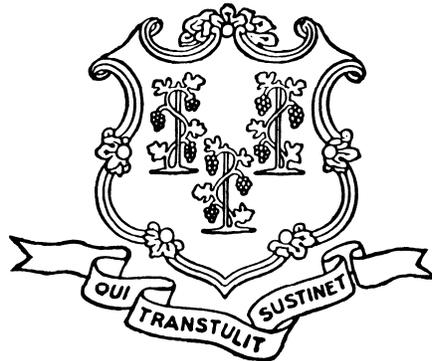


# DEPARTMENT OF PUBLIC WORKS

## PUBLIC ACT REPORT

2009



Douglas J. Moore  
DPW

## Table of Contents

1. ***Public Act No. 09-15 AN ACT CONCERNING THE CAPITOL AREA DISTRICT HEATING AND COOLING SYSTEM. (page 3)***
  
2. ***Public Act No. 09-25 AN ACT CONCERNING CERTIFIED PAYROLLS. (page 9)***
  
3. ***Public Act No. 09-146 AN ACT CONCERNING CONSTRUCTION CHANGE ORDERS. (page 11)***
  
4. ***Public Act No. 09-158 AN ACT CONCERNING CERTAIN STATE CONTRACTING NONDISCRIMINATION REQUIREMENTS. (page 16)***
  
5. ***Public Act No. 09-183 AN ACT CONCERNING THE STANDARD WAGE FOR CERTAIN CONNECTICUT WORKERS. (page 23)***

**Public Act No. 09-15**

**AN ACT CONCERNING THE CAPITOL AREA DISTRICT HEATING AND COOLING SYSTEM.**

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

Section 1. (NEW) (*Effective from passage*) (a) The Commissioner of Public Works, on behalf of the state, may purchase from TEN Companies, Inc. , in accordance with the Asset Purchase Agreement dated November 4, 2008, by and among the state, acting by and through the Commissioner of Public Works, and TEN Companies, Inc. , which Asset Purchase Agreement is hereby ratified and approved, the district heating and cooling system that provides heating and cooling service to state facilities within the Capitol District and to other nonstate facilities, as listed in the Asset Purchase Agreement dated November 4, 2008, and which is known as the Capitol Area System, including all assets and property necessary for the operation of said system, as described in the Asset Purchase Agreement dated November 4, 2008. The commissioner may assume all vendor contracts, customer contracts, supplier agreements, and third-party contracts with regard to said system. The commissioner may undertake any obligation and enter into any agreement to accomplish any transaction that is necessary to carry out the provisions of this section or said Asset Purchase Agreement, including the grant or acceptance of any release set forth in said Asset Purchase Agreement.

(b) To the extent any provision in an agreement executed or assumed by the commissioner pursuant to subsection (a) of this section may be interpreted as waiving the sovereign immunity of the state, including, without limitation, indemnification provisions, such provision is effective and enforceable against the state solely in accordance with its specific terms. Nothing in this subsection shall be construed as a waiver of the sovereign immunity of the state in any other context.

(c) In order to operate the Capitol Area System, the commissioner may: (1) Furnish, from plants located in the city of Hartford, heat or air conditioning, or both, by means of steam, heated or chilled water or other medium; (2) lay and maintain mains, pipes or other conduits; (3) erect such other fixtures as are, or may be, necessary or convenient in and on the streets, highways and public

grounds of said city, for the purpose of carrying steam, heated or chilled water or other medium from such plants to the location to be served and returning the same; and (4) lease to one or more corporations formed or specially chartered for the purpose of furnishing heat or air conditioning, or both, one or more of such plants or distribution systems owned by it and constructed or adapted for either or both such purposes.

(d) The Commissioner of Public Works may perform all obligations of the state relating to or arising from any agreement between the state and TEN Companies, Inc.

(e) The Commissioner of Public Works may (1) enter into contracts with third parties for the procurement of energy products and services or for the operation and maintenance of, and repairs and improvements to, the Capitol Area System; (2) provide energy products and services, as produced from said system or distributed by said system, to any buildings owned by, or leased to, the state or any instrumentality of the state; (3) sell energy products and services, as produced from said system or distributed by said system, to the owners or tenants of buildings not owned by the state; (4) occupy and use rights-of-way necessary to own, maintain, repair, improve and operate said system in and on the streets, highways and public grounds of the city of Hartford, on all property owned by the state and on property where the system is located, and to serve public and private end-use customers; (5) lay and maintain mains, pipes or other conduits, and erect such other fixtures as are, or may be, necessary or convenient in and on the streets, highways and public grounds of said city, for the purpose of carrying energy products to the location to be served and returning the same; and (6) enter into contracts with third parties for the procurement of other products and services, and provide or sell other products or services to the state or to the owners or tenants of buildings not owned by the state, that are being produced, provided or distributed through said system, or any part thereof, prior to, or as of, the effective date of this section.

