



Senate

General Assembly

File No. 701

January Session, 2015

Substitute Senate Bill No. 831

Senate, April 16, 2015

The Committee on Planning and Development reported through SEN. OSTEN of the 19th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

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 Section 4a-60g of the general statutes is repealed and the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, and includes the
21 Metropolitan District of Hartford County.

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

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

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

46 holds proxies representing, twenty per cent or more of any voting
47 securities of another person.

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

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

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

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

79 the construction and maintenance of highways and the purchase of
80 goods and services. Eligibility of nonprofit corporations under the
81 provisions of this section shall be limited to predevelopment contracts
82 awarded by the Commissioner of Housing 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] including a municipality, but only with
96 respect to contracts that are financed in whole or in part by the state,
97 may, in lieu of setting aside any contract or portions thereof, require
98 any general or trade contractor or any other entity authorized by such
99 agency to award contracts, to set aside a portion of any contract for
100 subcontractors who are eligible for set-aside contracts under this
101 section. Nothing in this subsection shall be construed to diminish the
102 total value of contracts which are required to be set aside by any state
103 agency or political subdivision of the state [other than a municipality]
104 pursuant to this section.

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

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

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

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

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

144 (h) The provisions of this section shall not apply (1) to any state

145 agency or political subdivision of the state [other than a municipality]
146 for which the total value of all contracts or portions of contracts of the
147 types enumerated in subsection (b) of this section is anticipated to be
148 equal to ten thousand dollars or less, or (2) municipal contracts or
149 portions of municipal contracts where the total cost of all work to be
150 performed by all contractors and subcontractors in connection with
151 new construction of public buildings or highways, or any remodeling,
152 refinishing, refurbishing, rehabilitation, alteration or repair of any
153 public building, or maintaining any highway is less than the amount
154 specified for such work in subsection (h) of section 31-53.

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

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

175 (2) The awarding authority shall hold a hearing on the violation
176 asserted unless such contractor or subcontractor fails to appear. The
177 hearing shall be held in accordance with the provisions of chapter 54.

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

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

201 (2) The Commissioner of Administrative Services may deny an
202 application for the initial issuance or renewal of such certification after
203 issuing a written decision to the applicant setting forth the basis for
204 such denial. The commissioner may revoke such certification for cause
205 after notice and an opportunity for a hearing in accordance with the
206 provisions of chapter 54. Any person aggrieved by the commissioner's
207 decision to deny the issuance or renewal of or to revoke such
208 certification may appeal such decision to the Superior Court, in
209 accordance with the provisions of section 4-183.

210 (3) Whenever the Commissioner of Administrative Services has

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

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

240 (l) On or before August 30, 2007, and annually thereafter, each state
241 agency and each political subdivision of the state [other than a
242 municipality] setting aside contracts or portions of contracts shall
243 prepare a report establishing small and minority business set-aside
244 program goals for the twelve-month period beginning July first in the

245 same year. Each such report shall be submitted to the Commissioner of
246 Administrative Services, the Commission on Human Rights and
247 Opportunities and the cochairpersons and ranking members of the
248 joint standing committees of the General Assembly having cognizance
249 of matters relating to planning and development and government
250 administration and elections.

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

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

283 (o) The Commissioner of Administrative Services may adopt
284 regulations in accordance with the provisions of chapter 54 to
285 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 Legislative Commissioners:

Subsection (p) was deleted and in line 20, reference to "Metropolitan District of Hartford County" was added for consistency with existing section 46a-68(a).

PD *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 16 \$	FY 17 \$
Human Rights & Opportunities, Com.	GF - Cost	665,000	665,000
Dept. of Administrative Services	GF - Cost	425,368	425,368
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	394,372	394,372

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 16 \$	FY 17 \$
All Municipalities; Metropolitan District Commission	Potential Cost	See Below	See Below

Explanation

This bill requires municipalities to participate in the state's small and minority business set-aside program when the state funds at least part of a contract for construction, goods, or services. The bill specifies that the set-aside requirements for municipalities do not apply to municipal construction contracts valued at less than the state's prevailing wage threshold (currently \$400,000 for new construction and \$100,000 for remodeling, refinishing, refurbishing, rehabilitation, alteration or repair). The bill would also require the Metropolitan District Commission to participate in the set-aside program.

