



**Senate Bill No. 1600**

**September Special Session, Public Act No. 07-1**

**AN ACT CONCERNING CLEAN CONTRACTING STANDARDS.**

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

Section 1. (NEW) (*Effective January 1, 2009*) For the purposes of sections 1 to 47, inclusive, of this act:

(1) "Best value selection" means a contract selection process in which the award of a contract is based on a combination of quality, timeliness and cost factors;

(2) "Bid" means an offer, submitted in response to an invitation to bid, to furnish supplies, materials, equipment, construction or contractual services to a state contracting agency under prescribed conditions at a stated price;

(3) "Bidder" means a business submitting a bid in response to an invitation to bid by a state contracting agency;

(4) "Business" means any individual or sole proprietorship, partnership, firm, corporation, trust, limited liability company, limited liability partnership, joint stock company, joint venture, association or other legal entity through which business for profit or not-for-profit is conducted;

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(5) "Competitive bidding" means the submission of prices by a business competing for a contract to provide supplies, materials, equipment or contractual services to a state contracting agency, under a procedure in which the contracting authority does not negotiate prices, as set forth in statutes and regulations concerning procurement;

(6) "Consultant" means (A) any architect, professional engineer, landscape architect, land surveyor, accountant, interior designer, environmental professional or construction administrator, who is registered or licensed to practice such person's profession in accordance with the applicable provisions of the general statutes, (B) any planner or any environmental, management or financial specialist, or (C) any person who performs professional work in areas including, but not limited to, educational services, medical services, information technology and real estate appraisal;

(7) "Consultant services" means those professional services rendered by a consultant and any incidental services that a consultant and those in the consultant's employ are authorized to perform;

(8) "Contract" or "state contract" means an agreement or a combination or series of agreements between a state contracting agency or quasi-public agency and a business for:

(A) A project for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building, public work, mass transit, rail station, parking garage, rail track or airport;

(B) Services, including, but not limited to, consultant and professional services;

(C) The acquisition or disposition of personal property;

(D) The provision of goods and services, including, but not limited to, the use of purchase of services contracts and personal service

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agreements;

(E) The provision of information technology, state agency information system or telecommunication system facilities, equipment or services;

(F) A lease; or

(G) A licensing agreement;

"Contract" or "state contract" does not include a contract between a state agency or a quasi-public agency and a political subdivision of the state;

(9) "Term contract" means the agreement reached when the state accepts a bid or proposal to furnish supplies, materials, equipment or contractual services at a stated price for a specific period of time in response to an invitation to bid;

(10) "Contract risk assessment" means (A) the identification and evaluation of loss exposures and risks, including, but not limited to, business and legal risks associated with the contracting process and the contracted goods and services, and (B) the identification, evaluation and implementation of measures available to minimize potential loss exposures and risks;

(11) "Contractor" means any business that is awarded, or is a subcontractor under, a contract or an amendment to a contract with a state contracting agency under statutes and regulations concerning procurement, including, but not limited to, a small contractor, minority business enterprise, an individual with a disability, as defined in section 4a-60 of the general statutes or an organization providing products and services by persons with disabilities;

(12) "Contractual services" means the furnishing of labor by a

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contractor, not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance and includes any and all laundry and cleaning service, pest control service, janitorial service, security service, the rental and repair, or maintenance, of equipment, machinery and other state-owned personal property, advertising and photostating, mimeographing, human services and other service arrangements where the services are provided by persons other than state employees. "Contractual services" includes the design, development and implementation of technology, communications or telecommunications systems or the infrastructure pertaining thereto, including hardware and software and services for which a contractor is conferred a benefit by the state, whether or not compensated by the state. "Contractual services" does not include employment agreements or collective bargaining agreements;

(13) "Data" means recorded information, regardless of form or characteristic;

(14) "Vote of two-thirds of the members of the board present and voting" means a vote by the State Contracting Standards Board that is agreed upon by two-thirds of the members of the State Contracting Standards Board present and voting for a particular purpose and that includes the vote of one member of the board appointed by a legislative leader;

(15) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology;

(16) "Emergency procurement" means procurement by a state contracting agency, quasi-public agency, as defined in section 1-120 of the general statutes, judicial department or constituent unit of higher education that is made necessary by a sudden, unexpected occurrence that poses a clear and imminent danger to public safety or requires immediate action to prevent or mitigate the loss or impairment of life,

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health, property or essential public services or in response to a court order, settlement agreement or other similar legal judgment;

(17) "Equipment" means personal property of a durable nature that retains its identity throughout its useful life;

(18) "Materials" means items required to perform a function or used in a manufacturing process, particularly those incorporated into an end product or consumed in its manufacture;

(19) "Nonprofit agency" means any organization that is not a for-profit business under 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, makes no distribution to its members, directors or officers and provides services contracted for by (A) the state, or (B) a nonstate entity;

(20) "Professional services" means any type of service to the public that requires that members of a profession rendering such service obtain a license or other legal authorization as a condition precedent to the rendition thereof, including, but not limited to, the professional services of architects, professional engineers, or jointly by architects and professional engineers, landscape architects, certified public accountants and public accountants, land surveyors, attorneys-at-law, psychologists, licensed marital and family therapists, licensed professional counselors and licensed clinical social workers as well as such other professional services described in section 33-182a of the general statutes;

(21) "Privatization contract" means an agreement or series of agreements between a state contracting agency and a person or entity in which such person or entity agrees to provide services that are substantially similar to and in lieu of services provided, in whole or in part, by state employees, other than contracts with a nonprofit agency,

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which are in effect as of the effective date of this section and which through a renewal, modification, extension or rebidding of contracts continue to be provided by a nonprofit agency;

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

(23) "Proposer" means a business submitting a proposal to a state contracting agency in response to a request for proposals or other competitive sealed proposal;

(24) "Public record" means a public record, as defined in section 1-200 of the general statutes;

(25) "Qualification based selection" means a contract selection process in which the award of a contract is primarily based on an assessment of contractor qualifications and on the negotiation of a fair and reasonable price;

(26) "Regulation" means regulation, as defined in section 4-166 of the general statutes;

(27) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals;

(28) "State contracting agency" means any executive branch agency, board, commission, department, office, institution or council. "State contracting agency" does not include the Judicial Branch, the Legislative Branch, the offices of the Secretary of the State, the State Comptroller, the Attorney General, the State Treasurer, with respect to

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their constitutional functions, any state agency with respect to contracts specific to the constitutional and statutory functions of the office of the State Treasurer. For the purposes of section 16 of this act, state contracting agency includes any constituent unit of the state system of higher education;

(29) "Subcontractor" means a subcontractor of a contractor for work under a contract or an amendment to a contract;

(30) "Supplies" means any and all articles of personal property, including, but not limited to, equipment, materials, printing, insurance and leases of real property, excluding land or a permanent interest in land furnished to or used by any state agency;

(31) "Infrastructure facility" means a building, structure or network of buildings, structures, pipes, controls and equipment that provide transportation, utilities, public education or public safety services. Infrastructure facility includes government office buildings, public schools, jails, water treatment plants, distribution systems and pumping stations, waste water treatment plants, collections systems and pumping stations, solid waste disposal plants, incinerators, landfills, and related facilities, public roads and streets, highways, public parking facilities, public transportation systems, terminals and rolling stock, rail, air and water port structures, terminals and equipment; and

(32) "State employee" means state employee, as defined in section 5-154 of the general statutes and, for purposes of section 16 of this act, state employee includes an employee of any state contracting agency.

Sec. 2. (NEW) (*Effective January 1, 2009*) (a) There is established a State Contracting Standards Board that shall consist of fourteen members appointed as follows: Eight members by the Governor, two members by the speaker of the House of Representatives, two

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members by the president pro tempore of the Senate, one member by the majority leader of the Senate and one member by the majority leader of the House of Representatives. In the event that the party of the Governor also controls both houses of the General Assembly, the board shall be appointed as follows: Eight members by the Governor, one member by the president pro tempore of the Senate, one member by the speaker of the House of Representatives, one member by the majority leader of the Senate, one member of the majority leader of the House of Representatives, one member by the minority leader of the Senate and one member by the minority leader of the House of Representatives.

