



# Senate

General Assembly

**File No. 314**

February Session, 2004

Substitute Senate Bill No. 333

*Senate, March 30, 2004*

The Committee on Government Administration and Elections reported through SEN. DEFRONZO of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

**AN ACT SETTING PROCEDURES, PERFORMANCE STANDARDS AND WORKPLACE QUALITY STANDARDS FOR PRIVATIZATION OF STATE PROGRAMS AND SERVICES.**

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

1 Section 1. (NEW) (*Effective October 1, 2004*) As used in sections 1 to  
2 13, inclusive, of this act:

3 (1) "Agency" means an executive office, department, division, board,  
4 commission or other office or officer in the executive branch of the  
5 state government.

6 (2) "Privatization contract" means an agreement or combination or  
7 series of agreements between an agency and a nongovernmental  
8 person or entity, in which such person or entity agrees to provide  
9 services valued at seven hundred fifty thousand dollars or more that  
10 are substantially similar to and in lieu of services provided, in whole or  
11 part, by regular employees of an agency. The term "privatization

12 contract" does not include an agreement to provide legal services or  
13 management consulting only.

14 Sec. 2. (NEW) (*Effective October 1, 2004*) (a) Beginning October 1,  
15 2004, prior to executing a privatization contract, an agency shall  
16 consult with the Department of Administrative Services and comply  
17 with the provisions of subsection (b) of this section.

18 (b) The agency shall prepare an analysis of the costs and benefits to  
19 the agency of (1) privatizing services, and (2) continuing to provide  
20 such services through regular employees of the agency. Such analysis  
21 shall include, but not be limited to, an examination of the cost and  
22 quality of service under each such option. The executive head of the  
23 agency shall transmit such analysis to the State Auditors.

24 (c) If the agency determines in such analysis that it is cost-effective  
25 to privatize such services, the agency shall prepare a specific written  
26 statement of the services, including the specific quantity and standard  
27 of quality of the services. The agency shall solicit competitive sealed  
28 bids for the privatization contracts based upon such statement. The  
29 day designated by the agency upon which it shall accept sealed bids  
30 shall be the same for all bidders. Such statement shall be a public  
31 record, filed in the agency and with the Department of Administrative  
32 Services and transmitted to the State Comptroller. The term of any  
33 privatization contract shall not exceed five years. No amendment to a  
34 privatization contract shall be valid if it has the purpose or effect of  
35 avoiding any requirement of this section.

36 Sec. 3. (NEW) (*Effective October 1, 2004*) (a) If an agency plans to  
37 solicit bids for a privatization contract, the agency shall prepare a  
38 comprehensive written estimate of the costs of regular employees of  
39 the agency providing the subject services in the most cost-efficient  
40 manner and the quality of such services provided by such agency  
41 employees. The estimate shall include all direct costs of regular agency  
42 employees providing the subject services, including, but not limited to,  
43 pensions, insurance and other employee benefit costs. Any costs  
44 allocable to unemployment compensation and retirement benefits shall

45 be reported separately from the value of any contract costs. The value  
46 of any state-owned property or assets shall be reported separately.

47 (b) At least sixty days prior to soliciting bids for a privatization  
48 contract, an agency shall notify each collective bargaining organization  
49 representing employees of the agency of such planned solicitation.  
50 After consulting the potentially affected bargaining units, if any, the  
51 agency shall provide adequate resources for the purpose of  
52 encouraging and assisting present agency employees to organize and  
53 submit a bid to provide the subject services. In determining what  
54 resources are adequate for this purpose, the agency shall refer to an  
55 existing collective bargaining agreement of a similar employee  
56 organization whose members perform the subject services, if available,  
57 which agreement provides similar resources in the same or other  
58 agencies. If no such collective bargaining agreement exists, the agency  
59 shall refer to any existing collective bargaining agreements providing  
60 such resources, and shall provide such resources at the minimum level  
61 of assistance provided in such agreements. The agency shall consider  
62 any such employee bid on the same basis as all other bids. An  
63 employee bid may be made as a joint venture with other persons.

64 Sec. 4. (NEW) (*Effective October 1, 2004*) (a) Each bid for a  
65 privatization contract and each privatization contract shall include  
66 provisions specifically establishing the wage rate for each employee  
67 covered by the contract. Each contractor shall submit quarterly payroll  
68 records to the agency, listing the name, address, Social Security  
69 number, hours worked and hourly wage paid for each employee in the  
70 previous quarter. The Attorney General may bring a civil action for  
71 equitable relief in Superior Court to enforce the provisions of this  
72 section and to prevent or remedy the dismissal, demotion or other  
73 action prejudicing any employee as a result of a violation of this  
74 section.

75 (b) Each bid for a privatization contract and each privatization  
76 contract shall contain provisions requiring the contractor to offer  
77 available employee positions pursuant to the contract to qualified

78 regular employees of the agency whose state employment is  
79 terminated because of the privatization contract and who satisfy the  
80 hiring criteria of the contractor. Each such contract shall also contain  
81 provisions prohibiting the contractor from engaging in discriminatory  
82 employment practices, as defined in section 46a-51 of the general  
83 statutes, as amended, and requiring the contractor to take affirmative  
84 steps to provide such equal opportunity for all such persons.

85 Sec. 5. (NEW) (*Effective October 1, 2004*) (a) No contractor,  
86 subcontractor, or employee or agent of a contractor or subcontractor,  
87 shall have any ownership rights or interest in any public record that  
88 the contractor, subcontractor, employee or agent possesses, modifies or  
89 creates pursuant to a privatization contract, subcontract, or  
90 amendment to a privatization contract or subcontract.

91 (b) No contractor, subcontractor, or employee or agent of a  
92 contractor or subcontractor, shall impair the integrity of any public  
93 record that the contractor, subcontractor, employee or agent possesses,  
94 modifies or creates.

95 (c) Any public record that a contractor, subcontractor, or employee  
96 or agent of a contractor or subcontractor, possesses, modifies or creates  
97 pursuant to a privatization contract or subcontract shall, at all times  
98 and for all purposes, remain the property of the state.

