



# House of Representatives

**File No. 622**

General Assembly

February Session, 2006

**(Reprint of File No. 461)**

Substitute House Bill No. 5279  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
April 24, 2006

***AN ACT CONCERNING THE RETENTION OF JOBS IN  
CONNECTICUT AND THE UNITED STATES.***

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

1 Section 1. (*Effective July 1, 2006*) The Governor shall review all state  
2 contracts in effect on July 1, 2006, and identify any state contracts  
3 under which services are being provided or goods are being  
4 manufactured outside Connecticut or outside the United States. Not  
5 later than January 1, 2007, the Governor shall prepare a report listing  
6 the contracts under which state funds are being paid for (1) services  
7 performed or goods manufactured outside Connecticut, and (2)  
8 services performed or goods manufactured outside the United States.  
9 Such report shall be made available to the public in hard copy and  
10 accessible electronically by means of the Internet or other media or  
11 systems.

12 Sec. 2. (NEW) (*Effective October 1, 2006*) (a) Each request for  
13 proposals issued by a state agency for a contract for the performance of  
14 services (1) shall require that each proposer submitting a proposal  
15 pursuant to such request disclose the location or locations where the

16 services under the contract and any subcontract under the contract  
17 would be performed, and (2) may include criteria for the awarding of  
18 the contract that (A) consider the economic impact to Connecticut and  
19 residents of the state of the location or locations where services under  
20 the contract would be performed, and (B) all other factors in awarding  
21 the contract being equal, give a higher rating for services performed in  
22 the United States.

23 (b) If a state agency awards a contract for the performance of  
24 services to a proposer based on criteria that the services under the  
25 contract and any subcontract be performed in the United States, such  
26 contract shall (1) require the contractor to notify the state agency if  
27 such contractor or any subcontractor subsequently performs any of the  
28 services under the contract outside the United States, and (2) establish  
29 remedies, which may include liquidated damages, if the contractor  
30 wilfully or intentionally fails to notify the state agency in the event  
31 such contractor or any subcontractor subsequently performs any of the  
32 services under the contract outside the United States and the  
33 performance of such services in the United States was a material  
34 obligation of the contract.

35 Sec. 3. (NEW) (*Effective October 1, 2006*) (a) As used in this section:

36 (1) "State agency" means a department, division, board, commission  
37 or other office in the executive branch of the state government or a  
38 quasi-public agency, as defined in section 1-120 of the general statutes;  
39 and

40 (2) "Privatization contract" means an agreement between a state  
41 agency and a nongovernmental person or entity, in which such person  
42 or entity agrees to provide services having a cost of one hundred  
43 thousand dollars or more over the term of the contract that are  
44 substantially similar to and in lieu of services provided, in whole or  
45 part, by employees of such state agency or by employees of another  
46 state agency for such state agency. The term "privatization contract"  
47 does not include an agreement to provide legal services, litigation

48 support, investment management services or management consulting  
49 only.

50 (b) Notwithstanding any provision of the general statutes, each  
51 privatization contract to which a state agency is a party shall (1)  
52 require the contractor to agree and warrant that in the performance of  
53 the contract such contractor shall make reasonable efforts to originate  
54 or provide such services at a location or locations in the United States,  
55 and (2) establish remedies, which may include liquidated damages, if  
56 the contractor fails to make reasonable efforts to originate or provide  
57 such services at a location or locations in the United States. If the  
58 contractor breaches the contract by failing to make reasonable efforts  
59 to originate or provide such services at a location or locations in the  
60 United States, the state agency may seek enforcement of such  
61 remedies.

