

Testimony Submitted by Elizabeth C. Brown to Labor Committee

Good Jobs Ordinance Committee, Waterbury, CT

February 17, 2015

Senator Holder-Winfield, Representative Tercyac and members of the Labor Committee:

My name is Elizabeth Brown and I am here today to testify in support of the policy direction in SB 383, An Act Concerning Workforce Participation Thresholds for Public Works Contracts.

The bill seeks to ensure that minority and women residents, often unrepresented in the construction workforce, have access to these good paying jobs. I would like to offer the experience and history of Waterbury's Good Jobs Ordinance as a model for state policy that requires contractors in publicly funded projects to "make a good faith effort" to hire 30% city residents including apprenticeships, minority, and women.

The stipulations of the Good Jobs Ordinance subject all contractors and sub-contractors working on publicly funded projects including municipal and education projects, to comply with the hiring goals. How does this work? Two important components make it work.

1. The Northwest Regional Workforce Board is appointed to be the "Administrator" of the Ordinance and is responsible for enforcement, and identifying, training and working with all parties, contractors and labor unions, to establish a jobs funnel for qualified workers. On the ground review and oversight is critical to an effective, enforceable law. If a contractor does not have city residence it must contact the Workforce Board to get available workers.

2. Enforcement: the Ordinance allows for withholding of payment or "liquidated damages" for non-compliance with the GJ requirements. Without this "stick" there is no incentive for compliance. The state would need to make this a workable, efficient system with no delays or it could be a barrier to really accomplishing anything. Timely enforcement is the key to success.

Over the course of the enactment of the Ordinance, we can boast a steady increase of compliance and hiring of local residents. In the last school construction project of the Waterbury Career Academy, over 30% of jobs were local residents. A real success story.

As the committee develops the jobs policy for the state we recommend that the policy include the core components of the Waterbury Good Jobs Ordinance that is working to train, hire and keep employed urban residents. Including:

- Leverage the expertise of the Workforce Boards in a regional approach to ensure on the ground monitoring as administrators and enforcement entities;
- Stipulate that a priority for hiring be given to residents living in a nexus to the project, for example residents of Waterbury be given a priority for highway construction on 84 in Waterbury and New Haven residents be given priority for project in their area and so on;
- Focus on the urban areas with high unemployment for maximum outcomes;

- Job training and apprenticeship opportunities must be included to ensure qualified workforce. When Waterbury first passed its Ordinance contractors tried to circumvent the requirement by saying there weren't enough "qualified residents." The Workforce Board worked tirelessly with unions and together made a concerted effort to train more residents; this is a critical component to success. There still exist certain highly skilled jobs like electricians, plumbers and engineers that are hard to fill. This should be a longer term goal included in a comprehensive jobs program.
- Include a liquidated damages clause in the law, without a stick compliance is difficult.
- Define "good faith effort" so everyone is on the same page. (See Waterbury Ordinance)

In conclusion, to be effective and address the underemployment of minority and women in construction and address the systemic issues related to barriers to employment, the state policy must be comprehensive, enforceable and a partnership with urban cities already working hard to increase hiring in construction.

Waterbury pioneered the Good Jobs Policy with much opposition and loud criticism from entities bent on keeping the status quo. I'm proud that Waterbury with persistence and assistance from labor, contractors, our regional workforce board and prescient elected officials are working together to afford good paying jobs and career opportunities for Waterbury residents. I have attached a copy of the Waterbury Ordinance for your review.

Thank you for this opportunity to testify this afternoon.

Elizabeth Brown

Good Jobs Committee, City of Waterbury

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**WHEREAS,** The Board of Aldermen of the City of Waterbury, being desirous of amending the Waterbury Code of Ordinances §§ 34.17 through 34.20 and 34.22 does hereby approve and adopt the following amendments to the Code.

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WATERBURY THAT:** Waterbury Code of Ordinances §§ 34.17 through 34.20 and 34.22, under the general heading “Hiring of Waterbury Residents on Certain Publicly-Funded Construction Projects”, are hereby repealed and the following are added in lieu thereof:

**§ 34.17 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADMINISTRATOR.** The person(s), city department or agency designated by the Mayor of the city with the responsibility of overseeing the implementation and enforcement of this subchapter.

**APPRENTICE.** For purposes of the City of Waterbury, Connecticut Code of Ordinances, the term “apprentice” as defined by Connecticut General Statutes Sec. 31-22m, and by any subsequent amendments as approved by the Connecticut General Assembly, is incorporated by reference herein.

**BASIC SKILLED WORKER.** For purposes of the City of Waterbury, Connecticut Code of Ordinances, a person who is currently enrolled in or having completed a training program administered by or on behalf of a legally organized labor union or a state-approved standardized craft training program. Specifically excluded from this definition is an “apprentice” as defined by Connecticut General Statutes Sec. 31-22m.

**CITY.** The City of Waterbury, Connecticut.

**CITY FUNDS.** Funds originating within the city pursuant to the city’s taxing powers or authority to raise money through the sale of public bonds, permit tax abatements and enter into tax fixing agreements and tax increment financing agreements.

