



Senate

General Assembly

File No. 38

January Session, 2005

Substitute Senate Bill No. 94

Senate, March 17, 2005

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 REFORM OF THE STATE CONTRACTING PROCESS.

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

1 Section 1. (NEW) (*Effective July 1, 2005*) For purposes of sections 2 to
2 10, inclusive, 14 and 15 of this act:

3 (1) "Procurement" means contracting for, buying, purchasing,
4 renting, leasing or otherwise acquiring or disposing of, any supplies,
5 services, including but not limited to, contracts for purchase of services
6 and personal service agreements, interest in real property, or
7 construction, and includes all government functions that relate to such
8 activities, including best value selection and qualification based
9 selection.

10 (2) "Emergency procurement" means procurement by a state agency
11 that is made necessary by a sudden, unexpected occurrence that poses
12 a clear and imminent danger to public safety or requires immediate

13 action to prevent or mitigate the loss or impairment of life, health,
14 property or essential public services.

15 (3) "Best value selection" means a contract selection process in which
16 the award of a contract is based on a combination of quality and cost
17 considerations.

18 (4) "Qualification based selection" means a contract selection process
19 in which the award of a contract is primarily based on an assessment
20 of contractor qualifications and on the negotiation of a fair and
21 reasonable price.

22 (5) "State contracting agency" means any state agency or political
23 subdivision of the state, other than the State Contracting Standards
24 Board, that is authorized by law to enter into contracts, including, but
25 not limited to, any quasi-public agency, as defined in section 1-120 of
26 the general statutes, and any agency, as defined in section 1-200 of the
27 general statutes, that receives state funds.

28 (6) "Contractor" means any person or entity bidding on, submitting
29 a proposal for, applying for, or participating as a subcontractor for, a
30 transaction, procurement, or contract described in section 3 of this act,
31 including, but not limited to, a small contractor, minority business
32 enterprise and an individual with a disability, as defined in section 4a-
33 60g of the general statutes.

34 (7) "Contract risk assessment" means (A) the identification and
35 evaluation of loss exposures and risks, including, but not limited to,
36 business and legal risks associated with the contracting process and
37 the contracted goods and services, and (B) the identification,
38 evaluation, and implementation of measures available to minimize
39 potential loss exposures and risks.

40 (8) "Privatization contract" means an agreement or series of
41 agreements between a state contracting agency and a person, in which
42 such person agrees to provide services valued at three hundred
43 thousand dollars or more over the life of the contract that are

44 substantially similar to and in lieu of services provided, in whole or in
45 part, by employees of such agency or by employees of another state
46 agency for such state agency. "Privatization contract" does not include
47 the renewal, modification or extension of a privatization agreement in
48 effect on or before the effective date of this section, an agreement to
49 only provide legal services, litigation support or management or
50 financial consulting.

51 (9) "Comparative costs" means a comparison of the costs of entering
52 into a privatization contract to the costs of the state continuing to
53 provide the services that are the subject of the privatization contract,
54 using a comparative costs methodology.

55 (10) "Comparative costs methodology" means (A) an examination of
56 all direct and indirect costs to the state, including health insurance,
57 pension costs of state employees, unemployment compensation costs
58 of state employees terminated as a result of a privatization contract,
59 gain or loss of income tax and sales tax revenue to the state, and (B) an
60 examination of the effect of a proposed privatization contract on the
61 quality of service and the public health and safety and residents of the
62 state who may utilize such privatized service.

63 (11) "Purchase of service agreement" means any contract between a
64 state agency and a nonprofit agency, partnership or corporation for the
65 purchase by the state of ongoing and routine human services for
66 clients of the Departments of Social Services, Children and Families,
67 Mental Retardation, Mental Health and Addiction Services, Public
68 Health and Correction which is overseen by the Office of Policy and
69 Management.

70 Sec. 2. (NEW) (*Effective July 1, 2005*) (a) There is established a State
71 Contracting Standards Board that shall consist of seven members
72 appointed as follows: The Governor, the speaker of the House of
73 Representatives, the president pro tempore of the Senate, the majority
74 leader of the House of Representatives, the majority leader of the
75 Senate, the minority leader of the House of Representatives and the
76 minority leader of the Senate shall each appoint one member. Each

77 member shall be appointed in accordance with the provisions of
78 section 4-7 of the general statutes and have demonstrated sufficient
79 knowledge by education, training or experience in several of the
80 following enumerated areas: (1) Procurement; (2) contract negotiation,
81 selection and drafting; (3) contract risk assessment; (4) requests for
82 proposals and real estate transactions; (5) business insurance and
83 bonding; (6) the code of ethics; (7) federal and state statutes, policies
84 and regulations; (8) outsourcing and privatization proposal analysis;
85 (9) small and minority business enterprise development; and (10)
86 personnel and union management. Such education, training or
87 experience shall have been acquired over not less than a continuous
88 five-year period and shall have been acquired within the ten-year
89 period preceding such appointment. Nothing in this section shall be
90 construed to prohibit an appointing authority from selecting a member
91 of the general public who has demonstrated an interest in
92 governmental ethics and integrity to serve on such board as such
93 appointing authority's appointee. The chairperson of such board shall
94 be appointed by the members of such board. The members first
95 appointed by the Governor, the speaker of the House of
96 Representatives and the president pro tempore of the Senate shall each
97 serve a three-year term. The members first appointed by the majority
98 leader of the House of Representatives, the majority leader of the
99 Senate, the minority leader of the House of Representatives and the
100 minority leader of the Senate shall each serve a two-year term. All
101 appointments of members to replace those whose terms expire shall be
102 for terms of three years and until their successors have been appointed.
103 If any vacancy occurs on the board, the appointing authorities having
104 the power to make the initial appointment under the provisions of this
105 section shall appoint a person for the unexpired term in accordance
106 with the provisions of this subsection. No member may serve more
107 than two consecutive terms or portion thereof and no member shall
108 serve more than six years.

109 (b) The State Contracting Standards Board shall be an independent
110 body within the Executive Department.

111 (c) The chairperson of the board shall be compensated two hundred
112 dollars per diem up to a maximum of thirty thousand dollars annually.
113 Other members of the board shall be compensated two hundred
114 dollars per diem up to a maximum of twenty-five thousand dollars
115 annually. No person shall serve on the board who holds another state
116 or municipal governmental position and no person on the board nor
117 any spouse, child, stepchild, parent or sibling of such person shall be
118 directly or indirectly involved in any enterprise that does business
119 with the state.

120 (d) The board shall appoint an executive director who shall serve as
121 an ex-officio, nonvoting member of said board. Said executive director
122 shall be a member of the state classified service and may be removed
123 from office for cause, in accordance with section 4-177 of the general
124 statutes. The board shall, annually, conduct a performance evaluation
125 of such executive director.

126 (e) Such board may employ secretaries, real estate examiners,
127 contract specialists, forensic fraud examiners, property and
128 procurement specialists, paralegals, attorneys and such other
129 employees as such board deems necessary.

130 (f) The reasonable expenses of the State Contracting Standards
131 Board and its employees shall be paid from the budget of the board
132 upon the approval of such board.

133 (g) No employee of the State Contracting Standards Board shall
134 hold another state or municipal position, nor shall any such employee
135 or any nonclerical employee or any spouse, child, stepchild, parent or
136 sibling of such employee of the board be directly or indirectly involved
137 in any enterprise that does business with the state. Each member and
138 employee of the State Contracting Standards Board shall file, with the
139 board and with the State Ethics Commission, a financial statement
140 indicating all sources of business income of such person in excess of
141 one thousand dollars, and the name of any business with which such
142 member or employee is associated, as defined in subsection (b) of
143 section 1-79 of the general statutes. Such statement shall be a public

144 record. Financial statements for the preceding calendar year shall be
145 filed with the commission on or before April fifteenth of each year if
146 such employee or member held such a position during the preceding
147 calendar year.

148 (h) Any violation of the provisions of subsection (g) of this section
149 shall constitute a violation of part I of chapter 10 of the general statutes
150 and may be the subject of a complaint and investigation filed and
151 conducted in accordance with the provisions of section 1-82 of the
152 general statutes.

153 (i) The board shall adopt such rules as it deems necessary for the
154 conduct of its internal affairs, in accordance with section 4-167 of the
155 general statutes, including, but not limited to, rules of procedure for
156 any appeal taken pursuant to section 10 of this act and any review
157 undertaken pursuant to section 12 of this act.

158 Sec. 3. (NEW) (*Effective July 1, 2005*) (a) On or before January 1, 2007,
159 the State Contracting Standards Board shall prepare a uniform
160 procurement code applicable to state contracting agency expenditures,
161 including, but not limited to, expenditures: (1) By municipalities that
162 receive state funds, (2) involving any state contracting and
163 procurement processes, including, but not limited to, leasing and
164 property transfers, purchasing or leasing of supplies, materials or
165 equipment, as defined in section 4a-50 of the general statutes,
166 consultant or consultant services, as defined in section 4b-55 of the
167 general statutes, personal service agreements, as defined in section 4-
168 212 of the general statutes, purchase of service agreements or
169 privatization contracts, and (3) relating to contracts for the
170 construction, reconstruction, alteration, remodeling, repair or
171 demolition of any public building. Nothing in this section shall be
172 construed to require the application of uniform procurement code
173 procedures when such procurement involves the expenditure of
174 federal assistance or contract funds and federal law provides
175 applicable procurement procedures.

176 (b) The uniform procurement code described in subsection (a) of

177 this section shall be designed to: (1) Establish uniform contracting
178 standards and practices among the various state contracting agencies;
179 (2) simplify and clarify the state's laws governing contracting
180 standards and procurement policies and practices, including, but not
181 limited to, procedures for competitive sealed bids, competitive sealed
182 proposals, small purchases, sole source procurements, emergency
183 procurements and special procurements; (3) ensure the fair and
184 equitable treatment of all businesses and persons who deal with the
185 procurement system of the state; (4) include a process to maximize the
186 use of small contractors and minority business enterprises, as defined
187 in section 4a-60g of the general statutes; (5) provide increased economy
188 in state procurement activities and maximize purchasing value to the
189 fullest extent possible; (6) ensure that the procurement of supplies,
190 materials, equipment, services, real property and construction required
191 by any state contracting agency is obtained in a cost-effective and
192 responsive manner; (7) preserve and maintain the existing contracting,
193 procurement, disqualification and termination authority and discretion
194 of any state contracting agency when such contracting and
195 procurement procedures represent best practices; (8) include a process
196 to improve contractor and state contracting agency accountability; (9)
197 include standards by which state contracting agencies must evaluate
198 proposals to privatize state or quasi-public agency services and
199 privatization contract bid proposals, such standards shall, at a
200 minimum, include: (A) A requirement for a comparative cost analysis
201 to be completed prior to any state or quasi-public agency decision to
202 privatize services, (B) adequate notification requirements to affected
203 employees and, where applicable, certified bargaining agents, (C) a
204 requirement for the preparation of an employee impact statement
205 including measures to be taken by the bidder to retain qualified state
206 and quasi-public agency employees, (D) a provision requiring state
207 agencies and quasi-public agencies to provide adequate information
208 and resources to their employees for the purpose of encouraging and
209 assisting such state or quasi-public employees to organize and submit
210 a bid to provide the services that are the subject of such privatization
211 contract, (E) a requirement that bidders disclose all relevant

212 information pertaining to past performance, pending or concluded
213 legal or regulatory proceedings or complaints, including, but not
214 limited to, compliance with fair employment practices and
215 nondiscrimination standards, as described in section 46a-60 of the
216 general statutes, and compliance with federal fair employment and
217 nondiscrimination standards; (10) establish standards for leases and
218 lease-purchase agreements and for the purchase and sale of real estate;
219 and (11) provide a process for competitive sealed bids, competitive
220 sealed proposals, small purchases, sole source procurements,
221 emergency procurements, special procurements, best value selection,
222 qualification based selection and the conditions for their use.

223 (c) In preparing the uniform procurement code described in
224 subsection (a) of this section, the State Contracting Standards Board
225 shall conduct a comprehensive review of existing state contracting and
226 procurement laws, regulations and practices and shall utilize existing
227 procurement procedures and guidelines that such board deems
228 appropriate.

229 (d) Upon request by the State Contracting Standards Board, each
230 state contracting agency engaged in procurement shall provide the
231 board, in a timely manner, with such procurement information as the
232 board deems necessary. The board shall have access to all information,
233 files and records related to any state contracting agency in furtherance
234 of this purpose. Nothing in this section shall be construed to require
235 such board's disclosure of documents that are exempt from disclosure
236 pursuant to chapter 14 of the general statutes or that may be protected
237 from disclosure under claim of an attorney-client privilege.

238 (e) Such uniform procurement code shall be submitted to the
239 General Assembly for its approval. The board shall file such code with
240 the clerks of the House of Representatives and the Senate not later than
241 January 15, 2007, and not later than January 20, 2007, the speaker of the
242 House of Representatives and the president pro tempore of the Senate
243 shall submit such code to the joint standing committee of the General
244 Assembly having cognizance of matters relating to government

245 administration and elections. Said committee shall hold a public
246 hearing on such code and shall report its recommendations, including
247 any changes thereto, to the House of Representatives and the Senate
248 concerning the approval or rejection of the code. The General
249 Assembly shall take a vote on such code not later than the end of the
250 2007 regular session.

