



# House of Representatives

General Assembly

**File No. 485**

February Session, 2010

Substitute House Bill No. 5323

*House of Representatives, April 13, 2010*

The Committee on Government Administration and Elections reported through REP. SPALLONE of the 36th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT REQUIRING STATE AGENCY AND CONTRACTOR AFFIRMATIVE ACTION PLANS TO BE SUBMITTED TO THE DEPARTMENT OF ADMINISTRATIVE SERVICES.***

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

1 Section 1. Subsection (a) of section 4a-2 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2010*):

4 (a) The Commissioner of Administrative Services shall have the  
5 following general duties and responsibilities:

6 (1) The establishment of personnel policy and responsibility for the  
7 personnel administration of state employees;

8 (2) The purchase and provision of supplies, materials, equipment  
9 and contractual services, as defined in section 4a-50;

10 (3) The publishing, printing or purchasing of laws, stationery, forms

11 and reports; [and]

12 (4) The collection of sums due the state for public assistance; and

13 (5) The monitoring of affirmative action plans submitted by (A)  
14 state agencies, departments, boards or commissions in accordance with  
15 the provisions of section 46a-68, as amended by this act, (B) contractors  
16 in accordance with the provisions of section 46a-68c, as amended by  
17 this act, or (C) bidders in accordance with the provisions of section  
18 46a-68d, as amended by this act.

19 Sec. 2. Section 46a-54 of the general statutes is repealed and the  
20 following is substituted in lieu thereof (*Effective October 1, 2010*):

21 The commission shall have the following powers and duties:

22 (1) To establish and maintain such offices as the commission may  
23 deem necessary;

24 (2) To organize the commission into a division of [affirmative action  
25 monitoring and] contract compliance, a division of discriminatory  
26 practice complaints and such other divisions, bureaus or units as may  
27 be necessary for the efficient conduct of business of the commission;

28 (3) To employ legal staff and commission legal counsel as necessary  
29 to perform the duties and responsibilities under section 46a-55. One  
30 commission legal counsel shall serve as supervising attorney. Each  
31 commission legal counsel shall be admitted to practice law in this state;

32 (4) To appoint such investigators and other employees and agents as  
33 it deems necessary, fix their compensation within the limitations  
34 provided by law and prescribe their duties;

35 (5) To adopt, publish, amend and rescind regulations consistent  
36 with and to effectuate the provisions of this chapter;

37 (6) To establish rules of practice to govern, expedite and effectuate  
38 the procedures set forth in this chapter;

39 (7) To recommend policies and make recommendations to agencies  
40 and officers of the state and local subdivisions of government to  
41 effectuate the policies of this chapter;

42 (8) To receive, initiate as provided in section 46a-82, investigate and  
43 mediate discriminatory practice complaints;

44 (9) By itself or with or by hearing officers or human rights referees,  
45 to hold hearings, subpoena witnesses and compel their attendance,  
46 administer oaths, take the testimony of any person under oath and  
47 require the production for examination of any books and papers  
48 relating to any matter under investigation or in question;

49 (10) To make rules as to the procedure for the issuance of subpoenas  
50 by individual commissioners, hearing officers and human rights  
51 referees;

52 (11) To require written answers to interrogatories under oath  
53 relating to any complaint under investigation pursuant to this chapter  
54 alleging any discriminatory practice as defined in subdivision (8) of  
55 section 46a-51, and to adopt regulations, in accordance with the  
56 provisions of chapter 54, for the procedure for the issuance of  
57 interrogatories and compliance with interrogatory requests;

58 (12) To utilize such voluntary and uncompensated services of  
59 private individuals, agencies and organizations as may from time to  
60 time be offered and needed and with the cooperation of such agencies,  
61 (A) to study the problems of discrimination in all or specific fields of  
62 human relationships, and (B) to foster through education and  
63 community effort or otherwise good will among the groups and  
64 elements of the population of the state;

65 (13) To require the posting by an employer, employment agency or  
66 labor organization of such notices regarding statutory provisions as  
67 the commission shall provide;

68 (14) To require the posting, by any respondent or other person  
69 subject to the requirements of section 46a-64, 46a-64c, 46a-81d or 46a-

70 81e, of such notices of statutory provisions as it deems desirable;

71 (15) (A) To require an employer having three or more employees to  
72 post in a prominent and accessible location information concerning the  
73 illegality of sexual harassment and remedies available to victims of  
74 sexual harassment; and (B) to require an employer having fifty or more  
75 employees to provide two hours of training and education to all  
76 supervisory employees within one year of October 1, 1992, and to all  
77 new supervisory employees within six months of their assumption of a  
78 supervisory position, provided any employer who has provided such  
79 training and education to any such employees after October 1, 1991,  
80 shall not be required to provide such training and education a second  
81 time. Such training and education shall include information  
82 concerning the federal and state statutory provisions concerning  
83 sexual harassment and remedies available to victims of sexual  
84 harassment. As used in this subdivision, "sexual harassment" [shall  
85 have] has the same meaning as set forth in subdivision (8) of  
86 subsection (a) of section 46a-60, and "employer" [shall include]  
87 includes the General Assembly;

88 (16) To require each state agency that employs one or more  
89 employees to (A) provide a minimum of three hours of diversity  
90 training and education (i) to all supervisory and nonsupervisory  
91 employees, not later than July 1, 2002, with priority for such training to  
92 supervisory employees, and (ii) to all newly hired supervisory and  
93 nonsupervisory employees, not later than six months after their  
94 assumption of a position with a state agency, with priority for such  
95 training to supervisory employees. Such training and education shall  
96 include information concerning the federal and state statutory  
97 provisions concerning discrimination and hate crimes directed at  
98 protected classes and remedies available to victims of discrimination  
99 and hate crimes, standards for working with and serving persons from  
100 diverse populations and strategies for addressing differences that may  
101 arise from diverse work environments; and (B) submit an annual  
102 report to the Commission on Human Rights and Opportunities  
103 concerning the status of the diversity training and education required

