



House of Representatives

General Assembly

File No. 492

January Session, 2005

Substitute House Bill No. 6666

House of Representatives, April 21, 2005

The Committee on Government Administration and Elections reported through REP. CARUSO of the 126th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT PROTECTING THE INTEGRITY OF THE PROCUREMENT PROCESS.

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

1 Section 1. Section 1-210 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Except as otherwise provided by any federal law or state statute,
4 all records maintained or kept on file by any public agency, whether or
5 not such records are required by any law or by any rule or regulation,
6 shall be public records and every person shall have the right to (1)
7 inspect such records promptly during regular office or business hours,
8 (2) copy such records in accordance with subsection (g) of section 1-
9 212, or (3) receive a copy of such records in accordance with section 1-
10 212. Any agency rule or regulation, or part thereof, that conflicts with
11 the provisions of this subsection or diminishes or curtails in any way
12 the rights granted by this subsection shall be void. Each such agency

13 shall keep and maintain all public records in its custody at its regular
14 office or place of business in an accessible place and, if there is no such
15 office or place of business, the public records pertaining to such agency
16 shall be kept in the office of the clerk of the political subdivision in
17 which such public agency is located or of the Secretary of the State, as
18 the case may be. Any certified record hereunder attested as a true copy
19 by the clerk, chief or deputy of such agency or by such other person
20 designated or empowered by law to so act, shall be competent
21 evidence in any court of this state of the facts contained therein. Each
22 such agency shall make, keep and maintain a record of the proceedings
23 of its meetings.

24 (b) Nothing in the Freedom of Information Act shall be construed to
25 require disclosure of:

26 (1) Preliminary drafts or notes provided the public agency has
27 determined that the public interest in withholding such documents
28 clearly outweighs the public interest in disclosure;

29 (2) Personnel or medical files and similar files the disclosure of
30 which would constitute an invasion of personal privacy;

31 (3) Records of law enforcement agencies not otherwise available to
32 the public which records were compiled in connection with the
33 detection or investigation of crime, if the disclosure of said records
34 would not be in the public interest because it would result in the
35 disclosure of (A) the identity of informants not otherwise known or the
36 identity of witnesses not otherwise known whose safety would be
37 endangered or who would be subject to threat or intimidation if their
38 identity was made known, (B) signed statements of witnesses, (C)
39 information to be used in a prospective law enforcement action if
40 prejudicial to such action, (D) investigatory techniques not otherwise
41 known to the general public, (E) arrest records of a juvenile, which
42 shall also include any investigatory files, concerning the arrest of such
43 juvenile, compiled for law enforcement purposes, (F) the name and
44 address of the victim of a sexual assault under section 53a-70, 53a-70a,
45 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or

46 impairing of morals under section 53-21, or of an attempt thereof, or
47 (G) uncorroborated allegations subject to destruction pursuant to
48 section 1-216;

49 (4) Records pertaining to strategy and negotiations with respect to
50 pending claims or pending litigation to which the public agency is a
51 party until such litigation or claim has been finally adjudicated or
52 otherwise settled;

53 (5) (A) Trade secrets, which for purposes of the Freedom of
54 Information Act, are defined as information, including formulas,
55 patterns, compilations, programs, devices, methods, techniques,
56 processes, drawings, cost data, or customer lists that (i) derive
57 independent economic value, actual or potential, from not being
58 generally known to, and not being readily ascertainable by proper
59 means by, other persons who can obtain economic value from their
60 disclosure or use, and (ii) are the subject of efforts that are reasonable
61 under the circumstances to maintain secrecy; and

62 (B) Commercial or financial information given in confidence, not
63 required by statute;

64 (6) Test questions, scoring keys and other examination data used to
65 administer a licensing examination, examination for employment or
66 academic examinations;

67 (7) The contents of real estate appraisals, engineering or feasibility
68 estimates and evaluations made for or by an agency relative to the
69 acquisition of property or to prospective public supply and
70 construction contracts, until such time as all of the property has been
71 acquired or all proceedings or transactions have been terminated or
72 abandoned, provided the law of eminent domain shall not be affected
73 by this provision;

74 (8) Statements of personal worth or personal financial data required
75 by a licensing agency and filed by an applicant with such licensing
76 agency to establish the applicant's personal qualification for the

77 license, certificate or permit applied for;

