



Senate

General Assembly

File No. 541

January Session, 2005

Substitute Senate Bill No. 94

Senate, April 27, 2005

The Committee on Judiciary reported through SEN. MCDONALD of the 27th 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 4a-50 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 the board as such
93 appointing authority's appointee. The chairperson of the board shall be
94 appointed by the members of the board. The members first appointed
95 by the Governor, the speaker of the House of Representatives and the
96 president pro tempore of the Senate shall each serve a three-year term.
97 The members first appointed by the majority leader of the House of
98 Representatives, the majority leader of the Senate, the minority leader
99 of the House of Representatives and the minority leader of the Senate
100 shall each serve a two-year term. All appointments of members to
101 replace those whose terms expire shall be for terms of three years and
102 until their successors have been appointed. If any vacancy occurs on
103 the board, the appointing authorities having the power to make the
104 initial appointment under the provisions of this section shall appoint a
105 person for the unexpired term in accordance with the provisions of this
106 subsection. No member may serve more than two consecutive terms or
107 portion thereof and no member shall serve more than six years.

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

110 (c) The chairperson of the board shall be compensated two hundred

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

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

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

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

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

144 filed with the commission on or before April fifteenth of each year if
145 such employee or member held such a position during the preceding
146 calendar year.

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

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

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

175 (b) The uniform procurement code described in subsection (a) of
176 this section shall be designed to: (1) Establish uniform contracting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

273 (8) Defining the contract data retention requirements for state

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

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

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

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

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

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

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

333 Sec. 7. (NEW) (*Effective October 1, 2007*) (a) After reasonable notice, a
334 hearing and consultation with the relevant state contracting agency
335 and the Attorney General, the State Contracting Standards Board may
336 disqualify any contractor, for a period of up to five years, from bidding
337 on, applying for, or participating as a subcontractor under, contracts
338 with the state. Such disqualification shall be upon the vote of two-
339 thirds of the members of the board present and voting for that
340 purpose. Such hearing shall be conducted in accordance with chapter

341 54 of the general statutes. The board shall issue a written decision not
342 later than ninety days after the conclusion of such hearing and state in
343 the decision the reasons for the action taken and, if the contractor is
344 being disqualified, the period of such disqualification. The existence of
345 a cause for disqualification, as described in subsection (b) of this
346 section, may not be the sole factor to be considered by the board in
347 determining whether the contractor shall be disqualified. In
348 determining whether to disqualify a contractor, the board shall
349 consider the seriousness of the contractor's acts or omissions and any
350 mitigating factors. The board shall send the decision to the contractor
351 by certified mail, return receipt requested. The written decision shall
352 be a final decision for purposes of sections 4-180 and 4-183 of the
353 general statutes.

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

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

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

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

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

371 (5) A wilful failure to perform in accordance with the terms of one

372 or more contracts;

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

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

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

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

392 (1) Newly discovered material evidence;

393 (2) Reversal of the conviction upon which the disqualification was
394 based;

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

396 (4) Elimination of other causes for which the disqualification was
397 imposed.

398 Sec. 8. (NEW) (*Effective October 1, 2007*) (a) After reasonable notice
399 and a hearing, conducted in accordance with the provisions of chapter
400 54 of the general statutes, a state contracting agency may suspend any

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

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

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

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

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

429 (4) A violation of the ethical standards set forth in section 1-86e of
430 the general statutes.

431 (c) The state contracting agency may grant an exception permitting

432 a suspended contractor to participate in a particular contract or
433 subcontract upon a written determination by the commissioner of the
434 state contracting agency that there is good cause for such exception
435 and that such exception is in the best interest of the state.

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

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

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

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

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

455 (3) Inform such bidder of the right to review, as provided in section
456 10 of this act.

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

458 Sec. 10. (NEW) (*Effective October 1, 2007*) (a) Any bidder may appeal
459 a decision issued by the commissioner of a state contracting agency, or
460 the commissioner's designee, pursuant to subsection (c) of section 9 of
461 this act to the State Contracting Standards Board.

