

February 21, 2006
Public Hearing – Government Administration and Elections Committee

Written Testimony from Roy Merritt, Burlington, CT

Analysis of Committee Bill No. 41
AN ACT CONCERNING CLEAN CONTRACTING STANDARDS

Position: **OPPOSED**

Dear Legislators:

I offer this testimony to express my strong opposition to Committee Bill No. 41 – AN ACT CONCERNING CLEAN CONTRACTING STANDARDS. I have grave concerns that this bill will unfortunately result in the demise of many for-profit businesses, and in particular, the consulting engineering industry in this state. I am a licensed professional engineer in Connecticut and have been employed since 1994 by a consulting engineering firm in Connecticut that does most of its business with the Connecticut Department of Transportation.

I was hoping that the purpose of this legislation would be to develop a consistent, uniform contracting process across all state agencies. I was also hoping that the legislation would also ensure an open, honest selection process that would ensure Connecticut residents that our contracting processes are fair and beyond any hint of corruption. Unfortunately, this bill has turned into a state-employees protection act which unfairly penalizes private firms seeking to do business with the state, “rigs” the state contracting process toward state employees, and ultimately grows the size of government and the state budget to the detriment of Connecticut taxpayers.

Based on my personal experience, DOT’s hire consulting engineers for many reasons such as 1) accommodating peak demand, 2) accelerating project delivery and meeting deadlines, 3) gaining access to industry expertise, 4) spur innovation, 5) manage risk, and 6) cut or contain project costs. Note that of the six reasons listed above, five reasons DOT’s hire consulting engineers are not cost driven. Furthermore, the use of consulting engineers has been proven by numerous studies to be cost effective. However, Section 14 of Committee Bill No. 41 limits the hiring of any private firm by the state to strictly cost. And then the bill goes the next step and “rigs” the required comparative cost analysis. The net affect of this legislation will be a less effective rendering of state services with impacts on public health and safety, as some current options at the disposal of the various state agencies will no longer be allowed. State agencies will effectively operate with “one arm tied behind their backs”.

In “rigging” the comparative cost analysis, the bill requires that “in determining the cost of privatizing services, the state agency shall calculate labor costs for each employee position at a rate not less than the middle range salary of a *state employee* job class

substantially similar to such employee position, or the average salary of employees who would be displaced by the proposed privatization, whichever is higher and shall assume *comparable benefit costs*". Nowhere are the actual private firm's wages or true benefit costs allowed to enter the cost analysis. How does this ensure taxpayers that services are being provided in a cost effective manner? The "comparative cost analysis" is troubling and biased, effectively prohibiting private for-profit firms from doing business with the state.

In addition, this "comparative costs analysis" for privatization contracts defined in Section 14 is further biased to favor state employees as follows:

- Requires that unemployment compensation costs of state employees terminated be considered, while not considering it for private sector employees. Why not also consider unemployment costs for private sector employees who lose their jobs due to a loss of private contracts being done by state employees? This is two-way street.
- Requires a highly speculative and theoretical assessment of the effects on income tax and sales tax . Why is sales tax revenue being included in the cost analysis? Do state employees spend more than comparable private sector employees, thereby providing more sales tax revenue to the state? This requirement to evaluate tax revenues appears to be speculative at best, and a complete waste of time at worst.
- Fails to define the accounting methods to be used to determine the indirect costs of state employees. Many methods for attributing indirect costs of government workers have been used in various studies in the past, with wildly varying results. The selected method would likely be the primary driver for the outcome of the "comparative cost analysis".
- The list of items that are to be included in an examination of indirect costs to the state is partial, and fails to list all critical items. Would the cost of state offices be included? Would past bonding costs from their construction, heat, electricity, etc be included? Would costs for janitorial services, security, computers, phones, and IT be included? Also, would the pay of executive-level staff such as Commissioners and Deputy Commissioners, as well as administrative / secretarial and other support staff be included in overhead costs as they are in the private sector? Any comparison of indirect overhead costs has to be truly "apples-to-apples".
- Unfairly requires that costs for a privatization contract include the costs which the state may incur by terminating a contract with the private firm. This is an extremely unfair burden to place on private firms, as almost all state contracts are completed successfully without being terminated or incurring penalties.

Another troubling aspect of this bill is Section 14's provision which allows for state employees and their collective bargaining organization to submit a bid on any privatization contract prior to it being advertised. The state agency would also be required to "provide adequate information and resources to their employees for the purpose of encouraging and assisting such state or quasi-public employees to organize and submit a bid...". Is this what our state agencies should be doing?. What subsequent accountability would go with any bid submitted by state employees? Bids typically form the basis of a legal contract. Would state employees submitting a bid be legally bound to their bid as private sector firms are legally bound to their contracts? What employment risks would they face if they failed to do so? Would they have to work unpaid if they went over-budget, or could they spend beyond their bid figure. It would seem that enforcement of a state employee bid could directly conflict with the state employee's own collective bargaining agreement. Any bid or contract must have accountability for the benefit of taxpayers. Ultimately this provision risks causing increased costs to the taxpayers, significant delays in awarding contracts, and lessened accountability.

There are several more provisions in the bill which are troubling to firms in the private sector. This bill has troubling prevailing wage provisions which restrict a private firm working with the state from determining appropriate wages for their own employees. The bill also unfairly forces state contractors to hire displaced state workers when they have job openings. The bill also adds significant reporting requirements to the contracting and bidding process. In a time where the State has experienced declining interest from Contractors and consultants in working with the State, adding more onerous reporting requirements, and imposing greater restrictions on those in private industry will only serve to further diminish the State's ability to find qualified contractors and consultants.

The fallout from Committee Bill No. 41, if passed into law, would be dramatic and would negatively impact the residents of the state as follows:

- Dramatic reduction or elimination of the consulting engineering industry in Connecticut with loss of hundreds of highly educated, professional jobs.
- Loss of thousands of private sector jobs covering many industries.
- Potential loss of millions of dollars in Federal Transportation Funds due to delays resulting from the potential need to hire up to 400 new state engineers at the Department of Transportation.
- Lengthy delays in progressing large projects at DOT due to time-consuming "comparative cost analysis" and challenges from the state employees union.
- Permanent expansion of our the state government workforce, to the detriment of Connecticut taxpayers

With Connecticut lagging most every other state in the country in job growth over the past decade, we need legislation which supports private business, not bills such as Committee Bill No. 41 which place additional restrictions on private firms.

I emphatically urge the Legislators to remove the anti-privatization language, especially Section 14, from Committee Bill No. 41. Once that is done, Connecticut will have a fair and effective contract reform bill of which all residents can be proud.

Thank you,

A handwritten signature in cursive script, appearing to read "Roy A. Merritt, Jr.", written in dark ink.

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