78 (9) Records, reports and statements of strategy or negotiations with
79 respect to collective bargaining;

80 (10) Records, tax returns, reports and statements exempted by
81 federal law or state statutes or communications privileged by the
82 attorney-client relationship;

83 (11) Names or addresses of students enrolled in any public school or
84 college without the consent of each student whose name or address is
85 to be disclosed who is eighteen years of age or older and a parent or
86 guardian of each such student who is younger than eighteen years of
87 age, provided this subdivision shall not be construed as prohibiting the
88 disclosure of the names or addresses of students enrolled in any public
89 school in a regional school district to the board of selectmen or town
90 board of finance, as the case may be, of the town wherein the student
91 resides for the purpose of verifying tuition payments made to such
92 school;

93 (12) Any information obtained by the use of illegal means;

94 (13) Records of an investigation or the name of an employee
95 providing information under the provisions of section 4-61dd;

96 (14) Adoption records and information provided for in sections 45a-
97 746, 45a-750 and 45a-751;

98 (15) Any page of a primary petition, nominating petition,
99 referendum petition or petition for a town meeting submitted under
100 any provision of the general statutes or of any special act, municipal
101 charter or ordinance, until the required processing and certification of
102 such page has been completed by the official or officials charged with
103 such duty after which time disclosure of such page shall be required;

104 (16) Records of complaints, including information compiled in the
105 investigation thereof, brought to a municipal health authority pursuant
106 to chapter 368e or a district department of health pursuant to chapter

107 368f, until such time as the investigation is concluded or thirty days
108 from the date of receipt of the complaint, whichever occurs first;

109 (17) Educational records which are not subject to disclosure under
110 the Family Educational Rights and Privacy Act, 20 USC 1232g;

111 (18) Records, the disclosure of which the Commissioner of
112 Correction, or as it applies to Whiting Forensic Division facilities of the
113 Connecticut Valley Hospital, the Commissioner of Mental Health and
114 Addiction Services, has reasonable grounds to believe may result in a
115 safety risk, including the risk of harm to any person or the risk of an
116 escape from, or a disorder in, a correctional institution or facility under
117 the supervision of the Department of Correction or Whiting Forensic
118 Division facilities. Such records shall include, but are not limited to:

119 (A) Security manuals, including emergency plans contained or
120 referred to in such security manuals;

121 (B) Engineering and architectural drawings of correctional
122 institutions or facilities or Whiting Forensic Division facilities;

123 (C) Operational specifications of security systems utilized by the
124 Department of Correction at any correctional institution or facility or
125 Whiting Forensic Division facilities, except that a general description
126 of any such security system and the cost and quality of such system
127 may be disclosed;

128 (D) Training manuals prepared for correctional institutions and
129 facilities or Whiting Forensic Division facilities that describe, in any
130 manner, security procedures, emergency plans or security equipment;

131 (E) Internal security audits of correctional institutions and facilities
132 or Whiting Forensic Division facilities;

133 (F) Minutes or recordings of staff meetings of the Department of
134 Correction or Whiting Forensic Division facilities, or portions of such
135 minutes or recordings, that contain or reveal information relating to
136 security or other records otherwise exempt from disclosure under this

137 subdivision;

138 (G) Logs or other documents that contain information on the
139 movement or assignment of inmates or staff at correctional institutions
140 or facilities; and

141 (H) Records that contain information on contacts between inmates,
142 as defined in section 18-84, and law enforcement officers;

143 (19) Records when there are reasonable grounds to believe
144 disclosure may result in a safety risk, including the risk of harm to any
145 person, any government-owned or leased institution or facility or any
146 fixture or appurtenance and equipment attached to, or contained in,
147 such institution or facility, except that such records shall be disclosed
148 to a law enforcement agency upon the request of the law enforcement
149 agency. Such reasonable grounds shall be determined (A) with respect
150 to records concerning any executive branch agency of the state or any
151 municipal, district or regional agency, by the Commissioner of Public
152 Works, after consultation with the chief executive officer of the agency;
153 (B) with respect to records concerning Judicial Department facilities,
154 by the Chief Court Administrator; and (C) with respect to records
155 concerning the Legislative Department, by the executive director of the
156 Joint Committee on Legislative Management. As used in this section,
157 "government-owned or leased institution or facility" includes, but is
158 not limited to, an institution or facility owned or leased by a public
159 service company, as defined in section 16-1, a certified
160 telecommunications provider, as defined in section 16-1, a water
161 company, as defined in section 25-32a, or a municipal utility that
162 furnishes electric, gas or water service, but does not include an
163 institution or facility owned or leased by the federal government, and
164 "chief executive officer" includes, but is not limited to, an agency head,
165 department head, executive director or chief executive officer. Such
166 records include, but are not limited to:

167 (i) Security manuals or reports;

168 (ii) Engineering and architectural drawings of government-owned

169 or leased institutions or facilities;

170 (iii) Operational specifications of security systems utilized at any
171 government-owned or leased institution or facility, except that a
172 general description of any such security system and the cost and
173 quality of such system, may be disclosed;

174 (iv) Training manuals prepared for government-owned or leased
175 institutions or facilities that describe, in any manner, security
176 procedures, emergency plans or security equipment;

177 (v) Internal security audits of government-owned or leased
178 institutions or facilities;

179 (vi) Minutes or records of meetings, or portions of such minutes or
180 records, that contain or reveal information relating to security or other
181 records otherwise exempt from disclosure under this subdivision;

182 (vii) Logs or other documents that contain information on the
183 movement or assignment of security personnel at government-owned
184 or leased institutions or facilities;

185 (viii) Emergency plans and emergency recovery or response plans;
186 and

187 (ix) With respect to a water company, as defined in section 25-32a,
188 that provides water service: Vulnerability assessments and risk
189 management plans, operational plans, portions of water supply plans
190 submitted pursuant to section 25-32d that contain or reveal
191 information the disclosure of which may result in a security risk to a
192 water company, inspection reports, technical specifications and other
193 materials that depict or specifically describe critical water company
194 operating facilities, collection and distribution systems or sources of
195 supply;

196 (20) Records of standards, procedures, processes, software and
197 codes, not otherwise available to the public, the disclosure of which
198 would compromise the security or integrity of an information

199 technology system;

200 (21) The residential, work or school address of any participant in the
201 address confidentiality program established pursuant to sections 54-
202 240 to 54-240o, inclusive; and

203 (22) Responses to any procurement requests for proposals by a
204 public agency and any records or files made in connection with a
205 contract award process by any public agency until the contract is
206 awarded or until negotiations for the award of such contract have
207 ended, whichever occurs first, provided the chief officer of such public
208 agency certifies that the public interest in disclosure of such responses,
209 records or files is outweighed by the public interest in confidentiality
210 of such responses, records or files.

211 (c) Whenever a public agency receives a request from any person
212 confined in a correctional institution or facility or a Whiting Forensic
213 Division facility, for disclosure of any public record under the
214 Freedom of Information Act, the public agency shall promptly notify
215 the Commissioner of Correction or the Commissioner of Mental Health
216 and Addiction Services in the case of a person confined in a Whiting
217 Forensic Division facility of such request, in the manner prescribed by
218 the commissioner, before complying with the request as required by
219 the Freedom of Information Act. If the commissioner believes the
220 requested record is exempt from disclosure pursuant to subdivision
221 (18) of subsection (b) of this section, the commissioner may withhold
222 such record from such person when the record is delivered to the
223 person's correctional institution or facility or Whiting Forensic
224 Division facility.

225 (d) Whenever a public agency, except the Judicial Department or
226 Legislative Department, receives a request from any person for
227 disclosure of any records described in subdivision (19) of subsection
228 (b) of this section under the Freedom of Information Act, the public
229 agency shall promptly notify the Commissioner of Public Works of
230 such request, in the manner prescribed by the commissioner, before
231 complying with the request as required by the Freedom of Information

232 Act and for information related to a water company, as defined in
233 section 25-32a, the public agency shall promptly notify the water
234 company before complying with the request as required by the
235 Freedom of Information Act. If the commissioner, after consultation
236 with the chief executive officer of the applicable agency or after
237 consultation with the chief executive officer of the applicable water
238 company for information related to a water company, as defined in
239 section 25-32a, believes the requested record is exempt from disclosure
240 pursuant to subdivision (19) of subsection (b) of this section, the
241 commissioner may direct the agency to withhold such record from
242 such person. In any appeal brought under the provisions of section 1-
243 206 of the Freedom of Information Act for denial of access to records
244 for any of the reasons described in subdivision (19) of subsection (b) of
245 this section, such appeal shall be against the Commissioner of Public
246 Works, exclusively, or, in the case of records concerning Judicial
247 Department facilities, the Chief Court Administrator or, in the case of
248 records concerning the Legislative Department, the executive director
249 of the Joint Committee on Legislative Management.

