



House of Representatives

General Assembly

File No. 159

January Session, 2009

Substitute House Bill No. 6294

House of Representatives, March 24, 2009

The Committee on Government Administration and Elections reported through REP. SPALLONE of the 36th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CONTRACTING RELATED MATTERS AND THE STATE CODES OF ETHICS.

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

1 Section 1. Subsection (d) of section 1-88 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2009*):

4 (d) Any person who knowingly acts in such person's financial
5 interest in violation of section 1-84, 1-85, 1-86, [or] 1-86d, 1-86e or 1-
6 101nn, as amended by this act, or any person who knowingly receives
7 a financial advantage resulting from a violation of any of said sections
8 shall be liable for damages in the amount of such advantage. If the
9 board determines that any person may be so liable, it shall
10 immediately inform the Attorney General of that possibility.

11 Sec. 2. Subsection (b) of section 4e-34 of the general statutes is
12 repealed and the following is substituted in lieu thereof (*Effective June*

13 1, 2010):

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

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

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

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

29 (4) Accumulation of two or more suspensions pursuant to section
30 4e-35 within a twenty-four-month period;

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

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

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

40 (8) A wilful or egregious violation of the ethical standards set forth
41 in sections 1-84, [and] 1-86e [,] and 101nn, as amended by this act, as

42 determined by the Citizen's Ethics Advisory Board; or

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

46 (A) Disqualification by another state for cause;

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

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

57 Sec. 3. Subsection (c) of section 1-101nn of the general statutes is
58 repealed and the following is substituted in lieu thereof (*Effective*
59 *October 1, 2009*):

60 (c) Any person who [violates] is found in violation of any provision
61 of this section by the Office of State Ethics pursuant to section 1-82,
62 may be deemed a nonresponsible bidder by a state agency, board,
63 commission or institution or quasi-public agency.

64 Sec. 4. Subdivision (3) of subsection (a) of section 1-81 of the general
65 statutes is repealed and the following is substituted in lieu thereof
66 (*Effective October 1, 2009*):

67 (3) Upon the concurring vote of a majority of the board present and
68 voting, issue advisory opinions with regard to the requirements of this
69 part or part IV of this chapter upon the request of any person subject to
70 the provisions of this part or part IV of this chapter and publish such
71 advisory opinions in the Connecticut Law Journal. Advisory opinions

72 rendered by the board, until amended or revoked, shall be binding on
 73 the board and shall be deemed to be final decisions of the board for
 74 purposes of appeal to the superior court, in accordance with the
 75 provisions of section 4-175 or 4-183. Any advisory opinion concerning
 76 the person who requested the opinion and who acted in reliance
 77 thereon, in good faith, shall be binding upon the board, and it shall be
 78 an absolute defense in any criminal action brought under the
 79 provisions of this part or part IV of this chapter that the accused acted
 80 in reliance upon such advisory opinion.

81 Sec. 5. Subsection (e) of section 1-92 of the general statutes is
 82 repealed and the following is substituted in lieu thereof (*Effective*
 83 *October 1, 2009*):

84 (e) Upon the concurring vote of a majority of its members present
 85 and voting, the board shall issue advisory opinions with regard to the
 86 requirements of this part or part III of this chapter upon the request of
 87 any person, subject to the provisions of this part or part III of this
 88 chapter and publish such advisory opinions in the Connecticut Law
 89 Journal. Advisory opinions rendered by the board, until amended or
 90 revoked, shall be binding on the board and shall be deemed to be final
 91 decisions of the board for purposes of appeal to the superior court, in
 92 accordance with the provisions of section 4-175 or 4-183. Any advisory
 93 opinion concerning any person subject to the provisions of this part
 94 who requested the opinion and who acted in reliance thereon, in good
 95 faith, shall be binding upon the board, and it shall be an absolute
 96 defense in any criminal action brought under the provisions of this
 97 part or part III of this chapter that the accused acted in reliance upon
 98 such advisory opinion.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	1-88(d)
Sec. 2	<i>June 1, 2010</i>	4e-34(b)
Sec. 3	<i>October 1, 2009</i>	1-101nn(c)
Sec. 4	<i>October 1, 2009</i>	1-81(a)(3)

Sec. 5	October 1, 2009	1-92(e)
--------	-----------------	---------

Statement of Legislative Commissioners:

The effective date of section 2, which amends section 4e-34 of the general statutes, was changed for consistency with the effective date of the public act enacting section 4e-34.

