



General Assembly

February Session, 2014

Raised Bill No. 452

LCO No. 2481



Referred to Committee on GOVERNMENT ADMINISTRATION
AND ELECTIONS

Introduced by:
(GAE)

***AN ACT IMPLEMENTING THE INITIAL FINDINGS OF THE DISPARITY
STUDY CONCERNING THE MINORITY BUSINESS SET-ASIDE
PROGRAM.***

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

1 Section 1. Section 4a-60g of the 2014 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2014*):

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 that (A) [that]
8 maintains its principal place of business in the state, (B) (i) [that] had
9 gross revenues not exceeding fifteen million dollars in the most
10 recently completed fiscal year prior to such application, or (ii) of which
11 fifty-one per cent or more of the capital stock, if any, or assets are
12 owned, or in the case of a nonprofit corporation, fifty-one per cent or
13 more of the corporation is managed, by a person or persons who are

14 individuals with a disability or veterans, as defined in section 27-103,
15 and (C) [that] is independent. "Small contractor" does not include any
16 person who is affiliated with another person if both persons
17 considered together have a gross revenue exceeding fifteen million
18 dollars.

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

24 (3) "State agency" means each state board, commission, department,
25 office, institution, council or other agency with the power to contract
26 for goods or services itself or through its head.

27 (4) "Contractor" includes any contractor, subcontractor,
28 manufacturer, service company or nonprofit corporation that enters
29 into a contract for goods or services with a state agency.

30 [(4)] (5) "Minority business enterprise" means any [small] contractor
31 [(A)] of which fifty-one per cent or more of the capital stock, if any, or
32 assets [of which] are owned, or in the case of a nonprofit corporation
33 fifty-one per cent or more of the corporation is managed, by a person
34 or persons who [(i)] (A) exercise operational authority over the daily
35 affairs of the enterprise, [(ii)] (B) have the power to direct the
36 management and policies and receive the beneficial interest of the
37 enterprise, [(iii)] (C) possess managerial and technical competence and
38 experience directly related to the principal business activities of the
39 enterprise, and [(iv)] (D) are members of a minority. [, as such term is
40 defined in subsection (a) of section 32-9n, or are individuals with a
41 disability, or (B) which is a nonprofit corporation in which fifty-one
42 per cent or more of the persons who (i) exercise operational authority
43 over the enterprise, (ii) possess managerial and technical competence
44 and experience directly related to the principal business activities of

45 the enterprise, (iii) have the power to direct the management and
46 policies of the enterprise, and (iv) are members of a minority, as
47 defined in this subsection, or are individuals with a disability.]

48 (6) "Minority" means (A) Black Americans, including all persons
49 having origins in any of the Black African racial groups not of
50 Hispanic origin; (B) Hispanic Americans, including all persons of
51 Mexican, Puerto Rican, Cuban, Central or South American, or other
52 Spanish culture or origin, regardless of race; (C) all persons having
53 origins in the Iberian Peninsula, including Portugal, regardless of race;
54 (D) Asian Pacific Americans and Pacific islanders; or (E) American
55 Indians and persons having origins in any of the original peoples of
56 North America and maintaining identifiable tribal affiliations through
57 membership and participation or community identification.

58 (7) "Women's business enterprise" means any contractor of which
59 fifty-one per cent or more of the capital stock, if any, or assets are
60 owned, or in the case of a nonprofit corporation fifty-one per cent or
61 more of the corporation is managed, by a person or persons who (A)
62 exercise operational authority over the daily affairs of the enterprise,
63 (B) have the power to direct the management and policies and receive
64 the beneficial interest of the enterprise, (C) possess managerial and
65 technical competence and experience directly related to the principal
66 business activities of the enterprise, and (D) are women.

67 [(5)] (8) "Affiliated" means the relationship in which a person
68 directly, or indirectly through one or more intermediaries, controls, is
69 controlled by or is under common control with another person.

70 [(6)] (9) "Control" means the power to direct or cause the direction of
71 the management and policies of any person, whether through the
72 ownership of voting securities, by contract or through any other direct
73 or indirect means. Control shall be presumed to exist if any person,
74 directly or indirectly, owns, controls, holds with the power to vote, or
75 holds proxies representing, twenty per cent or more of any voting

76 securities of another person.