251 Sec. 4. (NEW) (*Effective July 1, 2007*) In addition to the preparation of
252 the uniform procurement code described in section 3 of this act, the
253 duties of the State Contracting Standards Board shall include:

254 (1) Recommending the repeal of repetitive, conflicting or obsolete
255 statutes concerning state procurement;

256 (2) Developing, publishing, and maintaining the uniform
257 procurement code for all state contracting agencies;

258 (3) Assisting state contracting agencies in complying with the code
259 by providing guidance, models, advice and practical assistance to state
260 contracting agency staff relating to: (A) Buying the best service at the
261 best price, (B) properly selecting contractors, and (C) drafting contracts
262 that achieve state goals and protect taxpayers' interest;

263 (4) Reviewing and certifying that a state contracting agency's
264 procurement processes are in compliance with the code;

265 (5) Triennially, recertifying each state contracting agency's
266 procurement processes and providing agencies with notice of any
267 certification deficiency and exercising authority as provided under
268 section 6 of this act if a determination of noncompliance is made;

269 (6) Defining the training requirements for state contracting agency
270 procurement professionals;

271 (7) Monitoring implementation of the state contracting portal and
272 making recommendations for improvement to the Department of
273 Administrative Services;

274 (8) Defining the contract data retention requirements for state
275 agencies concerning retention of information on: (A) The number and
276 type of state contracts currently in effect state-wide, (B) the dollar
277 value of said contracts, (C) a list of client agencies, (D) a description of
278 services purchased under said contracts, (E) contractor names, and (F)
279 an evaluation of contractor performance, and assuring such
280 information is available on the state contracting portal;

281 (9) Providing the Governor and the joint standing committee of the
282 General Assembly having cognizance of matters relating to
283 government administration and elections with recommendations
284 concerning the uniform procurement code; and

285 (10) Approving an ethics training course for state employees
286 involved in procurement and for state contractors and substantial
287 subcontractors who are prequalified pursuant to the provisions of
288 section 4a-100 of the general statutes, as amended by this act. Such
289 ethics training course may be developed and provided by the State
290 Ethics Commission or by any person, firm or corporation provided
291 such course is approved by the State Contracting Standards Board.

292 Sec. 5. (NEW) (*Effective October 1, 2007*) (a) The State Contracting
293 Standards Board shall triennially conduct audits of state contracting
294 agencies to ensure compliance with the uniform procurement code. In
295 conducting such audit, the State Contracting Standards Board shall
296 have access to all contracting and procurement records, may interview
297 personnel responsible for contracting, contract negotiation or
298 procurement and may enter into an agreement with the State Auditors
299 of Public Accounts to effectuate such audit.

300 (b) Upon completion of any such audit, the State Contracting
301 Standards Board shall prepare and issue a compliance report for such
302 state contracting agency. Such report shall identify any process or
303 procedure that is inconsistent with the uniform procurement code and
304 indicate those corrective measures the board deems necessary to
305 comply with code requirements. Such report shall be issued and
306 delivered not later than thirty days after completion of such audit and

307 shall be a public record.

308 (c) After notice and hearing, the State Contracting Standards Board
309 may restrict the authority of any state contracting agency to enter into
310 any contract or procurement agreement if, upon a vote of two-thirds of
311 the members of the board present and voting, for such purpose,
312 determines that such state contracting agency failed to comply with
313 statutory contracting and procurement requirements, and evidenced a
314 reckless disregard for applicable procedures and policy and such
315 limitation or restriction is in the state's best interest. Such limitation or
316 restriction shall remain in effect until such time as the board
317 determines that said state contracting agency has implemented
318 corrective measures and demonstrated compliance with code
319 requirements.

320 Sec. 6. (NEW) (*Effective October 1, 2007*) For cause, the State
321 Contracting Standards Board may review or terminate any contract or
322 procurement agreement undertaken by any state contracting agency
323 after providing fifteen days notice to the state contracting agency, the
324 applicable contractor, and consulting with the Attorney General. Such
325 termination of a contract or procurement agreement by the board may
326 occur only upon a vote of two-thirds of the members of the board
327 present and voting for that purpose. Such action shall be accompanied
328 by notice to the state contracting agency and any other affected party.
329 For the purpose of this section, "for cause" means: (1) A violation of
330 section 1-84, 1-86e or 4a-100 of the general statutes, as amended by this
331 act; (2) a whistleblower report under investigation by the Attorney
332 General, as described in section 4-61dd of the general statutes; or (3)
333 wanton or reckless disregard of any state contracting and procurement
334 process by any person substantially involved in such contract or state
335 contracting agency.

336 Sec. 7. (NEW) (*Effective October 1, 2007*) (a) After reasonable notice, a
337 hearing and consultation with the relevant state contracting agency
338 and the Attorney General, the State Contracting Standards Board may
339 disqualify any contractor, for a period of up to five years, from bidding

340 on, applying for, or participating as a subcontractor under, contracts
341 with the state. Said disqualification shall be upon the vote of two-
342 thirds of the members of the board present and voting for that
343 purpose. Such hearing shall be conducted in accordance with chapter
344 54 of the general statutes. The board shall issue a written decision not
345 later than ninety days after the conclusion of such hearing and state in
346 the decision the reasons for the action taken and, if the contractor is
347 being disqualified, the period of such disqualification. The existence of
348 a cause for disqualification, as described in subsection (b) of this
349 section, may not be the sole factor to be considered by the board in
350 determining whether the contractor shall be disqualified. In
351 determining whether to disqualify a contractor, the board shall
352 consider the seriousness of the contractor's acts or omissions and any
353 mitigating factors. The board shall send the decision to the contractor
354 by certified mail, return receipt requested. The written decision shall
355 be a final decision for purposes of sections 4-180 and 4-183 of the
356 general statutes.

357 (b) Causes for such disqualification shall include the following:

358 (1) Conviction or entry of a plea of guilty or nolo contendere, or
359 admission to, commission of a criminal offense as an incident to
360 obtaining or attempting to obtain a public or private contract or
361 subcontract, or in the performance of such contract or subcontract;

362 (2) Conviction or entry of a plea of guilty or nolo contendere or
363 admission to, the violation of any state or federal law for
364 embezzlement, theft, forgery, bribery, falsification or destruction of
365 records, receiving stolen property or any other offense indicating a
366 lack of business integrity or business honesty which affects
367 responsibility as a state contractor;

368 (3) Conviction or entry of a plea of guilty or nolo contendere or
369 admission to a violation of any state or federal antitrust, collusion or
370 conspiracy law arising out of the submission of bids or proposals on a
371 public or private contract or subcontract;

372 (4) Accumulation of two or more suspensions pursuant to section 8
373 of this act within a twenty-four-month period;

374 (5) A wilful failure to perform in accordance with the terms of one
375 or more contracts;

376 (6) A wilful violation of a statutory or regulatory provision or
377 requirement applicable to a contract;

378 (7) A wilful or egregious violation of the ethical standards set forth
379 in section 1-86e of the general statutes; or

380 (8) Any other cause the board determines to be so serious and
381 compelling as to affect responsibility as a state contractor, including,
382 but not limited to: (A) Disqualification by another state for cause, or (B)
383 the fraudulent, criminal or seriously improper conduct of any officer,
384 director, shareholder or employee of such contractor, provided such
385 conduct occurred in connection with the individual's performance of
386 duties for or on behalf of such contractor and such contractor knew or
387 had reason to know of such conduct, or (C) the existence of an
388 informal or formal business relationship with a contractor who has
389 been disqualified from bidding on state contracts.

390 (c) Upon written request by the affected state contractor, the State
391 Contracting Standards Board may reduce the period or extent of
392 disqualification for a contractor if documentation supporting any of
393 the following reasons for modification is provided to the board by the
394 contractor:

395 (1) Newly discovered material evidence;

396 (2) Reversal of the conviction upon which the disqualification was
397 based;

398 (3) Bona fide change in ownership or management; or

399 (4) Elimination of other causes for which the disqualification was
400 imposed.

401 Sec. 8. (NEW) (*Effective October 1, 2007*) (a) After reasonable notice
402 and a hearing, conducted in accordance with the provisions of chapter
403 54 of the general statutes, a state contracting agency may suspend any
404 contractor for a period of not more than six months from bidding on,
405 applying for or performing work as a subcontractor under, contracts
406 with the agency. The commissioner of any such state contracting
407 agency shall issue a written decision not later than ninety days after
408 the conclusion of such hearing and state in the decision the reasons for
409 the action taken and, if the contractor is being suspended, the period of
410 such suspension. The existence of a cause for suspension, as described
411 in subsection (b) of this section, may not be the sole factor to be
412 considered by the agency in determining whether the contractor shall
413 be suspended. In determining whether to suspend a contractor, the
414 state contracting agency shall consider the seriousness of the
415 contractor's acts or omissions and any mitigating factors. The
416 commissioner of the state contracting agency shall send such decision
417 to the contractor by certified mail, return receipt requested. Such
418 decision shall be a final decision for purposes of sections 4-180 and 4-
419 183 of the general statutes.

420 (b) Causes for such suspension shall include the following:

421 (1) Failure without good cause to perform in accordance with
422 specifications or within the time limits provided in the contract;

423 (2) A record of failure to perform or of unsatisfactory performance
424 in accordance with the terms of one or more contracts, provided failure
425 to perform or unsatisfactory performance caused by acts beyond the
426 control of the contractor shall not be considered to be a basis for
427 suspension;

428 (3) Any cause the state contracting agency determines to be so
429 serious and compelling as to affect the responsibility of a state
430 contractor, including suspension by another state contracting agency
431 for cause; or

432 (4) A violation of the ethical standards set forth in section 1-86e of

433 the general statutes.

434 (c) The state contracting agency may grant an exception permitting
435 a suspended contractor to participate in a particular contract or
436 subcontract upon a written determination by the commissioner of the
437 state contracting agency that there is good cause for such exception
438 and that such exception is in the best interest of the state.

439 Sec. 9. (NEW) (*Effective October 1, 2007*) (a) Any bidder on a state
440 contract may contest the solicitation or award of a contract to the
441 commissioner of the state agency that awarded such contract. Such
442 contest shall be submitted, in writing, not later than fourteen days after
443 such bidder knew or should have known of the facts giving rise to
444 such contest and shall be limited to the procedural elements of the
445 solicitation or award process, or claims of an exclusionary bidding
446 process.

447 (b) The commissioner of such state contracting agency, or the
448 commissioner's designee, shall have the authority to settle and resolve
449 any such contest.

450 (c) In the event such contest is not resolved by mutual agreement,
451 the commissioner of a state contracting agency, or the commissioner's
452 designee, shall issue a decision, in writing, not later than thirty days
453 after receipt of any such contest. Such decision shall:

454 (1) Describe the procedure used by such agency in soliciting and
455 awarding such contract;

456 (2) Indicate such agency's finding as to the merits of such bidder's
457 contest; and

458 (3) Inform such bidder of the right to review, as provided in section
459 10 of this act.

460 (d) A copy of such decision shall be provided to such bidder.

461 Sec. 10. (NEW) (*Effective October 1, 2007*) (a) Any bidder may appeal

462 a decision issued by the commissioner of a state contracting agency, or
463 the commissioner's designee, pursuant to subsection (c) of section 9 of
464 this act to the State Contracting Standards Board.

465 (b) Any such request for review shall be filed with the board not
466 later than fourteen days after such bidder's receipt of a decision issued
467 pursuant to subsection (c) of section 9 of this act. Such bidder shall set
468 forth the facts supporting its claim in sufficient detail for the State
469 Contracting Standards Board to determine whether the procedural
470 elements of the solicitation or award failed to comply with the code or
471 whether an exclusionary bidding process was utilized.

472 (c) Any appeal filed pursuant to subsection (b) of this section shall
473 not be deemed to prohibit the award or execution of any such
474 contested contract.

475 (d) The State Contracting Standards Board shall create a three-
476 member appeals review subcommittee, which shall review any request
477 filed pursuant to subsection (b) of this section and decide whether such
478 solicitation or award was in compliance with the code, and whether
479 allegations of exclusionary bidding practices have been demonstrated.
480 A unanimous vote of such subcommittee shall be dispositive of any
481 such appeal. A split vote of such subcommittee shall result in a review
482 of the appeal by the full membership of the board which, by a vote of
483 two-thirds of its members present and voting for such purpose, shall
484 decide whether the solicitation or award of such contract was in
485 compliance with the code and whether allegations of exclusionary
486 bidding practices have been demonstrated.

487 (e) Such appeals subcommittee shall issue a written decision or take
488 other appropriate action on each appeal not later than ninety days after
489 the filing of such appeal. A written copy of any such decision shall be
490 provided to such bidder.

491 (f) In the event of an appeal review by the full board, the board shall
492 issue a written decision or take other appropriate action on such
493 appeal not later than ninety days after receipt of the appeal from the

494 appeals subcommittee. A written copy of any such decision shall be
495 provided to such bidder.

496 (g) In the event that the appeals subcommittee or the board
497 determines that a procedural violation occurred, or that allegations of
498 exclusionary bidding have been demonstrated, the board shall direct
499 the state contracting agency to take corrective action not later than
500 thirty days after the date of the subcommittee's or board's decision, as
501 applicable.

502 (h) In the event such appeal is found to be frivolous by the appeals
503 review subcommittee or the full board, such frivolous appeal may
504 serve as a basis for disqualification pursuant to section 7 of this act.

505 (i) A decision issued by the board or appeals subcommittee under
506 this section shall be a final decision for purposes of sections 4-180 and
507 4-183 of the general statutes.

508 Sec. 11. (NEW) (*Effective October 1, 2007*) There is established a
509 Contracting Standards Advisory Council, which shall consist of nine
510 state contracting agency representatives designated by the Governor,
511 including at least one representative from each of the following: The
512 Department of Administrative Services, the Department of
513 Transportation and the Department of Public Works. Such advisory
514 council shall meet at least once a year to discuss problems with
515 procurement processes and to make recommendations for
516 improvements to the State Contracting Standards Board. Such
517 advisory council may conduct studies, research, analyses and make
518 reports and recommendations with respect to subjects or matters
519 within the jurisdiction of the State Contracting Standards Board.

