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## **OLR Bill Analysis**

### **SB 455**

#### ***AN ACT CONCERNING THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES.***

#### **SUMMARY:**

This bill requires municipalities to participate in the state's small and minority business set-aside program. Current law allows municipalities to establish such a program, but exempts municipal contracts from the mandatory state program. The state program requires state agencies to set aside some contracts for bidding exclusively by small and minority-owned businesses. By extending the program to municipalities, the bill requires them, as well as participating contractors, to comply with the state's requirements and procedures for the set-aside program.

The bill extends to municipal contracts requirements for non-discrimination provisions that currently apply to the state. Among other things, these provisions require contractors to agree to (1) not discriminate against various protected classes, (2) take affirmative action to employ qualified applicants, and (3) give the Commission on Human Rights and Opportunities (CHRO) information and access to records concerning the contractor's employment practices.

The bill changes the definition of "public works contracts" to include contracts with municipalities. This extends to municipal public works contractors various requirements. For example, contractors with 50 or more employees, that are awarded contracts over \$50,000 in a fiscal year, must file an affirmative action plan with CHRO. Public works contractors must also agree to make good faith efforts to employ minority-owned businesses as subcontractors and suppliers. The bill makes changes to this good faith requirement (for contractors with the state as well as municipalities) by further specifying actions that do or not provide evidence of good faith.

The bill changes the timeframes for (1) contractors with large public works contracts with the state to submit affirmative action plans and (2) CHRO to approve the plans. It also changes the state's withholding requirement, from 2% monthly to a one-time 5% withholding, for such contracts when the contractor's affirmative action plan has not been approved.

The bill extends to veterans and active members of the armed forces the law's protections regarding employment, housing, and credit discrimination, as well as discrimination by the state in various contexts (e.g., equal employment in state agencies). It also allows CHRO to enforce complaints alleging violations of federal prohibitions on age discrimination.

The bill reduces required training for CHRO commissioners. It allows CHRO to appeal decisions by human rights referees on complaints alleging whistleblower retaliation. It also makes clarifications and other changes regarding the role of CHRO's commissioners and staff.

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2012

### **§§ 10-12 — SET-ASIDE PROGRAM**

The bill requires municipalities to participate in the state's small and minority business set-aside program. The program currently requires state agencies and political subdivisions, other than municipalities, to set aside contracts for bidding exclusively by small and minority-owned businesses. (By law, small businesses for this purpose are businesses with a principal place of business in Connecticut with gross revenues up to \$15 million in the most recent fiscal year before applying.) The contracts may be for constructing roads and buildings or providing goods and services.

By law, those state agencies and political subdivisions that are otherwise required to participate are exempt from the program if the total value of their contracts is less than \$10,000 in any given year. The

bill extends this exemption to municipalities.

Under the bill, municipalities must comply with the state's requirements and procedures for bidding and awarding set-aside contracts. Consequently, businesses must be certified by the Department of Administrative Services (DAS) before they can bid on a municipal set-aside contract.

While existing law does not require municipalities to participate in the state's small and minority business set-aside program, it allows them to establish their own set-aside programs. The bill does not repeal that provision (CGS § 7-148u).

### ***Set-Aside Goals***

Existing law imposes the same set-aside goals on state entities and other political subdivisions required to participate in the set-aside program and municipalities that choose to establish a set-aside program. Both must annually set-aside at least 25% of the contracts for bidding by certified small businesses. They must also set aside 25% of that amount (6.25%) for contracts by certified minority owned businesses. The bill requires municipalities to participate in the set-aside program but does not specify whether the same set-aside goals would be required for municipalities. Presumably, the same requirements would apply.

### ***Administrative Options and Requirements***

By requiring municipalities to participate in the state set-aside program, the bill also extends to them several administrative options and requirements that currently apply only to the state or political subdivisions other than municipalities. These include that they:

1. in lieu of setting aside contracts themselves, may require general contractors to set-aside subcontracts for certified small and minority-owned businesses, in the same percentages as specified above;
2. must notify the DAS commissioner about set-aside contract awards;

3. must require set-aside contractors or subcontractors to do at least 15% of the work with their own forces and at least 25% with certified contractors;
4. may require set-aside contractors or subcontractors to submit specific documents;
5. have the authority to audit businesses that apply for or are awarded set-aside contracts, or the audits can be done by DAS or CHRO, to determine eligibility and compliance with the law's requirements;
6. must accept letters of credit, meeting specified requirements, in lieu of bid, performance, and other bonds;
7. must follow the statutory enforcement procedure when the awarding authority has reason to believe a contractor or subcontractor willfully violated set-aside requirements; and
8. must submit (a) annual reports on their small and minority business set-aside program goals and (b) quarterly status reports on the implementation and results of such goals.

