



Senate

General Assembly

File No. 317

February Session, 2004

Substitute Senate Bill No. 391

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 CONCERNING THE RETENTION OF SERVICE CONTRACT WORKERS.

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

- 1 Section 1. (NEW) (*Effective July 1, 2004*) (a) As used in this section:
- 2 (1) "Awarding authority" means any person, including a contractor
3 or subcontractor, who awards or otherwise enters into a contract to
4 perform any of the following services for the state: Security, janitorial,
5 building maintenance, food and beverage, hotel, including hotel
6 physical plant engineering, hotel electrician and hotel and convention
7 center stagehand, hotel and convention center exhibition and
8 convention setup and tear-down, carpentry, painting, audiovisual and
9 lighting technician, healthcare and any service performed by
10 nonelected and nonappointed state employees, but does not include
11 services performed by any restaurant owned and operated by one or
12 more individuals or an organization other than a publicly-traded

13 corporation.

14 (2) "Contractor" means any person who enters into a service
15 contract, valued at fifty thousand dollars or more, with the awarding
16 authority and any subcontractors to such service contract at any tier.

17 (3) "Employee" means any person engaged to perform any of the
18 following services: Security, janitorial, building maintenance, food and
19 beverage, hotel, including hotel physical plant engineering, hotel
20 electrician and hotel and convention center stagehand, hotel and
21 convention center exhibition and convention setup and tear-down,
22 carpentry, painting, audiovisual and lighting technician, healthcare
23 and any service performed by nonelected and nonappointed state
24 employees, but does not include services performed by any restaurant
25 owned and operated by one or more individuals or an organization
26 other than a publicly-traded corporation, but does not include a person
27 who is (A) a managerial, supervisory or confidential employee,
28 including any person who would be so defined under the National
29 Labor Relations Act, (B) employed for less than ten hours per week, or
30 (C) employed by a terminated contractor for less than ninety days
31 immediately preceding the termination date of the service contract.

32 (4) "Person" means any individual, proprietorship, partnership, joint
33 venture, corporation, limited liability company, trust association, the
34 state or other entity that may employ or enter into other contracts.

35 (5) "Service contract" means a contract let to a contractor by the
36 awarding authority for the furnishing of any service listed in
37 subdivision (3) of this subsection.

38 (6) "Successor service contract" means a service contract with the
39 awarding authority under which substantially the same services to be
40 performed have previously been rendered to the awarding authority
41 as part of the same program or at the same facility under another
42 service contract or have previously been rendered by the awarding
43 authority's own employees.

44 (7) "Terminated contractor" means a contractor whose service
45 contract expires without renewal or whose contract is terminated, and
46 includes the awarding authority itself when work previously rendered
47 by the awarding authority's own employees is the subject of a
48 successor service contract.

49 (8) "Successor contractor" means a contractor awarded a service
50 contract to provide substantially the same services previously
51 rendered to the awarding authority as part of the same program or at
52 the same facility under another service contract.

53 (b) Each awarding authority that enters into a service contract to be
54 performed within this state shall be subject to the following
55 obligations:

56 (1) The awarding authority shall give advance notice to a contractor
57 and the exclusive bargaining representative of any of the contractor's
58 employees, of the termination of such service contract and shall
59 provide the contractor and the exclusive bargaining representative
60 with the name, telephone number and address of the successor
61 contractor or contractors, if known. The terminated contractor shall,
62 not later than three days after receipt of such notice, provide the
63 successor contractor with the name, date of hire and employment
64 occupation classification of each person employed by the terminated
65 contractor at the site or sites covered by the service contract as of the
66 date the terminated contractor receives the notice of termination.

67 (2) On the date the service contract terminates, the terminated
68 contractor shall provide the successor contractor with updated
69 information concerning the name, date of hire and employment
70 occupation classification of each person employed by the terminated
71 contractor at the site or sites covered by the service contract, to ensure
72 that such information is current up to the actual date of service
73 contract termination.

74 (3) If the awarding authority fails to notify the terminated contractor
75 of the identity of the successor contractor, as required by subdivision

76 (1) of this subsection, the terminated contractor shall provide the
77 information described in subdivision (2) of this subsection to the
78 awarding authority not later than three days after receiving notice that
79 the service contract will be terminated. The awarding authority shall
80 be responsible for providing such information to the successor
81 contractor as soon as the successor contractor has been selected.

82 (4) (A) A successor contractor shall retain, for at least ninety days
83 from the date of first performance of services under the successor
84 service contract, all of the employees who were employed by the
85 terminated contractor at the site or sites covered by the service
86 contract.