250 (e) Notwithstanding the provisions of subdivisions (1) and (16) of
251 subsection (b) of this section, disclosure shall be required of:

252 (1) Interagency or intra-agency memoranda or letters, advisory
253 opinions, recommendations or any report comprising part of the
254 process by which governmental decisions and policies are formulated,
255 except disclosure shall not be required of a preliminary draft of a
256 memorandum, prepared by a member of the staff of a public agency,
257 which is subject to revision prior to submission to or discussion among
258 the members of such agency;

259 (2) All records of investigation conducted with respect to any
260 tenement house, lodging house or boarding house as defined in section
261 19a-355, or any nursing home, residential care home or rest home, as
262 defined in section 19a-490, by any municipal building department or
263 housing code inspection department, any local or district health
264 department, or any other department charged with the enforcement of

265 ordinances or laws regulating the erection, construction, alteration,
266 maintenance, sanitation, ventilation or occupancy of such buildings;
267 and

268 (3) The names of firms obtaining bid documents from any state
269 agency.

270 Sec. 2. Subsection (d) of section 4b-91 of the general statutes is
271 repealed and the following is substituted in lieu thereof (*Effective from*
272 *passage*):

273 (d) On and after October 1, 2004, each bid submitted for a contract
274 described in subsection (c) of this section shall include a copy of a
275 prequalification certificate issued by the Commissioner of
276 Administrative Services. The bid shall also be accompanied by an
277 update statement in such form as the Commissioner of Administrative
278 Services prescribes. The form for such update statement shall provide
279 space for information regarding all bonded projects completed by the
280 bidder since the date the bidder's prequalification certificate was
281 issued or renewed, all bonded projects the bidder currently has under
282 contract, including the percentage of work on such projects not
283 completed, the names and qualifications of the personnel who will
284 have supervisory responsibility for the performance of the contract,
285 any significant changes in the bidder's financial position or corporate
286 structure since the date the certificate was issued or renewed, any
287 change in the contractor's qualification status as determined by the
288 provisions of subdivision (6) of subsection (c) of section 4a-100 and
289 such other relevant information as the Commissioner of
290 Administrative Services prescribes. Any bid submitted without a copy
291 of the prequalification certificate and an update statement shall be
292 invalid. Any public agency that accepts a bid submitted without a
293 copy of such prequalification certificate and an update statement, as
294 required by this section, shall be ineligible for the receipt of any state
295 funds disbursed for the purpose of the construction, reconstruction,
296 alteration, remodeling, repair or demolition of any public building or
297 any public works project.

298 Sec. 3. Subsections (a) to (f), inclusive, of section 4a-100 of the
 299 general statutes are repealed and the following is substituted in lieu
 300 thereof (*Effective from passage*):

301 (a) As used in this section: (1) "Prequalification" means
 302 prequalification issued by the Commissioner of Administrative
 303 Services to bid on a contract for the construction, reconstruction,
 304 alteration, remodeling, repair or demolition of any public building for
 305 work by the state or a municipality; (2) "subcontractor" means a person
 306 who performs work with a value in excess of twenty-five thousand
 307 dollars for a contractor pursuant to a contract for work for the state or
 308 a municipality which is estimated to cost more than five hundred
 309 thousand dollars; (3) "principals and key personnel" includes officers,
 310 directors, shareholders, members, partners and managerial employees;
 311 (4) "aggregate work capacity rating" means the maximum amount of
 312 work an applicant is capable of undertaking for any and all projects;
 313 and (5) "single project limit" means the highest estimated cost of a
 314 single project that an applicant is capable of undertaking.

315 (b) (1) Any person may apply for prequalification to the Department
 316 of Administrative Services. Such application shall be made on such
 317 form as the Commissioner of Administrative Services prescribes and
 318 shall be accompanied by a nonrefundable application fee as set forth in
 319 subdivision (2) of this subsection. The application shall be signed
 320 under penalty of false statement.