The bill also makes certain conforming changes concerning the set-aside program, including one regarding the DAS commissioner's duty to adopt regulations establishing procedures for awarding contracts under the program.

The law requires the DAS commissioner to conduct regular training sessions, as he deems necessary, to explain the set-aside program to state agencies and to specify the factors that must be addressed in calculating program goals (CGS § 4a-60h). The bill does not extend such training to municipalities.

#### **§§ 7 & 9 — NONDISCRIMINATION REQUIREMENTS FOR CONTRACTORS**

Current law generally requires state contracts and contracts of political subdivisions, other than municipalities, to contain anti-discrimination provisions that protect people based on race, color,

religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability, physical disability, or sexual orientation. The bill extends these requirements to municipal contracts.

Under these provisions, the contractor must agree:

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 (the affirmative action provision does not apply to sexual orientation);
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 from CHRO advising the labor union or workers' representative of the contractor's anti-discrimination and affirmative action commitments, and to post copies of the notice in conspicuous places available to employees and to applicants;
5. to comply with certain anti-discrimination and affirmative action laws and CHRO regulations and orders; and
6. to provide CHRO with whatever information it requests and permit access to pertinent books, records, and accounts concerning its employment practices and procedures relating to anti-discrimination requirements.

In addition, if the contract is a public works contract, the contractor must agree in the contract to make good faith efforts to employ

minority business enterprises as subcontractors and suppliers for the project (see below).

Before entering a contract with the state or other political subdivision, a contractor must provide documentation to support the nondiscrimination agreement and warranty the law requires. The bill extends this requirement to contracts with municipalities. For contractors with such contracts valued at \$50,000 or more for any year of the contract, the law specifies certain options for such documentation.

By law, these requirements do not apply to contracts between governmental or quasi-governmental entities. Specifically, the requirement does not apply to contracts in which each party is:

1. a municipality or other political subdivision of the state;
2. a quasi-public agency;
3. another state;
4. the federal government;
5. a foreign government; or
6. an agency of any of the above.

### **§§ 7 & 13 — PUBLIC WORKS CONTRACTS**

By law, contractors who enter into public works contracts must meet various requirements. Under current law, public works contracts are agreements between contractors and the state or any political subdivision of the state, other than a municipality, for the construction, rehabilitation, conversion, extension, demolition, or repair of a public building, highway, or other changes or improvements in real property, or that are financed by the state, in whole or part.

The bill changes this definition to include such contracts with municipalities. Thus, the bill extends various requirements to contractors who enter into public works contracts with municipalities.

The requirements are summarized below.

***Good Faith Effort to Employ Minority Business Enterprises***

By law, contractors must agree in public works contracts to make good faith efforts to employ minority business enterprises as subcontractors and suppliers. The bill extends these requirements to public works contracts with municipalities.

The law specifies a list of non-exclusive factors to determine whether a contractor has made good faith efforts to comply with this requirement. The bill provides that evidence of good faith efforts includes a contractor's employment and subcontracting practices that demonstrate that it has met or surpassed the set-aside goals of the awarding authority (i.e., the state or municipality). The bill further provides that it does not necessarily demonstrate a lack of good faith efforts if a contractor fails to solicit (1) bids from more than two subcontractors, vendors, or service providers; (2) subcontractors, vendors, or service providers in all project areas; or (3) less than all types of businesses that DAS has certified as eligible for set-aside contracts.

***Affirmative Action Plans***

By law, public works contractors with 50 or more employees that are awarded contracts over \$50,000 in a fiscal year must file an affirmative action plan with CHRO that complies with CHRO regulations. (The requirements differ in some respects for contracts costing more than \$500,000.) The bill extends these requirements to public works contracts with municipalities.

