



Senate

General Assembly

File No. 406

January Session, 2009

Substitute Senate Bill No. 954

Senate, April 2, 2009

The Committee on Human Services reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PERSONAL SERVICE AGREEMENTS.

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

1 Section 1. Section 4-212 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 As used in sections 4-212 to 4-219, inclusive:

4 (1) "Competitive negotiation" means a procedure for contracting for
5 services in which (A) proposals are solicited from qualified persons,
6 firms or corporations by a request for proposals, and (B) changes may
7 be negotiated in proposals and prices after being submitted.

8 (2) "Personal service contractor" means any person, firm or
9 corporation not employed by the state, who is hired by a state agency
10 for a fee to provide services to the agency. The term "personal service
11 contractor" shall not include (A) a person, firm or corporation
12 providing "contractual services", as defined in section 4a-50, to the
13 state, (B) a "consultant", as defined in section 4b-55, (C) a "consultant",

14 as defined in section 13b-20b, [providing services to the Department of
15 Transportation,] (D) an agency of the federal government, of the state
16 or of a political subdivision of the state, or (E) a person, firm or
17 corporation providing consultant services for information and
18 telecommunications systems authorized under subdivision (5) of
19 subsection (c) of section 4d-2.

20 (3) "Personal service agreement" means a written agreement
21 defining the services or end product to be delivered by a personal
22 service contractor to a state agency, excluding any agreement with a
23 personal service contractor that the state accounting manual does not
24 require to be submitted to the Comptroller.

25 (4) "Secretary" means the Secretary of the Office of Policy and
26 Management.

27 (5) "State agency" means a department, board, council, commission,
28 institution or other executive branch agency. [of the Executive
29 Department of the state government.]

30 Sec. 2. Section 4-214 of the general statutes is repealed and the
31 following is substituted in lieu thereof (*Effective from passage*):

32 [(a)] Each personal service agreement executed on or after July 1,
33 1994, and having a cost of not more than twenty thousand dollars and
34 a term of not more than one year shall be based, when possible, on
35 competitive negotiation or competitive quotations.

36 [(b) Not later than thirty days after the end of each six-month
37 period, beginning with the six-month period ending on December 31,
38 1994, each state agency shall submit a report to the secretary indicating
39 (1) for each personal service agreement described in subsection (a) of
40 this section that is executed during the six-month period, the name of
41 the personal service contractor, a description of the services to be
42 provided, the term and cost of the agreement and the method of
43 selecting the contractor and (2) for each personal service agreement
44 described in said subsection (a) that is in effect during the six-month

45 period, the amount of all payments made during the six-month period
46 to the contractor, by fund, and the amount of any federal or private
47 funds allocated for such payments.]

48 Sec. 3. Section 4-215 of the general statutes is repealed and the
49 following is substituted in lieu thereof (*Effective from passage*):

50 [(a)] Each personal service agreement executed on or after July 1,
51 1994, and having a cost of more than twenty thousand dollars but not
52 more than fifty thousand dollars and a term of not more than one year
53 shall be based on competitive negotiation or competitive quotations,
54 unless the state agency purchasing the personal services determines
55 that a sole source purchase is required and applies to the secretary for
56 a waiver from such requirement and the secretary grants the waiver.
57 Not later than March 1, 1994, the secretary shall adopt guidelines for
58 determining the types of services that may qualify for such waivers.
59 The qualifying services shall include, but not be limited to, (1) services
60 for which the cost to the state of a competitive selection procedure
61 would outweigh the benefits of such procedure, as documented by the
62 state agency, (2) proprietary services, (3) services to be provided by a
63 contractor mandated by the general statutes or a public or special act,
64 and (4) emergency services, including services needed for the
65 protection of life or health.

66 [(b)] Each state agency shall submit the following information to the
67 secretary concerning each proposed personal service agreement
68 described in subsection (a) of this section, at the same time that it
69 submits the agreement to the Commissioner of Administrative
70 Services or the Attorney General: The name of the personal service
71 contractor, a description of the services to be provided, the term and
72 cost of the agreement, the method of selecting the contractor, the state
73 fund from which the contractor will be paid and whether any federal
74 or private funds will be allocated for such payments.]

75 Sec. 4. Subsection (b) of section 4-216 of the general statutes is
76 repealed and the following is substituted in lieu thereof (*Effective from*
77 *passage*):

78 (b) Each personal service agreement having a cost of more than fifty
79 thousand dollars or a term of more than one year shall be based on
80 competitive negotiation or competitive quotations, unless the state
81 agency purchasing the personal services applies to the secretary for a
82 waiver from such requirement and the secretary grants the waiver in
83 accordance with the guidelines adopted under [subsection (a) of]
84 section 4-215, as amended by this act.

