



# Senate

General Assembly

**File No. 541**

January Session, 2009

Substitute Senate Bill No. 922

*Senate, April 8, 2009*

The Committee on Planning and Development reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING AFFIRMATIVE ACTION AND CONTRACTING PROCEDURES FOR THE METROPOLITAN DISTRICT OF HARTFORD COUNTY.***

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

1 Section 1. Section 46a-68 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) Each state agency, department, board and commission shall  
4 develop and implement, in cooperation with the Commission on  
5 Human Rights and Opportunities, an affirmative action plan that  
6 commits the agency, department, board or commission to a program of  
7 affirmative action in all aspects of personnel and administration. Such  
8 plan shall be developed pursuant to regulations adopted by the  
9 Commission on Human Rights and Opportunities in accordance with  
10 chapter 54 to ensure that affirmative action is undertaken as required  
11 by state and federal law to provide equal employment opportunities  
12 and to comply with all responsibilities under the provisions of sections

13 4-61u to 4-61w, inclusive, sections 46a-54 to 46a-64, inclusive, section  
14 46a-64c and sections 46a-70 to 46a-78, inclusive. The executive head of  
15 each such agency, department, board or commission shall be directly  
16 responsible for the development, filing and implementation of such  
17 affirmative action plan. The Metropolitan District of Hartford County  
18 shall be deemed to be a state agency for purposes of this section.

19 (b) (1) Each state agency, department, board or commission shall  
20 designate a full-time or part-time affirmative action officer. If such  
21 affirmative action officer is an employee of the agency, department,  
22 board or commission, the executive head of the agency, department,  
23 board or commission shall be directly responsible for the supervision  
24 of the officer.

25 (2) The Commission on Human Rights and Opportunities shall  
26 provide training and technical assistance to affirmative action officers  
27 in plan development and implementation.

28 (3) The Commission on Human Rights and Opportunities and the  
29 Permanent Commission on the Status of Women shall provide training  
30 concerning state and federal discrimination laws and techniques for  
31 conducting investigations of discrimination complaints to persons  
32 designated by state agencies, departments, boards or commissions as  
33 affirmative action officers and persons designated by the Attorney  
34 General or the Attorney General's designee to represent such agencies,  
35 departments, boards or commissions pursuant to subdivision (5) of  
36 this subsection. Such training shall be provided for a minimum of ten  
37 hours during the first year of service or designation, and a minimum of  
38 five hours per year thereafter.

39 (4) (A) Each person designated by a state agency, department, board  
40 or commission as an affirmative action officer shall (i) be responsible  
41 for mitigating any discriminatory conduct within the agency,  
42 department, board or commission, (ii) investigate all complaints of  
43 discrimination made against the state agency, department, board or  
44 commission, and (iii) report all findings and recommendations upon  
45 the conclusion of an investigation to the commissioner or director of

46 the state agency, department, board or commission for proper action.

47 (B) Notwithstanding the provisions of subparagraphs (A)(i), (A)(ii)  
48 and (A)(iii) of this subdivision, if a discrimination complaint is made  
49 against the executive head of a state agency or department, any  
50 member of a state board or commission or any affirmative action  
51 officer alleging that the executive head, member or officer directly or  
52 personally engaged in discriminatory conduct, or if a complaint of  
53 discrimination is made by the executive head of a state agency, any  
54 member of a state board or commission or any affirmative action  
55 officer, the complaint shall be referred to the Commission on Human  
56 Rights and Opportunities for review and, if appropriate, investigation  
57 by the Department of Administrative Services. If the discrimination  
58 complaint is made by or against the executive head, any member or  
59 the affirmative action officer of the Commission on Human Rights and  
60 Opportunities alleging that the executive head, member or officer  
61 directly or personally engaged in discriminatory conduct, the  
62 commission shall refer the complaint to the Department of  
63 Administrative Services for review and, if appropriate, investigation. If  
64 the complaint is by or against the executive head or affirmative action  
65 officer of the Department of Administrative Services, the complaint  
66 shall be referred to the Commission on Human Rights and  
67 Opportunities for review and, if appropriate, investigation. Each  
68 person who conducts an investigation pursuant to this subparagraph  
69 shall report all findings and recommendations upon the conclusion of  
70 such investigation to the appointing authority of the individual who  
71 was the subject of the complaint for proper action. The provisions of  
72 this subparagraph shall apply to any such complaint pending on or  
73 after July 5, 2007.

