

**Testimony of Ralph Eno
1st Selectman, Town of Lyme
Before the GAE Committee
February 22, 2016**

RE: HB-5049 - AN ACT IMPLEMENTING THE GOVERNOR'S BUDGET RECOMMENDATIONS FOR GENERAL GOVERNMENT.

The Town of Lyme thanks the Committee for this opportunity to testify and wishes to go on record as **supporting** provisions in **HB-5049 which would postpone the application of the state set aside requirements to municipalities.**

While the goal of the legislation to provide greater economic opportunities for small contractors and minority business enterprises is laudable - the Commission on Human Rights and Opportunities (CHRO) simply does not have the staff, the time or the expertise to properly administer the program. Questions raised by municipalities, the Town of Lyme among them, regarding how to proceed in complying with the program have gone unanswered for months. What guidance Lyme has specifically received has been inconsistent.

As a result, Lyme's shovel ready landfill closure project has been significantly delayed presenting the likelihood that the town will be subject to delays in construction resulting in unnecessary and unavoidable additional costs.

Given the persistent economic challenges facing our state and municipalities, it is extremely disheartening that even small municipal projects have been jammed up because of bureaucratic red tape and confusion. And larger projects – that could support job growth in our communities – have come to a standstill as questions about compliance with the program remain unanswered.

There are also a lot of questions about what constitutes a state-funded project. For example, Community Development Block Grant (CDBG) funding – which is a critical source of funding for many local projects – is federal funding. But because it passes through the state to municipal grant recipients, towns cannot get a clear answer as to whether such projects are subject to the set aside and, if so, what percentage.

Local Transportation Capital Improvement Program (LOTICIP) funding is likewise impacted and road projects have been caught up in the confusion surrounding the set aside program, bringing projects to a halt. Many of these projects must move forward in the next few months, due to the availability of asphalt, weather conditions and other considerations. If towns don't have

clear guidance from the state on the requirements to move forward with these projects soon, the projects may have to be suspended until next year.

In addition, as the state Department of Administrative Service pointed out in its testimony on the bill in 2015, grant funds may be subject to very specific selection criteria. "Adding a race and or gender-based requirement to program-based criteria may well give rise to constitutional challenges unless such requirements are supported by an updated disparity study demonstrating the existence of qualified potential grant recipients who receive a disproportionately small percentage of state grant funds." Recognizing this, the state is currently conducting a disparity study but it has not been completed, to date.

Although lawmakers crafted the legislation in a way that was intended to impose responsibility on contractors for compliance, Lyme will still have an obligation to vet contractors to ensure that they make a "good faith effort" to engage small and women- and minority-owned firms in their projects. This will most certainly result in additional costs to the town as Lyme must now consult legal counsel to ensure they are in compliance.

In addition, CHRO continues to face a backlog of contractor affirmative-action plans awaiting review and approval. It is my understanding that contractors must have an approved plan in order to be eligible to bid on projects subject to set aside requirements. It is therefore very troubling that this backlog persists, limiting the number of contractors eligible to participate in the program.

The requirements are also expected to add to the overall cost of projects in addition to imposing administrative burdens on towns. According to the Office of Fiscal Analysis, "Requiring municipalities... to participate in the state's set-aside program when bidding certain contracts may increase the cost of certain public works contracts if potential lowest qualified bidders do not meet the requirements." This is also confirmed in a report by the state Department of Administrative Services, which concludes that prices paid for certain commodities and services under a set aside program may be higher under the program because contractors are not competing against larger companies, who have the purchasing power to negotiate lower prices.

This is particularly troubling because the requirements and additional costs will impact local infrastructure and other projects that receive just \$50,000 in state funding. This impacts each and every Lyme Town Aid Road project, including small projects such as chip sealing a few miles of road, installing a sidewalk or putting in some new curbs, and even small grants under programs that support projects such as playgrounds, LED Street lighting, EV Charging stations, and invasive species removal.

Given the significant problems with administering the program, in addition to supporting provisions in HB-5049 to postpone the implementation of the set aside program, the Town of Lyme respectfully lawmakers to:

- 1) Request that the administration immediately suspend the requirements to ensure that stalled projects can move forward;
- 2) Increase the project thresholds to \$1 million to exclude smaller projects; and
- 3) Clarify that federal pass through funds are not subject to the set aside requirements.

Again, thank you for this opportunity to submit testimony on this crucial legislation vital not only to the Town of Lyme, but also municipalities across the state. I hope the Committee will issue a favorable report on **HB 5049**.

Ralph Eno

1st Selectman
Town of Lyme