(f) The Commissioner of Public Works may: (1) Grant easements with respect to land owned by the state in connection with the operation of the Capitol Area System, subject to the approval of the agency having supervision of the care and control of such land and the State Properties Review Board; (2) acquire easements with respect to land not owned by the state in connection with said system, subject to the approval of the State Properties Review Board; (3) enter into leases for any type of space or facility necessary to meet the needs of operating said system, subject to the approval of the State Properties Review Board; and (4) when the General Assembly is not in session, the commissioner may, subject to the provisions of section 4b-23 of the general statutes, purchase or acquire for the state any land, or interest therein, if such action is necessary for the operation of said system. The commissioner shall provide notice of any

easement granted pursuant to subdivision (1) of this subsection to the chief elected official of the municipality and the members of the General Assembly representing the municipality, in which such land is located.

(g) The Commissioner of Public Works may establish and administer an account to be known as the Public Works Heating and Cooling Energy Revolving Account, which shall be used for: (1) The deposit of receipts from the sale of Capitol Area System energy products and services to state agencies or to the owners or tenants of buildings not owned by the state, and (2) for the payment of expenses related to the operation, maintenance, repair and improvement of the Capitol Area System. The commissioner may expend funds necessary for all reasonable direct expenses related to said account.

(h) For the provision of energy products and services, the Commissioner of Public Works shall periodically invoice and collect a pro rata share of the costs described in this subsection from each state agency and owner or tenant of the buildings on the Capitol Area System that are not owned by the state, to the extent not prohibited by contracts in effect as of November 4, 2008. The Commissioner of Public Works shall periodically submit proposed rate setting methods and proposed rates to the Secretary of the Office of Policy and Management for the secretary's approval. No such method or rate shall be effective without the secretary's approval. Rates shall be based on: (1) A pro rata share of all costs of acquiring the system, including all costs for legal and consultant services; (2) a pro rata share of the cost of such energy products or services, whether produced by the state or purchased from third parties; (3) a pro rata share of any and all costs of operating, maintaining and repairing said system, including the cost of services provided by vendors and the cost of equipment; (4) a pro rata share of an amount determined to be necessary for long-term capital improvements or replacement, which amount shall be specifically identified in the Public Works Heating and Cooling Energy Revolving Account, and allocated for long-term capital improvements or replacement; (5) a pro rata share of the Department of Public Works' personnel costs related to the operation, maintenance, repair and improvement of the Capitol Area System, provided not more than one full-time employee of the department shall be allocated to the system; and (6) a pro rata share of the cost of other products or services incurred and permitted by this section. Not more than forty-five days after receipt of a proposed rate setting method or a proposed rate from the commissioner, the Secretary of the Office of Policy and Management shall approve or disapprove such proposed method or rate. If the secretary fails to act on such proposed method or rate within such period, the commissioner's proposal shall be deemed to have been approved. On a quarterly basis, the Commissioner of Public Works shall transmit to the General Fund any portion of the costs that are attributable to the provisions of subdivision (1) of this subsection.

(i) Nothing in this section shall be construed to limit the use of the Capitol Area System by the state to its use or functional capacity as of the date of its purchase by the state.

(j) Except as expressly required by the provisions of this section, the acquisition of the Capitol Area System by the Commissioner of Public Works, and any transaction necessary for such acquisition, shall not be subject to any other review, approval or authorization by any other state agency, board, department or instrumentality and shall not be subject to any otherwise applicable sales or conveyance tax or taxes.

(k) Nothing in this section shall be construed to prohibit the state from reselling the Capitol Area System to a third party if it is determined that such resale is in the best interest of the state.

Sec. 2. Section 3 of number 7 of the special acts of 1961, as amended by special act 97-1, is amended to read as follows (*Effective from passage*):

(a) Said corporation is authorized and empowered, either directly or through the agency of its parent, a subsidiary or an affiliate: To furnish, from plants located in the city of Hartford, heat or air conditioning, or both, by means of steam, heated or chilled water or other medium; to lay and maintain mains, pipes or other conduits, and to erect such other fixtures as are or may be necessary or convenient in and on the streets, highways and public grounds of said city, for the purpose of carrying steam, heated or chilled water or other medium from such plants to the location to be served and returning the same; and to lease to one or more corporations formed under the general law or specially chartered for the purpose of furnishing heat or air conditioning, or both, one or more of such plants or distribution systems, or both, owned by it and constructed or adapted for either or both of such purposes.

(b) Said corporation or its parent or successor may sell to the state the district heating and cooling system, known as the Capitol Area System, that provides heating and cooling energy products or services to buildings owned by the state and to privately owned buildings. Such sale shall include all assets and property relative to or necessary for the operation of said system, as described in the Asset Purchase Agreement dated November 4, 2008, relating to such sale.

Sec. 3. (*Effective from passage*) (a) For the purposes described in subsection (b) of this section, the State Bond Commission shall have the power, from time to time, to authorize the issuance of bonds of the state in one or more series and in principal amounts not exceeding in the aggregate ten million six hundred thousand dollars.

(b) The proceeds of the sale of said bonds, to the extent of the amount stated in subsection (a) of this section, shall be used by the Department of Public Works for the purpose of the sale provided for in section 1 of this act, for the Capitol Area System and the assets and property of TEN Companies, Inc. , related to said system, as set forth in the Asset Purchase Agreement between TEN Companies, Inc. , and the state of Connecticut dated November 4, 2008.

