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## **OLR Bill Analysis**

### **sSB 1518**

#### ***AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE STATE DISPARITY STUDY.***

#### **SUMMARY**

This bill makes changes to the state laws on non-discrimination contract compliance, the Small and Minority Owned Business Set-Aside Program, and affirmative action plans for certain state contractors. Among other things, it:

1. standardizes the definition of the “public works contracts” to which these laws apply, and in doing so, changes value thresholds that determine whether the contracts are subject to the laws;
2. changes the set-aside program’s current 25% set-aside requirements to one that must be annually determined by the Department of Administrative Services (DAS) commissioner and the Commission on Human Rights and Opportunities (CHRO) based on certain factors;
3. requires DAS to establish a program allowing a small contractor and a person who does not qualify as a small contractor to form a joint venture eligible to perform a public works contract set aside or reserved for small contractors or minority business enterprises (MBEs) (see BACKGROUND);
4. sets specific deadlines for submitting and approving a covered contractor’s set-aside plans, affirmative action plans, and compliance reports;
5. requires awarding agencies, for contracts over \$1 million, to withhold 2% of the total contract price per month until the required compliance reports are submitted and approved; and

6. makes failure to timely pay a small contractor a discriminatory practice subject to CHRO investigation and enforcement.

It also makes numerous minor, technical, and conforming changes (primarily related to standardizing the definition of a “public works contract”).

EFFECTIVE DATE: July 1, 2026

### **“PUBLIC WORKS CONTRACT” DEFINITION**

The state’s current laws on anti-discrimination contract compliance, the Small and Minority Owned Business Set-Aside program, and affirmative action plans for state contractors generally set various diversity-related requirements for the contractors on public works contracts, municipal public works contracts, and quasi-public agency projects.

Under these current laws, a “public works contract” is an agreement between any individual, firm, or corporation and the state or any of its political subdivisions (other than a municipality) for construction, rehabilitation, conversion, extension, demolition, or repair of a public building or highway or other changes or improvements in real property, or which is financed in whole or in part by the state, including, but not limited to, matching expenditures, grants, loans, insurance, or guarantees.

A “municipal public works contract” and “quasi-public agency project” are substantially similar to a public works contract, except that either a municipality or quasi-public agency is a party to the contract, and the project is anticipated to cost more than \$50,000.

The bill broadens the definition of a “public works contract” under these three laws to cover contracts with the state, municipalities, and quasi-public agencies. Under the bill, a “public works contract” is an agreement for construction, rehabilitation, conversion, extension, demolition, or repair of improvements in real property that is financed in whole or in part with at least \$150,000 from the state, such as through matching expenditures, grants, loans, insurance, or guarantees, but

excluding contracts for paving roads or related services. In doing so, the bill sets a new value threshold of \$150,000 in state funding for determining when a project becomes a “public works project” covered by those laws. It also creates a new exemption under these laws for any paving contracts.

## **§§ 2, 11 & 23 — NONDISCRIMINATION CONTRACT COMPLIANCE LAW**

### ***Contract Compliance Law (§ 2 & 23)***

The state’s contract compliance law generally requires a contractor on a public works contract to (1) agree and warrant to make good faith efforts to employ minority business enterprises as subcontractors and materials suppliers on the project and (2) include a nondiscrimination affirmation provision certifying that the contractor understands the law’s obligations and will maintain a policy to assure that the contract will be performed in compliance with the nondiscrimination requirements.

In applying its broadened definition of a “public works contract” to these requirements, the bill changes the value thresholds for when these requirements apply. It (1) creates a new threshold of \$150,000 in state funding for state contracts and (2) changes the threshold from \$50,000 in a project’s costs to \$150,000 in state funding for municipal and quasi-public contracts. It also exempts paving contracts from all of them.

The bill also removes standalone provisions on sexual orientation nondiscrimination and applies the state’s contract compliance law to this type of discrimination. In doing so, it explicitly applies, among other things, the law’s good faith determination analysis to contractors’ compliance and requires the contractor to develop and maintain adequate documentation, as determined by CHRO, of its good faith efforts.

### ***Higher Education Contracts (§ 11)***

Current law generally requires certain contracts entered into by the constituent units of the state’s higher education system to include the same nondiscrimination provisions as the state’s contract compliance

law. For contracts entered into on or after July 1, 2026, the bill requires the protected classes specified in these contract provisions to include veterans and domestic violence victims (two groups that have become protected classes in recent years).

### **§§ 3 & 4 — SET-ASIDE PROGRAM**

#### ***Set-Aside Amounts***

Current law generally requires state agencies and contractors awarded state-financed municipal public works or quasi-public agency contracts to set aside or reserve (1) 25% of the total value of the contracts for exclusive bidding by small contractors and (2) 25% of that amount (6.25% of the total) for exclusive bidding by small contractors that are MBEs (i.e. owned by women, ethnic minorities, or people with disabilities; see BACKGROUND).

Under current law, this requirement applies to (1) municipal public works and quasi-public agency contracts anticipated to be for more than \$50,000 and (2) state public works contracts regardless of their value. The bill instead applies the requirement to any of those contracts financed with at least \$150,000 of state funding, regardless of the contract's value. It also exempts paving contracts.