104 under subparagraph (A) of this subdivision. The information in such  
105 annual reports shall be reviewed by the commission for the purpose of  
106 submitting an annual summary report to the General Assembly.  
107 Notwithstanding the provisions of this section, if a state agency has  
108 provided such diversity training and education to any of its employees  
109 prior to October 1, 1999, such state agency shall not be required to  
110 provide such training and education a second time to such employees.  
111 The requirements of this subdivision shall be accomplished within  
112 available appropriations. As used in this subdivision, "employee" shall  
113 include any part-time employee who works more than twenty hours  
114 per week;

115 (17) To [require each agency to submit information demonstrating  
116 its compliance with subdivision (16) of this section as part of its  
117 affirmative action plan and to] receive and investigate complaints  
118 concerning the failure of a state agency to comply with the  
119 requirements of subdivision (16) of this section; and

120 (18) To enter into contracts for and accept grants of private or  
121 federal funds and to accept gifts, donations or bequests, including  
122 donations of service by attorneys.

123 Sec. 3. Section 46a-56 of the general statutes is repealed and the  
124 following is substituted in lieu thereof (*Effective October 1, 2010*):

125 (a) The commission shall:

126 (1) Investigate the possibilities of affording equal opportunity of  
127 profitable employment to all persons, with particular reference to job  
128 training and placement;

129 (2) Compile facts concerning discrimination in employment,  
130 violations of civil liberties and other related matters;

131 (3) Investigate and proceed in all cases of discriminatory practices as  
132 provided in this chapter and noncompliance with the provisions of  
133 section 4a-60 or 4a-60a or sections 46a-68c to 46a-68f, inclusive, as  
134 amended by this act;

135 (4) From time to time, but not less than once a year, report to the  
136 Governor as provided in section 4-60, making recommendations for  
137 the removal of such injustices as it may find to exist and such other  
138 recommendations as it deems advisable and describing the  
139 investigations, proceedings and hearings it has conducted and their  
140 outcome, the decisions it has rendered and the other work it has  
141 performed; and

142 (5) Monitor state contracts to determine whether they are in  
143 compliance with sections 4a-60 and 4a-60a, and those provisions of the  
144 general statutes which prohibit discrimination. ]; and]

145 [(6) Compile data concerning state contracts with female and  
146 minority business enterprises and submit a report annually to the  
147 General Assembly concerning the employment of such business  
148 enterprises as contractors and subcontractors.]

149 (b) The commission may, when it is deemed in the best interests of  
150 the state, exempt a contractor from the requirements of complying  
151 with any or all of the provisions of section 4a-60, 4a-60a [, 46a-68c, 46a-  
152 68d] or 46a-68e in any specific contract. Exemptions under the  
153 provisions of this section may include, but not be limited to, the  
154 following instances: (1) If the work is to be or has been performed  
155 outside the state and no recruitment of workers within the limits of the  
156 state is involved; (2) those involving less than specified amounts of  
157 money or specified numbers of workers; (3) to the extent that they  
158 involve subcontracts below a specified tier. The commission may also  
159 exempt facilities of a contractor which are in all respects separate and  
160 distinct from activities of the contractor related to the performance of  
161 the contract, provided such an exemption shall not interfere with or  
162 impede the effectuation of the purposes of this section and sections 4a-  
163 60, 4a-60a, 4a-60g, as amended by this act, 4a-62 and 46a-68b to 46a-  
164 68k, inclusive.

165 (c) If the commission determines through its monitoring and  
166 compliance procedures that a contractor or subcontractor is not  
167 complying with antidiscrimination statutes or contract provisions

168 required under section 4a-60 or 4a-60a or the provisions of sections  
169 46a-68c to 46a-68f, inclusive, as amended by this act, or the  
170 Department of Administrative Services reports to the commission that  
171 a contractor or subcontractor is not complying with the provisions of  
172 section 46a-68c, as amended by this act, or 46a-68d, as amended by this  
173 act, the commission may issue a complaint pursuant to subsection (c)  
174 of section 46a-82. Such complaint shall be scheduled for a hearing  
175 before a hearing officer or human rights referee appointed to act as a  
176 presiding officer. Such hearing shall be held in accordance with  
177 chapter 54 and section 46a-84. If, after such hearing, the presiding  
178 officer makes a finding of noncompliance with antidiscrimination  
179 statutes or contract provisions required under section 4a-60 or 4a-60a  
180 or the provisions of sections 46a-68c to 46a-68f, inclusive, as amended  
181 by this act, the presiding officer may: (1) Order the state to retain two  
182 per cent of the total contract price per month on any existing contract  
183 with such contractor; (2) prohibit the contractor from participation in  
184 any further contracts with state agencies until: (A) The expiration of a  
185 period of two years from the date of the finding of noncompliance, or  
186 (B) the presiding officer determines that the contractor has adopted  
187 policies consistent with such statutes, provided the presiding officer  
188 shall make such determination within forty-five days of such finding  
189 of noncompliance; (3) publish, or cause to be published, the names of  
190 contractors or unions that the presiding officer has found to be in  
191 noncompliance with such provisions; (4) notify the Attorney General  
192 that, in cases in which there is substantial or material violation or the  
193 threat of substantial or material violation of the contractual provisions  
194 set forth in section 4a-60 or 4a-60a, appropriate proceedings should be  
195 brought to enforce such provisions, including the enjoining, within the  
196 limitations of applicable law, of organizations, individuals or groups  
197 who prevent directly or indirectly, or seek to prevent directly or  
198 indirectly, compliance with the provisions of section 4a-60 or 4a-60a;  
199 (5) recommend to the Equal Employment Opportunity Commission or  
200 the Department of Justice that appropriate proceedings be instituted  
201 under Title VII of the Civil Rights Act of 1964, when necessary; (6)  
202 recommend to the appropriate prosecuting authority that criminal