99 Sec. 6. (NEW) (*Effective October 1, 2004*) (a) Any public record (1)  
100 provided to a contractor or subcontractor by an agency, or (2) created  
101 by a contractor or subcontractor pursuant to a privatization contract  
102 shall be and remain a public record for purposes of the Freedom of  
103 Information Act and the enforcement provisions of said act apply to  
104 any improper failure to disclose such records.

105 (b) Both the agency and the contractor or subcontractor that execute  
106 a privatization contract shall have a joint and several liability with  
107 respect to any obligations imposed on the agency by the Freedom of  
108 Information Act with respect to any public record related to the  
109 privatization contract, provided the final determination as to whether

110 or not to disclose a particular record or type of record shall be made  
111 solely by the agency.

112 (c) No contractor, subcontractor, or employee or agent of a  
113 contractor or subcontractor, shall disclose to the public any public  
114 record that (1) the contractor, subcontractor, or employee or agent  
115 possesses, modifies or creates pursuant to a privatization contract,  
116 subcontract, or amendment to a privatization contract or subcontract,  
117 and (2) the state agency (A) is prohibited from disclosing pursuant to  
118 state or federal law, (B) may only disclose to certain entities or  
119 individuals or under certain conditions pursuant to state or federal  
120 law, or (C) may withhold from disclosure pursuant to state or federal  
121 law. No provision of this subsection shall be construed to prohibit any  
122 such contractor from disclosing such public record to any of its  
123 subcontractors to carry out the purposes of the privatization contract.

124 (d) No contractor, subcontractor, or employee or agent of a  
125 contractor or subcontractor, shall sell, market or otherwise profit from  
126 the disclosure or use of any public record in its possession pursuant to  
127 a privatization contract, subcontract, or amendment to a privatization  
128 contract or subcontract, except as authorized in the privatization  
129 contract, subcontract or amendment.

130 (e) Any contractor, subcontractor, or employee or agent of a  
131 contractor or subcontractor, that learns of any violation of the  
132 provisions of section 5 of this act or this section shall, not later than  
133 seven calendar days after learning of such violation, notify the agency  
134 head and the Attorney General of such violation.

135 Sec. 7. (NEW) (*Effective October 1, 2004*) (a) In addition to any of the  
136 remedies provided under the Freedom of Information Act, if any  
137 person violates any provision of section 5 or 6 of this act, the Attorney  
138 General may bring an action against such person in Superior Court  
139 seeking (1) damages on behalf of the state for such violation, (2)  
140 restitution for damages suffered by any person as a result of the  
141 violation, or (3) imposition and recovery of a civil penalty of not more  
142 than fifty thousand dollars for the violation.

143 (b) In addition to any of the remedies provided under the Freedom  
144 of Information Act, any person aggrieved by a violation of any  
145 provision of section 5 or 6 of this act may bring an action in Superior  
146 Court to recover any damages suffered as a result of such violation.

147 (c) In any action brought under subsection (a) or (b) of this section,  
148 the court may (1) order disgorgement of any profits or other benefits  
149 derived as a result of a violation of any provision of section 5 or 6 of  
150 this act, (2) award punitive damages, costs or reasonable attorney's  
151 fees, or (3) order injunctive or other equitable relief. Proof of public  
152 interest or public injury shall not be required in any action brought  
153 under subsection (a) or (b) of this section. No action may be brought  
154 under subsection (a) or (b) of this section more than three years after  
155 the occurrence of such violation.

156 (d) Any person who knowingly and wilfully violates any provision  
157 of section 5 or 6 of this act shall, for each such violation, be fined not  
158 more than five thousand dollars or imprisoned not less than one year  
159 nor more than five years, or be both fined and imprisoned.

160 Sec. 8. (NEW) (*Effective October 1, 2004*) (a) The executive head of an  
161 agency soliciting bids for a privatization contract and the  
162 Commissioner of Administrative Services shall each certify, in writing,  
163 to the State Auditors that:

164 (1) They have complied with all provisions of sections 1 to 4,  
165 inclusive, of this act, and all other applicable laws;

166 (2) A cost-benefit analysis of the proposed privatization has been  
167 conducted pursuant to subsection (b) of section 2 of this act and the  
168 agency has determined in such analysis that it is cost-effective to  
169 privatize services;

170 (3) The quality of the services to be provided by the designated  
171 bidder is likely to satisfy the quality requirements of the statement  
172 prepared pursuant to subsection (c) of section 2 of this act and to equal  
173 or exceed the quality of services that are provided by regular agency

174 employees pursuant to subsection (a) of section 3 of this act;

175 (4) The designated bidder and its supervisory employees, while in  
176 the employ of the designated bidder, have no adjudicated record of  
177 substantial or repeated wilful noncompliance with any relevant federal  
178 or state regulatory law including, but not limited to, laws concerning  
179 labor relations, occupational safety and health, nondiscrimination and  
180 affirmative action, environmental protection and conflicts of interest;

181 (5) The proposed privatization contract is otherwise in the public  
182 interest;

183 (6) The projected cost savings of the proposed privatization contract  
184 will exceed ten per cent of the cost of delivering the services with state  
185 employees; and

186 (7) Each bid details:

187 (A) The length of continuous employment of current employees of  
188 the contractor by job classification, without personally identifying  
189 employees by name. In addition, the contractor may submit  
190 information detailing the relevant prior experience of current  
191 employees within each job classification. If the positions identified by  
192 the bidder are newly created positions, the bid shall identify the  
193 minimum requirements for prospective applicants for each such  
194 position.

195 (B) The annual rate of employee turnover.

196 (C) The number of hours of training planned for each employee in  
197 areas directly related to the provision of services to state residents and  
198 clients.

199 (D) Any legal complaints issued by an enforcement agency for  
200 alleged violations of applicable federal, state or local rules, regulations  
201 or laws, including laws governing employee safety and health, labor  
202 relations and other employment requirements, and any citations, court  
203 findings or administrative findings for violations of such federal, state

204 or local rules, regulations or laws. Such information shall specify the  
205 date of the complaint, citation, court finding or administrative finding,  
206 the enforcement agency, rule, law or regulation involved and any  
207 additional information the contractor elects to submit.