62 Sec. 4. Subsection (c) of section 4a-59 of the general statutes is  
63 repealed and the following is substituted in lieu thereof (*Effective*  
64 *October 1, 2006*):

65 (c) All open market orders or contracts shall be awarded to (1) the  
66 lowest responsible qualified bidder, the qualities of the articles to be  
67 supplied, their conformity with the specifications, their suitability to  
68 the requirements of the state government and the delivery terms being  
69 taken into consideration and, at the discretion of the Commissioner of  
70 Administrative Services, life-cycle costs and trade-in or resale value of  
71 the articles may be considered where it appears to be in the best  
72 interest of the state, (2) the highest scoring bidder in a multiple criteria  
73 bid, in accordance with the criteria set forth in the bid solicitation for  
74 the contract, or (3) the proposer whose proposal is deemed by the  
75 awarding authority to be the most advantageous to the state, in  
76 accordance with the criteria set forth in the request for proposals,  
77 including price and evaluation factors. Notwithstanding any provision  
78 of the general statutes to the contrary, each state agency awarding a  
79 contract through competitive negotiation shall include price as an  
80 explicit factor in the criteria in the request for proposals and for the

81 contract award. In considering past performance of a bidder for the  
82 purpose of determining the "lowest responsible qualified bidder" or  
83 the "highest scoring bidder in a multiple criteria bid", the  
84 commissioner shall evaluate the skill, ability and integrity of the  
85 bidder in terms of the bidder's fulfillment of past contract obligations  
86 and the bidder's experience or lack of experience in delivering  
87 supplies, materials, equipment or contractual services of the size or  
88 amount for which bids have been solicited. In determining the lowest  
89 responsible qualified bidder for the purposes of this section, the  
90 commissioner may give a price preference of up to ten per cent for (A)  
91 the purchase of goods made with recycled materials or the purchase of  
92 recyclable or remanufactured products if the commissioner determines  
93 that such preference would promote recycling or remanufacturing. As  
94 used in this subsection, "recyclable" means able to be collected,  
95 separated or otherwise recovered from the solid waste stream for  
96 reuse, or for use in the manufacture or assembly of another package or  
97 product, by means of a recycling program which is reasonably  
98 available to at least seventy-five per cent of the state's population,  
99 "remanufactured" means restored to its original function and thereby  
100 diverted from the solid waste stream by retaining the bulk of  
101 components that have been used at least once and by replacing  
102 consumable components and "remanufacturing" means any process by  
103 which a product is remanufactured; (B) the purchase of motor vehicles  
104 powered by a clean alternative fuel; or (C) the purchase of motor  
105 vehicles powered by fuel other than a clean alternative fuel and  
106 conversion equipment to convert such motor vehicles allowing the  
107 vehicles to be powered by either the exclusive use of clean alternative  
108 fuel or dual use of a clean alternative fuel and a fuel other than a clean  
109 alternative fuel. As used in this subsection, "clean alternative fuel" shall  
110 mean natural gas or electricity when used as a motor vehicle fuel. All  
111 other factors being equal, (i) preference shall be given to supplies,  
112 materials and equipment produced, assembled or manufactured in the  
113 state and services originating and provided in the state, and (ii) if no  
114 bidder or proposer would produce, assemble or manufacture supplies,  
115 materials and equipment in the state or originate and provide services

116 in the state, preference shall be given to supplies, materials and  
 117 equipment produced, assembled or manufactured in the United States  
 118 and services originating and provided in the United States. If any such  
 119 bidder refuses to accept, within ten days, a contract awarded to such  
 120 bidder, such contract may be awarded to the next lowest responsible  
 121 qualified bidder or the next highest scoring bidder in a multiple  
 122 criteria bid, whichever is applicable, and so on until such contract is  
 123 awarded and accepted. If any such proposer refuses to accept, within  
 124 ten days, a contract awarded to such proposer, such contract shall be  
 125 awarded to the next most advantageous proposer, and so on until the  
 126 contract is awarded and accepted. There shall be a written evaluation  
 127 made of each bid. This evaluation shall identify the vendors and their  
 128 respective costs and prices, document the reason why any vendor is  
 129 deemed to be nonresponsive and recommend a vendor for award. A  
 130 contract valued at one million dollars or more shall be awarded to a  
 131 bidder other than the lowest responsible qualified bidder or the  
 132 highest scoring bidder in a multiple criteria bid, whichever is  
 133 applicable, only with written approval signed by the Commissioner of  
 134 Administrative Services and by the Comptroller. The commissioner  
 135 shall submit to the joint standing committee of the General Assembly  
 136 having cognizance of matters relating to government administration,  
 137 the State Auditors and the Comptroller, an annual report of all awards  
 138 made pursuant to the provisions of this section.