77 [(7)] (10) "Person" means any individual, corporation, limited
78 liability company, partnership, association, joint stock company,
79 business trust, unincorporated organization or other entity.

80 [(8)] (11) "Individual with a disability" means an individual (A)
81 having a physical or mental impairment that substantially limits one or
82 more of the major life activities of the individual, which mental
83 impairment may include, but is not limited to, having one or more
84 mental disorders, as defined in the most recent edition of the American
85 Psychiatric Association's "Diagnostic and Statistical Manual of Mental
86 Disorders", or (B) having a record of such an impairment.

87 [(9)] (12) "Nonprofit corporation" means a nonprofit corporation
88 incorporated pursuant to chapter 602 or any predecessor statutes
89 thereto.

90 (13) "Reserved contract" means a contract offered or awarded to a
91 minority business enterprise or women's business enterprise to meet
92 the goals established under subsection (b) of this section.

93 (b) It is found and determined that there is a serious need to help
94 small contractors, minority business enterprises, women's business
95 enterprises, nonprofit organizations, veterans and individuals with
96 disabilities to be considered for and awarded state contracts for the
97 construction, reconstruction or rehabilitation of public buildings, the
98 construction and maintenance of highways and the purchase of goods
99 and services. Accordingly, the necessity, in the public interest and for
100 the public benefit and good, of the provisions of this section, sections
101 4a-60h to 4a-60j, inclusive, and sections 32-9i to 32-9p, inclusive, is
102 declared as a matter of legislative determination. Notwithstanding any
103 provisions of the general statutes, [to the contrary,] and except as set
104 forth [herein,] in this section, the head of each state agency and each
105 political subdivision of the state other than a municipality shall set
106 aside in each fiscal year, for award to small contractors, on the basis of

107 competitive bidding procedures, contracts or portions of contracts for
108 the construction, reconstruction or rehabilitation of public buildings,
109 the construction and maintenance of highways and the purchase of
110 goods and services. Eligibility of nonprofit corporations under the
111 provisions of this section shall be limited to predevelopment contracts
112 awarded by the Commissioner of Housing for housing projects. The
113 total value of such contracts or portions thereof to be set aside by each
114 such agency shall be at least twenty-five per cent of the total value of
115 all contracts let by the head of such agency in each fiscal year,
116 provided that neither: (1) A contract that may not be set aside due to a
117 conflict with a federal law or regulation; or (2) a contract for any goods
118 or services which have been determined by the Commissioner of
119 Administrative Services to be not customarily available from or
120 supplied by small contractors shall be included. [Contracts] Each such
121 agency shall also have the goal of reserving contracts or portions
122 thereof having a value of not less than twenty-five per cent of the total
123 value of all contracts or portions thereof to be set aside [shall be
124 reserved] for awards to women's business enterprises and minority
125 business enterprises whenever feasible.

126 (c) The head of any state agency or political subdivision of the state
127 other than a municipality may (1) in lieu of setting aside any contract
128 or portions thereof, require any general or trade contractor or any
129 other entity authorized by such agency to award contracts, to set aside
130 a portion of any contract for subcontractors who are eligible for set-
131 aside contracts under this section or, (2) concerning the goals for
132 reserved contracts established in subsection (b) of this section, require
133 the general or trade contractor or any such other entity to make a
134 reasonable effort to reserve a portion of the contract for subcontractors
135 who are women's business enterprises or minority business
136 enterprises. Nothing in this subsection shall be construed to diminish
137 the total value of contracts which are required to be set aside or
138 reserved by any state agency or political subdivision of the state other
139 than a municipality pursuant to this section.

140 (d) The heads of all state agencies and of each political subdivision
141 of the state other than a municipality shall notify the Commissioner of
142 Administrative Services of all contracts to be set aside or reserved
143 pursuant to subsection (b) or (c) of this section at the time that bid
144 documents for such contracts are made available to potential
145 contractors.

