



General Assembly

Amendment

January Session, 2013

LCO No. 8930

SB0043008930HDO

Offered by:

REP. MCCRORY, 7th Dist.
REP. MCGEE, 5th Dist.
REP. MILLER, 36th Dist.
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REP. SANCHEZ, 25th Dist.
REP. SANTIAGO, 130th Dist.
REP. SANTIAGO, 84th Dist.
REP. STALLWORTH, 126th Dist.
REP. VARGAS, 6th Dist.

REP. HOLDER-WINFIELD, 94th
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REP. HEWETT, 39th Dist.
REP. GONZALEZ, 3rd Dist.
REP. CUEVAS, 75th Dist.
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REP. CANDELARIA, 95th Dist.
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REP. AYALA, 128th Dist.
REP. ARCE, 4th Dist.

To: Subst. Senate Bill No. 430

File No. 477

Cal. No. 546

**"AN ACT CONCERNING THE STATE FLEET AND MILEAGE, FUEL
AND EMISSION STANDARDS."**

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 4a-60g of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2013*):

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

7 (1) "Small contractor" means any contractor, subcontractor,

8 manufacturer, service company or nonprofit corporation (A) that
9 maintains its principal place of business in the state, [and] (B) that had
10 gross revenues not exceeding fifteen million dollars in the most
11 recently completed fiscal year prior to such application, and (C) that is
12 independent. "Small contractor" does not include any person who is
13 affiliated with another person if both persons considered together have
14 a gross revenue exceeding fifteen million dollars.

15 (2) "Independent" means the viability of the enterprise of the small
16 contractor does not depend upon another person, as determined by an
17 analysis of the small contractor's relationship with any other person in
18 regards to the provision of personnel, facilities, equipment, other
19 resources and financial support, including bonding.

20 [(2)] (3) "State agency" means each state board, commission,
21 department, office, institution, council or other agency with the power
22 to contract for goods or services itself or through its head.

23 [(3)] (4) "Minority business enterprise" means any small contractor
24 (A) fifty-one per cent or more of the capital stock, if any, or assets of
25 which are owned by a person or persons who (i) [who] exercise
26 operational authority over the daily affairs of the enterprise, (ii) [who]
27 have the power to direct the management and policies and receive the
28 beneficial interest of the enterprise, (iii) possess managerial and
29 technical competence and experience directly related to the principal
30 business activities of the enterprise, and [(iii) who] (iv) are members of
31 a minority, as such term is defined in subsection (a) of section 32-9n,
32 [(B) who is an individual] or are individuals with a disability, or [(C)]
33 (B) which is a nonprofit corporation in which fifty-one per cent or
34 more of the persons who (i) exercise operational authority over the
35 enterprise, (ii) possess managerial and technical competence and
36 experience directly related to the principal business activities of the
37 enterprise, [and (ii)] (iii) have the power to direct the management and
38 policies of the enterprise, and (iv) are members of a minority, as
39 defined in this subsection, or are individuals with a disability.

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.

94 (c) The head of any state agency or political subdivision of the state
95 other than a municipality may, in lieu of setting aside any contract or
96 portions thereof, require any general or trade contractor or any other
97 entity authorized by such agency to award contracts, to set aside a
98 portion of any contract for subcontractors who are eligible for set-aside
99 contracts under this section. Nothing in this subsection shall be
100 construed to diminish the total value of contracts which are required to
101 be set aside by any state agency or political subdivision of the state
102 other than a municipality pursuant to this section.

103 (d) The heads of all state agencies and of each political subdivision
104 of the state other than a municipality shall notify the Commissioner of
105 Administrative Services of all contracts to be set aside pursuant to

106 subsection (b) or (c) of this section at the time that bid documents for
107 such contracts are made available to potential contractors.

108 (e) The awarding authority shall require that a contractor or
109 subcontractor awarded a contract or a portion of a contract under this
110 section perform not less than [fifteen] thirty per cent of the work with
111 the workforces of such contractor or subcontractor and shall require
112 that not less than [twenty-five] fifty per cent of the work be performed
113 by contractors or subcontractors eligible for awards under this section.
114 A contractor awarded a contract or a portion of a contract under this
115 section shall not subcontract with any person with whom the
116 contractor is affiliated. No person who is affiliated with another person
117 shall be eligible for awards under this section if both affiliated persons
118 considered together would not qualify as a small contractor or a
119 minority business enterprise under subsection (a) of this section. The
120 awarding authority shall require that a contractor awarded a contract
121 pursuant to this section submit, in writing, an explanation of any
122 subcontract to such contract that is entered into with any person that is
123 not eligible for the award of a contract pursuant to this section, prior to
124 the performance of any work pursuant to such subcontract.

