



# Senate

General Assembly

**File No. 255**

January Session, 2015

Substitute Senate Bill No. 830

*Senate, March 26, 2015*

The Committee on Labor and Public Employees reported through SEN. GOMES of the 23rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING A SURETY BOND GUARANTEE PROGRAM FOR MINORITY-OWNED BUSINESSES.***

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

1 Section 1. (NEW) (*Effective from passage*) (a) As used in this section:

2 (1) "Contract" means an agreement for work for the state or a  
3 municipality that is estimated to cost more than five hundred  
4 thousand dollars and is funded, in whole or in part, by state funds;

5 (2) "Emerging contractor" means a contractor that (A) is owned by a  
6 minority, (B) has not been prequalified pursuant to section 4a-100 of  
7 the general statutes, and (C) is unable to (i) obtain bonding required  
8 under section 49-41 of the general statutes, as amended by this act, to  
9 bid on a contract or perform work pursuant to a contract for the  
10 construction, reconstruction, alteration, remodeling, repair or  
11 demolition of any public building or any other public work by the state  
12 or a municipality, except a public highway or bridge project or any

13 other construction project administered by the Department of  
14 Transportation, or (ii) perform work under such a contract as a  
15 substantial subcontractor;

16 (3) "Minority" means a minority as defined in section 32-9n of the  
17 general statutes; and

18 (4) "Substantial subcontractor" means a person who performs work  
19 with a value in excess of five hundred thousand dollars for a  
20 contractor pursuant to a contract for work for the state or a  
21 municipality which is estimated to cost more than five hundred  
22 thousand dollars.

23 (b) Not later than October 1, 2015, the Commissioner of  
24 Administrative Services shall establish a surety bond guarantee  
25 program for emerging contractors. Participation in the program shall  
26 satisfy the bond requirements pursuant to subsection (a) of section 49-  
27 41 of the general statutes. An emerging contractor shall only be eligible  
28 for the surety bond guarantee program for a period not exceeding five  
29 years from the date of the emerging contractor's initial application for  
30 the program.

31 Sec. 2. Section 49-41 of the general statutes is repealed and the  
32 following is substituted in lieu thereof (*Effective October 1, 2015*):

33 (a) Each contract exceeding one hundred thousand dollars in  
34 amount for the construction, alteration or repair of any public building  
35 or public work of the state or a municipality shall include a provision  
36 that the person to perform the contract shall furnish to the state or  
37 municipality on or before the award date, a bond in the amount of the  
38 contract which shall be binding upon the award of the contract to that  
39 person, with a surety or sureties satisfactory to the officer awarding  
40 the contract, for the protection of persons supplying labor or materials  
41 in the prosecution of the work provided for in the contract for the use  
42 of each such person, provided no such bond shall be required to be  
43 furnished (1) in relation to any general bid in which the total estimated  
44 cost of labor and materials under the contract with respect to which

45 such general bid is submitted is less than one hundred thousand  
46 dollars, (2) in relation to any sub-bid in which the total estimated cost  
47 of labor and materials under the contract with respect to which such  
48 sub-bid is submitted is less than one hundred thousand dollars, or (3)  
49 in relation to any general bid or sub-bid submitted by a consultant, as  
50 defined in section 4b-55. Any such bond furnished shall have as  
51 principal the name of the person awarded the contract.

52 (b) Nothing in this section or sections 49-41a to 49-43, inclusive,  
53 shall be construed to limit the authority of any contracting officer to  
54 require a performance bond or other security in addition to the bond  
55 referred to in subsection (a) of this section, except that no such officer  
56 shall require a performance bond in relation to any general bid in  
57 which the total estimated cost of labor and materials under the contract  
58 with respect to which such general bid is submitted is less than  
59 twenty-five thousand dollars or in relation to any sub-bid in which the  
60 total estimated cost of labor and materials under the contract with  
61 respect to which such sub-bid is submitted is less than fifty thousand  
62 dollars.