Under these requirements, a contractor that fails to develop an approved affirmative action plan may not bid on or be awarded contracts until the requirement is met. When CHRO approves a plan it must issue a certificate of compliance, which is good for two years and becomes prima facie proof that the contractor can bid on and be awarded contracts. CHRO can revoke a certificate if the contractor does not implement the plan. The certificate does not excuse the contractor from reporting and record-keeping requirements or from

CHRO monitoring.

***Compliance Reports***

The law also requires contractors to file, and require their subcontractors to file, compliance reports with CHRO, as CHRO directs. The bill extends these requirements to contracts with municipalities. The reports must contain information on their practices, policies, programs, and employment statistics. Additional provisions apply to contractors or subcontractors that use union labor, worker referral agencies, or apprenticeship training or supervising agencies.

***Noncompliance and CHRO Enforcement***

The bill extends to municipal contracts the current prohibition on contracting agencies entering into contracts with bidders or prospective contractors that have not complied with the law's requirements regarding affirmative action plans, set-aside programs, and compliance reports.

The enforcement provisions for violations of these requirements are the same as under existing law. These include the right to appeal.

**§ 6 — CONTRACT WITHHOLDING DUE TO NONCOMPLIANCE WITH AFFIRMATIVE ACTION REQUIREMENTS**

With certain exceptions, the law requires public building contracts with the state costing more than \$500,000 to be awarded by competitive bidding to the lowest responsible qualified bidder.

Under current law, after a bid has been accepted but before the contract is awarded, the successful bidder must file an affirmative action plan with CHRO for its approval. The bill instead requires the plan filing and approval after the contract is awarded but before it is completed. By law, CHRO can conditionally accept a plan if the contractor assures, in writing, that it will amend the plan to conform to affirmative action requirements.

Under current law, the state must withhold 2% of the contract price per month from any payment made to the contractor until CHRO

approves the plan. The bill instead requires a one-time 5% withholding until CHRO approves the plan.

### **§ 8 — DISCRIMINATION AGAINST VETERANS AND ACTIVE MEMBERS OF THE ARMED FORCES**

The bill extends to veterans and active members of the armed forces various protections against discrimination that currently apply to other protected groups. The bill applies the same rules, procedures, and remedies that apply to other types of discrimination complaints, including the right to file a lawsuit if the investigation is not completed within a certain time. The protections are explained below.

***Employment Discrimination.*** The bill prohibits an employer or employer's agent, except in the case of a bona fide occupational qualification or need, from refusing to hire or employ someone; barring or discharging someone from employment; or discriminating against someone in pay or in employment terms, conditions, or privileges because the person is in the armed forces or is a veteran. This prohibition applies to any employer (including the state, municipalities, and other political subdivisions) that employs three or more people. It applies to all employees except those employed (1) by their parents, spouse, or children, or (2) in domestic service.

The bill also prohibits the following kinds of discrimination based on the person serving in the armed forces or being a veteran:

1. employment agencies failing or refusing to classify properly or refer for employment or otherwise discriminating against someone except in the case of a bona fide occupational qualification or need;
2. labor organizations excluding someone from full membership rights, expelling a member, or discriminating in any way against a member, employer, or employee, unless the action is due to a bona fide occupational qualification;
3. employers, employment agencies, labor organizations, or anyone else discriminating against someone because he or she

opposed a discriminatory employment practice, brought a complaint, or testified or assisted someone else in a complaint;

4. any person aiding, abetting, inciting, compelling, or coercing someone to commit a discriminatory employment practice or attempting to do so; and
5. employers, employment agencies, labor organizations, or anyone else advertising employment opportunities in a way that restricts employment and thus discriminates, except for a bona fide occupational qualification or need.