(c) All provisions of section 3-20 of the general statutes, or the exercise of any right or power granted thereby, which are not inconsistent with the provisions of this section are hereby adopted and shall apply to all bonds authorized by the State Bond Commission pursuant to this section, and temporary notes in anticipation of the money to be derived from the sale of any such bonds so authorized may be issued in accordance with said section 3-20 and from time to time renewed. Such bonds shall mature at such time or times not exceeding twenty years from their respective dates as may be provided in or pursuant to the resolution or resolutions of the State Bond Commission authorizing such bonds. None of said bonds shall be authorized except upon a finding by the State Bond Commission that there has been filed with it a request for such authorization which is signed by or on behalf of the Secretary of the Office of Policy and Management and states such terms and conditions as said commission, in its discretion, may require. Said bonds issued pursuant to this section shall be general obligations of the state and the full faith and credit of the state of Connecticut are pledged for the payment of the principal of and interest on said bonds as the same become due, and accordingly and as part of the contract of the state with the holders of said bonds, appropriation of all amounts necessary for punctual payment of such principal and interest is hereby made, and the State Treasurer shall pay such principal and interest as the same become due.

Sec. 4. (*Effective from passage*) (a) For the purposes described in subsection (b) of this section, the State Bond Commission shall have the power, from time to time, to authorize the issuance of bonds of the state in one or more series and in principal amounts not exceeding in the aggregate one million dollars.

(b) The proceeds of the sale of said bonds, to the extent of the amount stated in subsection (a) of this section, shall be used by the Department of Public Works for the transactional costs related to the purchase of the Capitol Area System, as provided in section 1 of this act, including the state's insurance costs, the state's legal fees, reimbursement to TEN Companies, Inc. , for prepaid property taxes, a reasonable amount for start-up funding for the Public Works Heating and Cooling Energy Revolving Account, as established in section 1 of this act, and for the purchase and installation of pipe necessary for the operation of the Capitol Area System, including the cost of pipe and its installation as the interconnection between the supply and return lines of the Capitol Area System at or near the

point of interconnection between the Capitol Area System and TEN Companies, Inc. 's other district energy system located in the downtown area of the city of Hartford.

(c) All provisions of section 3-20 of the general statutes, or the exercise of any right or power granted thereby, which are not inconsistent with the provisions of this section are hereby adopted and shall apply to all bonds authorized by the State Bond Commission pursuant to this section, and temporary notes in anticipation of the money to be derived from the sale of any such bonds so authorized may be issued in accordance with said section 3-20 and from time to time renewed. Such bonds shall mature at such time or times not exceeding twenty years from their respective dates as may be provided in or pursuant to the resolution or resolutions of the State Bond Commission authorizing such bonds. None of said bonds shall be authorized except upon a finding by the State Bond Commission that there has been filed with it a request for such authorization which is signed by or on behalf of the Secretary of the Office of Policy and Management and states such terms and conditions as said commission, in its discretion, may require. Said bonds issued pursuant to this section shall be general obligations of the state and the full faith and credit of the state of Connecticut are pledged for the payment of the principal of and interest on said bonds as the same become due, and accordingly and as part of the contract of the state with the holders of said bonds, appropriation of all amounts necessary for punctual payment of such principal and interest is hereby made, and the State Treasurer shall pay such principal and interest as the same become due.

**Public Act No. 09-25 AN ACT CONCERNING CERTIFIED PAYROLLS.**

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

Section 1. Subsection (f) of section 31-53 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(f) Each employer subject to the provisions of this section or section 31-54 shall (1) keep, maintain and preserve such records relating to the wages and hours worked by each person performing the work of any mechanic, laborer and worker and a schedule of the occupation or work classification at which each person performing the work of any mechanic, laborer or worker on the project is employed during each work day and week in such manner and form as the Labor Commissioner establishes to assure the proper payments due to such persons or employee welfare funds under this section or section 31-54, regardless of any contractual relationship alleged to exist between the contractor and such person, and (2) submit monthly to the contracting agency by mail, first class postage prepaid, a certified payroll that shall consist of a complete copy of such records accompanied by a statement signed by the employer that indicates (A) such records are correct; (B) the rate of wages paid to each person performing the work of any mechanic, laborer or worker and the amount of payment or contributions paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (h) of this section, are not less than the prevailing rate of wages and the amount of payment or contributions paid or payable on behalf of each such person to any employee welfare fund, as determined by the Labor Commissioner pursuant to subsection (d) of this section, and not less than those required by the contract to be paid; (C) the employer has complied with the provisions of this section and section 31-54; (D) each such person is covered by a workers' compensation insurance policy for the duration of such person's employment, which shall be demonstrated by submitting to the contracting agency the name of the workers' compensation insurance carrier covering each such person, the effective and expiration dates of each policy and each policy number; (E) the employer does not receive kickbacks, as defined in 41 USC 52, from any employee or employee welfare fund; and (F) pursuant to the provisions of section 53a-157a, the employer is aware that filing a certified payroll which the employer knows to be false is a class D felony for which the employer may be fined up to five thousand dollars, imprisoned for up to five years, or both. This subsection shall not be construed to prohibit a general contractor from relying on the certification of a lower tier subcontractor, provided the general contractor shall not be exempted from the provisions of section 53a-157a if the general contractor knowingly relies upon a subcontractor's false certification. Notwithstanding the provisions of section 1-210, the certified payroll shall be considered a public record and every person

shall have the right to inspect and copy such records in accordance with the provisions of section 1-212. The provisions of subsections (a) and (b) of section 31-59 and sections 31-66 and 31-69 that are not inconsistent with the provisions of this section or section 31-54 apply to this section. Failing to file a certified payroll pursuant to subdivision (2) of this subsection is a class D felony for which the employer may be fined up to five thousand dollars, imprisoned for up to five years, or both.

