

# **Government Administration and Elections Committee JOINT FAVORABLE REPORT**

**Bill No.:** SB-1518

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE STATE

**Title:** DISPARITY STUDY.

**Vote Date:** 3/26/2025

**Vote Action:** Joint Favorable Substitute

**PH Date:** 3/21/2025

**File No.:**

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## **SPONSORS OF BILL:**

Government Administration & Elections Committee

## **REASONS FOR BILL:**

This bill implements recommendations from the state disparity study on subcontracting for construction projects using state funding initiated in 2021. This study was done by the Commission on Human Rights and Opportunities to understand the disparity in state contracting participation by historically marginalized demographics. It was found in the study that there are still significant disparities in the businesses awarded state contracts. The study pointed out while minority owned construction contractors make up 25% of the businesses yet only receive 0.95% of contracts valued at \$1 million or less. This bill aim to address these disparities and increase participation with these historically marginalized demographics.

## **SUBSTITUTE LANGUAGE:**

The substitute language delays the bills effective date from October 1, 2025, to July 1, 2026. This was done at the request of various stakeholders during the public hearing to allow enough time for an efficient and effective implementation.

## **RESPONSE FROM ADMINISTRATION/AGENCY:**

### **Jeffrey Beckham, Secretary, Office of Policy and Management**

While OPM supports efforts to identify and remove disparities in contracting, we must acknowledge the significant time and effort required to complete the first disparity study for Connecticut. The contractor began work on the original study in 2022 and the study was not released until 2025, at a cost of \$899,830. The cost for subsequent studies is not reflected in agency budgets. Additionally, language in Section 3 of the Bill does not identify who should carry out the studies, how the results will be validated, or how often the studies will need to

be conducted to determine if disparities still exist. Efforts to reform and improve data on contracting must be implemented before using that data to set goals and for the requirements of this legislation to be effectively implemented. The methods for setting goals are not adequately specified in the legislation as it's language references industry and relevant geographic are without clearly defining either. The legislation also requires calculating a ratio based on annual data certified by the Department of Administrative Services as a percentage of businesses registered with the Secretary of the State, but these two data sources use different industry codes that lack direct comparison without modification. The language does not specify if the ratio should be based on one point in time for cover a time period. This data also contains many inactive or dormant businesses which would undermine the intent of the legislation. The calculation for availability of contractors in the language does not consider size or capacity of business, which must be the operative criteria. None of CHRO, DAS or OPM have received the full availability data used by GSPC to conduct the analysis, so there has been no ability to effectively replicate elements of the study as required for this legislation.

**Garret T. Eucalitto, Commissioner, Connecticut Department of Transportation**

This bill, though well intentioned, likely creates an administrative burden that may negatively impact state procurement opportunities for small and minority businesses. The timelines outlined in this bill would likely push state funded projects ahead a year, causing project cost increases and negatively impacting the related workforces. This burden of increased costs may fall on Small Business Enterprises/Minority Business Enterprises alongside a new burden to develop new separate procurement processes specifically for state-funded initiatives. This bill also fails to address a significant recommendation of the study: reforming data collection. Though there are clear challenges with this idea, it is a pillar of the study and must be in place prior to establishing any clear goalsetting process. The reference to small contractor is problematic because it relies on a self-certification program. The exemption of any contract for the pavement of roads or related services is unclear and could relate to many other transportation infrastructure projects. Individual state agencies should not be responsible for verifying a firm's eligibility as a small contractor – it should be a certification process and not on a case-by-case or agency-by-agency basis. Federally funded CTDOT projects are exempt from state SBE/MBE requirements.

**Michelle Gilman, Commissioner, Department of Administrative Services**

DAS is not able to determine the total value of contracts to be set aside by each such agency as required by Section 3 of the bill. DAS does not have oversight over the spending or budgets of other agencies, nor does it control agency purchases. It is not clear how the availability of contractors in relevant industries will be calculated, as DAS would need additional resources and clarification to determine availability and additional information as to how the relevant industries are defined. Even if DAS could calculate availability, DAS cannot guarantee that available small and minority contractors within relevant industries will participate in state contracts. DAS cannot guarantee business interest or response and cannot forecast the makeup of businesses within its contract portfolio, nor can it impose purchasing requirements on agencies when the participation/award is dependent on outside variables such as business community interest and competitive response/bids. A definition of parity is required within Section 3, how it is defined, how it should be calculated, and what remedy exists if a contractor disagrees with the calculation. The program as proposed would cause delays in contracting as after clarifying the methodology for determining industry availability, DAS would need time to complete calculations on goals, implementation of the

program, and dissemination of the resulting percentages to agencies. DAS requests the implementation fate be pushed back significantly. If the process identified in subparagraph (2) of Section 3 applies to state public works contracts, all the above concerns apply to construction procurement changes as well as the goods and services contracts. If the process identified in subparagraph (3) of Section 3 applies to state public works contracts, the proposed program would cause undue delays in construction as the awarding agency would have to wait for CHRO to set specific goals for each contract without a timeline, the definition of availability in lines 336-340 is problematic as it presumes that all certified small and minority business enterprises are bidding on all contracts, and the proposal does not contemplate a situation in which no bidders submit proposals that meet said set goals. Beyond all the above concerns, DAS would require additional procurement, legal, and support staff to implement these changes and develop the exponentially larger number of required goals, these additional staffing and operational costs are not funded in the Governor's proposed budget for FY 26-27.

