
OLR Bill Analysis

sHB 6508

AN ACT CONCERNING PUBLIC WORKS PROJECTS AND THE EMPLOYMENT OF MINORITIES, RESIDENTS AND WOMEN.

SUMMARY

This bill requires state and municipal public works contracts and quasi-public agency project contracts to contain a provision by which the contractor agrees and warrants to make good faith efforts to employ a workforce comprised of at least 25% minorities, 25% state residents, and 8% women. By law, such contracts already require awarded contractors to agree to make good faith efforts to employ minority business enterprises as subcontractors and material suppliers on the projects.

Such contractors must also include with their required affirmative action plans a statement that reiterates the good faith effort contract provision. By law the affirmative action plans must be submitted to, and approved by, the Commission on Human Rights and Opportunities (CHRO).

The requirement to make good faith efforts to hire 25% state residents could be vulnerable to a legal challenge on Constitutional grounds, such as potentially violating the privileges and immunities clause (see BACKGROUND).

The bill also adds factors that must be considered when determining whether a contractor has made such good faith efforts for employing members of the above-named groups.

It also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2019

CONTRACTOR REQUIREMENTS

Hiring and Affirmative Action Requirements

By law, when a state agency public works, municipal public works, or quasi-public agency project contract is awarded to a contractor, the contractor must agree and warrant that he or she will make good faith efforts to employ minority business enterprises (MBEs) as subcontractors and suppliers of materials on the public works or quasi-public agency project. The bill additionally requires that the contractor agree and warrant to make a good faith effort to employ a workforce comprised of at least (1) 25% minorities, as defined in economic development law, which includes women; (2) 25% state residents; and (3) 8% women.

Current law requires contractors to submit affirmative action plans to CHRO for state or municipal public works or quasi-public agency project contracts that are (1) either awarded to contractors with at least 50 employees or valued between \$50,000 and \$500,000 or (2) valued at more than \$500,000 and subject to the state competitive bidding and contracting requirements for public works projects (see BACKGROUND).

For these contracts, the bill requires the contractor's affirmative action plans to include a statement that the contractor will make good faith efforts to employ a workforce comprised of at least 25% minorities, 25% state residents, and 8% women (see BACKGROUND).

For any contracts over \$500,000, the bill requires that affirmative action plans also include a statement that reiterates the contract provision to make good faith efforts to work in conjunction with workforce development entities and construction employment job training entities to refer eligible workers to them.

Good Faith Effort Determination

Under the bill, the contractor's good faith efforts must be determined based on the following factors:

1. the contractor's employment and subcontracting policies, patterns, and practices;

2. affirmative advertising, recruitment, and training; and
3. technical assistance activities and other reasonable activities or efforts as CHRO may prescribe that are designed to ensure the employment of minorities, state residents, and women in public works projects.

The bill also applies existing law's good faith effort standard that contractors must, at a minimum, make (1) reasonable initial efforts necessary to comply with the requirements and (2) additional or substituted efforts when it is determined that the initial efforts will not be enough to comply (CGS § 4a-60(e)).

The contractor must develop and maintain adequate documentation, in a manner prescribed by CHRO, of its good faith efforts.

BACKGROUND

Affirmative Action Plans and State Contracts

By law, if a state or municipal public works contract or quasi-public agency project contract is below the \$500,000 threshold and the contractor does not have an approved affirmative action plan, CHRO will bar the contractor from bidding on future contracts until it meets the requirement. For those contracts over \$500,000, the contracting public entity (the state, a municipality, or the quasi-public agency) may withhold up to 2% of the total contract price per month from any contract payment until a contractor has developed an affirmative action plan and it is approved by CHRO.

Judicial Review of Preferences

Generally, the U.S. Constitution's privileges and immunities clause (Article IV), among other clauses, sets a high bar for courts to uphold laws that establish preferential treatment for certain groups of people. To avoid being overturned in court, the government must clearly demonstrate there is a compelling public interest in treating one group differently from another, and the statute in question must be narrowly tailored to meet that interest and have a rational connection between

the law and its stated goal.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/21/2019)