203 proceedings be brought for the furnishing of false information to any  
204 contracting agency or to the commission as the case may be; (7) order  
205 the contractor to bring itself into compliance with antidiscrimination  
206 statutes or contract provisions required under section 4a-60 or 4a-60a  
207 or sections 46a-68c to 46a-68f, inclusive, as amended by this act, within  
208 a period of thirty days or, for good cause shown, within an additional  
209 period of thirty days, and, if such contractor fails to bring itself into  
210 such compliance within such time period and such noncompliance is  
211 substantial or material or there is a pattern of noncompliance,  
212 recommend to the contracting agency that such agency declare the  
213 contractor to be in breach of the contract and that such agency pursue  
214 all available remedies; or (8) order the contracting agency to refrain  
215 from entering into further contracts, or extensions or other  
216 modifications of existing contracts, with any noncomplying contractor,  
217 until such contractor has satisfied the commission that such contractor  
218 has established and will carry out personnel and employment policies  
219 in compliance with antidiscrimination statutes and the provisions of  
220 section 4a-60 or 4a-60a and sections 46a-68c to 46a-68f, inclusive, as  
221 amended by this act. The commission shall adopt regulations, in  
222 accordance with chapter 54, to implement the provisions of this  
223 section.

224 (d) If the commission determines, through its monitoring and  
225 compliance procedures and after a complaint is filed and a hearing is  
226 held pursuant to subsection (c) of this section, that, with respect to a  
227 state contract, a contractor, subcontractor or supplier of materials has  
228 (1) fraudulently qualified as a minority business enterprise, or (2)  
229 performed services or supplied materials on behalf of another  
230 contractor, subcontractor or supplier of materials knowing (A) that  
231 such other contractor, subcontractor or supplier has fraudulently  
232 qualified as a minority business enterprise in order to comply with  
233 antidiscrimination statutes or contract provisions required under  
234 section 4a-60 or 4a-60a, and (B) that such services or materials are to be  
235 used in connection with a contract entered into pursuant to subsection  
236 (b) of section 4a-60g, the hearing officer or human rights referee before  
237 whom such hearing was held shall assess a civil penalty of not more

238 than ten thousand dollars upon such contractor, subcontractor or  
239 supplier of materials. The Attorney General, upon complaint of the  
240 commission, shall institute a civil action in the superior court for the  
241 judicial district of Hartford to recover such penalty. Any penalties  
242 recovered pursuant to this subsection shall be deposited in a special  
243 fund and shall be held by the State Treasurer separate and apart from  
244 all other moneys, funds and accounts. The resources in such fund shall,  
245 pursuant to regulations adopted by the commission in accordance with  
246 the provisions of chapter 54, be used to assist minority business  
247 enterprises. As used in this section, "minority business enterprise"  
248 means any contractor, subcontractor or supplier of materials fifty-one  
249 per cent or more of the capital stock, if any, or assets of which is owned  
250 by a person or persons: (i) Who are active in the daily affairs of the  
251 enterprise; (ii) who have the power to direct the management and  
252 policies of the enterprise; and (iii) who are members of a minority, as  
253 defined in subsection (a) of section 32-9n.

254 Sec. 4. Section 46a-68 of the 2010 supplement to the general statutes  
255 is repealed and the following is substituted in lieu thereof (*Effective*  
256 *October 1, 2010*):

257 (a) Each state agency, department, board and commission shall  
258 develop and implement [, in cooperation with the Commission on  
259 Human Rights and Opportunities,] an affirmative action plan that  
260 commits the agency, department, board or commission to a program of  
261 affirmative action in all aspects of personnel and administration. Such  
262 plan shall [be developed pursuant to regulations adopted by the  
263 Commission on Human Rights and Opportunities in accordance with  
264 chapter 54 to ensure that affirmative action is undertaken as required  
265 by state and federal law to provide equal employment opportunities  
266 and to comply with all responsibilities under the provisions of sections  
267 4-61u to 4-61w, inclusive, sections 46a-54 to 46a-64, inclusive, section  
268 46a-64c and sections 46a-70 to 46a-78, inclusive] describe the efforts of  
269 the agency, department, board or commission to provide equal  
270 employment opportunities and to comply with all its responsibilities  
271 under state and federal nondiscrimination laws, and shall include the

272 race, gender, occupational category and age data for all full-time  
273 employees of the agency, department, board or commission. The  
274 executive head of each such agency, department, board or commission  
275 shall be directly responsible for the development, filing and  
276 implementation of such affirmative action plan. The Metropolitan  
277 District of Hartford County shall be deemed to be a state agency for  
278 purposes of this section.

279 (b) (1) Each state agency, department, board or commission shall  
280 designate a full-time or part-time affirmative action officer. If such  
281 affirmative action officer is an employee of the agency, department,  
282 board or commission, the executive head of the agency, department,  
283 board or commission shall be directly responsible for the supervision  
284 of the officer.

285 [(2) The Commission on Human Rights and Opportunities shall  
286 provide training and technical assistance to affirmative action officers  
287 in plan development and implementation.]

288 [(3)] (2) The Commission on Human Rights and Opportunities and  
289 the Permanent Commission on the Status of Women shall provide  
290 training concerning state and federal discrimination laws and  
291 techniques for conducting investigations of discrimination complaints  
292 to persons designated by state agencies, departments, boards or  
293 commissions as affirmative action officers and persons designated by  
294 the Attorney General or the Attorney General's designee to represent  
295 such agencies, departments, boards or commissions pursuant to  
296 subdivision [(5)] (4) of this subsection. Such training shall be provided  
297 for a minimum of ten hours during the first year of service or  
298 designation, and a minimum of five hours per year thereafter.