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

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

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

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

488 (f) In the event of an appeal review by the full board, the board shall
489 issue a written decision or take other appropriate action on such
490 appeal not later than ninety days after receipt of the appeal from the
491 appeals subcommittee. A written copy of any such decision shall be
492 provided to such bidder.

493 (g) In the event that the appeals subcommittee or the board

494 determines that a procedural violation occurred, or that allegations of
495 exclusionary bidding have been demonstrated, the board shall direct
496 the state contracting agency to take corrective action not later than
497 thirty days after the date of the subcommittee's or board's decision, as
498 applicable.

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

502 (i) A decision issued by the board or appeals subcommittee under
503 this section shall be a final decision for purposes of sections 4-180 and
504 4-183 of the general statutes.

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

517 Sec. 12. (NEW) (*Effective July 1, 2005*) (a) On and after October 1,
518 2007, the powers, duties, obligations and other governmental functions
519 of the State Properties Review Board, established under subsection (a)
520 of section 4b-3 of the general statutes, shall transfer to the State
521 Contracting Standards Board, established under section 2 of this act.
522 The powers, duties, obligations and other governmental functions of
523 the State Properties Review Board, shall thereafter vest in the State
524 Contracting Standards Board.

525 (b) On or before October 1, 2007, the State Contracting Standards

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

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

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

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

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

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

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

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

585 (4) The contractor shall pay a minimum wage rate for which the
586 duties are substantially similar to the duties performed by a regular
587 agency, which rate shall be the lesser of step one of the grade or
588 classification under which the comparable regular agency employee is
589 paid, or the standard private sector wage rate for said position as
590 determined by the Labor Commissioner in accordance with section 31-
591 57f of the general statutes;

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

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

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

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

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

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

618 (4) A description of why the proposed privatization contract is in
619 the public interest.

620 (c) Any employees, or collective bargaining agent of any employee
621 adversely affected by any proposed privatization contract filed with
622 the Secretary of the State may file a motion for an order to show cause

623 in the superior court for the judicial district of Hartford claiming that
624 such contract fails to comply with the substantive or procedural
625 requirements of this act. A ruling on any such motion may: (1) Deny
626 the motion, if the court finds that all procedural and substantive
627 provisions of this act have been complied with; (2) grant the motion if
628 the court finds that the proposed contract would substantively violate
629 the provisions of this act; or (3) stay the effective date of the contract
630 until any procedural or substantive defect found by the court has been
631 corrected.

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

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

647 Sec. 16. (NEW) (*Effective from passage*) (a) Notwithstanding any
648 provision of the general statutes, any contract for legal services
649 between a state agency and any person, firm or corporation that is
650 entered into on or after January 1, 2006, and that will or that can
651 reasonably be expected to result in attorney's fees, including, but not
652 limited to, contingent fees paid to such person, firm or corporation in
653 the amount of two hundred fifty thousand dollars or more shall be
654 subject to requests for proposals or requests for qualifications and
655 negotiation procedures.

656 (b) Not later than October 1, 2005, the Attorney General shall
657 establish requests for proposals or requests for qualifications and
658 negotiation procedures for use by any state agency to enter into a
659 contract described in subsection (a) of this section.

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

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

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

689 thousand dollars.

