



STATE OF CONNECTICUT

DEPARTMENT OF TRANSPORTATION

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Office of the
Commissioner

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Public Hearing – March 1, 2010 Committee on Government Administration and Elections

Testimony Submitted by Commissioner Joseph F. Marie Department of Transportation

H.B. 5323 - An Act Eliminating a Duplicative Department of Transportation Affirmative Action Plan.

The Department of Transportation (Department) would like to thank the Government, Administration and Elections Committee for raising H.B. 5323, AA Eliminating a Duplicative Department of Transportation Affirmative Action Plan and fully supports its passage.

The bill amends CGS 46a-68(a) to allow the Commission on Human Rights and Opportunities (CHRO) to accept and approve the Department's approved Federal Highway Administration (FHWA)/Federal Transit Administration (FTA) Affirmative Action Plans and Annual Updates as fulfillment of the requirements of preparing an Affirmative Action Plan under the CHRO Affirmative Action Regulations.

At present, the Department is required to file two separate and distinct affirmative action plans: one plan in accordance with Connecticut General Statutes to be completed and filed annually with CHRO and another plan in compliance with both the U.S. Department of Transportation's Federal Highway Administration's (FHWA) 23CFR230 Subpart C Appendix A Part II, *State highway Agency Equal Employment Opportunity Programs* and the Federal Transit Administration's (FTA) UMTA Circular 4704.1 *Equal Employment Opportunity Program Guidelines for Grant Recipients*. Both FHWA and FTA accept a single affirmative action plan from the Department that incorporates the requirements of both federal agencies. Prior negotiations with CHRO and FHWA/FTA for a single affirmative action plan to be accepted by all three agencies failed as CHRO was unable to negotiate any changes that deviated from the existing CHRO regulations.

It is important to note that ConnDOT must be in compliance with the Federal Affirmative Action Plan (Federal AAP) requirements in order to receive federal transportation funding. In federal fiscal year 2009, that funding amounted to approximately \$571 million, not including recovery act dollars totaling \$455 million.

Because of the different data reporting requirements surrounding the methodology for the setting of numerical hiring and promotion goals, complying with both the federal and state regulations is not possible at the same time. The result is conflicting numerical hiring and promotion goals and noncompliance with either requirement. Although the Department currently has an "approved" Federal AAP, this approval was awarded temporarily by our federal partners based on the CHRO methodology for

the setting of goals statistically. However, they have indicated the need for preparing the statistics and goals based on the U.S. DOT's methodology.

The Department strongly supports H.B. 5323 because it would provide for a more efficient affirmative action program at ConnDOT by eliminating the duplication of effort of writing two separate plans, redundancy and the conflict between the Federal and State affirmative action requirements *all* while achieving the same objective.

Further information

ConnDOT has compared the CHRO, FHWA, and FTA affirmative action plan requirements and essentially all of the state requirements are covered in the federal requirements with the exception of a separate section for "Innovative Programs" required by CHRO regulations. However, innovative programs are an implied requirement throughout the federal regulations as well as in their Desk Reference Manual of guidance on how to prepare a FHWA AA Plan.

H.B. 5323 would *not* affect the State's policy of non discrimination of the various protected classes nor would it detrimentally impact ConnDOT's affirmative action programs. The Department's AA Policy Statement and Plan would continue to include all of the protected classes recognized by the State of Connecticut. The Department would continue the preparation and submission of an affirmative action plan; however, it would be in compliance with federal requirements which require a different methodology of data collection and a more specific in-depth method of monitoring and reporting than those of the State. Essentially, all of the elements required of the CHRO regulations are also encompassed in the federal regulations.

The Federal AAP is intended to be a living document that mandates more time and effort on education, training, and implementation, as well as monitoring of the Department's employment processes - true measures of the success of an affirmative action plan. Acceptance of the Federal AAP in lieu of a separate CHRO plan would allow ConnDOT's affirmative action unit to concentrate its efforts on the *prevention* of discrimination through education and training.

The Department believes it is important for employees to be fully educated on the benefits of an affirmative action plan and the importance of a diverse workforce united in furtherance of the agency's mission. There are extensive monitoring and training requirements under the Federal AA plans. This monitoring is an important component in the implementation of affirmative action plans because it affords the Department the ability to identify possible issues of discrimination and correct them before complaints are made and lawsuits are filed. Affirmative action plans are vital tools that are utilized to *prevent* discrimination in the workplace, however, if all of the affirmative action staff time is spent on writing plans and investigation of complaints, there is no time left to perform the actual monitoring and training necessary to assure that equal opportunity is afforded to everyone.

The actual writing of the CHRO plan takes a minimum of 3 ½ months time (full time) of the entire Affirmative Action Division of 2 EEO Specialists, 1 EEO Manager, and 1 Secretary as well as a significant amount of the EEO Director's time. CHRO has 90 days to review the Plan and either approve, conditionally approve, or disapprove the Plan. These timeframes provide for only 5 ½ months at most for goal achievement, assuming the Plan is fully approved and none of the eighteen (18) sections or various statistics need to be corrected or changed. The CHRO plan for ConnDOT is approximately 900 pages in length. The Federal AA Plan is written in its entirety once every three years and is approximately 200 pages in length. The Annual Update is approximately 50-75 pages in

length and is reviewed and approved by the FHWA/FTA within 30-60 days of its submission. The Federal AA Plan allows three years for goal achievement – a more realistic expectation, which allows for the Affirmative Action staff to sit in and monitor interviews, assist in outreach and recruitment, conduct monitoring analyses, conduct staff training, and perform internal investigations.

CHRO regulations require agencies to rewrite plans in their entirety annually and with the staff spending the majority of its time gathering data and drafting the plan, there is little, if any time, to interpret monitoring or conduct the required education and training. Goals cannot be completely set until the completion of the plan, which leaves less than six months to perform outreach and recruitment activities to impact or even achieve the current year's goals.

CHRO regulations also require short-term and long-term numerical hiring and promotion goals, yet their regulations seem to be in conflict with the statute that requires an annual affirmative action plan resulting in a new statistical analysis of the availability annually. For example: CHRO regulations specify that an agency have 20% of their goals as short-term goals to be accomplished within one year, and the remaining long-term goals are to be accomplished over the next five years. Agencies are not allowed the full five years to accomplish the long-term goals because they are constantly setting new goals annually based on a new analysis of availability.

As mentioned above, the Federal AAP is rewritten with new goals set every three years. Short-term goals are to be achieved within one year and long-term goals are to be reached within three years. CHRO requires resetting all goals annually. The Federal AAP requires annual updates of activities and goal achievement through a report of activities and goal achievement performed during the year. The second and third year goals of the Federal AAP are to be adjusted to 33% of the remaining goals for each year for those plans with a three year life.

H.B. 5323 would assist the Department in performing the work needed for compliance with all affirmative action requirements and eliminate unnecessary duplication of effort.

For further information or questions, please contact Pam Sucato, Legislative Program Manager for the Department of Transportation, at (860) 594-3013.