299 [(4)] (3) (A) Each person designated by a state agency, department,  
300 board or commission as an affirmative action officer shall (i) be  
301 responsible for mitigating any discriminatory conduct within the  
302 agency, department, board or commission, (ii) investigate all internal  
303 complaints of discrimination made against the state agency,  
304 department, board or commission, and (iii) report all findings and

305 recommendations upon the conclusion of an investigation to the  
306 commissioner or director of the state agency, department, board or  
307 commission for proper action.

308 (B) Notwithstanding the provisions of subparagraphs (A)(i), (A)(ii)  
309 and (A)(iii) of this subdivision, if [a] an internal discrimination  
310 complaint is made against the executive head of a state agency or  
311 department, any member of a state board or commission or any  
312 affirmative action officer alleging that the executive head, member or  
313 officer directly or personally engaged in discriminatory conduct, or if  
314 [a] an internal complaint of discrimination is made by the executive  
315 head of a state agency, any member of a state board or commission or  
316 any affirmative action officer, the complaint shall be referred to the  
317 Commission on Human Rights and Opportunities for review and, if  
318 appropriate, investigation by the Department of Administrative  
319 Services. If the internal discrimination complaint is made by or against  
320 the executive head, any member or the affirmative action officer of the  
321 Commission on Human Rights and Opportunities alleging that the  
322 executive head, member or officer directly or personally engaged in  
323 discriminatory conduct, the commission shall refer the complaint to  
324 the Department of Administrative Services for review and, if  
325 appropriate, investigation. If the internal complaint is by or against the  
326 executive head or affirmative action officer of the Department of  
327 Administrative Services, the complaint shall be referred to the  
328 Commission on Human Rights and Opportunities for review and, if  
329 appropriate, investigation. Each person who conducts an investigation  
330 pursuant to this subparagraph shall report all findings and  
331 recommendations upon the conclusion of such investigation to the  
332 appointing authority of the individual who was the subject of the  
333 complaint for proper action. The provisions of this subparagraph shall  
334 apply to any such complaint pending on or after July 5, 2007.

335 [(5)] (4) Each person designated by a state agency, department,  
336 board or commission as an affirmative action officer, and each person  
337 designated by the Attorney General or the Attorney General's designee  
338 to represent an agency pursuant to subdivision [(6)] (5) of this

339 subsection, shall complete training provided by the Commission on  
340 Human Rights and Opportunities and the Permanent Commission on  
341 the Status of Women pursuant to subdivision [(3)] (2) of this  
342 subsection.

343 [(6)] (5) No person designated by a state agency, department, board  
344 or commission as an affirmative action officer shall represent such  
345 agency, department, board or commission before the Commission on  
346 Human Rights and Opportunities or the Equal Employment  
347 Opportunity Commission concerning a discrimination complaint. If a  
348 discrimination complaint is filed with the Commission on Human  
349 Rights and Opportunities or the Equal Employment Opportunity  
350 Commission against a state agency, department, board or commission,  
351 the Attorney General, or the Attorney General's designee, other than  
352 the affirmative action officer for such agency, department, board or  
353 commission, shall represent the state agency, department, board or  
354 commission before the Commission on Human Rights and  
355 Opportunities or the Equal Employment Opportunity Commission. In  
356 the case of a discrimination complaint filed against the Metropolitan  
357 District of Hartford County, the Attorney General, or the Attorney  
358 General's designee, shall not represent such district before the  
359 Commission on Human Rights and Opportunities or the Equal  
360 Employment Opportunity Commission.

361 (c) Each state agency, department, board and commission shall file  
362 an affirmative action plan developed in accordance with subsection (a)  
363 of this section, with the [Commission on Human Rights and  
364 Opportunities, semiannually] Department of Administrative Services,  
365 annually, except that any state agency, department, board or  
366 commission [which] that has an affirmative action plan approved by  
367 the [commission may] department shall be permitted to file its plan on  
368 [an annual] a biennial basis. [in a manner prescribed by the  
369 commission and any state agency, department, board or commission  
370 that employs twenty or fewer full-time employees shall file its  
371 affirmative action plan biennially.] All such affirmative action plans  
372 shall be filed electronically with the Department of Administrative

373 Services.

374 (d) The [Commission on Human Rights and Opportunities]  
375 Department of Administrative Services shall review and formally  
376 approve, conditionally approve or disapprove the content of such  
377 affirmative action plans [within] not later than ninety days [of] after  
378 the submission of each plan to the [commission] department. If the  
379 [commissioners, by a majority vote of those present and voting, fail]  
380 department fails to approve, conditionally approve or disapprove a  
381 plan within [that] such period, the plan shall be deemed to be  
382 approved.

383 (e) The Commissioner of Administrative Services and the Secretary  
384 of the Office of Policy and Management shall [cooperate with the  
385 Commission on Human Rights and Opportunities to] insure that the  
386 State Personnel Act and personnel regulations are administered, and  
387 that the process of collective bargaining is conducted by all parties in a  
388 manner consistent with the affirmative action responsibilities of the  
389 state.

390 (f) The [Commission on Human Rights and Opportunities]  
391 Department of Administrative Services shall monitor the activity of  
392 such plans within each state agency, department, board and  
393 commission and report in accordance with the provisions of section 11-  
394 4a to the Governor and the General Assembly on or before April first  
395 of each year concerning the results of such plans.

396 [(g) The Commission on Human Rights and Opportunities shall  
397 adopt regulations, in accordance with chapter 54, to carry out the  
398 requirements of this section. Such regulations shall include a schedule  
399 for semiannual, annual and biennial filing of plans.]

400 Sec. 5. Section 46a-68a of the general statutes is repealed and the  
401 following is substituted in lieu thereof (*Effective October 1, 2010*):

402 (a) The [commission] Department of Administrative Services may  
403 issue a certificate of noncompliance if the affirmative action plan

404 required by section 46a-68, as amended by this act, is disapproved.

