

SENATE No. 2959

Text of amendment (Senator DiZoglio) to the Senate Bill making appropriations for the fiscal year 2021 for the maintenance of the departments, boards, commissions, institutions and certain activities of the commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (Senate, No. 4).

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

1 by adding the following sections:-

2 SECTION XX. Section 57 of chapter 7 of the General Laws is hereby amended by
3 adding the following paragraphs:-

4 In order to fulfill the commitment embodied in the foregoing policy, it is not sufficient
5 that the state government see that all available services and programs are put to the best use. The
6 state government has an affirmative duty to advance diversity and equity in all of its own rules,
7 regulations and practices. In the near-term to address disruptions caused by the outbreak of the
8 2019 novel coronavirus, also known as COVID-19, the effects of the governor's March 10, 2020,
9 declaration of a state of emergency, and the disparate impact the foregoing have had on
10 communities and workers of color and minority-owned businesses, and in the long-term to
11 facilitate the commonwealth's economic recovery and future growth and to promote equitable
12 access to opportunity, it is therefore incorporated into the policy of the commonwealth that all
13 agencies of the commonwealth, when procuring supplies or services via requests for proposals
14 from private businesses, include diversity and inclusion plan requirements in all such requests

15 and consider those plans alongside traditional criteria when evaluating bids. The weight given to
16 diversity and inclusion plans when evaluating bids shall be determined by each agency of the
17 commonwealth in collaboration with the executive office of housing and economic development,
18 the executive office of labor and workforce development, the executive office for administration
19 and finance, the commission against discrimination, the supplier diversity office established
20 pursuant to section 58A, the vendor advisory team formed by the gaming commission, and the
21 port authority. Agencies may seek guidance from the Massport Model in determining the weight
22 to be given to diversity and inclusion plans when evaluating bids. For purposes of this section,
23 “Massport Model” shall mean the bidder selection model implemented by the port authority
24 which, in the port authority’s requests for proposals, requires bidders to incorporate diversity and
25 inclusion plans into their bids, such plans to be considered alongside traditional criteria when
26 evaluating bids and given a weight of 25%.

27 The secretary of each executive office is hereby authorized to promulgate regulations to
28 assure the timely and effective implementation of this section.

29 This section shall only apply to requests for proposals proffered on or after the date of
30 enactment.

31 SECTION XX. Chapter 7 of the General Laws is hereby amended by striking out
32 sections 58 through 61, inclusive.

33 SECTION XX. Chapter 23A of the General Laws is hereby amended by inserting after
34 section 68 the following sections:-

35 Section 69: Definitions applicable to Secs. 71 to 73

36 Section 69. As used in sections 71 to 73 of this chapter, the following words shall have
37 the following meanings, unless a contrary intent is clearly indicated:—

38 “Certified business enterprise” and “certified business”, a business certified pursuant to
39 section 73.

40 “Director”, the director of the supplier diversity office.

41 “Disadvantaged business enterprise”, a disadvantaged business enterprise as defined by
42 the United States Department of Transportation in 49 C.F.R. § 26 et seq.

43 “Minority business enterprise” or “MBE”, for the purpose of receipt of services from
44 SDO, a business enterprise that is both owned and controlled by 1 or more socially or
45 economically disadvantaged persons who have invested in an ongoing business free of
46 conversion rights. Such disadvantage may arise from cultural, racial, chronic economic
47 circumstances or background or other similar cause. Such persons include, but are not limited to,
48 minority persons as defined in 425 CMR 2.02(1), or any successor regulation thereto. For
49 purposes of section 73, the term “minority-owned business” shall have the same meaning as
50 “minority business enterprise”.

51 “Office”, the supplier diversity office as established by section 70.

52 “SDO”, the supplier diversity office as designated by section 70. The office shall be the
53 successor to the office of minority and women business assistance and the preceding supplier
54 diversity office within the operational services division of the executive office for administration
55 and finance.

56 “Unified certification program”, the program, whereby the supplier diversity office
57 certifies disadvantaged business enterprises, as required by regulations of the United States
58 Department of Transportation in 49 C.F.R. § 26 et seq.

59 “Veteran business enterprise” or “VBE”, for the purpose of receipt of services from SDO,
60 a business enterprise that is both owned and controlled by 1 or more veterans, as defined in
61 section 7 of chapter 4, who have invested in an ongoing business free of conversion rights. For
62 purposes of section 73, the term “veteran-owned business” shall have the same meaning as
63 “veteran business enterprise”.