520 Sec. 12. (NEW) (*Effective July 1, 2005*) (a) On and after October 1,
521 2007, the powers, duties, obligations and other governmental functions
522 of the State Properties Review Board, established under subsection (a)
523 of section 4b-3 of the general statutes, shall transfer to the State
524 Contracting Standards Board, as established under section 2 of this act.
525 Said powers, duties, obligations and other governmental functions of

526 the State Properties Review Board, shall thereafter vest in the State
527 Contracting Standards Board.

528 (b) On or before October 1, 2007, the State Contracting Standards
529 Board shall establish a subcommittee of the board to be known as the
530 state properties review subcommittee to perform the duties described
531 under subsection (a) of this section. Such subcommittee shall perform
532 the duties established under subsection (a) of this section in accordance
533 with the rules and procedures established by the board pursuant to
534 subsection (i) of section 2 of this act. The State Contracting Standards
535 Board shall constitute a successor department to the State Properties
536 Review Board in accordance with the provisions of sections 4-38d and
537 4-39 of the general statutes.

538 Sec. 13. Subsection (i) of section 4b-91 of the general statutes is
539 repealed and the following is substituted in lieu thereof (*Effective from*
540 *passage*):

541 (i) [In the event that the] The General Assembly [approves] may
542 approve legislation authorizing an exception to the competitive
543 bidding process for a project, provided such legislation is approved, in
544 whole, by a two-thirds vote of the members of each house of the
545 General Assembly. If rejected, the contract for such project shall not be
546 valid and shall not be implemented. The contract shall be deemed
547 rejected if the General Assembly fails to vote to approve or reject the
548 contract (1) prior to the adjournment of the regular session of the
549 General Assembly during which the contract is filed, (2) prior to the
550 adjournment of the next regular session of the General Assembly
551 following the date on which the contract is filed if the General
552 Assembly is not in regular session on such date, or (3) prior to the
553 adjournment of special session convened before the next regular
554 session of the General Assembly for the purpose of considering the
555 contract if the General Assembly is not in regular session on the date
556 on which the contract if filed. However, if the contract is filed less than
557 thirty days before the end of a regular session, the General Assembly
558 may vote to approve or reject the contract (A) within thirty days after

559 the first day of a special session convened before the next regular
560 session of the General Assembly for the purpose of considering the
561 contract, or (B) within thirty days after the first day of the next regular
562 session of the General Assembly. In the event that the General
563 Assembly approves legislation authorizing an exception to the
564 competitive bidding process for a project, the State Properties Review
565 Board shall complete a review of the contract for such project and
566 approve or disapprove such contract no later than thirty days after the
567 Commissioner of Public Works submits such contract to the board.
568 Such review shall be conducted in accordance with the provisions of
569 section 4b-3. On and after October 1, 2007, such review shall be
570 conducted by the subcommittee of the State Contracting Standards
571 Board established under subsection (b) of section 12 of this act. In the
572 event that such review does not occur within the thirty-day period
573 prescribed by this subsection, such contract shall be deemed to be
574 approved.

575 Sec. 14. (NEW) (*Effective from passage*) (a) Any privatization contract
576 entered into by a state agency shall include the following provisions:

577 (1) The contractor shall offer available employee positions pursuant
578 to the contract to qualified regular employees of the agency whose
579 state employment is terminated because of such privatization contract
580 provided such employees satisfy the hiring criteria of the contractor;

581 (2) The contractor shall not engage in discriminatory employment
582 practices, as described in section 46a-60 of the general statutes, and
583 shall take affirmative steps to provide such equal opportunity for all
584 such persons;

585 (3) The contractor shall submit to performance audits of such
586 contract by the Auditors of Public Accounts on a periodic basis, as
587 determined by the Auditors of Public Accounts;

588 (4) The contractor shall pay a minimum wage rate for which the
589 duties are substantially similar to the duties performed by a regular
590 agency, which rate shall be the lesser of step one of the grade or

591 classification under which the comparable regular agency employee is
592 paid, or the standard private sector wage rate for said position as
593 determined by the Labor Commissioner in accordance with section 31-
594 57f of the general statutes;

595 (5) Such contract shall not become effective until the contractor and
596 the state agency have complied with the provisions of this act and the
597 procurement code adopted in accordance with section 3 of this act;

598 (6) Such contractor shall submit quarterly payroll records to the
599 state agency, listing the name, address, Social Security number, hours
600 worked and the hourly wage paid for each employee in the previous
601 quarter.

602 (b) Such state agency shall submit such contract to the Secretary of
603 the State who shall maintain such contract as a public document. Such
604 state agency shall simultaneously submit to the Secretary of the State
605 the following information:

606 (1) A certification that the state agency has complied with all the
607 requirements of the state agency contained in this act, and that the
608 privatization contract is necessary and appropriate under the
609 procurement code adopted in accordance with section 3 of this act;

610 (2) A state agency analysis of the quality of the services to be
611 provided by the designated bidder and whether such services are
612 equal to or exceed the quality of services that are provided by regular
613 agency employees;

614 (3) A certification by the designated bidder that the bidder and its
615 supervisory employees, while in the employ of the designated bidder,
616 have no adjudicated record of repeated wilful noncompliance with any
617 relevant federal or state regulatory law including, but not limited to,
618 laws concerning labor relations, occupational safety and health,
619 nondiscrimination and affirmative action, environmental protection
620 and conflicts of interest; and

621 (4) A description of why the proposed privatization contract is in

622 the public interest.

623 (c) Any employees, or collective bargaining agent of any employee
624 adversely affected by any proposed privatization contract filed with
625 the Secretary of the State may file a motion for an order to show cause
626 in the superior court for the judicial district of Hartford claiming that
627 such contract fails to comply with the substantive or procedural
628 requirements of this act. A ruling on any such motion may: (1) Deny
629 the motion, if the court finds that all procedural and substantive
630 provisions of this act have been complied with; (2) grant the motion if
631 the court finds that the proposed contract would substantively violate
632 the provisions of this act; or (3) stay the effective date of the contract
633 until any procedural or substantive defect found by the court has been
634 corrected.

635 (d) The Attorney General may bring a civil action for equitable relief
636 in the superior court for the judicial district of Hartford to enforce the
637 provisions of any privatization contract or to prevent or remedy the
638 dismissal, demotion or other action prejudicing any employee as a
639 result of a report of a violation of this section.

640 Sec. 15. (NEW) (*Effective from passage*) The Office of Policy and
641 Management shall establish procedures for use by state agencies when
642 entering purchase of service agreements that shall provide for the
643 payment of fifty per cent of any unexpended funds allocated for such
644 contract to the contracting nonprofit agency, partnership or
645 corporation at the end of such contract, provided the services rendered
646 under such contract meet the contracted requirements for number,
647 type and quality of services and there is either an agreed upon price
648 for such services, a set cost for such services or a flat grant for an
649 agreed upon level of services.

650 Sec. 16. (NEW) (*Effective from passage*) (a) Notwithstanding any
651 provision of the general statutes, any contract for legal services
652 between a state agency and any person, firm or corporation that is
653 entered into on or after January 1, 2006, and that will or that can
654 reasonably be expected to result in attorney's fees, including, but not

655 limited to, contingent fees paid to such person, firm or corporation in
656 the amount of two hundred fifty thousand dollars or more shall be
657 subject to competitive bidding and negotiation procedures.

658 (b) Not later than October 1, 2005, the Attorney General shall
659 establish competitive bidding and negotiation procedures for use by
660 any state agency to enter into a contract described in subsection (a) of
661 this section.

662 (c) No contract described in subsection (a) of this section shall be
663 valid without the prior approval of the substance and form of such
664 contract by the Attorney General.

665 Sec. 17. Section 4a-100 of the general statutes is repealed and the
666 following is substituted in lieu thereof (*Effective January 1, 2006*):

667 (a) As used in this section: (1) "Prequalification" means
668 prequalification issued by the Commissioner of Administrative
669 Services to bid on a contract for the construction, reconstruction,
670 alteration, remodeling, repair or demolition of any public building for
671 work by the state or a municipality or to perform work under such a
672 contract as a substantial subcontractor; (2) "subcontractor" means a
673 person who performs work with a value in excess of twenty-five
674 thousand dollars for a contractor pursuant to a contract for work for
675 the state or a municipality which is estimated to cost more than five
676 hundred thousand dollars; (3) "principals and key personnel" includes
677 officers, directors, shareholders, members, partners and managerial
678 employees; (4) "aggregate work capacity rating" means the maximum
679 amount of work an applicant is capable of undertaking for any and all
680 projects; [and] (5) "single project limit" means the highest estimated
681 cost of a single project that an applicant is capable of undertaking; (6)
682 from January 1, 2006, until September 30, 2006, "substantial
683 subcontractor" means a person who performs work with a value in
684 excess of five hundred thousand dollars for a contractor pursuant to a
685 contract for work for the state or a municipality which is estimated to
686 cost more than five hundred thousand dollars; and (7) on and after
687 October 1, 2006, "substantial subcontractor" means a person who

688 performs work with a value in excess of two hundred fifty thousand
 689 dollars for a contractor pursuant to a contract for work for the state or
 690 a municipality which is estimated to cost more than five hundred
 691 thousand dollars.

692 (b) (1) Any person may apply for prequalification to the Department
 693 of Administrative Services. Such application shall be made on such
 694 form as the Commissioner of Administrative Services prescribes and
 695 shall be accompanied by a nonrefundable application fee as set forth in
 696 subdivision (2) of this subsection. The application shall be signed
 697 under penalty of false statement.

698 (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

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

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

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

705 (3) The applicant's experience on public and private construction
 706 projects over the past five years, or on the applicant's ten most
 707 recently-completed projects and the names of any subcontractors used
 708 on the projects;

709 (4) Any legal or administrative proceedings pending or concluded
710 adversely against the applicant or any of the applicant's principals or
711 key personnel within the past five years which relate to the
712 procurement or performance of any public or private construction
713 contract and whether the applicant is aware of any investigation
714 pending against the applicant or any principal or key personnel;

715 (5) The nature of any financial, personal or familial relationship
716 between the applicant and any public or private construction project
717 owner listed on the application as constituting construction experience;

718 (6) A statement of whether (A) the applicant has been disqualified
719 pursuant to section 4b-95, this section or section 31-57c or 31-57d, (B)
720 the applicant is on the list distributed by the Labor Commissioner
721 pursuant to section 31-57a, (C) the applicant is disqualified or
722 prohibited from being awarded a contract pursuant to section 31-57b,
723 (D) the applicant has been disqualified by another state, (E) the
724 applicant has been disqualified by a federal agency or pursuant to
725 federal law, (F) the applicant's registration has been suspended or
726 revoked by the Department of Consumer Protection pursuant to
727 section 20-341gg, (G) the applicant has been disqualified by a
728 municipality, and (H) the matters that gave rise to any such
729 disqualification, suspension or revocation have been eliminated or
730 remedied; and

731 (7) Other information as the commissioner deems relevant to the
732 determination of the applicant's qualifications and responsibilities.

733 (d) The applicant shall include a statement of financial condition
734 prepared by a certified public accountant which includes information
735 concerning the applicant's assets and liabilities, plant and equipment,
736 bank and credit references, bonding company and maximum bonding
737 capacity, and other information as the commissioner deems relevant to
738 an evaluation of the applicant's financial capacity and responsibility.

739 (e) Information contained in the application shall be current as of
740 the time of filing except that the statement of financial condition shall

741 pertain to the applicant's most recently-completed fiscal year.

742 (f) The commissioner shall determine whether to prequalify an
743 applicant on the basis of the application and on relevant past
744 performance according to procedures and criteria set forth in
745 regulations which the commissioner shall adopt on or before October
746 1, 2005, in accordance with chapter 54. Such criteria shall include, at a
747 minimum, the record of the applicant's performance, including, but
748 not limited to, written evaluations of the applicant's performance on
749 public or private projects within the past five years, the applicant's
750 past experience on projects of various size and type, the skill, ability
751 and integrity of the applicant and any subcontractors used by the
752 applicant, the experience and qualifications of supervisory personnel
753 employed by the applicant, the maximum amount of work the
754 applicant is capable of undertaking as demonstrated by the applicant's
755 financial condition, bonding capacity, size of past projects and present
756 and anticipated work commitments, and any other relevant criteria
757 that the commissioner prescribes. Such regulations shall also (1)
758 provide that the criteria considered shall be assigned separate
759 designated numerical values and weights and that the applicant shall
760 be assigned an overall numerical rating on the basis of all criteria, and
761 (2) establish prequalification classifications, aggregate work capacity
762 ratings and single project limits. Such prequalification classifications
763 shall be used to establish the types of work a contractor or substantial
764 subcontractor is qualified to perform and the aggregate work capacity
765 ratings shall be used to establish the maximum amount of work a
766 contractor or substantial subcontractor is capable of undertaking.

767 (g) (1) The applicant shall indicate the prequalification
768 classifications, aggregate work capacity ratings and single project
769 limits that are sought. The commissioner may issue a certificate of
770 prequalification to any applicant who meets the requirements of this
771 section. Such certificate shall be effective for one year from the date
772 issued and shall indicate the contractor's or substantial subcontractor's
773 prequalification classifications, aggregate work capacity ratings and
774 single project limits. The commissioner may cause the initial certificate

775 of prequalification to be effective for a period not to exceed two years
776 and may require the applicant to remit payment of the application fee,
777 as set forth in subsection (b) of this section, for the first twelve months
778 of certification as well as a prorated application fee, as described in
779 subdivision (3) of this subsection, for any additional period of
780 certification beyond the first twelve months.

