



Senate

General Assembly

File No. 615

January Session, 2007

Substitute Senate Bill No. 1106

Senate, April 30, 2007

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PROCEDURES FOR THE HEARING OF COMPLAINTS AGAINST STATE CONTRACTORS AND SUBCONTRACTORS BY THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES AND THE DOCUMENTATION OF NONDISCRIMINATION POLICIES ADOPTED BY STATE CONTRACTORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (8) of section 46a-51 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2007*):

4 (8) "Discriminatory practice" means a violation of section 4a-60, as
5 amended by this act, 4a-60a, as amended by this act, 4a-60g, 46a-58,
6 46a-59, 46a-60, 46a-64, 46a-64c, 46a-66, 46a-68, [sections] 46a-68c to 46a-
7 68f, inclusive, or 46a-70 to 46a-78, inclusive, subsection (a) of section
8 46a-80 [,] or sections 46a-81b to 46a-81o, inclusive.

9 Sec. 2. Subsections (c) and (d) of section 46a-56 of the general
10 statutes are repealed and the following is substituted in lieu thereof

11 (Effective July 1, 2007):

12 (c) If the commission determines through its [complaint procedure]
13 monitoring and compliance procedures that a contractor or
14 subcontractor is not complying with antidiscrimination statutes or
15 contract provisions required under section 4a-60 or 4a-60a, as amended
16 by this act, or the provisions of [section 46a-68c, 46a-68d, 46a-68e or
17 46a-68f, (A)] sections 46a-68c to 46a-68f, inclusive, the commission may
18 issue a complaint pursuant to subsection (c) of section 46a-82, as
19 amended by this act. Such complaint shall be scheduled for a hearing
20 before a hearing officer or human rights referee appointed to act as a
21 presiding officer. Such hearing shall be held in accordance with
22 chapter 54 and section 46a-84, as amended by this act. If, after such
23 hearing, the presiding officer makes a finding of noncompliance with
24 antidiscrimination statutes or contract provisions required under
25 section 4a-60 or 4a-60a, as amended by this act, or the provisions of
26 sections 46a-68c to 46a-68f, inclusive, the presiding officer may: (1)
27 Order the state [shall] to retain two per cent of the total contract price
28 per month on any existing contract with such contractor; [and (B)] (2)
29 prohibit the contractor [shall be prohibited] from participation in any
30 further contracts with state agencies until: [(i)] (A) The expiration of a
31 period of two years from the date of the finding of noncompliance, or
32 [(ii)] (B) the [commission] presiding officer determines that the
33 contractor has adopted policies consistent with such statutes, [. The
34 commission] provided the presiding officer shall make such [a]
35 determination [as to whether the contractor has adopted such policies]
36 within forty-five days of [its determination] such finding of
37 noncompliance; [. In addition, the commission may do one or more of
38 the following: (1) Publish] (3) publish, or cause to be published, the
39 names of contractors or unions [which it] that the presiding officer has
40 found to be in noncompliance with such provisions; [(2)] (4) notify the
41 Attorney General that, in cases in which there is substantial or material
42 violation or the threat of substantial or material violation of the
43 contractual provisions set forth in section 4a-60 or 4a-60a, as amended
44 by this act, appropriate proceedings should be brought to enforce
45 [those] such provisions, including the enjoining, within the limitations

46 of applicable law, of organizations, individuals or groups who prevent
47 directly or indirectly, or seek to prevent directly or indirectly,
48 compliance with the provisions of [said] section 4a-60 or 4a-60a, as
49 amended by this act; [(3)] (5) recommend to the Equal Employment
50 Opportunity Commission or the Department of Justice that
51 appropriate proceedings be instituted under Title VII of the Civil
52 Rights Act of 1964, when necessary; [(4)] (6) recommend to the
53 appropriate prosecuting authority that criminal proceedings be
54 brought for the furnishing of false information to any contracting
55 agency or to the commission as the case may be; [(5)] or (7) order the
56 contracting agency to refrain from entering into further contracts, or
57 [extension] extensions or other modifications of existing contracts, with
58 any noncomplying contractor, until such contractor has satisfied the
59 commission that such contractor has established and will carry out
60 personnel and employment policies in compliance with
61 antidiscrimination statutes and the provisions of section 4a-60 or 4a-
62 60a, as amended by this act, and sections 46a-68c to 46a-68f, inclusive.
63 The commission shall adopt regulations, in accordance with chapter
64 54, to implement the provisions of this section.