405 (b) The issuance of a certificate of noncompliance shall bar the  
406 agency, department, board or commission in noncompliance with  
407 section 46a-68, as amended by this act, from filling a position or  
408 position classification by hire or promotion upon receipt of the  
409 certificate, the provisions of any state law or regulation to the contrary  
410 notwithstanding, until: (1) The [commission] department determines  
411 that the agency has achieved compliance with section 46a-68, as  
412 amended by this act, and withdraws the certificate; or (2) the  
413 commission, at a hearing requested by the agency, department, board  
414 or commission receiving the certificate or by the Department of  
415 Administrative Services and conducted by a presiding officer  
416 appointed by the chairperson of the commission, is unable to show  
417 cause why the certificate of noncompliance should not be rescinded or  
418 a court, upon appeal, so determines; or (3) the [Commissioner of  
419 Administrative Services and the] Secretary of the Office of Policy and  
420 Management [certify] certifies to the [commission] Department of  
421 Administrative Services that the agency in noncompliance with section  
422 46a-68, as amended by this act, requires immediate filling of the  
423 vacancy because failure to fill the position or position classification will  
424 cause an emergency situation to exist jeopardizing the public welfare.  
425 A separate certificate of exemption shall be required for each vacancy  
426 in a position or position classification with respect to which the  
427 [Commissioner of Administrative Services and the] Secretary of the  
428 Office of Policy and Management [certify] certifies that an emergency  
429 situation exists.

430 (c) Hearings under this section shall be conducted in accordance  
431 with sections 4-176e to 4-182, inclusive.

432 (d) The commission, in consultation with the Department of  
433 Administrative Services, shall adopt regulations in accordance with  
434 chapter 54 to implement this section.

435 Sec. 6. Section 46a-68c of the general statutes is repealed and the  
436 following is substituted in lieu thereof (*Effective October 1, 2010*):

437 In addition to the provisions of section 4a-60, each contractor with  
438 fifty or more employees awarded a public works contract in excess of  
439 fifty thousand dollars in any fiscal year, but not subject to the  
440 provisions of section 46a-68d, as amended by this act, shall develop  
441 and electronically file with the [commission] Department of  
442 Administrative Services an affirmative action plan which shall comply  
443 with [regulations adopted by said commission] any guidelines for such  
444 plan issued by the department. Failure to develop an approved  
445 affirmative action plan pursuant to this section shall act as a bar to  
446 bidding on or the award of future contracts until such requirement has  
447 been met. When the [commission] department approves an affirmative  
448 action plan pursuant to this section, it shall issue a certificate of  
449 compliance to the contractor. [This] Such certificate shall be prima facie  
450 proof of the contractor's eligibility to bid or be awarded contracts for a  
451 period of two years from the date of the certificate. Such certificate  
452 shall not excuse the contractor from monitoring by the department or  
453 commission or from the reporting and record-keeping requirements of  
454 sections 46a-68e and 46a-68f. The [commission] department may  
455 revoke the certificate of a contractor if the contractor does not  
456 implement its affirmative action plan in compliance with this section  
457 and sections 4a-60, 4a-60g, as amended by this act, 4a-62, 46a-56, as  
458 amended by this act, 46a-68b, 46a-68d, as amended by this act, and  
459 46a-68e to 46a-68k, inclusive.

460 Sec. 7. Section 46a-68d of the general statutes is repealed and the  
461 following is substituted in lieu thereof (*Effective October 1, 2010*):

462 In addition to the provisions of section 4a-60, every public works  
463 contract subject to the provisions of part II of chapter 60 shall also be  
464 subject to the provisions of this section. After a bid has been accepted  
465 but before a contract is awarded, the successful bidder shall  
466 electronically file and have approved by the [commission] Department  
467 of Administrative Services an affirmative action plan. The  
468 [commission] department may provide for conditional acceptance of  
469 an affirmative action plan provided written assurances are given by  
470 the contractor that it will amend its plan to conform to affirmative

471 action requirements. The state shall withhold two per cent of the total  
472 contract price per month from any payment made to such contractor  
473 until such time as the contractor has developed an affirmative action  
474 plan, and received the approval of the [commission] department.  
475 Notwithstanding the provisions of this section, a contractor subject to  
476 the provisions of this section may electronically file a plan in advance  
477 of or at the same time as its bid. The [commission] department shall  
478 review plans submitted pursuant to this section [within] not later than  
479 sixty days [of] after receipt and either approve, approve with  
480 conditions or reject such plan. When the [commission] department  
481 approves an affirmative action plan pursuant to this section, it shall  
482 issue a certificate of compliance to the contractor as provided in section  
483 46a-68c, as amended by this act.

484 Sec. 8. Section 46a-68g of the general statutes is repealed and the  
485 following is substituted in lieu thereof (*Effective October 1, 2010*):

486 Contracting agencies shall not enter into contracts with any bidder  
487 or prospective contractor unless the bidder or prospective contractor  
488 has satisfactorily complied with the provisions of sections 4a-60, 4a-  
489 60g, 46a-56, as amended by this act, and 46a-68c to 46a-68f, inclusive,  
490 as amended by this act. [, or submits a program for compliance  
491 acceptable to the commission.]

492 Sec. 9. Section 46a-68j of the general statutes is repealed and the  
493 following is substituted in lieu thereof (*Effective October 1, 2010*):

494 The commission shall adopt regulations in accordance with the  
495 provisions of chapter 54 for the purposes of sections 4a-60, 46a-56, as  
496 amended by this act, and [46a-68b] 46a-68e to 46a-68i, inclusive.

