



General Assembly

January Session, 2015

**Committee Bill No. 831**

LCO No. 5530



Referred to Committee on PLANNING AND DEVELOPMENT

Introduced by:  
(PD)

**AN ACT ELIMINATING THE MUNICIPAL EXEMPTION FROM THE CONTRACT COMPLIANCE REQUIREMENTS IN STATE CONTRACTS.**

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

1 Section 1. Section 4a-60g of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

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

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

13 (2) "Independent" means the viability of the enterprise of the small  
14 contractor does not depend upon another person, as determined by an

15 analysis of the small contractor's relationship with any other person in  
16 regards to the provision of personnel, facilities, equipment, other  
17 resources and financial support, including bonding.

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

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

37 (5) "Affiliated" means the relationship in which a person directly, or  
38 indirectly through one or more intermediaries, controls, is controlled  
39 by or is under common control with another person.

40 (6) "Control" means the power to direct or cause the direction of the  
41 management and policies of any person, whether through the  
42 ownership of voting securities, by contract or through any other direct  
43 or indirect means. Control shall be presumed to exist if any person,  
44 directly or indirectly, owns, controls, holds with the power to vote, or  
45 holds proxies representing, twenty per cent or more of any voting  
46 securities of another person.

47 (7) "Person" means any individual, corporation, limited liability  
48 company, partnership, association, joint stock company, business trust,  
49 unincorporated organization or other entity.

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

57 (9) "Nonprofit corporation" means a nonprofit corporation  
58 incorporated pursuant to chapter 602 or any predecessor statutes  
59 thereto.

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

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

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

104 (d) The heads of all state agencies and of each political subdivision  
105 of the state [other than a municipality] shall notify the Commissioner  
106 of Administrative Services of all contracts to be set aside pursuant to  
107 subsection (b) or (c) of this section at the time that bid documents for  
108 such contracts are made available to potential contractors.

109 (e) The awarding authority shall require that a contractor or  
110 subcontractor awarded a contract or a portion of a contract under this

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

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

136 (g) The awarding authority or the Commissioner of Administrative  
137 Services or the Commission on Human Rights and Opportunities may  
138 conduct an audit of the financial, corporate and business records and  
139 conduct an investigation of any small contractor or minority business  
140 enterprise which applies for or is awarded a set-aside contract for the  
141 purpose of determining eligibility for awards or compliance with the  
142 requirements established under this section.

143 (h) The provisions of this section shall not apply (1) to any state  
144 agency or political subdivision of the state [other than a municipality]  
145 for which the total value of all contracts or portions of contracts of the  
146 types enumerated in subsection (b) of this section is anticipated to be  
147 equal to ten thousand dollars or less, or (2) municipal contracts or  
148 portions of municipal contracts where (A) the total cost of all work to  
149 be performed by all contractors and subcontractors in connection with  
150 new construction of public buildings or highways is less than four  
151 hundred thousand dollars, or (B) the total cost of all work to be  
152 performed by all contractors and subcontractors in connection with  
153 any remodeling, refinishing, refurbishing, rehabilitation, alteration or  
154 repair of any public building or maintaining any highway is less than  
155 one hundred thousand dollars.

156 (i) In lieu of a performance, bid, labor and materials or other  
157 required bond, a contractor or subcontractor awarded a contract under  
158 this section may provide to the awarding authority, and the awarding  
159 authority shall accept a letter of credit. Any such letter of credit shall  
160 be in an amount equal to ten per cent of the contract for any contract  
161 that is less than one hundred thousand dollars and in an amount equal  
162 to twenty-five per cent of the contract for any contract that exceeds one  
163 hundred thousand dollars.

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

176 (2) The awarding authority shall hold a hearing on the violation  
177 asserted unless such contractor or subcontractor fails to appear. The  
178 hearing shall be held in accordance with the provisions of chapter 54.  
179 If, after the hearing, the awarding authority finds that the contractor or  
180 subcontractor has wilfully violated any provision of this section, the  
181 awarding authority shall suspend all set-aside contract payments to  
182 the contractor or subcontractor and may, in its discretion, order that a  
183 civil penalty not exceeding ten thousand dollars per violation be  
184 imposed on the contractor or subcontractor. If such contractor or  
185 subcontractor fails to appear for the hearing, the awarding authority  
186 may, as the facts require, order that a civil penalty not exceeding ten  
187 thousand dollars per violation be imposed on the contractor or  
188 subcontractor. The awarding authority shall send a copy of any order  
189 issued pursuant to this subsection by certified mail, return receipt  
190 requested, to the contractor or subcontractor named in such order. The  
191 awarding authority may cause proceedings to be instituted by the  
192 Attorney General for the enforcement of any order imposing a civil  
193 penalty issued under this subsection.