85 Sec. 5. Section 4-218 of the general statutes is repealed and the
86 following is substituted in lieu thereof (*Effective October 1, 2009*):

87 (a) Not later than [thirty days after the end of each six-month
88 period, beginning with the six-month period ending on December 31,
89 1994, each contracting agency shall submit a report to] October 1, 2009,
90 and annually thereafter, the secretary shall submit a report to the
91 General Assembly indicating (1) for each personal service agreement,
92 pursuant to sections 4-214 to 4-216, inclusive, as amended by this act,
93 and executed during [such six-month period with a person, firm or
94 corporation providing "contractual services", as defined in section 4a-
95 50, to the state, a "consultant", as defined in section 4b-55, or an agency
96 of the federal government, of the state or of a political subdivision of
97 the state] the preceding fiscal year, (A) the name of the [person, firm or
98 corporation] personal service contractor, (B) a description of the
99 services [to be] provided, (C) the term and cost of the agreement, and
100 (D) the method of selecting the [person, firm or corporation] personal
101 service contractor; and (2) for each such agreement either executed or
102 otherwise in effect during the [six-month period] preceding fiscal year,
103 (A) the amount of all payments made during the [six-month period to
104 the person, firm or corporation, by fund] preceding fiscal year to the
105 personal service contractor, and (B) the amount of any federal or
106 private funds allocated for such payments. [No state agency utilizing
107 contractual services hired by using a purchase order approved and
108 committed by the State Comptroller shall be required to submit a
109 report to the secretary.]

110 (b) Not later than [thirty days after the end of each six-month

111 period, beginning with the six-month period ending on December 31,
112 1995, the Department of Transportation shall submit a report to]
113 October 1, 2009, and annually thereafter, the secretary shall submit a
114 report to the General Assembly indicating (1) for each agreement
115 executed during [such six-month period with] the preceding fiscal year
116 with a person, firm or corporation providing contractual services, as
117 defined in section 4a-50, a consultant, as defined in section 4b-55, a
118 "consultant", as defined in section 13b-20b, or an agency of the federal
119 government, of the state or of a political subdivision of the state, (A)
120 the name of the person, firm or corporation, (B) a description of the
121 services [to be] provided, (C) the term and cost of the agreement and
122 (D) the method of selecting the person, firm or corporation; and (2) for
123 each such agreement either executed or otherwise in effect during the
124 [six-month period] preceding fiscal year, (A) the amount of all
125 payments made during the [six-month period] preceding fiscal year to
126 the person, firm or corporation, [by fund,] and (B) the amount of any
127 federal or private funds allocated for such payments.

128 [(c) Not later than September 1, 1995, and annually thereafter, the
129 secretary shall submit a report to the General Assembly summarizing
130 information received pursuant to subsection (b) of section 4-214,
131 subsection (b) of section 4-215, subsection (a) of section 4-216, and
132 subsections (a) and (b) of section 4-218 for the preceding fiscal year.]

133 Sec. 6. Section 4-70b of the general statutes is repealed and the
134 following is substituted in lieu thereof (*Effective from passage*):

135 (a) For purposes of this section:

136 (1) "Purchase of service contract" (A) means a contract between a
137 state agency and a private provider organization or municipality for
138 the purpose of obtaining direct health and human services for agency
139 clients and generally not for administrative or clerical services,
140 material goods, training or consulting services, and (B) does not
141 include a contract with an individual;

142 (2) "Secretary" means the Secretary of the Office of Policy and

143 Management;

144 (3) "State agency" means any department, board, council,
145 commission, institution or other executive branch agency of state
146 government;

147 (4) "Municipality" means a town or any other political subdivision
148 of the state, including any local or regional board of education or
149 health district that is created or designated by the town to act on behalf
150 of the town; and

151 (5) "Private provider organization" means a nonstate entity that is
152 either a nonprofit or proprietary corporation or partnership which
153 receives funds from the state, and may receive federal or other funds,
154 to provide direct health or human services to agency clients.

155 [(a)] (b) The Secretary of the Office of Policy and Management shall
156 establish an Office of Finance under the direction of an executive
157 financial officer. The secretary shall assist the Governor in his duties
158 respecting the formulation of the budget and the correlating and
159 revising of estimates and requests for appropriations of all budgeted
160 agencies and shall also assist the Governor in his duties respecting the
161 investigation, supervision and coordination of the expenditures and
162 other fiscal operations of such budgeted agencies.