**CONSTRUCTION.** The process of building, altering, repairing, improving or demolishing any public infrastructure facility, including any public structure, public building or other public improvements of any kind to city property or other property or space in which the city has an interest. It does not include the routine operation, routine repair or routine maintenance of any existing public infrastructure facility, including structures, buildings or real property.

**CONSTRUCTION PROJECT.** Any project for which the primary purpose involves construction, as defined above, deconstruction, the remediation of any hazardous materials as defined in the Connecticut General Statutes, the rehabilitation or renovation of any structure or the creation, extension, reconstruction, reconditioning or rebuilding of any portion of a municipal infrastructure or public utility system.

**CONTRACTOR.** Any person hired by the city, directly or indirectly through an owner, to perform construction work on covered projects, including subcontractors hired by general contractors.

**COVERED PROJECT.** Any construction project taking place in the city (1) with a value of \$500,000 or greater, including any projects that become valued above \$500,000 pursuant to a contract amendment, as of the date of amendment and (2) that is funded in whole or in part by city funds or funds administered by the city in accordance with federal or state grant or loan programs or any other federal or state programs. This definition of **COVERED PROJECT** shall include funds derived from the aforementioned federal or state grant, loan or other programs only to the extent permitted by federal and state law. The value of the projects shall equal the total consideration to be paid to all contractors stated in each contract pursuant to which contractors are performing construction work on covered projects.

**FIRST-SOURCE REFERRAL PROGRAM.** A program whose purpose includes but is not limited to, job training and the referral of qualified residents to contractors. The **FIRST-SOURCE REFERRAL PROGRAM** shall use the Good Jobs! umbrella coalition of community groups and churches as a priority source for recruitment.

**GOOD JOBS ADMINISTRATION BUDGET.** The amount of funding required to oversee the implementation and enforcement of this subchapter in a given fiscal year.

**HIRING GOAL.** The 30% of the total worker hours on each covered project shall be performed by residents. At least 25% of construction trade jobs shall go to apprentices and/or basic skilled workers. At least 70% of all "new hires" (those workers hired by a contractor on a project, other than existing employees and those referred by union hiring halls with prior seniority in the case of a union job) shall be "economically disadvantaged" individuals, defined as those earning less than 150% of the poverty line at the time of application. A minimum of 5% of the construction workforce labor hours will be local resident, minority artisans. A minimum of 5% of the construction workforce labor hours will be women. A minimum of 10% of the total work hours shall be allocated for minorities. Contractors are expected to employ a workforce that represents the population of the city.

**LIAISON COMMITTEE.** The committee established by the Board of Aldermen to monitor compliance with the provisions of this subchapter, and make recommendations to the Adminis-

trator and the Board of Aldermen regarding administration of this ordinance. The committee shall convene quarterly in a space open to the public. The committee shall be comprised of two representatives of the Board of Aldermen one to be appointed by the President of the Board of Aldermen and one to be appointed by the Minority Leader on the Board of Aldermen, one representative from the Board of Education to be appointed by the President of the Board of Education, one representative of the Workforce Development Board, and seven representatives who are appointed by the Board of Aldermen to represent: one contractor, one union, one civil rights group, one community and one Human Rights Commission. The committee members shall serve for a term of two years, and this nomination and selection process shall be used to fill any vacancy.

**NEW HIRE.** Those workers hired by a contractor on a project, other than existing employees, and those referred by union hiring halls with prior seniority in the case of a union job.

**OWNER.** The person who enters into a contract with a contractor for work on a covered project other than the city.

**PERSON.** An individual or a company, partnership, foreign or domestic corporation, partnership, limited liability company or other business entity.

**RESIDENT.** Any person whose domicile is the City of Waterbury, Connecticut.

**ROUTINE MAINTENANCE.** Simple, small-scale activities (usually requiring only minimal skills or training) planned and performed at regular intervals and being necessary to (1) extend the life of, or to delay or prevent the premature failure of, any plant or system or of any structure or structural system, building component or equipment; or (2) protect against normal wear and tear; or (3) maintain a suitable aesthetic appearance. Examples of **ROUTINE MAINTENANCE** may include, but are not limited to, lawn or grass cutting, hedge trimming, painting, caulking, sealing, plumbing or electrical repairs, carpet cleaning or other cleaning performed at regular intervals.

#### **§ 34.18 HIRING GOAL AND IMPLEMENTATION.**

(A) All contractors performing work on covered projects shall make good faith efforts to satisfy the hiring goal.

(B) Any contractors that fail to meet the hiring goal shall be required to demonstrate to the Administrator's satisfaction that the contractor made good faith efforts to meet the hiring goal.

(C) (1) The Mayor of the city shall appoint an Administrator annually no later than June 30th to serve as the Administrator for the city's fiscal year following such appointment or within 30 days of a vacancy that might arise during any fiscal year. The foregoing notwithstanding, an

incumbent Administrator shall serve until their successor has been appointed and qualified. If, in the event of a vacancy, the Mayor fails to appoint a replacement Administrator within the first 30 days following the effective date of that vacancy, then the Board of Aldermen shall have the power to fill the vacancy provided that the Board does so:

(a) Within 30 days from the date upon which the power to make the appointment vested in the Board; or

(b) Prior to May 31st if the power to make the appointment vests in the Board on or after May 1st.