65 (d) If the commission determines, through its [complaint procedure
66 and after a hearing held in accordance with chapter 54] monitoring
67 and compliance procedures and after a complaint is filed and a hearing
68 is held pursuant to subsection (c) of this section, that, with respect to a
69 state contract, a contractor, subcontractor or supplier of materials has
70 (1) fraudulently qualified as a minority business enterprise, or (2)
71 performed services or supplied materials on behalf of another
72 contractor, subcontractor or supplier of materials knowing (A) that
73 such other contractor, subcontractor or supplier has fraudulently
74 qualified as a minority business enterprise in order to comply with
75 antidiscrimination statutes or contract provisions required under
76 section 4a-60 or 4a-60a, as amended by this act, and (B) that such
77 services or materials are to be used in connection with a contract
78 entered into pursuant to subsection (b) of section 4a-60g, [it] the
79 hearing officer or human rights referee before whom such hearing was
80 held shall assess a civil penalty of not more than ten thousand dollars

81 upon such contractor, subcontractor or supplier of materials. The
82 Attorney General, upon complaint of the commission, shall institute a
83 civil action in the superior court for the judicial district of Hartford to
84 recover such penalty. Any penalties recovered pursuant to this
85 subsection shall be deposited in a special fund and shall be held by the
86 State Treasurer separate and apart from all other moneys, funds and
87 accounts. The resources in such fund shall, pursuant to regulations
88 adopted by the commission in accordance with the provisions of
89 chapter 54, be used to assist minority business enterprises. As used in
90 this section, "minority business enterprise" means any contractor,
91 subcontractor or supplier of materials fifty-one per cent or more of the
92 capital stock, if any, or assets of which is owned by a person or
93 persons: [(1)] (i) Who are active in the daily affairs of the enterprise;
94 [(2)] (ii) who have the power to direct the management and policies of
95 the enterprise; and [(3)] (iii) who are members of a minority, as [such
96 term is] defined in subsection (a) of section 32-9n.

97 Sec. 3. Section 46a-68i of the general statutes is repealed and the
98 following is substituted in lieu thereof (*Effective July 1, 2007*):

99 The commission or any contractor or subcontractor aggrieved by a
100 decision of the hearing officer or human rights referee following a
101 hearing held pursuant to [section 46a-68h] subsection (c) of section
102 46a-56, as amended by this act, shall have a right of appeal to the
103 Superior Court as provided for in section 4-183. Such appeal shall be
104 privileged in order of assignment of trial.

105 Sec. 4. Section 46a-81r of the general statutes is repealed and the
106 following is substituted in lieu thereof (*Effective July 1, 2007*):

107 Nothing in sections 4a-60a, as amended by this act, 45a-726a, 46a-51,
108 as amended by this act, 46a-54, 46a-56, as amended by this act, 46a-63,
109 46a-64b, 46a-65, 46a-67, 46a-68b [,] and 46a-81a to 46a-81q, inclusive,
110 subsection [(d)] (e) of section 46a-82, as amended by this act,
111 subsection (a) of section 46a-83, as amended by this act, and sections
112 46a-86, as amended by this act, 46a-89, 46a-90a, 46a-98, 46a-98a and
113 46a-99 shall be deemed or construed (1) to mean the state of

114 Connecticut condones homosexuality or bisexuality or any equivalent
115 lifestyle, (2) to authorize the promotion of homosexuality or
116 bisexuality in educational institutions or require the teaching in
117 educational institutions of homosexuality or bisexuality as an
118 acceptable lifestyle, (3) to authorize or permit the use of numerical
119 goals or quotas, or other types of affirmative action programs, with
120 respect to homosexuality or bisexuality in the administration or
121 enforcement of the provisions of sections 4a-60a, as amended by this
122 act, 45a-726a, 46a-51, as amended by this act, 46a-54, 46a-56, as
123 amended by this act, 46a-63, 46a-64b, 46a-65, 46a-67, 46a-68b [,] and
124 46a-81a to 46a-81q, inclusive, subsection [(d)] (e) of section 46a-82, as
125 amended by this act, subsection (a) of section 46a-83, as amended by
126 this act, and sections 46a-86, as amended by this act, 46a-89, 46a-90a,
127 46a-98, 46a-98a and 46a-99, (4) to authorize the recognition of or the
128 right of marriage between persons of the same sex, or (5) to establish
129 sexual orientation as a specific and separate cultural classification in
130 society.