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

202 (2) The Commissioner of Administrative Services may deny an  
203 application for the initial issuance or renewal of such certification after  
204 issuing a written decision to the applicant setting forth the basis for  
205 such denial. The commissioner may revoke such certification for cause  
206 after notice and an opportunity for a hearing in accordance with the  
207 provisions of chapter 54. Any person aggrieved by the commissioner's  
208 decision to deny the issuance or renewal of or to revoke such

209 certification may appeal such decision to the Superior Court, in  
210 accordance with the provisions of section 4-183.

211 (3) Whenever the Commissioner of Administrative Services has  
212 reason to believe that a small contractor or minority business  
213 enterprise who has applied for or received certification under this  
214 section has included a materially false statement in his or her  
215 application, the commissioner may impose a penalty not exceeding ten  
216 thousand dollars after notice and a hearing held in accordance with  
217 chapter 54. Such notice shall include (A) a reference to the statement or  
218 statements contained in the application alleged to be false, (B) the  
219 maximum civil penalty that may be imposed for such  
220 misrepresentation, and (C) the time and place of the hearing. Such  
221 hearing shall be fixed for a date not later than fourteen days from the  
222 date such notice is sent. The commissioner shall send a copy of such  
223 notice to the Commission on Human Rights and Opportunities.

224 (4) The commissioner shall hold a hearing prior to such revocation  
225 or denial or the imposition of a penalty, unless such contractor or  
226 subcontractor fails to appear. If, after the hearing, the commissioner  
227 finds that the contractor or subcontractor has wilfully included a  
228 materially false statement in his or her application for certification  
229 under this subsection, the commissioner shall revoke or deny the  
230 certification and may order that a civil penalty not exceeding ten  
231 thousand dollars be imposed on the contractor or subcontractor. If  
232 such contractor or subcontractor fails to appear for the hearing, the  
233 commissioner may, as the facts require, revoke or deny the certification  
234 and order that a civil penalty not exceeding ten thousand dollars be  
235 imposed on the contractor or subcontractor. The commissioner shall  
236 send a copy of any order issued pursuant to this subsection to the  
237 contractor or subcontractor named in such order. The commissioner  
238 may cause proceedings to be instituted by the Attorney General for the  
239 enforcement of any order imposing a civil penalty issued under this  
240 subsection.

241 (l) On or before August 30, 2007, and annually thereafter, each state  
242 agency and each political subdivision of the state [other than a  
243 municipality] setting aside contracts or portions of contracts shall  
244 prepare a report establishing small and minority business set-aside  
245 program goals for the twelve-month period beginning July first in the  
246 same year. Each such report shall be submitted to the Commissioner of  
247 Administrative Services, the Commission on Human Rights and  
248 Opportunities and the cochairpersons and ranking members of the  
249 joint standing committees of the General Assembly having cognizance  
250 of matters relating to planning and development and government  
251 administration and elections.

252 (m) On or before November 1, 1995, and quarterly thereafter, each  
253 state agency and each political subdivision of the state [other than a  
254 municipality] setting aside contracts or portions of contracts shall  
255 prepare a status report on the implementation and results of its small  
256 business and minority business enterprise set-aside program goals  
257 during the three-month period ending one month before the due date  
258 for the report. Each report shall be submitted to the Commissioner of  
259 Administrative Services and the Commission on Human Rights and  
260 Opportunities. Any state agency or political subdivision of the state [,  
261 other than a municipality,] that achieves less than fifty per cent of its  
262 small contractor and minority business enterprise set-aside program  
263 goals by the end of the second reporting period in any twelve-month  
264 period beginning on July first shall provide a written explanation to  
265 the Commissioner of Administrative Services and the Commission on  
266 Human Rights and Opportunities detailing how the agency or political  
267 subdivision will achieve its goals in the final reporting period. The  
268 Commission on Human Rights and Opportunities shall: (1) Monitor  
269 the achievement of the annual goals established by each state agency  
270 and political subdivision of the state; [other than a municipality;] and  
271 (2) prepare a quarterly report concerning such goal achievement. The  
272 report shall be submitted to each state agency that submitted a report,  
273 the Commissioner of Economic and Community Development, the  
274 Commissioner of Administrative Services and the cochairpersons and

275 ranking members of the joint standing committees of the General  
276 Assembly having cognizance of matters relating to planning and  
277 development and government administration and elections. Failure by  
278 any state agency or political subdivision of the state other than a  
279 municipality to submit any reports required by this section shall be a  
280 violation of section 46a-77.

281 (n) Nothing in this section shall be construed to apply to the  
282 janitorial or service contracts awarded pursuant to subsections (b) to  
283 (d), inclusive, of section 4a-82.

284 (o) The Commissioner of Administrative Services may adopt  
285 regulations in accordance with the provisions of chapter 54 to  
286 implement the provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2015	4a-60g

**Statement of Purpose:**

To require municipalities to adhere to contract set-aside requirements when contracting with state agencies for new construction valued at less than four hundred thousand dollars and reconstruction valued at less than one hundred thousand dollars.

*[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.]*

Co-Sponsors: SEN. COLEMAN, 2nd Dist.

S.B. 831