321 (2) The application fee shall be as follows:

T1	Aggregate Work Capacity Rating	Fee
T2	\$5,000,000.00 or less	\$600.00
T3	\$5,000,000.01 - \$8,000,000.00	\$750.00
T4	\$8,000,000.01 - \$10,000,000.00	\$850.00
T5	\$10,000,000.01 - \$15,000,000.00	\$1,000.00
T6	\$15,000,000.01 - \$20,000,000.00	\$1,500.00

T7	\$20,000,000.01 - \$40,000,000.00	\$2,000.00
T8	\$40,000,000.01 or more	\$2,500.00

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

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

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

328 [(3) The applicant's experience on public and private construction
 329 projects over the past five years, or on the applicant's ten most
 330 recently-completed projects and the names of any subcontractors used
 331 on the projects;]

332 [(4)] (3) Any legal or administrative proceedings pending or
 333 concluded adversely against the applicant or any of the applicant's
 334 principals or key personnel within the past five years which relate to
 335 the procurement or performance of any public or private construction
 336 contract and whether the applicant is aware of any investigation
 337 pending against the applicant or any principal or key personnel;

338 [(5)] (4) The nature of any financial, personal or familial relationship
 339 between the applicant and any public or private construction project
 340 owner listed on the application as constituting construction experience;

341 [(6)] (5) A statement of whether (A) the applicant has been
 342 disqualified pursuant to section 4b-95, this section or section 31-57c or
 343 31-57d, (B) the applicant is on the list distributed by the Labor
 344 Commissioner pursuant to section 31-57a, (C) the applicant is
 345 disqualified or prohibited from being awarded a contract pursuant to
 346 section 31-57b, (D) the applicant has been disqualified by another state,
 347 (E) the applicant has been disqualified by a federal agency or pursuant
 348 to federal law, (F) the applicant's registration has been suspended or
 349 revoked by the Department of Consumer Protection pursuant to

350 section 20-341gg, (G) the applicant has been disqualified by a
351 municipality, and (H) the matters that gave rise to any such
352 disqualification, suspension or revocation have been eliminated or
353 remedied; and

354 [(7)] (6) Other information as the commissioner deems relevant to
355 the determination of the applicant's qualifications and responsibilities.

356 (d) The applicant shall include a statement of financial condition
357 prepared by a certified public accountant which includes information
358 concerning the applicant's assets and liabilities, plant and equipment,
359 bank and credit references, bonding company and maximum bonding
360 capacity, and other information as the commissioner deems relevant to
361 an evaluation of the applicant's financial capacity and responsibility.

362 (e) Information contained in the application shall be current as of
363 the time of filing except that the statement of financial condition shall
364 pertain to the applicant's most recently-completed fiscal year.

365 (f) The commissioner shall determine whether to prequalify an
366 applicant on the basis of the application and on relevant past
367 performance according to procedures and criteria set forth in
368 regulations which the commissioner shall adopt on or before October
369 1, 2005, in accordance with chapter 54. Such criteria shall include, at a
370 minimum, the record of the applicant's performance, including, but
371 not limited to, written evaluations of the applicant's performance on
372 public or private projects, [within the past five years,] the applicant's
373 past experience on projects of various size and type, the skill, ability
374 and integrity of the applicant and any subcontractors used by the
375 applicant, the experience and qualifications of supervisory personnel
376 employed by the applicant, the maximum amount of work the
377 applicant is capable of undertaking as demonstrated by the applicant's
378 financial condition, bonding capacity, size of past projects and present
379 and anticipated work commitments, and any other relevant criteria
380 that the commissioner prescribes. Such regulations shall also (1)
381 provide that the criteria considered shall be assigned separate
382 designated numerical values and weights and that the applicant shall

383 be assigned an overall numerical rating on the basis of all criteria, and
384 (2) establish prequalification classifications, aggregate work capacity
385 ratings and single project limits. Such prequalification classifications
386 shall be used to establish the types of work a contractor is qualified to
387 perform and the aggregate work capacity ratings shall be used to
388 establish the maximum amount of work a contractor is capable of
389 undertaking.