(b) Each member shall have demonstrated sufficient knowledge by education, training or experience in one or more of the following enumerated areas: (1) Procurement; (2) contract negotiation, selection and drafting; (3) contract risk assessment; (4) competitive bidding and proposal procedures; (5) real estate transactions, including the purchase, sale and lease of real estate and buildings; (6) building construction and architecture; (7) business insurance and bonding; (8) ethics in public contracting; (9) federal and state statutes, procurement policies and regulations; (10) outsourcing and privatization analysis; (11) small and minority business enterprise development; (12) engineering and information technologies; (13) human services and (14) personnel and labor relations, provided such education, training or experience was acquired over not less than a continuous five-year period within the ten-year period preceding such appointment.

(c) The chairperson of the board shall be appointed by the Governor. The terms of the members shall be coterminous with the terms of the appointing authority for each member and subject to the provisions of section 4-1a of the general statutes. If any vacancy occurs on the board, the appointing authority having the power to make the appointment under the provisions of this section shall appoint a

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person in accordance with the provisions of this section.

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

(e) The chairperson of the board and other members of the board shall be compensated two hundred dollars per diem. No person shall serve on the board who is a state or municipal employee. No board member or any spouse, child, stepchild, parent or sibling of such board member shall be directly involved in any enterprise that does business with the state.

(f) The Governor shall appoint an executive director of the board who shall serve as an ex-officio, nonvoting member of the board. The executive director shall be appointed in accordance with the provisions of section 4-7 of the general statutes and may be removed from office for reasonable cause, in accordance with chapter 67 of the general statutes. The board shall, annually, conduct a performance evaluation of such executive director. The executive director shall report to the chairperson of the board and, in consultation with the Chief Procurement Officer, (1) conduct comprehensive planning with respect to the administrative functions of the board; (2) coordinate the budget and personnel activities of the board; (3) cause the administrative organization of the board to be examined with a view to promoting economy and efficiency; (4) act as the external liaison for the board; and (5) execute such other duties as may be assigned by the chairperson of the board or the board, as applicable. The executive director may enter into such contractual agreements as may be necessary for the discharge of the director's duties.

(g) The board shall appoint a Chief Procurement Officer for a term not to exceed six years, unless reappointed pursuant to the provisions of this subsection. The Chief Procurement Officer shall report to the board and annually be evaluated by, and serve at the pleasure of, the

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board. For administrative purposes only, the Chief Procurement Officer shall be supervised by the executive director.

(1) The Chief Procurement Officer shall be responsible for carrying out the policies of the board relating to procurement including, but not limited to, oversight, investigation, auditing, agency procurement certification and procurement and project management training and enforcement of said policies as well as the application of such policies to the screening and evaluation of current and prospective contractors. The Chief Procurement Officer may enter into such contractual agreements as may be necessary for the discharge of the duties as set forth in this subsection and by the board, including, but not limited to, recommending best practices and providing operational and administrative assistance to state agencies determined, by the board, to be in violation of sections 16 to 47, inclusive, of this act.

(2) In addition to the duties set forth by the board, the Chief Procurement Officer shall (A) oversee state contracting agency compliance with the provisions of statutes and regulations concerning procurement; (B) monitor and assess the performance of the procurement duties of each Agency Procurement Officer; (C) administer the certification system and monitor the level of agency compliance with the requirements of statutes and regulations concerning procurement, including, but not limited to, the education and training, performance and qualifications of Agency Procurement Officers; (D) review and monitor the procurement processes of each state contracting agency, quasi-public agencies and institutions of higher education; and (E) serve as chairperson of the Contracting Standards Advisory Council and an ex-officio member of the Vendor and Citizen Advisory Panel.

(h) The board may contract with consultants and professionals on a temporary or project by project basis and may employ, subject to the provisions of chapter 67 of the general statutes, such employees as may

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be necessary to carry out the provisions of this section.

(i) The reasonable expenses of the State Contracting Standards Board and its employees shall be paid from the budget of the board, upon the approval of the board.

(j) No employee of the State Contracting Standards Board shall hold another state or municipal position. No nonclerical employee of the board or any spouse, child, stepchild, parent or sibling of such employee, shall be associated with an enterprise that does business with the state. For purposes of this subsection, "associated with" means "business with which he is associated", as defined in section 1-79 of the general statutes. Each member and employee of the State Contracting Standards Board shall file, with the board and with the Office of State Ethics, a statement of financial interests, as described in section 1-83 of the general statutes. Such statement shall be a public record. Such statements for the preceding calendar year shall be filed with the Office of State Ethics, as required by law, if such employee or member held such a position during the preceding calendar year.

(k) Any violation of the provisions of subsection (j) of this section shall constitute a violation of part I of chapter 10 of the general statutes and may be the subject of a complaint and investigation filed and conducted in accordance with the provisions of section 1-82 of the general statutes.

(l) The board shall adopt such rules as it deems necessary for the conduct of its internal affairs, in accordance with section 4-167 of the general statutes, including, but not limited to, rules of procedure for any audit undertaken pursuant to section 6 of this act.

(m) Eight members of the board, including not less than one member appointed by a legislative leader, shall constitute a quorum which shall be required for the transaction of business by the board.

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Sec. 3. (NEW) (*Effective January 1, 2009*) (a) All rights, powers, duties, and authority relating to the procurement policies of the state, vested in, or exercised by, any state contracting agency may also be exercised by the board, provided such rights, powers, duties and authority may be exercised by the board as provided in sections 3 to 47, inclusive, of this act, and absent any affirmative action by the board, pursuant to said sections of this act, shall not be deemed to limit or restrict the exercise of such rights, powers, duties and authority by any such state contracting agency. Such rights, powers, duties and authority shall include the following:

(1) Acquisition of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction;

(2) Any state contracting and procurement processes, including, but not limited to, leasing and property transfers, purchasing or leasing of supplies, materials or equipment, consultant or consultant services, purchase of service agreements or privatization contracts; and

(3) Contracts for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building.

(b) Notwithstanding any provision of chapter 14 of the general statutes upon request by the board, each state contracting agency, including institutions of higher education, shall provide the board, in a timely manner, with such procurement information as the board deems necessary. The board shall have access to all information, files and records related to any state contracting agency in furtherance of the board's duties, as described in sections 3 to 47, inclusive, of this act. Nothing in this section shall be construed to require the board's disclosure of documents that are exempt from disclosure pursuant to chapter 14 of the general statutes.

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Sec. 4. (NEW) (*Effective January 1, 2009*) Except as otherwise provided in the general statutes, the board shall have the following authority and responsibilities with respect to procurements by state contracting agencies:

(a) Recommend the repeal of repetitive, conflicting or obsolete statutes concerning state procurement;

(b) Review and make recommendations concerning proposed legislation and regulations concerning procurement, management, control, and disposal of any and all supplies, services, and construction to be procured by the state, including, but not limited to:

(1) Conditions and procedures for delegation of procurement authority;

(2) Prequalification, suspension, debarment and reinstatement of prospective bidders and contractors;

(3) Small purchase procedures;

(4) Conditions and procedures for the procurement of perishables and items for resale;

(5) Conditions and procedures for the use of source selection methods authorized by statutes and regulations concerning procurement;

(6) Conditions and procedures for the use of emergency procurements;

(7) Conditions and procedures for the selection of contractors by processes or methods that restrict full and open competition;

(8) The opening or rejection of bids and offers, and waiver of errors in bids and offers;

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(9) Confidentiality of technical data and trade secrets submitted by actual or prospective bidders;

(10) Partial, progressive and multiple awards;

(11) Supervision of storerooms and inventories, including determination of appropriate stock levels and the management, transfer, sale or other disposal of publicly-owned supplies;

(12) Definitions and classes of contractual services and procedures for acquiring such services;

(13) Regulations providing for conducting cost and price analysis;

(14) Use of payment and performance bonds;

(15) Guidelines for use of cost principles in negotiations, adjustments and settlements; and

(16) Identification of procurement best practices;

(c) Adopt regulations, pursuant to chapter 54 of the general statutes, to carry out the provisions of statutes concerning procurement, in order to facilitate consistent application of the law and require the implementation of procurement best practices;

(d) Make recommendations with regard to information systems for state procurement including, but not limited to, data element and design and the State Contracting Portal;

(e) Develop a guide to state statutes and regulations concerning procurement, for use by all state contracting agencies;