208 (E) Any collective bargaining agreements or personnel policies  
209 covering the employees that will provide services to the state.

210 (F) Any political contributions made by the bidder or any employee  
211 who holds a management position with the bidding company, to any  
212 elected officer of the state or member of the General Assembly during  
213 the four years prior to the due date of the bid.

214 (b) A copy of the proposed privatization contract shall accompany  
215 the certificate transmitted to the State Auditors.

216 Sec. 9. (NEW) (*Effective October 1, 2004*) (a) The State Auditors shall  
217 review the certificate and proposed privatization contract and notify  
218 the agency of the State Auditors' approval or objection not less than  
219 thirty days after receiving the certification required by section 8 of this  
220 act. No privatization contract shall be valid if the State Auditors notify  
221 the agency of the State Auditors' objection. Such objection shall be in  
222 writing and shall state specifically the requirements under sections 2 to  
223 4, inclusive, of this act that the agency has failed to comply with,  
224 including any facts that the State Auditors find incorrect, based on an  
225 independent review of all relevant facts.

226 (b) For the purpose of reviewing the agency's compliance and  
227 certification pursuant to section 8 of this act, the State Auditor, or a  
228 designee, may issue a summons to any person to appear and testify  
229 under oath and to produce books, papers and other records relating to  
230 such review. All provisions of the general statutes relative to  
231 summonses in civil cases, including the manner of service, the scope  
232 and relevance to such review and the compensation of witnesses who  
233 are not state employees shall apply to such summonses.

234 (c) The objection of the State Auditors pursuant to subsection (a) of

235 this section shall be final and binding on the agency, unless the State  
236 Auditors thereafter, in writing, withdraw the objection, stating the  
237 specific reasons, based upon a revised certificate by the agency and the  
238 Commissioner of Administrative Services.

239 Sec. 10. (NEW) (*Effective October 1, 2004*) (a) The Commissioner of  
240 Administrative Services shall adopt regulations, in accordance with the  
241 provisions of chapter 54 of the general statutes, governing contracts  
242 between governmental units and social services program providers  
243 that shall include, but not be limited to a provision:

244 (1) Requiring that all transactions between said providers and  
245 related parties shall be disclosed in writing in advance to the  
246 Department of Administrative Services and to the agency affected by  
247 the privatization contract, either of which may prohibit the transaction  
248 by written notice to the provider;

249 (2) Requiring that any reductions by said providers in a rate of  
250 reimbursement, or other payment method or total expenditure, shall  
251 be applied, first against expenditures on managerial personnel,  
252 including, but not limited to, management fees, salaries, benefits and  
253 other compensation paid to managers and shall be applied in the last  
254 instance against expenditures on direct service workers;

255 (3) Requiring that any contracts for funds expended by the state,  
256 that does not require the state to be reimbursed or compensated by the  
257 provider who amortizes the mortgages for the ownership of property,  
258 whether owned directly or indirectly by said provider, shall contain  
259 provisions for the recoupment of said reimbursement or compensation  
260 by the state in the event said property is sold and may, if necessary,  
261 allow for the execution of liens to ensure such recoupment;

262 (4) Requiring a complete inventory of equipment purchased by said  
263 providers on behalf of the state and the return of such equipment to  
264 the proper governmental unit upon the completion or termination of  
265 the contract;

266 (5) Requiring that the uniform financial report include a subsidiary  
267 schedule for each component cost and a related party disclosure  
268 statement from each officer, director and trustee of said providers;

269 (6) Prohibiting any subcontract or consultant contract for services  
270 from a parent organization or parent agency at the national, state or  
271 local level;

272 (7) Prohibiting the refusal to service any case or type of case, or  
273 place any restrictions or limitation on services, the provisions of which  
274 were mutually agreed upon in the conditions specified in the contract,  
275 subsequent to the finalization of such contract either primary or  
276 secondary; and

277 (8) Prohibiting the use of state funding for investment counseling,  
278 fund-raising, management consultants and other services that are not  
279 directly related to the servicing of clients, patients and other persons  
280 served by the provider agency.

281 (b) If, after a hearing, the Department of Administrative Services  
282 finds any violation of any regulations adopted pursuant to subsection  
283 (a) of this section, the Department of Administrative Services may  
284 order that the contract be terminated, or the Attorney General may  
285 assess a civil penalty of not more than two thousand dollars or ten per  
286 cent of the amount payable under the contract, whichever is greater,  
287 that the agency shall withhold from payments otherwise due under  
288 the contract. Notwithstanding any provision of the general statutes,  
289 any provider aggrieved under this section may exercise any legal  
290 remedy or cause of action available to such provider under the  
291 provisions of the general statutes. If, after a hearing, the Commissioner  
292 of Administrative Services determines that a provider has committed  
293 any wilful violation of subsection (a) of this section, said commissioner  
294 may disqualify the provider from bidding on further state contracts.

295 Sec. 11. (NEW) (*Effective October 1, 2004*) (a) Within five days after  
296 the State Auditors, pursuant to section 9 of this act, notify an agency of  
297 their approval of a proposed privatization contract between such

298 agency and a nongovernmental person or entity, that has a value of  
299 five million dollars or more, the agency shall file such contract with the  
300 clerks of the House of Representatives and the Senate.

301 (b) Within five days after the clerks receive such contract, the  
302 speaker of the House of Representatives and the president pro tempore  
303 of the Senate shall submit the contract to the joint standing committees  
304 of the General Assembly having cognizance of matters relating to (1)  
305 government administration, and (2) appropriations and the budgets of  
306 state agencies.

307 (c) Within twenty-five days after the speaker of the House of  
308 Representatives and the president pro tempore of the Senate receive  
309 such contract, such committees shall hold a public hearing on the  
310 contract and shall report their recommendations to the House of  
311 Representatives and the Senate concerning the approval or rejection of  
312 the contract.