497 Sec. 10. Subsections (g) to (m), inclusive, of section 4a-60g of the  
498 2010 supplement to the general statutes are repealed and the following  
499 is substituted in lieu thereof (*Effective October 1, 2010*):

500 (g) The awarding authority or the Commissioner of Administrative  
501 Services [or the Commission on Human Rights and Opportunities]

502 may conduct an audit of the financial, corporate and business records  
503 and conduct an investigation of any small contractor or minority  
504 business enterprise [which] that applies for or is awarded a set-aside  
505 contract for the purpose of determining eligibility for awards or  
506 compliance with the requirements established under this section.

507 (h) The provisions of this section shall not apply to any state agency  
508 or political subdivision of the state other than a municipality for which  
509 the total value of all contracts or portions of contracts of the types  
510 enumerated in subsection (b) of this section is anticipated to be equal  
511 to ten thousand dollars or less.

512 (i) In lieu of a performance, bid, labor and materials or other  
513 required bond, a contractor or subcontractor awarded a contract under  
514 this section may provide to the awarding authority, and the awarding  
515 authority shall accept a letter of credit. Any such letter of credit shall  
516 be in an amount equal to ten per cent of the contract for any contract  
517 that is less than one hundred thousand dollars and in an amount equal  
518 to twenty-five per cent of the contract for any contract that exceeds one  
519 hundred thousand dollars.

520 (j) (1) Whenever the awarding authority has reason to believe that  
521 any contractor or subcontractor awarded a set-aside contract has  
522 wilfully violated any provision of this section, the awarding authority  
523 shall send a notice to such contractor or subcontractor by certified  
524 mail, return receipt requested. Such notice shall include: (A) A  
525 reference to the provision alleged to be violated; (B) a short and plain  
526 statement of the matter asserted; (C) the maximum civil penalty that  
527 may be imposed for such violation; and (D) the time and place for the  
528 hearing. Such hearing shall be fixed for a date not earlier than fourteen  
529 days after the notice is mailed. [The awarding authority shall send a  
530 copy of such notice to the Commission on Human Rights and  
531 Opportunities.]

532 (2) The awarding authority shall hold a hearing on the violation  
533 asserted unless such contractor or subcontractor fails to appear. The  
534 hearing shall be held in accordance with the provisions of chapter 54.

535 If, after the hearing, the awarding authority finds that the contractor or  
536 subcontractor has wilfully violated any provision of this section, the  
537 awarding authority shall suspend all set-aside contract payments to  
538 the contractor or subcontractor and may, in its discretion, order that a  
539 civil penalty not exceeding ten thousand dollars per violation be  
540 imposed on the contractor or subcontractor. If such contractor or  
541 subcontractor fails to appear for the hearing, the awarding authority  
542 may, as the facts require, order that a civil penalty not exceeding ten  
543 thousand dollars per violation be imposed on the contractor or  
544 subcontractor. The awarding authority shall send a copy of any order  
545 issued pursuant to this subsection by certified mail, return receipt  
546 requested, to the contractor or subcontractor named in such order. The  
547 awarding authority may cause proceedings to be instituted by the  
548 Attorney General for the enforcement of any order imposing a civil  
549 penalty issued under this subsection.

550 (k) On or before January 1, 2000, the Commissioner of  
551 Administrative Services shall establish a process for certification of  
552 small contractors and minority business enterprises as eligible for  
553 set-aside contracts. Each certification shall be valid for a period not to  
554 exceed two years. Any paper application for certification shall be no  
555 longer than six pages. The Department of Administrative Services shall  
556 maintain on its web site an updated directory of small contractors and  
557 minority business enterprises certified under this section.

558 (l) On or before August 30, 2007, and annually thereafter, each state  
559 agency and each political subdivision of the state other than a  
560 municipality setting aside contracts or portions of contracts shall  
561 prepare a report establishing small and minority business set-aside  
562 program goals for the twelve-month period beginning July first in the  
563 same year. Each such report shall be submitted to the Commissioner of  
564 Administrative Services [, the Commission on Human Rights and  
565 Opportunities] and the cochairpersons and ranking members of the  
566 joint standing committees of the General Assembly having cognizance  
567 of matters relating to planning and development and government  
568 administration and elections in accordance with the provisions of

569 section 11-4a.

570 (m) On or before November 1, 1995, and quarterly thereafter, each  
571 state agency and each political subdivision of the state other than a  
572 municipality setting aside contracts or portions of contracts shall  
573 prepare a status report on the implementation and results of its small  
574 business and minority business enterprise set-aside program goals  
575 during the three-month period ending one month before the due date  
576 for the report. Each report shall be submitted to the Commissioner of  
577 Administrative Services, [and the Commission on Human Rights and  
578 Opportunities.] Any state agency or political subdivision of the state,  
579 other than a municipality, that achieves less than fifty per cent of its  
580 small contractor and minority business enterprise set-aside program  
581 goals by the end of the second reporting period in any twelve-month  
582 period beginning on July first shall provide a written explanation to  
583 the Commissioner of Administrative Services [and the Commission on  
584 Human Rights and Opportunities] detailing how the agency or  
585 political subdivision will achieve its goals in the final reporting period.  
586 The [Commission on Human Rights and Opportunities] Department of  
587 Administrative Services shall: (1) Monitor the achievement of the  
588 annual goals established by each state agency and political subdivision  
589 of the state other than a municipality; and (2) prepare a quarterly  
590 report concerning such goal achievement. The report shall be  
591 [submitted to each state agency that submitted a report, the  
592 Commissioner of Economic and Community Development, the  
593 Commissioner of Administrative Services and the cochairpersons and  
594 ranking members of the joint standing committees of the General  
595 Assembly having cognizance of matters relating to planning and  
596 development and government administration and elections] posted on  
597 the Internet web site of the Department of Administrative Services.  
598 Failure by any state agency or political subdivision of the state other  
599 than a municipality to submit any reports required by this section shall  
600 be a violation of section 46a-77.