(f) Assist state contracting agencies in complying with the statutes and regulations concerning procurement by providing guidance, models, advice and practical assistance to state contracting agency staff

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relating to: (1) Buying the best service at the best price, (2) properly selecting contractors, and (3) drafting contracts that achieve state goals of accountability, transparency and results based outcomes and to protect taxpayers' interest;

(g) Train and oversee the Agency Procurement Officer of each state contracting agency and any contracting officers thereunder;

(h) Review and certify, on or after January 1, 2009, that a state contracting agency's procurement processes are in compliance with statutes and regulations concerning procurement by:

(1) Establishing procurement and project management education and training criteria and certification procedures for Agency Procurement Officers and contracting officers. All Agency Procurement Officers and contracting officers designated under this provision shall be required to maintain the certification in good standing at all times while performing procurement functions;

(2) Approving an ethics training course, in consultation with the Office of State Ethics, including, but not limited to, state employees involved in procurement and for state contractors and substantial subcontractors who are prequalified pursuant to chapter 58a of the general statutes. Such ethics training course may be developed and provided by the Office of State Ethics or by any person, firm or corporation provided such course is approved by the State Contracting Standards Board;

(i) Recertify each state contracting agency's procurement processes, triennially, and provide agencies with notice of any certification deficiency and exercise those powers authorized by section 34, 39 or 40 of this act, as applicable, if a determination of noncompliance is made;

(j) Define the contract data reporting requirements to the board for state agencies concerning information on: (1) The number and type of

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state contracts of each state contracting agency currently in effect state-wide; (2) the term and dollar value of such contracts; (3) a list of client agencies; (4) a description of services purchased under such contracts; (5) contractor names; (6) an evaluation of contractor performance, including, but not limited to records pertaining to the suspension or disqualification of contractors, and assuring such information is available on the state contracting portal; and (7) a list of contracts and contractors awarded without full and open competition stating the reasons for and identifying the approving authority; and

(k) Provide the Governor and the joint standing committee of the General Assembly having cognizance of matters relating to government administration with recommendations concerning the statutes and regulations concerning procurement.

Sec. 5. (NEW) (*Effective January 1, 2009*) (a) (1) The head of each state contracting agency shall appoint an Agency Procurement Officer. Such officer shall serve as the liaison between the agency and the Chief Procurement Officer on all matters relating to the agency's procurement activity, including, but not limited to, implementation and compliance with the provisions of statutes and regulations concerning procurement and any policies or regulations adopted by the board, coordination of the training and education of agency procurement employees and any person serving on the Contracting Standards Advisory Council;

(2) The Agency Procurement Officer shall be responsible for assuring that contractors are properly screened prior to the award of a contract, evaluating contractor performance during and at the conclusion of a contract, submitting written evaluations to a central data repository to be designated by the board and creating a project management plan for the agency with annual reports to the board pertaining to procurement projects within the agency.

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(b) The State Contracting Standards Board, with the advice and assistance of the Commissioner of Administrative Services, shall develop a standardized state procurement and project management education and training program. Such education and training program shall develop education, training and professional development opportunities for employees of state contracting agencies charged with procurement responsibilities. The program shall educate such employees in general business acumen and on proper purchasing procedures as established in statutes and regulations concerning procurement with an emphasis on ethics, fairness, consistency and project management. Participation in the program shall be required of any supervisory and nonsupervisory state employees in state contracting agencies with responsibility for buying, purchasing, renting, leasing or otherwise acquiring any supplies, service or construction, including the preparation of the description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration.

(c) The program shall include, but shall not be limited to (1) training and education concerning federal, state and municipal procurement processes, including the statutes and regulations concerning procurement; (2) training and education courses developed in cooperation with the Office of State Ethics, the Freedom of Information Commission, the State Elections Enforcement Commission, the Commission on Human Rights and Opportunities, the office of the Attorney General and any other state agency the board determines is necessary in carrying out statutes and regulations concerning procurement; (3) providing technical assistance to state contracting agencies and municipalities for implementing statutes and regulations concerning procurement, regulations, policies and standards developed by the board; (4) training to current and prospective contractors and vendors and others seeking to do business with the state; and (5) training and education of state employees in the area of

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best procurement practices in state purchasing with the goal of achieving the level of acumen necessary to achieve the objectives of statutes and regulations concerning procurement.

(d) Any employee who completes the program established under subsection (b) of this section shall be issued documentation by the board acknowledging such employee's participation in the program. The board shall submit an annual report to the Governor and the General Assembly on the status of such program in accordance with section 11-4a of the general statutes.

(e) The board shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to develop and implement the training and education program established under subsection (b) of this section.

Sec. 6. (NEW) (*Effective October 1, 2011*) (a) The board shall conduct audits of state contracting agencies, triennially, to ensure compliance with statutes and regulations concerning procurement. In conducting each such audit, the board shall have access to all contracting and procurement records, may interview any and all personnel responsible for contracting, contract negotiations or procurement and may enter into an agreement with the Auditors of Public Accounts to effectuate such audit.

(b) Upon completion of any such audit, the board shall prepare and issue a compliance report for the state contracting agency. Such report shall identify any process or procedure that is inconsistent with statutes and regulations concerning procurement and indicate those corrective measures the board deems necessary to comply with statutes and regulations concerning procurement requirements. Such report shall be issued and delivered not later than thirty days after completion of such audit and shall be a public record.

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Sec. 7. (NEW) (*Effective October 1, 2011*) (a) For cause, the State Contracting Standards Board may review, terminate or recommend to a state contracting agency the termination of any contract or procurement agreement undertaken by any state contracting agency after providing fifteen days notice to the state contracting agency and the applicable contractor, and consulting with the Attorney General. Such termination of a contract or procurement agreement by the board may occur only after (1) the board has consulted with the contracting agency to determine the impact of an immediate termination of the contract, (2) a determination has been made jointly by the board and the contracting agency that an immediate termination of the contract will not create imminent peril to the public health, safety or welfare, (3) a vote of two-thirds of the members of the board present and voting for that purpose, and (4) the board has provided the state contracting agency and the contractor with opportunity for a hearing conducted pursuant to the provisions of chapter 54 of the general statutes. Such action shall be accompanied by notice to the state contracting agency and any other affected party. For the purpose of this section, "for cause" means: (A) A violation of section 1-84 or 1-86e of the general statutes, as determined by the Citizen's Ethics Advisory Board; (B) wanton or reckless disregard of any state contracting and procurement process by any person substantially involved in such contract or state contracting agency; or (C) notification from the Attorney General to the state contracting agency that an investigation pursuant to section 4-61dd of the general statutes has concluded that the process by which such contract was awarded was compromised by fraud, collusion or any other criminal violation. Nothing in this section shall be construed to limit the authority of the board as described in section 6 of this act.

(b) Following consultation with the state contracting agency and upon providing fifteen days' notice and the opportunity for a hearing, the State Contracting Standards Board may restrict or terminate the authority of any state contracting agency to enter into any contract or

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procurement agreement if: (1) The board, upon a vote of two-thirds of the members of the board present and voting for such purpose, determines that such state contracting agency failed to comply with statutory contracting and procurement requirements and evidenced a reckless disregard for applicable procedures and policy; and (2) such limitation, restriction or termination of authority is in the state's best interest, provided the board has made arrangements for the exercise of the contracting power of such agency during the period of limitation, restriction or termination. Such limitation, restriction or termination of authority shall remain in effect until such time as the board determines that such state contracting agency has implemented corrective measures and demonstrated compliance with statutes and regulations concerning procurement.

(c) Following consultation with the state contracting agency, and thereafter upon providing fifteen days' notice and the opportunity for a hearing, the State Contracting Standards Board may order a state contracting agency to take appropriate action to restrict or terminate the authority of an employee or agent to enter into any contract or procurement agreement if the board, upon a vote of two-thirds of the members of the board present and voting for such purpose, determines that such employee or agent failed to comply with statutory contracting and procurement requirements, and evidenced a reckless disregard for applicable procedures and policy. Such limitation, restriction or termination of authority shall remain in effect until such time as the board determines that such state contracting agency has implemented corrective measures and demonstrated compliance with statutes and regulations concerning procurement.