313 (d) The General Assembly may approve the contract, in whole, by a  
314 majority vote of each house or may reject the contract, in whole, by a  
315 majority vote of either house. If rejected, the contract shall not be valid  
316 and shall not be implemented. The contract shall be deemed rejected if  
317 the General Assembly fails to vote to approve or reject the contract (1)  
318 prior to the adjournment of the regular session of the General  
319 Assembly during which the contract is filed, provided the contract is  
320 not filed less than thirty days before the end of such regular session, (2)  
321 prior to the adjournment of the next regular session of the General  
322 Assembly following the date on which the contract is filed if the  
323 General Assembly is not in regular session on such date, or (3) prior to  
324 the adjournment of a special session convened before the next regular  
325 session of the General Assembly for the purpose of considering the  
326 contract if the General Assembly is not in regular session on the date  
327 on which the contract is filed. If the contract is filed less than thirty  
328 days before the end of a regular session, the General Assembly may  
329 vote to approve or reject the contract (A) within thirty days after the  
330 first day of a special session convened before the next regular session

331 of the General Assembly for the purpose of considering the contract, or  
332 (B) within thirty days after the first day of the next regular session of  
333 the General Assembly.

334 Sec. 12. (NEW) (*Effective October 1, 2004*) State funds shall not be  
335 used to support or oppose union activity by the employees of any  
336 contractor that executes a privatization contract, including, but not  
337 limited to, preparation and distribution of materials that advocate for  
338 or against unionization, hiring or consulting legal counsel or other  
339 consultants to advise the contractor how to assist, promote or deter  
340 union organizing or how to impede a union that represents the  
341 contractor's employees from fulfilling its representational  
342 responsibilities.

343 Sec. 13. (NEW) (*Effective October 1, 2004*) (a) No person shall retaliate  
344 or discriminate in any manner against any public employee or any  
345 employee of a private contractor because the employee, or any person  
346 acting on behalf of the employee, acting in good faith (1) engaged in  
347 any disclosure of information related to the services provided by the  
348 contractor pursuant to a privatization contract, (2) advocated on behalf  
349 of service recipients with respect to the care or services provided by  
350 the contractor, or (3) initiated, cooperated or otherwise participated in  
351 any investigation or proceeding of any governmental entity related to  
352 the services provided pursuant to a privatization contract.

353 (b) No person shall retaliate or discriminate in any manner against  
354 any public employee or any employee of a private contractor because  
355 the employee attempted or intends to engage in an action described in  
356 subsection (a) of this section.

357 (c) No person shall, by contract, policy or procedure, prohibit or  
358 restrict any employee of a private contractor from engaging in any  
359 action for which a protection against discrimination or retaliation is  
360 provided under subsection (a) or (b) of this section.

361 (d) Nothing in subsection (a) or (b) of this section shall be construed  
362 to protect disclosures that would otherwise violate federal or state law

363 or diminish or impair the rights of any person to the continued  
364 protection of confidentiality of communications provided by state or  
365 federal law.

366 (e) For purposes of this section, an employee is "acting in good faith"  
367 if (1) the employee reasonably believes the information disclosed by  
368 the employee is true, and (2) the information disclosed by the  
369 employee (A) evidences a violation of any law, rule or regulation, or a  
370 generally recognized professional or clinical standard, or (B) relates to  
371 care, services or conditions that potentially endanger one or more  
372 recipients of services or employees working pursuant to a  
373 privatization contract.

374 (f) All privatization contracts shall include a contract provision  
375 specifying that in order to determine compliance with the provisions  
376 of this section as well as the privatization contract, the private  
377 contractor is required to provide the state or its agents, except where  
378 prohibited by federal or state laws, regulations or rules, reasonable  
379 access, through representatives of the private contractor, to facilities,  
380 records and employees that are used in conjunction with the provision  
381 of services specified in the privatization contract.

382 Sec. 14. Subdivision (2) of section 32-700 of the general statutes is  
383 repealed and the following is substituted in lieu thereof (*Effective*  
384 *October 1, 2004*):

385 (2) "State assistance" means any grant, loan, loan guarantee or  
386 issuance of tax benefit not of general applicability for the purpose of  
387 economic development that is (A) made to a business entity operated  
388 for profit, and (B) in an amount greater than one million dollars or  
389 that, if added to any other such state assistance made to the same  
390 business entity during the preceding two years, would total greater  
391 than [one million] five hundred thousand dollars.

392 Sec. 15. Section 32-701 of the general statutes is repealed and the  
393 following is substituted in lieu thereof (*Effective October 1, 2004*):

394 (a) The terms and conditions of any agreement for state assistance  
395 under any program of the general statutes to a business entity  
396 operated for profit administered by the Department of Economic and  
397 Community Development, Connecticut Development Authority and  
398 Connecticut Innovations, Incorporated, shall include provisions for (1)  
399 specific goals for the creation and retention of full-time and part-time  
400 jobs and for periodic reports by the recipient on progress in achieving  
401 such goals if the primary purpose of the state assistance is job creation  
402 or retention, and (2) a requirement that an applicant for any type of  
403 state assistance, except grants and loans of a term of less than one year,  
404 provide the agency with appropriate security for such financial  
405 assistance, including, but not limited to, a letter of credit, a lien on real  
406 property or a security interest in goods, equipment, inventory or other  
407 property of any kind and that the recipient of such state assistance will  
408 remain in substantial material compliance with state and federal law.

409 (b) If a recipient fails to create or retain the number of jobs in this  
410 state stipulated in an agreement for state assistance, [and such failure  
411 is due to circumstances within the control of such recipient,] the  
412 recipient shall repay an amount that is in proportion to the number of  
413 jobs that it failed to create or retain. [unless the awarding authority  
414 deems it is in the best interests of the state or the community in which  
415 the recipient is located to revise such job creation goals. In such event,  
416 the parties shall enter into a revised agreement subject to the approvals  
417 required by subsection (c) of this section. Upon request of the  
418 awarding authority, a recipient shall provide information necessary to  
419 determine compliance with this section, including information  
420 showing the compensation paid to employees on jobs created as a  
421 result of the state assistance.]