GAE *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Office of State Ethics	GF - Revenue Gain	Potential	Potential
Office of State Ethics	GF - Cost	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill could result in a revenue gain to the state associated with recouping damages from contractors who are determined to have violated the law, CGS 1-101nn, related to advancing their own financial interests. The Office of State Ethics (OSE) would have the authority to recoup such damages in the amount of the financial advantage gained during the contract. This amount is not anticipated to be significant.

The bill could also result in a minimal cost to OSE associated with hearings to determine whether or not contractors are deemed non-responsible bidders. Judge trial referees oversee the hearings and are compensated \$220 per diem. The number of hearings is expected to be minimal.

The Out Years

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

OLR Bill Analysis**sHB 6294*****AN ACT CONCERNING CONTRACTING RELATED MATTERS AND THE STATE CODES OF ETHICS.*****SUMMARY:**

This bill makes several changes to the State Code of Ethics. Specifically, it:

1. accords contractors, potential contractors, and consultants due process before they are prohibited from bidding on state contracts because of alleged past unethical bidding practices;
2. makes contractors, consultants, and certain other people who violate the law to advance their own financial interests liable for the amount of the financial advantage and requires the Office of State Ethics (OSE) to immediately inform the attorney general of the violation;
3. expands the grounds for contractor disqualification by the State Contracting Standards Board (SCSB); and
4. authorizes OSE's Citizens Advisory Board to interpret all parts of the State Ethics Code.

EFFECTIVE DATE: October 1, 2009, except that the provision expanding the grounds for contractor disqualification is effective on June 1, 2010.

STATE CONTRACTORS AND CONSULTANTS***Due Process***

By law, state agencies, boards, commissions, institutions, and quasi-public agencies may treat as nonresponsible bidders (and thus ineligible to win a state contract) prequalified contractors, large state

construction or procurement contractors, consultants on state contracts, and people seeking those positions if they:

1. solicit from public officials or state employees information that is not available to other bidders in order to gain a competitive advantage;
2. intentionally, willfully, or recklessly defraud the state by charging an agency, board, commission, institution, or quasi-public agency for work not performed or goods not provided;
3. intentionally or willfully violate or circumvent competitive bidding and ethics laws; or
4. provide or direct someone else to provide information or donated goods and services to a state or quasi-public agency, its procurement staff, or a member of a bid selection committee with intent to unduly influence the award of a state contract.

The law also allows state agencies, boards, commissions, institutions, and quasi-public agencies to treat consultants as nonresponsible bidders if they help negotiate a state contract and then they or the businesses with which they are associated serve as contractors, subcontractors, or consultants on the project, or as consultants to anyone seeking the contract.

The bill requires OSE to find a violation before these contractors or consultants may be deemed nonresponsible. This means OSE must investigate complaints of wrongdoing, offer respondents the opportunity for a hearing, and make a decision based on the evidence.

Penalties for Violations

The bill makes contractors and consultants who violate the above-stated law on unethical bidding practices to advance their own financial interests liable for the amount of the financial advantage and requires OSE to immediately inform the attorney general of the violation.

It subjects state consultants and independent contractors to the same penalty if they benefit financially from (1) abusing their contractual authority, (2) accepting another state contract that impairs their judgment on the first contract, or (3) accepting anything of value on the understanding that a person acting on the state’s behalf would be influenced. Lastly, it subjects to the same penalty anyone who gives anything of value to a state consultant or independent contractor with the understanding that the consultant or contractor, on behalf of the state, would be influenced.

Contractor Disqualification

The bill gives the SCSB the authority to disqualify a contractor who is deemed a nonresponsible bidder. By law, SCSB can disqualify a contractor from bidding on, applying for, or participating as a contractor or subcontractor on a state contract for up to five years. Currently, the board may disqualify a contractor for any cause or conduct it determines a serious and compelling showing of the contractor’s irresponsibility.

INTERPRETING THE STATE ETHICS CODE

The bill authorizes the Citizens Advisory Board to interpret all parts of the State Ethics Code by giving it explicit authority to issue advisory opinions on parts III and IV, miscellaneous lobbyist provisions and ethical considerations concerning bidding and state contracts, respectively. By law, OSE’s board and staff generally have the authority to (1) respond to inquiries and provide advice regarding the code and (2) enforce it.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 15 Nay 0 (03/06/2009)