74 (5) Each person designated by a state agency, department, board or  
75 commission as an affirmative action officer, and each person  
76 designated by the Attorney General or the Attorney General's designee  
77 to represent an agency pursuant to subdivision (6) of this subsection,  
78 shall complete training provided by the Commission on Human Rights  
79 and Opportunities and the Permanent Commission on the Status of

80 Women pursuant to subdivision (3) of this subsection.

81 (6) No person designated by a state agency, department, board or  
82 commission as an affirmative action officer shall represent such  
83 agency, department, board or commission before the Commission on  
84 Human Rights and Opportunities or the Equal Employment  
85 Opportunity Commission concerning a discrimination complaint. If a  
86 discrimination complaint is filed with the Commission on Human  
87 Rights and Opportunities or the Equal Employment Opportunity  
88 Commission against a state agency, department, board or commission,  
89 the Attorney General, or the Attorney General's designee, other than  
90 the affirmative action officer for such agency, department board or  
91 commission, shall represent the state agency, department, board or  
92 commission before the Commission on Human Rights and  
93 Opportunities or the Equal Employment Opportunity Commission. In  
94 the case of a discrimination complaint filed against the Metropolitan  
95 District of Hartford County, the Attorney General, or the Attorney  
96 General's designee, shall not represent such district before the  
97 Commission on Human Rights and Opportunities or the Equal  
98 Employment Opportunity Commission.

99 (c) Each state agency, department, board and commission shall file  
100 an affirmative action plan developed in accordance with subsection (a)  
101 of this section, with the Commission on Human Rights and  
102 Opportunities, semiannually, except that any state agency,  
103 department, board or commission which has an affirmative action plan  
104 approved by the commission may be permitted to file its plan on an  
105 annual basis in a manner prescribed by the commission and any state  
106 agency, department, board or commission that employs twenty or  
107 fewer full-time employees shall file its affirmative action plan  
108 biennially.

109 (d) The Commission on Human Rights and Opportunities shall  
110 review and formally approve, conditionally approve or disapprove the  
111 content of such affirmative action plans within ninety days of the  
112 submission of each plan to the commission. If the commissioners, by a

113 majority vote of those present and voting, fail to approve,  
 114 conditionally approve or disapprove a plan within that period, the  
 115 plan shall be deemed to be approved.

116 (e) The Commissioner of Administrative Services and the Secretary  
 117 of the Office of Policy and Management shall cooperate with the  
 118 Commission on Human Rights and Opportunities to insure that the  
 119 State Personnel Act and personnel regulations are administered, and  
 120 that the process of collective bargaining is conducted by all parties in a  
 121 manner consistent with the affirmative action responsibilities of the  
 122 state.

123 (f) The Commission on Human Rights and Opportunities shall  
 124 monitor the activity of such plans within each state agency,  
 125 department, board and commission and report to the Governor and  
 126 the General Assembly on or before April first of each year concerning  
 127 the results of such plans.

128 (g) The Commission on Human Rights and Opportunities shall  
 129 adopt regulations, in accordance with chapter 54, to carry out the  
 130 requirements of this section. Such regulations shall include a schedule  
 131 for semiannual, annual and biennial filing of plans.