422 (c) [The] No awarding authority [, in its discretion, may] shall  
423 modify the terms and conditions of any state assistance, including, but  
424 not limited to, forgiveness of repayment of a loan, revision of job  
425 creation and retention goals or changes to interest rates [, provided  
426 such awarding authority notifies] unless such modification has been  
427 approved by the State Bond Commission. [or the appropriate board of

428 directors, if any, of the modification.]

429 Sec. 16. Section 32-702 of the general statutes is repealed and the  
430 following is substituted in lieu thereof (*Effective October 1, 2004*):

431 If an awarding authority finds that a recipient of state assistance is  
432 not in substantial material compliance with any other provision of the  
433 agreement, [and such noncompliance is within the recipient's control,]  
434 the awarding authority shall provide written notice, by registered  
435 mail, to the recipient and shall order the recipient to come into  
436 compliance with such agreement not less than one hundred eighty  
437 days following receipt of such notice. Failure to comply with reporting  
438 requirements set forth in such agreement shall constitute a default. If  
439 the recipient fails to come into compliance with such agreement within  
440 the one-hundred-eighty-day period, the awarding authority may (1)  
441 rescind the agreement and require that the state be made whole by the  
442 repayment by the recipient of (A) the amount of any grant made, (B)  
443 the amount of any loan outstanding, including any interest necessary  
444 to make the state whole, or (C) the amount of any tax benefit received,  
445 or (2) impose a penalty on such recipient, for the period of failure to  
446 comply, at the rate of one per cent per month or any part thereof of the  
447 amount of the grant, tax benefit or loan outstanding. The awarding  
448 authority may foreclose on any collateral or bond related to such grant,  
449 tax benefit or loan for the purpose of payment of such penalty and any  
450 costs incurred by the awarding authority in connection with collection  
451 of such penalty.

452 Sec. 17. Section 32-703 of the general statutes is repealed and the  
453 following is substituted in lieu thereof (*Effective October 1, 2004*):

454 If the terms and conditions of an agreement for state assistance,  
455 except an agreement for grants only, provide for security, the  
456 awarding authority providing such state assistance shall have a lien on  
457 such security in an amount equal to the amount that is due on such  
458 state assistance, [or other appropriate security for such financial  
459 assistance.] Any such lien shall have priority over all other subsequent  
460 liens except state tax liens, [, except if the awarding authority



The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

## OFA Fiscal Note

### State Impact:

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Department of Administrative Services	GF - Cost	Significant	Significant
Auditors	GF - Cost	97,800	95,600
Department of Economic & Community Development	GO Bond Funds - Savings	Minimal	Minimal
CT Innovations Inc. (quasi-public); CT. Development Auth. (quasi-public)	Savings	Minimal	Minimal
Various State Agencies	GF - Cost	Potential Significant	Potential Significant
Attorney General	GF - Cost	Potential Significant	Potential Significant
Attorney General	GF - Revenue Gain	Potential Minimal	Potential Minimal
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	18,800	43,800

Note: GF=General Fund

**Municipal Impact:** None

### Explanation

The bill establishes procedures that executive branch agencies and officials must follow before entering into a contract with a private entity to provide public services valued at \$750,000 or more. This bill has a potentially significant impact on several state agencies. The bill may also increase the cost of contracting out state service in the future, or increase the costs of contracting out such that the provision of services by state employees would be more cost effective.

### Sections 1-13: Procedures and Standards for Privatizing Services

This bill requires an agency to consult with the Department of Administrative Services (DAS) before contracting a private entity to provide services that would substitute services provided by state

employees. There will be indeterminate costs of compliance to an agency contracting out services. To the extent that there are savings to be achieved from contracting out state services, there will be a delay and a potential decrease in the savings as a result of the administrative processes established by the bill. An agency and DAS are required to compare the costs and benefits, including quality of service provided, of privatizing services with not privatizing them. DAS must certify to the State Auditors that it is cost effective to privatize services, and that the prospective contractor meets certain specified requirements, including that the projected savings will exceed 10% of current costs. As DAS does not currently perform any of these functions, significant costs may result, which would require additional personnel and resources.

Under the bill, the Auditors of Public Accounts is required to review the DAS certification and the proposed privatization contract and then has 30 days to approve or object to a contract. The bill permits the State Auditors to issue a summons to anyone to appear, testify, or produce records relating to their review. Depending on the number of contracts, the Auditors of Public Accounts may require two Auditor I positions with FY 05 costs of \$92,800, plus fringe benefits<sup>1</sup>, and \$5,000 for equipment. Additionally, the Auditors will require indeterminate Other Expenses funding for potential costs associated with the retention of outside professional services on an as-needed basis.

The bill allows the Attorney General (AG) to bring a civil action to prevent or remedy the dismissal, demotion or other action prejudicing of an employee covered by a privatization contract, or a violation of the established wage rate. The bill also authorizes the AG to bring a cause of action against a privatization contractor, subcontractor, their

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<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The total fringe benefit reimbursement rate as a percentage of payroll is 45.82%, effective July 1, 2003. However, first year fringe benefit costs for new positions do not include pension costs lowering the rate to 20.23% in FY 05. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System.

employees or agents who improperly discloses public records. The number of cases under either of these sections is unknown, but could be substantial. A potential, significant cost could be incurred by the AG to engage in additional cases under the bill.

If provisions of this bill concerning privatization contracts are interpreted to apply to existing contracts greater than \$750,000 entered into by state agencies, a significant cost will be incurred by said agencies. This cost would be associated with performing cost benefit analyses, preparing comprehensive written estimates of the costs of state employees providing the same services, providing notice and assistance to each applicable collective bargaining unit when soliciting bids for a privatization contract, and enhanced administrative oversight of contracts. If, alternatively, this bill were interpreted to apply only to new contracts over \$750,000, the identified impact would be mitigated, but is still anticipated to be significant in magnitude.

The bill also requires approval of the General Assembly for contracts valued at \$5 million or more. To the extent that this requirement causes legislators to make additional trips to the Capitol for public hearings or consideration of a contract, Legislative Management may incur minimal costs for legislator mileage reimbursement.