139 Sec. 5. (NEW) (*Effective October 1, 2006*) There is established within  
 140 the office of the Attorney General, within available appropriations, an  
 141 office that shall be responsible for assisting manufacturers and other  
 142 businesses based in the state in protecting their patents and businesses  
 143 from unfair and illegal competition from businesses based outside the  
 144 United States.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2006</i>	New section
Sec. 2	<i>October 1, 2006</i>	New section

Sec. 3	<i>October 1, 2006</i>	New section
Sec. 4	<i>October 1, 2006</i>	4a-59(c)
Sec. 5	<i>October 1, 2006</i>	New section

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:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 07 \$</b>	<b>FY 08 \$</b>
Department of Administrative Services; Various State Agencies	GF - Cost	Potential Significant	Potential Significant
Department of Transportation	TF - Cost	Potential Significant	Potential Significant
Attorney General	GF - Cost	Minimal	Minimal

Note: GF=General Fund; TF=Transportation Fund

**Municipal Impact:** None

#### **Explanation**

**Section 1** of the bill requires the governor to prepare a report by January 1, 2007 listing any existing state contracts for goods or services done outside of Connecticut or the United States.

It is expected that the workload associated with this report will be handled by individual state agencies. For example, the Department of Administrative Services and the Department of Transportation each have hundreds of contracts that will need to be reviewed. This requirement, and other monitoring provisions in the bill, will create a workload increase which will necessitate the hiring of additional staff by various state agencies. The additional staff needed will depend on the number of current contracts to be reviewed, plus the number of newly awarded contracts that will require compliance monitoring.

**Section 2** of the bill allows request for proposals for service contracts to include criteria for awarding the contract that considers the economic impact to Connecticut and its residents. An agency may give a higher rating to a proposal that would perform the service in the United States, all other factors in awarding the contract being equal.

As this language is permissive, it is expected that the state would award contracts based on locational criteria only where it is in the best interest of the state and does not violate the Code of Federal Regulations.

**Section 2** requires that contracts awarded based on locational criteria must include remedies, which may include liquidated damages, if the contractor willfully or intentionally fails to notify a state agency that it performed any of the contracted work outside the United States. This provision could have a fiscal impact on the state, to the extent that a contractor fails to perform the contractually obligated services within the United States, the state may seek damages.

**Section 3** of the bill requires certain privatization contracts over \$100,000 to contain a provision requiring contractors to make reasonable efforts to deliver the services from within the United States. The contracts must establish remedies, which may include liquidated damages, if the contractor fails to do so. This provision may have a fiscal impact on the state to the extent that a contractor fails to make reasonable efforts to provide services at locations in the United States, the state may seek damages.

**Section 4** of the bill requires agencies to give preference, all other factors being equal, to goods or services made or originating in the United States if agencies receive no bids from companies making such goods or services in Connecticut. As current law already sets conditions for giving preference to goods or services made in Connecticut, this provision will have no fiscal impact on the state.

**Section 5** of the bill requires the Office of the Attorney General (OAG) to assist manufacturers and other businesses based in the state in protecting their patents and businesses from unfair and illegal competition from businesses based outside the United States. As the United States Trade Representative has sole jurisdiction in these matters, it is anticipated that the OAG would act primarily as a clearinghouse for inquiries about what a manufacturer should do if it

encountered patent infringement, dumping of competing products or some other violation.

The OAG would incur costs, which are anticipated to be minimal, to develop contacts with the federal government and engage in training opportunities in order to better serve Connecticut business under the bill. Since the bill requires that these duties be accommodated by the agency, "within available appropriations," the OAG would need to reallocate resources from other functions to carry out its duties under the bill.