132 Sec. 2. (NEW) (*Effective January 1, 2010*) On or after July 1, 2010, the  
 133 State Contracting Standards Board shall adopt regulations, in  
 134 accordance with the provisions of chapter 54 of the general statutes, to  
 135 apply the contracting procedures, as described in sections 4e-18 to 4e-  
 136 45, inclusive, of the general statutes, to the Metropolitan District of  
 137 Hartford County. Such regulations shall take into consideration  
 138 circumstances and factors that are unique to said metropolitan district.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	46a-68
Sec. 2	<i>January 1, 2010</i>	New section

*PD 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 House thereof for any purpose:

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Dept. of Administrative Services	GF - Cost	Potential	Potential
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Cost	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

The bill requires the Metropolitan District Commission (MDC), a nonprofit municipal corporation, to comply with the affirmative action laws that apply to state agencies and state policies on procuring goods and services.

Under current law, the Department of Administrative Services (DAS) is responsible for investigating discrimination complaints brought against agency heads, members of boards and commissions, and affirmative action officers. Under the bill, certain MDC discrimination and harassment complaints would be sent to DAS for investigation. DAS would be responsible to investigate the MDC complaint and prepare a report of all findings and recommendations.

Based on the size of MDC<sup>2</sup> and the number of complaints it receives,

<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

<sup>2</sup> MDC has a 29 member commission and approximately 700 employees.

DAS may require one new Equal Employment Opportunity Specialist II position (with an annualized salary of \$74,000, plus fringe benefits) to handle this new responsibility.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sSB 922*****AN ACT CONCERNING AFFIRMATIVE ACTION AND CONTRACTING PROCEDURES FOR THE METROPOLITAN DISTRICT OF HARTFORD COUNTY.*****SUMMARY:**

The Metropolitan District Commission (MDC) is a nonprofit municipal corporation providing water and sewer service in the Hartford area. It operates primarily under a 1929 special act and answers to a 29-member commission consisting mostly of municipal representatives. Consequently, it has its own policies and procedures for hiring and promoting people and procuring goods and services.

This bill requires MDC to comply with state policies governing these activities. It does this by requiring MDC to comply with the same affirmative action laws that apply to state agencies. It also requires the State Contracting Standards Board (SCSB) to adopt regulations MDC must follow to procure goods and services. In doing so, it must consider the circumstances and factors that set MDC apart from state agencies.

EFFECTIVE DATE: October 1, 2009, except for the authorization for the SCSB to adopt regulations governing MDC procurement takes effect January 1, 2010.

**AFFIRMATIVE ACTION**

The law requires state agencies, departments, boards, and commissions (i.e., agencies) to develop and implement annual affirmative action plans covering all aspects of personnel and administration. The bill requires MDC to comply with this law.

Consequently, MDC must prepare an annual affirmative action plan

in cooperation with the Commission on Human Rights and Opportunities (CHRO) and according to its regulations. CHRO has up to 90 days to approve or disapprove the plan. If it disapproves the plan, MDC must submit another plan within six months and continue doing so until CHRO approves it. CHRO must monitor MDC's compliance with the plan and report its finding to the governor and the legislature by April 1 annually.

MDC must also comply with various administrative and procedural requirements. It must designate a full- or part-time affirmative officer responsible for mitigating discriminative behavior, investigating complaints about such behavior, and reporting to the agency head any findings and recommendations after completing the investigation. The officer must complete training provided by CHRO or the Permanent Commission on the Status of Women.

The MDC must also comply with the law's procedures for addressing discrimination complaints made by or against the agency head, a board or commission member, or the affirmative action officer. In these cases, the officer must refer the complaint to CHRO for review. If appropriate, CHRO must refer the complaint to the Department of Administrative Services.

Current law bans an affirmative action officer from representing his or her agency before CHRO or the federal Equal Employment Opportunity Commission regarding a discrimination complaint. Under these circumstances, the attorney general or his designee must represent the organization, but the bill bans him or his designee from doing so with respect to complaints filed against the MDC. Given this prohibition, it appears that CHRO's affirmative action officer can represent the agency before CHRO or the Equal Employment Opportunity Commission.