146 (e) The awarding authority shall require that a contractor or
147 subcontractor awarded a contract or a portion of a contract under this
148 section perform not less than thirty per cent of the work with the
149 workforces of such contractor or subcontractor and shall require that
150 not less than fifty per cent of the work be performed by contractors or
151 subcontractors eligible for awards under this section. A contractor
152 awarded a contract or a portion of a contract under this section shall
153 not subcontract with any person with whom the contractor is affiliated.
154 No person who is affiliated with another person shall be eligible for
155 awards under this section if both affiliated persons considered together
156 would not qualify as a small contractor or a minority business
157 enterprise or women's business enterprise under subsection (a) of this
158 section. The awarding authority shall require that a contractor
159 awarded a contract pursuant to this section submit, in writing, an
160 explanation of any subcontract to such contract that is entered into
161 with any person [that] who is not eligible for the award of a contract
162 pursuant to this section, prior to the performance of any work
163 pursuant to such subcontract.

164 (f) The awarding authority may require that a contractor or
165 subcontractor awarded a contract or a portion of a contract under this
166 section furnish the following documentation: (1) A copy of the
167 certificate of incorporation, certificate of limited partnership,
168 partnership agreement or other organizational documents of the
169 contractor or subcontractor; (2) a copy of federal income tax returns
170 filed by the contractor or subcontractor for the previous year; and (3)
171 evidence of payment of fair market value for the purchase or lease by
172 the contractor or subcontractor of property or equipment from another

173 contractor who is not eligible for set-aside or reserved contracts under
174 this section.

175 (g) The awarding authority or the Commissioner of Administrative
176 Services or the Commission on Human Rights and Opportunities may
177 conduct an audit of the financial, corporate and business records and
178 conduct an investigation of any small contractor [or minority business
179 enterprise which] that applies for or is awarded a set-aside contract or
180 any minority business enterprise or women's business enterprise that
181 applies for or is awarded a reserved contract for the purpose of
182 determining eligibility for awards or compliance with the
183 requirements established under this section.

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

189 (i) In lieu of a performance, bid, labor and materials or other
190 required bond, a contractor or subcontractor awarded a contract under
191 this section may provide to the awarding authority, and the awarding
192 authority shall accept a letter of credit. Any such letter of credit shall
193 be in an amount equal to ten per cent of the contract for any contract
194 that is less than one hundred thousand dollars and in an amount equal
195 to twenty-five per cent of the contract for any contract that exceeds one
196 hundred thousand dollars.

197 (j) (1) Whenever the awarding authority has reason to believe that
198 any contractor or subcontractor awarded a set-aside or reserved
199 contract has wilfully violated any provision of this section, the
200 awarding authority shall send a notice to such contractor or
201 subcontractor by certified mail, return receipt requested. Such notice
202 shall include: (A) A reference to the provision alleged to be violated;
203 (B) a short and plain statement of the matter asserted; (C) the

204 maximum civil penalty that may be imposed for such violation; and
205 (D) the time and place for the hearing. Such hearing shall be fixed for a
206 date not earlier than fourteen days after the notice is mailed. The
207 awarding authority shall send a copy of such notice to the Commission
208 on Human Rights and Opportunities.

209 (2) The awarding authority shall hold a hearing on the violation
210 asserted unless such contractor or subcontractor fails to appear. The
211 hearing shall be held in accordance with the provisions of chapter 54.
212 If, after the hearing, the awarding authority finds that the contractor or
213 subcontractor has wilfully violated any provision of this section, the
214 awarding authority shall suspend all set-aside or reserved contract
215 payments to the contractor or subcontractor and may, in its discretion,
216 order that a civil penalty not exceeding ten thousand dollars per
217 violation be imposed on the contractor or subcontractor. If such
218 contractor or subcontractor fails to appear for the hearing, the
219 awarding authority may, as the facts require, order that a civil penalty
220 not exceeding ten thousand dollars per violation be imposed on the
221 contractor or subcontractor. The awarding authority shall send a copy
222 of any order issued pursuant to this subsection by certified mail, return
223 receipt requested, to the contractor or subcontractor named in such
224 order. The awarding authority may cause proceedings to be instituted
225 by the Attorney General for the enforcement of any order imposing a
226 civil penalty issued under this subsection.

227 (k) (1) On or before January 1, [2000] 2015, the Commissioner of
228 Administrative Services shall establish a process for certification of
229 small contractors [and minority business enterprises] as eligible for set-
230 aside contracts and women's business enterprises and minority
231 business enterprises as eligible for reserved contracts. Each
232 certification shall be valid for a period not to exceed two years. Any
233 paper application for certification shall be no longer than six pages.
234 The Department of Administrative Services shall maintain on its web
235 site an updated directory of small contractors, [and] women's business
236 enterprises and minority business enterprises certified under this

237 section.