131 Sec. 5. Section 46a-82 of the general statutes is repealed and the
132 following is substituted in lieu thereof (*Effective July 1, 2007*):

133 (a) Any person claiming to be aggrieved by an alleged
134 discriminatory practice, except for an alleged violation of section 46a-
135 68, may, by himself or [his] herself or by such person's attorney, make,
136 sign and file with the commission a complaint in writing under oath,
137 which shall state the name and address of the person alleged to have
138 committed the discriminatory practice, and which shall set forth the
139 particulars thereof and contain such other information as may be
140 required by the commission. After the filing of a complaint pursuant to
141 this subsection, the commission shall serve upon the person claiming
142 to be aggrieved a notice that: (1) Acknowledges receipt of the
143 complaint; and (2) advises of the time frames and choice of forums
144 available under this chapter.

145 (b) The commission, whenever it has reason to believe that any
146 person has been engaged or is engaged in a discriminatory practice,

147 may issue a complaint, except for a violation of subsection (a) of
148 section 46a-80.

149 (c) The commission, whenever it has reason to believe that any
150 contractor or subcontractor is not complying with antidiscrimination
151 statutes or contract provisions required under section 4a-60 or 4a-60a,
152 as amended by this act, or the provisions of sections 46a-68c to 46a-68f,
153 inclusive, may issue a complaint.

154 ~~[(c)]~~ (d) The commission may issue a complaint if: (1) An affirmative
155 action plan filed pursuant to section 46a-68 is in violation of any of the
156 provisions of section 4-61u or 4-61w, sections 46a-54 to 46a-64,
157 inclusive, section 46a-64c or sections 46a-70 to 46a-78, inclusive; or (2)
158 an agency, department, board or commission fails to submit an
159 affirmative action plan required under section 46a-68.

160 ~~[(d)]~~ (e) Any employer whose employees, or any of them, refuse or
161 threaten to refuse to comply with the provisions of section 46a-60 or
162 46a-81c ~~[.]~~ may file with the commission a written complaint under
163 oath asking for assistance by conciliation or other remedial action.

164 ~~[(e)]~~ (f) Any complaint filed pursuant to this section must be filed
165 within one hundred and eighty days after the alleged act of
166 discrimination, except that any complaint by a person claiming to be
167 aggrieved by a violation of subsection (a) of section 46a-80 must be
168 filed within thirty days of the alleged act of discrimination.

169 Sec. 6. Subsection (a) of section 46a-83 of the general statutes is
170 repealed and the following is substituted in lieu thereof (*Effective July*
171 *1, 2007*):

172 (a) Within twenty days after the filing of any discriminatory practice
173 complaint pursuant to subsection (a) or (b) of section 46a-82, as
174 amended by this act, or an amendment to such complaint adding an
175 additional respondent, the commission shall cause the complaint to be
176 served upon the respondent together with a notice (1) identifying the
177 alleged discriminatory practice, and (2) advising of the procedural

178 rights and obligations of a respondent under this chapter. The
179 respondent shall file a written answer to the complaint under oath
180 with the commission within thirty days of receipt of the complaint,
181 provided a respondent may request, and the commission may grant,
182 for good cause shown, one extension of time of fifteen days within
183 which to file an answer to a complaint. The answer to any complaint
184 alleging a violation of section 46a-64c or 46a-81e shall be filed within
185 ten days of receipt.

186 Sec. 7. Section 46a-84 of the general statutes is repealed and the
187 following is substituted in lieu thereof (*Effective July 1, 2007*):

188 (a) If the investigator fails to eliminate a discriminatory practice
189 complained of pursuant to subsection (a) or (b) of section 46a-82, as
190 amended by this act, within fifty days of a finding of reasonable cause,
191 [he] the investigator shall, within ten days, certify the complaint and
192 the results of the investigation to the executive director of the
193 commission and to the Attorney General.

194 (b) Upon certification of [the] a complaint filed pursuant to
195 subsection (a) or (b) of section 46a-82, as amended by this act, or upon
196 the filing of a complaint pursuant to subsection (c) of said section, the
197 [executive director of the commission or his designee] Chief Human
198 Rights Referee shall appoint, for a complaint filed pursuant to said
199 subsection (a) or (b), a hearing officer, hearing adjudicator or human
200 rights referee, and for a complaint filed pursuant to said subsection (c),
201 a hearing officer or human rights referee, to act as a presiding officer to
202 hear the complaint or to conduct settlement negotiations and shall
203 cause to be issued and served in the name of the commission a written
204 notice, together with a copy of the complaint, as the same may have
205 been amended, requiring the respondent to answer the charges of the
206 complaint at a hearing before the presiding officer or hearing
207 adjudicator at a time and place to be specified in the notice. [, provided
208 such] A hearing on a complaint filed pursuant to subsection (a) or (b)
209 of section 46a-82, as amended by this act, shall be commenced by
210 convening a hearing conference not later than forty-five days after the

211 certification of the complaint. [The] Such hearing shall be a de novo
212 hearing on the merits of the complaint and not an appeal of the
213 commission's processing of the complaint prior to its certification. [The
214 hearing] A hearing on a complaint filed pursuant to subsection (c) of
215 section 46a-82, as amended by this act, shall be commenced by
216 convening a hearing conference not later than twenty days after the
217 date of notice of such complaint. Hearings shall proceed with
218 reasonable dispatch and be concluded in accordance with the
219 provisions of section 4-180.

