



# Senate

General Assembly

**File No. 408**

February Session, 2018

Substitute Senate Bill No. 494

*Senate, April 10, 2018*

The Committee on Government Administration and Elections reported through SEN. FLEXER of the 29th Dist. and SEN. MCLACHLAN, M. of the 24th Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT REQUIRING STATE CONTRACTORS AND UNIONS TO ADOPT A SEXUAL HARASSMENT POLICY.***

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

1 Section 1. (NEW) (*Effective October 1, 2018, and applicable to*  
2 *solicitations and requests for proposals or qualifications noticed on or after*  
3 *said date*) (a) For the purposes of this section:

4 (1) "Contractor" means a person or business entity with three or  
5 more employees who submits a competitive bid or proposal in  
6 response to a solicitation of a state agency;

7 (2) "State agency" means each state board, commission, department,  
8 office, institution, council or other agency with the power to contract  
9 for goods or services itself or through its head;

10 (3) "Goods or services" includes, but is not limited to, supplies,  
11 materials and equipment and contractual services, as such terms are

12 defined in section 4a-50 of the general statutes;

13 (4) "Public works contract" has the same meaning as provided in  
14 section 46a-68b of the general statutes; and

15 (5) "Sexual harassment" has the same meaning as provided in  
16 subdivision (8) of subsection (b) of section 46a-60 of the general  
17 statutes.

18 (b) On and after October 1, 2018, each state agency, when awarding  
19 a contract for goods or services or a public works contract, shall state  
20 in its notice of solicitation for competitive bids or request for proposals  
21 or qualifications for such contract that the contractor shall be required  
22 to comply with the provisions of this section. Each contractor  
23 responding to a state agency's solicitation of bids for a contract for  
24 goods or services or a public works contract shall provide to the state  
25 agency a sworn affidavit concerning its sexual harassment policy, in  
26 accordance with subsection (d) of this section. At a minimum, such  
27 policy shall include:

28 (1) The statutory definition of sexual harassment and examples of  
29 different types of sexual harassment;

30 (2) Notice that sexual harassment is prohibited by the state pursuant  
31 to subdivision (8) of subsection (b) of section 46a-60 of the general  
32 statutes;

33 (3) Notice that sexual harassment is prohibited by Title VII of the  
34 1964 Civil Rights Act, as amended from time to time;

35 (4) The address and telephone number of the Commission on  
36 Human Rights and Opportunities;

37 (5) A statement that Connecticut law provides that a formal written  
38 complaint may only be filed with the commission within one hundred  
39 eighty days of the date when the alleged sexual harassment occurred;

40 (6) A statement concerning the contractor's policies and procedures

41 regarding sexual harassment and a statement concerning the  
42 disciplinary action that may be taken if sexual harassment has been  
43 committed;

44 (7) A contact person at the contractor's place of employment to  
45 whom an employee can report complaints of sexual harassment or  
46 direct questions or concerns regarding sexual harassment; and

47 (8) A statement that any retaliation against an individual who has  
48 complained about sexual harassment or retaliation against an  
49 individual for cooperating with an investigation of a sexual  
50 harassment complaint will not be tolerated.

51 (c) Such policy shall be posted in a prominent and accessible  
52 location and on the contractor's Internet web site, if applicable.

53 (d) When responding to a state agency solicitation for competitive  
54 bids or request for proposals or qualifications for a contract for goods  
55 or services or a public works contract, the contractor shall provide the  
56 awarding state agency with an affidavit bearing notice that it is signed  
57 under penalty of false statement and signed by a chief executive  
58 officer, president, chairperson or other corporate officer duly  
59 authorized to adopt company or corporate policy that certifies that the  
60 company or corporate policy of the contractor includes, at a minimum,  
61 the sexual harassment policy requirements set forth in subsection (b) of  
62 this section and is in effect on the date the affidavit is signed.

63 (e) No state agency shall award a contract for goods or services or a  
64 public works contract to a contractor who has not provided the  
65 affidavit required under subsection (d) of this section. After the initial  
66 submission of such affidavit, the contractor shall not be required to  
67 resubmit such affidavit unless there is a change in the information  
68 contained in such affidavit. If there is any change in the information  
69 contained in the most recently filed or updated affidavit, the contractor  
70 shall submit an updated affidavit, either (1) not later than thirty days  
71 after the effective date of such change, or (2) upon the execution of a  
72 new contract with the awarding state agency, whichever is earlier.

73 Such contractor shall also certify to the awarding state agency, not later  
74 than fourteen days after the twelve-month anniversary of the most  
75 recently filed affidavit or updated affidavit, that the affidavit on file  
76 with the awarding state agency is current and accurate.