125 (f) The awarding authority may require that a contractor or
126 subcontractor awarded a contract or a portion of a contract under this
127 section furnish the following documentation: (1) A copy of the
128 certificate of incorporation, certificate of limited partnership,
129 partnership agreement or other organizational documents of the
130 contractor or subcontractor; (2) a copy of federal income tax returns
131 filed by the contractor or subcontractor for the previous year; and (3)
132 evidence of payment of fair market value for the purchase or lease by
133 the contractor or subcontractor of property or equipment from another
134 contractor who is not eligible for set-aside contracts under this section.

135 (g) The awarding authority or the Commissioner of Administrative
136 Services or the Commission on Human Rights and Opportunities may
137 conduct an audit of the financial, corporate and business records and
138 conduct an investigation of any small contractor or minority business

139 enterprise which applies for or is awarded a set-aside contract for the
140 purpose of determining eligibility for awards or compliance with the
141 requirements established under this section.

142 (h) The provisions of this section shall not apply to any state agency
143 or political subdivision of the state other than a municipality for which
144 the total value of all contracts or portions of contracts of the types
145 enumerated in subsection (b) of this section is anticipated to be equal
146 to ten thousand dollars or less.

147 (i) In lieu of a performance, bid, labor and materials or other
148 required bond, a contractor or subcontractor awarded a contract under
149 this section may provide to the awarding authority, and the awarding
150 authority shall accept a letter of credit. Any such letter of credit shall
151 be in an amount equal to ten per cent of the contract for any contract
152 that is less than one hundred thousand dollars and in an amount equal
153 to twenty-five per cent of the contract for any contract that exceeds one
154 hundred thousand dollars.

155 (j) (1) Whenever the awarding authority has reason to believe that
156 any contractor or subcontractor awarded a set-aside contract has
157 wilfully violated any provision of this section, the awarding authority
158 shall send a notice to such contractor or subcontractor by certified
159 mail, return receipt requested. Such notice shall include: (A) A
160 reference to the provision alleged to be violated; (B) a short and plain
161 statement of the matter asserted; (C) the maximum civil penalty that
162 may be imposed for such violation; and (D) the time and place for the
163 hearing. Such hearing shall be fixed for a date not earlier than fourteen
164 days after the notice is mailed. The awarding authority shall send a
165 copy of such notice to the Commission on Human Rights and
166 Opportunities.

167 (2) The awarding authority shall hold a hearing on the violation
168 asserted unless such contractor or subcontractor fails to appear. The
169 hearing shall be held in accordance with the provisions of chapter 54.
170 If, after the hearing, the awarding authority finds that the contractor or

171 subcontractor has wilfully violated any provision of this section, the
172 awarding authority shall suspend all set-aside contract payments to
173 the contractor or subcontractor and may, in its discretion, order that a
174 civil penalty not exceeding ten thousand dollars per violation be
175 imposed on the contractor or subcontractor. If such contractor or
176 subcontractor fails to appear for the hearing, the awarding authority
177 may, as the facts require, order that a civil penalty not exceeding ten
178 thousand dollars per violation be imposed on the contractor or
179 subcontractor. The awarding authority shall send a copy of any order
180 issued pursuant to this subsection by certified mail, return receipt
181 requested, to the contractor or subcontractor named in such order. The
182 awarding authority may cause proceedings to be instituted by the
183 Attorney General for the enforcement of any order imposing a civil
184 penalty issued under this subsection.

185 (k) (1) On or before January 1, 2000, the Commissioner of
186 Administrative Services shall establish a process for certification of
187 small contractors and minority business enterprises as eligible for
188 set-aside contracts. Each certification shall be valid for a period not to
189 exceed two years. Any paper application for certification shall be no
190 longer than six pages. The Department of Administrative Services shall
191 maintain on its web site an updated directory of small contractors and
192 minority business enterprises certified under this section.

193 (2) The Commissioner of Administrative Services may revoke such
194 certification for cause after notice and an opportunity for a hearing in
195 accordance with the provisions of chapter 54. Any person aggrieved by
196 the commissioner's decision to revoke such certification may appeal
197 such decision to the Superior Court, in accordance with the provisions
198 of section 4-183.

199 (3) Whenever the Commissioner of Administrative Services has
200 reason to believe that a small contractor or minority business
201 enterprise who has applied for or received certification under this
202 section has included a materially false statement in his or her
203 application, the commissioner may impose a penalty not exceeding ten

204 thousand dollars after notice and a hearing held in accordance with
205 chapter 54. Such notice shall include (A) a reference to the statement or
206 statements contained in the application alleged to be false, (B) the
207 maximum civil penalty that may be imposed for such
208 misrepresentation, and (C) the time and place of the hearing. Such
209 hearing shall be fixed for a date not later than fourteen days from the
210 date such notice is sent. The commissioner shall send a copy of such
211 notice to the Commission on Human Rights.