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

696 (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

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

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

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

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

707 (4) Any legal or administrative proceedings pending or concluded
708 adversely against the applicant or any of the applicant's principals or
709 key personnel within the past five years which relate to the

710 procurement or performance of any public or private construction
711 contract and whether the applicant is aware of any investigation
712 pending against the applicant or any principal or key personnel;

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

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

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

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

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

740 (f) The commissioner shall determine whether to prequalify an

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

765 (g) (1) The applicant shall indicate the prequalification
766 classifications, aggregate work capacity ratings and single project
767 limits that are sought. The commissioner may issue a certificate of
768 prequalification to any applicant who meets the requirements of this
769 section. Such certificate shall be effective for one year from the date
770 issued and shall indicate the contractor's or substantial subcontractor's
771 prequalification classifications, aggregate work capacity ratings and
772 single project limits. The commissioner may cause the initial certificate
773 of prequalification to be effective for a period not to exceed two years
774 and may require the applicant to remit payment of the application fee,
775 as set forth in subsection (b) of this section, for the first twelve months

776 of certification as well as a prorated application fee, as described in
777 subdivision (3) of this subsection, for any additional period of
778 certification beyond the first twelve months.

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

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

790 (h) Not later than sixty days after receiving a completed application,
791 the commissioner shall mail or send by electronic mail a notice to the
792 applicant concerning the commissioner's preliminary determination
793 regarding the conditions of the prequalification certification, a denial
794 of certification, a reduction in the level of certification sought or
795 nonrenewal of certification. Any applicant aggrieved by the
796 commissioner's preliminary determination may request copies of the
797 information upon which the commissioner relied in making the
798 preliminary determination, provided such request is made not later
799 than ten days after the date the notice was mailed or sent by electronic
800 mail to the applicant. Not later than twenty days after the date the
801 notice was mailed or sent by electronic mail, the applicant may submit
802 additional information to the commissioner with a request for
803 reconsideration. The commissioner shall issue a final determination
804 regarding the application not later than ninety days after the date the
805 commissioner mailed or sent by electronic mail the notice of the
806 preliminary determination, which ninety-day period may be extended
807 for an additional period not to exceed ninety days if (1) the
808 commissioner gives written notice to the applicant that the

809 commissioner requires additional time, and (2) such notice is mailed or
810 sent by electronic mail during the initial ninety-day period.

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

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

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

838 (2) The commissioner shall revoke the prequalification of any
839 person, after an opportunity for hearing, if the commissioner finds that
840 the person has included any materially false statement in such
841 application or update statement, has been convicted of a crime related

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

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

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

870 (n) The commissioner shall establish an update statement for use by
871 bidders and substantial subcontractors for purposes of renewing or
872 upgrading a prequalification certificate and for purposes of submitting
873 a bid pursuant to section 4b-91, as amended by this act.

874 (o) Any applicant aggrieved by the commissioner's final

875 determination concerning a preliminary determination, a denial of
876 certification, a reduction in prequalification classification or aggregate
877 work capacity rating or a revocation or nonrenewal of certification
878 may appeal to the Superior Court in accordance with section 4-183.

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

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

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

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

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

900 (a) There shall be established within the Department of Public
901 Works [a] State Construction Services Selection [Panel] Panels which
902 shall consist of five members. Four of such members shall be
903 appointed by the commissioner, shall be current or retired employees
904 of the Department of Public Works and shall serve for [terms of one
905 year from July first] deliberations involving the project for which such

906 member was appointed. The remaining member shall be appointed by
907 the head or acting head of the user agency and shall serve only for
908 deliberations involving the project for which [he] such member was
909 appointed. [If any vacancy occurs on the panel, the commissioner shall
910 appoint a person for the unexpired term in accordance with the
911 provisions of this subsection.]

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

914 (c) There shall be established within the Department of Public
915 Works [a] Connecticut Health and Education Facilities Authority
916 Construction Services [Panel] Panels which shall consist of five
917 members: Three of whom shall be appointed by the Commissioner of
918 Public Works, who shall serve only for deliberations involving the
919 project for which such member was appointed and shall be current
920 employees of the Department of Public Works; and the remaining
921 members shall be appointed by the head or acting head of the user
922 agency and shall serve only for deliberations involving the project for
923 which such member was appointed. [The members of the selection
924 panel appointed by the Commissioner of Public Works shall serve for
925 terms of one year from July first. If any vacancy occurs on the panel,
926 the Commissioner of Public Works or the head or acting head of the
927 user agency, as appropriate, shall appoint a person for the unexpired
928 term in accordance with the provisions of this subsection.]