77 Sec. 2. Subsection (c) of section 4a-100 of the general statutes is  
78 repealed and the following is substituted in lieu thereof (*Effective*  
79 *October 1, 2018, and applicable to applications made on or after said date*):

80 (c) The application form shall, at a minimum, require the applicant  
81 to supply information concerning:

82 (1) The applicant's form of organization;

83 (2) The applicant's principals and key personnel and any names  
84 under which the applicant, principals or key personnel conducted  
85 business during the past five years;

86 (3) Any legal or administrative proceedings pending or concluded  
87 adversely against the applicant or any of the applicant's principals or  
88 key personnel within the past five years which relate to the  
89 procurement or performance of any public or private construction  
90 contract and whether the applicant is aware of any investigation  
91 pending against the applicant or any principal or key personnel;

92 (4) The nature of any financial, personal or familial relationship  
93 between the applicant and any public or private construction project  
94 owner listed on the application as constituting construction experience;

95 (5) A statement of whether (A) the applicant has been disqualified  
96 pursuant to section 4b-95, this section or section 31-57c or 31-57d, (B)  
97 the applicant is disqualified or prohibited from being awarded a  
98 contract pursuant to section 31-57b, (C) the applicant has been  
99 disqualified by another state, (D) the applicant has been disqualified  
100 by a federal agency or pursuant to federal law, (E) the applicant's  
101 registration has been suspended or revoked by the Department of  
102 Consumer Protection pursuant to section 20-341gg, (F) the applicant  
103 has been disqualified by a municipality, and (G) the matters that gave

104 rise to any such disqualification, suspension or revocation have been  
105 eliminated or remedied; [and]

106 (6) If the applicant has three or more employees, an affidavit bearing  
107 notice that it is signed under penalty of false statement and signed by a  
108 chief executive officer, president, chairperson or other corporate officer  
109 duly authorized to adopt company or corporate policy that certifies  
110 that the company or corporate policy of the contractor includes a  
111 sexual harassment policy and is in effect on the date the affidavit is  
112 signed; and

113 ~~[(6)]~~ (7) Other information as the commissioner deems relevant to  
114 the determination of the applicant's qualifications and responsibilities.

115 Sec. 3. (NEW) (*Effective October 1, 2018*) Each labor organization, as  
116 defined in section 46a-51 of the general statutes, that has three or more  
117 employees, shall adopt a sexual harassment policy. Such policy shall  
118 be posted in a prominent and accessible location and on the  
119 organization's Internet web site, if applicable. At a minimum, such  
120 policy shall include:

121 (1) The statutory definition of sexual harassment and examples of  
122 different types of sexual harassment;

123 (2) Notice that sexual harassment is prohibited by the state pursuant  
124 to subdivision (8) of subsection (b) of section 46a-60 of the general  
125 statutes;

126 (3) Notice that sexual harassment is prohibited by Title VII of the  
127 1964 Civil Rights Act, as amended from time to time;

128 (4) The address and telephone number of the Commission on  
129 Human Rights and Opportunities;

130 (5) A statement that Connecticut law provides that a formal written  
131 complaint may only be filed with the commission within one hundred  
132 eighty days of the date when the alleged sexual harassment occurred;

133 (6) A statement concerning the organization's policies and  
 134 procedures regarding sexual harassment and a statement concerning  
 135 the disciplinary action that may be taken if sexual harassment has been  
 136 committed;

137 (7) A contact person at the place of employment to whom an  
 138 employee can report complaints of sexual harassment or direct  
 139 questions or concerns regarding sexual harassment; and

140 (8) A statement that any retaliation against an individual who has  
 141 complained about sexual harassment or retaliation against an  
 142 individual for cooperating with an investigation of a sexual  
 143 harassment complaint will not be tolerated.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2018, and applicable to solicitations and requests for proposals or qualifications noticed on or after said date</i>	New section
Sec. 2	<i>October 1, 2018, and applicable to applications made on or after said date</i>	4a-100(c)
Sec. 3	<i>October 1, 2018</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 19 \$	FY 20 \$
Human Rights & Opportunities, Com.	GF - Cost	50,095	66,793
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Cost	18,199	24,266
Various State Agencies	Various - Potential Cost	See Below	See Below
Higher Education Constituent Units	Various - Potential Revenue Loss	See Below	See Below

Note: GF=General Fund; Various=Various

**Municipal Impact:** None

**Explanation**

The bill requires certain state contractors and unions to adopt a sexual harassment policy in order to be eligible to apply for construction contractor prequalification or to respond to a state agency solicitation for competitive bids or requests for proposals.