The bill further requires DAS to adopt regulations governing contracts between agencies and social service private providers. DAS would be required to monitor the regulations and hold hearings on contract violations. DAS will incur a workload increase to promulgate, monitor, and hold hearings on these regulations. It is anticipated that this workload increase will require additional funding.

This bill permits the AG to assess a civil penalty if someone violates regulations to be promulgated by DAS governing contracts between governmental units and social services programs. The workload impact of this section is indeterminate since state agencies with

regulatory authority typically assess civil penalties and the AG enforces or collects them. The potential revenue gain from civil penalties to be deposited in the General Fund is minimal.

Finally, the bill prohibits the use of state funds to support or oppose union activity by employees of any contractor that executes a privatization contract. It prohibits retaliation or discrimination against public employees and employees of the contractor who participate in an investigation related to services provided under the contract, and engage in union activities. These provisions have no fiscal impact on the state.

### **Sections 14 -17: State Assistance to Business**

The financial assistance agreement requirements, bond commission approvals and the additional procedures established in Sections 14-17 of the bill are anticipated to result in a workload increase to the state and the quasi-public agencies. It is estimated that expanding current requirements would impact 5-10 additional Department of Economic and Community Development (DECD) agreements per year, which could divert approximately  $\frac{1}{4}$  full-time employee per year away from current duties or require additional minimal resources (GO bond funds). Approximately 20-25 Connecticut Development Authority (CDA) and 10 Connecticut Innovations, Inc. (CII) agreements could be impacted resulting in a minimal workload increase within resources. The security requirements are already instituted to some degree under current procedures when applicable. Job creation/retention as a primary goal impacts a majority of DECD and CDA agreements, but would not impact CII agreements. The job creation/retention requirements are current practice in many cases.

Any increase in revenue or savings due to the penalty repayment, recoveries and lien provisions are anticipated to be minimal.

To the extent that any of the requirements could increase the time involved to slow down the process for assistance, or that the additional requirements reduce the number of applicants, there could be a cost

savings to various financial assistance programs.

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**OLR Bill Analysis**

sSB 333

***AN ACT SETTING PROCEDURES, PERFORMANCE STANDARDS AND WORKPLACE QUALITY STANDARDS FOR PRIVATIZATION OF STATE PROGRAMS AND SERVICES*****SUMMARY:**

This bill establishes procedures executive branch agencies and officials must follow before contracting with private entities to provide services valued at \$750,000 or more and bars such contracts from running more than five years. It excludes contracts for legal or management consulting only.

Under the bill, an agency cannot contract to have a private person or entity provide services similar to, and substituted for, services provided by regular state employees unless the agency, in consultation with the Department of Administrative Services (DAS), compares the costs and benefits (including quality) of privatizing services with not privatizing them. If the agency determines it is cost-effective to privatize the service, it must:

1. prepare a written public statement of current services, specifying their quantity and quality;
2. prepare a written estimate of the most efficient costs of having state employees providing the same quality services;
3. solicit competitive bids and help agency employees to submit a bid;
4. require bids to include the wage rates that bidders will pay for each position, and the contractor to offer available positions to qualified agency employees; and
5. certify, with the DAS commissioner, specific compliance issues to the state auditors and send them a copy of the proposed contract.

The state auditors must approve all contracts, and for contracts valued at \$5 million or more, the legislature must also approve.

The bill establishes rules and procedures for public records associated with state contracts. It specifies (1) how contract recipients must maintain public documents that they receive pursuant to a contract, (2)

the manner and circumstances under which these documents may be disclosed, and (3) the consequences of violating its disclosure provisions.

The bill bans the use of state funds to support or oppose the union activities of a contractor's employees. It extends protections for public and private contractor employees against retaliation for certain of their activities related to the services the contractor provides. Disclosure of information that would otherwise violate state or federal law is not protected. Each privatization contract must include a provision allowing the state or its agents access to the contractor's facilities, records, and employees used to provide the contracted services.

The bill lowers the threshold, from \$1 million to \$500,000, of state assistance to businesses that triggers the ability of state agencies and quasi-public authorities to recover the assistance if a business falls short of meeting job creation and retention goals. When job goals are not met, the bill also requires such state agencies and authorities (the Department of Economic and Community Development (DECD), the Connecticut Development Authority (CDA), and Connecticut Innovations, Incorporated (CII)) to seek assistance repayment. Current law allows the agency to waive the repayment requirement under certain conditions.

The bill removes the condition that noncompliance with any assistance agreement provision must be within the recipient's control before the state can seek to rescind the agreement, seek repayment, or impose a penalty.

It allows an agreement that the agencies enter with a business to provide assistance other than grants (e.g., loans or tax benefits not applicable to others) to include security to guarantee the recipient's compliance with state and federal law. The State Bond Commission must approve any change to the terms and conditions of an assistance agreement.

Finally, the bill requires DAS to adopt regulations governing contracts between government agencies and social services program private providers. A provider's violation of the regulations can result in termination of a contract, civil penalties, and the disqualification from bidding on future contracts.

EFFECTIVE DATE: October 1, 2004

## **PRIVATIZATION CONTRACTS**

### ***Agency Duties (§§ 2 and 3)***

Under the bill, an agency must analyze the costs and benefits of privatizing services versus continuing to provide them with state employees. The agency cannot enter a valid privatization contract unless it does so. (Privatization is the process of hiring a private entity to perform work that is usually performed by a government agency. ) It must consult with the DAS commissioner and send the analysis to the state auditors.

If the agency concludes that privatization is cost-effective, it must prepare a written statement of the services needed along with their quantity and standards of quality. The statement is a public record and must be on file at the agency and DAS and is sent to the state comptroller.

The agency must also prepare a comprehensive written estimate of the most efficient personnel costs for the agency's employees to provide the same quality services. The estimate must include all direct costs, including employee benefits. Unemployment compensation and retirement benefits must be reported separately. The agency must also report separately on the value of any state-owned property or assets. The bill invalidates any contract amendment an agency proposes for the purpose of avoiding these requirements.