Sec. 8. (NEW) (*Effective January 1, 2009*) There is established a Contracting Standards Advisory Council, which shall consist of representatives from the Office of Policy and Management, Departments of Administrative Services, Transportation, Public Works

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and Information Technology and representatives of at least three additional contracting agencies, including at least one human services related state agency, designated by the Governor. The Chief Procurement Officer shall be a member of the council and serve as chairperson. The advisory council shall meet at least four times per year to discuss state procurement issues and to make recommendations for improvement of the procurement processes to the State Contracting Standards Board. The advisory council may conduct studies, research and analyses and make reports and recommendations with respect to subjects or matters within the jurisdiction of the State Contracting Standards Board.

Sec. 9. (NEW) (*Effective January 1, 2009*) (a) There shall be a Vendor and Citizen Advisory Panel comprised of fifteen members appointed as follows: Three members by the Governor, two members by each of the following: The speaker of the House of Representatives, the majority and minority leaders of the House of Representatives, the president pro tempore of the Senate and the majority and minority leaders of the Senate. No more than six vendors with state procurement experience shall be on the panel and the remaining members shall have demonstrated sufficient knowledge by education, training or experience in one or more of the following areas: (1) Government procurement; (2) contract negotiation, drafting and management; (3) contract risk assessment; (4) preparing requests for proposals, invitations to bid and other procurement solicitations; (5) evaluating proposals, bids and quotations; (6) real property transactions; (7) business insurance and bonding; (8) the state code of ethics; (9) federal and state statutes, policies and regulations; (10) outsourcing and privatization proposal analysis; (11) governmental taxation and finance; (12) small and minority business enterprise development; (13) collective bargaining; and (14) human services, provided such education, training or experience shall have been acquired over not less than a continuous five-year period and within

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the ten-year period preceding such appointment. The chairperson of the panel shall be the Chief Procurement Officer, who shall be an ex-officio member.

(b) The panel shall make recommendations to the board regarding best practices in state procurement processes and project management as well as other issues pertaining to stakeholders in the system.

Sec. 10. (NEW) (*Effective January 1, 2009*) (a) On or before July 1, 2010, the board shall submit to the Governor and the General Assembly such legislation as is necessary to permit state contracting agencies, not including quasi-publics, institutions of higher education, and municipal procurement processes utilizing state funds, to carry out their functions under statutes and regulations concerning procurement.

(b) On or before July 1, 2011, the board shall submit to the Governor and the General Assembly such legislation as is necessary to apply the provisions of statutes concerning procurement to constituent units of the state system of higher education. Concomitantly, the board shall submit such additional legislation as is necessary to apply the provisions of statutes and regulations concerning privatization and procurement to quasi-public agencies.

(c) On or before July 1, 2012, the board shall submit to the Governor and the General Assembly such legislation as is necessary to apply the provisions of statutes and regulations concerning procurement to the municipal procurement processes utilizing state funds.

Sec. 11. (NEW) (*Effective January 1, 2009*) (a) The board shall provide assistance to the Secretary of the State, Comptroller, Treasurer and Attorney General to develop best procurement practices specific to the constitutional and statutory functions of each office and consistent with statutes and regulations concerning procurement.

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(b) Each of the officers specified in subsection (a) of this section shall adopt a code of procurement practices on or before June 1, 2011.

Sec. 12. (NEW) (*Effective January 1, 2009*) (a) On or before February 1, 2011, the Judicial Branch and the Legislative Branch shall each prepare a procurement code applicable to contracting expenditures, including, but not limited to, expenditures: (1) Involving contracting and procurement processes for purchasing or leasing of supplies, materials or equipment, consultant or consultant services, personal service agreements or purchase of service agreements; and (2) relating to contracts for the renovation, alteration or repair of any Judicial Branch or Legislative Branch facility in accordance with section 4b-1 of the general statutes.

(b) The procurement codes described in subsection (a) of this section shall be designed to: (1) Establish uniform contracting standards and practices; (2) simplify and clarify contracting standards and procurement policies and practices, including, but not limited to, procedures for competitive sealed bids, competitive sealed proposals, small purchases, sole source procurements, emergency procurements and special procurements; (3) ensure the fair and equitable treatment of all businesses and persons who deal with the procurement system; (4) include a process to maximize 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 the procurement of supplies, materials, equipment, services, real property and construction is obtained in a cost-effective and responsive manner; (7) include a process to ensure contractor and Judicial Branch or Legislative Branch accountability; and (8) provide a process for competitive sealed bids, competitive sealed proposals, small purchases, sole source procurements, emergency procurements, special procurements, best value selection, qualification based selection and the conditions for their use.

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(c) On or before February 1, 2011, the Judicial Branch shall submit such procurement code for review and approval to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary.

Sec. 13. (NEW) (*Effective January 1, 2009*) (a) The Department of Administrative Services, in consultation with the State Contracting Standards Board, shall establish and maintain a single electronic portal available on the Internet and located on the Department of Administrative Services' web site for purposes of posting all contracting opportunities with state agencies in the executive branch, the constituent units of the state system of higher education and quasi-public agencies. Such electronic portal shall be known as the State Contracting Portal.

(b) The State Contracting Portal shall, among other things, include: (1) All requests for bids or proposals, and other solicitations regardless of the method of source selection, related materials and all resulting contracts and agreements by state agencies; (2) a searchable database for locating information; (3) personal services agreements and purchase of service agreements; (4) a state procurement and contract manual or other similar information designated by the Department of Administrative Services as describing approved contracting processes and procedures; and (5) prominent features to encourage the active recruitment and participation of small businesses and women and minority owned enterprises in the state contracting process.

(c) All state agencies in the executive branch, the constituent units of the state system of higher education and quasi-public agencies shall post all bids, requests for proposals and all resulting contracts and agreements on the State Contracting Portal and shall, with the assistance of the Department of Administrative Services and the Department of Information Technology as needed, develop the infrastructure and capability to electronically communicate with the

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(d) All state agencies in the executive branch, the constituent units of the state system of higher education and quasi-public agencies shall develop written policies and procedures to ensure that information is posted to the State Contracting Portal in a timely, complete and accurate manner consistent with the highest legal and ethical standards of state government.

(e) The Department of Administrative Services shall periodically report to the Governor and the State Contracting Standards Board on the progress of all state agencies in the executive branch, the constituent units of the state system higher education and quasi-public agencies, in developing the capacity, infrastructure, policies and procedures to electronically communicate with the State Contracting Portal and the Department of Administrative Services' progress toward establishment and maintenance of the State Contracting Portal.

Sec. 14. (NEW) (*Effective January 1, 2009*) On and after June 1, 2010, all state contracts of each state contracting agency that take effect on or after June 1, 2010, shall contain provisions to ensure accountability, transparency and results based outcomes, as prescribed by the State Contracting Standards Board. On and after June 1, 2010, all state contracts of the Legislative Branch and the Judicial Branch that take effect on or after June 1, 2010, shall contain provisions to ensure accountability, transparency and results based outcomes.

Sec. 15. (*Effective January 1, 2009*) Nothing in sections 1 to 14, inclusive, and 16 of this act shall be construed to affect the requirements of public act 06-129.

Sec. 16. (NEW) (*Effective January 1, 2010*) (a) Prior to entering any privatization contract for the privatization of a state service that is not currently privatized, the state contracting agency shall develop a cost-

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benefit analysis in accordance with the provisions of subsection (b) of this section. Such requirement shall not apply to a privatization contract for a service currently provided, in whole or in part, by a non-state entity. Any affected party may petition the State Contracting Standards Board for review of such privatization contract, in accordance with the provisions of subsections (f) to (h), inclusive, of this section.

(b) The cost-benefit analysis conducted by a state contracting agency prior to entering a privatization contract shall document the direct and indirect costs, savings, and qualitative and quantitative benefits, that will result from the implementation of such privatization contract. Such cost-benefit analysis shall specify the schedule that, at a minimum, shall be adhered to in order to achieve any estimated savings. Any cost factor shall be clearly identified in such cost-benefit analysis and supported by all applicable records and reports. The department head of such state contracting agency shall certify that, based on the data and information, all projected costs, savings and benefits are valid and achievable. As used in this subsection, "costs" means all reasonable, relevant and verifiable expenses, including salary, materials, supplies, services, equipment, capital depreciation, rent, maintenance, repairs, utilities, insurance, travel, overhead, interim and final payments and the normal cost of fringe benefits, as calculated by the Comptroller. As used in this subsection, "savings" means the difference between the current annual direct and indirect costs of providing such service and the projected, annual direct and indirect costs of contracting to provide such services in any succeeding state fiscal year during the term of such proposed privatization contract.