**Public Act No. 09-146 AN ACT CONCERNING CONSTRUCTION CHANGE ORDERS.**

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

Section 1. Section 42-158j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) Each construction contract shall contain the following provisions: (1) A requirement that the owner pay any amounts due any contractor, subcontractor or supplier in a direct contractual relationship with the owner, whether for labor performed or materials furnished, not later than thirty days after the date any written request for payment has been made by such contractor, subcontractor or supplier; (2) a requirement that the contractor pay any amounts due any subcontractor or supplier, whether for labor performed or materials furnished, not later than thirty days after the date the contractor receives payment from the owner which encompasses labor performed or materials furnished by such subcontractor or supplier; and (3) a requirement that the contractor shall include in each of its subcontracts a provision requiring each subcontractor and supplier to pay any amounts due any of its subcontractors or suppliers, whether for labor performed or materials furnished, not later than thirty days after the date such subcontractor or supplier receives a payment from the contractor which encompasses labor performed or materials furnished by such subcontractor or supplier.

(b) Each payment requisition submitted in accordance with the requirements of subsection (a) of this section shall include a statement showing the status of all pending construction change orders, other pending change directives and approved changes to the original contract or subcontract. Such statement shall identify the pending construction change orders and other pending change directives, and shall include the date such change orders and directives were initiated, the costs associated with their performance and a description of any work completed. As used in this section, "pending construction change order" or "other pending change directive" means an authorized directive for extra work that has been issued to a contractor or a subcontractor.

[(b)] (c) (1) If payment is not made by an owner in accordance with the requirements of subdivision (1) of subsection (a) of this section or any applicable construction contract, such contractor, subcontractor or supplier shall set forth its claim against the owner through notice by registered or certified mail.

(2) If payment is not made by a contractor in accordance with the requirements of subdivision (2) of subsection (a) of this section or any applicable construction

contract, the subcontractor or supplier shall set forth its claim against the contractor through notice by registered or certified mail.

(3) If payment is not made by a subcontractor or supplier in accordance with the provisions of subdivision (3) of subsection (a) of this section, the subcontractor or supplier to whom money is owed shall set forth its claim against the subcontractor or supplier who has failed to comply with the provisions of said subdivision (3) through notice by registered or certified mail.

(4) Ten days after the receipt of any notice specified in subdivisions (1), (2) and (3) of this subsection, the owner, contractor, subcontractor or supplier, as the case may be, shall be liable for interest on the amount due and owing at the rate of one per cent per month. Such interest shall accrue beginning on the date any such notice is received. In addition, such owner, contractor, subcontractor or supplier, upon written demand from the party providing such notice, shall be required to place funds in the amount of the claim, plus such interest of one per cent per month, in an interest-bearing escrow account in a bank in this state, provided such owner, contractor, subcontractor or supplier may refuse to place the funds in escrow on the grounds that the party making such demand has not substantially performed the work or supplied the materials according to the terms of the construction contract. In the event that such owner, contractor, subcontractor or supplier refuses to place such funds in escrow and such owner, contractor, subcontractor or supplier is found to have unreasonably withheld payment due a party providing such notice, such owner, contractor, subcontractor or supplier shall be liable to the party making demand for payment of such funds and for reasonable attorneys' fees plus interest on the amount due and owing at the rate of one per cent per month. In addition, any owner, contractor, subcontractor or supplier who is found to have withheld payments to a party providing such notice in bad faith shall be liable for ten per cent damages.

[(c)] (d) No payment may be withheld from a subcontractor or supplier for work performed or materials furnished because of a dispute between a contractor and another contractor, subcontractor or supplier.

[(d)] (e) This section shall not be construed to prohibit progress payments prior to final payment of the contract and is applicable to all subcontractors and suppliers for material or labor whether they have contracted directly with the contractor or with some other subcontractor on the work. Each owner that enters into a contract under this section and fails or neglects to make payment to a contractor for labor and materials supplied under a contract, as required pursuant to this section, shall, upon demand of any person who has not been paid by the contractor for such labor and materials supplied in the performance of the work under the contract, promptly pay the person for such labor or

materials. Demand for payment shall be served on the owner and a copy of each demand shall be sent to the contractor by certified mail, return receipt requested to any address at which the owner and contractor conduct business. If the owner fails to make such payment, the person shall have a direct right of action against the owner in the superior court for the judicial district in which the project is located. The owner's obligations for direct payments to the contractor, subcontractors or suppliers giving notice pursuant to this section shall be limited to the amount owed to the contractor by the owner for work performed under the contract at the date such notice is provided.

Sec. 2. Section 49-41a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) When any public work is awarded by a contract for which a payment bond is required by section 49-41, the contract for the public work shall contain the following provisions: (1) A requirement that the general contractor, within thirty days after payment to the contractor by the state or a municipality, pay any amounts due any subcontractor, whether for labor performed or materials furnished, when the labor or materials have been included in a requisition submitted by the contractor and paid by the state or a municipality; (2) a requirement that the general contractor shall include in each of its subcontracts a provision requiring each subcontractor to pay any amounts due any of its subcontractors, whether for labor performed or materials furnished, within thirty days after such subcontractor receives a payment from the general contractor which encompasses labor or materials furnished by such subcontractor.