64 “Women business enterprise” or “WBE”, for the purpose of receipt of services from
65 SDO, a business enterprise that is both owned and controlled by 1 or more women who have
66 invested in an ongoing business free of conversion rights. For purposes of section 73, the term
67 “women-owned business” shall have the same meaning as “women business enterprise”.

68 Section 70: Supplier diversity office

69 Section 70. There shall be a supplier diversity office which shall be an agency within the
70 executive office of housing and economic development.

71 Section 71: Director of supplier diversity office

72 Section 71. SDO shall have a director and such other specialists as may be authorized.
73 The director shall have all necessary authority to effect the purposes of section 57 of chapter 7
74 and sections 69 to 73 of this chapter, inclusive, and shall have the authority to seek such funds,
75 public or private, as may be available and needed to carry out the intent of those sections.

76 Section 72: Unified Certification Program Trust Fund

77 Section 72. (a) There shall be established a separate account to be known as the Unified
78 Certification Program Trust Fund, in this section called the fund. The director shall expend
79 funds, without further appropriation, exclusively for the operation of the unified certification
80 program.

81 (b) Funds received from the federal government by the following state and regional
82 authorities and municipal and regional airports, in this section collectively referred to as the
83 participants, and any others that take part in the unified certification program, for the purpose of
84 operating the unified certification program, shall be deposited in the fund: the Massachusetts
85 Department of Transportation, the Massachusetts Bay Transportation Authority, the
86 Massachusetts Port Authority, the Berkshire Regional Transit Authority, the Brockton Area
87 Transit Authority, the Cape Cod Regional Transit Authority, the Greater Attleboro-Taunton
88 Regional Transit Authority, the Lowell Regional Transit Authority, the Merrimack Valley
89 Regional Transit Authority, the Montachusett Regional Transit Authority, the Pioneer Valley
90 Regional Transit Authority, the Southeastern Regional Transit Authority, the Worcester Regional
91 Transit Authority, Barnstable Municipal Airport, Martha's Vineyard Airport, Nantucket
92 Memorial Airport and New Bedford Regional Airport. The methodology used in determining the
93 allocation of payments due from each participant shall be determined pursuant to a formula,
94 subject to modification from time to time, that is established by and between the Massachusetts
95 Department of Transportation, the participants and the United States Department of
96 Transportation, consistent with applicable federal laws and regulations.

97 Section 73: Powers and duties of supplier diversity office

98 Section 73. (a) SDO shall adopt regulations and policies for the establishment and
99 management of the office's certification process, including regulations and policies governing
100 the streamlining, approval, denial or revocation of any such certification.

101 (b) SDO shall seek to develop and maintain a directory of certified minority, women and
102 veteran businesses within the commonwealth, and shall, from time to time, notify such
103 businesses of the programs and services available to them, whether from public or private
104 sources, or from local, state or federal agencies. To the extent feasible, SDO shall separately
105 categorize minority businesses pursuant to the categories specified in 425 CMR 2.02(1), or any
106 successor regulation thereto, and shall separately track outcomes of programs and policies under
107 this section with respect to such categories.

108 (c) SDO may establish its own programs and policies and seek from any official or
109 agency of the commonwealth or its political subdivisions, information and assistance necessary
110 to carry out its functions and duties; and all officials, agencies or political subdivisions of the
111 commonwealth shall supply such information or assistance.

112 (d) SDO shall receive assistance from state agencies including, where consistent with
113 existing law, commitments that such agencies do a minimum amount of contracting and
114 subcontracting with minority or women or veteran businesses. SDO shall assist minority, women
115 and veteran businesses in making use of any special programs which may be operated by the
116 state or by various departments and agencies of the federal government.

117 (e) SDO shall coordinate its activities with those of other offices, and shall assist
118 minority, women and veteran businesses in their dealings with federal agencies and with state
119 departments and agencies. SDO shall also provide assistance to all cabinet secretaries and

120 departments, in evaluating economic activities of their offices to determine how their offices may
121 be of assistance in providing fair opportunities for minority, women and veteran businesses.

122 (f) SDO may work with lending institutions, insurance companies, and other private
123 businesses in the commonwealth to encourage the formation of seed money for facilitating the
124 starting-up and expansion of minority, women and veteran businesses. SDO may provide
125 assistance to minority, women and veteran businesses in their efforts to obtain loan money and
126 operating capital from private and public lenders.

127 (g) SDO may seek to increase the amount of financial assistance available to minority,
128 women and veteran businesses from private financial institutions; and may, from time to time,
129 sponsor conferences, workshops or other informational programs.