(c) (1) If such cost-benefit analysis identifies a cost savings to the state of ten per cent or more, and such privatization contract will not diminish the quality of such service, the state contracting agency shall

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develop a business case, in accordance with the provisions of subsection (d) of this section, in order to evaluate the feasibility of entering any such contract and to identify the potential results, effectiveness and efficiency of such contract.

(2) If such cost-benefit analysis identifies a cost savings of less than ten per cent to the state and such privatization contract will not diminish the quality of such service, the state contracting agency may develop a business case, in accordance with the provisions of subsection (d) of this section, in order to evaluate the feasibility of entering any such contract and to identify the potential results, effectiveness and efficiency of such contract, provided there is a significant public policy reason to enter into such privatization contract. Any such business case shall be approved in accordance with the provisions of subdivision (4) of subsection (h) of this section.

(3) If any such proposed privatization contract would result in the layoff, transfer or reassignment of one hundred or more state agency employees, after consulting with the potentially affected bargaining units, if any, the state contracting agency shall notify the state employees of such bargaining unit, after such cost benefit analysis is completed. Such state contracting agency shall provide an opportunity for said employees to reduce the costs of conducting the operations to be privatized and provide reasonable resources for the purpose of encouraging and assisting such state employees to organize and submit a bid to provide the services that are the subject of the potential privatization contract. The state contracting agency shall retain sole discretion in determining whether to proceed with the privatization contract, provided the business case for such contract is approved by the board.

(d) Any business case developed by a state contracting agency for the purpose of complying with subsection (c) of this section shall include: (1) The cost benefit analysis as described in subsection (b) of

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this section, (2) a detailed description of the service or activity that is the subject of such business case, (3) a description and analysis of the state contracting agency's current performance of such service or activity, (4) the goals to be achieved through the proposed privatization contract and the rationale for such goals, (5) a description of available options for achieving such goals, (6) an analysis of the advantages and disadvantages of each option, including, at a minimum, potential performance improvements and risks attendant to termination of the contract or rescission of such contract, (7) a description of the current market for the services or activities that are the subject of such business case, (8) an analysis of the quality of services as gauged by standardized measures and key performance requirements including compensation, turnover, and staffing ratios, (9) a description of the specific results based performance standards that shall, at a minimum be met, to ensure adequate performance by any party performing such service or activity, (10) the projected time frame for key events from the beginning of the procurement process through the expiration of a contract, if applicable, (11) a specific and feasible contingency plan that addresses contractor nonperformance and a description of the tasks involved in and costs required for implementation of such plan, and (12) a transition plan, if appropriate, for addressing changes in the number of agency personnel, affected business processes, employee transition issues, and communications with affected stakeholders, such as agency clients and members of the public, if applicable. Such transition plan shall contain a reemployment and retraining assistance plan for employees who are not retained by the state or employed by the contractor. If the primary purpose of the proposed privatization contract is to provide a core governmental function, such business case shall also include information sufficient to rebut the presumption that such core governmental function should not be privatized. Such presumption shall not be construed to prohibit a state contracting agency from contracting for specialized technical expertise not available within such agency, provided such agency shall

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retain responsibility for such core governmental function. For the purposes of this section, "core governmental function" means a function for which the primary purpose is (A) the inspection for adherence to health and safety standards because public health or safety may be jeopardized if such inspection is not done or is not done in a timely or proper manner, (B) the establishment of statutory, regulatory or contractual standards to which a regulated person, entity or state contractor shall be held, (C) the enforcement of statutory, regulatory or contractual requirements governing public health or safety, or (D) criminal or civil law enforcement. If any part of such business case is based upon evidence that the state contracting agency is not sufficiently staffed to provide the core governmental function required by the privatization contract, the state contracting agency shall also include within such business case a plan for remediation of the understaffing to allow such services to be provided directly by the state contracting agency in the future.

(e) Upon the completion of such business case, the state contracting agency shall submit the business case to the State Contracting Standards Board. For any privatization contract with a projected cost that exceeds one hundred fifty million dollars annually or six hundred million dollars over the life of such contract, the state contracting agency shall also submit such business case to the Governor, the president pro tempore of the Senate, the speaker of the House of Representatives, and any collective bargaining unit affected by the proposed privatization contract.

(f) (1) There shall be a privatization contract committee of the State Contracting Standards Board that shall review, evaluate, issue advisory reports and make recommendations on business cases submitted to the board by any state contracting agency. Such privatization contract committee shall consist of five members of the State Contracting Standards Board. Such members shall be appointed

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by the chairperson of the board and consist of both gubernatorial and legislative appointments, have not more than three members from any one political party, and at least one member of such committee shall have expertise in the area that is the subject of such proposed contract. The chairperson of the board, or the chairperson's designee shall serve as the chair of the privatization contract committee.

(2) Upon receipt of any such business case from a state contracting agency, the State Contracting Standards Board shall immediately refer such business case to such privatization contract committee. The privatization contract committee shall employ a standard process for reviewing, evaluating and approving any such business cases. Such process shall include due consideration of: (A) The cost-benefit analysis developed by the state contracting agency, (B) the business case developed by the state contracting agency, including any facts, documents or other materials that are relevant to such business case, (C) any adverse effect that such privatization contract may have on minority, small and women-owned businesses that do, or are attempting to do business with the state, and (D) the value of having services performed in the state and within the United States.

(3) The privatization committee shall evaluate the business case and submit the committee's evaluation to the State Contracting Standards Board for review and approval. During the review or consideration of any such business case, no member of the board shall engage in any ex-parte communication with any lobbyist, contractor or union representative. Unless otherwise provided in this section, a majority vote of the board shall be required to approve any such business case.

(4) The business case for a privatization contract to provide a core governmental function may be approved by a two-thirds vote of the board, provided the state contracting agency has provided sufficient evidence to rebut the presumption contained in subsection (d) of this section and there is a significant policy reason to approve such

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business case. In no such case shall the insufficient staffing of a state contracting agency constitute a significant policy reason to approve a business case for a privatization contract to provide a core governmental function.

(g) Each state contracting agency that submits a business case to the board for review shall submit to the board all information, documents or other material required by the privatization contract committee to complete its review and evaluation of such business case.

(h) (1) Not later than sixty days after receipt of any business case, the State Contracting Standards Board shall transmit a report detailing its review, evaluation and disposition regarding such business case to the state contracting agency that submitted such business case and, in the case of a privatization contract with a projected cost of one hundred fifty million dollars or more annually, or six hundred million dollars or more over the life of the contract, concomitantly transmit such report to the Governor, the president pro tempore of the Senate, the speaker of the House of Representatives and any collective bargaining unit affected by the proposed privatization contract. Such sixty-day period may be extended for an additional thirty days upon a majority vote of the board or the privatization contract committee and for good cause shown.

(2) The board's report shall include the business case prepared by the state contracting agency, the evaluation of the business case prepared by the privatization contract committee, the reasons for approval or disapproval, any recommendations of the board and sufficient information to assist the state contracting agency in determining if additional steps are necessary to move forward with a privatization contract.

(3) If the State Contracting Standards Board does not act on a business case submitted by a state contracting agency within sixty

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days of receipt of such business case, such business case shall be deemed approved, except that no business case may be approved for failure of the board to meet.

(4) In the case of a business case developed pursuant to subdivision (2) of subsection (c) of this section, a two-thirds vote of the board shall be required for approval of such privatization contract.

(5) Any state contracting agency may request an expedited review of a business case submitted to the board if there is a compelling public interest for such expedited review. If the board approves the agency's request for such an expedited review, such review shall be completed not later than thirty days after receipt of such request. If the board fails to complete an expedited review within thirty days of receipt of a request that was approved by the board, such business case shall be deemed to be approved.