212 (4) The commissioner shall hold a hearing prior to such revocation
213 or denial or the imposition of a penalty, unless such contractor or
214 subcontractor fails to appear. If after the hearing, the commissioner
215 finds that the contractor or subcontractor has wilfully included a
216 materially false statement in his or her application for certification
217 under this subsection, the commissioner shall revoke or deny the
218 certification and may order that a civil penalty not exceeding ten
219 thousand dollars be imposed on the contractor or subcontractor. If
220 such contractor or subcontractor fails to appear for the hearing, the
221 commissioner may, as the facts require, revoke or deny the certification
222 and order that a civil penalty not exceeding ten thousand dollars be
223 imposed on the contractor or subcontractor. The commissioner shall
224 send a copy of any order issued pursuant to this subsection to the
225 contractor or subcontractor named in such order. The commissioner
226 may cause proceedings to be instituted by the Attorney General for the
227 enforcement of any order imposing a civil penalty issued under this
228 subsection.

229 (l) On or before August 30, 2007, and annually thereafter, each state
230 agency and each political subdivision of the state other than a
231 municipality setting aside contracts or portions of contracts shall
232 prepare a report establishing small and minority business set-aside
233 program goals for the twelve-month period beginning July first in the
234 same year. Each such report shall be submitted to the Commissioner of
235 Administrative Services, the Commission on Human Rights and
236 Opportunities and the cochairpersons and ranking members of the
237 joint standing committees of the General Assembly having cognizance

238 of matters relating to planning and development and government
239 administration and elections.

240 (m) On or before November 1, 1995, and quarterly thereafter, each
241 state agency and each political subdivision of the state other than a
242 municipality setting aside contracts or portions of contracts shall
243 prepare a status report on the implementation and results of its small
244 business and minority business enterprise set-aside program goals
245 during the three-month period ending one month before the due date
246 for the report. Each report shall be submitted to the Commissioner of
247 Administrative Services and the Commission on Human Rights and
248 Opportunities. Any state agency or political subdivision of the state,
249 other than a municipality, that achieves less than fifty per cent of its
250 small contractor and minority business enterprise set-aside program
251 goals by the end of the second reporting period in any twelve-month
252 period beginning on July first shall provide a written explanation to
253 the Commissioner of Administrative Services and the Commission on
254 Human Rights and Opportunities detailing how the agency or political
255 subdivision will achieve its goals in the final reporting period. The
256 Commission on Human Rights and Opportunities shall: (1) Monitor
257 the achievement of the annual goals established by each state agency
258 and political subdivision of the state other than a municipality; and (2)
259 prepare a quarterly report concerning such goal achievement. The
260 report shall be submitted to each state agency that submitted a report,
261 the Commissioner of Economic and Community Development, the
262 Commissioner of Administrative Services and the cochairpersons and
263 ranking members of the joint standing committees of the General
264 Assembly having cognizance of matters relating to planning and
265 development and government administration and elections. Failure by
266 any state agency or political subdivision of the state other than a
267 municipality to submit any reports required by this section shall be a
268 violation of section 46a-77.

269 (n) Nothing in this section shall be construed to apply to the four
270 janitorial contracts awarded pursuant to subsections (b) to (e),
271 inclusive, of section 4a-82.

272 (o) The Commissioner of Administrative Services may adopt
 273 regulations in accordance with the provisions of chapter 54 to
 274 implement the provisions of this section.

275 Sec. 502. Section 4a-100 of the general statutes is amended by adding
 276 subsection (p) as follows (*Effective October 1, 2013*):

277 (NEW) (p) The commissioner shall provide written notice to each
 278 contractor and substantial subcontractor issued a prequalification
 279 certificate pursuant to this section about the bond guaranty program
 280 administered by the Department of Economic and Community
 281 Development.

282 Sec. 503. (NEW) (*Effective October 1, 2013*) The Commissioner of
 283 Economic and Community Development shall give priority to any
 284 contractor or substantial subcontractor who is prequalified under
 285 section 4a-100 of the general statutes, as amended by this act, for
 286 participation in the Department of Economic and Community
 287 Development's bond guaranty program under public act 79-607."

This act shall take effect as follows and shall amend the following sections:		
Sec. 501	<i>October 1, 2013</i>	4a-60g
Sec. 502	<i>October 1, 2013</i>	4a-100
Sec. 503	<i>October 1, 2013</i>	New section