



Senate

General Assembly

File No. 475

February Session, 2012

Substitute Senate Bill No. 429

Senate, April 17, 2012

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE SET-ASIDE PROGRAM AND THE PERCENTAGE OF CONTRACTS RESERVED FOR MINORITY BUSINESS ENTERPRISES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsections (a) and (b) of section 4a-60g of the 2012
2 supplement to the general statutes are repealed and the following is
3 substituted in lieu thereof (*Effective July 1, 2012*):

4 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive,
5 the following terms have the following meanings:

6 (1) "Small contractor" means any contractor, subcontractor,
7 manufacturer, service company or nonprofit corporation (A) that
8 maintains its principal place of business in the state, and (B) that had
9 gross revenues not exceeding fifteen million dollars in the most
10 recently completed fiscal year prior to such application. "Small
11 contractor" does not include any person who is affiliated with another

12 person if both persons considered together have a gross revenue
13 exceeding fifteen million dollars.

14 (2) "State agency" means each state board, commission, department,
15 office, institution, council or other agency with the power to contract
16 for goods or services itself or through its head.

17 (3) "Minority business enterprise" means any small contractor (A)
18 fifty-one per cent or more of the capital stock, if any, or assets of which
19 are owned by a person or persons (i) who exercise operational
20 authority over the daily affairs of the enterprise, (ii) who have the
21 power to direct the management and policies and receive the beneficial
22 interest of the enterprise, and (iii) who are members of a minority [, as
23 such term is defined in subsection (a) of section 32-9n,] or who are
24 women, (B) who is an individual with a disability, or (C) which is a
25 nonprofit corporation in which fifty-one per cent or more of the
26 persons who (i) exercise operational authority over the enterprise, and
27 (ii) have the power to direct the management and policies of the
28 enterprise are members of a minority, [as defined in this subsection,]
29 are women or are individuals with a disability.

30 (4) "Minority" means (A) Black Americans, including all persons
31 having origins in any of the Black African racial groups not of
32 Hispanic origin; (B) Hispanic Americans, including all persons of
33 Mexican, Puerto Rican, Cuban, Central or South American, or other
34 Spanish culture or origin, regardless of race; (C) all persons having
35 origins in the Iberian Peninsula, including Portugal, regardless of race;
36 (D) Asian Pacific Americans and Pacific islanders; or (E) American
37 Indians and persons having origins in any of the original peoples of
38 North America and maintaining identifiable tribal affiliations through
39 membership and participation or community identification.

40 [(4)] (5) "Affiliated" means the relationship in which a person
41 directly, or indirectly through one or more intermediaries, controls, is
42 controlled by or is under common control with another person.

43 [(5)] (6) "Control" means the power to direct or cause the direction of

44 the management and policies of any person, whether through the
45 ownership of voting securities, by contract or through any other direct
46 or indirect means. Control shall be presumed to exist if any person,
47 directly or indirectly, owns, controls, holds with the power to vote, or
48 holds proxies representing, twenty per cent or more of any voting
49 securities of another person.

50 [(6)] (7) "Person" means any individual, corporation, limited liability
51 company, partnership, association, joint stock company, business trust,
52 unincorporated organization or other entity.

53 [(7)] (8) "Individual with a disability" means an individual (A)
54 having a physical or mental impairment that substantially limits one or
55 more of the major life activities of the individual, which mental
56 impairment may include, but is not limited to, having one or more
57 mental disorders, as defined in the most recent edition of the American
58 Psychiatric Association's "Diagnostic and Statistical Manual of Mental
59 Disorders", or (B) having a record of such an impairment.

60 [(8)] (9) "Nonprofit corporation" means a nonprofit corporation
61 incorporated pursuant to chapter 602 or any predecessor statutes
62 thereto.

63 (b) It is found and determined that there is a serious need to help
64 small contractors, minority business enterprises, nonprofit
65 organizations and individuals with disabilities to be considered for
66 and awarded state contracts for the construction, reconstruction or
67 rehabilitation of public buildings, the construction and maintenance of
68 highways and the purchase of goods and services. Accordingly, the
69 necessity, in the public interest and for the public benefit and good, of
70 the provisions of this section, sections 4a-60h to 4a-60j, inclusive, and
71 sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative
72 determination. Notwithstanding any provisions of the general statutes
73 to the contrary, and except as set forth herein, the head of each state
74 agency and each political subdivision of the state other than a
75 municipality shall set aside in each fiscal year, for award to small
76 contractors, on the basis of competitive bidding procedures, contracts

77 or portions of contracts for the construction, reconstruction or
 78 rehabilitation of public buildings, the construction and maintenance of
 79 highways and the purchase of goods and services. Eligibility of
 80 nonprofit corporations under the provisions of this section shall be
 81 limited to predevelopment contracts awarded by the Commissioner of
 82 Economic and Community Development for housing projects. The
 83 total value of such contracts or portions thereof to be set aside by each
 84 such agency shall be at least twenty-five per cent of the total value of
 85 all contracts let by the head of such agency in each fiscal year,
 86 provided that neither: (1) A contract that may not be set aside due to a
 87 conflict with a federal law or regulation; or (2) a contract for any goods
 88 or services which have been determined by the Commissioner of
 89 Administrative Services to be not customarily available from or
 90 supplied by small contractors shall be included. Contracts or portions
 91 thereof having a value of not less than twenty-five per cent of the total
 92 value of all contracts or portions thereof to be set aside shall be
 93 reserved for awards to minority business enterprises, provided not less
 94 than fifty per cent of the contracts or portions thereof so reserved shall
 95 be reserved for awards to minority business enterprises that are
 96 members of a minority.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2012	4a-60g(a) and (b)

Statement of Legislative Commissioners:

In section 1(a)(3) "as defined in this subsection" was bracketed for proper form.

GAE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Comptroller - Adjudicated Claims Account	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill may expose the state to potential future liability as it changes the spending goals¹ for minority business enterprises (MBEs) by requiring at least 50% of MBE spending on ethnic minority-owned businesses (as opposed to businesses owned by women or individuals with disabilities as is currently permitted). The potential cost cannot be determined at this time as it would depend upon the number of claims against the state, the cost of any such judgments and associated litigation costs.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Department of Administrative Services

¹ In order to be legally valid such a change must be based on data and/or evidence (traditionally via a disparity study) showing that a particular race or gender group has been disparately impacted or discriminated against. The state is currently in the planning process for conducting a new disparity study. The state's liability would be mitigated to the extent that the results of the new study are in-line with the changes of the bill.

OLR Bill Analysis**sSB 429*****AN ACT CONCERNING THE SET-ASIDE PROGRAM AND THE PERCENTAGE OF CONTRACTS RESERVED FOR MINORITY BUSINESS ENTERPRISES.*****SUMMARY:**

By law, state agencies and political subdivisions, other than municipalities, must set aside 25% of the total value of all contracts they let for construction, goods, and services each year for exclusive bidding by certified small contractors. The agencies must further reserve 25% of the set-aside value (6.25% of the total) for exclusive bidding by certified minority business enterprises (MBE), which are small contractors owned by women, minorities, or people with disabilities.

This bill requires that half of the set-aside value for MBEs (3.125% of the total value of all contracts) be specifically reserved for MBEs that are owned by members of a minority. The other half of the MBE set-aside is open to all MBEs.

EFFECTIVE DATE: July 1, 2012

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 14 Nay 1 (03/29/2012)