

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Connecticut

TESTIMONY BEFORE THE GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE REGARDING RAISED SENATE BILL 1428

March 16, 2007

Good morning, my name is Paul Brady. I am the Executive Director of the American Council of Engineering Companies of Connecticut, representing some 100 consulting engineering firms in the state., I would like to testify in opposition to Senate Bill 1428, *AN ACT CONCERNING FRAUD AGAINST THE STATE*.

The design and construction of public works is a highly complex process. The process is not perfect and it is prone to valid claims. For example a valid claim can be as simple as a claim for unforeseen conditions like finding asbestos behind a wall during a renovation project, or changes in the scope of work. Contracts are written with provisions to resolve claims through negotiation, mediation, arbitration, as a last resort, the court system. While a false claims act may work well for fighting fraud in Medicare cases, its applicability to the construction industry will upset the balance of rights and responsibilities in the construction contract. The result, I fear, will be more delays in granting contracts and resolving disputes, more lawsuits, more lawyers and higher costs to the state. We recommend that the design and construction industry should be exempt from this bill. Many of the states with false claims acts limit the law to certain areas like health care fraud.

While we don't oppose whistleblower laws, we think it is a mistake to provide financial incentives to bring these actions. In reality, the federal and state false claims laws have given rise to law firms that specialize in this type of lawsuit in the hope that they will reap financial rewards. They will advertise, file a complaint and if the government takes the case, they get a huge reward. If not, they drop the case. It's contingency lawyering at its worst. Only three states have qui tam provisions.

The bill has no provision for the defendant to collect costs if the court finds the claim to be frivolous. Because the false claims act is so onerous, the defendant should be able to recover damages from the state if the claim not proven.

This false claim bill is very different from the common law fraud. There is no requirement that a person must have an intent to deceive or defraud; one must only "knowingly" submit a false claim. These vague definitions have led to many appeals of federal and state false claim laws. Connecticut law should be consistent with the Connecticut common law fraud definition so that there is less confusion and more consistency.

Although a False Claims Act can be used to punish contractors who are defrauding the government, it can also be used to harass honest contractors. Disgruntled former employers, bidders who didn't win the project, or subcontractors seeking leverage can all file frivolous false claims. Many valid claims are not black and white. What is to prevent the state from using the threat of a false claims action as a negotiating tool to get a contractor to back down from an otherwise valid claim? By increasing the risk of doing business with the state, you will only drive away good design professionals and contractors and increase the cost to taxpayers in the long term.

Thank you for your time and consideration.