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

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

937 (a) The Department of Public Works shall establish construction

938 services award panels which shall each consist of six members: Three
939 of whom shall be appointed by the Commissioner of Public Works,
940 [and shall] be current employees of the Department of Public Works
941 and serve only for deliberations involving the project for which such
942 member was appointed; two of whom shall be appointed by the
943 department head of the user agency; and one of whom who shall be a
944 neutral party appointed by the commissioner. [The members of each
945 award panel appointed by the Commissioner of Public Works shall
946 serve for terms of one year from July first. If any vacancy occurs on the
947 panel, the Commissioner of Public Works or the head or acting head of
948 the user agency, as appropriate, shall appoint a person for the
949 unexpired term in accordance with the provisions of this subsection.]

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

956 Sec. 21. Subsection (b) of section 4b-91 of the general statutes is
957 repealed and the following is substituted in lieu thereof (*Effective from*
958 *passage*):

959 (b) The Commissioner of Public Works, the joint committee or the
960 constituent unit, as the case may be, shall determine the manner of
961 submission and the conditions and requirements of such bids, and the
962 time within which the bids shall be submitted, consistent with the
963 provisions of sections 4b-91 to 4b-96, inclusive. Such award shall be
964 made within [sixty] one hundred twenty days after the opening of
965 such bids. If the general bidder selected as the general contractor fails
966 to perform the general contractor's agreement to execute a contract in
967 accordance with the terms of the general contractor's general bid and
968 furnish a performance bond and also a labor and materials or payment
969 bond to the amount specified in the general bid form, an award shall
970 be made to the next lowest responsible and qualified general bidder.

971 No employee of the Department of Public Works, the joint committee
972 or a constituent unit with decision-making authority concerning the
973 award of a contract and no public official, as defined in section 1-79,
974 may communicate with any bidder prior to the award of the contract if
975 the communication results in the bidder receiving information about
976 the contract that is not available to other bidders, except that if the
977 lowest responsible and qualified bidder's price submitted is in excess
978 of funds available to make an award, the Commissioner of Public
979 Works, the Joint Committee on Legislative Management or the
980 constituent unit, as the case may be, may negotiate with such bidder
981 and award the contract on the basis of the funds available, without
982 change in the contract specifications, plans and other requirements. If
983 the award of a contract on said basis is refused by such bidder, the
984 Commissioner of Public Works, the Joint Committee on Legislative
985 Management or the constituent unit, as the case may be, may negotiate
986 with other contractors who submitted bids in ascending order of bid
987 prices without change in the contract, specifications, plans and other
988 requirements. In the event of negotiation with general bidders as
989 provided in this section, the general bidder involved may negotiate
990 with subcontractors on the same basis, provided such general bidder
991 shall negotiate only with subcontractors named on such general
992 bidder's general bid form.

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

995 (b) The Department of Administrative Services shall require any
996 publicly traded corporation that seeks to do business with the state to
997 certify in an affidavit that such company is not a company that: (1)
998 Conducted business in the United States, (2) was previously
999 incorporated within the United States' territorial limits, (3)
1000 reincorporated outside the United States' territorial limits on or after
1001 July 1, 2005, and (4) as a result of such reincorporation outside the
1002 United States' territorial limits, has received a reduction in federal or
1003 Connecticut tax liability.

1004 (c) The state may not enter into any contract with any publicly
1005 traded company that does not deny such reincorporation in a sworn
1006 affidavit.