The bill removes both fixed 25% set-aside requirements for small contractors and MBEs. Instead, it requires the CHRO executive director, or her designee, to establish goals for including small contractors and MBEs on all public works contracts to attain parity with the availability of contractors required for the specific contract according to their industry and the relevant geographic area. This availability must be determined using annual data derived from the number of DAS-certified small contractors and MBEs as a percentage of businesses in the relevant industries registered with the secretary of the state.

The bill correspondingly requires the DAS commissioner, in consultation with CHRO, to determine the value of the set-asides at least annually to attain parity with the percentage of available small contractors and MBEs in the relevant industries in the state in accordance with the goals CHRO must set.

### ***Statement of Purpose***

The current set-aside law generally (1) finds that there is a serious need to help small contractors, MBEs, nonprofit organizations, and individuals with disabilities to be considered for and awarded state contracts and (2) declares the need to award contracts under the set-aside law as a matter of legislative determination. The bill further specifies that these findings and determinations are based on a state-validated study of contracting disparities and that the need for the set-aside law will apply until a subsequent state-validated disparity study finds that there are no longer disparities in state contracting, in which case, the determination will not apply to areas where disparities have been eliminated.

### ***Exception for Construction Managers***

Current law requires a contractor or subcontractor awarded a contract or portion of one under the set-aside law to perform at least 30% of the work with its own workforce and at least 50% of the work with other contractors or subcontractors who are eligible small contractors or MBEs. The bill exempts from this requirement (1) construction managers who have been awarded a public works contract for at least \$150,000 and must, under the bill, file an affirmative action plan with CHRO, and (2) joint ventures (see below).

### ***Joint Ventures***

The bill creates a process to allow joint ventures to qualify for contracts for set-aside projects. Under the bill, a “joint venture” is an agreement between a small contractor and a person who does not qualify as a small contractor to perform a public works contract set aside or reserved for small contractors under the program.

The bill requires the DAS commissioner, by September 1, 2026, to establish a program to enable small contractors or MBEs to enter into a written agreement, on a form set by the commissioner, to establish a joint venture with a contractor that is not a small contractor or MBE. Under the bill, any joint venture that meets criteria the commissioner must establish through regulations is eligible to be awarded a contract as a small contractor or MBE under the set-aside law upon presenting

the agreement. (It is unclear if this would include a joint venture between an MBE and a small contractor who is not an MBE.)

The bill requires the criteria and requirements for the agreement to at least specify:

1. the percentage of work to be performed by the small contractor or MBE;
2. the percentage of revenue from the contract allocated to the small contractor or MBE;
3. reporting and documentation requirements;
4. restrictions on how many joint ventures a large contractor may enter into;
5. each contractor's responsibilities under the contract;
6. the parties' responsibilities for negotiating the contract, sourcing labor, and contract performance;
7. notification requirements for joint venture termination;
8. a pre-qualification requirement for a large contractor;
9. a prohibition on the small contractor being affiliated with the large contractor; and
10. any other requirement the commissioner deems necessary.

In addition, the bill prohibits anyone who has been suspended or disqualified from being awarded a contract by another state or a federal agency or under federal law from establishing a joint venture. It makes it a discriminatory practice, subject to CHRO investigation and enforcement powers, to establish a joint venture in bad faith or make a fraudulent representation about a joint venture.

The bill also makes various conforming changes related to joint ventures, such as (1) allowing an awarding agency to require a joint

venture to provide a copy of the joint venture agreement, (2) allowing audits of joint ventures that apply for a set-aside contract, and (3) requiring the DAS commissioner's workshops on the set-aside program to include information about the joint venture program.

***Hearing Process for Enforcing Violations***

The bill changes the process for enforcing violations of the set-aside law, generally requiring CHRO to enforce violations rather than the awarding agency. Under current law, if an awarding agency believes that a contractor or subcontractor awarded a set-aside contract willfully violated the set-aside law, the agency generally must notify the contractor or subcontractor, hold a hearing on the violation, and, if it finds that the contractor willfully violated the law, suspend all set-aside contract payments to the contractor or subcontractor and impose a civil penalty of up to \$10,000.

The bill instead requires the agency to notify CHRO (in addition to the contractor or subcontractor, as currently required) in a way set by the commission. It also eliminates agencies' authority to conduct hearings and issue fines. It correspondingly allows CHRO to file a complaint alleging a violation with its office of public hearings and requires the office to hold a hearing under an existing law that allows it to hold hearings about violations of the set-aside law. Generally, under this law, the hearing's presiding officer must assess a civil penalty of up to \$10,000 if he or she finds that the contractor or subcontractor (1) fraudulently qualified as an MBE or (2) performed services or supplied materials for another contractor or subcontractor knowing that the (a) other contractor or subcontractor fraudulently qualified as an MBE and (b) services were used in connection with a contract under the set-aside law.

As under existing law, the DAS commissioner may adopt regulations to implement these provisions.

