



Senate

General Assembly

File No. 266

February Session, 2004

Substitute Senate Bill No. 501

Senate, March 25, 2004

The Committee on Commerce reported through SEN. LEBEAU of the 3rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE RETENTION OF JOBS IN CONNECTICUT.

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

1 Section 1. (NEW) (*Effective from passage*) (a) For purposes of this
2 section:

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

6 (2) "Privatization contract" means an agreement between a state
7 agency and a nongovernmental person or entity, in which such person
8 or entity agrees to provide services valued at one hundred thousand
9 dollars or more over the life of the contract that are substantially
10 similar to and in lieu of services provided, in whole or part, by
11 employees of such agency or by employees of another state agency for
12 such state agency; but does not mean an agreement to provide legal

13 services, litigation support or management consulting only.

14 (b) Notwithstanding any provision of the general statutes, every
15 privatization contract to which the state, a state agency or any political
16 subdivision of the state other than a municipality is a party shall
17 contain the following provisions: (1) The contractor agrees and
18 warrants that in the performance of the contract such contractor will
19 not originate or provide such services at a location outside of the
20 United States; and (2) failure by the contractor to comply with the
21 requirement that such services not originate or be provided outside of
22 the United States shall constitute a material breach of such contract,
23 making the contract void, and, in the case of such breach, the
24 contractor shall be liable for damages in an amount equal to the
25 amount paid by the state, state agency or political subdivision of the
26 state other than a municipality, for the percentage of work originated
27 or provided outside of the United States, plus attorney's fees and costs
28 incurred in enforcing this provision of such contract.

29 Sec. 2. Subsection (c) of section 4a-59 of the general statutes is
30 repealed and the following is substituted in lieu thereof (*Effective from*
31 *passage*):

32 (c) All open market orders or contracts shall be awarded to (1) the
33 lowest responsible qualified bidder, the qualities of the articles to be
34 supplied, their conformity with the specifications, their suitability to
35 the requirements of the state government and the delivery terms being
36 taken into consideration and, at the discretion of the Commissioner of
37 Administrative Services, life-cycle costs and trade-in or resale value of
38 the articles may be considered where it appears to be in the best
39 interest of the state, (2) the highest scoring bidder in a multiple criteria
40 bid, in accordance with the criteria set forth in the bid solicitation for
41 the contract, or (3) the proposer whose proposal is deemed by the
42 awarding authority to be the most advantageous to the state, in
43 accordance with the criteria set forth in the request for proposals,
44 including price and evaluation factors. Notwithstanding any provision
45 of the general statutes to the contrary, each state agency awarding a

46 contract through competitive negotiation shall include price as an
47 explicit factor in the criteria in the request for proposals and for the
48 contract award. In considering past performance of a bidder for the
49 purpose of determining the "lowest responsible qualified bidder" or
50 the "highest scoring bidder in a multiple criteria bid", the
51 commissioner shall evaluate the skill, ability and integrity of the
52 bidder in terms of the bidder's fulfillment of past contract obligations
53 and the bidder's experience or lack of experience in delivering
54 supplies, materials, equipment or contractual services of the size or
55 amount for which bids have been solicited. In determining the lowest
56 responsible qualified bidder for the purposes of this section, the
57 commissioner may give a price preference of up to ten per cent for (A)
58 the purchase of goods made with recycled materials or the purchase of
59 recyclable or remanufactured products if the commissioner determines
60 that such preference would promote recycling or remanufacturing. As
61 used in this subsection, "recyclable" means able to be collected,
62 separated or otherwise recovered from the solid waste stream for
63 reuse, or for use in the manufacture or assembly of another package or
64 product, by means of a recycling program which is reasonably
65 available to at least seventy-five per cent of the state's population,
66 "remanufactured" means restored to its original function and thereby
67 diverted from the solid waste stream by retaining the bulk of
68 components that have been used at least once and by replacing
69 consumable components and "remanufacturing" means any process by
70 which a product is remanufactured; (B) the purchase of motor vehicles
71 powered by a clean alternative fuel; or (C) the purchase of motor
72 vehicles powered by fuel other than a clean alternative fuel and
73 conversion equipment to convert such motor vehicles allowing the
74 vehicles to be powered by either the exclusive use of clean alternative
75 fuel or dual use of a clean alternative fuel and a fuel other than a clean
76 alternative fuel. As used in this subsection, "clean alternative fuel" shall
77 mean natural gas or electricity when used as a motor vehicle fuel. All
78 other factors being equal, preference shall be given to supplies,
79 materials and equipment produced, assembled or manufactured in the
80 state and services originating and provided in the state, provided in no