163 [(b)] (c) Said secretary shall direct internal management consultant
164 services to state agencies in such areas as administrative management,
165 facility planning and review, management systems and program
166 evaluation and such other special studies and analyses as he deems
167 necessary.

168 [(c)] (d) The secretary shall establish uniform policies and
169 procedures for obtaining, managing and evaluating the quality and
170 cost effectiveness of direct health and human services purchased from
171 [private providers] a private provider organization or municipality.
172 The secretary shall require all state agencies which purchase direct
173 health and human services to comply with such policies and

174 procedures. [The secretary shall report to the General Assembly on or
175 before January 1, 2008, and biennially thereafter, on the system for the
176 purchase of such services in the state. The report shall include an
177 analysis of (1) the relationship between the number of providers of a
178 particular service in a region and the cost of the service, and (2) the
179 impact of the state's policies and procedures for the purchase of health
180 and human services on the cost of purchasing such services.]

181 [(d)] (e) Purchase of service contracts shall be subject to the
182 competitive procurement provisions of sections 4-212 to 4-219,
183 inclusive, as amended by this act. The secretary may waive the
184 competitive procurement requirements set forth in chapter 55a with
185 respect to any purchase of service contract between a state agency and
186 a private provider of human services. [For purposes of this subsection,
187 "purchase of service contract" means a contract between a state agency
188 and a private provider organization or municipality for the purchase
189 of ongoing direct health and human services for agency clients.]

190 [(e)] (f) In order to ensure continuity of care in the delivery of health
191 and human services, on or before January 1, 2008, the secretary shall,
192 in consultation with the Connecticut Nonprofit Human Services
193 Cabinet and representatives of state agencies which provide health and
194 human services, develop a plan for the competitive procurement of
195 such services. On or before February 1, 2008, the secretary shall submit
196 such plan to the joint standing committees of the General Assembly
197 having cognizance of matters relating to human services and public
198 health. In developing the plan the secretary shall give consideration to
199 the following factors: (1) The current market rate for the services
200 provided, (2) whether services provided by a new private provider
201 assure the health, safety and well-being of service recipients, (3)
202 whether services provided by a new private provider assure that
203 community-based services are conveniently located and readily
204 accessible for service recipients, (4) whether selection of a new private
205 provider can avoid unnecessary challenges of local zoning law, and (5)
206 whether selection of a new private provider can avoid creating a
207 conflict with the current service provider's existing bonding contracts

208 or placing the current service provider at risk for losing bonding
 209 investment. The secretary may implement such plan on or after July 1,
 210 2008.

211 (g) No state agency may hire a private provider organization or
 212 municipality to provide direct health or human services to agency
 213 clients without executing a purchase of service contract with such
 214 private provider organization or municipality.

215 Sec. 7. Subsection (e) of section 17a-218 of the general statutes is
 216 repealed and the following is substituted in lieu thereof (*Effective from*
 217 *passage*):

218 (e) The commissioner may, within available appropriations and in
 219 accordance with individualized plans of care, provide a full range of
 220 services to support persons with mental retardation living with their
 221 families, caretakers, independently or in community-based residential
 222 facilities licensed pursuant to section 17a-227. Such services may
 223 include, but are not limited to, education and training programs, social
 224 services, counseling services, medical services, physical or
 225 occupational therapy, parent training, recreation and transportation.
 226 Such services may be provided by the department or be purchased
 227 from persons or private agencies through contracts pursuant to
 228 subsection [(c)] (d) of section 4-70b, as amended by this act, or
 229 purchased directly by the service recipient or his family. The
 230 department may provide a direct subsidy to persons with mental
 231 retardation or their families to be used for such purchases of such
 232 support services. The recipient of such subsidy shall provide a
 233 documented accounting of such subsidy to the department.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	4-212
Sec. 2	<i>from passage</i>	4-214
Sec. 3	<i>from passage</i>	4-215
Sec. 4	<i>from passage</i>	4-216(b)
Sec. 5	<i>October 1, 2009</i>	4-218

Sec. 6	<i>from passage</i>	4-70b
Sec. 7	<i>from passage</i>	17a-218(e)

Statement of Legislative Commissioners:

Section 7 was removed because it was a duplicate of section 4 for accuracy.

HS *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Policy & Mgmt., Off.	GF - None	None	None
Various State Agencies	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill eliminates agency semi-annual reporting requirements regarding Personal Service Agreements and codifies current practice, which results in no fiscal impact to the Office of Policy and Management and agencies that use PSAs and Purchase of Services contracts.