390 Sec. 4. Subdivision (8) of section 4-37f of the general statutes is
391 repealed and the following is substituted in lieu thereof (*Effective*
392 *October 1, 2005*):

393 (8) [A] (A) Except as otherwise provided in this subparagraph, a
394 foundation which has in any of its fiscal years receipts and earnings
395 from investments totaling one hundred thousand dollars per year or
396 more shall have completed on its behalf for such fiscal year a full audit
397 of the books and accounts of the foundation. [A] Except as otherwise
398 provided in this subparagraph, a foundation which has receipts and
399 earnings from investments totaling less than one hundred thousand
400 dollars in each fiscal year during any three of its consecutive fiscal
401 years beginning October 1, 1986, shall have completed on its behalf for
402 the third fiscal year in any such three-year period a full audit of the
403 books and accounts of the foundation. In the case of a foundation that
404 is established for a constituent unit of the state system of higher
405 education or a public institution of higher education, the audit
406 completed pursuant to this subparagraph shall be limited to an audit
407 of the private funds deposited in such foundation. For each fiscal year
408 in which an audit is not required pursuant to this [subdivision]
409 subparagraph financial statements shall be provided by the foundation
410 to the executive authority of the state agency. Each audit under this
411 [subdivision] subparagraph shall be conducted [(A)] (i) by an
412 independent certified public accountant or, if requested by the state
413 agency with the consent of the foundation, the Auditors of Public
414 Accounts, and [(B)] (ii) in accordance with generally accepted auditing
415 standards. The audit report shall include financial statements, a
416 management letter and an audit opinion which address the

417 conformance of the operating procedures of the foundation with the
418 provisions of sections 4-37e to 4-37i, inclusive, and recommend any
419 corrective actions needed to ensure such conformance. Each audit
420 report shall disclose the receipt or use by the foundation of any public
421 funds in violation of said sections or any other provision of the general
422 statutes. The foundation shall provide a copy of each audit report
423 completed pursuant to this subdivision to the executive authority of
424 the state agency. Each financial statement required under this
425 [subdivision] subparagraph shall include, for the fiscal year to which
426 the statement applies, the total receipts and earnings from investments
427 of the foundation and the amount and purpose of each receipt of funds
428 by the state agency from the foundation. As used in this subdivision,
429 "fiscal year" means any twelve-month period adopted by a foundation
430 as its accounting year.

431 (B) On and after October 1, 2005, a foundation that is established for
432 a constituent unit of the state system of higher education or a public
433 institution of higher education shall have completed on its behalf for
434 the second fiscal year in any such two-year period an audit of its books
435 and accounts relating to public funds deposited in the foundation.
436 Such audit shall be completed by the Auditors of Public Accounts. For
437 each fiscal year in which an audit is not required pursuant to this
438 subparagraph, financial statements shall be provided by the
439 foundation to the executive authority of the constituent unit or
440 institution. The audit report shall include financial statements, a
441 management letter and an audit opinion which address the
442 conformance of the operating procedures of the foundation with the
443 provisions of sections 4-37e to 4-37i, inclusive, and recommend any
444 corrective actions needed to ensure such conformance. Each audit
445 report shall disclose the receipt or use by the foundation of any public
446 funds in violation of sections 4-37e to 4-37i, inclusive, or any other
447 provision of the general statutes. Each financial statement required
448 under this subparagraph shall include, for the fiscal year to which the
449 statement applies, the total receipts and earnings from investments of
450 the foundation and the amount and purpose of each receipt of funds
451 by the constituent unit or institution from the foundation.

452 (C) Each audit of a foundation that is established for a constituent
 453 unit of the state system of higher education or a public institution of
 454 higher education, including the audit report, shall maintain the
 455 confidentiality of any donor to the foundation, regardless of whether
 456 the donor has requested confidentiality under section 4-37h.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	1-210
Sec. 2	<i>from passage</i>	4b-91(d)
Sec. 3	<i>from passage</i>	4a-100(a) to (f)
Sec. 4	<i>October 1, 2005</i>	4-37f(8)

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 06 \$	FY 07 \$
Auditors	GF - Cost	None	\$143,416
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	None	\$31,690
Various State Agencies	Various - Savings	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires the Auditors of Public Accounts to audit the public funds of the foundations established by the constituent units of higher education during the second year in any two-year period. It is anticipated that 18 higher education foundations would be subject to such audits (i.e. 2 at UConn, 4 at CSU system, and 12 at Community Colleges). The Auditors of Public Accounts will need two Associate Auditors (starting salary of \$69,958)¹ and associated other expenses of \$3,500 in FY 07.