220 (c) The place of any hearing may be the office of the commission or
221 another place designated by [it] the commission.

222 (d) The case in support of the complaint shall be presented at the
223 hearing by the Attorney General, who shall be counsel for the
224 commission, or by a commission legal counsel as provided in section
225 46a-55, as the case may be. If the Attorney General or the commission
226 legal counsel determines that a material mistake of law or fact has been
227 made in the finding of reasonable cause [, he] on a complaint filed
228 pursuant to subsection (a) or (b) of section 46a-82, as amended by this
229 act, the Attorney General or the commission legal counsel may
230 withdraw the certification of the complaint and remand the file to the
231 investigator for further action. The complainant may be represented by
232 an attorney of [his] the complainant's own choice. If the Attorney
233 General or the commission legal counsel, as the case may be,
234 determines that the interests of the state will not be adversely affected,
235 the attorney for the complainant shall present all or part of the case in
236 support of the complaint. No commissioner may participate in the
237 deliberations of the presiding officer in the case.

238 (e) A hearing officer, hearing adjudicator, human rights referee or
239 attorney who volunteers service pursuant to subdivision (18) of section
240 46a-54 may supervise settlement endeavors, or, in employment
241 discrimination cases only, the complainant and respondent, with the
242 permission of the commission, may engage in alternate dispute
243 resolution endeavors for not more than three months. The cost of such

244 alternate dispute resolution endeavors shall be borne by the
245 complainant or the respondent, or both, and not by the commission.
246 Any endeavors or negotiations for conciliation, settlement or alternate
247 dispute resolution shall not be received in evidence.

248 (f) The respondent may file a written answer to the complaint under
249 oath and appear at the hearing in person or otherwise, with or without
250 counsel, and submit testimony and be fully heard. If the respondent
251 fails to file a written answer prior to the hearing within the time limits
252 established by regulation adopted by the commission in accordance
253 with chapter 54 or fails to appear at the hearing after notice in
254 accordance with section 4-177, the presiding officer or hearing
255 adjudicator may enter an order of default and order such relief as is
256 necessary to eliminate the discriminatory practice and make the
257 complainant whole. The commission or the complainant may petition
258 the Superior Court for enforcement of any such order for relief
259 pursuant to the provisions of section 46a-95.

260 (g) The presiding officer or hearing adjudicator conducting any
261 hearing shall permit reasonable amendment to any complaint or
262 answer and the testimony taken at the hearing shall be under oath and
263 be transcribed at the request of any party.

264 Sec. 8. Section 46a-86 of the general statutes is repealed and the
265 following is substituted in lieu thereof (*Effective July 1, 2007*):

266 (a) If, upon all the evidence presented at the hearing conducted
267 pursuant to section 46a-84, as amended by this act, the presiding
268 officer finds that a respondent has engaged in any discriminatory
269 practice, the presiding officer shall state [his] the presiding officer's
270 findings of fact and shall issue and file with the commission and cause
271 to be served on the respondent an order requiring the respondent to
272 cease and desist from the discriminatory practice and further requiring
273 the respondent to take such affirmative action as in the judgment of
274 the presiding officer will effectuate the purpose of this chapter.

275 (b) In addition to any other action taken [hereunder] under this

276 section, upon a finding of a discriminatory employment practice, the
277 presiding officer may order the hiring or reinstatement of employees,
278 with or without back pay, or restoration to membership in any
279 respondent labor organization, provided, liability for back pay shall
280 not accrue from a date more than two years prior to the filing or
281 issuance of the complaint and, provided further, interim earnings,
282 including unemployment compensation and welfare assistance or
283 amounts which could have been earned with reasonable diligence on
284 the part of the person to whom back pay is awarded shall be deducted
285 from the amount of back pay to which such person is otherwise
286 entitled. The amount of any such deduction for interim unemployment
287 compensation or welfare assistance shall be paid by the respondent to
288 the commission which shall transfer such amount to the appropriate
289 state or local agency.