63 (c) No contract for the construction, alteration or repair of any  
64 public building or public work of the state or a municipality that  
65 requires a person to supply the state or municipality with a bond may  
66 include a provision that requires the person to obtain the bond from a  
67 specific surety, agent, broker or producer. No contracting officer may  
68 require that a bond be obtained from a specific surety, agent, broker or  
69 producer.

70 (d) In the event that any political subdivision of the state enters into  
71 a contract described in subsection (a) of this section and fails to obtain  
72 delivery from the contractor of the bond required by this section, any  
73 person who has not been paid by the contractor for labor or materials  
74 supplied in the performance of work under the contract shall have the  
75 same legal right of action against such political subdivision of the state  
76 as such person would have had against a surety under the provisions  
77 of section 49-42. Nothing in this section shall be construed to extend

78 liability to the state for any person's right to payment or constitute a  
79 waiver of the state's sovereign immunity.

80 (e) (1) As used in this subsection, "owner-controlled insurance  
81 program" means an insurance procurement program under which a  
82 principal provides and consolidates insurance coverage for one or  
83 more contractors on one or more construction projects.

84 (2) No contract for the construction, alteration or repair of any  
85 public building or public work of the state or a municipality may  
86 include a provision that allows or requires the state or municipality to  
87 maintain an owner-controlled insurance program, except for (A) a  
88 project approved pursuant to section 10a-109e, or (B) one or more  
89 municipal projects totaling one hundred million dollars or more (i)  
90 under the supervision of one construction manager, or (ii) located  
91 within the boundaries of a municipality if under the supervision of  
92 more than one construction manager.

93 (3) Each contract or policy of insurance issued under an owner-  
94 controlled insurance program pursuant to this subsection shall provide  
95 that:

96 (A) Coverage for work performed and materials furnished shall  
97 continue from the completion of the work until the date all causes of  
98 action are barred under any applicable statute of limitations.

99 (B) Any notice of a change in coverage under the contract or policy  
100 or of a cancellation or refusal to renew the coverage under the contract  
101 or policy shall be provided to the principal and all contractors covered  
102 under the program.

103 (C) The effective date of a (i) change in coverage under the contract  
104 or policy shall be at least thirty days after the date the principal and  
105 contractors receive the notice of change in coverage as required under  
106 subparagraph (B) of this subdivision, and (ii) cancellation or refusal to  
107 renew shall be at least sixty days after the principal and contractors  
108 receive the notice of change in coverage as required under

109 subparagraph (B) of this subdivision.

110 (4) Each principal or contractor shall disclose in the project plans or  
 111 specifications at the time the principal or contractor is soliciting bids  
 112 for the construction project that the project will be covered by an  
 113 owner-controlled insurance program.

114 (f) Whenever a surety bond is required in connection with a contract  
 115 for the construction, reconstruction, alteration, remodeling, repair or  
 116 demolition of any public building for work by the state or a  
 117 municipality, that is estimated to cost more than five hundred  
 118 thousand dollars and is paid for, in whole or in part, with state funds,  
 119 the surety contract between the contractor named as principal in the  
 120 bond and the surety that issues such bond shall contain the following  
 121 provision: "In the event that the surety assumes the contract or obtains  
 122 a bid or bids for completion of the contract, the surety shall ensure that  
 123 the contractor chosen to complete the contract is prequalified pursuant  
 124 to section 4a-100 of the Connecticut general statutes in the requisite  
 125 classification and has the aggregate work capacity rating and single  
 126 project limit necessary to complete the contract".

127 (g) An emerging contractor participating in the surety bond  
 128 guarantee program established pursuant to section 1 of this act shall  
 129 not be required to comply with the provisions of this section.