238 (2) The Commissioner of Administrative Services may revoke such
239 certification for cause after notice and an opportunity for a hearing in
240 accordance with the provisions of chapter 54. Any person aggrieved by
241 the commissioner's decision to revoke such certification may appeal
242 such decision to the Superior Court, in accordance with the provisions
243 of section 4-183.

244 (3) Whenever the Commissioner of Administrative Services has
245 reason to believe that a small contractor, women's business enterprise
246 or minority business enterprise who has applied for or received
247 certification under this section has included a materially false
248 statement in his or her application, the commissioner may impose a
249 penalty not exceeding ten thousand dollars after notice and a hearing
250 held in accordance with chapter 54. Such notice shall include (A) a
251 reference to the statement or statements contained in the application
252 alleged to be false, (B) the maximum civil penalty that may be imposed
253 for such misrepresentation, and (C) the time and place of the hearing.
254 Such hearing shall be fixed for a date not later than fourteen days from
255 the date such notice is sent. The commissioner shall send a copy of
256 such notice to the Commission on Human Rights and Opportunities.

257 (4) The commissioner shall hold a hearing prior to such revocation
258 or denial or the imposition of a penalty, unless such contractor or
259 subcontractor fails to appear. If, after the hearing, the commissioner
260 finds that the contractor or subcontractor has wilfully included a
261 materially false statement in his or her application for certification
262 under this subsection, the commissioner shall revoke or deny the
263 certification and may order that a civil penalty not exceeding ten
264 thousand dollars be imposed on the contractor or subcontractor. If
265 such contractor or subcontractor fails to appear for the hearing, the
266 commissioner may, as the facts require, revoke or deny the certification
267 and order that a civil penalty not exceeding ten thousand dollars be
268 imposed on the contractor or subcontractor. The commissioner shall

269 send a copy of any order issued pursuant to this subsection to the
270 contractor or subcontractor named in such order. The commissioner
271 may cause proceedings to be instituted by the Attorney General for the
272 enforcement of any order imposing a civil penalty issued under this
273 subsection.

274 (l) On or before August 30, 2007, and annually thereafter, each state
275 agency and each political subdivision of the state other than a
276 municipality setting aside or reserving contracts or portions of
277 contracts shall prepare a report establishing small [and minority]
278 business set-aside program and minority and women's business
279 enterprise reserved contract goals for the twelve-month period
280 beginning July first in the same year. Each such report shall be
281 submitted to the Commissioner of Administrative Services, the
282 Commission on Human Rights and Opportunities and the
283 cochairpersons and ranking members of the joint standing committees
284 of the General Assembly having cognizance of matters relating to
285 planning and development and government administration and
286 elections.

287 (m) On or before November 1, 1995, and quarterly thereafter, each
288 state agency and each political subdivision of the state other than a
289 municipality setting aside or reserving contracts or portions of
290 contracts shall prepare a status report on the implementation and
291 results of its small business [and minority business enterprise] set-
292 aside program goals and women's business enterprise and minority
293 business enterprise reserved contract goals during the three-month
294 period ending one month before the due date for the report. Each
295 report shall be submitted to the Commissioner of Administrative
296 Services and the Commission on Human Rights and Opportunities.
297 Any state agency or political subdivision of the state, other than a
298 municipality, that achieves less than fifty per cent of its small
299 contractor [and minority business enterprise] set-aside program goals
300 or women's business enterprise and minority business enterprise
301 reserved contract goals by the end of the second reporting period in

302 any twelve-month period beginning on July first shall provide a
303 written explanation to the Commissioner of Administrative Services
304 and the Commission on Human Rights and Opportunities detailing
305 how the agency or political subdivision will achieve its goals in the
306 final reporting period. The Commission on Human Rights and
307 Opportunities shall: (1) Monitor the achievement of the annual goals
308 established by each state agency and political subdivision of the state
309 other than a municipality; and (2) prepare a quarterly report
310 concerning such goal achievement. The report shall be submitted to
311 each state agency that submitted a report, the Commissioner of
312 Economic and Community Development, the Commissioner of
313 Administrative Services and the cochairpersons and ranking members
314 of the joint standing committees of the General Assembly having
315 cognizance of matters relating to planning and development and
316 government administration, [and elections.] Failure by any state
317 agency or political subdivision of the state other than a municipality to
318 submit any reports required by this section shall be a violation of
319 section 46a-77.