***Housing Discrimination.*** The bill prohibits the following kinds of housing discrimination based on someone being a member of the armed forces or a veteran:

1. refusing to sell or rent after a person makes a bona fide offer, or refusing to negotiate for the sale or rental of a dwelling, or otherwise denying or making a dwelling unavailable;
2. discriminating in the terms, conditions, or privileges of a dwelling's sale or rental, or in the provision of services or facilities in connection with the sale or rental;
3. making, printing, publishing, or causing this to be done, any notice, statement, or advertisement concerning the sale or rental of a dwelling that indicates a preference, limitation, or discrimination, or an intention to make such a preference, limitation, or discrimination;
4. falsely representing to someone that a dwelling is not available for inspection, sale, or rental;
5. for profit, inducing or attempting to induce someone to sell or rent a dwelling by representing that people of a particular armed forces or veteran status are moving, or may move, into the neighborhood;
6. any person or entity engaging in residential real estate

transactions discriminating in making a transaction available or its terms or conditions;

7. denying someone access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminating in the terms or conditions of such access, membership, or participation; or
8. coercing, intimidating, threatening, or interfering with someone in the exercise or enjoyment of, or on account of the person having exercised, enjoyed, or aided or encouraged someone else in the exercise or enjoyment of, these rights.

Violators are subject to a fine of between \$25 and \$100, up to 30 days' imprisonment, or both.

The law's prohibitions on housing discrimination do not apply to either of the following, if the owner maintains his or her residence there: (1) renting a room or rooms in a single-family home or (2) a unit in a two-family home.

**Credit Discrimination.** The bill prohibits a creditor from discriminating against any adult in a credit transaction on the basis of the person being a member of the armed forces or a veteran.

**Requirements for State Agencies.** The bill also extends to armed forces members and veterans certain protections from discrimination that specifically apply to their interactions with the state. The bill:

1. requires state officials and supervisory personnel to recruit, appoint, assign, train, evaluate, and promote state personnel on the basis of merit and qualifications, without regard for someone being in the armed forces or a veteran;
2. requires state agency services to be performed without discrimination based on someone being in the armed forces or a veteran;

3. requires any state agency that provides employment referrals or placement services to public or private employers to reject any job request that indicates an intention to exclude someone based on the person being in the armed forces or a veteran;
4. requires all educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state agencies, or in which state agencies participate, to be open to all qualified persons, without regard to the person being in the armed forces or a veteran; and
5. prohibits a person's status as a veteran or armed services members from being considered as limiting factors in state-administered programs involving the distribution of funds to qualify applicants for benefits authorized by law, and prohibits the state from giving financial assistance to public agencies, private institutions, or other organizations which discriminate on this basis.

#### **§ 4 — AGE DISCRIMINATION**

Under current law, it is a discriminatory practice for anyone to deprive another person of any rights, privileges, or immunities, secured or protected by Connecticut or federal laws or constitutions, or cause such a deprivation, because of religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness, or physical disability. The bill adds age to this list.

This change allows CHRO to enforce federal age discrimination laws. It already enforces state age discrimination laws. Various other provisions in state law already prohibit discrimination based on age.

#### **§§ 1-3 & 5 — CHRO**

By law, CHRO is overseen by nine commissioners (five appointed by the governor and four by legislative leaders, with the general assembly's advice and consent). The bill refers to the commissioners as the governing board.

The bill makes several changes clarifying the role of the

commissioners (i.e, the appointed members of the governing board) and the role of CHRO's staff. For example, it clarifies that the commissioners, and not CHRO generally, appoint and supervise CHRO's executive director.

The bill specifies that CHRO, and not an individual commissioner, has the authority to bring a petition for equitable relief in employment discrimination matters. It also specifies that CHRO, and not an individual commissioner, can apply for injunctive relief, punitive damages, or civil penalties in matters concerning housing or public accommodations discrimination.

### **§ 1 — Whistleblower Complaints**

By law, state officers, employees, and appointing authorities; officers and employees of quasi-public agencies; and large state contractors may not take or threaten to take any personnel action in retaliation for a whistleblower disclosure. The bill requires the chief human rights attorney, upon receiving an employee's complaint alleging retaliation for a whistleblower disclosure, to have a copy of the complaint hand delivered or mailed to CHRO's supervising attorney.

The bill also allows CHRO to appeal the decision of a human rights referee following hearings on such complaints. The law already allows parties to appeal.

### **§ 3 — Commissioner Training**

The bill reduces the required hours of introductory training for commissioners, from 10 to five (required within two months of their appointment and before they can vote on a commission matter). It also reduces their required annual training in subsequent years, from five to three hours.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 30    Nay 15    (04/02/2012)