130 (h) SDO shall seek to encourage voluntary assistance programs by which nonminority,
131 non-women and non-veteran business employees are loaned to minority, women and veteran
132 businesses or by which minority, women and veteran business persons are taken into viable
133 business ventures to acquire training and experience in managing business affairs.

134 (i) SDO may encourage state contract awarding authorities to seek to increase the
135 incidence of joint ventures between nonminority state contractors and minority, women and
136 veteran contractors, by specifically pointing out that such arrangements would constitute one
137 method of partially meeting affirmative action requirements imposed upon both nonminority
138 state contractors and the state. The director of affirmative action shall be kept informed of
139 actions taken under this provision. SDO shall follow advertisements for construction work by
140 public bodies in the commonwealth, shall notify minority, women and veteran general
141 contractors and subcontractors of the bid opening dates for the approximate amount of the

142 contract and subcontract work being bid, may assist them in securing bonds and in bidding for
143 that construction work and shall initiate a program to help qualified minority persons, women
144 and veterans to get started as small business firms in the construction field by helping to arrange
145 joint ventures with qualified general contractors and subcontractors and by arranging for
146 administrative and accounting assistance to help them carry out their subcontract and general
147 contract obligations during the period of contract performance.

148 (i ½) SDO shall promulgate regulations to encourage and facilitate participation on public
149 projects for service-disabled veteran-owned small businesses interested in and capable of
150 providing construction and design services on public construction and design projects. For the
151 purposes of this subsection, “service-disabled veteran-owned small business” shall mean a
152 business that is verified by the federal government's Department of Veterans Affairs pursuant to
153 the Veterans Benefits, Health Care, and Information Technology Act of 2006, Pub. L. 109–461,
154 and determined to be a service-disabled veteran-owned small business concern in accordance
155 with 38 CFR Part 74 and Pub. L. 111–275.

156 (i ¾) SDO shall, every 3 years and in consultation with the department of veterans’
157 services, establish goals for participation of service-disabled, veteran-owned business enterprises
158 in all areas of state procurement contracting, including contracts for public construction, design
159 services and commodities and service. In calculating such goals, the director shall base the
160 determination on an understanding of the pool of service-disabled, veteran-owned business
161 enterprises available for participation.

162 (j) SDO shall submit an annual report to the general court on the minority, women and
163 veteran businesses which it assists, the type of services which it renders, the difficulties it
164 encounters. The report may include recommendations for legislative or executive action.

165 (k) SDO shall, after notice and an opportunity to be heard, impose administrative
166 penalties on an applicant for certification or recertification that knowingly provides false or
167 misleading information on its application or in support of its application for certification or
168 recertification as a minority- or women- or veteran-owned business, or on a person who fails to
169 comply with any provision of any regulation or approval issued or adopted by the agency or of
170 any law which the agency has the authority or responsibility to enforce.

171 (k ½)(1) SDO shall have oversight and enforcement authority over the performance of
172 contracts awarded to nonminority state contractors who enter into joint ventures with minority or
173 women or veteran contractors or subcontractors for the purpose of partially meeting affirmative
174 action requirements imposed upon both nonminority state contractors and the state, with respect
175 to the participation of such minority or women or veteran contractors or subcontractors in the
176 performance of such contracts.

177 (2) SDO shall, after notice and an opportunity to be heard, have the authority to impose a
178 minimum 5-year ban on awarding contracts to nonminority state contractors who enter into joint
179 ventures with minority or women or veteran contractors or subcontractors for the purpose of
180 partially meeting affirmative action requirements imposed upon both nonminority state
181 contractors and the state but who, after being awarded such contract, willfully terminate such
182 joint venture or willfully do not fulfill the requirements of such joint venture with respect to the
183 participation of such minority or women or veteran contractors or subcontractors without being

184 granted a waiver by the director pursuant to subsection (p), and such other administrative or
185 financial penalties as the director may deem appropriate. The director of affirmative action shall
186 be kept informed of actions taken under this provision.

187 (l) The director shall consult with the commissioner of capital asset management and
188 maintenance on the establishment of an affirmative marketing program pursuant to section 6 of
189 chapter 7C. The affirmative marketing program shall be established for the purpose of ensuring
190 the fair participation of minority-owned and women-owned businesses on capital facility projects
191 and state assisted building projects. The affirmative marketing program shall establish
192 participation goals for minority-owned and women-owned business on capital facility projects
193 and state assisted building projects. Participation goals for minority-owned business and women-
194 owned business shall be based upon the broadest and most inclusive pool of available minority-
195 owned businesses and women-owned businesses interested in and capable of performing
196 construction work and design services on such capital facility projects and state assisted building
197 projects. The director and the commissioner of capital asset management and maintenance shall
198 meet on a quarterly basis to determine the status of implementation of the affirmative marketing
199 program and what further steps both agencies deem necessary to achieve the purposes of section
200 6 of chapter 7C and this subsection. For purposes of this subsection, the terms “capital facility
201 project” and “state assisted building project” shall have the same meanings as found in section 6
202 of chapter 7C.