(b) Each payment requisition submitted in accordance with the requirements of subsection (a) of this section, except for any such payment requisition submitted pursuant to a contract administered by or in conjunction with the Department of Transportation, shall include a statement showing the status of all pending construction change orders, other pending change directives and approved changes to the original contract or subcontract. Such statement shall identify the pending construction change orders and other pending change directives, and shall include the date such change orders and directives were initiated, the costs associated with their performance and a description of any work completed. As used in this section, "pending construction change order" or "other pending change directive" means an authorized directive for extra work that has been issued to a contractor or a subcontractor.

[(b)] (c) If payment is not made by the general contractor or any of its subcontractors in accordance with such requirements, the subcontractor shall set forth his claim against the general contractor and the subcontractor of a subcontractor shall set forth its claim against the subcontractor through notice by registered or certified mail. Ten days after the receipt of that notice, the general

contractor shall be liable to its subcontractor, and the subcontractor shall be liable to its subcontractor, for interest on the amount due and owing at the rate of one per cent per month. In addition, the general contractor, upon written demand of its subcontractor, or the subcontractor, upon written demand of its subcontractor, shall be required to place funds in the amount of the claim, plus interest of one per cent, in an interest-bearing escrow account in a bank in this state, provided the general contractor or subcontractor may refuse to place the funds in escrow on the grounds that the subcontractor has not substantially performed the work according to the terms of his or its employment. In the event that such general contractor or subcontractor refuses to place such funds in escrow, and the party making a claim against it under this section is found to have substantially performed its work in accordance with the terms of its employment in any arbitration or litigation to determine the validity of such claim, then such general contractor or subcontractor shall pay the attorney's fees of such party.

~~[(c)]~~ (d) No payment may be withheld from a subcontractor for work performed because of a dispute between the general contractor and another contractor or subcontractor.

~~[(d)]~~ (e) This section shall not be construed to prohibit progress payments prior to final payment of the contract and is applicable to all subcontractors for material or labor whether they have contracted directly with the general contractor or with some other subcontractor on the work.

Sec. 3. Subsection (a) of section 49-42 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) Any person who performed work or supplied materials for which a requisition was submitted to, or for which an estimate was prepared by, the awarding authority and who does not receive full payment for such work or materials within sixty days of the applicable payment date provided for in subsection (a) of section 49-41a, as amended by this act, or any person who supplied materials or performed subcontracting work not included on a requisition or estimate who has not received full payment for such materials or work within sixty days after the date such materials were supplied or such work was performed, may enforce such person's right to payment under the bond by serving a notice of claim on the surety that issued the bond and a copy of such notice to the contractor named as principal in the bond not later than one hundred eighty days after the last date any such materials were supplied or any such work was performed by the claimant. For the payment of retainage, as defined in section 42-158i, such notice shall be served not later than one hundred eighty days after the applicable payment date provided for in subsection (a) of section 49-41a, as amended by this act. The notice of claim shall state with

substantial accuracy the amount claimed and the name of the party for whom the work was performed or to whom the materials were supplied, and shall provide a detailed description of the bonded project for which the work or materials were provided. If the content of a notice prepared in accordance with subsection [(b)] (c) of section 49-41a, as amended by this act, complies with the requirements of this section, a copy of such notice, served not later than one hundred eighty days after the date provided for in this section upon the surety that issued the bond and upon the contractor named as principal in the bond, shall satisfy the notice requirements of this section. Not later than ninety days after service of the notice of claim, the surety shall make payment under the bond and satisfy the claim, or any portion of the claim which is not subject to a good faith dispute, and shall serve a notice on the claimant denying liability for any unpaid portion of the claim. The notices required under this section shall be served by registered or certified mail, postage prepaid in envelopes addressed to any office at which the surety, principal or claimant conducts business, or in any manner in which civil process may be served. If the surety denies liability on the claim, or any portion thereof, the claimant may bring action upon the payment bond in the Superior Court for such sums and prosecute the action to final execution and judgment. An action to recover on a payment bond under this section shall be privileged with respect to assignment for trial. The court shall not consolidate for trial any action brought under this section with any other action brought on the same bond unless the court finds that a substantial portion of the evidence to be adduced, other than the fact that the claims sought to be consolidated arise under the same general contract, is common to such actions and that consolidation will not result in excessive delays to any claimant whose action was instituted at a time significantly prior to the motion to consolidate. In any such proceeding, the court judgment shall award the prevailing party the costs for bringing such proceeding and allow interest at the rate of interest specified in the labor or materials contract under which the claim arises or, if no such interest rate is specified, at the rate of interest as provided in section 37-3a upon the amount recovered, computed from the date of service of the notice of claim, provided, for any portion of the claim which the court finds was due and payable after the date of service of the notice of claim, such interest shall be computed from the date such portion became due and payable. The court judgment may award reasonable attorneys fees to either party if upon reviewing the entire record, it appears that either the original claim, the surety's denial of liability, or the defense interposed to the claim is without substantial basis in fact or law. Any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond shall have a right of action upon the payment bond upon giving written notice of claim as provided in this section.