781 (2) A prequalified contractor or substantial subcontractor may apply
782 at any time for additional prequalification classifications, aggregate
783 work capacity ratings or single project limits by submitting the
784 applicable increase in fee, a completed update statement, and other
785 information the commissioner requires.

786 (3) The commissioner may renew a prequalification certificate upon
787 receipt of a completed update statement, any other material the
788 commissioner requires and a nonrefundable fee in an amount equal to
789 one-half of the application fee for the applicable aggregate work
790 capacity rating as set forth in subsection (b) of this section, except that
791 in no event shall such fee be less than six hundred dollars.

792 (h) Not later than sixty days after receiving a completed application,
793 the commissioner shall mail or send by electronic mail a notice to the
794 applicant concerning the commissioner's preliminary determination
795 regarding the conditions of the prequalification certification, a denial
796 of certification, a reduction in the level of certification sought or
797 nonrenewal of certification. Any applicant aggrieved by the
798 commissioner's preliminary determination may request copies of the
799 information upon which the commissioner relied in making the
800 preliminary determination, provided such request is made not later
801 than ten days after the date the notice was mailed or sent by electronic
802 mail to the applicant. Not later than twenty days after the date the
803 notice was mailed or sent by electronic mail, the applicant may submit
804 additional information to the commissioner with a request for
805 reconsideration. The commissioner shall issue a final determination
806 regarding the application not later than ninety days after the date the
807 commissioner mailed or sent by electronic mail the notice of the

808 preliminary determination, which ninety-day period may be extended
809 for an additional period not to exceed ninety days if (1) the
810 commissioner gives written notice to the applicant that the
811 commissioner requires additional time, and (2) such notice is mailed or
812 sent by electronic mail during the initial ninety-day period.

813 (i) The commissioner may not issue a prequalification certificate to
814 any contractor or substantial subcontractor (1) who is disqualified
815 pursuant to section 31-57c or 31-57d, (2) who has a principal or key
816 personnel who, within the past five years, has a conviction or has
817 entered a plea of guilty or nolo contendere for or has admitted to
818 commission of an act or omission that reasonably could have resulted
819 in disqualification pursuant to any provision of subdivisions (1) to (3),
820 inclusive, of subsection (d) of section 31-57c or subdivisions (1) to (3),
821 inclusive, of subsection (d) of section 31-57d, as determined by the
822 commissioner.

823 (j) The commissioner may revoke a contractor's or substantial
824 subcontractor's prequalification or reduce the contractor's or
825 substantial subcontractor's prequalification classification or aggregate
826 work capacity ratings, after an opportunity for a hearing, if the
827 commissioner receives additional information that supports such
828 revocation or reduction or if such contractor is suspended from bidding
829 on a state contract pursuant to the provisions of section 8 of this act.

830 (k) (1) Any materially false statement in the application or any
831 update statement may, in the discretion of the awarding authority,
832 result in termination of any contract awarded the applicant by the
833 awarding authority. The awarding authority shall provide written
834 notice to the commissioner of such false statement not later than thirty
835 days after discovering such false statement. The commissioner shall
836 provide written notice of such false statement to the Commissioner of
837 Public Works and the Commissioner of Consumer Protection not later
838 than thirty days after discovering such false statement or receiving
839 such notice.

840 (2) The commissioner shall revoke the prequalification of any

841 person, after an opportunity for hearing, if the commissioner finds that
842 the person has included any materially false statement in such
843 application or update statement, has been convicted of a crime related
844 to the procurement or performance of any public or private
845 construction contract has been disqualified by the State Contracting
846 Standards Board from bidding on state contracts pursuant to section 7
847 of this act or, within the past five years or has otherwise engaged in
848 fraud in obtaining or maintaining prequalification. Any person whose
849 prequalification has been revoked pursuant to this subsection shall be
850 disqualified for a period of two years after which the person may
851 reapply for prequalification, except that a person whose
852 prequalification has been revoked on the basis of conviction of a crime
853 or engaging in fraud shall be disqualified for a period of five years
854 after which the person may reapply for prequalification and a person
855 whose prequalification has been revoked on the basis of
856 disqualification by the State Contracting Standards Board shall be
857 disqualified for the same length of time as the disqualification period
858 imposed by the State Contracting Standards Board pursuant to section
859 7 of this act. The commissioner shall not prequalify a person whose
860 prequalification has been revoked pursuant to this subdivision until
861 the expiration of said [two or] two-year, five-year, or other applicable
862 disqualification period and the commissioner is satisfied that the
863 matters that gave rise to the revocation have been eliminated or
864 remedied.

865 (l) The commissioner shall provide written notice of any revocation,
866 disqualification, reduction in classification or capacity rating or
867 reinstated prequalification to the Commissioner of Public Works and
868 the Commissioner of Consumer Protection not later than thirty days
869 after any final determination.

870 (m) The provisions of this section and section 4a-101 shall not apply
871 to subcontractors.

872 (n) The commissioner shall establish an update statement for use by
873 bidders and substantial subcontractors for purposes of renewing or

874 upgrading a prequalification certificate and for purposes of submitting
875 a bid pursuant to section 4b-91, as amended by this act.

876 (o) Any applicant aggrieved by the commissioner's final
877 determination concerning a preliminary determination, a denial of
878 certification, a reduction in prequalification classification or aggregate
879 work capacity rating or a revocation or nonrenewal of certification
880 may appeal to the Superior Court in accordance with section 4-183.

881 (p) Not later than one hundred twenty days after becoming
882 prequalified, any contractor or substantial subcontractor prequalified
883 under the provisions of this section shall participate in an ethics
884 training course approved by the State Contracting Standards Board
885 pursuant to section 4 of this act.

886 (q) The commissioner shall adopt regulations, in accordance with
887 chapter 54, to establish a schedule of application fees for substantial
888 subcontractors.

889 Sec. 18. Section 4b-91 of the general statutes is amended by adding
890 subsection (j) as follows (*Effective January 1, 2006*):

891 (NEW) (j) (1) From January 1, 2006, until September 30, 2006, no
892 person whose subcontract exceeds five hundred thousand dollars in
893 value may perform work as a subcontractor, except for a project
894 described in subdivision (2) of subsection (a) of this section, for the
895 construction, reconstruction, alteration, remodeling, repair or
896 demolition of any public building for work by the state or a
897 municipality, which is estimated to cost more than five hundred
898 thousand dollars and is paid for, in whole or in part, with state funds,
899 unless the person is prequalified in accordance with section 4a-100, as
900 amended by this act.

901 (2) On and after October 1, 2006, no person whose subcontract
902 exceeds two hundred fifty thousand dollars in value may perform
903 work as a subcontractor, except for a project described in subdivision
904 (2) of subsection (a) of this section, for the construction, reconstruction,

905 alteration, remodeling, repair or demolition of any public building for
906 work by the state or a municipality, which is estimated to cost more
907 than five hundred thousand dollars and is paid for, in whole or in part,
908 with state funds, unless the person is prequalified in accordance with
909 section 4a-100, as amended by this act.

910 Sec. 19. Section 4b-56 of the general statutes is repealed and the
911 following is substituted in lieu thereof (*Effective from passage*):

912 (a) There shall be established within the Department of Public
913 Works [a] State Construction Services Selection [Panel] Panels which
914 shall consist of five members. Four of such members shall be
915 appointed by the commissioner, shall be current or retired employees
916 of the Department of Public Works and shall serve for [terms of one
917 year from July first] deliberations involving the project for which such
918 member was appointed. The remaining member shall be appointed by
919 the head or acting head of the user agency and shall serve only for
920 deliberations involving the project for which [he] such member was
921 appointed. [If any vacancy occurs on the panel, the commissioner shall
922 appoint a person for the unexpired term in accordance with the
923 provisions of this subsection.]

924 (b) The selection panel shall not be deemed to be a board or
925 commission within the meaning of section 4-9a.

926 (c) There shall be established within the Department of Public
927 Works [a] Connecticut Health and Education Facilities Authority
928 Construction Services [Panel] Panels which shall consist of five
929 members: Three of whom shall be appointed by the Commissioner of
930 Public Works, who shall serve only for deliberations involving the
931 project for which such member was appointed and shall be current
932 employees of the Department of Public Works; and the remaining
933 members shall be appointed by the head or acting head of the user
934 agency and shall serve only for deliberations involving the project for
935 which such member was appointed. [The members of the selection
936 panel appointed by the Commissioner of Public Works shall serve for
937 terms of one year from July first. If any vacancy occurs on the panel,

938 the Commissioner of Public Works or the head or acting head of the
939 user agency, as appropriate, shall appoint a person for the unexpired
940 term in accordance with the provisions of this subsection.]

941 (d) The panel established pursuant to subsection (c) of this section
942 shall not be deemed to be a board or commission within the meaning
943 of section 4-9a. Such panel shall be the selection panel only for
944 Connecticut Health and Education Facilities Authority projects
945 pursuant to section 10a-89b.

946 Sec. 20. Subsections (a) and (b) of section 4b-100a of the general
947 statutes are repealed and the following is substituted in lieu thereof
948 (*Effective from passage*):

949 (a) The Department of Public Works shall establish construction
950 services award panels which shall each consist of six members: Three
951 of whom shall be appointed by the Commissioner of Public Works,
952 [and shall] be current employees of the Department of Public Works
953 and serve only for deliberations involving the project for which such
954 member was appointed; two of whom shall be appointed by the
955 department head of the user agency; and one of whom who shall be a
956 neutral party appointed by the commissioner. [The members of each
957 award panel appointed by the Commissioner of Public Works shall
958 serve for terms of one year from July first. If any vacancy occurs on the
959 panel, the Commissioner of Public Works or the head or acting head of
960 the user agency, as appropriate, shall appoint a person for the
961 unexpired term in accordance with the provisions of this subsection.]

962 (b) A panel established pursuant to this section shall not be deemed
963 to be a board or commission within the meaning of section 4-9a. Such
964 panels shall be the award panels for any contract for the construction,
965 reconstruction, alteration, remodeling, repair or demolition of any
966 public building for the state pursuant to [sections 4b-91 to 4b-100,
967 inclusive, and] section 4b-24 and subsection (g) of section 4b-91.

968 Sec. 21. Subsection (b) of section 4b-91 of the general statutes is
969 repealed and the following is substituted in lieu thereof (*Effective from*

970 *passage*):

971 (b) The Commissioner of Public Works, the joint committee or the
972 constituent unit, as the case may be, shall determine the manner of
973 submission and the conditions and requirements of such bids, and the
974 time within which the bids shall be submitted, consistent with the
975 provisions of sections 4b-91 to 4b-96, inclusive. Such award shall be
976 made within [sixty] one hundred twenty days after the opening of
977 such bids. If the general bidder selected as the general contractor fails
978 to perform the general contractor's agreement to execute a contract in
979 accordance with the terms of the general contractor's general bid and
980 furnish a performance bond and also a labor and materials or payment
981 bond to the amount specified in the general bid form, an award shall
982 be made to the next lowest responsible and qualified general bidder.
983 No employee of the Department of Public Works, the joint committee
984 or a constituent unit with decision-making authority concerning the
985 award of a contract and no public official, as defined in section 1-79,
986 may communicate with any bidder prior to the award of the contract if
987 the communication results in the bidder receiving information about
988 the contract that is not available to other bidders, except that if the
989 lowest responsible and qualified bidder's price submitted is in excess
990 of funds available to make an award, the Commissioner of Public
991 Works, the Joint Committee on Legislative Management or the
992 constituent unit, as the case may be, may negotiate with such bidder
993 and award the contract on the basis of the funds available, without
994 change in the contract specifications, plans and other requirements. If
995 the award of a contract on said basis is refused by such bidder, the
996 Commissioner of Public Works, the Joint Committee on Legislative
997 Management or the constituent unit, as the case may be, may negotiate
998 with other contractors who submitted bids in ascending order of bid
999 prices without change in the contract, specifications, plans and other
1000 requirements. In the event of negotiation with general bidders as
1001 provided in this section, the general bidder involved may negotiate
1002 with subcontractors on the same basis, provided such general bidder
1003 shall negotiate only with subcontractors named on such general
1004 bidder's general bid form.

1005 Sec. 22. (NEW) (*Effective from passage*) (a) This section shall be known
1006 as the "Anthony J. Tercyak Act".

1007 (b) The Department of Administrative Services shall require any
1008 publicly traded corporation that seeks to do business with the state to
1009 certify in an affidavit that such company is not a company that: (1)
1010 Conducted business in the United States, (2) was previously
1011 incorporated within the United States' territorial limits, (3)
1012 reincorporated outside the United States' territorial limits on or after
1013 July 1, 2005, and (4) as a result of such reincorporation outside the
1014 United States' territorial limits, has received a reduction in federal or
1015 Connecticut tax liability.

1016 (c) The state may not enter into any contract with any publicly
1017 traded company that does not deny such reincorporation in a sworn
1018 affidavit.