1007 Sec. 23. (NEW) (*Effective October 1, 2005*) (a) As used in this section:

1008 (1) "Fixture" means the assembly that holds a lamp and may include
1009 an assembly housing, a mounting bracket or pole socket, a lamp
1010 holder, a ballast, a reflector or mirror and a refractor or lens;

1011 (2) "Full cut-off luminaire" means a luminaire that allows no direct
1012 light emissions above a horizontal plane through the luminaire's
1013 lowest light-emitting part;

1014 (3) "Glare" means direct light emitting from a luminaire that causes
1015 reduced vision or momentary blindness;

1016 (4) "Illuminance" means the level of light measured at a surface;

1017 (5) "Lamp" means the component of a luminaire that produces the
1018 light;

1019 (6) "Light trespass" means light emitted by a luminaire that shines
1020 beyond the boundaries of the property on which the luminaire is
1021 located;

1022 (7) "Lumen" means a unit of measurement of luminous flux;

1023 (8) "Luminaire" means the complete lighting unit, including the
1024 lamp and the fixture;

1025 (9) "Permanent outdoor luminaire" means any luminaire or system
1026 of luminaires that is outdoors and intended to be used for seven days
1027 or longer; and

1028 (10) "State funds" means any bond revenues or any money
1029 appropriated or allocated by the General Assembly.

1030 (b) Except as provided in subsection (c) of this section, no state

1031 funds shall be used to install or replace a permanent outdoor luminaire
1032 for lighting on the grounds of any state building or facility unless (1)
1033 the luminaire is designed to maximize energy conservation and to
1034 minimize light pollution, glare and light trespass, (2) the luminaire's
1035 illuminance is equal to the minimum illuminance adequate for the
1036 intended purpose of the lighting, and (3) for a luminaire with a rated
1037 output of more than one thousand eight hundred lumens, such
1038 luminaire is a full cut-off luminaire.

1039 (c) The provisions of subdivision (3) of subsection (b) of this section
1040 shall not apply to luminaires located on the grounds of any
1041 correctional institution or facility administered by the Commissioner of
1042 Correction, required by federal regulations, required for storm
1043 operation activities performed by the Department of Transportation, or
1044 in a lighting plan for a Department of Transportation facility where
1045 less than twenty-five per cent of the luminaires are to be replaced. The
1046 Commissioner of Public Works, or the commissioner's designee, may
1047 waive the provisions of subdivision (3) of subsection (b) of this section
1048 with respect to luminaires on the grounds of any other state building
1049 or facility when, after a request for such a waiver has been made and
1050 reviewed, the commissioner or the commissioner's designee
1051 determines that such a waiver is necessary for the lighting application.
1052 Requests for such a waiver shall be made to the commissioner or the
1053 commissioner's designee in such form as the commissioner shall
1054 prescribe and shall include, without limitation, a description of the
1055 lighting plan, a description of the efforts that have been made to
1056 comply with the provisions of subdivision (3) of subsection (b) of this
1057 section and the reasons such a waiver is necessary. In reviewing a
1058 request for such a waiver, the commissioner or the commissioner's
1059 designee shall consider design safety, costs and other factors deemed
1060 appropriate by the commissioner or the commissioner's designee.

1061 (d) The provisions of this section shall not apply to the installation
1062 or replacement of luminaires for which the Secretary of the Office of
1063 Policy and Management (1) conducts a life-cycle cost analysis of one or
1064 more luminaires that meet the requirements set forth in subsection (b)

1065 of this section and one or more luminaires that do not meet such
1066 requirements, and (2) certifies that a luminaire which meets such
1067 requirements is not cost effective and is not the most appropriate
1068 alternative based on the life-cycle cost analysis.