87 (B) In the event the successor service contract is terminated prior to
88 the expiration of such ninety-day period, then any contractor awarded
89 a subsequent successor service contract shall be bound by the
90 requirements set forth in this subsection to retain, for a new ninety-day
91 period commencing with the onset of the subsequent successor service
92 contract, all of the employees who were previously employed by any
93 one or more of the terminated contractors at the site or sites covered by
94 the service contract.

95 (C) At least five days prior to the termination of a service contract,
96 or at least fifteen days prior to the commencement of the first
97 performance of service under a successor service contract, whichever is
98 later, the successor contractor shall hand deliver a written offer of
99 employment to each such employee in such employee's native
100 language or any other language in which such employee is fluent and
101 information concerning such employee's rights under the provisions of
102 this section. Each offer of employment shall state the time within
103 which such employee must accept such offer but in no case shall that
104 time be less than ten days from the date of the offer of employment.

105 (5) If at any time a successor contractor determines that fewer
106 employees are required to perform the successor service contract than
107 were required by the terminated contractor, the successor contractor
108 shall be required to retain such employees by seniority within each job

109 classification, based upon the employees' total length of service at the
110 affected site or sites.

111 (6) During such ninety-day period, the successor contractor shall
112 maintain a preferential hiring list of employees eligible for retention
113 pursuant to subdivision (4) of this subsection, who were not initially
114 retained by the successor contractor, from which the successor
115 contractor shall hire additional employees, if necessary.

116 (7) Except as provided under subdivision (6) of this subsection,
117 during such ninety-day period, the successor contractor shall not
118 discharge without just cause an employee retained pursuant to this
119 section. For purposes of this subdivision, "just cause" shall be
120 determined solely by the performance or conduct of the particular
121 employee. At the end of such ninety-day period, the successor
122 contractor shall prepare a written performance evaluation for each
123 employee retained pursuant to this section, and, if such employee's
124 performance is satisfactory, offer such employee continued
125 employment as may be consistent with the provisions of sections 4a-
126 60g to 4a-60j, inclusive, of the general statutes.

127 (c) Any awarding authority or contractor who knowingly violates
128 the provisions of this section shall pay a penalty not to exceed one
129 hundred dollars per employee for each day the violation continues.

130 (d) The Labor Commissioner shall have the responsibility for the
131 enforcement of the provisions of this section and in connection with
132 such responsibility shall:

133 (1) Cause a notice containing the provisions of this section to be sent
134 to all persons currently engaged in performing any of the following
135 services within the state and to all persons who shall in the future
136 indicate on such application an intention to engage in such businesses,
137 including any subcontracts for such services: Security, janitorial,
138 building maintenance, food and beverage, hotel, including hotel
139 physical plant engineering, hotel electrician and hotel and convention
140 center stagehand, hotel and convention center exhibition and

141 convention setup and tear-down, carpentry, painting, audiovisual and
142 lighting technician, health care and any service performed by
143 nonelected and nonappointed state employees.

144 (2) Maintain a current list of all business privilege license holders for
145 performing services listed in subdivision (1) of this subsection.

146 (3) Investigate all complaints against any contractor or awarding
147 authority and in connection with such complaint or with respect to any
148 investigation shall have full power and authority to subpoena any
149 witness, books, records or other data of any person for the purposes of
150 obtaining information pertinent to such investigation. The Labor
151 Commissioner shall make a finding, in writing, with respect to each
152 complaint filed, and shall send a copy of the complaint to the
153 complainant and the contractor and shall maintain the original on file.

154 (4) Refer all complaints determined to have merit to the appropriate
155 state department for revocation of the offending contractor's business
156 privilege license.

157 (5) Monitor the operations of contractors and awarding authorities
158 to ensure compliance with the provisions of this section.

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| This act shall take effect as follows: | |
| Section 1 | July 1, 2004 |

GAE *Joint Favorable Subst.*

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; Various State Agencies | GF - Cost | Potential Significant | Potential Significant |
| Labor Dept. | GF - Revenue Gain | Potential Minimal | Potential Minimal |

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill provides protection to service contract employees whose jobs are in jeopardy because their employer’s state contract is terminated or the state agency that employs them decides to outsource their jobs. The bill also requires that advance notice be given to the contractor, subcontractor or state employees currently performing a service contract before that contract is terminated. The covered service contracts¹ are those valued at \$50,000 or more and includes subcontracts.

The bill requires that the successor service contractor must retain employees from the terminated service contractor for at least 90 days, unless the successor contractor determines fewer workers are needed to perform the job, then only the most senior workers in each job classification must be retained.