1019 Sec. 23. (NEW) (*Effective October 1, 2005*) (a) As used in this section:

1020 (1) "Fixture" means the assembly that holds a lamp and may include
1021 an assembly housing, a mounting bracket or pole socket, a lamp
1022 holder, a ballast, a reflector or mirror and a refractor or lens;

1023 (2) "Full cut-off luminaire" means a luminaire that allows no direct
1024 light emissions above a horizontal plane through the luminaire's
1025 lowest light-emitting part;

1026 (3) "Glare" means direct light emitting from a luminaire that causes
1027 reduced vision or momentary blindness;

1028 (4) "Illuminance" means the level of light measured at a surface;

1029 (5) "Lamp" means the component of a luminaire that produces the
1030 light;

1031 (6) "Light trespass" means light emitted by a luminaire that shines
1032 beyond the boundaries of the property on which the luminaire is
1033 located;

1034 (7) "Lumen" means a unit of measurement of luminous flux;

1035 (8) "Luminaire" means the complete lighting unit, including the
1036 lamp and the fixture;

1037 (9) "Permanent outdoor luminaire" means any luminaire or system
1038 of luminaires that is outdoors and intended to be used for seven days
1039 or longer; and

1040 (10) "State funds" means any bond revenues or any money
1041 appropriated or allocated by the General Assembly.

1042 (b) Except as provided in subsection (c) of this section, no state
1043 funds shall be used to install or replace a permanent outdoor luminaire
1044 for lighting on the grounds of any state building or facility unless (1)
1045 the luminaire is designed to maximize energy conservation and to
1046 minimize light pollution, glare and light trespass, (2) the luminaire's
1047 illuminance is equal to the minimum illuminance adequate for the
1048 intended purpose of the lighting, and (3) for a luminaire with a rated
1049 output of more than one thousand eight hundred lumens, such
1050 luminaire is a full cut-off luminaire.

1051 (c) The provisions of subdivision (3) of subsection (b) of this section
1052 shall not apply to luminaires located on the grounds of any
1053 correctional institution or facility administered by the Commissioner of
1054 Correction, required by federal regulations, required for storm
1055 operation activities performed by the Department of Transportation, or
1056 in a lighting plan for a Department of Transportation facility where
1057 less than twenty-five per cent of the luminaires are to be replaced. The
1058 Commissioner of Public Works, or the commissioner's designee, may
1059 waive the provisions of subdivision (3) of subsection (b) of this section
1060 with respect to luminaires on the grounds of any other state building
1061 or facility when, after a request for such a waiver has been made and
1062 reviewed, the commissioner or the commissioner's designee
1063 determines that such a waiver is necessary for the lighting application.
1064 Requests for such a waiver shall be made to the commissioner or the
1065 commissioner's designee in such form as the commissioner shall

1066 prescribe and shall include, without limitation, a description of the
1067 lighting plan, a description of the efforts that have been made to
1068 comply with the provisions of subdivision (3) of subsection (b) of this
1069 section and the reasons such a waiver is necessary. In reviewing a
1070 request for such a waiver, the commissioner or the commissioner's
1071 designee shall consider design safety, costs and other factors deemed
1072 appropriate by the commissioner or the commissioner's designee.

1073 (d) The provisions of this section shall not apply to the installation
1074 or replacement of luminaires for which the Secretary of the Office of
1075 Policy and Management (1) conducts a life-cycle cost analysis of one or
1076 more luminaires that meet the requirements set forth in subsection (b)
1077 of this section and one or more luminaires that do not meet such
1078 requirements, and (2) certifies that a luminaire which meets such
1079 requirements is not cost effective and is not the most appropriate
1080 alternative based on the life-cycle cost analysis.

1081 Sec. 24. (NEW) (*Effective from passage*) Notwithstanding any
1082 provision of law, the Metropolitan District Commission may not enter
1083 into a contract with an independent contractor for lobbying, as defined
1084 in section 1-91 of the general statutes.

1085 Sec. 25. Section 1-122 of the general statutes is repealed and the
1086 following is substituted in lieu thereof (*Effective from passage*):

1087 The Auditors of Public Accounts shall annually conduct a
1088 compliance audit of each quasi-public agency's activities during the
1089 preceding agency fiscal year or contract with a person, firm or
1090 corporation for any such audit or audits. Each such audit shall
1091 determine whether the quasi-public agency has complied with its
1092 regulations concerning affirmative action, personnel practices, the
1093 purchase of goods and services, the use of surplus funds and the
1094 distribution of loans, grants and other financial assistance. Each audit
1095 shall include a review of all or a representative sample of the agency's
1096 activities in such areas during such fiscal year. The Auditors of Public
1097 Accounts shall submit each audit report to the Governor and two
1098 copies of the audit report to the Legislative Program Review and

1099 Investigations Committee. Not later than thirty days after receiving
1100 copies of an audit report from the Auditors of Public Accounts, the
1101 Legislative Program Review and Investigations Committee shall
1102 prepare an assessment of whether the audit report complies with the
1103 requirements of this section and shall submit the assessment and a
1104 copy of the audit report to the joint standing committee of the General
1105 Assembly having cognizance of matters relating to the quasi-public
1106 agency. Each quasi-public agency shall pay the cost of conducting such
1107 annual compliance audit of the agency. Notwithstanding any
1108 provision of the general statutes or any special act, the Metropolitan
1109 District Commission shall be considered a quasi-public agency for
1110 purposes of this section.

1111 Sec. 26. Subsection (c) of section 2-90 of the general statutes is
1112 repealed and the following is substituted in lieu thereof (*Effective from*
1113 *passage*):

1114 (c) Said auditors shall audit, on a biennial basis if deemed most
1115 economical and efficient, or as frequently as they deem necessary, the
1116 books and accounts of each officer, department, commission, board
1117 and court of the state government, all institutions supported by the
1118 state and all public and quasi-public bodies, politic and corporate,
1119 created by public or special act of the General Assembly and not
1120 required to be audited or subject to reporting requirements, under the
1121 provisions of chapter 111. Each such audit may include an examination
1122 of performance in order to determine effectiveness in achieving
1123 expressed legislative purposes. The auditors shall report their findings
1124 and recommendations to the Governor, the State Comptroller, the joint
1125 standing committee of the General Assembly having cognizance of
1126 matters relating to appropriations and the budgets of state agencies,
1127 and the Legislative Program Review and Investigations Committee.
1128 Notwithstanding any provision of the general statutes, or any special
1129 act, the Metropolitan District Commission shall be considered a quasi-
1130 public body for purposes of this subsection.

1131 Sec. 27. (NEW) (*Effective July 1, 2005*) (a) (1) No quasi-public agency,

1132 as defined in section 1-120 of the general statutes, except the
1133 Connecticut Development Authority, Connecticut Innovations,
1134 Incorporated, Connecticut Health and Educational Facilities Authority,
1135 Connecticut Higher Education Supplemental Loan Authority,
1136 Connecticut Housing Finance Authority, Connecticut Housing
1137 Authority, Capital City Economic Development Authority and the
1138 Connecticut Lottery Corporation, shall, without the written approval
1139 of the State Comptroller, (A) make any investment or loan, in any
1140 amount, or (B) otherwise disburse funds or assets or authorize an
1141 agreement or series of related agreements involving obligations, which
1142 funds, assets or obligations have a value of more than twenty-five
1143 thousand dollars. The Comptroller may approve any such transaction
1144 only upon determining that the transaction is in the best interest of,
1145 and consistent with the purposes of, the quasi-public agency. A quasi-
1146 public agency may apply for such approval by submitting an
1147 application to the Comptroller, on a form prepared by the Comptroller,
1148 describing the amount or value and purpose of the transaction and
1149 including any other information required by the Comptroller. The
1150 Comptroller shall approve or disapprove an application not later than
1151 fifteen days after receiving the application, provided if the Comptroller
1152 does not act within such fifteen-day period, the application shall be
1153 deemed to have been approved.

1154 (2) The provisions of subdivision (1) of this subsection shall not
1155 apply to (A) an investment in equities listed on the New York Stock
1156 Exchange, the American Stock Exchange or the NASDAQ Stock
1157 Market, (B) incurring a debt having an investment grade status, as
1158 determined by Standard & Poor's, Moody's Investor Service or Fitch
1159 Ratings, (C) the purchase of a federally guaranteed security, as defined
1160 in section 10a-178 of the general statutes, (D) the purchase of
1161 participation certificates in the Short Term Investment Fund, (E) capital
1162 expenditures otherwise authorized by applicable law, and (F)
1163 expenditures in the amount of not more than one hundred thousand
1164 dollars for the normal operations of the quasi-public agency. Not later
1165 than five business days after a quasi-public agency makes a transaction
1166 described in this subdivision, the chief executive officer or chief

1167 financial officer of the quasi-public agency shall submit to the State
1168 Comptroller a notarized certification, signed by such officer, which
1169 describes the transaction and states that, to the best knowledge of such
1170 officer, the transaction does not require the approval of said secretary
1171 under subdivision (1) of subsection (a) of this section.

1172 (b) The State Comptroller may void any transaction subject to the
1173 requirements of subdivision (1) of subsection (a) of this section that is
1174 not submitted to said Comptroller for approval under said subdivision
1175 (1). If the Comptroller voids any such transaction, the state shall have a
1176 perfected lien on all assets of any value, from the transaction, of the
1177 entity with whom the state made such transaction. Such lien shall be
1178 effective from the date of the transaction.

1179 (c) The State Comptroller may adopt regulations, in accordance with
1180 the provisions of chapter 54 of the general statutes, to carry out the
1181 purposes of this section.

1182 Sec. 28. Subdivision (1) of section 1-92 of the general statutes is
1183 repealed and the following is substituted in lieu thereof (*Effective from*
1184 *passage*):

1185 (1) Adopt regulations in accordance with chapter 54 to carry out the
1186 purposes of this part. Not later than January 1, 1992, the commission
1187 shall adopt regulations which further clarify the meaning of the terms
1188 "directly and personally received" and "major life event", as used in
1189 subsection (e) of section 1-79 and subsection (g) of section 1-91. The
1190 commission shall adopt regulations that further clarify the meaning of
1191 the term "directly or indirectly involved in any enterprise", as used in
1192 section 2 of this act.

1193 Sec. 29. Subdivision (19) of subsection (d) of section 2c-2b and
1194 section 4b-3 of the general statutes are repealed. (*Effective October 1,*
1195 *2007*)

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2005</i>	New section
Sec. 2	<i>July 1, 2005</i>	New section
Sec. 3	<i>July 1, 2005</i>	New section
Sec. 4	<i>July 1, 2007</i>	New section
Sec. 5	<i>October 1, 2007</i>	New section
Sec. 6	<i>October 1, 2007</i>	New section
Sec. 7	<i>October 1, 2007</i>	New section
Sec. 8	<i>October 1, 2007</i>	New section
Sec. 9	<i>October 1, 2007</i>	New section
Sec. 10	<i>October 1, 2007</i>	New section
Sec. 11	<i>October 1, 2007</i>	New section
Sec. 12	<i>July 1, 2005</i>	New section
Sec. 13	<i>from passage</i>	4b-91 (i)
Sec. 14	<i>from passage</i>	New section
Sec. 15	<i>from passage</i>	New section
Sec. 16	<i>from passage</i>	New section
Sec. 17	<i>January 1, 2006</i>	4a-100
Sec. 18	<i>January 1, 2006</i>	4b-91
Sec. 19	<i>from passage</i>	4b-56
Sec. 20	<i>from passage</i>	4b-100a (a) and (b)
Sec. 21	<i>from passage</i>	4b-91 (b)
Sec. 22	<i>from passage</i>	New section
Sec. 23	<i>October 1, 2005</i>	New section
Sec. 24	<i>from passage</i>	New section
Sec. 25	<i>from passage</i>	1-122
Sec. 26	<i>from passage</i>	2-90 (c)
Sec. 27	<i>July 1, 2005</i>	New section
Sec. 28	<i>from passage</i>	1-92 (1)
Sec. 29	<i>October 1, 2007</i>	2c-2b (d)(19) and 4b-3 repealed

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 \$
Contracting Standards Board	GF - Cost	791,000	996,000
Department of Administrative Services	GF - Cost	220,000	250,000
Department of Administrative Services	GF - Revenue Gain	377,500 - 755,000	1.8 million - 3.4 million
Auditors	GF - Cost	331,946	330,316
Various State Agencies	GF - Cost	Potential Significant	Potential Significant
Policy & Mgmt., Off.	GF - None	None	None
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	279,885	806,125
Secretary of the State	GF - Cost	85,000	90,000
Treasurer, Debt Serv.	GF - Cost	None	Minimal
Pub. Works, Dept.	GF - Cost	See Below	See Below
Attorney General	GF - Cost	Potential Significant	Potential Significant
Judicial Dept.	GF - None	None	None
Human Services Agencies	GF - Loss of Potential Savings	See Below	See Below
Comptroller	GF - Cost	150,000 - 300,000	155,000 - 309,000

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 06 \$	FY 07 \$
All Municipalities	STATE MANDATE - Cost	Potential	Potential

Explanation

State Contracting Standards Board

The bill establishes a seven-member State Contracting Standards Board effective July 1, 2005 and permits the Board to hire an executive director and other staff to carry out the responsibilities described in the

bill. A per diem reimbursement of up to \$30,000 per year is provided for the board chairperson and a reimbursement of up to \$25,000 is provided for each of the other six board members. The total cost for the reimbursements is \$180,000 per fiscal year beginning in FY 06 if the maximum amount is paid.

The Governor's proposed FY 06-07 biennium budget (HB 6671) includes funding in the amount of \$916,000 (\$640,000 for Personal Services, \$275,000 for Other Expenses, \$1,000 for Equipment) to establish the Contracting Standards Board and hire 10 staff members. While the Governor's Personal Services and Other Expenses figures assume the agency will operate for a full 12 month period, it appears more likely that there will be a delay of several months before board appointments are made and an executive director and staff are hired. Based on this assumption, the projected operating cost in FY 06 is estimated to be \$791,000; \$490,000 for Personal Services, plus fringe benefits¹, \$300,000 for Other Expenses (which includes per diem payments) and \$1,000 for equipment. The annualized cost in FY 07 is estimated to be \$996,000; \$670,000 for Personal Services, plus fringe benefits, \$325,000 for Other Expenses, and \$1,000 for equipment.