290 (c) In addition to any other action taken [hereunder] under this
291 section, upon a finding of a discriminatory practice prohibited by
292 section 46a-58, 46a-59, 46a-64, 46a-64c, 46a-81b, 46a-81d or 46a-81e, the
293 presiding officer shall determine the damage suffered by the
294 complainant, which damage shall include, but not be limited to, the
295 expense incurred by the complainant for obtaining alternate housing
296 or space, storage of goods and effects, moving costs and other costs
297 actually incurred by [him] the complainant as a result of such
298 discriminatory practice and shall allow reasonable attorney's fees and
299 costs.

300 (d) In addition to any other action taken [hereunder] under this
301 section, upon a finding of a discriminatory practice prohibited by
302 section 46a-66 or 46a-81f, the presiding officer shall issue and file with
303 the commission and cause to be served on the respondent an order
304 requiring the respondent to pay the complainant the damages
305 resulting from the discriminatory practice.

306 (e) In addition to any other action taken under this section, upon a
307 finding of noncompliance with antidiscrimination statutes or contract
308 provisions required under section 4a-60 or 4a-60a, as amended by this

309 act, or the provisions of sections 46a-68c to 46a-68f, inclusive, the
310 presiding officer shall issue and file with the commission and cause to
311 be served on the respondent an order with respect to any remedial
312 action imposed by the presiding officer pursuant to subsection (c) or
313 (d) of section 46a-56, as amended by this act.

314 [(e)] (f) If, upon all the evidence and after a complete hearing, the
315 presiding officer finds that the respondent has not engaged in any
316 alleged discriminatory practice, the presiding officer shall state [his]
317 the presiding officer's findings of fact and shall issue and file with the
318 commission and cause to be served on the respondent an order
319 dismissing the complaint.

320 [(f)] (g) Any payment received by a complainant under this chapter
321 or under any equivalent federal antidiscrimination law, either as a
322 settlement of a claim or as an award made in a judicial or
323 administrative proceeding, shall not be considered as income,
324 resources or assets for the purpose of determining the eligibility of or
325 amount of assistance to be received by such person in the month of
326 receipt or the three months following receipt under the state
327 supplement program, Medicaid or any other medical assistance
328 program, temporary family assistance program, state-administered
329 general assistance program, or the temporary assistance for needy
330 families program. After such time period, any remaining funds shall
331 be subject to state and federal laws governing such programs,
332 including, but not limited to, provisions concerning individual
333 development accounts, as defined in section 31-51ww.

334 Sec. 9. Subsection (a) of section 4a-60 of the general statutes is
335 repealed and the following is substituted in lieu thereof (*Effective from*
336 *passage*):

337 (a) Every contract to which the state or any political subdivision of
338 the state other than a municipality is a party shall contain the
339 following provisions: (1) The contractor agrees and warrants that in
340 the performance of the contract such contractor will not discriminate
341 or permit discrimination against any person or group of persons on the

342 grounds of race, color, religious creed, age, marital status, national
343 origin, ancestry, sex, mental retardation or physical disability,
344 including, but not limited to, blindness, unless it is shown by such
345 contractor that such disability prevents performance of the work
346 involved, in any manner prohibited by the laws of the United States or
347 of the state of Connecticut. The contractor further agrees to take
348 affirmative action to insure that applicants with job-related
349 qualifications are employed and that employees are treated when
350 employed without regard to their race, color, religious creed, age,
351 marital status, national origin, ancestry, sex, mental retardation, or
352 physical disability, including, but not limited to, blindness, unless it is
353 shown by such contractor that such disability prevents performance of
354 the work involved; (2) the contractor agrees, in all solicitations or
355 advertisements for employees placed by or on behalf of the contractor,
356 to state that it is an "affirmative action-equal opportunity employer" in
357 accordance with regulations adopted by the commission; (3) the
358 contractor agrees to provide each labor union or representative of
359 workers with which such contractor has a collective bargaining
360 agreement or other contract or understanding and each vendor with
361 which such contractor has a contract or understanding, a notice to be
362 provided by the commission advising the labor union or workers'
363 representative of the contractor's commitments under this section, and
364 to post copies of the notice in conspicuous places available to
365 employees and applicants for employment; (4) the contractor agrees to
366 comply with each provision of this section and sections 46a-68e and
367 46a-68f and with each regulation or relevant order issued by said
368 commission pursuant to sections 46a-56, as amended by this act, 46a-
369 68e and 46a-68f; (5) the contractor agrees to provide the Commission
370 on Human Rights and Opportunities with such information requested
371 by the commission, and permit access to pertinent books, records and
372 accounts, concerning the employment practices and procedures of the
373 contractor as relate to the provisions of this section and section 46a-56,
374 as amended by this act. If the contract is a public works contract, the
375 contractor agrees and warrants that he will make good faith efforts to
376 employ minority business enterprises as subcontractors and suppliers