(i) A state contracting agency may publish notice soliciting bids for a privatization contract only after the board approves such business case, provided any privatization contract that is estimated to cost in excess of one hundred fifty million dollars annually or six hundred million dollars or more over the life of the contract shall also be approved by the General Assembly prior to the state contracting agency soliciting bids for such contract. The General Assembly may approve any such contract as a whole by a majority vote of each house or may reject such agreement as a whole by a majority vote of either house. If the General Assembly is in session, it shall vote to approve or reject such contract not later than thirty days after such state contracting agency files such contract with the General Assembly. If the General Assembly is not in session when such contract is filed, it shall be submitted to the General Assembly not later than ten days after the first day of the next regular session or special session called for such purpose. The contract shall be deemed approved if the General Assembly fails to vote to approve or reject such contract

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within thirty days after such filing. Such thirty-day period shall not begin or expire unless the General Assembly is in regular session. For the purpose of this subsection, any contract filed with the clerks within thirty days before the commencement of a regular session of the General Assembly shall be deemed to be filed on the first day of such session.

(j) Each state contracting agency shall submit, in writing, to the State Contracting Standards Board, any proposed amendment to a board approved business case in order that the board may review and approve of such proposed amendment. The board may approve or disapprove of any such proposed amendment not later than thirty days after receipt of such proposed amendment by the same vote that was required for approval of the original business case. If the board fails to complete its review within thirty days of receipt of such proposed amendment, such amendment shall be deemed approved.

(k) Not later than thirty days after a decision of the board to approve a business case, any collective bargaining agent of any employee adversely affected by such proposed privatization contract may file a motion for an order to show cause in the superior court for the judicial district of Hartford on the grounds that such contract fails to comply with the substantive or procedural requirements of this section. A ruling on any such motion may: (1) Deny the motion; (2) grant the motion if the court finds that the proposed contract would substantively violate the provisions of this section; or (3) stay the effective date of the contract until any substantive or procedural defect found by the court has been corrected.

(l) (1) The board may review additional existing privatization contracts and shall review not less than one contracting area each year that is currently privatized. During the review of any such privatization contract, no member of the board shall engage in any ex-parte communication with any lobbyist, contractor or union

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representative. For each such privatization contract selected for review by the board, the appropriate state contracting agency shall develop a cost-benefit analysis in accordance with subsection (b) of this section. In addition, any affected party may petition the board for review of any existing privatization contract, in accordance with the provisions of subsections (f) to (h), inclusive, of this section.

(2) If such cost-benefit analysis identifies a ten per cent or more cost savings to the state from the use of such privatization contract and such contract does not diminish the quality of the service provided, such state contracting agency shall develop a business case for the renewal of such privatization contract in accordance with the provisions of subsections (d) and (e) of this section. The board shall review such contract in accordance with the provisions of subsections (f) to (h), inclusive, of this section and may approve such renewal by the applicable vote of the board, provided any such renewal that is estimated to cost in excess of one hundred fifty million dollars annually or six hundred million dollars or more over the life of the contract shall also be approved by the General Assembly prior to the state contracting agency renewing such contract. If such renewal is approved by the board and the General Assembly, if applicable, the provisions of subsection (j) of this section shall apply to any proposed amendment to such contract.

(3) If such cost-benefit analysis identifies a cost savings to the state of less than ten per cent, such state contracting agency shall prepare a plan to have such service provided by state employees and shall begin to implement such plan, provided: (A) While such plan is prepared, but prior to implementation of such plan, such state contracting agency may develop a business case for such privatization contract, in accordance with the provisions of subsection (d) of this section, that achieves a cost savings to the state of ten per cent or more. Any such business case shall be reviewed by the board in accordance with the

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provisions of subsections (f) to (h), inclusive, of this section, and may be approved by the applicable vote of the board; (B) such privatization contract shall not be renewed with the vendor currently providing such service unless: (i) There exists a significant public interest in renewing such contract, and (ii) such renewal is approved by a two-thirds vote of the board; (C) the state contracting agency may enter into a contract with a term of one year or less for the provision of such service until such state contracting agency implements such plan; and (D) the procedure for the transfer of funds from the General Fund, as described in section 4-94 of the general statutes, may be utilized to allocate necessary resources for the implementation of the provisions of this subdivision.

(4) Notwithstanding the provisions of subdivision (3) of this subsection, the renewal of a privatization contract with a nonprofit organization shall not be denied if the cost of increasing compensation to employees performing the privatized service is the sole cause for such contract not achieving a cost savings to the state of ten per cent or more.

(m) The Office of Policy and Management, in consultation with the State Contracting Standards Board, shall: (1) Develop policies and procedures, including templates for use by state contracting agencies for the development of a cost-benefit analysis, as described in subsection (b) of this section, and (2) review with each state contracting agency the budgetary impact of any such privatization contract and the need to request budget adjustments in connection with any such privatization contract.

(n) The State Contracting Standards Board, in consultation with the Department of Administrative Services, shall: (1) Recommend and implement standards and procedures for state contracting agencies to develop business cases in connection with privatization contracts, including templates for use by state contracting agencies when

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submitting business cases to the board, and policies and procedures to guide state contracting agencies to complete such business cases, and (2) develop guidelines and procedures for assisting state employees whose jobs are affected by a privatization contract.

(o) Notwithstanding the provisions of subsections (a) and (i) of this section, a state contracting agency may enter into a privatization contract without development of a cost-benefit analysis or approval of a business case by the State Contracting Standards Board if (1) the state contracting agency finds that a privatization contract is required (A) due to an imminent peril to the public health, safety or welfare, and (B) the agency states, in writing, its reasons for such finding; and (2) the Governor approves such finding, in writing.

(p) Nothing in this section shall be construed to apply to procurements that involve the expenditure of federal assistance or federal contract funds, provided federal law provides applicable procurement procedures that are inconsistent with the requirements of this section.

Sec. 17. (NEW) (*Effective June 1, 2010*) (a) Except as otherwise provided, the provisions of sections 16 to 47, inclusive, of this act shall apply to all contracts solicited or entered into by state contracting agencies after the effective date of this section.

(b) Except as otherwise provided, the provisions of sections 16 to 47, inclusive, of this act shall apply to every expenditure of public funds by any state contracting agency, irrespective of their source, involving any state contracting and procurement processes, including, but not limited to, leasing and property transfers, purchasing or leasing of supplies, materials or equipment, consultant or consultant services, personal service agreements, purchase of service agreements or privatization contracts, as defined in section 1 of this act, and, relating to contracts for the construction, reconstruction, alteration,

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remodeling, repair or demolition of any public building, bridge or road.

(c) Nothing in sections 16 to 47, inclusive, of this act, shall be construed to require the application of procurement statutes or regulations to a procurement that involves the expenditure of federal assistance or federal contract funds if federal law provides procurement procedures applicable to the expenditure of such funds, to the extent such federal procedures are inconsistent with state procurement statutes or regulations.

Sec. 18. (NEW) (*Effective June 1, 2010*) For the purpose of obtaining supplies, materials, equipment or contractual services, except infrastructure facilities, the Commissioner of Administrative Services shall establish a requisition system to be used by state contracting agencies to initiate and authorize the procurement process. Such system shall be approved by the State Contracting Standards Board.

Sec. 19. (NEW) (*Effective October 1, 2009*) (a) All purchases of, and contracts for, supplies, materials, equipment and contractual services by any state contracting agency, except purchases and contracts made pursuant to the provisions of section 23 of this act, shall be awarded by one of the following methods, unless otherwise authorized by law:

- (1) Competitive sealed bidding;
- (2) Competitive sealed proposals;
- (3) Small purchase procedure;
- (4) Sole source procurement;
- (5) Emergency procurements; or
- (6) Waiver of bid or proposal requirement for extraordinary conditions.

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(b) Not later than June 1, 2010, the State Contracting Standards Board shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to define each of the methods listed in subsection (a) of this section, establish the circumstances in which each such method shall be used by state contracting agencies, and establish the processes and criteria by which purchases and contracts shall be awarded in accordance with each such method.

Sec. 20. (NEW) (*Effective January 1, 2009*) (a) Not later than June 1, 2010, the State Contracting Standards Board shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, specifying the procedure for issuing invitations for bids which shall include the required elements of an invitation for bids, the process for opening of bids, and criteria for the evaluation and award of bids.