320 (n) Nothing in this section shall be construed to apply to the
321 janitorial contracts awarded pursuant to subsections (b) to (d),
322 inclusive, of section 4a-82.

323 (o) The Commissioner of Administrative Services may adopt
324 regulations in accordance with the provisions of chapter 54 to
325 implement the provisions of this section.

326 Sec. 2. Section 4a-60h of the general statutes is repealed and the
327 following is substituted in lieu thereof (*Effective October 1, 2014*):

328 (a) The Commissioner of Administrative Services shall be
329 responsible for the administration of the set-aside and reserved
330 contract program. The commissioner shall conduct regular training
331 sessions, as the commissioner deems necessary, for state agencies to
332 explain the set-aside and reserved contract program and to specify the

333 factors that must be addressed in calculating agency goals under the
334 program. The commissioner shall conduct informational workshops to
335 inform businesses of set-aside and reserved contract opportunities and
336 responsibilities.

337 (b) The commissioner shall adopt regulations in accordance with the
338 provisions of chapter 54 to carry out the purposes of sections 4a-60g to
339 4a-60j, inclusive. Such regulations shall include (1) provisions
340 concerning the application of the program to individuals with a
341 disability; (2) guidelines for a legally acceptable format for, and content
342 of, letters of credit authorized under subsection (j) of section 4a-60g; (3)
343 procedures for random site visits to the place of business of an
344 applicant for certification at the time of application and at subsequent
345 times, as necessary, to ensure the integrity of the application process;
346 and (4) time limits for approval or disapproval of applications.

347 (c) [~~On or before January 1, 1994, the~~] The Commissioner of
348 Administrative Services shall, by regulations adopted in accordance
349 with chapter 54, establish a process to ensure that small contractors,
350 small businesses, [~~and~~] women's business enterprises and minority
351 business enterprises have fair access to all competitive contracts
352 outside of the set-aside and reserved contract program.

353 Sec. 3. Section 4a-61 of the general statutes is repealed and the
354 following is substituted in lieu thereof (*Effective October 1, 2014*):

355 The Commissioner of Administrative Services, with the advice of
356 the Commissioner of Economic and Community Development, shall
357 adopt regulations, in accordance with chapter 54, establishing
358 procedures for the award of contracts concerning minority business
359 enterprises and women's business enterprises by the state or any
360 political subdivision of the state other than a municipality.

361 Sec. 4. Section 4a-62 of the 2014 supplement to the general statutes is
362 repealed and the following is substituted in lieu thereof (*Effective*
363 *October 1, 2014*):

364 (a) There is established a Women's and Minority Business
365 Enterprise Review Committee. The committee shall consist of two
366 members of the House of Representatives appointed by the speaker of
367 the House, two members of the House appointed by the minority
368 leader of the House, two members of the Senate appointed by the
369 president pro tempore of the Senate, and two members of the Senate
370 appointed by the minority leader of the Senate. The committee shall
371 conduct an ongoing study of contract awards, loans and bonds made
372 or guaranteed by the state or any political subdivision of the state
373 other than a municipality for the purpose of determining the extent of
374 compliance with the provisions of the general statutes concerning
375 contract awards, loans and bonds for minority business enterprises
376 and women's business enterprises, including the [set-aside] reserved
377 contract program for such business enterprises.

378 (b) The committee may request any agency of the state authorized to
379 award public works contracts or to enter into purchase of goods or
380 services contracts to submit such information on compliance with
381 sections 4a-60, as amended by this act, and 4a-60g and at such times as
382 the committee may require. The committee shall consult with the
383 Departments of Administrative Services, Transportation and Economic
384 and Community Development and the Commission on Human Rights
385 and Opportunities concerning compliance with the state programs for
386 minority business enterprises and women's business enterprises. The
387 committee shall report annually on or before February first to the Joint
388 Committee on Legislative Management on the results of its ongoing
389 study and include its recommendations, if any, for legislation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2014</i>	4a-60g
Sec. 2	<i>October 1, 2014</i>	4a-60h
Sec. 3	<i>October 1, 2014</i>	4a-61
Sec. 4	<i>October 1, 2014</i>	4a-62

Statement of Purpose:

To implement the results of the first phase of the disparity study.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]