(2) Should the Board fail to make the appointment during any 30 day period it has to do so, or prior to May 31st if the power to make the appointment vests in the Board on or after May 1st, then the power of appointment shall revert to the Mayor. Thereafter, throughout the remainder of the then current fiscal year, the power to make the appointment shall alternate between the Mayor and the Board, at 30 day intervals, until an appointment is made or until June 1st at which point in time the power to make the appointment shall vest in the Mayor.

(D) The Mayor may annually, prior to the adoption of the city's budget for the then next fiscal year and after consultation with the Administrator and all relevant city department heads, establish a Good Jobs Administration Budget for the then next fiscal year and the Mayor may include a line item in his annual budget submission to the Board of Aldermen sufficient to fund the Good Jobs Administration Budget. If, during the fiscal year in which the Mayor submits a given Good Jobs Administration Budget as part of his budget submission, the city has retained as liquidated damages, pursuant to its contracts for covered projects, an amount greater than or equal to the Good Jobs Administration Budget as then submitted by the Mayor, the city shall be required to fund the Good Jobs Administration Budget as submitted by the Mayor.

#### **§ 34.19 REFERRAL MECHANISM.**

(A) Prior to the commencement of construction on covered projects, the Administrator shall meet with the contractor to provide notice that the project qualifies as a covered project under this ordinance, obtain from the contractor the number of job positions to be created by the project by trade and obtain the qualifications by job title. The Administrator shall also ensure that adequate job training is available to the extent necessary to achieve the hiring goal and that screening and referral mechanisms are in place so that contractors can access qualified residents. Additionally, the Administrator shall designate a first-source referral program for the city.

(B) In the event a contractor cannot satisfy the hiring goal through its own employees and union hiring halls, the contractor shall next utilize the first source referral program in order to satisfy the hiring goal. The contractor must wait five business days after a request has been submitted before advertising the position elsewhere.

(C) Qualifications required shall be only those relevant to the job. In satisfying the hiring goal, the contractor shall employ all qualified persons referred by the first source referral program. The contractor must utilize the first source referral program whenever its hiring needs increase and they are unable to comply with the hiring goals.

#### **§ 34.20 MONITORING.**

(A) The owner for a covered project shall require all construction contracts to comply with all provisions of this subchapter, and a copy of this subchapter shall be included with all contracts with contractors performing construction work on covered projects. The subchapter must be a contractual obligation in all contracts.

(B) All contractors performing construction work on covered projects shall submit to the Administrator weekly certified payroll records within five working days of the end of each payroll period. The records must show the person-hours on a craft-by-craft basis and identify the address, social security number, hiring date, ethnicity, gender and trade (journey person or apprentice) of all employees on the project. All reports must have an original signature and be signed by an authorized officer or employee of the company. Failure to comply with the provisions of this division (B) shall be deemed by the Administrator to be a violation of this subchapter and shall be subject to liquidated damages. Any willful misrepresentation contained in the information requested pursuant to this division (B) shall be deemed by the Administrator to be a violation of this subchapter and shall be subject to liquidated damages. Unless prohibited by federal, state or local law, all records in the city's possession shall be available for public inspection.

(C) The Administrator shall review all information provided pursuant to division (B) hereof and submit monthly reports to the Liaison Committee and to the Board of Aldermen summarizing the information.

#### **§ 34.22 CONTRACT REQUIREMENTS FOR COVERED SERVICES.**

(A) This city shall include provisions in Chapter 38, entitled "Centralized Procurement System," of the Code of Waterbury mandating that each contract for a covered project, as that term is defined herein, awarded pursuant to Chapter 38 include provisions addressing compliance with the provisions of this subchapter by the contractor or contractors thereunder and by any subcontractor or subcontractors performing work related to any such contract.

(B) Whenever provisions are included in a contract for a covered project pursuant to division (A) of this section, they shall include provisions establishing liquidated damages for the failure of any contractor or subcontractor to comply with the provisions of this subchapter. The liquidated damages shall be based on an estimate of the cost the city would incur in having to provide alternative employment opportunities, or alternative economic assistance, to those residents who would have benefited by the city's investment in the covered project if they had been hired by the contractor or subcontractor had they complied with the provisions of this subchapter.

(C) Whenever provisions regarding liquidated damages are included in a contract for a covered project pursuant to division (B) of this section, that contract shall, if applicable, also include provisions addressing the following matters:

(1) Weekly compliance reviews by the Administrator for the purpose of assessing compliance with the provisions of this subchapter, or the lack thereof;

(2) Requiring a separate certification of compliance by the Administrator prior to the payment of any funds by the city under any such contract;

(3) The assessment of weekly liquidated damages per noncompliant contractor or subcontractor while said contract is executory;

(4) The permanent retention, by the city, of funds due from it under the contract in amounts sufficient to offset any assessment of liquidated damages outstanding at the time the funds are due from the city.