The bill transfers the powers and duties of the State Properties Review Board to the State Contracting Standards Board effective October 1, 2007. The Contracting Standards Board will function as the successor agency to the Properties Review Board. It also requires the Properties Review Board to form the State Properties Review Subcommittee within the Contracting Standards Board.

It is assumed that four positions (excluding the executive director) will be transferred from the Properties Review Board to the

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.

Contracting Standards Board in FY 08. The projected total Personal Services cost for these four positions (Real Estate Examiner, Executive Secretary, Fiscal Administrative Assistant, and Secretary 1) is approximately \$165,000 in FY 08 (9 months) and \$220,000 in FY 09 (12 months). It is expected that the Contracting Standards Board's Other Expenses budget would be increased to support the additional duties and personnel transferred, but that amount cannot be determined at this time. In addition, it is assumed that the new State Properties Review Subcommittee members would receive per diem reimbursements since the current Properties Review Board members receive such reimbursements. The bill does not indicate the number of subcommittee members or the level of reimbursement, but the current Properties Review Board has six members who are budgeted to receive a total of \$155,000 in reimbursements in each of FY 06 and FY 07.

The bill requires the State Contracting Standards Board to conduct audits of state contracting agencies every three years, and permits the board to enter into an agreement with the State Auditors to perform this requirement. If the board and the State Auditors agree that the State Auditors will perform this duty, the Auditors will incur Personal Services costs of \$166,000 for three Auditor II positions, plus fringe benefits, and one-time equipment costs of \$6,750 for three computers. If the board chooses to use private auditors, the board will incur similar costs.

The bill permits any bidder who is aggrieved by a decision of the State Contracting Standards Board in its review of any agency's decision on state contract solicitation or awarding to appeal the State Contracting Standards Board's decision to the Superior Court. Current practice provides that a commissioner's decision on any challenge to a bid award is final; thus, this provision in the bill would increase the number of civil suits brought against the state. It is anticipated that the number of additional administrative appeals under the bill would not be particularly significant given the overall level of cases currently.²

² There are approximately 400 administrative appeals of state agency decisions added to the civil court docket of the Superior Court annually.

However, the complexity of any single case could be substantial given the scope of services and financial stakes involved in some of the larger state contracts. The workload increase for the Office of the Attorney General, which would be required to defend the state in these matters, is uncertain, but could be such that one or more additional staff members and associated expenses are required. It is anticipated that the Judicial Department could accommodate any cases under this provision without requiring additional resources.

The bill also establishes a nine-member Contracting Standards Advisory Council, with at least one representative from Department of Administrative Services (DAS), the Department of Transportation, and the Department of Public Works (DPW), to meet at least once a year to discuss recommendations and improvements to the Contracting Standards Board. This provision will have no fiscal impact.

Subcontractor Prequalification

The bill requires subcontractors to prequalify with DAS to bid on public building construction contracts valued at more than \$500,000 (After October 1, 2006, the threshold for subcontractors' prequalification is reduced to \$250,000).

The bill requires DAS to adopt regulations establishing a subcontractor prequalification application fee schedule. Under current law, the contractor prequalification application fee schedule ranges from \$600 to \$2,500, based on the aggregate work capacity rating sought. It is assumed that the subcontractor prequalification application fee schedule will be the same as the contractor fee schedule.

According to the Department of Consumer Protection (DCP), there are approximately 18,000 contractors licensed in various classifications (electrical, plumbing, HVAC, etc.) in the state³. There are about 800 contractors licensed through the Department of Public Safety and the

³ This figure does not include the 1,100 major contractors registered with the state.

Department of Public Health. There are also several thousand more contractors who perform work that does not require a license (e.g. carpentry, painting, masonry, roofing), or are out-of-state contractors.

It is not known how many contractors will apply for subcontractor prequalification. However, there are three factors that will significantly limit the pool of prequalification applicants: 1) prequalification is only for contractors who perform, or are interested in bidding on, state or municipal construction work; 2) for contractors that have state or municipal contracts, only those contracts valued at over \$500,000 (lowered to \$250,000 in FY 07) need to be prequalified; 3) many subcontractors cannot meet the bonding requirements to even apply to the prequalification program.

It is estimated these factors, among others, will limit the pool of subcontractor prequalification applicants to 2,500 - 5,000 contractors.

Based on that assumption, the subcontractor prequalification application fee may generate FY 06 revenues in the range of \$377,500 - \$755,000. In FY 06, revenues are impacted by the program operating for only six months, and with the prequalification threshold set for work valued at \$500,000 or more. In FY 07, revenues may range from \$1,774,000 - \$3,406,500 (this includes initial application fees and renewal fee revenues) based on a full year of operation, and with the prequalification threshold lowered to work valued at \$250,000 or more. It is anticipated that FY 08 will still see large numbers of first time applications as it may take some time for the subcontractor prequalification program to become widely known in the construction industry. Subsequent years will see declining, but still significant revenue, as the renewal fee is assumed to be one-half the application fee, except no renewal fee will be less than \$600 (based on the current contractor fee schedule).

The bill will significantly expand the responsibilities of the current DAS prequalification program and will result in a significant workload increase. DAS must examine each subcontractor's past performance record on public and private projects for the past five years or the 10

most recently completed projects; any legal or administrative proceedings pending against the subcontractor's principals or key personnel within the past five years; and whether the subcontractor has been disqualified from bidding on other public contracts. DAS must also analyze each subcontractor's statement of financial condition. It is expected that contractor outreach, and the educating and training of contractors on the subcontractor prequalification program will create a considerable workload increase. Currently, DAS has five full time employees dedicated to contractor prequalification. DAS has prequalified 264 contractors since the prequalification program began on October 1, 2004. Based on the estimate of 2,500 - 5,000 subcontractors seeking prequalification, DAS will need five new positions. It is estimated that these positions will be filled for nine months in FY 06, at a cost of approximately \$190,000, plus fringe benefits. In FY 07, the salary costs will be approximately \$250,000, plus fringe benefits. DAS will also incur one-time costs of \$30,000 in FY 06 for equipment and supplies for the new employees.

Municipalities will incur a workload increase, which may require additional staff resources, to provide written evaluations on prequalified subcontractor's work. The potential cost to municipalities will depend on the number of construction projects and the number of prequalified subcontractors working on those projects. Some municipalities may have to write numerous subcontractor evaluations annually.

Privatization Contracts

The bill establishes procedures that agencies must follow before entering into a privatization contract. This bill has a potentially significant impact on several state agencies. The bill may also increase the cost of contracting out state services in the future, or increase the costs of contracting out such that the provision of services by state employees would be more cost effective.

This bill requires an agency to perform a cost benefit analysis 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 is required to compare the costs and benefits, including quality of service provided, of privatizing services with not privatizing them. As state agencies do not currently perform these functions, significant costs may result, which would require additional personnel and resources.

The bill also requires contractors to submit to performance audits of the contract by the State Auditors, on a periodic basis. Since these audits will occur on a sporadic basis, and the Auditors currently perform similar analysis when requested, this provision is not anticipated to result in any additional costs.

The bill calls for original privatization contracts to be filed and maintained as a public record in the office of the Secretary of the State. The Secretary of the State would require a Processing Technician, with a salary of \$37,000, plus fringe benefits, to assist with the filing, indexing, and handling of the requests for the copying of these documents. In addition, for ease of public viewing, such contracts would need to be posted on the internet, which would require a Systems Developer I at \$48,000, plus fringe benefits.

It is anticipated that the Office of the Attorney General (OAG) and the Judicial Department could accommodate any potential caseload increase under section 14 of the bill without requiring additional resources.

Purchase of Service Agreements

The bill requires the Office of Policy and Management (OPM) to establish procedures for use by state agencies when entering into purchase of service agreements, whereby 50% of any unexpended funds allocated in a contract with a contracting nonprofit agency,

partnership or corporation will be retained by the nonprofit entity, and the rest will be remitted to the contracting agency. (It should be noted that this is current practice for Department of Mental Retardation and its provider agencies). This will preclude future savings, as the nonprofit entities will retain half of the unexpended funds, which would otherwise lapse or be used to offset other costs⁴. It is anticipated that OPM can establish these procedures for use by state agencies when entering purchase of service agreements within the normal budgetary resources of the agency.

State Contracts with Reincorporated Companies

Under the bill, DAS must require publicly traded corporations seeking to do business with the state to certify in an affidavit that the company did not reincorporate outside the United States after July 1, 2005 to reduce their federal or state tax liability. The bill prohibits the state from contracting with corporations that fail to make that certification. This provision of the bill may increase the future cost of state contracts if the lowest qualified bidder for a state service contract fails to make the certification and the state must re-bid that contract. The state may also be precluded from renewing a contract with a company that reincorporated outside the U.S., and the state may have to incur higher costs to contract with another company.

Light Pollution

The bill requires that all new or replacement permanent light fixtures at state buildings or facilities be replaced with fixtures designed to maximize energy conservation and minimize light pollution, glare and light trespass. It gives the commissioner of Public Works the power to provide waivers to this requirement based on design safety considerations, costs and other factors such as property security. This could result in an increase in General Fund cost for

⁴ Historically, a certain level of lapses are budgeted and must be achieved to meet the net General Fund appropriation. In the current fiscal year, FY 05, \$109.85 million in General Funds lapses are budgeted.

funds appropriated to DPW and all state agencies that have care and control of their buildings beginning in FY 06 of between \$1,500 and \$3,000 for each fixture because full cutoff luminaries cost approximately 3% more than semi-cutoff luminaries. It could also result in an increase in General Fund debt service cost because the requirement also applies to projects funded with General Obligation bond funds.

To the degree that the bill results in the installation of more energy efficient lighting, it could also reduce General Fund cost for utilities.

Contract Awards

The bill increases, from 60 to 120, the number of days DPW and constituent units of higher education have to award contracts after opening bids. This will result in a potential administrative cost savings to the degree that it eliminates the need to re-bid certain contracts. Under current law, DPW and higher education units have occasionally been unable to award a contract because the agencies were not able to complete the review process within 60 days. As a consequence, the contract had to be re-bid, which resulted in an administrative cost. The 120-day limit will provide these agencies with a more reasonable time frame for reviewing bids and awarding a contract.

Contracts for Legal Services

The bill requires the OAG to establish procedures for competitive bidding and negotiations in the awarding of any state contract for legal services that could reasonably be expected to exceed \$250,000. Since the OAG is presently involved in the awarding and oversight of contracts for state agencies' outside legal services, including the issuance of Requests for Proposals, any administrative costs associated with this provision would be minimal.

Metropolitan District Commission

The bill requires the State Auditors, or someone the auditors contract with, to perform annual compliance audits and biennial fiscal

audits of the Metropolitan District Commission. Due to the complexity of these audits, it is anticipated that one Principal Auditor, with a salary \$85,114, plus fringe benefits, and one Associate Auditor, with a salary of \$69,985, plus fringe benefits, will be required. Additionally, one-time equipment costs of \$4,500 are anticipated.

Public Investments

The bill creates a prohibition for the Connecticut Resources Recovery Authority (CRRA) from investing, loaning, disbursing, or obligating funds or assets without the Office of the State Comptroller's (OSC) written consent. This provision would impact a significant number of CRRA transactions. Since the start of FY 05, more than 150 transactions over \$100,000, not including wire transfers, would be subject to OSC review. The number of transactions increases to over 227 (since the start of FY 05), if transactions over \$25,000 are included. The additional administrative procedures, including notarized certification, would increase the CRRA workload and may delay payments, which could potentially result in late payment fees. Late payments to a bondholder could result in negative financial consequences. The exact impact of these provisions is indeterminate at this time.

The bill establishes new responsibilities for the OSC by requiring that the OSC provide written consent of transactions valued over \$25,000 for certain quasi-public agencies. The thorough review of all such transactions would have to be undertaken before the exact staffing requirements could be determined. Based on preliminary information regarding CRRA transactions, it is estimated that the OSC may require three to five additional staff at a FY 06 cost ranging from \$150,000 - \$300,000; and a FY 07 cost ranging of \$155,000 - \$309,000. Additionally, there could be Core-CT costs, related to systems compatibility, that cannot be determined at this time.

Ethics Training

The bill requires that state employees involved in procurement and

prequalified contractors and subcontractors take an ethics training course. There would be no cost to the Ethics Commission to develop and provide these ethics training courses.

OLR Bill Analysis
sSB 94

**AN ACT CONCERNING REFORM OF THE STATE CONTRACTING
PROCESS**

SUMMARY:

This bill establishes a State Contracting Standards Board (SCSB) as an independent state agency and the successor agency to the State Properties Review Board (SPRB). It dissolves the SPRB on October 1, 2007 and transfers its duties and responsibilities to the SCSB on that date. The new board is also charged with various other responsibilities that reform state contracting processes. It must establish uniform procurement standards, audit state contracting agencies, and discipline them for failure to comply with the bill or the uniform procurement code.

The bill establishes:

1. grounds for suspending and disqualifying contractors and subcontractors from bidding on or participating in state contracts,
2. a procedure for the legislature to exempt construction contracts from the competitive bidding process,
3. conditions precedent to state privatization contracts, and
4. procedures for state agencies to use when entering purchase of service agreements.

The bill conforms the Department of Public Works' contractor selection law to practice and increases the number of days it and constituent units of higher education have to award contracts.

The bill prohibits the state from contracting with corporations that receive a tax benefit as a result of reincorporating outside of the United States.

It bans, with some exceptions, the use of state bond revenues or appropriated or allocated state funds for outdoor lighting that is not energy efficient or that exceeds the brilliance required to achieve its purpose.