**Public Act No. 09-158 AN ACT CONCERNING CERTAIN STATE CONTRACTING NONDISCRIMINATION REQUIREMENTS.**

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

Section 1. Section 4a-60 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Every contract to which the state or any political subdivision of the state other than a municipality is a party shall contain the following provisions:

(1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut; [The] and the contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved;

(2) [the] The contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the commission;

(3) [the] The contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the commission advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) [the] The contractor agrees to comply with each provision of this section and sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e and 46a-68f; and

(5) [the] The contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of this section and section 46a-56.

(b) If the contract is a public works contract, the contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works project.

(c) (1) Prior to entering into [the] a contract valued at less than fifty thousand dollars for each year of the contract, the contractor shall provide the state or such political subdivision of the state with [documentation] a written representation that complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section.

(2) Prior to entering into a contract valued at fifty thousand dollars or more for any year of the contract, such contractor shall provide the state or such political subdivision of the state with any one of the following:

(A) Documentation in the form of a company or corporate policy adopted by resolution of the board of directors, shareholders, managers, members or other governing body of such contractor [to support] that complies with the nondiscrimination agreement and warranty under subdivision (1) of [this] subsection (a) of this section;

(B) Documentation in the form of a company or corporate policy adopted by a prior resolution of the board of directors, shareholders, managers, members or other governing body of such contractor if (i) the prior resolution is certified by a duly authorized corporate officer of such contractor to be in effect on the date the documentation is submitted, and (ii) the head of the agency of the state or such political subdivision, or a designee, certifies that the prior resolution complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section, or

(C) Documentation in the form of an affidavit signed under penalty of false statement by a chief executive officer, president, chairperson or other corporate officer duly authorized to adopt company or corporate policy that certifies that the company or corporate policy of the contractor complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section and is in effect on the date the affidavit is signed.

(d) For the purposes of this section, "contract" includes any extension or modification of the contract, [and] "contractor" includes any successors or assigns of the contractor, "marital status" means being single, married as recognized by

the state of Connecticut, widowed, separated or divorced, and "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders. For the purposes of this section, "contract" does not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in section 1-120, (3) any other state, as defined in section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in subparagraph (1), (2), (3), (4) or (5) of this subsection.

[(b)] (e) For the purposes of this section, "minority business enterprise" means any small contractor or supplier of materials fifty-one per cent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) Who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of section 32-9n; and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements.

[(c)] (f) Determination of the contractor's good faith efforts shall include but shall not be limited to the following factors: The contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

[(d)] (g) The contractor shall develop and maintain adequate documentation, in a manner prescribed by the commission, of its good faith efforts.

[(e)] (h) The contractor shall include the provisions of [subsection] subsections (a) and (b) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or

vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

Sec. 2. Section 4a-60a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Every contract to which the state or any political subdivision of the state other than a municipality is a party shall contain the following provisions:

(1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation;

(2) [the] The contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(3) [the] The contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said commission pursuant to section 46a-56; and

(4) [the] The contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this section and section 46a-56.

(b) (1) Prior to entering into [the] a contract valued at less than fifty thousand dollars for each year of the contract, the contractor shall provide the state or such political subdivision of the state with [documentation] a written representation that complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section.

(2) Prior to entering into a contract valued at fifty thousand dollars or more for any year of the contract, such contractor shall provide the state or such political subdivision of the state with any of the following:

(A) Documentation in the form of a company or corporate policy adopted by resolution of the board of directors, shareholders, managers, members or other governing body of such contractor [to support] that complies with the nondiscrimination agreement and warranty under subdivision (1) of [this] subsection (a) of this section;

(B) Documentation in the form of a company or corporate policy adopted by a prior resolution of the board of directors, shareholders, managers, members or other governing body of such contractor if (i) the prior resolution is certified by a duly authorized corporate officer of such contractor to be in effect on the date the documentation is submitted, and (ii) the head of the agency of the state or such political subdivision, or a designee, certifies that the prior resolution complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section, or

(C) Documentation in the form of an affidavit signed under penalty of false statement by a chief executive officer, president, chairperson or other corporate officer duly authorized to adopt company or corporate policy that certifies that the company or corporate policy of the contractor complies with the nondiscrimination agreement and warranty under subdivision (1) of subsection (a) of this section and is in effect on the date the affidavit is signed.

(3) For the purposes of this section, "contract" includes any extension or modification of the contract, and "contractor" includes any successors or assigns of the contractor. For the purposes of this section, "contract" does not include a contract where each contractor is (A) a political subdivision of the state, including, but not limited to, a municipality, (B) a quasi-public agency, as defined in section 1-120, (C) any other state, as defined in section 1-267, (D) the federal government, (E) a foreign government, or (F) an agency of a subdivision, agency, state or government described in subparagraph (A), (B), (C), (D) or (E) of this subdivision.