## **PROCUREMENT**

The bill requires SCSB to adopt regulations governing the way MDC procures goods and services. In doing so, SCSB generally must

apply the laws governing the way state agencies procure goods and services, but consider the circumstances and factors unique to MDC. Those laws:

1. require the administrative services commissioner to establish a system for requisitioning supplies, materials, equipment, and contractual services;
2. specify the methods for awarding contracts under a competitive bidding process;
3. require contracts to include provisions allowing agencies to inspect contractors' and subcontractors' work sites and audit their books and records;
4. require contracting agencies and bidders to notify the attorney general when they suspect bidders are colluding or engaging in other anticompetitive practices;
5. allow contracting agencies to request information needed to determine if bid amounts or costs are reasonable;
6. set conditions under which the SCSB can disqualify contractors, bidders, or businesses responding to a request for proposals (i.e., proposer) from bidding on, applying for, or participating as a contractor or subcontractor under state contracts;
7. set conditions under which state agencies can suspend contractors, bidders, and proposers for up to six months from bidding on, applying for, or performing work as a contractor or subcontractor under a state contract;
8. provide procedures for appealing agency suspensions and contesting contracting processes or selections;
9. require SCSB to cancel or revise bid solicitation or proposed awards violating state law; and
10. require SCSB to adopt regulations establishing procurement

policies and procedures and specify the criteria they must meet.

## **BACKGROUND**

### **MDC**

MDC's special act charter allows the commission to:

1. create, maintain, improve, and operate a water system;
2. impound water in and outside of the district's territorial limits;
3. transport water and sell it at retail;
4. build, maintain, and improve sewers and sanitary systems and sewage disposal plants;
5. build, maintain, and improve public highways;
6. collect and dispose of garbage and refuse;
7. build, maintain, improve, and operate hydroelectric dams in and outside the district;
8. transmit and distribute the power produced by these dams to electric utilities or municipalities;
9. establish and maintain active recreational and educational facilities, including a golf course managed on a for-profit basis (although these powers apply only to non-reservoir lands in Glastonbury and Manchester);
10. take property by eminent domain;
11. enter into interlocal agreements with municipalities; and
12. exercise a variety of financial powers, including assessing and collecting taxes, borrowing money and pledging the district's credit, issuing bonds, and assessing benefits and damages in the layout of any public improvement.

### **Affirmative Action**

The law requires state agencies to prepare plans showing how they will overcome past practices, policies, and barriers that continue to deny equal opportunity (i.e., affirmative action plans). The plans must also show how the agencies will provide for the full and fair employment for women, Blacks, Hispanics, and other protected groups found to be underused in the workforce or affected by policies and practices that have an adverse impact (Conn. Agency Reg. § 46a-68-31).

The plans must contain detailed procedures showing how the agencies will combat discrimination and produce the desired results. They must prepare and approve the procedures according to state law. An affirmative actions plan must contain:

1. a policy statement;
2. identified problem areas;
3. goal, organization, workforce, availability, employment, and utilization analyses;
4. goals and timetables for programs, upward mobility, and hiring and promotion;
5. those responsible for completing specific tasks;
6. procedures for internal and external communication;
7. a grievance procedure;
8. an internal program evaluation;
9. innovative programs; and
10. a concluding statement and signature (Conn. Agency Reg. § 46a-68-32).

**SCSB**

PA 07-1, September Special Session established the SCSB as an

independent executive branch agency authorized to adopt procurement regulations and review, monitor, and audit state procurement processes. The governor and legislative leaders appoint its 14 members.

The board can exercise any procurement related right, power, duty, and authority vested in or exercised by any state contracting agency. It must oversee procurement practices and train and oversee agencies' procurement and contracting officers. It must audit contracting agencies at least once every three years and may review, terminate, or recommend terminating a contract or procurement agreement for cause.

**COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/20/2009)