



House of Representatives

General Assembly

File No. 471

January Session, 2019

Substitute House Bill No. 6508

House of Representatives, April 8, 2019

The Committee on Labor and Public Employees reported through REP. PORTER, R. of the 94th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING PUBLIC WORKS PROJECTS AND THE EMPLOYMENT OF MINORITIES, RESIDENTS AND WOMEN.

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

1 Section 1. Subsection (b) of section 4a-60 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2019*):

4 (b) If the contract is a public works contract, municipal public works
5 contract or contract for a quasi-public agency project, the contractor
6 agrees and warrants that he or she will make good faith efforts to
7 employ (1) minority business enterprises as subcontractors and
8 suppliers of materials on such public works or quasi-public agency
9 project, and (2) a workforce comprised of not less than twenty-five per
10 cent minorities, as such term is defined in subsection (a) of section 32-
11 9n, not less than twenty-five per cent state residents and not less than
12 eight per cent women.

13 Sec. 2. Section 46a-68c of the general statutes is repealed and the
14 following is substituted in lieu thereof (*Effective October 1, 2019*):

15 (a) In addition to the provisions of section 4a-60, as amended by this
16 act, each contractor with fifty or more employees awarded a public
17 works contract, municipal public works contract or contract for a
18 quasi-public agency project in excess of fifty thousand dollars in any
19 fiscal year, but not subject to the provisions of section 46a-68d, as
20 amended by this act, shall develop and file with the Commission on
21 Human Rights and Opportunities an affirmative action plan [which]
22 that shall (1) comply with regulations adopted by the commission, and
23 (2) include a statement that the contractor shall make good faith
24 efforts, as described in subsection (e) of section 4a-60, and determined
25 pursuant to subsection (b) of this section, to employ a workforce
26 comprised of not less than twenty-five per cent minorities, as such
27 term is defined in subsection (a) of section 32-9n, not less than twenty-
28 five per cent state residents and not less than eight per cent women.
29 Failure to develop an approved affirmative action plan pursuant to
30 this section shall act as a bar to bidding on or the award of future
31 contracts until such requirement has been met. When the commission
32 approves an affirmative action plan pursuant to this section, it shall
33 issue a certificate of compliance to the contractor. This certificate shall
34 be prima facie proof of the contractor's eligibility to bid or be awarded
35 contracts for a period of two years from the date of the certificate. Such
36 certificate shall not excuse the contractor from monitoring by the
37 commission or from the reporting and record-keeping requirements of
38 sections 46a-68e and 46a-68f. The commission may revoke the
39 certificate of a contractor if the contractor does not implement its
40 affirmative action plan in compliance with this section and sections 4a-
41 60, as amended by this act, 4a-60g, 4a-62, 46a-56, 46a-68b, 46a-68d, as
42 amended by this act, and 46a-68e to 46a-68k, inclusive.

43 (b) Determination of the contractor's good faith efforts shall include,
44 but not be limited to, the following factors: (1) The contractor's
45 employment and subcontracting policies, patterns and practices; (2)
46 affirmative advertising, recruitment and training; and (3) technical

47 assistance activities and such other reasonable activities or efforts as
48 the commission may prescribe that are designed to ensure the
49 employment of minorities, state residents and women in public works
50 projects. The contractor shall develop and maintain adequate
51 documentation, in a manner prescribed by the commission, of its good
52 faith efforts.

53 Sec. 3. Section 46a-68d of the general statutes is repealed and the
54 following is substituted in lieu thereof (*Effective October 1, 2019*):

55 (a) In addition to the provisions of section 4a-60, as amended by this
56 act, every public works contract, municipal public works contract or
57 contract for a quasi-public agency project subject to the provisions of
58 part II of chapter 60 shall also be subject to the provisions of this
59 section. After a bid has been accepted but before a contract is awarded,
60 the successful bidder shall file with and have obtained the approval of
61 the commission for an affirmative action plan that shall include a
62 statement that the contractor shall make good faith efforts, as
63 described in subsection (e) of section 4a-60, and determined pursuant
64 to subsection (b) of this section, to (1) work in conjunction with
65 workforce development entities and construction employment job
66 training entities to refer eligible workers to such entities, and (2)
67 employ a workforce comprised of not less than twenty-five per cent
68 minorities, as such term is defined in subsection (a) of section 32-9n,
69 not less than twenty-five per cent state residents and not less than
70 eight per cent women. The commission may provide for conditional
71 acceptance of an affirmative action plan provided written assurances
72 are given by the contractor that it will amend its plan to conform to
73 affirmative action requirements. In the case of a public works contract,
74 the state shall withhold two per cent of the total contract price per
75 month from any payment made to such contractor until such time as
76 the contractor has developed an affirmative action plan, and received
77 the approval of the commission. In the case of a municipal public
78 works contract or contract for a quasi-public agency project, the
79 municipality or entity, as applicable, shall withhold two per cent of the
80 total contract price per month from any payment made to such

81 contractor until such time as the contractor has developed an
 82 affirmative action plan and received the approval of the commission.
 83 Notwithstanding the provisions of this section, a contractor subject to
 84 the provisions of this section may file a plan in advance of or at the
 85 same time as its bid. The commission shall review plans submitted
 86 pursuant to this section within sixty days of receipt and either
 87 approve, approve with conditions or reject such plan. When the
 88 commission approves an affirmative action plan pursuant to this
 89 section, it shall issue a certificate of compliance to the contractor as
 90 provided in section 46a-68c, as amended by this act.