(b) Not later than June 1, 2010, the State Contracting Standards Board, in consultation with the Commissioner of Administrative Services shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, specifying the circumstances in which contracts and purchase orders, in an amount in excess of fifty thousand dollars, may be awarded by a method of source selection other than competitive sealed bidding.

Sec. 21. (NEW) (*Effective January 1, 2009*) (a) Not later than January 1, 2010, the State Contracting Standards Board, in consultation with the Department of Administrative Services, shall adopt regulations to establish small purchase procedures for procurements that do not exceed fifty thousand dollars. Such regulations shall include a prohibition on the artificial division of a procurement in order to make use of such small procurement procedures.

(b) The State Contracting Standards Board, in consultation with the Commissioner of Administrative Services, may determine that a state contracting agency has artificially divided procurement requirements

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so as to constitute a small purchase under this section and, upon such determination shall prohibit the state contracting agency from utilizing such small purchase procedures.

(c) The State Contracting Standards Board, in consultation with the Commissioner of Administrative Services, may waive the requirement of competitive bidding or competitive negotiation in the case of minor, nonrecurring or emergency purchases of ten thousand dollars or less in amount.

Sec. 22. (NEW) (*Effective January 1, 2009*) Not later than June 1, 2010, the State Contracting Standards Board, in consultation with the Commissioner of Administrative Services, shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, specifying the circumstances in which a contract may be awarded for a supply, service or construction item without competition. Such regulations shall include, but not be limited to, situations in which an agency contracting officer states in writing that there is only one source for the required supply, service or construction item, provided sole source procurement is not permitted unless a requirement is available from only a single supplier.

Sec. 23. (NEW) (*Effective January 1, 2009*) Not later than June 1, 2010, the State Contracting Standards Board, in accordance with the provisions of chapter 54 of the general statutes, shall adopt regulations establishing procedures for waiver of competitive bid or proposal requirements.

Sec. 24. (NEW) (*Effective January 1, 2009*) Not later than June 1, 2010, the State Contracting Standards Board, in consultation with the Commissioner of Administrative Services and any other appropriate award authority, shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, permitting emergency procurements when there exists a threat to public health, welfare or

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safety. Such emergency procurements shall be made with competition, as is practicable under the circumstances. Said regulations shall require that a written determination of the basis for the emergency and for the selection of the particular contractor be included in the contract file and transmitted to the Governor, the president pro tempore of the Senate, the majority and minority leaders of the Senate, the speaker of the House of Representatives and the majority and minority leaders of the House of Representatives.

Sec. 25. (NEW) (*Effective January 1, 2009*) A state contracting agency may request factual information reasonably available to the bidder or proposer to substantiate that the price or cost offered, or some portion of it, is reasonable.

Sec. 26. (NEW) (*Effective January 1, 2009*) Not later than June 1, 2010, the State Contracting Standards Board, in consultation with the Commissioner of Administrative Services, shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, establishing standards for the preparation, maintenance, and content of specifications for supplies, services, and construction required by the state.

Sec. 27. (NEW) (*Effective January 1, 2009*) Not later than June 1, 2010, the State Contracting Standards Board, in consultation with the Attorney General, shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, specifying the types of contracts that may be used by state contracting agencies. Such regulations shall specify that a cost-reimbursement contract may be used only when a determination is made in writing by the Agency Procurement Officer that such contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies, services or construction required except under such a contract.

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Sec. 28. (NEW) (*Effective January 1, 2009*) Not later than June 1, 2010, the State Contracting Standards Board shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, requiring that contractors submit appropriate documentation to the appropriate state contracting agency, prior to the award of a contract, to confirm that the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type.

Sec. 29. (NEW) (*Effective January 1, 2009*) Each contract of a state contracting agency shall provide that a state contracting agency may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded, or to be awarded by the state, to ensure compliance with the contract.

Sec. 30. (NEW) (*Effective January 1, 2009*) A state contracting agency may audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the expiration of the subcontract.

Sec. 31. (NEW) (*Effective January 1, 2009*) When, for any reason, collusion or other anticompetitive practices are suspected among any bidders or proposers for a state contract, a notice of the relevant facts shall be transmitted to the Attorney General by any affected party, including, but not limited to, the state contracting agency, a bidder or a proposer.

Sec. 32. (NEW) (*Effective January 1, 2009*) Each state contracting agency shall retain and dispose of all procurement records in

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accordance with records retention guidelines and schedules approved by the Public Records Administrator.

Sec. 33. (NEW) (*Effective June 1, 2010*) The Agency Procurement Officer of each state contracting agency shall maintain a record that lists all contracts awarded pursuant to section 21 and the regulations adopted under section 23 of this act for a minimum of five years after the date of any such award. Such record shall contain:

- (1) Each contractor's name;
- (2) The amount and type of each contract; and
- (3) A listing of the supplies, services or construction procured under each contract.

Sec. 34. (NEW) (*Effective June 1, 2010*) (a) After reasonable notice and hearing and consultation with the relevant state contracting agency and the Attorney General, the State Contracting Standards Board, acting through a subcommittee of three members, appointed by the chairperson, which subcommittee shall include not less than one legislative appointee, may disqualify any contractor, bidder or proposer, for a period of not more than five years, from bidding on, applying for or participating as a contractor or subcontractor under, contracts with the state. Such disqualification shall be upon the vote of two-thirds of the members of the subcommittee present and voting for that purpose. Such hearing shall be conducted in accordance with the provisions of chapter 54 of the general statutes. The subcommittee shall issue a written recommendation not later than sixty days after the conclusion of such hearing, and shall state the reason for the recommended action and, if the disqualification is recommended, the period of time the contractor, bidder or proposer shall be disqualified. In determining whether to disqualify a contractor, bidder or proposer, the subcommittee shall consider the seriousness of the acts or

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omissions of the contractor, bidder or proposer and any mitigating factors. Such recommendation shall be submitted to the board for action and sent to the contractor by certified mail, return receipt requested. If disqualification is recommended, the contractor shall have thirty days to submit comments to the board. Upon receipt of the proposed recommendation by the subcommittee, the board shall issue a written decision either adopting, rejecting or modifying the subcommittee's recommendation. Such decision shall be issued not later than thirty days after receipt by the board of the contractor's comments, if any. The board shall send the decision to the contractor by certified mail, return receipt requested. The written decision shall be a final decision for purposes of sections 4-180 and 4-183 of the general statutes.

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

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

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

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

(4) Accumulation of two or more suspensions pursuant to section 35

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of this act within a twenty-four-month period;

(5) A wilful, negligent or reckless failure to perform in accordance with the terms of one or more contracts or subcontracts, agreements or transactions with state contracting agencies;

(6) A history of failure to perform or of unsatisfactory performance on one or more public contracts, agreements or transactions with state contracting agencies;

(7) A wilful violation of a statutory or regulatory provision or requirement applicable to a contract, agreement or transaction with state contracting agencies;

(8) A wilful or egregious violation of the ethical standards set forth in sections 1-84 and 1-86e of the general statutes, as determined by the Citizen's Ethics Advisory Board; or

(9) Any other cause or conduct the board determines to be so serious and compelling as to affect responsibility as a state contractor, including, but not limited to:

(A) Disqualification by another state for cause;

(B) The fraudulent or criminal conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor, bidder or proposer of such contractor, bidder or proposer, provided such conduct occurred in connection with the individual's performance of duties for or on behalf of such contractor, bidder or proposer and such contractor, bidder or proposer knew or had reason to know of such conduct;

(C) The existence of an informal or formal business relationship with a contractor who has been disqualified from bidding or proposing on state contracts of any state contracting agency.

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

- (1) Newly discovered material evidence;
- (2) Reversal of the conviction upon which the disqualification was based;
- (3) Bona fide change in ownership or management; or
- (4) Elimination of other causes for which the disqualification was imposed.

Sec. 35. (NEW) (*Effective June 1, 2010*) (a) After reasonable notice and a hearing, conducted in accordance with the provisions of chapter 54 of the general statutes, the department head of any state contracting agency may suspend any contractor, bidder or proposer for a period of not more than six months from bidding on, applying for or performing work as a contractor or subcontractor under, contracts with the state. The department head shall issue a written decision not later than ninety days after the conclusion of such hearing and state in the decision the reasons for the action taken and, if the contractor, bidder or proposer is being suspended, the period of such suspension. In determining whether to suspend a contractor, bidder or proposer, the department head shall consider the seriousness of the acts or omissions of the contractor, bidder or proposer and any mitigating factors. The department head shall send such decision to the contractor and the State Contracting Standards Board by certified mail, return receipt requested. Such decision shall be a final decision for purposes of sections 4-180 and 4-183 of the general statutes.