[(b)] (c) The contractor shall include the provisions of subsection (a) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

Sec. 3. Subsection (a) of section 4a-60g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

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

(1) "Small contractor" means any contractor, subcontractor, manufacturer or service company (A) that has been doing business under the same ownership or management and has maintained its principal place of business in the state, for a period of at least one year immediately prior to the date of application for certification under this section, (B) that had gross revenues not exceeding fifteen million dollars in the most recently completed fiscal year prior to such application, and (C) at least fifty-one per cent of the ownership of which is held by a person or persons who exercise operational authority over the daily affairs of the business and have the power to direct the management and policies and receive the beneficial interests of the business, except that a nonprofit corporation shall be construed to be a small contractor if such nonprofit corporation meets the requirements of subparagraphs (A) and (B) of this subdivision.

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

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

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

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

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

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

(8) "Nonprofit corporation" means a nonprofit corporation incorporated pursuant to chapter 602 or any predecessor statutes thereto.

**Public Act No. 09-183 AN ACT CONCERNING THE STANDARD WAGE FOR CERTAIN CONNECTICUT WORKERS.**

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

Section 1. Section 31-57f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) As used in this section: (1) "Required employer" means any provider of food, building, property or equipment services or maintenance listed in this subdivision whose rate of reimbursement or compensation is determined by contract or agreement with the state or any state agent: (A) Building, property or equipment service companies; (B) management companies providing property management services; and (C) companies providing food preparation or service, or both; (2) "state agent" means any state official, state employee or other person authorized to enter into a contract or agreement on behalf of the state; (3) "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or organized groups of persons; [and] (4) "building, property or equipment service" means any janitorial, cleaning, maintenance or related service; (5) "prevailing rate of wages" means the hourly wages paid for work performed within the city of Hartford under the collective bargaining agreement covering the largest number of hourly nonsupervisory employees employed within Hartford County in each classification established by the Labor Commissioner under subsection (e) of this section, provided the collective bargaining agreement covers no less than five hundred employees in the classification; (6) "prevailing rate of benefits" means the total cost to the employer on an hourly basis for work performed within the city of Hartford, under a collective bargaining agreement that establishes the prevailing rate of wages, of providing health, welfare and retirement benefits, including, but not limited to, (A) medical, surgical or hospital care benefits; (B) disability or death benefits; (C) benefits in the event of unemployment; (D) pension benefits; (E) vacation, holiday and personal leave; (F) training benefits; and (G) legal services benefits, and may include payment made directly to employees, payments to purchase insurance and the amount of payment or contributions paid or payable by the employer on behalf of each employee to any employee benefits fund; (7) "employee benefit fund" means any trust fund established by one or more employers and one or more labor organizations or one or more other third parties not affiliated with such employers to provide, whether through the purchase of insurance or annuity contracts or otherwise, benefits under an employee health, welfare or retirement plan, but does not include any such fund where the trustee or trustees are subject to supervision by the Banking Commissioner of this state or of any other state, or the Comptroller

of the Currency of the United States or the Board of Governors of the Federal Reserve System; and (8) "benefits under an employee health, welfare or retirement plan" means one or more benefits or services under any plan established or maintained for employees or their families or dependents, or for both, including, but not limited to, medical, surgical or hospital care benefits, benefits in the event of sickness, accident, disability or death, benefits in the event of unemployment, retirement benefits, vacation and paid holiday benefits, legal service benefits or training benefits.

(b) On and after July 1, 2000, the wages paid on an hourly basis to any employee of a required employer in the provision of food, building, property or equipment services provided to the state pursuant to a contract or agreement with the state or any state agent, shall be at a rate not less than the standard rate determined by the Labor Commissioner pursuant to subsection (g) of this section.

(c) Any required employer or agent of such employer that violates subsection (b) of this section shall pay a civil penalty in an amount not less than two thousand five hundred dollars but not more than five thousand dollars for each offense. The contracting department of the state that has imposed such civil penalty on the required employer or agent of such employer shall, within two days after taking such action, notify the Labor Commissioner, in writing, of the name of the employer or agent involved, the violations involved and steps taken to collect the fine.

(d) The Labor Commissioner may make complaint to the proper prosecuting authorities for the violation of any provision of subsection (b) of this section.

(e) For the purpose of predetermining the standard rate of covered wages on an hourly basis, the Labor Commissioner shall establish classifications for all hourly nonsupervisory employees based on the applicable occupation codes and titles set forth in the federal Register of Wage Determinations under the Service Contract Act of 1965, 41 USC 351, et seq. , provided the Labor Commissioner shall classify any individual employed on or before July 1, 2009, as a grounds maintenance laborer or laborer as a janitor, and shall classify any individual hired after July 1, 2009, performing the duty of grounds maintenance laborer, laborer or janitor as a light cleaner, heavy cleaner, furniture handler or window cleaner, as appropriate. The Labor Commissioner shall then determine the standard rate of wages for each classification of hourly nonsupervisory employees which shall be [equivalent to] (1) the prevailing rate of wages paid to employees in each classification, or if there is no such prevailing rate of wages, the minimum hourly wages set forth in the federal Register of Wage Determinations under the Service Contract Act, plus (2) the prevailing rate of benefits paid to employees in each classification, or if there is no such prevailing rate of benefits, a thirty per cent surcharge on the amount determined in

subdivision (1) of this subsection to cover the cost of any health, welfare and retirement [plans] benefits or, if no such [plan is in effect between] benefits are provided to the employees, [and the employer,] an amount equal to thirty per cent of the [hourly wage] amount determined in subdivision (1) of this section, which shall be paid directly to the employees. The standard rate of wages for any employee entitled to receive such rate on or before July 1, 2009, shall not be less than the minimum hourly wage for the classification set forth in the federal Register Of Wage Determinations under the Service Contract Act plus the prevailing rate of benefits for such classification for as long as that employee continues to work for a required employer.