91 (b) Determination of the contractor's good faith efforts shall include,
 92 but not be limited to, the following factors: (1) The contractor's
 93 employment and subcontracting policies, patterns and practices; (2)
 94 affirmative advertising, recruitment and training; and (3) technical
 95 assistance activities and such other reasonable activities or efforts as
 96 the commission may prescribe that are designed to ensure the
 97 employment of minorities, state residents and women in public works
 98 projects. The contractor shall develop and maintain adequate
 99 documentation, in a manner prescribed by the commission, of its good
 100 faith efforts.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	4a-60(b)
Sec. 2	October 1, 2019	46a-68c
Sec. 3	October 1, 2019	46a-68d

LAB *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 20 \$	FY 21 \$
Human Rights & Opportunities, Com.	GF - Cost	33,737	48,731
State Comptroller - Fringe Benefits ¹	GF - Cost	13,896	20,072

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires state and municipal public works contracts and quasi-public agency project contracts to include a statement of good faith efforts to employ 25% minorities, 25% state residents, and 8% women with their required affirmative action plans that are submitted to and approved by the Commission on Human Rights and Opportunities (CHRO).

As a result of the provisions of this bill, CHRO will have to review and determine good faith efforts for every contract submitted, requiring the addition of one Human Rights and Opportunities Trainee at a cost of \$33,737 in FY 20 (partial year) and \$48,731 in FY 21 (full year), and fringe benefit costs of \$13,896 and \$20,072, respectively.

The Out Years

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

¹The 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 41.19% of payroll in FY 20 and FY 21.

OLR Bill Analysis

sHB 6508

AN ACT CONCERNING PUBLIC WORKS PROJECTS AND THE EMPLOYMENT OF MINORITIES, RESIDENTS AND WOMEN.

SUMMARY

This bill requires state and municipal public works contracts and quasi-public agency project contracts to contain a provision by which the contractor agrees and warrants to make good faith efforts to employ a workforce comprised of at least 25% minorities, 25% state residents, and 8% women. By law, such contracts already require awarded contractors to agree to make good faith efforts to employ minority business enterprises as subcontractors and material suppliers on the projects.

Such contractors must also include with their required affirmative action plans a statement that reiterates the good faith effort contract provision. By law the affirmative action plans must be submitted to, and approved by, the Commission on Human Rights and Opportunities (CHRO).

The requirement to make good faith efforts to hire 25% state residents could be vulnerable to a legal challenge on Constitutional grounds, such as potentially violating the privileges and immunities clause (see BACKGROUND).

The bill also adds factors that must be considered when determining whether a contractor has made such good faith efforts for employing members of the above-named groups.

It also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2019

CONTRACTOR REQUIREMENTS***Hiring and Affirmative Action Requirements***

By law, when a state agency public works, municipal public works, or quasi-public agency project contract is awarded to a contractor, the contractor must agree and warrant that he or she will make good faith efforts to employ minority business enterprises (MBEs) as subcontractors and suppliers of materials on the public works or quasi-public agency project. The bill additionally requires that the contractor agree and warrant to make a good faith effort to employ a workforce comprised of at least (1) 25% minorities, as defined in economic development law, which includes women; (2) 25% state residents; and (3) 8% women.

Current law requires contractors to submit affirmative action plans to CHRO for state or municipal public works or quasi-public agency project contracts that are (1) either awarded to contractors with at least 50 employees or valued between \$50,000 and \$500,000 or (2) valued at more than \$500,000 and subject to the state competitive bidding and contracting requirements for public works projects (see BACKGROUND).

For these contracts, the bill requires the contractor's affirmative action plans to include a statement that the contractor will make good faith efforts to employ a workforce comprised of at least 25% minorities, 25% state residents, and 8% women (see BACKGROUND).

For any contracts over \$500,000, the bill requires that affirmative action plans also include a statement that reiterates the contract provision to make good faith efforts to work in conjunction with workforce development entities and construction employment job training entities to refer eligible workers to them.

Good Faith Effort Determination

Under the bill, the contractor's good faith efforts must be determined based on the following factors:

1. the contractor's employment and subcontracting policies,

patterns, and practices;

2. affirmative advertising, recruitment, and training; and
3. technical assistance activities and other reasonable activities or efforts as CHRO may prescribe that are designed to ensure the employment of minorities, state residents, and women in public works projects.

The bill also applies existing law's good faith effort standard that contractors must, at a minimum, make (1) reasonable initial efforts necessary to comply with the requirements and (2) additional or substituted efforts when it is determined that the initial efforts will not be enough to comply (CGS § 4a-60(e)).

The contractor must develop and maintain adequate documentation, in a manner prescribed by CHRO, of its good faith efforts.

BACKGROUND

Affirmative Action Plans and State Contracts

By law, if a state or municipal public works contract or quasi-public agency project contract is below the \$500,000 threshold and the contractor does not have an approved affirmative action plan, CHRO will bar the contractor from bidding on future contracts until it meets the requirement. For those contracts over \$500,000, the contracting public entity (the state, a municipality, or the quasi-public agency) may withhold up to 2% of the total contract price per month from any contract payment until a contractor has developed an affirmative action plan and it is approved by CHRO.

Judicial Review of Preferences

Generally, the U.S. Constitution's privileges and immunities clause (Article IV), among other clauses, sets a high bar for courts to uphold laws that establish preferential treatment for certain groups of people. To avoid being overturned in court, the government must clearly demonstrate there is a compelling public interest in treating one group

differently from another, and the statute in question must be narrowly tailored to meet that interest and have a rational connection between the law and its stated goal.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/21/2019)