The bill exempts responses and records provided to an agency's procurement request for proposal during the contracting process from the Freedom of Information Act. The documents are to be treated confidentially until the agency awards the contract or the contract negotiations end, whichever comes first. This exemption may result in a savings to the state. In situations where the state has entered into

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated fringe benefit reimbursement rate as a percentage of payroll is 53.91%, effective July 1, 2004. However, first year fringe benefit costs for new positions do not include pension costs lowering the rate to 22.65%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System.

contract negotiations with a company and that company has requested disclosure of bids/proposals submitted by other competing companies, the state may lose leverage in negotiating the contract price down if the company is aware of their competitor companies' proposals.

OLR Bill Analysis

sHB 6666

AN ACT PROTECTING THE INTEGRITY OF THE PROCUREMENT PROCESS**SUMMARY:**

This bill establishes new audit requirements for UConn, Connecticut State University, Charter Oak College, and community-technical college foundations.

It eliminates certain requirements from the contractor prequalification process, broadens the scope of the Department of Administrative Services (DAS) commissioner's review when determining a contractor's prequalification, and generally bans state and municipal agencies from receiving state funds for construction if they accept bids from a contractor without proof of his prequalification.

Lastly, the bill permits documents public agencies receive in response, and related, to a procurement request for proposal (RFP) to be exempt from disclosure under the Freedom of Information Act (FOIA) for a limited time.

EFFECTIVE DATE: Upon passage, except for the audit provision, which is effective October 1, 2005.

INSTITUTION OF HIGHER EDUCATION FOUNDATIONS***Audits***

Under current law, the head of any state agency with a foundation must ensure that the foundation receives an audit (1) for any year its investment earnings or receipts total \$100,000 or more or (2) in the third year of any three consecutive years that it had investment earnings or receipts totaling less than \$100,000.

The bill requires foundations established for UConn, Connecticut State University, Charter Oak College, and community-technical colleges to audit their private funds, rather than their investment earnings and

receipts.

Beginning October 1, 2005, the bill also requires these foundations to allow the state auditors to audit their public funds every two years. The audit report must include (1) financial statements; (2) a management letter; (3) a disclosure the foundation's use or receipt of any public funds in violation of state law; (4) an audit opinion on the foundation's conformance with laws on audits, solicitations, use of foundation funds to compensate state officers or employees, and other operating procedures conformance; and (5) recommendations for any corrective action needed to ensure conformance.

During the non-audit year, each foundation must provide financial statements to its college or university's executive authority. Each statement must include investment earnings and receipts and the amount and purpose for funds the colleges or universities received from each foundation.

Audits and audit reports must maintain the confidentiality of foundation donors whether or not they request it.

CONTRACTS

By law, contractors must prequalify before they can bid on state and state-funded municipal building construction contracts, other than UConn projects, estimated to cost more than \$500,000.

The bill eliminates a requirement for contractors to include a list of their non-bonded projects in the update statements that they must submit with (1) each bid on a state construction contract and (2) applications to renew or upgrade their prequalification certificate. The bill leaves unchanged a requirement that they include in these statements (1) a list of bonded projects, (2) the names and qualifications of personnel who will supervise any new contract they are bidding on, (3) any significant change in their financial position or corporate structure since the certificate was issued or renewed, and (4) any other relevant information the DAS commissioner prescribes. By law, the commissioner must establish the form.

The bill prohibits a public agency from receiving any state funds for construction if it accepts a bid without the bidder's prequalification certificate or update statement.

The bill also eliminates a requirement for contractors seeking prequalification to include in their applications (1) their construction experience over the immediate past five years or on the 10 most recently completed projects and (2) the names of any subcontractors they used on the projects.

Lastly, it removes the limitation on the DAS commissioner's consideration of applicants' performance evaluations when determining whether to prequalify them. By law, she must consider written evaluations of an applicant's performance on public or private contracts within the past five years. The bill allows her to consider evaluations on contracts completed at any time.

DISCLOSURE OF PROCUREMENT DOCUMENTS

The bill allows procurement documents submitted in response to an agency's RFP to be temporarily exempted from disclosure under the FOIA if the agency's chief officer certifies that the public's interest in confidentiality outweighs its interest in disclosure.

Under the bill, RFP responses and records and files provided to the agency during the contracting process can be treated confidentially until the agency awards the contract or contract negotiations end, whichever occurs first. The bill does not specify the recipient of the certification.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 20 Nay 0