377 of materials on such public works project. Prior to entering into the
378 contract, the contractor shall provide the state or such political
379 subdivision of the state with documentation in the form of a company
380 or corporate policy adopted by resolution of the board of directors,
381 shareholders, managers, members or other governing body of such
382 contractor to support the nondiscrimination agreement and warranty
383 under subdivision (1) of this subsection.

384 Sec. 10. Subsection (a) of section 4a-60a of the general statutes is
385 repealed and the following is substituted in lieu thereof (*Effective from*
386 *passage*):

387 (a) Every contract to which the state or any political subdivision of
388 the state other than a municipality is a party shall contain the
389 following provisions: (1) The contractor agrees and warrants that in
390 the performance of the contract such contractor will not discriminate
391 or permit discrimination against any person or group of persons on the
392 grounds of sexual orientation, in any manner prohibited by the laws of
393 the United States or of the state of Connecticut, and that employees are
394 treated when employed without regard to their sexual orientation; (2)
395 the contractor agrees to provide each labor union or representative of
396 workers with which such contractor has a collective bargaining
397 agreement or other contract or understanding and each vendor with
398 which such contractor has a contract or understanding, a notice to be
399 provided by the Commission on Human Rights and Opportunities
400 advising the labor union or workers' representative of the contractor's
401 commitments under this section, and to post copies of the notice in
402 conspicuous places available to employees and applicants for
403 employment; (3) the contractor agrees to comply with each provision
404 of this section and with each regulation or relevant order issued by
405 said commission pursuant to section 46a-56, as amended by this act; (4)
406 the contractor agrees to provide the Commission on Human Rights
407 and Opportunities with such information requested by the
408 commission, and permit access to pertinent books, records and
409 accounts, concerning the employment practices and procedures of the
410 contractor which relate to the provisions of this section and section

411 46a-56, as amended by this act. Prior to entering into the contract, the
 412 contractor shall provide the state or such political subdivision of the
 413 state with documentation in the form of a company or corporate policy
 414 adopted by resolution of the board of directors, shareholders,
 415 managers, members or other governing body of such contractor to
 416 support the nondiscrimination agreement and warranty under
 417 subdivision (1) of this subsection.

418 Sec. 11. Section 46a-68h of the general statutes is repealed. (*Effective*
 419 *July 1, 2007*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2007</i>	46a-51(8)
Sec. 2	<i>July 1, 2007</i>	46a-56(c) and (d)
Sec. 3	<i>July 1, 2007</i>	46a-68i
Sec. 4	<i>July 1, 2007</i>	46a-81r
Sec. 5	<i>July 1, 2007</i>	46a-82
Sec. 6	<i>July 1, 2007</i>	46a-83(a)
Sec. 7	<i>July 1, 2007</i>	46a-84
Sec. 8	<i>July 1, 2007</i>	46a-86
Sec. 9	<i>from passage</i>	4a-60(a)
Sec. 10	<i>from passage</i>	4a-60a(a)
Sec. 11	<i>July 1, 2007</i>	Repealer section

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

This bill would not result in a fiscal impact to the Commission on Human Rights and Opportunities (CHRO). It would allow the agency to issue a complaint and bring it to a public hearing, instead of also hearing the complaint through CHRO's normal complaint process.

The bill also makes changes regarding which staff persons at CHRO are authorized to impose penalties, eliminate certain automatic sanctions, and who may appoint a hearing officer or human rights referee regarding complaints against contractors and subcontractors. There is no fiscal impact regarding these changes.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 1106*****AN ACT CONCERNING PROCEDURES FOR THE HEARING OF COMPLAINTS AGAINST STATE CONTRACTORS AND SUBCONTRACTORS BY THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES AND THE DOCUMENTATION OF NONDISCRIMINATION POLICIES ADOPTED BY STATE CONTRACTORS.*****SUMMARY:**

This bill establishes a separate process for the Commission on Human Rights and Opportunities (CHRO) to hear and remedy complaints against contractors and subcontractors for noncompliance with state antidiscrimination laws, mandatory antidiscrimination provisions in state and certain political subdivision contracts, and equal employment requirements. It does so by allowing CHRO to bring a matter to a public hearing based on its monitoring and compliance process instead of also going through its normal complaint process.