130 Sec. 3. (*Effective July 1, 2015*) The sum of one hundred thousand  
 131 dollars is appropriated to the Department of Administrative Services,  
 132 from the General Fund, for the fiscal year ending June 30, 2016, for the  
 133 purpose of a grant to establish a surety bond guarantee program for  
 134 emerging contractors pursuant to section 1 of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>October 1, 2015</i>	49-41
Sec. 3	<i>July 1, 2015</i>	New section

**LAB**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Dept. of Administrative Services	GF - Cost	at least 10,607,758	347,758
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	72,568	72,568

**Municipal Impact:** None

**Explanation**

The bill requires the Department of Administrative Services (DAS) to establish a Surety Bond Guarantee Program for emerging contractors under public works contracts of more than \$500,000. The bill appropriates \$100,000 in FY 16 to DAS to establish the program.

To establish the Surety Bond Guarantee Program, DAS would need to incur the following one-time costs; (1) \$200,000 to hire an insurance consultant to create program guidelines, underwriting standards and templates for surety bond contracts consistent with industry standards; (2) \$60,000 for support software, licensing fees and equipment; and (3) at least \$10 million for a reserve fund to guarantee the work undertaken by eligible contractors. The amount of reserves required depends upon the nature of the subcontractor's work and the annual value of bonds written. In FY 14, the annual value of state construction contracts over \$500,000 was approximately \$780 million. If 1% of this work is undertaken by eligible contractors that secure

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.65% of payroll in FY 16 and FY 17.

bonds under this program, \$7.8 million of bonds will be written each year.

The ongoing costs for DAS to maintain the Surety Bond Guarantee Program includes hiring two Commercial Contract Underwriters and one Office Assistant, at a total salary cost of \$187,758 and fringe benefits cost of \$72,568. DAS would also need \$160,000 to attain a Claim Adjusting Service and contract with an actuary to comply with the reporting requirements of surety companies.

### ***The Out Years***

The annualized ongoing FY 17 fiscal impact identified above would continue into the future subject to inflation. Additional costs may be incurred in order to replace any reserve funds utilized by the program. Pension-related costs for the identified personnel will be recognized in the state's annual required pension contribution as of FY 18.

*Sources: Core-CT Financial Accounting System  
Department of Administrative Services*

**OLR Bill Analysis****sSB 830*****AN ACT CONCERNING A SURETY BOND GUARANTEE PROGRAM FOR MINORITY-OWNED BUSINESSES.*****SUMMARY:**

This bill requires the administrative services (DAS) commissioner to establish a surety bond guarantee program for emerging contractors under public works contracts of more than \$500,000. Under the bill, an emerging contractor is a minority- or woman-owned contractor that meets certain qualifying criteria. Participation in the program will exempt them from the requirement that each contractor on a state or municipal building project post a surety bond in the amount of the contract.

The commissioner must establish the program by October 1, 2015. An emerging contractor may participate in the program for up to five years.

The bill also appropriates \$100,000 for FY 2016 to DAS to establish the program.

**EFFECTIVE DATE:** Upon passage for creation of the bond guarantee program, July 1, 2015 for the appropriation, and October 1, 2015 for the exemption from the surety bond requirement.

**QUALIFYING CRITERIA**

Under the bill, an emerging contractor:

1. is minority- or woman-owned as defined under the state Small Business Affairs law,
2. has not been prequalified by DAS (by law, contractors must prequalify with DAS before they can bid on or be awarded most

types of state contracts), and

3. is unable to either (1) obtain a surety bond to bid for or work on a public works project or (2) perform work as a substantial subcontractor on such projects.

**DEFINITIONS**

As used in the bill, public works projects are municipal or state construction, reconstruction, alteration, remodeling, repair, or demolition of public buildings or other public works, other than highway, bridge, or other construction projects administered by the Department of Transportation.

The bill defines:

1. “contract” as an agreement with the state or a municipality for work costing at least \$500,000 that receives at least some state funding and
2. “substantial subcontractor” as one who performs work valued at more than \$500,000 for a contractor under a contract for work for the state or a municipality that is estimated to cost more than \$500,000.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/12/2015)