Commission on Human Rights and Opportunities

Government Administration and Elections Committee

Public Hearing

Monday, March 17, 2014 at 1 PM in Room 2A

Testimony

SB 452, AN ACT IMPLEMENTING THE INITIAL FINDINGS OF THE DISPARITY STUDY CONCERNING THE MINORITY BUSINESS SET-ASIDE PROGRAM.

Senator Musto, Representative Jutilo, Senator Mclachlan, Representative Hwang and members of the Committee my name is Tanya Hughes and I am the Executive Director of the Commission on Human Rights and Opportunities.

The Commission on Human Rights and Opportunities strongly **OPPOSES** SB 452 on a number of levels for several reasons.

In 2011, at the request of the Commission on Human Rights and Opportunities (CHRO), the General Assembly provided an appropriation of $1,000,000with $500,000 being provided in FY 11 and the remainder in FY 12 to conduct a disparity study that would ensure that the state of Connecticut's contracting practices are equitable and fair, and would allow the CHRO to properly enforce the contract compliance laws over which it has jurisdiction. Initially, the administration of the disparity study was under the auspices of the CHRO. The CHRO requested funding for a disparity study, and sought to have the study conducted by a firm that had the expertise and experience in conducting disparity studies—there are only 6 firms nationally that have the recognition and capacity to perform this study, which would need to be recognized and accepted by the Courts. A Request For Proposal RFP was prepared and published by the CHRO, with the assistance of the Department of Administrative Services "DAS". There was a delay in the development and publication of the RFP, in addition to budgetary concerns that arose during the delay, which caused the legislature to assume control over the disparity study. The project was assigned to CASE, who represented to the legislature that it had the necessary skills and qualifications to conduct the study for $500,000 which was considerably less than originally appropriated for the study. CASE had no prior experience conducting a disparity study, and doesn't have the experience in this area of contracting, which includes providing opportunities to minority, women owned and disabled owned businesses. CASE's findings, determinations and this legislative proposal illustrate their lack of familiarity and expertise in this area, despite their representations previously made to the legislature.

After two years, CASE still has not conducted a disparity study. CHRO needs a disparity study and requested the study based on this need. CHRO knows what is

required in order to withstand a constitutional challenge to the state's set aside program. The CHRO and the state need a study to determine whether or not minority, women owned and disabled owned businesses are being fairly and equitably selected and utilized with respect to state contracts. Apparently, CASE does not know how to resource the state's data bases to obtain the information they need to perform the disparity study that should be completed by now. CASE has developed a multi-phase report identifying issues that have arisen absent a disparity study. CASE has erroneously indicated that the state's data management systems and agencies are unable to provide contract data needed to conduct a disparity study. Recent discussions between CHRO and the Comptroller's Office raise doubts about CASE's claim. It appears that the state has the needed data, but CASE, with no experience in this area, lacks the expertise required to access and analyze the data.

CASE has made unfounded determinations that Connecticut's set-aside program is unconstitutional and created a four phase, five year data gathering scheme that is contingent on a new costly data system being in place by July 1, 2014 while essentially eviscerating the existing minority and women owned business set-aside program.

This bill would be a terrible change in public policy.

The biggest problem with the bill is the establishment of what CASE calls "reserved contracts." The definition reads that a reserved contract means a contract offered or awarded to a minority business enterprise or women's business enterprise to meet the goals established under subsection (b) of this section."

The operative portion of subsection (b) states that each agency shall also have the goal of reserving contracts or portions thereof having a value of not less than twenty-five per cent of the total value of all contracts or portions thereof to be set aside for awards to women's business enterprises and minority business enterprises whenever feasible. Besides being vague and incomprehensible, this language provides a blanket out for agencies who can simply say it was not feasible to reserve portions of a contract without any parameters on what is feasible or not feasible.

In subsection (c) of Section 1 of this bill it states the head of any state agency or political subdivision of the state other than a municipality may (1) in lieu of setting aside any contract or portions thereof, require any general or trade contractor or any other entity authorized by such agency to award contracts, to set aside a portion of any contract for subcontractors who are eligible for set-aside contracts under this section or, (2) concerning the goals for reserved contracts established in subsection (b) of this section, require the general or trade contractor or any such other entity to make a reasonable effort to reserve a portion of the contract for subcontractors who are women's business enterprises or minority business enterprises. Nothing in this subsection shall be construed to diminish the total value of contracts which are required to be set aside or reserved by any state agency or political subdivision of the state other than a municipality pursuant to this section.

The language of (c)(2) refers to goals for reserved contracts as established in (b), yet subsection (b) does not establish any methodology for setting goals for reserved funds. The next sentence goes on to state, "value of contracts which are required to be set-aside or reserved." The word required would mean that reserves are required even though nothing establishes what is required for a goal for reserves in subsection (b) and then provides wiggle room with the "whenever feasible" wording. Section (1)(a)(1) includes individuals with a disability or veterans as small businesses but does not appear to qualify either for set-aside of reserved contract moneys.

Section 4 adds Women Business Enterprises to the Minority Business Enterprise Review Committee. The Legislative Library replied to a CHRO inquiry and informed the Commission that the Minority Business Enterprise Review Committee is required by statute to submit annual reports to the Joint Committee on Legislative Management, but they have not received any since 1995. The last appointment letter received by the Library is from 2001. A thorough review of the statutes that CASE is suggesting be amended would have immediately revealed this information.

Because of the confusing and conflicting language of SB 452, veterans are included as a class for some unclear purpose. As CHRO honors the service of persons who have been members of the military, there is no historical record that veterans have faced barriers in obtaining state contracts because of their veteran status. The result would be to reduce the potential moneys that women and minority contractors could compete for if these monies were also available to veterans.

Drafting of the bill is inconsistent with women's business enterprise and minority business enterprise written in different order in different sections which could create confusion for the public, placing an unfair burden on the business community.

Section (1)(m) of the bill states that each state agency shall prepare a status report on the implementation and results of its small business set-aside program goals and women's business enterprise and minority business enterprise reserved contract goals during the three-month. This appears to mean that only small businesses are provided set-asides and WBEs and MBEs have access only to reserved contracts. This is in direct conflict with the operative portion of subsection (b) as mentioned above.

Finally, we would point out that in line 316 the very name of the Government Administration and Elections Committee is inexplicably renamed Government Administration Committee.

Thank you for your attention to this issue and again we urge your rejection of this legislation.