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

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

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

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

(4) A violation of the ethical standards set forth in section 1-84, 1-86e or 1-101nn of the general statutes, as determined by the Citizen's Ethics Advisory Board.

(c) The State Contracting Standards Board may grant an exception permitting a suspended contractor to participate in a particular contract or subcontract upon a written determination by the Board that there is good cause for such exception and that such exception is in the best interest of the state.

(d) The department head of each state contracting agency shall conduct reviews of contractors and shall file reports pertaining to any of the reasons set forth in this section of this act that may be the basis for disqualification.

Sec. 36. (NEW) (*Effective June 1, 2010*) (a) Any bidder or proposer on a state contract may contest the solicitation or award of a contract to a subcommittee of the State Contracting Standards Board which shall be appointed by the chairperson of the board and consist of three

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members, at least one of whom shall be a legislative appointee. Such contest shall be submitted, in writing, not later than fourteen days after such bidder or proposer knew or should have known of the facts giving rise to such contest and shall be limited to the procedural elements of the solicitation or award process, or claims of an unauthorized or unwarranted, noncompetitive selection process.

(b) The filing of a contest pursuant to this section shall not, alone, be deemed to prohibit the award or execution of any such contested contract.

(c) The assigned subcommittee of the State Contracting Standards Board may settle and resolve any such contest.

(d) In the event such contest is not resolved by mutual agreement, the assigned subcommittee of the State Contracting Standards Board shall issue a decision, in writing, not later than thirty days after receipt of any such contest. Such decision shall:

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

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

(3) Inform such bidder or proposer of the right to review.

(e) A copy of such decision shall be provided to such bidder or proposer.

Sec. 37. (NEW) (*Effective June 1, 2010*) (a) Any contractor, bidder or proposer may appeal a decision issued by a department head, pursuant to section 35 of this act, to the State Contracting Standards Board.

(b) Any such appeal shall be filed with the board not later than

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fourteen days after such contractor, bidder or proposer receives a decision issued pursuant to section 35 of this act. Such bidder or proposer shall set forth the facts supporting its claim in sufficient detail for the State Contracting Standards Board to determine whether the procedural elements of the solicitation or award failed to comply with the code or whether an unauthorized or unwarranted, noncompetitive selection process was utilized.

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

(d) The State Contracting Standards Board shall create a three-member appeals review subcommittee, one of whom shall be a legislative appointment, which shall review any request filed pursuant to subsection (b) of this section and decide whether such solicitation or award was in compliance with the statutes and regulations concerning procurement, and whether allegations of an unauthorized or unwarranted, noncompetitive selection process have been demonstrated. A unanimous vote of such subcommittee shall be dispositive of any such appeal. A split vote of such subcommittee shall result in a review of the appeal by the full membership of the board which, by a vote of two-thirds of its members present and voting for such purpose, shall decide whether the solicitation or award of such contract was in compliance with the statutes and regulations concerning procurement and whether allegations of an unauthorized or unwarranted, noncompetitive selection process have been demonstrated.

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

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

(g) In the event that the appeals review subcommittee or the board determines that a procedural violation occurred, or that allegations of an unauthorized or unwarranted, noncompetitive selection process have been substantiated, the board shall direct the state contracting agency to take corrective action not later than thirty days after the date of the subcommittee's or board's decision, as applicable.

(h) In the event such appeal is found to be frivolous by the appeals review subcommittee or the full board, such frivolous appeal may serve as a basis for disqualification pursuant to section 34 of this act.

(i) Any three members of the board may request a full board review of any contract deliberation or award process of a state contracting agency.

(j) A decision issued by the board or appeals review subcommittee under this section shall be final and not subject to appeal under sections 4-180 and 4-183 of the general statutes.

Sec. 38. (NEW) (*Effective June 1, 2010*) The State Contracting Standards Board shall issue a decision in writing or take other appropriate action on each appeal submitted pursuant to section 37 of this act. A copy of any decision shall be provided to all parties, the department head of the state contracting agency and the Chief Procurement Officer.

Sec. 39. (NEW) (*Effective June 1, 2010*) If, prior to award, it is determined by the State Contracting Standards Board that a solicitation or proposed award of a contract by a state contracting

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agency is in violation of law, then the solicitation or proposed award shall be:

- (1) Cancelled; or
- (2) Revised to comply with the law.

Sec. 40. (NEW) (*Effective June 1, 2010*) If, after an award, it is determined by the State Contracting Standards Board that a solicitation or award of a contract by a state contracting agency is in violation of law:

- (1) If the person awarded the contract did not act in bad faith:

- (A) The contract may be ratified and affirmed by the state contracting agency, provided it is determined by the board that doing so is in the best interests of the state; or

- (B) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.

- (2) If the person awarded the contract acted in bad faith:

- (A) The contract may be declared null and void; or

- (B) The contract may be ratified and affirmed if such action is in the best interests of the state, as determined by the State Contracting Standards Board, in writing, without prejudice to the state's right to such damages as may be appropriate.

Sec. 41. (NEW) (*Effective January 1, 2009*) Not later than June 1, 2010, the State Contracting Standards Board shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, that specify the process that shall be used to procure architectural and

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engineering services in design-bid-build procurements, construction in design-bid-build procurements and construction management at-risk. Such regulations shall include a description of the project delivery methods.

Sec. 42. (NEW) (*Effective January 1, 2009*) Not later than June 1, 2010, the State Contracting Standards Board shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, that require bid security for all competitive sealed bidding for construction contracts in a design-bid-build procurement when the price is estimated by the state contracting agency to exceed five hundred thousand dollars.

Sec. 43. (NEW) (*Effective January 1, 2009*) Not later than June 1, 2010, the State Insurance and Risk Management Board established pursuant to section 4a-19 of the general statutes shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, in consultation with the State Contracting Standards Board, that specify when a state contracting agency shall require proposers to provide appropriate errors and omissions insurance to cover architectural and engineering services under the project delivery methods established in regulations adopted pursuant to section 41 of this act.

Sec. 44. (*Effective January 1, 2009*) Not later than June 1, 2010, the State Contracting Standards Board shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to establish the process to be used to procure consultant services, and in consultation with the Attorney General, the type of contract to be used to procure such consultant services.

Sec. 45. (NEW) (*Effective January 1, 2009*) With respect to infrastructure facilities, not later than June 1, 2010, the State Contracting Standards Board, in consultation with the state contracting agencies and the Attorney General, shall adopt regulations, in

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accordance with the provisions of chapter 54 of the general statutes, requiring the inclusion in state contracts with any state contracting agency of clauses providing for adjustments in prices, time of performance, remedies, termination or other contract provisions necessary to protect the interests of the state.

Sec. 46. (NEW) (*Effective January 1, 2009*) Not later than June 1, 2010, the State Contracting Standards Board shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, concerning the procedure and circumstances under which a state agency may allow contract modification, change order, or contract price adjustment under a construction contract with the state in excess of fifty thousand dollars. Such regulations shall require that every contract modification, change order or contract price adjustment under a construction contract with the state in excess of fifty thousand dollars shall be subject to prior written certification by the fiscal officer of the state contracting agency or other agency responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. Such regulations shall further provide that in the event the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the Agency Procurement Officer shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration provided, with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the

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contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this section.

Sec. 47. (NEW) (*Effective January 1, 2009*) On or after January 1, 2011, the State Contracting Standards Board shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to apply the contracting procedures, as described in sections 18 to 45, inclusive, of this act, to each constituent unit of the state system of higher education. Such regulations shall take into consideration circumstances and factors that are unique to such constituent units.

Sec. 48. (*Effective July 1, 2008*) The sum of seven hundred thousand dollars is appropriated to the State Contracting Standards Board, from the General Fund, for the fiscal year ending June 30, 2009, for the purpose of carrying out the duties of the State Contracting Standards Board, as established in sections 3 to 47, inclusive, of this act.

Approved October 6, 2007