

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Connecticut

TESTIMONY BEFORE THE GOVERNMENT ADMINISTRATION & ELECTIONS COMMITTEE
REGARDING RAISED HOUSE BILL 6299
February 2, 2009

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 Raised House Bill 6299, *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, and 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 and higher costs to the state.

While we support 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 an industry that specializes in this type of lawsuit. Very few states have qui tam provisions.

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 employees, bidders who didn't win the project, or subcontractors seeking leverage can all file frivolous false claims. Many valid construction 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 a 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.