### ***Bidding (§ 3(b))***

The agency must solicit competitive sealed bids based on the statement of need. At least 60 days before soliciting bids, it must notify each union representing its employees. It must consult with them and provide resources for encouraging and assisting employees to organize and submit a bid on the contract. Employees may bid with another person in a joint venture. The agency must give equal consideration to all bids, including any employee bid.

### ***Wages and Payroll (§ 4(a))***

Each bid and contract must include the wage rate for each employee covered by the contract. After the contract begins, the contractor must

submit quarterly payroll records to the agency showing the hours worked and hourly wage paid to each employee identified by name, address, and Social Security number. The attorney general may sue to enforce the bill's wage requirements and to prevent or remedy any disciplinary action against an employee that is a violation of these provisions.

### **State Employees (§ 4(b))**

Each bid and contract must include provisions requiring the contractor to offer available positions to qualified regular agency employees who lose their jobs as a result of the contract award and who meet the contractor's qualifications. The contractor must also agree to comply with nondiscrimination policies and take affirmative steps to provide equal employment opportunities.

### **Certification (§ 8)**

When soliciting bids, the agency head and DAS commissioner must each certify to the state auditors that:

1. based on the cost-benefit analysis, it is cost-effective to privatize services;
2. projected savings will exceed 10% of the cost to the state for the services using state employees;
3. the quality of services that the contractor will provide is likely to satisfy the agency's requirements as described in the agency's statement of service and meet or exceed those provided by state employees;
4. the contractor and its supervisory employees have no adjudicated record of substantial or repeated willful violations of relevant laws, including those on labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection, and conflict of interest;
5. the contract is in the public interest; and
6. they have complied with the bill and other state laws.

The agency head and DAS must certify that the bid included:

1. current employees' length of service (which may include their relevant experience, by job classification) and the minimum requirements for applicants for new positions;

2. the annual rate of employee turnover;
3. planned training period for each employee;
4. any legal complaints alleging violations of federal, state, or local rules, regulations, or laws and the resulting citations and findings;
5. collective bargaining agreements or personnel policies that cover employees providing services under the contract; and
6. campaign contributions that a bidder or managerial employee made to any elected state official or legislator during the prior four years.

The agency head and DAS commissioner must send to the state auditors a copy of the contract with their certification.

### ***State Auditors' Approval (§ 9)***

A copy of the contract and the certification goes to the state auditors for their approval. They have 30 days from certification to approve or object to a contract. No contract can be implemented or considered valid if the auditors notify the agency that they object. The objection must be in writing and state the specific requirements that the agency failed to meet. The auditors can issue a summons to anyone to appear, testify, or produce records relating to their review.

The auditors' objection is final and binding unless and until they withdraw it in writing, stating their reasons based on revised certifications from the agency and DAS.

### ***Legislative Approval (§ 11)***

For contracts with a value of \$5 million or more, within five days after the auditors notify the agency of their approval, the agency must file the contract with the Senate and House clerks. The Senate president pro tempore and House speaker have five days to submit the contract to the Government Administration and Elections and Appropriations committees. The committees must hold a public hearing and report their recommendations to the legislature within 25 days after the leaders receive the contract.

The legislature must approve or reject a contract in whole by a majority vote. It has until its adjournment to do so when a contract is filed during a regular session as long as it is filed at least 30 days before the end of session. If the legislature is not in regular session

when a contract is filed, it has until adjournment of (1) the next regular session or (2) a special session convened to take action on the measure. If it takes no action by its adjournment, the contract is rejected and cannot be implemented.

But if the agency files a contract within 30 days of the end of a regular session, the legislature can either (1) convene in a special session and vote within 30 days or (2) vote on it within the first 30 days of its next regular session.

***Maintenance and Disclosure of Public Records (§ 5 and 6(a)(b) and (c))***

The bill keeps public records provided to, or created by, the contractor subject to the Freedom of Information Act (FOIA). The public agency controls these records pursuant to the FOIA and will disclose them accordingly. The private contractor, or subcontractor, may not disclose them.

Under the bill, privatization contractors, subcontractors, and their employees or agents have no ownership rights or interest in any public record they possess, modify, or create pursuant to the contract, subcontract, or amendment to the contract or subcontract. The bill prohibits these people from impairing the integrity of the public records, which remain the state's property. Under the FOIA, "public records" means any recorded data or information relating to the conduct of the public's business which (1) is prepared, owned, used, received, or retained by a contractor or subcontractor pursuant to a contract, subcontract, or amendment to a contract or subcontract and (2) handwritten, typed, tape-recorded, printed, photo-stated, photographed, or otherwise recorded.

The bill provides that any public record that (1) a state agency gives a contractor or subcontractor or (2) the contractor or subcontractor creates pursuant to a contract, subcontract, or amendment to such contract or subcontract remains a public record for purposes of FOIA. The state agency providing the record and the contractor or subcontractor, as the case may be, have a joint and several duty to comply with the agency's disclosure obligations under the FOIA; but only the state agency can decide whether to disclose a particular record.

Contractors, subcontractors, and their agents and employees cannot disclose public records:

1. they possess, modify, or create pursuant to the contract, subcontract, or amendment to such contract or subcontract; and
2. that federal or state law (a) prohibits the state agency from disclosing in all cases, (b) allows the agency to disclose to only certain people or entities or under certain conditions, or (c) allows the state agency to withhold.

The bill does not prohibit the contractor from disclosing such records to any subcontractor for purposes of carrying out its subcontract.

### ***Unauthorized Disclosure (§ 6(e))***

A contract recipient and his subcontractor must notify the agency head and attorney general of any unauthorized disclosure of public information within seven days after learning of it.

### ***Penalties for Unauthorized Disclosure of Public Records (§ 7)***

The bill authorizes the attorney general and anyone aggrieved to bring a cause of action against anyone who (1) discloses public records; (2) fails to report such disclosure; or (3) sells, markets, or otherwise profits from their disclosure in violation of its provisions. The aggrieved party may bring a cause of action for damages in Superior Court, and the attorney general may bring a cause of action for:

1. damages on behalf of the state,
2. restitution for damages suffered by anyone as a result of the violation, and
3. imposition and recovery of a civil penalty of up to \$ 50,000.