**§§ 5-7 — CHRO AFFIRMATIVE ACTION PLANS & COMPLIANCE REPORTS*****Contracts for Less Than \$1 Million (§ 5)***

Under current law, a contractor with at least 50 employees who is awarded a public works or municipal public works contract, or a quasi-public agency project for between \$50,000 and \$1 million, must develop and file an affirmative action plan with CHRO. The bill applies this requirement to “public works contracts” as defined in the bill, and in doing so, (1) applies it to contractors regardless of how many employees they have and (2) requires the project to have at least \$150,000 in state funding. It also increases the applicable contract value threshold from \$50,000 to \$150,000.

The bill removes the current procedure for submitting and approving these plans, and replaces it with one that, among other things, requires contractors to submit a set-aside plan (rather than an affirmative action plan) and sets deadlines for contractors to do so. It also removes current provisions that generally (1) make a failure to develop an approved plan a bar on bidding on or being awarded future contracts; (2) require CHRO to issue certificates of compliance, valid for two years, to contractors with approved plans; and (3) allow CHRO to revoke a certificate if the contractor does not implement the plan as required by law.

Instead, under the bill, contractors awarded a public works contract (as defined by the bill) for more than \$150,000 but less than \$1 million, or a first-tier contractor who has entered into an agreement worth at least \$150,000 with a construction manager subject to the requirements for contracts for over \$1 million (see below), must develop and file a set-aside plan with CHRO, which must comply with the commission’s regulations. The contractor must file the plan within 45 days after the contract or agreement is awarded, and CHRO may grant one 15-day extension upon the contractor’s request.

CHRO’s executive director or her designee must review and formally approve, conditionally approve, or disapprove the set-aside plan within 120 days after it is submitted. If they fail to do so within that period, the



plan is deemed to be approved or deficient without consequence. If the plan is disapproved, the contractor must, within 45 days after the notice of disapproval, resubmit an amended plan to remedy the reasons for disapproval. The executive director or designee must then approve or disapprove the resubmitted plan within 30 days. If they fail to do so within that period, the plan is deemed deficient without consequence. If the contractor fails to resubmit a plan, or to remedy the reasons for disapproval, the plan must receive a final disapproval from the executive director or her designee.

Under the bill, a failure to submit a plan or a final disapproval of a plan is a discriminatory practice subject to CHRO investigation and enforcement powers. A contractor who receives a final disapproval may request reconsideration under the existing procedures for reconsiderations.

***Contracts for at Least \$1 Million (§ 6)***

The bill generally requires contractors awarded a public works contract (as defined by the bill) worth at least \$1 million, and construction managers awarded a public works contract worth at least \$150,000, to follow the same approval process as described above. However, they must file affirmative action plans (as under current law), rather than set-aside plans.

In standardizing the approval process, the bill removes provisions in the current law for contracts over \$1 million that generally:

1. require contractors to file their plans for approval after their bid was accepted but before the contract is awarded;
2. allow CHRO to conditionally accept a plan if the contractor gives written assurance that it will amend the plan to meet affirmative action requirements;
3. require 2% of the total contract price to be withheld per month from any payment to the contractor until it develops an affirmative action plan (existing law, unchanged by the bill, still allows CHRO to order this after a hearing); and

4. allow a contractor to file a plan in advance or at the same time as a bid.

### ***Compliance Report Deadlines (§ 7)***

Current law requires contractors and subcontractors to file compliance reports with CHRO when the commission directs it, but does not set a deadline for them to do so. The bill requires the reports to be submitted within 45 days after the substantial completion of the contract (it does not define “substantial completion”). It requires CHRO’s executive director, or her designee, to review and formally approve or disapprove the report within 30 days. If they fail to approve, conditionally approve, or disapprove one within that time, it is deemed approved or deficient without consequence.

For public works contracts of at least \$1 million, the bill also requires the awarding agency to withhold 2% of the total contract price per month from any payment made to the contractor until it submits all compliance reports required by CHRO and they have been approved or deemed deficient without consequence.

### **§ 14 — FAILURE TO TIMELY PAY SMALL CONTRACTORS**

The law requires a small contractor to be paid on a contract awarded under the set-aside program within 25 days after the due date for paying the contract. The bill makes a failure to do so a discriminatory practice subject to CHRO investigation and enforcement.

### **BACKGROUND**

#### ***Small Contractors and MBEs Under the Set-Aside Law***

Under the set-aside law, a “small contractor” is generally a:

1. contractor or subcontractor that (a) maintains its principal place of business in the state and (b) is registered as a small business in the federal database maintained by the U.S. General Services Administration, as required to do business with the federal government, or
2. nonprofit entity that (a) had gross revenues of \$20 million or less

during its most recent fiscal year and (b) is independent.

“Minority Business Enterprises” are generally small contractors with majority ownership by women, minorities, or people with disabilities. The owner must have (1) managerial and technical competence, (2) experience directly related to his or her principal business activities, and (3) the power to direct the enterprise’s management or policies (CGS § 4a-60g(a)).

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 13 Nay 6 (03/26/2025)