1069 Sec. 24. (NEW) (*Effective July 1, 2005*) (a) (1) No quasi-public agency,
1070 as defined in section 1-120 of the general statutes, except the
1071 Connecticut Development Authority, Connecticut Innovations,
1072 Incorporated, Connecticut Health and Educational Facilities Authority,
1073 Connecticut Higher Education Supplemental Loan Authority,
1074 Connecticut Housing Finance Authority, Connecticut Housing
1075 Authority, Capital City Economic Development Authority and the
1076 Connecticut Lottery Corporation, shall, without the written approval
1077 of the State Comptroller, (A) make any investment or loan, in any
1078 amount, or (B) otherwise disburse funds or assets or authorize an
1079 agreement or series of related agreements involving obligations, which
1080 funds, assets or obligations have a value of more than twenty-five
1081 thousand dollars. The Comptroller may approve any such transaction
1082 only upon determining that the transaction is in the best interest of,
1083 and consistent with the purposes of, the quasi-public agency. A quasi-
1084 public agency may apply for such approval by submitting an
1085 application to the Comptroller, on a form prepared by the Comptroller,
1086 describing the amount or value and purpose of the transaction and
1087 including any other information required by the Comptroller. The
1088 Comptroller shall approve or disapprove an application not later than
1089 fifteen days after receiving the application, provided if the Comptroller
1090 does not act within such fifteen-day period, the application shall be
1091 deemed to have been approved.

1092 (2) The provisions of subdivision (1) of this subsection shall not
1093 apply to (A) an investment in equities listed on the New York Stock
1094 Exchange, the American Stock Exchange or the NASDAQ Stock
1095 Market, (B) incurring a debt having an investment grade status, as
1096 determined by Standard & Poor's, Moody's Investor Service or Fitch
1097 Ratings, (C) the purchase of a federally guaranteed security, as defined
1098 in section 10a-178 of the general statutes, (D) the purchase of

1099 participation certificates in the Short Term Investment Fund, (E) capital
1100 expenditures otherwise authorized by applicable law, and (F)
1101 expenditures in the amount of not more than one hundred thousand
1102 dollars for the normal operations of the quasi-public agency. Not later
1103 than five business days after a quasi-public agency makes a transaction
1104 described in this subdivision, the chief executive officer or chief
1105 financial officer of the quasi-public agency shall submit to the State
1106 Comptroller a notarized certification, signed by such officer, which
1107 describes the transaction and states that, to the best knowledge of such
1108 officer, the transaction does not require the approval of said secretary
1109 under subdivision (1) of subsection (a) of this section.

1110 (b) The State Comptroller may void any transaction subject to the
1111 requirements of subdivision (1) of subsection (a) of this section that is
1112 not submitted to said Comptroller for approval under said subdivision
1113 (1). If the Comptroller voids any such transaction, the state shall have a
1114 perfected lien on all assets of any value, from the transaction, of the
1115 entity with whom the state made such transaction. Such lien shall be
1116 effective from the date of the transaction.

1117 (c) The State Comptroller may adopt regulations, in accordance with
1118 the provisions of chapter 54 of the general statutes, to carry out the
1119 purposes of this section.

1120 Sec. 25. Subdivision (1) of section 1-92 of the general statutes is
1121 repealed and the following is substituted in lieu thereof (*Effective from*
1122 *passage*):

1123 (1) Adopt regulations in accordance with chapter 54 to carry out the
1124 purposes of this part. Not later than January 1, 1992, the commission
1125 shall adopt regulations which further clarify the meaning of the terms
1126 "directly and personally received" and "major life event", as used in
1127 subsection (e) of section 1-79 and subsection (g) of section 1-91. The
1128 commission shall adopt regulations that further clarify the meaning of
1129 the term "directly or indirectly involved in any enterprise", as used in
1130 section 2 of this act.

1131 Sec. 26. (NEW) (*Effective July 1, 2005*) (a) On or before January 1,
1132 2007, the Judicial Branch shall prepare a procurement code applicable
1133 to its contracting expenditures, including, but not limited to,
1134 expenditures: (1) Involving its contracting and procurement processes,
1135 including, but not limited to, purchasing or leasing of supplies,
1136 materials or equipment, consultant or consultant services, personal
1137 service agreements or purchase of service agreements, and (2) relating
1138 to contracts for the renovation, alteration or repair of any Judicial
1139 Branch facility in accordance with section 4b-1 of the general statutes.