Any action must be brought within three years of the violation. Proof of public interest or public injury is not required in order to bring the cause of action.

The bill authorizes the court, at the conclusion of such action, to:

1. order disgorgement of any profits or other benefits derived from the violation;
2. award punitive damages, costs, or reasonable attorney's fees; or

3. order injunctive or other equitable relief.

The bill makes anyone who knowingly and willfully violates its provisions on disclosing public records; failing to report disclosures; or selling, marketing, or otherwise profiting from such a disclosure subject to one to five years' imprisonment, a fine of up to \$ 5,000, or both.

### ***Restriction on Profiting (§ 6(d) )***

The bill prohibits a contractor, subcontractor, or his employees or agents from selling, marketing, or otherwise profiting from the disclosure or use of any public records they possess pursuant to a contract, subcontract, or contract or subcontract amendment, unless the document authorizes it.

### **EMPLOYEE PROTECTIONS (§§ 12 AND 13)**

The bill bans using state funds for supporting or opposing the union activities of a private contractor's employees. It covers activities such as preparing and distributing material advocating for or against unionization; and paying for advice on how a contractor can assist, promote, or deter union organization, or impede a union from fulfilling its representational responsibilities.

The bill also prohibits retaliating or discriminating against a public employee or a private contractor's employee acting in good faith who:

1. discloses information related to a service the contractor provides under a contract,
2. advocates on behalf of service recipients,
3. participates in any investigation or proceeding related to services provided under a contract, or
4. attempts or intends to do any of these things.

It also bars any policy or procedure that prohibits or restricts any of the above.

The bill does not (1) protect an employee's disclosures that would otherwise violate federal or state law or (2) diminish or impair anyone's right to the legally protected confidentiality of communications.

Under the bill, privatization contracts must include a provision that requires contractors to give the state reasonable access to facilities, records, and employees related to the contract in order to determine compliance with these provisions.

## **COMPLIANCE WITH STATE ASSISTANCE AGREEMENTS**

### ***Financial Assistance Affected (§ 14)***

The bill's financial assistance provisions apply to for-profit businesses that have received a grant, loan, loan guarantee, or particular tax benefit (1) of more than \$500,000 or (2) in an amount that, if added to all other state assistance received in the preceding two years, would total more than \$500,000. Under current law, the trigger is \$1 million or more in state assistance. The bill makes the compliance provisions more stringent by removing state agency flexibility regarding job goals and other conditions.

### ***Job Creation and Retention, Security for Financial Assistance, and Assistance Repayment (§ 15)***

By law, a business that receives assistance under a program administered by DECD, CDA, or CII must sign an agreement that includes (1) specific goals for creating and retaining full-time and part-time jobs (if employment is the goal of the assistance), with requirements for reporting on progress and (2) a security requirement, such as a letter of credit, lien, or security interest in property, for assistance other than a grant.

The bill maintains the existing requirement that the assistance recipient must repay a proportional amount, if it fails to create or retain the number of jobs stipulated in the agreement. But it eliminates the ability of the agency to waive the repayment requirement if (1) the job goal is not reached due to circumstances beyond the business's control, or (2) the agency deems it is in the best interest of the state or the community where the business is located.

The State Bond Commission must approve any modification of the terms and conditions of a state assistance agreement, such as loan forgiveness, a change in the job goals, or interest rate change. Under current law, the agency providing the assistance can modify terms and must notify the bond commission.

**Other Agreement Provisions (§ 16)**

The bill removes the condition that agreement noncompliance must be within the recipient's control before the state can seek to rescind the agreement, seek repayment, or impose a penalty.

**Lien Requirements (§17)**

The bill gives the awarding authority a lien on any security that may be required in a state assistance agreement (other than grants) equal to the amount of assistance. The state's lien has priority over all other liens except state tax liens. Under current law, the awarding agency may decide that it is in the state's best interest for the state's lien not to have priority.

**DAS REGULATIONS ON PRIVATE SOCIAL SERVICE PROVIDERS (§ 10)**

The bill requires the DAS commissioner to adopt regulations to govern contracts between state agencies and social services program private providers. The regulations must include a provision allowing the affected agency and DAS to bar transactions between a provider and related parties after receiving advance written notice of the transaction and sending a written notice to the provider. The regulations must require that:

1. any reduction in a reimbursement rate, payment, or expenditure must be used first to reduce the payment for managerial personnel and only lastly against spending for direct service workers;
2. in certain circumstances gives the state the right to recoup its payments to a provider or execute a lien on its property, when the provider amortizes a mortgage and then sells it;
3. the provider make a complete inventory of all equipment purchased on behalf of the state and return the equipment to the state when the contract is completed or terminated; and
4. the uniform financial report (not defined in the bill) include a subsidiary schedule for each component cost and a related party disclosure statement from each of the provider's officers, directors, and trustees.

The regulations must also:

1. ban subcontracts or consultant contracts for services with the provider's parent organization or parent agency;
2. prohibit the provider's limiting or refusing to provide services to a case or type of case as agreed to in the contract; and
3. prohibit the use of state funds for financial services, fund-raising, or management consultants not related to services for clients or patients.

If, after a hearing, DAS finds that a provider is violating the regulations, it can order the contract terminated, or the attorney general can assess a civil penalty of up to \$2,000 or 10% of the amount payable under the contract, whichever is greater. The agency must withhold the penalty from any payments it still owes under the contract.

After holding a hearing, the DAS commissioner can also disqualify any provider who willfully violates the regulations from bidding on future state contracts.

The bill gives any aggrieved provider the right to exercise any legal remedy or cause of action available under the law.

### **COMMITTEE ACTION**

#### Labor and Public Employees Committee

Joint Favorable Change of Reference

Yea 10      Nay 4

#### Government Administration and Elections Committee

Joint Favorable Report

Yea 9      Nay 7