OLR Bill Analysis**sSB 954*****AN ACT CONCERNING PERSONAL SERVICE AGREEMENTS.*****SUMMARY:**

The law establishes two types of contracts that state agencies execute when procuring services from private providers—personal service agreements (PSA) and purchase of services (POS) contracts. PSAs are written agreements defining the services or end product to be delivered by a contractor to a state agency. A POS is a contract between a state agency and a private provider organization or municipality for the purchase of ongoing direct health and human services for agency clients. This bill:

1. requires the Office of Policy and Management (OPM) to provide two reports to the legislature annually on PSA activities;
2. eliminates (a) the requirement that state agencies submit semi-annual reports on their PSA activities and (b) other reporting requirements;
3. prohibits state agencies from hiring certain health or human service providers without first executing POS contracts; and
4. clarifies the POS definition.

The bill also deletes an obsolete reference to purchase orders and makes technical and conforming changes.

EFFECTIVE DATE: Upon passage, except the provision requiring the annual reports on PSAs is effective October 1, 2009.

PERSONAL SERVICE AGREEMENTS (PSA) AND PURCHASE OF SERVICE (POS) CONTRACTS

OPM Reports

Beginning October 1, 2009, the bill requires the OPM secretary annually to submit a report to the General Assembly on PSAs executed during the preceding fiscal year. This information includes the names of the personal service contractor and amounts paid for each contract. Under current law, OPM must submit a summary report on PSA activity annually. The bill removes this requirement.

Currently, the Department of Transportation (DOT), every six months, must report to OPM on PSAs it executed with (1) persons or entities performing consultant services or (2) federal or state agencies. The bill instead requires OPM to provide a separate annual report to the General Assembly on PSAs for these specific types of contracts executed during the preceding fiscal year, as well as those for contractual services, as defined in state law.

By law, personal service contactors are people or entities that state agencies hire to provide services to the agency. They do not include those performing contractual or consultant services, as defined above.

Elimination of Agency Responsibilities

The bill eliminates the requirement that every six months each state agency submit reports to the OPM secretary on PSAs executed during the previous six months, including contractor names, service descriptions, costs, and payments made.

It also eliminates a requirement that each agency with proposed PSAs costing between \$20,001 and \$50,000 submit information about the PSAS to OPM at the same time it submits the information to the commissioner of administrative services or the attorney general.

Purchase of Service (POS) Contracts

The bill codifies current practice by prohibiting state agencies from hiring a private provider organization or municipality to provide direct health or human services to the agency's clients without executing a POS contract with them.

The bill explicitly subjects POS contracts to the same competitive procurement requirements as the law requires for PSAs. The law already authorizes the OPM secretary to waive these requirements for POS contracts.

The bill specifies that POS contracts are generally not for administrative or clerical services, material goods, training, or consulting services and do not include a contract with an individual.

The bill also defines terms currently in the POS law. For example, it defines a “private provider organization” as a nonstate entity that is either a for- or nonprofit corporation or partnership that receives funds from the state, and may receive federal or other funds, to provide direct health and human services to agency clients.

BACKGROUND

Contractual and Consulting Services

The law governing general state purchases defines “contractual services” as any and all (1) laundry and cleaning, pest control, janitorial, or security services; (2) the rental or repair or maintenance of equipment, machinery, and other state-owned personal property; (3) advertising, photostating, and mimeographing; and (4) other service arrangements where the services are provided by someone other than a state employee.

“Consultants” are defined in the state law governing the construction and alteration of state buildings as (1) architects, professional engineer, landscape architects, land surveyors, accountants, interior designers, environmental professional, or construction administrator registered or licensed to practice their profession or (2) planners or financial specialists.

Core-CT and PSA and POS Reports

CORE-CT, the state’s central financial and administrative computer system, encompasses central and agency accounting functions for executive branch agencies. Since 2005, agencies have been required to enter their contracting data into CORE-CT, and OPM has the ability to

generate reports about agencies' PSA and POS activities. OPM requires agencies to enter all contract data with CORE-CT and can access this data to get the reports that the law currently requires the agencies to provide. OPM's annual report on PSAs includes POS contract activity.

No Legal Distinction Between PSA and POS

In 2005, the attorney general issued a formal opinion (No. 031) that there is no legal distinction between a PSA and POS contract, and that both are subject to competitive procurements.

COMMITTEE ACTION

Human Services Committee

Joint Favorable

Yea 19 Nay 0 (03/17/2009)