As a result of this provision, the cost of future state service contracts may increase significantly. Requiring a successor contractor to retain employees from the terminated contractor will increase the successor

¹ The state contracts covered under the bill are for the following services: security, janitorial, building maintenance, food services, health care, hotel or convention

contractor's costs. This increase in successor contractor costs will likely be passed onto the state. This provision may also preclude some contractors from bidding on state service contracts, thus the state may be precluded from a future cost savings. It is not known how many state service contracts will be impacted by this bill.

The bill also requires any awarding authority or contractor who violates the bill's advance notice provisions to a fine of up to \$100 per employee per day the violation continues. The potential revenue generated by these fines is anticipated to be minimal.

center, carpentry, painting, audiovisual and lighting, or any other service performed by non-appointed and non-elected state employees.

OLR Bill Analysis

sSB 391

AN ACT CONCERNING THE RETENTION OF SERVICE CONTRACT WORKERS**SUMMARY:**

This bill provides greater protection to service contract employees whose jobs are in jeopardy because (1) their employer's contract is terminated or (2) the state agency that employs them decides to outsource their jobs. It requires anyone who contracts on the state's behalf for these services (the awarding authority) to give these at-risk employees advanced notice of the termination and requires any successor contractor to hire them for a specified period.

With a few exceptions, the covered services are: (1) security, (2) janitorial, (3) building maintenance, (4) food services, (5) hotel or convention center, (6) carpentry, (7) painting, (8) audiovisual and lighting, (9) health care, or (10) any other service, other than restaurant services, performed by non-appointed and non-elected state employees. Covered services do not include those performed by managers, supervisors, or confidential employees; employees working fewer than 10 hours a week; or employees who work for fewer than 90 days before the contract is terminated. The covered contracts are those valued at \$50,000 or more and include subcontracts.

The bill subjects any awarding authority or contractor who violates its provisions to a fine of up to \$100 per employee per day the violation continues. The labor commissioner enforces the bill's provisions. In connection with his duties, the commissioner must have a notice of the policy the bill establishes sent to (1) employees currently performing the covered services and (2) future applicants who indicate a desire to perform them. (The bill does not specify how the commissioner will identify these applicants.) Additionally, he must (1) maintain a current list of all "business privilege license holders" for performing the covered services; (2) investigate complaints, including subpoena people and records for information pertinent to the investigation; (3) refer meritorious complaints to the state department with authority to revoke the offending contractor's business license; and (4) ensure

compliance with the bill's policies by monitoring the operations of awarding authorities and contractors.

EFFECTIVE DATE: July 1, 2004

NOTICE AND EMPLOYEE INFORMATION

The bill requires authorities awarding a service contract that will be performed in Connecticut to give the contractor, subcontractors, or state agency (terminating contractor) currently performing the contract and any union representing their employees advance notice before terminating the contract. The authority must also give them the name, telephone number, and address of any known successor contractor. After receiving the notice, the terminating contractor has at least three days to give the successor the name, date of hire, and classification of each of his employees subject to the termination. Within the same time period, any terminating contractor who is not given the successor's name must provide the employee information to the awarding authority, who must give it to the successor contractor.

On the date the contract terminates, the bill requires the terminating contractor to give the successor contractor updated employee information.

DUTY OF SUCCESSOR CONTRACTORS

The bill requires a successor contractor to hand deliver a written job offer to each employee of the terminating contractor at least five days before a service contract terminates or 15 days before a successor contract begins, whichever is later. The job offer must inform the employee of his rights and be written in the employee's native language or a language in which he is fluent. Each offer must specify a period for acceptance that is at least 10 days from the offer date.

The successor must retain the employees for at least 90 days. But if the successor determines that he needs fewer people to do the jobs, he only has to keep the most senior people in each job classification. These are the people who have worked on the job for the longest time. During the 90 days, the successor must keep a preferential list of all of the terminating contractor's employees that he did not hire and offer them jobs as they become available.

The bill prohibits the successor contractor from firing an employee hired from the terminating contractor without just cause, which must be determined solely by the employee's performance or conduct. At the end of the 90 days, the successor contractor must evaluate each such employee. If an employee's work is satisfactory, he must allow him to keep his job, consistent with the state's minority set-aside laws. (Set-aside laws require a percentage of state contracts to be awarded to small or minority businesses, rather than address employment-related issues; thus, it is unclear how these laws apply to the bill.)

If the successor's contract is terminated before the end of the 90-day period, the bill requires the subsequent successor to keep the employees of the original terminating contractor and the first successor contractor for 90 days, beginning on the day the contract starts.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 11 Nay 6