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**SB 455**  
**An Act Concerning the Commission**  
**on Human Rights and Opportunities**

**Judiciary Committee**  
**March 29, 2012**

The Department of Administrative Services (DAS) and Department of Construction Services (DCS) wish to share the following concerns regarding Senate Bill 455, An Act Concerning the Commission on Human Rights and Opportunities. Specifically:

- Unintended consequences of changing the timeframe for CHRO to review affirmative action plans submitted by public works contractors and increasing the withholding applicable to such contractors as set forth in Section 6;
- Ambiguity created by the description of "good faith efforts" in section 7; and
- DAS' current inability to administer a set-aside program for municipalities.

**Section 6**

Currently, a successful bidder must submit an affirmative action plan and receive approval from the CHRO before the contract is awarded. If the CHRO does not review and approve the plan within 60 days, CHRO may authorize the state to proceed with the contract, but withholds 2% of the contracted-for payments from the contractor every month until CHRO approves the plan.

Section 6 of SB 455 changes this process by allowing the contractor to submit the plan any time before the work on the contract is completed and by increasing the withholding to 5%. DAS and DCS are concerned that these changes will unintentionally undermine the contract compliance program by changing the existing pro-active/incentive-based requirement into a reactive/punishment-based requirement. If a contractor does not know until it completes the work that its affirmative action plan was inadequate, it will have no opportunity to improve its equal employment opportunity practices. Increasing the withholding will not ameliorate this negative result. In fact, it may exacerbate the problem by simply creating an incentive for contractors to account for the 5% deduction when bidding the project.

### Section 7

DAS and DCS are also concerned that section 7, which is intended to clarify the meaning of "good faith effort," may have similar unintended consequences by causing - instead of eliminating -- confusion. DAS and DCS believe it would be more helpful to contractors to identify examples of the conduct that exemplifies good faith efforts rather than to identify conduct that does not.

Even if such examples are not included in the legislation, however, lines 388 through 394 should be revised as follows to make the section more clear:

[Failure by a] A contractor's failure to solicit[: (1)] [B]bids from (1) no more than two subcontractors, vendors or service providers; (2) subcontractors, vendors or service providers in all project areas; or (3) [less than] all types of businesses certified by the Department of Administrative Services pursuant to section 4a-60g, as amended by this act, shall not necessarily demonstrate a contractor's lack of good faith efforts.

### Section 10

Section 10 of SB 455 requires all municipalities in the state to participate in the set-aside program that exists for state agencies and political subdivisions. The bill does not, however, specify who will be responsible for establishing the set-aside goals for the municipalities. While DAS believes the intent of this section is laudable, DAS cautions that it does not have the resources to administer a set-aside program for municipalities.

Currently, the set-aside program applies to 59 state agencies and approximately two-dozen political subdivisions. As the administrator of this program, DAS's supplier diversity unit analyzes the budgets of each participant, sets individualized set-aside goals for each participant, verifies that the vendors receiving the contracts are, in fact certified by the state as small or minority owned businesses, and offers training and assistance to the participants. (This work is in addition to auditing the records of companies that apply for small business or minority business enterprise certification and engaging in education and outreach in the business community.)

Currently one full-time employee is dedicated to creating goals for agencies. DAS is able to manage this workload effectively because all state agencies use the State's Accounting System, CoreCT. As a result, DAS has immediate access to the agencies' budgets and spend data. In fact, through CoreCT, each time a state agency cuts a purchase order, that information is automatically compared with the state's list of certified small business and minority business enterprise to determine if the contract can be counted toward the agency's set-aside goals.

As written, it appears that Senate Bill 455 will add all 169 municipalities to the state program, increasing the number of participating entities by 386%. The greater difficulty, however, is that none of the 169 municipalities are in the CoreCT system. Thus, every goal calculation would have to be done manually, hugely increasing the amount of time and resources required. An added level of complexity is created by the fact that many municipalities have separate budget structures for their different boards and councils; for example, a town's board of education budget is often completely separate from its operating budget. Senate Bill 455 does not address how this factor should be considered in determining the set-aside goals and compliance.

Moreover, an almost four-fold increase in the number of participating entities is likely to prompt a similar increase in the number of vendors seeking certification, which in turn will increase the number of audits performed and disputes investigated by DAS.

At a conservative estimate, if DAS became responsible for administering the set-aside program for municipalities, it would need at least five more full-time employees to handle the increased workload.

DAS and DCS appreciate this opportunity to share their concerns about SB 455. Please do not hesitate to contact us if you would like to discuss any of these matters in more detail.