1140 (b) The procurement code described in subsection (a) of this section
1141 shall be designed to: (1) Establish uniform contracting standards and
1142 practices; (2) simplify and clarify contracting standards and
1143 procurement policies and practices, including, but not limited to,
1144 procedures for competitive sealed bids, competitive sealed proposals,
1145 small purchases, sole source procurements, emergency procurements
1146 and special procurements; (3) ensure the fair and equitable treatment
1147 of all businesses and persons who deal with the procurement system;
1148 (4) include a process to maximize the use of small contractors and
1149 minority business enterprises, as defined in section 4a-60g of the
1150 general statutes; (5) provide increased economy in procurement
1151 activities and maximize purchasing value to the fullest extent possible;
1152 (6) ensure that the procurement of supplies, materials, equipment,
1153 services, real property and construction is obtained in a cost-effective
1154 and responsive manner; (7) include a process to ensure contractor and
1155 state contracting agency accountability; and (8) provide a process for
1156 competitive sealed bids, competitive sealed proposals, small
1157 purchases, sole source procurements, emergency procurements,
1158 special procurements, best value selection, qualification based
1159 selection and the conditions for their use.

1160 (c) On or before February 1, 2007, the Judicial Branch shall submit
1161 such procurement code for review and approval to the joint standing
1162 committee of the General Assembly having cognizance of matters
1163 relating to the Judicial Branch.

1164 (d) Notwithstanding the provisions of subsections (a) and (b) of this
 1165 section, the Judicial Branch shall be subject to the requirements of
 1166 section 14 of this act.

1167 Sec. 27. Subdivision (19) of subsection (d) of section 2c-2b and
 1168 section 4b-3 of the general statutes are repealed. (*Effective October 1,*
 1169 *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>July 1, 2005</i>	New section
Sec. 25	<i>from passage</i>	1-92(1)
Sec. 26	<i>July 1, 2005</i>	New section
Sec. 27	<i>October 1, 2007</i>	Repealer section

JUD 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	128,000	150,000
Department of Administrative Services	GF - Revenue Gain	347,500 - 635,000	972,000 - 1,751,500
Auditors	GF - Cost	172,750	166,000
Various State Agencies	GF - Cost	Potential Significant	Potential Significant
Policy & Mgmt., Off.	GF - None	None	None
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	226,727	663,632
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 - Cost	Minimal	Minimal
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

Beginning on January 1, 2006, the bill requires subcontractors to prequalify with DAS to bid on public building construction contracts valued at more than \$500,000.

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 Department of Public Health. There are also several thousand more

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

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 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 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 1,500 - 2,500 contractors.

Based on that assumption, the subcontractor prequalification application fee may generate FY 06 revenues in the range of \$347,500 - \$635,000. In FY 06, revenues are impacted by the program operating for only six months. In FY 07, revenues may range from \$972,000 - \$1,751,500 (this includes initial application fees and renewal fee revenues) based on a full year of operation. It is anticipated that in FY 08 there will still be first-time applicant revenues generated 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 1,500 - 2,500 subcontractors seeking prequalification, DAS will need three new positions. It is estimated that these positions will be filled for nine months in FY 06, at a cost of approximately \$110,000, plus fringe benefits. In FY 07, the salary costs will be approximately \$150,000, plus fringe benefits. DAS will also incur one-time costs of \$18,000 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 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

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.

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.

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.

Judicial Branch Procurement Code

By January 1, 2007, the bill requires the Judicial Branch to prepare a procurement code. Presently, the Judicial Department has the in-house expertise necessary to develop such a code. It is anticipated that the Judicial Department would incur only minimal costs in order to comply with the bill's requirements.

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.

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.

Lastly, the bill requires the Judicial Branch to prepare its own procurement code.