The Department of Administrative Services' (DAS) Supplier Diversity Office analyzes the budgets of set-aside participants, sets unique set-aside goals for each participant, verifies the vendors

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.65% of payroll in FY 16 and FY 17.

receiving contracts are certified by the state as small or minority owned businesses, and offers training and assistance to participants. DAS also audits the records of companies that apply for small business or minority business enterprise certification and engage in education and outreach in the business community.

The bill would increase the number of entities participating in the set-aside program by 169. The expansion is also expected to lead to an increase in the number of vendors applying for certification.

DAS would require \$562,718 to administer the expanded program. Of which, \$492,718 is for the salaries and fringe benefits of five Processing Technicians and two Account Examiners, and \$70,000 for Other Expenses.

The bill also requires the Commission on Human Rights and Opportunities (CHRO) to monitor and report on the achievement of annual goals by the expanded group of participants. Adding approximately 169 more participants to the set aside program is anticipated to have significant fiscal impacts to CHRO as the program currently affects approximately 60 agencies. CHRO's contract compliance unit is anticipated to require approximately eight Human Rights and Opportunities Representatives and one secretary to perform the work. Salary for these positions is estimated at approximately \$450,000 (plus \$173,925 for fringe benefits) in FY 16 and annually thereafter. Additionally, the CHRO Legal Division is anticipated to require three additional Attorney 1 positions with a total approximate salary of \$215,000 (plus \$83,098 for fringe benefits) in FY 16 and annually thereafter.

Requiring municipalities and the Metropolitan District Commission to participate in the state's set-aside program when bidding certain contracts may increase the cost of certain public works contracts if potential lowest qualified bidders do not meet the requirements.

The Out Years

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

*Sources: Commission on Human Rights and Opportunities
Department of Administrative Services*

OLR Bill Analysis**sSB 831*****AN ACT ELIMINATING THE MUNICIPAL EXEMPTION FROM THE CONTRACT COMPLIANCE REQUIREMENTS IN STATE CONTRACTS.*****SUMMARY:**

This bill requires municipalities to participate in the state's small and minority business set-aside program when the state funds all or part of a contract for construction, goods, or services.

Current law requires state agencies and political subdivisions ("agencies"), except municipalities, to participate in the set-aside program. Under the program, agencies must annually 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 businesses, which are small contractors owned by women, minorities, or people with disabilities. Agencies do not have to set aside any of their contracts in a year in which the anticipated total value of their contracts is less than \$10,000.

The bill requires municipalities to participate in the program in the same manner as agencies, except the bill specifies that the set-aside requirements do not apply to municipal construction contracts valued at less than the thresholds set under the state's prevailing wage law (currently \$400,000 for new construction and \$100,000 for remodeling, refinishing, refurbishing, rehabilitation, alteration, or repair). Presumably, this means municipalities need not award such contracts to small or minority businesses. It is unclear whether exempt contracts count toward a municipality's total contract volume calculation.

The bill also makes a conforming change related to a 2013 law requiring the Metropolitan District Commission to participate in the set-aside program.

EFFECTIVE DATE: October 1, 2015

BACKGROUND

Certified Small or Minority-Owned Businesses

The Department of Administrative Services is responsible for certifying businesses as small or minority-owned.

By law, a small contractor is a business that (1) maintains its principal place of business in Connecticut, (2) had gross revenues of \$15 million or less during its most recent fiscal year, and (3) is independent. Minority-owned businesses are small contractors owned by women, minorities, or people with disabilities. The owner must have managerial and technical competence and experience directly related to his or her principal business activities.

Related Bill

HB 6086, favorably reported by the Government Administration and Elections Committee, also subjects municipalities to the set-aside program.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 13 Nay 8 (03/27/2015)