601 Sec. 11. (NEW) (*Effective October 1, 2010*) Any state agency,  
602 department, board or commission that is required to prepare an

603 affirmative action plan for a federal agency may submit such plan to  
604 the Department of Administrative Services in lieu of the affirmative  
605 action plan required in section 46a-68 of the general statutes, as  
606 amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	4a-2(a)
Sec. 2	<i>October 1, 2010</i>	46a-54
Sec. 3	<i>October 1, 2010</i>	46a-56
Sec. 4	<i>October 1, 2010</i>	46a-68
Sec. 5	<i>October 1, 2010</i>	46a-68a
Sec. 6	<i>October 1, 2010</i>	46a-68c
Sec. 7	<i>October 1, 2010</i>	46a-68d
Sec. 8	<i>October 1, 2010</i>	46a-68g
Sec. 9	<i>October 1, 2010</i>	46a-68j
Sec. 10	<i>October 1, 2010</i>	4a-60g(g) to (m)
Sec. 11	<i>October 1, 2010</i>	New section

**GAE**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Various State Agencies	App Fund - Savings	Potential	Potential

Note: App Fund=All Appropriated Funds

**Municipal Impact:** None

**Explanation**

The bill streamlines the current process of filing affirmative action plans by 1) requiring electronic submittal, 2) reducing filing frequency, and 3) allowing a federal affirmative action plan to be filed instead of a second separate state plan. It is anticipated that various state agencies may achieve potential savings associated with the elimination of job duplication and administrative overhead.

There are currently 47 affirmative action or equal employment opportunity positions statewide with an average annual salary of \$75,000.<sup>1</sup> Savings would result to the extent that streamlining the affirmative action plan process results in the elimination of these or other associated positions. Job security provisions through FY 11 apply to all state employee labor units which have agreed to contracts in accordance with the SEBAC 2009 Agreement. This does not preclude the State from restructuring and/or eliminating non-union positions or from eliminating union positions, provided those union positions affected are transferred to another comparable job. These savings would be offset by unemployment compensation benefits costs and accrual payouts.

<sup>1</sup> Of these 47 positions, 2 are currently union and 45 are non-union. These positions do not include administrative staff that may support these functions.

The bill also removes CHRO from a number of aspects of the state's supplier diversity (set-aside) program. The bill transfers the responsibility for reviewing, approving, and monitoring of affirmative action plans from the Commission on Human Rights and Opportunities (CHRO) to the Department of Administrative Services (DAS). The bill is unclear as to whether staff from CHRO would be transferred to DAS and it is not addressed in sHB 5018, the Appropriations Committee FY 11 Revised Budget. It is anticipated, however, that there would be a net transfer of positions from CHRO to DAS as a result of these provisions.

***The Out Years***

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

*Sources: Core-CT Financial Accounting System*

**OLR Bill Analysis****sHB 5323*****AN ACT REQUIRING STATE AGENCY AND CONTRACTOR AFFIRMATIVE ACTION PLANS TO BE SUBMITTED TO THE DEPARTMENT OF ADMINISTRATIVE SERVICES.*****SUMMARY:**

The bill transfers, from the Commission on Human Rights and Opportunities (CHRO) to the Department of Administrative Services (DAS), responsibility for reviewing, approving, and monitoring affirmative action plans submitted by state agencies (departments, boards, commissions, agencies), and contractors and bidders. It specifies that affirmative action plans will not be developed in cooperation with CHRO or be subject to CHRO regulations, and it removes from CHRO the responsibility for providing training and technical assistance to affirmative action officers in developing and implementing a plan.

With respect to filing affirmative action plans, the bill eliminates the requirement to file the plans with CHRO and instead (1) requires plans to be filed electronically with DAS, (2) reduces the frequency with which state agencies must file their plans, and (3) allows these entities to file a federal affirmative action plan with DAS instead of a separate state plan.

The bill also removes CHRO from a number of aspects of the state's supplier diversity (set-aside) program. The bill removes CHRO's ability to audit the financial, corporate, and business records of, and investigate, small contractors or minority business enterprises that apply for or are awarded set-aside contracts. It removes CHRO's responsibility for compiling data for and reporting on state contracts with female and minority business enterprises. The bill also specifies that CHRO will no longer receive (1) copies of notices sent by state

agencies to set-aside contractors that accuse the contractor of certain set-aside violations, (2) agencies' annual reports on set-aside contracts, and (3) written explanations of agencies' failures to achieve set-aside goals. It requires DAS, rather than sending a quarterly report on set-aside goals to various entities, to post the report on the DAS website.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2010

### **AFFIRMATIVE ACTION PLAN DEVELOPMENT**

By law, all state agencies and most state contractors and bidders must develop and implement an affirmative action plan. Under current law, state agencies must develop such plans in cooperation with CHRO and in accordance with its regulations. CHRO must provide training and technical assistance on the plans' development and implementation to affirmative action officers in these entities. The plans must (1) ensure compliance with applicable state and federal laws, (2) provide for equal employment opportunities, and (3) comply with a number of nondiscrimination statutes.

The bill alters the plans' contents. Instead of the above, the plans must describe agencies' efforts to (1) provide equal employment opportunities; (2) comply with state and federal nondiscrimination laws; and (3) include race, gender, occupational category, and age data for all full-time employees.

The bill eliminates the requirements for (1) state agencies to cooperate with CHRO and follow its regulations when developing a plan, (2) CHRO to train agencies' affirmative action officers, and (3) contractors and bidders to follow CHRO regulations in developing plans.

The bill also eliminates a requirement for state agencies to demonstrate in their affirmative action plans their compliance with diversity training and education requirements. However, agencies remain responsible for providing this information in an annual report

to CHRO.

## **PLAN SUBMISSION**

The bill requires state agencies, contractors, and bidders to electronically file their affirmative action plans with DAS and not CHRO. It allows the agencies to file their plans less frequently. They must file annually, rather than semiannually. Once DAS has approved a plan, the agency may file subsequent plans biennially rather than annually.