House "A" requires the governor to prepare a report by January 1, 2007 listing any existing state contracts for goods or services done outside of Connecticut or the United States. House "A" has no fiscal impact.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

---

---

**OLR Bill Analysis****sHB 5279 (as amended by House "A")\******AN ACT CONCERNING THE RETENTION OF JOBS IN CONNECTICUT AND THE UNITED STATES.*****SUMMARY:**

This bill (1) allows state agencies to adopt contractual requirements and procedures to encourage contractors to perform the contracted services within the United States and (2) sets conditions under which the agencies must give bid preferences to goods made and services originating in this country.

The bill requires the governor to prepare and make public by January 1, 2007 a report listing any existing state contract work, for either goods or services, done outside of Connecticut or the U.S.

Lastly, the bill establishes, within available appropriations, an office within the attorney general's office to help Connecticut manufacturers and other businesses protect their patents and operations from unfair and illegal foreign competition.

\*House Amendment "A" eliminates the requirement that the governor's report on contract work done outside Connecticut or the U.S. be submitted to two legislative committees and instead requires the report be made public.

EFFECTIVE DATE: October 1, 2006, except for the provision requiring the governor to review and report on existing state contracts, which takes effect July 1, 2006.

**§ 2 — SERVICE CONTRACTS**

Under the bill, state agencies must require entities responding to a request for proposals to disclose where they will perform the services. They must disclose the location or locations where the services will be performed under the contract or any subcontract under that contract and whether any of the contracted services will be performed from outside the U.S.

The bill allows the agencies to award contracts based on locations where the services will be performed. They may do this by adopting criteria that considers how these locations would affect the state's economy and people (i.e., locational criteria). An agency may give a higher rating to a proposal that would perform the service in the U.S. if it is equal in all other respects to the other proposals the agency received.

Contracts or subcontracts awarded based on the locational criteria must require the contractor to notify the contracting agency if it or any subcontractor under the contract subsequently performs any of the contracted work outside the country. The contracts and subcontracts must also establish remedies if:

1. the contractor willfully or intentionally failed to notify the contracting agency of the move and
2. the contract materially obligated the contractor or subcontractor to perform the services in the country.

The bill provides that the remedies may include liquidated damages.

**§ 3 — PRIVATIZATION CONTRACTS**

Privatization contracts over \$100,000 must obligate the contractor to make reasonable efforts to originate or provide the contracted services from within the U.S. The contracts must also establish remedies, which may include liquidated damages, if the contractor fails to do so.

These requirements apply to contracts in which a state agency or quasi-public agency contracts with a private person or entity for services that are similar to or in lieu of those state employees provide, whether in whole or in part. They do not apply to contracts for legal services, litigation support, investment management, or management counseling.

**§ 4 — BID PREFERENCE**

The bill qualifies the statutory bid preference for goods made and services originating in Connecticut. Current law requires state agencies to give this preference if these goods and services are equal in all other respects to those made or originating from outside the state.

The bill requires the agencies to also give preference to goods or services made or originating anywhere in the U.S. if:

1. these goods and services are equal in all respects to those offered by other bidders and
2. the agencies received no bids from a business that would make the goods or originate the services in Connecticut.

**§ 1 — CONTRACT REVIEW**

The bill requires the governor to examine all service or procurement contracts in effect on July 1, 2006 to see if services provided or goods manufactured under them originate from outside Connecticut or the U.S. She must, by January 1, 2007, list those that originate outside Connecticut and the country separately and make the report public and available either in hard copy or accessible through the Internet or other media or systems.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute Change of Reference

Yea 9 Nay 4 (03/14/2006)

Government Administration and Elections Committee

Joint Favorable

Yea 12    Nay 7    (03/22/2006)

Appropriations Committee

Joint Favorable

Yea 35    Nay 13    (04/18/2006)