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

STATE CONTRACTING STANDARDS BOARD (SCSB) (§§ 1-7 & 25)

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 three-year terms. The remaining four appointees serve initial two-year terms. Subsequent appointments are 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 board member. 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 considers 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 information on (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 it is available on the state contracting portal;
 10. recommend the procurement code changes 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 (see COMMENT). 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, and qualification-based selection, and the conditions for their use.

"Best-value selection" means a process to award contracts based on

quality and costs. "Qualification-based selection" means a process to award contracts based primarily 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 identify in the compliance report 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 or a wanton or reckless disregard of any state contracting and procurement process by any person substantially involved in the contract or with the state contracting agency.

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)***Process***

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 grounds 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. They 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 & 27)

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, including one initiated by the Judicial Branch, 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 pursuant to request for proposal or for qualification and negotiation procedures. By October 1, 2005, the attorney general must establish the procedures. He must also approve all legal services contracts for form and substance.

PREQUALIFIED CONTRACTORS (§§ 17 & 18)

Beginning January 1, 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 (see COMMENT). 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 invitations to bid on design-build, noncompetitively bid projects and submit lists 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.

PUBLIC INVESTMENTS (§ 24)

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.

JUDICIAL BRANCH PROCUREMENT CODE (§ 26)

By January 1, 2007, the bill requires the Judicial Branch to prepare a procurement code for its use when contracting for, buying, renting, leasing, or otherwise acquiring or disposing of supplies, equipment, or services, including consultant and construction services.

The bill requires the code to:

1. establish uniform contracting standards and practices;
2. simplify and clarify contracting standards and procurement policies and practices, including procedures for competitive sealed bids or proposals, small purchases, and sole source, special, and emergency procurements;
3. ensure the fair and equitable treatment of all businesses and people involved in the procurement system;
4. include a process for maximizing the use of small contractors and minority business enterprises;
5. provide increased economy in procurement activities and maximize purchasing value to the fullest extent possible;
6. ensure that supplies, materials, equipment, services, real property, and construction are obtained in a cost-effective and responsive manner;
7. include a process to ensure contractor and state contracting agency accountability (see COMMENT); and
8. provide a process for competitive sealed bids and proposals; small purchases; sole source, emergency, and special

procurements; best-value selection; and qualification-based selection; and the conditions for their use.

By February 1, 2007, the bill requires the Judicial Branch to submit the code to the Judiciary Committee for approval.

BACKGROUND

Legislative History

The Senate referred the bill (File 38) to the Judiciary Committee on March 23. On April 7, Judiciary reported a substitute that requires the Judicial Branch to adopt a procurement code, eliminated the provisions on the Metropolitan District Commission, and eliminated a requirement for subcontractors to prequalify if the value of there is between \$250,000 and \$500,000.

COMMENT

Conflicting Provisions

Agency Definition. Section 3 of the bill requires SCSB to establish a uniform procurement code for use by state contracting agencies when acquiring or disposing of supplies, materials, or services. The bill defines “state contracting agencies” in Section 1 to mean any state agency, other than the SCSB, authorized to enter contracts. This definition appears to include judicial- and legislative-branch agencies. However, Section 26 requires the Judicial Branch to prepare its own procurement code. Additionally, the bill seeks to include in the definition agencies defined in CGS Sec. 4a-50; however, this section includes a definition of “state agency” not “agency.”

Procurement Code Provisions. Section 3 of the bill requires the SCSB’s uniform code to include a process for improving contractor and state contracting agency accountability. Section 26 requires the Judicial Branch’s code to improve state contracting agency accountability even though Judicial’s code is supposed to govern only its contracts.

Subcontractor Prequalification. Section 17 of the bill defines a “subcontractor” who has to prequalify to work on public construction contracts as one who performs work valued in excess of (1) \$500,000 between January 1, 2006 and September 30, 2006 and (2) \$250,000 beginning October 1, 2006. However, Section 18 requires only those

subcontractors who perform work valued at over \$500,000 to actually prequalify.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 15 Nay 4

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 2