If after the hearing, the presiding hearing officer finds noncompliance, the bill authorizes the officer, instead of CHRO, to impose certain penalties and take other actions. It also eliminates certain automatic sanctions and instead gives the presiding officer discretion to impose them.

The bill authorizes the chief human rights referee, instead of CHRO's executive director or designee, to appoint a hearing officer or human rights referee to hear complaints against contractors and subcontractors filed by CHRO under the bill.

The bill requires that before entering into the contract with the state or any political subdivision other than a municipality, the contractor

must provide documentation to support the nondiscrimination agreement and warranty the law requires for such contracts. The documentation must be a company or corporate policy adopted by resolution of the contractor's board of directors, shareholders, managers, members, or other governing body (see BACKGROUND).

The bill gives people the right to file, and CHRO jurisdiction to investigate, complaints of violations of the:

1. set-aside law for small contractors and minority businesses, and
2. laws requiring the filing and approval of affirmative action plans and compliance reports concerning public works contractors.

EFFECTIVE DATE: July 1, 2007, except for the provisions dealing with documentation of company or corporate policy, which are effective upon passage.

NEW CHRO PROCEDURE TO HEAR AND REMEDY COMPLAINTS AGAINST CONTRACTORS

The bill authorizes CHRO to issue a discrimination complaint against a contractor or subcontractor if it determines through its monitoring and compliance process, instead of through its complaint process, that a contractor or subcontractor has not complied with antidiscrimination laws and contract provisions. Under the normal complaint process, CHRO assigns it to an investigator who must follow normal CHRO procedures and deadlines for investigating a complaint, and if after the investigation the investigator finds reason to believe that a violation has occurred, to attempt to eliminate it, and if that fails, to certify it to a public hearing. The bill instead authorizes CHRO, based on its monitoring and compliance process, to schedule a public hearing within 20 days after notice of the complaint before a hearing officer or a human rights referee appointed to act as a presiding hearing officer.

PENALTIES, SANCTIONS, AND OTHER ENFORCEMENT ACTIONS

Under existing law, if CHRO determines through its complaint procedure that a contractor or subcontractor is not complying with antidiscrimination statutes or contract antidiscrimination provisions (1) the state retains 2% of the total contract price per month on any existing contract and (2) the contractor is prohibited from participating in any further contracts with state agencies until two years from the date of the finding of noncompliance or CHRO determines that the contractor has adopted policies consistent with these antidiscrimination statutes.

The bill instead:

1. eliminates the mandatory 2% monthly retention requirement and instead authorizes the presiding hearing officer to order retainage,
2. eliminates the mandatory debarment and instead authorizes the presiding officer to bar the contractor from future contracts for two years or until the officer determines compliance, and
3. authorizes the presiding officer instead of CHRO to make the compliance determination.

By law, unchanged by the bill, the compliance determination must be made within 45 days of the noncompliance determination.

The bill transfers from CHRO to the presiding hearing officers CHRO's current authority to:

1. publish, or cause to be published, the names of contractors or unions found to be in noncompliance;
2. notify the attorney general when there is a substantial or material violation or the threat of such a violation of the contractual provisions on antidiscrimination laws;
3. recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate

proceedings be instituted under Title VII of the Civil Rights Act of 1964, when necessary;

4. ask prosecutors to bring criminal actions against contractors who give false information to any contracting agency or to CHRO, as the case may be; or
5. order the contracting agency not to enter another contract or extend or modify an existing contracts with any noncomplying contractor, until the contractor has satisfied CHRO that it has established and will implement personnel and employment policies in compliance with state antidiscrimination laws.

BACKGROUND

Small Contractors and Minority Business Enterprises Set Aside Law

The law requires the head of each state agency and political subdivision of the state other than a municipality annually to set aside for award to small contractors, on the basis of competitive bidding procedures, at least 25% of the total value of all contracts or portions of contracts for the construction, reconstruction, or rehabilitation of public buildings, the construction and maintenance of highways and the purchase of goods and services. At least 25% of the total value of all set aside contracts must be reserved for awards to minority business enterprises.

The awarding authority must require that a contractor or subcontractor awarded a contract perform not less than 15% of the work with the contractor's own workforce. It may require that a contractor furnish the certain documentation including:

1. a copy of its organizational documents,
2. a copy of its or its subcontractors' federal income tax returns for the previous year, and
3. evidence of payment of fair market value for the purchase or lease of property or equipment from another contractor who is

not eligible for set-aside contracts.