(f) Required employers with employees covered by collective bargaining agreements which call for wages and benefits that are reasonably related to the standard rate of wages shall not be economically disadvantaged in the bidding process, provided the collective bargaining agreement was arrived at through arms-length negotiations.

(g) The Labor Commissioner shall, in accordance with subsection (e) of this section, determine the standard rate of wages for each classification on an hourly basis where any covered services are to be provided, and the state agent empowered to let such contract shall contact the Labor Commissioner at least ten days prior to the date such contract will be advertised for bid, to ascertain the standard rate of wages and shall include the standard rate of wages on an hourly basis for all classifications of employment in the proposal for the contract. The standard rate of wages on an hourly basis shall, at all times, be considered the minimum rate for the classification for which it was established.

(h) Where a required employer is awarded a contract to perform services that are substantially the same as services that have been rendered under a predecessor contract, such required employer shall retain, for a period of ninety days, all employees who had been employed by the predecessor to perform services under such predecessor contract, except that the successor contract need not retain employees who worked less than fifteen hours per week or who had been employed at the site for less than sixty days. During such ninety-day period, the successor contract shall not discharge without just cause an employee retained pursuant to this subsection. If the performance of an employee retained pursuant to this subsection or section 4a-82 is satisfactory during the ninety-day period, the successor contractor shall offer the employee continued employment for the duration of the successor contract under the terms and conditions established by the successor contractor, or as required by law. The provisions of this subsection shall not apply to any contract covered by subsections (o) and (p) of section 4a-82.

[(h)] (i) Each required employer subject to the provisions of this section shall (1) keep, maintain and preserve such records relating to the wages and hours worked by each employee and a schedule of the occupation or work classification at which each person is employed during each work day and week in such manner and form as the Labor Commissioner establishes to assure the proper payments due to such employees, and (2) annually or upon written request, submit to the contracting state agent a certified payroll which shall consist of a complete copy of such records accompanied by a statement signed by the employer which indicates that (A) such records are correct, (B) the rate of wages paid to each employee is not less than the standard rate of wages required by this section, (C) such employer has complied with the provisions of this section, and (D) such employer is aware that filing a certified payroll which it knows to be false is a class D felony for which such employer may be fined not more than five thousand dollars or imprisoned not more than five years, or both. Notwithstanding the provisions of section 1-210, the certified payroll shall be considered a public record and every person shall have the right to inspect and copy such record in accordance with the provisions of section 1-212. The provisions of subsections (a) and (b) of section 31-59, section 31-66 and section 31-69 which are not inconsistent with the provisions of this section shall apply. Any person who files a false certified payroll in violation of subdivision (2) of this subsection shall be guilty of a class D felony for which such person may be fined not more than five thousand dollars or imprisoned not more than five years, or both.

[(i)] (j) This section shall not apply to contracts, agreements or grants which do not exceed forty-nine thousand nine hundred ninety-nine dollars per annum.

[(j)] (k) On receipt of a complaint for nonpayment of the standard rate of wages, the Labor Commissioner, the Director of Wage and Workplace Standards and wage enforcement agents of the Labor Department shall have power to enter, during usual business hours, the place of business or employment of any employer to determine compliance with this section, and for such purpose may examine payroll and other records and interview employees, call hearings, administer oaths, take testimony under oath and take depositions in the manner provided by sections 52-148a to 52-148e, inclusive. The commissioner or the director, for such purpose, may issue subpoenas for the attendance of witnesses and the production of books and records. Any required employer, an officer or agent of such employer, or the officer or agent of any corporation, firm or partnership who wilfully fails to furnish time and wage records as required by law to the commissioner, the director or any wage enforcement agent upon request or who refuses to admit the commissioner, the director or such agent to a place of employment or who hinders or delays the commissioner, the director or such agent in the performance of any duties in the enforcement of this section shall be fined not less than twenty-five dollars nor more than one hundred

dollars, and each day of such failure to furnish time and wage records to the commissioner, the director or such agent shall constitute a separate offense, and each day of refusal of admittance, of hindering or of delaying the commissioner, the director or such agent shall constitute a separate offense.

[(k)] (l) Notwithstanding subsection [(i)] (j) of this section, any employer that pays the state for a franchise to provide food preparation or service, or both, for the state shall be required to certify that the wages and benefits paid to its employees are not less than the standard rate established pursuant to this section, provided, if no prevailing rate of wages or benefits was in effect at the time the state entered into a franchise agreement, then the employer shall not be required to pay the prevailing rate of wages or benefits during the life of the agreement, unless the agreement is amended, extended or renewed.

[(l)] (m) The Labor Commissioner may adopt regulations, in accordance with chapter 54, to carry out the provisions of this section.

[(m)] (n) The provisions of this section and any regulation adopted pursuant to subsection [(l)] (m) of this section shall not apply to any contract or agreement entered into before July 1, 2000.