**Tanya Hughes, Executive Director, State of Connecticut Commission on Human Rights and Opportunities**

Section 1 and 4 consolidate the definitions of public works contracts, quasi-public agency projects, and municipal public works projects. They also raise the minimum threshold to match inflation and codify an exemption for paving contracts as they are regularly given exemptions due to the low number of subcontracting opportunities they present. Section 2 consolidates the prohibition of discrimination in public works construction contracts with the prohibition on discrimination based on sexual orientation. Section 3 shifts the static goals of 25% of 25% minority owned businesses to be project-based. Section 4 streamlines and clarifies near-duplicate statutes. Sections 5 and 6 codify project specific goal setting. Section 7 establishes clear consequences for failing to submit close out documents. Section 14 adds failure to promptly pay subcontractors as a violation.

**NATURE AND SOURCES OF SUPPORT:**

No testimony in support of this Bill was provided.

**NATURE AND SOURCES OF OPPOSITION:**

**John Butts, Executive Director, Connecticut Construction Industries Association**

It is premature to implement the recommendations contained in the study without reliable subcontractor data on which to base project-specific goals, and the system of project-specific goals contained in the bill will lead to unnecessary project delays. A disparity study is necessary to position Connecticut's set-aside program on solid legal footing and to achieve the objective of justifying a race-based program. Reforming the state's subcontractor data collection system is necessary before adopting project-specific goals to ensure the success of the state's MWE set-aside program. While we do not take issue with the attempt by the disparity study consultants to compensate for the state's lack of subcontractor utilization data, it is clear that the response from only 5% of the contractor firms is insufficient. We do not oppose the concept of the adoption of setting project-specific goals to achieve better results in increasing MWBE participation, but the specific timetables set within Section 5 of the bill could lead to delays that would add serious additional costs not anticipated at the time of submittal of a bid.

**Bernard H. Thomas, Vice President, Minority Construction Council**

Projects that are funded by the state but channeled through developers, non-profits, and other non-governmental organizations are not covered by this bill even though these are smaller projects that allow small businesses to grow. These projects often involve owners and contractors that do not frequently contract with the government allowing for the prevalence of entrenched networks. This bill exempts paving and related services but equal opportunity to participate in these state-funded projects is deserved as well. They represent hundreds of millions of dollars of spending each year and the reason for their exclusion, along with the definition of paving and related services, is unclear. Related services, with regard to paving, is an area with plenty of opportunity for small and minority business participation. MBE is an overly broad category that includes not only ethnic minorities but also women and individuals with disabilities. These groups all merit separate and distinct goals as well as commensurate attention and by lumping them together, their goal is diluted. The disparities in contracting are not the same for women, individuals with disabilities, and ethnic minorities and as such separate goals are better suited to allow for more fair contracting. The bill's limitation of contracts with a minimum of \$150,000 of state funding should be removed entirely – if any state funding is given, the requirements should apply. This bill does not include a clear mechanism for enforcing noncompliance's by municipalities and agencies. The \$10,000 limit on fines for violations is laughably low and does not serve as a disincentive for a large company or on a large contract. This Bill does not include any clear requirements for municipalities to affirmatively implement best practices for diversity and inclusion in contracting and procurement. Direct contracts are more lucrative for small businesses than subcontracting but as written this bill does nothing to encourage small business subcontractors to grow into direct contractors. This bill regulates outcomes but regulation of the process by which contractors meet these goals is needed. As it currently stands, goals can be met on with a single subcontractor, leaving all others out in the cold. This bill does not contain any mechanism for prompt payment for subcontractors and suppliers, delays to payment are a huge detriment to small and minority contractors. When not conflicting with federal law, this bill should also apply to federal funds. The compliance requirements are not currently applicable to large projects using a general contractor or design-builder but should be. The bill should also be applicable to professional services, not just construction contracts.

**GENERAL COMMENTS:**

**Betsy Gara, Executive Director, Connecticut Council of Small Towns**

The bill may create considerable confusion, resulting in delays in moving forward with critical municipal infrastructure projects, many of which are time sensitive. Section 3 of the bill is very likely to exacerbate the delays many projects are already facing by adding another requirement. Many terms within the bill are not adequately defined and create confusion as to their applicability. The effective date set by this bill may also be applied to projects that have already gone out to bid, which will wreak havoc with municipal bidding processes, jeopardizing opportunities to move forward with vital projects. The state's data collection system on contracting must be improved prior to implementing the recommendations. Although increasing the project threshold from \$50,000 to \$150,000 is a good start, due to inflation we believe \$500,000 is necessary.

**Reported by: Aston Foley**

**Date: 4/02/2025**