It prohibits the Metropolitan District Commission (MDC) from hiring lobbyists and subjects it to auditing, both compliance and fiscal, by the state auditors.

Lastly, the bill generally requires quasi-public agencies to get the comptroller's consent to invest or loan funds or assets valued at over \$25,000.

EFFECTIVE DATE: Upon passage, except (1) the SCSB is established, the date for SPRB duties to transfer is established, and prior approval for quasi-public agency investments required on July 1, 2005; (2) full cut-off luminaire requirements are effective on October 1, 2005; (3) the prequalification provisions are effective on January 1, 2006; (4) SCSB duties, other than the uniform procurement code are effective on July 1, 2007; and (5) SCSB audits and contract reviews, contractors disqualification and suspension, SCSB appeals, advisory council, and SPRB dissolution are effective on October 1, 2007.

STATE CONTRACTING STANDARDS BOARD (SCSB) (§§ 1-7 & 28)

The bill establishes the seven-member SCSB as a separate, independent, executive-branch agency. The governor and the six top legislative leaders appoint one member each. The people initially appointed by the governor, Senate president, and House speaker serve a three-year term. The remaining four appointees serve an initial two-year term. Subsequent appointments are all for three-year terms and until successors are appointed. Each appointing authority fills any vacancy in his appointment. No member can serve more than two consecutive terms (or portions thereof) or six years.

Board Member Qualifications

The bill requires each member to have (1) a demonstrated interest in government ethics and integrity or (2) education, training, or experience, received in five consecutive years of the 10 years immediately preceding his appointment, in several of the following

areas:

1. procurement;
2. contract negotiation, selection, and drafting;
3. contract risk assessment;
4. requests for proposals and real estate transactions;
5. business insurance and bonding;
6. the State Code of Ethics;
7. federal and state statutes, policies, and regulations;
8. outsourcing and privatization proposal analysis;
9. small and minority business enterprise development; or
10. personnel and union management.

“Contract risk assessment” means (1) the identification and evaluation of loss exposures and risks, including business and legal risks associated with contracting and (2) the identification, evaluation, and implementation of measures available to minimize potential loss exposures and risks.

Board’s Leadership and Staff

The bill requires the board to appoint its chairperson and an executive director who serves as an ex-officio, nonvoting member of the board. Under the bill, the executive director is a member of classified state service who may be removed for cause. The board must annually evaluate his performance.

The bill authorizes the board to employ any other staff it deems necessary, including property and procurement specialists, real estate examiners, and contract specialists.

Board Ethics and Operations

The bill prohibits anyone from serving on or working for the board if (1) he holds another position in state or municipal government or (2) his spouse, child, stepchild, parent, or sibling is directly or indirectly involved in any enterprise that does business with the state. The bill requires the State Ethics Commission to adopt regulations clarifying the meaning of “directly or indirectly involved in any enterprise.”

It requires board members and employees to file with the board and the State Ethics Commission annual financial statements, by April 15, that disclose the sources of any income over \$1,000 for the preceding calendar year and the name of any business with which they are associated. The requirement appears to apply to members and employees beginning with their second year of service or employment, respectively. By law, an associated business is one owned by an official, employee, or member of his immediate family, or where any one of them (1) serves as an officer or a director or compensated agent or (2) owns at least 5% of the stock in any class. The financial statement is a public record and subject to disclosure under the Freedom of Information Act.

Any board employee, but not a member, who violates the employment prohibition and any member or employee who fails to file the statement violates the State Ethics Code and may be subject to the code’s penalties, including a fine of up to \$10,000.

The bill requires the board to adopt any rules it deems necessary to conduct its internal affairs, including appellate rules of procedure and procedural rules to carry out the duties and responsibilities of the SPRB.

Budget and Compensation

The bill requires the board’s budget, upon approval of its members, to pay its reasonable expenses. It requires the board chairperson to be paid a \$200 per diem up to a maximum of \$30,000 annually. Other members must receive the same per diem up to a maximum of \$25,000 annually.

Board Duties

The bill requires the board to:

1. recommend the repeal of repetitive, conflicting, or obsolete state procurement statutes;
2. prepare a uniform procurement code;
3. develop, publish, and maintain the code for all state contracting agencies;
4. help them with code compliance by providing their staffs with guidance, models, advice, and practical assistance on buying the best service at the best price, properly selecting contractors, and drafting contracts that achieve state goals and protect taxpayers' interest;
5. review and certify that a state contracting agency's procurement processes comply with the code;
6. triennially recertify state contracting agencies' procurement processes and give them notice of any certification deficiency and tell them how they can rectify it;
7. define the training requirements for state contracting agency procurement professionals;
8. monitor implementation of the state contracting website and make recommendations for improving the Department of Administrative Services (DAS);
9. define the requirements for state agencies to retain (a) the number and type of current state contracts, (b) their dollar value, (c) a list of client agencies and contractor names, (d) a description of contracted services, and (e) an evaluation of contractor performance, and make sure that the information is available on the state contracting portal;
10. recommend changes to the procurement code to the governor and the Government Administration and Elections (GAE) Committee;
11. approve an ethics training course for state employees involved in procurement and for prequalified state contractors and subcontractors; and

12. conduct compliance audits.

The ethics training course may be developed and provided by the State Ethics commission or any other person or firm as long as the SCSB approves it.

Uniform Procurement Code. By January 1, 2007, the bill requires the SCSB to prepare a uniform code for use by state contracting agencies when contracting for, buying, renting, leasing, or otherwise acquiring or disposing of supplies or services, including construction services, materials, or supplies. "State contracting agencies" are state, municipal, and quasi-public agencies, other than the SCSB, and any other agency that receives state funds. The uniform code does not apply to the expenditure of federal assistance or contract funds if federal law provides procurement procedures.

The bill requires the board to conduct a comprehensive review of existing state contracting and procurement laws, regulations, and practices and use any appropriate, existing procedures and guidelines when preparing the code. It requires each state contracting agency to provide its procurement information if the board asks. The bill gives the board access to all such agencies' information, files, and records necessary to complete the code. It protects documents exempt from disclosure under the Freedom of Information Act from disclosure by the board.

The bill requires the board to submit the code to the legislature for approval by filing it with the Senate and House clerks by January 15, 2007. Within the next five days, the Senate president and House speaker must submit the code to the GAE Committee. The committee must hold a hearing on the code and report its recommendations, including any changes, for approval or rejection to the House and Senate. The General Assembly must vote on the code by the end of the 2007 regular session. (The bill does not specify what happens if the legislature rejects the code.)

The bill requires the code to:

1. establish uniform state contracting standards and practices;
2. ensure the fair and equitable treatment of all businesses and

-
- people involved in the state's procurement system;
3. include a process for maximizing the use of small contractors and minority business enterprises;
 4. provide increased economy in state procurement activities and maximize purchasing value to the fullest extent possible;
 5. ensure that state contracting agencies procure supplies, materials, equipment, services, real property, and construction in a cost-effective and responsive manner;
 6. preserve and maintain state agencies' contracting or procurement procedures that represent best practices, including their discretion and authority to disqualify contractors and terminate contracts;
 7. include a process to improve contractor and state contracting agency accountability;
 8. include standards for state contracting agencies to evaluate proposals to privatize state or quasi-public agency services and privatization contract bid proposals;
 9. establish standards for leases and lease-purchase agreements and for the purchase and sale of real estate; and
 10. simplify and clarify the state's contracting standards and procurement policies and practices, including procedures for competitive sealed bids or proposals, small purchases, and sole source, special, and emergency procurements (procurements necessary because of a sudden, unexpected occurrence that poses a clear and imminent danger to public safety or that requires immediate action to prevent or reduce loss or impairment of life, health, property, or essential public services); and
 11. provide a process for competitive sealed bids and proposals; small purchases; sole source, emergency, and special procurements; best value selection; qualification based selection; and the conditions for their use.

“Best value selection” means a process where contracts are awarded based on quality and costs. “Qualification based selection” means a process where contracts are awarded primarily based on contractor qualifications and a fair and reasonable price.

The bill requires privatization standards to, at a minimum, require state and quasi-public agencies to:

1. complete a comparative cost analysis before deciding to privatize services;
2. give their affected employees and, where applicable, employee unions, adequate notice;
3. prepare an employee impact statement, including measures a bidder must take to retain the agency’s qualified employees; and
4. provide their employees with adequate information and resources that would encourage and help them to organize and submit a bid to provide the services that are the subject of the privatization contract.

The standards must also require bidders to disclose all relevant information pertaining to their past performance and pending or concluded legal or regulatory proceedings or complaints, including compliance with fair employment practices standards and federal fair employment and non-discrimination standards.

Compliance Audits. The bill requires the board to audit state contracting agencies every three years and report on their compliance with the uniform procurement code. During the audit, the bill gives the board access to all of the agencies’ contracting and procurement records, and authority to interview people responsible for awarding and negotiating contracts or procurement. The board can make an agreement with the state auditors to conduct the audit.

The board must include in the compliance report the identity of any process or procedure that is inconsistent with the uniform procurement code and corrective measures to achieve code compliance. The board must deliver the report, which is a public record, to the contracting agency within 30 days after the audit is

completed.

Disciplinary Actions for Noncompliance and Other Violations.

Under the bill, the board can restrict an agency's contracting or procurement authority upon a two-thirds vote, after notice and a hearing, because it finds the agency failed to comply with statutory and procurement requirements and showed a reckless disregard for applicable policies and procedures. The restriction stays in effect until the agency implements corrective measures and complies with the code. Any restriction must be in the state's best interest.

The board may review or terminate a contract or procurement agreement for cause after consulting with the attorney general and giving the agency and contractor 15 days notice. "For cause" means engaging in activities prohibited under the State Ethics Code; a whistleblower report that the attorney general is investigating; or any person or state agency related to the contract wantonly or recklessly disregarding state contracting and procurement processes.

The decision to terminate a contract must be preceded by notice to the state agency and any other affected party that the board is meeting for that purpose. The board's decision to terminate must be approved by a two-thirds vote of its members.

CONTRACTOR DISQUALIFICATION OR SUSPENSION (§§ 7 & 8)

The bill allows the board to disqualify, and a state contracting agency to suspend, contractors from bidding on, applying for, or participating as a subcontractor in, state or agency contracts, respectively. The disqualification can last for up to five years and the suspension for up to six months. The board and the agency must provide reasonable notice and a hearing before taking this action. Additionally, the board must consult with the relevant state contracting agency and get a two-thirds vote of board members before acting.

The board can reduce the disqualification period or limit its application upon the contractor's written request and supporting documentation showing (1) newly discovered material evidence, (2) a reversal of the conviction that formed the basis for the disqualification, (3) a bona fide change in ownership or management, or (4) the elimination of other causes that formed the basis for the disqualification. A contracting agency can allow a suspended

contractor to work on a particular contract upon its commissioner's written determination that good cause exists for the exception and that it is in the state's best interest.

When making its decision, the board or agency, as the case maybe, must consider the seriousness of the contractor's acts or omissions, any mitigating factors, and whether at least one of the bill's grounds for disqualification or suspension, respectively, is met.

The board or agency must make its decision within 90 days after the hearing; include its reasoning and the disqualification period; and mail it to the contractor by certified mail, return receipt requested. An aggrieved party may appeal the board's or agency's decision to Superior Court.

Grounds for Disqualification by the Board. The board may disqualify a contractor for:

1. conviction of, or guilty or no contest plea to, a crime (a) related to getting or attempting to get a contract or subcontract or (b) related to performing the contract or subcontract;
2. conviction of, or guilty or no contest plea to, embezzlement, forgery, bribery, document falsification or destruction, receiving stolen property, or any other offense that indicates a lack of business integrity or honesty related to a contractor's responsibility;
3. conviction of, or guilty or no contest plea to, violating state or federal antitrust, collusion, or conspiracy laws while submitting a public or private contract or subcontract bid or proposal;
4. at least two suspensions in 24 months by a contracting agency;
5. a willful failure to perform the terms of at least one contract;
6. a willful violation of a statute or regulation applicable to a contract;
7. a willful or egregious violation of ethical standards specific to contractors; or

8. any reason that casts serious and compelling doubt on the contractor's responsibility, including (a) for-cause disqualification by another state; (b) fraudulent, criminal, or seriously improper conduct committed by a shareholder or member, including an employee of the contractor's firm in the performance of his duties on behalf of the contractor if the contractor knew or had reason to know of the conduct; or (c) an informal or formal business relationship with a contractor disqualified from bidding on state contracts.

Grounds for Suspension by a Contracting Agency. The agency may suspend a contractor for:

1. failure, without good cause, to adhere to contract specifications or timeframes;
2. a record of failure to perform or of at least one unsatisfactory performance, other than one caused by acts beyond the contractor's control;
3. any reason, including suspension for cause by another agency, that the contracting agency deems to cast serious and compelling doubt on the contractor's responsibility; or
4. a violation of ethical standards specific to contractors.

CONTESTING STATE CONTRACT SOLICITATIONS OR AWARDS (§ 9)

The bill establishes a process for bidders on state contracts to contest the way the contracts were solicited or awarded or exclusionary bidding processes. A contractor can file a complaint with the commissioner of the contracting agency within 14 days after the contractor knew or should have known about the facts forming the basis for the complaint.

The bill authorizes the commissioner or his designee to resolve or settle the complaint. If the complaint is not resolved, the bill requires the commissioner (or his designee) to issue a written decision within 30 days after receiving the complaint and provide a copy to the complaining bidder. The decision must:

1. describe the procedure the agency used to solicit and award the contract,
2. indicate the agency's findings on the merits of the bidder's complaint, and
3. inform the bidder of his right to a appeal to the SCSB.