203 (m) In connection with the affirmative marketing program established pursuant to section
204 6 of chapter 7C, SDO shall regularly review and, where necessary, modify its certification
205 process to ensure that it operates effectively, and shall report annually to the secretary of the

206 executive office of housing and economic development and the secretary of the executive office
207 for administration and finance regarding these matters.

208 (n) SDO shall be responsible for the overall management, monitoring, and enforcement
209 of the affirmative marketing program as it relates to minority-owned and women-owned business
210 participation on state assisted building projects. The director may appoint a program director to
211 assist in program development, coordination of program operations and compliance with
212 program goals and objectives. The program director shall also have responsibility for monitoring
213 compliance regarding minority-owned and women-owned business participation on state assisted
214 building projects, addressing program violations and coordinating enforcement activities.

215 (o) The director shall develop a written procedure by which participation goals, for an
216 individual state assisted building project, may be adjusted for minority-owned businesses,
217 women-owned businesses or both; but, the adjustment shall be based upon the actual availability
218 of minority-owned businesses and women-owned businesses, the geographic location of the
219 project, the scope of work of the capital facility project or other relevant factors.

220 (p) The director shall develop a written waiver procedure by which, at any time before
221 the award of a contract, it may be determined that compliance with the participation goals is not
222 feasible and by which the participation goals on a state assisted building project may be reduced
223 or waived. Waiver shall be granted only upon a showing that good faith efforts have been made
224 to comply with the participation goals.

225 (q) The director and the commissioner of capital asset management and maintenance
226 shall by March 15 of each year submit to the joint committee on state administration and
227 regulatory oversight, the senate committee on ways and means, the house committee on ways

228 and means, the clerk of the house, and the clerk of the senate a report on the performance of the
229 affirmative marketing program for the preceding year. The report shall, at a minimum, show the
230 name and address of each such minority-owned business and women-owned business, its
231 designation as a minority-owned or women-owned business, the contract or subcontract price, a
232 description of the work performed on the contract by class of work, and project type, and shall
233 show separately the total number of contracts awarded to minority-owned and women-owned
234 businesses as a percentage of the total number of contracts awarded and as a percentage of the
235 total contract price.

236 (r) The director shall adopt regulations necessary to implement this subsection.

237 (s) The SDO shall, every 2 years and in consultation with the Massachusetts Office on
238 Disability, establish goals for participation of individuals with disabilities in all areas of state
239 procurement contracting. Participation goals may be met by contracting or subcontracting with
240 businesses that hire, or identify and recruit with the intent to hire, qualified applicants with
241 disabilities. SDO shall provide assistance to the executive offices in determining opportunities
242 for contracting with businesses that hire persons with disabilities to meet the participation goal
243 set forth in this paragraph, including contractors and subcontractors providing goods and services
244 under multi-year contracts or grants funded by agencies within the executive offices.

245 SDO shall file an annual report with the clerks of the house of representatives and the
246 senate on or before October 31 on the progress made toward meeting the participation goal set
247 forth in this paragraph.

248 SECTION XX. Section 6 of chapter 30B of the General Laws is hereby amended by
249 striking out subsection (b) and inserting the following subsection:-

250 (b) The chief procurement officer shall solicit proposals through a request for proposals.

251 The request for proposals shall include:

252 (1) the time and date for receipt of proposals, the address of the office to which the
253 proposals are to be delivered, the maximum time for proposal acceptance by the governmental
254 body;

255 (2) the purchase description and all evaluation criteria that will be utilized pursuant to
256 paragraph (e);

257 (3) a requirement for a diversity and inclusion plan which shall be considered alongside
258 traditional criteria when evaluating bids; and

259 (4) all contractual terms and conditions applicable to the procurement provided that the
260 contract may incorporate by reference a plan submitted by the selected offeror for providing the
261 required supplies or services.

262 The request for proposals may incorporate documents by reference; provided, however,
263 that the request for proposals specifies where prospective offerors may obtain the documents.
264 The request for proposals shall provide for the separate submission of price, and shall indicate
265 when and how the offerors shall submit the price. The chief procurement officer shall make
266 copies of the request for proposals available to all persons on an equal basis.

267 (5) This subsection shall only apply to requests for proposals proffered on or after the
268 date of enactment.