The bill also allows state agencies that file a federal affirmative action plan to submit that plan to DAS in lieu of developing a separate state plan. Contractors or bidders who file a federal affirmative action plan must continue to file a separate state plan.

The bill does not require the federal plan to have been approved by a federal agency. However, DAS has the authority, under the bill, to disapprove a submitted federal plan that does not comply with state requirements.

## **APPROVAL AND MONITORING**

### ***State Agencies***

The bill transfers, from CHRO to DAS, responsibility for (1) approving and monitoring state agencies' affirmative action plans, (2) issuing certificates of noncompliance to agencies that do not have an approved plan, and (3) submitting an annual report to the governor and General Assembly on the results of the affirmative action plans.

By law, a state agency's affirmative action plan must be approved, conditionally approved, or disapproved within 90 days of its submission. If no action is taken within 90 days, the plan is considered approved. Agencies with disapproved plans may be issued a certificate of noncompliance.

With certain exceptions, agencies that receive a certificate of noncompliance may not fill a position or position classification by hire or promotion. Under current law, these exceptions are (1) CHRO

determines that the agency has achieved compliance, (2) the noncompliant agency requests a hearing during which CHRO is unable to show why the certificate should not be rescinded, or (3) the DAS commissioner and the Office of Policy and Management (OPM) secretary certify to CHRO that the position must be filled immediately because of an emergency situation.

The bill (1) makes DAS, not CHRO, responsible for determining that an agency has achieved compliance; (2) extends to DAS the ability to request a hearing with CHRO; and (3) requires the OPM secretary to certify to the DAS commissioner, not CHRO, that the position must be filled immediately. Since the bill makes DAS responsible for determining compliance, it is unclear why DAS would need to be able to request a hearing. The bill also requires CHRO to develop regulations governing noncompliance in consultation with DAS. It is unclear why CHRO would adopt regulations governing DAS activities.

The bill removes from CHRO any involvement in ensuring that the State Personnel Act and personnel regulations are administered and collective bargaining conducted consistent with affirmative action requirements. Under current law, the DAS commissioner and OPM secretary have this responsibility but must exercise it in cooperation with CHRO.

### ***Contractors and Bidders***

Under current law, each contractor with at least 50 employees awarded a public works contract in excess of \$50,000 in any fiscal year and any successful bidder on a building construction contract estimated to cost more than \$500,000 must file an affirmative action plan unless exempted from doing so by CHRO. Failure to file a required plan bars the contractor from bidding or being awarded future contracts until the requirement is met.

The bill eliminates the exemption and instead requires all of these contractors and bidders to file a plan. Unlike current law, the bill

requires contractors and successful bidders to file their plans electronically.

The bill also transfers, from CHRO to DAS:

1. authority to adopt policy with which the plans must comply;
2. duty to approve acceptable plans and issue certificates of compliance;
3. authority to revoke a certificate for failure to implement a plan;
4. authority to conditionally accept an affirmative action plan if a successful bidder agrees to amend a plan to conform to law; and
5. duty to approve plans, within 60 days of receipt for bidders and within an unspecified period for contractors.

Under current law, CHRO regulations govern decisions about a plan's compliance. Under the bill, DAS may adopt guidelines for this purpose.

The bill preserves CHRO's authority to monitor, investigate, and initiate proceedings against contractors and bidders who do not comply with affirmative action requirements. Under the bill, CHRO retains the authority to order a contracting agency to refrain from doing business with a noncompliant contractor. The bill allows, but does not require, DAS to report to CHRO on contractors or subcontractors not complying with affirmative action requirements.

## **SUPPLIER DIVERSITY PROGRAM**

### ***Monitoring***

Under the state set-aside program, state agencies and political subdivisions, other than municipalities, must set aside 25% of the total value of all contracts they let for construction, goods, and services each year for certified small contractors, and reserve 25% of this amount for certified minority business enterprises.

The bill eliminates CHRO's authority to audit the financial, corporate, and business records of and investigate small contractors or minority business enterprises that apply for or are awarded set-aside contracts. Under the bill, DAS retains the authority to take these actions. The bill also removes a requirement for contracting agencies to notify CHRO whenever they allege that a contractor has violated set-aside requirements.

However, under existing law, unchanged by the bill, CHRO is authorized to monitor compliance with supplier diversity requirements. If CHRO, after a complaint is filed and a hearing is held, finds that a contractor, subcontractor, or supplier has fraudulently qualified as a minority business enterprise, it may issue a fine of up to \$10,000 and may refer the complaint to the attorney general for a civil action.

### ***Reporting***

By law, state agencies and political subdivisions other than municipalities must (1) annually submit a report establishing 12-month set-aside program goals and (2) quarterly submit a report on the implementation and achievement of those goals. Agencies and subdivisions that achieve less than 50% of their set-aside goals by the end of the second reporting period must provide a written explanation as to how they will rectify that. The bill removes the requirement for these reports to be submitted to CHRO. Agencies and political subdivisions must continue to file these reports with the DAS commissioner and, in the case of the annual report, with the chairpersons and ranking members of the Government Administration and Elections (GAE) and Planning and Development committees.

The bill also transfers, from CHRO to DAS, responsibility for monitoring the achievement of set-aside goals and preparing a quarterly report on the achievement of these goals. The bill requires DAS to post the report on its website. Under current law, the report is submitted to all state agencies with set-aside programs, the DAS and Economic and Community Development commissioners, and the

chairpersons and ranking members of the GAE and Planning and Development committees.

The bill also eliminates CHRO's responsibility for (1) compiling data on state contracts with female and minority business enterprises and (2) submitting a report on this information to the General Assembly. It does not transfer this responsibility to DAS.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 15    Nay 0    (03/26/2010)