APPEALS FROM AGENCY DECISIONS (§ 10)

The bill permits bidders to appeal an agency decision on state contract solicitation and awarding processes to the SCSB within 14 days after receiving it. Each bidder must state the facts supporting his claim in enough detail for the SCSB to determine whether the process for soliciting or awarding the contract failed to comply with the uniform procurement code or involved an exclusionary bidding process. The appeal does not prohibit the award or execution of the contested contract.

The bill requires the SCSB to create a subcommittee of three of its members to review these appeals and decide, by a unanimous vote, whether an allegation of noncompliance or exclusionary bidding practices has been demonstrated. If there is a split vote, the full membership must review the appeal and dispose of it by a vote of two-thirds of its members present and voting.

The subcommittee, or the full board in the event of a split vote, must issue a written decision, or take other appropriate action, on each appeal and provide a copy of any decision to the bidder. The subcommittee must act within 90 days after receiving the appeal and the full committee must act within 90 days after receiving the appeal from the subcommittee. If the subcommittee or full board decides in the contractor's favor, the board must direct the state contracting agency to take corrective action within 30 days after the decision date. If the subcommittee finds the appeal to be frivolous, its filing may be a ground for disqualifying the contractor. Anyone aggrieved by a decision can appeal to Superior Court.

CONTRACTING STANDARDS ADVISORY COUNCIL (§ 11)

The bill establishes a nine-member Contracting Standards Advisory Council to discuss problems with procurement processes and to

recommend improvements to the SCSB. The council can conduct studies, research, and analyses and make reports and recommendations on matters within the SCSB's jurisdiction.

The governor must designate the council's members. The members must represent state contracting agencies, including at least one representative each from the administrative services, transportation, and public works departments. The council must meet at least once a year.

STATE PROPERTIES REVIEW BOARD (§§ 12 & 29)

The bill names the SCSB as a successor department to the SPRB and transfers the powers, duties, obligations, and other government functions of latter to the former beginning October 1, 2007. By the same date, the bill requires the SCSB to establish a subcommittee, called the State Properties Review Subcommittee, to perform SPRB's duties in accordance with SCSB's rules and procedures.

FAST-TRACK CONSTRUCTION PROJECTS (§ 13)

The bill establishes a more specific procedure for the legislature to exempt construction projects from the competitive bidding process. The legislature must approve authorizing legislation by a two-thirds vote of the members of each chamber.

If the legislation is rejected, the contract for the project is not valid. (Although the bill refers to the "contract" being rejected and filed, it appears that the reference should be to the legislation proposing the exemption for the contract.) The contract is deemed rejected if the legislature fails to vote to approve it (1) by the end of the regular session during which the legislation proposing it is filed, (2) before the end of the next regular session if the legislature is not in regular session when the legislation is filed, or (3) before the end of any special session called to consider the legislation. If the legislation is filed less than 30 days before the end of a regular session, the legislature may vote to approve or reject it within 30 days after the first day of (1) a special session convened for that purpose or (2) the next regular session.

By law, if the legislature approves the legislation, the SPRB must review the contract and approve or disapprove it no later than 30 days

after the public works commissioner submits it. Beginning October 1, 2007, the bill requires the State Properties Review Subcommittee of the SCSB to conduct the review. Consistent with current law, the contract is deemed approved if the review does not occur within the 30 days.

PRIVATIZATION CONTRACTS (§ 14)

The bill requires any state privatization contract to provide that it becomes effective after the contractor and the state agency have complied with the bill and the uniform procurement code. The contract must require the contractor to:

1. offer any available contract positions to qualified regular state employees who satisfy the hiring criteria and are being terminated because of the contract;
2. refrain from discriminatory employment practices and take affirmative steps to provide an equal opportunity to all people;
3. allow the state auditors to conduct periodic performance audits of the contract;
4. pay a minimum wage rate equal to the lesser of the standard wage rate or the rate paid for a comparable position by a state agency; and
5. submit quarterly payroll records to the state agency, listing the name, address, Social Security number, hours worked, and the hourly wage paid for each employee in the previous quarter.

The bill requires the state agency entering the contract to file it with the secretary of the state, who must maintain it as a public record. The agency must also file with the secretary:

1. a certification that it complied with the bill and that the privatization contract is necessary and appropriate under the procurement code;
2. its analysis of the quality of the services the bidder will provide and whether the quality meets or exceeds those provided by regular agency employees;

3. the designated bidder's certification that neither the company nor any of its supervisory employees, while so employed, have an adjudicated record of repeated willful noncompliance with any relevant federal or state regulatory law, including labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection, and conflicts of interest; and
4. a description of why the proposed privatization contract is in the public interest.

The bill permits employees (or their union) adversely affected by any proposed privatization contract to file a motion for an order to show cause in Hartford Superior Court claiming that the contract fails to comply, substantively or procedurally, with the bill. The court may (1) deny the motion if it finds full compliance with all procedural and substantive requirements, (2) grant the motion if it finds that the proposed contract would substantively violate the bill, or (3) stay the effective date of the contract until any procedural or substantive defect it finds is corrected.

The bill authorizes the attorney general to bring a civil action in Hartford Superior Court to enforce any privatization contract, or to prevent or remedy any retaliatory action against an employee who reports a violation of the bill's privatization requirements.

PURCHASE OF SERVICE AGREEMENTS (§ 15)

By law, state agencies may enter into purchase of service agreements with nonprofit agencies. Typically, the parties to these agreements agree on a likely cost of services provided over a specified period. The actual cost of services may be less than that provided under these "prospective pricing" contracts.

The bill requires the Office of Policy and Management (OPM) to establish procedures for state agencies to use when entering purchase of service agreements based on an agreed-upon price for such services, a set cost for such services, or a flat grant for an agreed upon level of services. The procedures must require agencies to pay 50% of any unexpended contract funds to the contracting nonprofit agency, partnership, or corporation at the end of the contract if the services rendered meet the contracted requirements for number, type, and

quality of services. The procedures apply to human services contracts for clients of the departments of Social Services, Children and Families, Mental Retardation, Mental Health and Addiction Services, Public Health, and Correction.

CONTRACTS FOR LEGAL SERVICES (§ 16)

Beginning January 1, 2006, the bill requires state agency contracts for legal services that will, or could reasonably be expected to, result in attorney's fees, including contingency fees, of at least \$250,000 to be awarded based on competitive bidding and negotiations. By October 1, 2005, the attorney general must establish the competitive bidding and negotiations procedures. He must also approve all legal services contracts for form and substance.

PREQUALIFIED CONTRACTORS (§§ 17 & 18)

From January 1, 2006 to September 30, 2006, the bill requires subcontractors to prequalify with the Department of Administrative Services (DAS) before they perform work valued in excess of \$500,000 on a state or municipal construction contract. Beginning October 1, 2006, the bill reduces the minimum threshold for subcontractors' prequalification to \$250,001. The prequalification procedures, range of application fees, and possible penalties for violations are the same as those under current law for contractors. The bill requires the DAS commissioner to adopt regulations establishing a schedule of applicable fees for subcontractors required to prequalify. The current application fees are based on aggregate work capacity ratings and range from \$600 for a rating of \$5 million or less to \$2,500 for a rating over \$40 million.

The bill adds an additional ground for the DAS commissioner to revoke a contractor's or subcontractor's prequalification. She can do so if the contractor or subcontractor is disqualified by the SCSB. The revocation period is the same as the disqualification period. The commissioner can already revoke prequalification, generally for two years (five years for fraud), for fraud in obtaining or maintaining prequalification, making materially false statements in application or update statements, or criminal convictions related to contract procurement or performance.

Within 120 days after becoming prequalified, the bill requires contractors and subcontractors to participate in an SCSB-approved

ethics training course.

DPW CONTRACTOR SELECTION PROCESS (§§ 19 & 20)

The bill changes the number, tenure, and mission of the panels that assist the public works commissioner to award state construction projects outside of the competitive bidding process. Instead of a single panel with members who serve for one year to assist in all contracts negotiated that year, the bill establishes multiple panels (one per contract) where members serve for deliberations on a single contract only. The number of members and their appointing authorities do not change under the bill.

The panels affected are the DPW construction services selection, Connecticut Health and Education Facilities Authority (CHEFA) construction services, and DPW construction services award panels. The former two screen firms that respond to an invitation to bid on a design-build, noncompetitively bid project and submit a list of the three most qualified to the commissioner. The CHEFA panel's work is limited to CHEFA-funded projects. The award panel interviews the screened firms and ranks them for the commissioner, who awards the contract.

The bill limits the projects that the award panels work on to those that are not competitively bid. This means the panels work on fast-track and design-build projects only.

CONTRACT AWARDS (§ 21)

The bill increases, from 60 to 120, the number of days the DPW commissioner and constituent units of higher education have to award contracts after opening bids.

STATE CONTRACTS WITH REINCORPORATED COMPANIES (§ 22)

The bill requires DAS to require each publicly traded corporation seeking to do business with the state to certify in an affidavit that it is not a company that (1) was previously incorporated, and conducted business, in the U.S.; (2) reincorporated outside of the U.S. on or after July 1, 2005; and (3) realized a federal or state tax benefit as a result of the reincorporation. The bill prohibits the state from contracting with corporations that fail to make the certification.

LIGHT POLLUTION (§ 23)

The bill bans, with some exceptions, the use of state bond revenues or appropriated or allocated state funds to install or replace an outdoor light or lighting unit on state building or facility grounds that:

1. fails to maximize energy conservation and minimize light pollution, glare, and light trespass (light that shines beyond the boundaries of the property where it is located);
2. provides light at a level that exceeds what is adequate for its intended purpose; or
3. has an output of more than 1,800 lumens (the unit for measuring the brilliance of a light source), unless it is a full cut-off luminaire (a lighting unit that allows no direct light emissions above a horizontal plane through its lowest light-emitting part).

The bill allows four exceptions to the full cut-off requirement. It exempts lighting units (1) on the grounds of a Department of Correction correctional institution or facility, (2) required by federal regulations, (3) required for Department of Transportation (DOT) storm operations, and (4) in a plan for DOT facilities where less than 25% of the luminaires will be replaced. It also sets conditions under which the public works commissioner, or his designee, may waive the full cut-off requirement for other state buildings or facilities when necessary. The bill directs the commissioner to prescribe the form for the waiver request, which must include a description of the lighting plan, the efforts that have been made to comply with the cut-off requirement, and the reasons the waiver is necessary. The commissioner, or his designee, must consider design safety, cost, and other appropriate factors in his review.

The bill also exempts a new or replacement lighting system from its requirements if the OPM secretary finds that a non-complying system is more cost-effective than a system that meets the bill's requirements. The secretary must determine this by comparing the systems' life-cycle cost analyses and certifying that a system that meets the bill's requirements is not cost-effective or the most appropriate alternative.

METROPOLITAN DISTRICT COMMISSION (§§ 24-26)

The bill prohibits the MDC from hiring a lobbyist (i.e., a person who receives or spends or agrees to receive or spend at least \$2,000 in a calendar year to lobby administrative or legislative action).

The bill requires the state auditors, or someone the auditors contract with, to conduct an annual compliance, and biennial fiscal, audit of the MDC. The compliance audit, like those of other quasi-public agencies, must determine whether the MDC has complied with its regulations on affirmative action; personnel practices; the purchase of goods and services; the use of surplus funds; and the distribution of loans, grants, and other financial assistance. Each audit must include a review of all, or a representative sample, of the agency's activities in these areas during the audit year. The auditors must provide copies of the audit to the governor and the Program Review and Investigations Committee. As with other quasi-public agencies, the MDC must pay for the audit.

The fiscal audit may include a performance examination to determine the agency's effectiveness in achieving expressed legislative purposes. The auditors must provide copies to the governor; comptroller; and Appropriations, Finance, Revenue and Bonding, and Program Review and Investigations committees.

PUBLIC INVESTMENTS (§ 27)

The bill generally prohibits certain quasi-public agencies from investing, loaning, or otherwise disbursing or obligating funds or assets valued at over \$25,000 without the comptroller's written consent. The prohibition applies to the Connecticut Resources Recovery Authority and the Connecticut Hazardous Waste Management Service. It does not apply to CHEFA, the Connecticut Lottery Corporation, Connecticut Innovations, Incorporated, or the Connecticut Development, Connecticut Higher Education Supplemental Loan, Connecticut Housing Finance, Connecticut Housing, or Capital City Economic Development authorities.

It also does not apply to:

1. an investment in equities listed on the New York or American Stock Exchanges or the NASDAQ;

2. incurring a debt having an investment-grade status, as determined by Standard & Poor's, Moody's Investor Service, or Fitch rating services;
3. the purchase of a federally guaranteed security or participation certificates in the state's Short Term Investment Fund;
4. capital expenditures otherwise authorized by applicable law; or
5. maximum expenditures of \$100,000 for the quasi-public agency's normal operations.

A quasi-public agency may seek approval by submitting a comptroller-approved application to the comptroller describing, at a minimum, the amount or value and the purpose of the transaction. The comptroller must approve or disapprove the application within 15 days after receiving it. Any application she fails to act on by the deadline is deemed approved. The comptroller may approve a transaction only if she determines that it is in the best interest of, and consistent with the purposes of, the quasi-public agency.

Within five business days after making a transaction that does not require prior approval, the chief financial officer of the quasi-public agency must give the comptroller a notarized certification stating that fact to the best of his knowledge and describing the transaction.

The bill permits the comptroller to void any transaction for noncompliance. In any voided transaction, the state has a perfected lien on any asset of value belonging to the party to the transaction with the agency. The lien is effective from the transaction date. The bill authorizes the comptroller to adopt implementing regulations.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 15 Nay 4