



STATE OF CONNECTICUT

OFFICE OF POLICY AND MANAGEMENT

**Testimony of
Office of Policy and Management
Judiciary Committee
March 14, 2008
Concerning
SB 686, AAC the APPLICABILITY OF CERTAIN
STATE CONTRACTING REQUIREMENTS**

The Office of Policy and Management (OPM) appreciates the opportunity to provide comments with respect to SB 686. OPM expresses its qualified support of this legislation. We agree with the Commission on Human Rights and Opportunities (CHRO), however, that the types of contracts that would be exempted from the provisions of CONN. GEN. STAT. §§ 4a-60 and 4a-60a pursuant to this bill should be broadened.

Currently this bill would exempt those contracts between the between the state and any of its political subdivisions as well as the state or any of its political subdivisions and the federal government. As far as contracts with the United States are concerned, this exemption is crucial in order to avoid what otherwise has been, and, but for this proposed legislation, is sure to remain, an irreconcilable problem: namely, that, due to issues relating to sovereignty, no equal, much less superior, governmental entity is likely to bow to another's will. This problem has been exacerbated by the changes that were effected to CONN. GEN. STAT. §§ 4a-60 and 4a-60a by P.A. 07-142, which literally would require Congress to pass a resolution indicating its support of Connecticut state law before a state agency could lawfully enter into any contract with a federal agency. We would, therefore, respectfully urge this committee to expand the exemption contained within the current bill to cover all contracts with all governmental entities and their various departments, agencies, and instrumentalities, foreign and domestic.

Like the CHRO, we also question whether certain other contracts were intended to or should be covered by CONN. GEN. STAT. §§ 4a-60 and 4a-60a, as amended by P.A. 07-142. In particular, we question whether there is any efficacy in requiring any party to a real estate transaction which is seeking to donate property to the State to abide by these statutory requirements.

OPM also questions the value of requiring the subject provisions to be made a part of each and every contract to which the State is party, no matter how small. Like the CHRO, OPM believes a reasonable threshold for such purposes would be contracts that exceed \$50,000 in any calendar or fiscal year. As a practical matter, it is virtually impossible to require the subject provisions to be included in every contract (including, for example, buying pizza for an office function or a book over the internet), unless the State is to be precluded the flexibility of entering into contracts for small items with other than contractors pre-selected and under a master contract. In this vein, we hasten to note that the requirement that the subject provisions apply to every contract has resulted in certain vendors, who refuse to sign state contracts for small items, selling their goods or services through third parties who are,

As a final point, OPM agrees with the CHRO that the amendments effected by Sections 9 & 10 of Public Act 07-142, which amended sections 4a-60 and 4a-60a of the statutes, "have transformed what was an occasional administrative requirement into an administrative nightmare." This is so primarily because of the requirement imposed by P.A. 07-142 that every contractor's governing body must pass a resolution indicating its support of the contractor's contractual undertakings. Like the CHRO, OPM's experience has been that the vast majority of contractors are perfectly willing to insert the State's non-discrimination language in their contracts. This new requirement is problematic, however, because (1) not all contractors have governing bodies, as such, (2) the governing bodies of those that do, do not meet frequently enough to be able to respond to the need for the subject resolution on a timely basis, and (3) many contractors do not understand and thus are concerned what could be the intended or actual effect of having their governing body pass a resolution which states that it supports its agreement not to discriminate which, by signing a state contract, the contractor already would legally obligate itself to do. The problem here is that statutory provisions are not generally construed to be redundant or unnecessary, which has thus caused contractors to ask what it is they really are being asked to do, or how a court might be inclined to interpret the actions their governing bodies are being asked to undertake.

In view of the above, we respectfully request that, in lieu of requiring contractor's governing bodies to pass resolutions, the committee consider having contractors' chief executives signing certifications, which indicate that they support their nondiscrimination agreements and warranties. OPM is ready to work with CHRO to prepare such language and would welcome the opportunity to present it to the committee.