81 instance shall such services originate or be performed outside of the
82 United States. If any such bidder refuses to accept, within ten days, a
83 contract awarded to such bidder, such contract may be awarded to the
84 next lowest responsible qualified bidder or the next highest scoring
85 bidder in a multiple criteria bid, whichever is applicable, and so on
86 until such contract is awarded and accepted. If any such proposer
87 refuses to accept, within ten days, a contract awarded to such
88 proposer, such contract shall be awarded to the next most
89 advantageous proposer, and so on until the contract is awarded and
90 accepted. There shall be a written evaluation made of each bid. This
91 evaluation shall identify the vendors and their respective costs and
92 prices, document the reason why any vendor is deemed to be
93 nonresponsive and recommend a vendor for award. A contract valued
94 at one million dollars or more shall be awarded to a bidder other than
95 the lowest responsible qualified bidder or the highest scoring bidder in
96 a multiple criteria bid, whichever is applicable, only with written
97 approval signed by the Commissioner of Administrative Services and
98 by the Comptroller. The commissioner shall submit to the joint
99 standing committee of the General Assembly having cognizance of
100 matters relating to government administration, the State Auditors and
101 the Comptroller, an annual report of all awards made pursuant to the
102 provisions of this section.

103 Sec. 3. (NEW) (*Effective from passage*) (a) As used in this section:

104 (1) "Covered establishment" means any industrial, commercial,
105 service or other entity located in the state that employs one hundred or
106 more persons;

107 (2) "Employer" means any person who, directly or indirectly, owns,
108 operates or has a controlling interest in a covered establishment,
109 including the state or any political subdivision thereof but does not
110 mean any agriculture enterprise or construction enterprise;

111 (3) "Person" means one or more individuals, partnerships,
112 associations, corporations, business trusts, legal representatives or any
113 organized group of persons; and

114 (4) "Employment relocation" means the removal of twenty-five per
115 cent or more of all the employees or the work performed by such
116 employees in a covered establishment to a location outside the state of
117 Connecticut.

118 (b) The employer for a covered establishment proposing an
119 employment relocation shall provide at least six months written notice
120 prior to such action to the employees to be affected by the relocation
121 and to the Labor Commissioner and the Commissioner of Economic
122 and Community Development.

123 (c) An employer failing to provide required notification pursuant to
124 this section shall pay to the state a fine in the amount of one thousand
125 dollars for each day of such failure, provided that all such funds
126 received by the state shall be credited to the Labor Department for
127 purposes of employment retraining, placement and other assistance.

128 (d) The provisions of this section shall not apply to those employees
129 who, following an employment relocation, continue their employment
130 with the employer.

131 Sec. 4. (NEW) (*Effective from passage*) Every contract to which the
132 state or any quasi-public agency is a party shall include the following
133 provision: The contractor agrees and warrants that in the performance
134 of the contract, the contractor shall not enter into an agreement or
135 otherwise engage the services of any subcontractor, person or group of
136 persons at a site located outside the United States or transfer any of the
137 work or services to a location outside the United States, unless the
138 purpose of such contract is work or services to be performed incident
139 to a proceeding or other event that occurs outside the United States or
140 unless such service or work is otherwise unavailable within the United
141 States.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>

Sec. 3	<i>from passage</i>
Sec. 4	<i>from passage</i>

CE *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 - None	None	None
Labor Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill bans state agencies from giving preference to Connecticut service companies when awarding contracts if those companies originate or perform services outside the U.S. The bill also requires agencies to include provisions in privatization contracts that limit or restrict the ability of state contractors to transfer jobs or work outside the U.S. The bill further requires that state contractors assure that their work is performed in the U.S.

