DEPARTMENT OF ADMINISTRATIVE SERVICES STATE OF CONNECTICUT

165 Capitol Avenue
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**Proposed Bill 383**
**An Act Concerning Workforce Participation Thresholds For Public Works**

**Testimony of Commissioner Melody A. Currey**

**Labor & Public Employees Committee**
**February 17, 2015**

As the agency responsible for administering construction contracts on behalf of executive branch agencies, the Department of Administrative Services (DAS) offers the following testimony regarding Senate Bill 383.

SB 383 would require every contractor awarded a construction contract, as a part of their Affirmative Action Plan requirements, to comply with specific workforce diversity standards established in the bill. Specifically, for each classification of work on the project, the contractors would be subject to the following hiring/employment requirements:

- not less than twenty-five percent in each class of work listed in the contractor's bid shall be from a minority group; and
- not less than six and nine-tenths percent in each class of work shall be female.

As you are aware, the legislature contracted for a Disparity Study to assess the constitutionality of and update the state's existing statutes and policies relating to set-aside and state contract work. DAS respectfully suggests that SB 101 raises constitutional questions similar to those currently being assessed in this Study, and that any policy changes in this area should await completion of the Study. This may be especially prudent given the costs and administrative challenges that could result from passage of this bill to construction contractors, DAS, other agencies with contracting authority, and CHRO.

While DAS respects and appreciates the intent of this proposal, we are concerned that adding additional requirements on state contractors would decrease competition, add administrative burdens and increase costs on state projects. Currently, all state projects are required to comply with the state's set-aside laws; specifically, 25% of state agency spend going to small business enterprises (SBEs) and 25% of that (i.e. 6.25%) to minority-owned business enterprises (MBEs). Additionally, contractors with public

works construction contracts over $50,000 and who have more than 50 employees must draft and submit Affirmative Action Plans to the Commission on Human Rights & Opportunities ("CHRO") to ensure that they are making good faith efforts to meet their SBE and MBE goals, and in providing equal employment opportunities and workforce diversity.

There is currently no law that requires contractors to hire employees of a particular gender, race or ethnicity, as SB 383 would do. There are, however, other laws applicable to construction projects related to employment concerning hiring preferences, payment of wages, etc. See, e.g., 31-52-53. Recently, as part of the Connecticut Contracting and Bidding Transparency Working Group presentation, construction industry representatives stated that the economics of contracting in Connecticut are not adding up for contractors due to cumbersome rules and regulations, extraordinary overhead costs for compliance and paperwork processing time resulting in contractors financing projects. The requirements proposed in SB 383 add administrative burdens and costs to contractors, which will choose not to bid DAS administered capital projects or will seek to pass the costs to the state. The Bill will also require changes to bid documents, increased review and monitoring by DAS and enforcement resources for CHRO.

DAS' appreciation of the intent of the proposed legislation is evident from the number of administrative steps in the past years aimed at increasing the diversity of the state contractor workforces. Not only has DAS increased the number of MBE set aside packages on Construction Manager at Risk ("CMR") projects, while keeping set aside goals for the other packages, we are adding language to our CMR contracts setting forth our expectation that the contractors will have a diverse workforce on the project, and that the CMR will monitor the contractors' efforts in this regard. In addition, DAS has improved MBE participation on our professional services contracts, and are in the process of implementing a minor capital project program that we believe will have a positive impact on MBE participation in our design-bid-build project delivery method. DAS, therefore, has been extremely supportive of creating greater opportunities for both MBE companies and a diverse workforce on its projects, and will be a strong advocate in implementing the results of the Diversity Study, but on all of its public works projects across the state.

We thank the Committee for permitting DAS to comment on SB 383.