The bill results in a potential cost to state agencies, including the higher education constituent units. The cost is potential as it is unclear to what extent constituent unit contract respondents will adjust their company policies to Connecticut law. It is anticipated that Connecticut companies will choose to comply with the new requirements while it is

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.33% of payroll in FY 19 and FY 20.

unclear if out-of-state and foreign companies will comply.

To the extent that the bill's requirements result in fewer bidders and thus less competitive downward pressure on prices, contractor prices and therefore state agency costs may increase. The amount of potential cost depends on the share of potential respondents that decline to adopt the bill's requirements and the volume of purchases that require competitive bidding or proposals. For context, FY 17 University of Connecticut (UConn) and UConn Health Center purchasing from out-of-state and foreign companies totaled approximately \$79 million and \$206 million respectively.<sup>2</sup>

The bill may also result in a revenue loss to the constituent units as revenue-generating contracts would also be subject to the bill's requirements. The amount of potential revenue loss depends on the same factors described above. For context, in FY 16, revenue from these contracts totaled approximately \$167 million across the constituent units.

The Commission on Human Rights and Opportunities (CHRO) is responsible for handling the complaints that may arise from the policy provisions outlined in the bill. Depending on the number of complaints filed, CHRO may need to hire one Human Rights and Opportunities Representative at a cost of \$68,294 in FY 19 (including fringe benefits), adjusted for the effective date of the bill, and \$91,059 (including fringe benefits) in FY 20.

### ***The Out Years***

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

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<sup>2</sup> The UConn amount is lower because it excludes purchases at or below \$50,000. The UConn figure is based on purchase orders issued in FY 17, while the UConn Health amount is based on actual spending in FY 17.



**OLR Bill Analysis****sSB 494*****AN ACT REQUIRING STATE CONTRACTORS AND UNIONS TO ADOPT A SEXUAL HARASSMENT POLICY.*****SUMMARY**

Beginning October 1, 2018, this bill requires certain state contractors to adopt minimum sexual harassment policies and provide a sworn affidavit regarding such policies to be eligible for a contract for goods, services, or public works projects. The bill applies to any potential state contractors with at least three employees who apply for construction contractor prequalification or respond to a state agency solicitation for competitive bids and request for proposals. It also requires labor unions with three or more employees to adopt sexual harassment policies with the same minimum criteria.

EFFECTIVE DATE: October 1, 2018, and applicable to solicitations, applications, and requests for proposals and qualifications on and after this date.

**SEXUAL HARASSMENT POLICY REQUIREMENTS*****Minimum Criteria***

The bill requires the sexual harassment policies to be posted in a prominent and accessible location and, if applicable, on the contractor's or organization's website. At a minimum, such policies must include:

1. the statutory definition of sexual harassment, including different examples;
2. notice that it is illegal under state and federal laws;
3. the address and phone number of the Commission on Human

Rights and Opportunities (CHRO);

4. a statement that, under state law, a person must file a complaint with CHRO within 180 days after an incident;
5. a statement concerning the (a) policies and procedures regarding sexual harassment and (b) disciplinary action that may be taken for employees who violate them;
6. a contact person at the place of employment for employees to report complaints or direct questions or concerns; and
7. a statement that any retaliation against an individual who (a) has submitted a complaint or (b) is cooperating with an investigation, will not be tolerated.

Correspondingly, a state agency's notices of solicitation for competitive bids and requests for proposals or qualifications for such contracts must require contractors to meet these requirements.

### **Sworn Affidavit**

The bill requires contractors to provide the awarding state agency with an affidavit, signed under penalty of false statement by a chief executive officer, president, chairperson or other corporate officer authorized to adopt company or corporate policy, which certifies that its sexual harassment policy meets the established minimum criteria and is currently in effect. The bill prohibits state agencies from awarding a contract to a contractor who has not submitted the affidavit.

Unless there is a change to the information in the affidavit, the bill does not require contractors to resubmit it in subsequent contract bids. Instead, such contractors must annually certify to the awarding state agency that the affidavit on file is current and accurate, not later than 14 days after the one-year anniversary of the most recently filed or updated affidavit. If there is any change, the contractor must submit an updated affidavit (1) within 30 days after the change's effective date, or

(2) upon the execution of a new contract with the awarding state agency, whichever is earlier.

**BACKGROUND**

***Sexual Harassment***

By law, sexual harassment means any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment (CGS § 46a-60).

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/23/2018)