This bill is not expected to have a fiscal impact on the Department of Administrative Services as the agency has no contracts with companies that originate or perform services outside the U.S. The restrictions on privatization contracts is not expected to have a fiscal impact on the state.

The Department of Labor may realize a potential minimal revenue gain from collecting fines from certain employers who relocate outside Connecticut without providing six month written notice to their employees, the Labor Commissioner and to the Commissioner of Economic and Community Development. Employers failing to provide the required advance relocation notification are subject to a \$1,000 per day fine.

OLR Bill Analysis

sSB 501

AN ACT CONCERNING THE RETENTION OF JOBS IN CONNECTICUT**SUMMARY:**

This bill sets conditions under which most businesses must notify employees about pending layoffs. Under the bill, a business with 100 or more employees must give at least six months advance written notice if (1) it decides to transfer work to a site outside of Connecticut and consequently layoffs its Connecticut employees and (2) the decision affects at least 25% of the employees or the work they perform. It must also give the labor and economic and community development commissioners six months notice. The bill imposes a \$1,000 per day fine if the business fails to give either notice.

The bill also restricts state contractors' ability to transfer jobs and work under their contracts to worksites outside of Connecticut. It requires state contracts to contain provisions assuring that the work will be performed in the U.S. It also bans agencies from giving the statutory preference for Connecticut service contracts to contractors who will originate or perform the service outside the U.S.

EFFECTIVE DATE: Upon passage

JOB LAYOFF NOTICES***Affected Businesses***

The bill imposes the notice requirement on the people and organizations that own, operate, or control a business with 100 or more employees. Owners include individuals, partnerships, associations, corporations, business trusts, legal representatives, and local and state agencies. The bill exempts only those who own or operate agricultural or construction businesses.

Conditions for Issuing Notices

A business must give advance notice to the employees it intends to lay off if it plans to transfer the work or the specific jobs they perform to an out-of-state site. In either case, the business must notify the affected employees if they constitute at least 25% of its workforce or the work it plans to transfer constitutes at least 25% of the work these employees perform.

Fine

The business must pay a \$1,000 per day fine if it fails to give the six-month notice to the affected employees and the labor and economic and community development commissioners. The revenue from the fines must go to the Labor Department, which must use the money to fund job retraining, job placement, and other worker assistance programs.

STATE CONTRACTS

Generic Contractual Assurance

The bill requires every state contract to contain a provision that bars the contractor from using workers employed at sites outside the U.S. unless the work is unavailable in the U.S. or the contract's purpose is to perform work or services that result from proceedings or other events occurring outside the U.S.

Privatization Contracts

The bill requires agencies to include an additional provision in certain service contracts over \$100,000. The provision, which the bill specifies, requires contractors to assure that they will not perform the work outside of the U.S. and makes them liable for damage if they do. Agencies must include the provision in contracts over the threshold amount for services that are very similar to or in lieu of those provided by its employees or those of another agency. The bill exempts from this requirement contracts solely for legal services, litigation support, or management consulting.

BACKGROUND

Related Bills

Several other bills limit or restrict the extent to which businesses

contracting with the state can perform or transfer work to sites outside of Connecticut. sSB 430, which the Labor Committee favorably reported on March 16, requires any contract let by the state, municipalities, or other state political subdivisions to contain a provision prohibiting the contractor from using a person, group or subcontractor located outside the U.S. unless the work or service is not available in the U.S.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute
Yea 16 Nay 10