The law authorizes the awarding authority or the administrative services or CHRO Commissioner to audit the financial, corporate, and business records of any small contractor or minority business enterprise that applies for or is awarded a set-aside contract and investigate to determine eligibility or compliance with the set-aside law (CGS § 4a-60g).

Contractors Required to File Affirmative Action Plan

The law requires each contractor with at least 50 employees awarded a public works contract between \$50,000 and \$500,000 in any fiscal year, to develop and file with CHRO an affirmative action plan that complies with CHRO regulations. Failure to do so bars bidding on or the award of future contracts until the requirement is met. When CHRO approves an affirmative action plan, it must issue a certificate of compliance to the contractor. This certificate is prima facie proof of the contractor's eligibility to bid or be awarded contracts for a two years from the date of the certificate. A certificate does not excuse the contractor from CHRO monitoring or from reporting and record-keeping requirements imposed by law. CHRO may revoke the certificate if the contractor does not implement its affirmative action plan in compliance with applicable state law (CGS § 46a-68c).

Large Public Works Contracts Subject to Affirmative Action Requirements

Every successful bidder for a public works contract to construct, reconstruct, alter, remodel, repair, or demolish of any state public building that is estimated to cost more than \$500,000, except certain specified contracts awarded by the commissioner of public works, must, before the contract is awarded, file and have approved by CHRO an affirmative action plan. CHRO may conditionally accept an affirmative action plan if the contractor gives written assurances that it will amend its plan to conform to affirmative action requirements. The state must withhold 2% of the total contract price per month from any payment made to such a contractor until it has developed an

affirmative action plan, and received CHRO approval.

CHRO must review affirmative action plans submitted within 60 days of receipt and either approve, approve with conditions, or reject them. When CHRO approves a plan, it must issue a certificate of compliance to the contractor (CGS § 46a-89d).

Contractors and Subcontractors Required to File Compliance Reports

Each contractor must file, and cause each of his subcontractors to file, compliance reports with CHRO. These must contain whatever information about the contractor's or subcontractor's the employment policies, programs, and statistics and be in whatever form CHRO prescribes (CGS § 46a-68e).

Compliance Reports to include Labor Union Practices

Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the law requires that the compliance reports must include information pertaining to the labor union's or agency's practices and policies affecting compliance (CGS § 46a-68f).

Nondiscrimination and Affirmative Action Provisions in Contracts of the State and Political Subdivisions other than Municipalities

The law requires that every contract to which the state or any political subdivision other than a municipality is a party must contain the following provisions the contractor agrees:

1. that in the performance of the contract it will not discriminate or permit discrimination in any manner prohibited by state or federal law;
2. to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are not discriminated against;

3. in all solicitations or advertisements for employees placed by or on its behalf to state that it is an “affirmative action-equal opportunity employer” in accordance with CHRO regulations;
4. to provide each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding and each vendor with which it has a contract or understanding, a notice to be provided by CHRO or vendor advising the labor union workers’ representative, of the contractor's commitments, and to post copies of the notice in conspicuous places available to employees and to applicants;
5. to comply with certain anti-discretion and affirmative action laws, and CHRO regulations and orders;
6. to provide CHRO with whatever information it requests and permit access to pertinent books, records, and accounts concerning its employment practices and procedures; and
7. if the contract is a public works contract, that it will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works project (CGS §§ 4a-60 and 4a-60a).

CHRO Normal Hearing Process for Discrimination Complaints

When a CHRO investigator finds “reasonable cause” and is unable to eliminate the discrimination by conference or conciliation, the investigator certifies the complaint to the Office of Public Hearings. Typically, the certification of the complaint occurs about one year after the original complaint is filed.

By law, a hearing conference must be held within 45 days following the certification of the complaint. At the hearing conference, the presiding human rights referee assigns a settlement conference date, as well as dates for production of documents, exchange of witness and exhibit lists, a pre-hearing conference, and public hearing trial dates.

A respondent is required to file an answer to the complaint within 15 days of receiving the notice of public hearing. If the complaint is amended, an answer must also be filed to the amended complaint. Failure to file an answer may result in an order of default by the presiding human rights referee.

All cases have at least one settlement conference. The settlement conference is conducted by a human rights referee other than the one who will preside at the public hearing. The settlement referee meets with the parties and their attorneys and reviews the factual and legal issues with them in an attempt to reach a settlement.

If the parties are unable to settle the case, it proceeds to a public hearing. At the close of evidence, the presiding human rights referee may permit the filing of briefs. A written decision is issued within 90 days of the close of evidence or the filing of briefs, whichever is later.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0 (04/13/2007)