



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

OFFICE OF STATE ETHICS' STATEMENT IN SUPPORT OF RAISED BILL No. 5403 AN ACT CONCERNING REVISIONS TO THE CODE OF ETHICS

The primary purpose of this bill is to provide critical revisions to the Codes of Ethics concerning the governance of the Citizen's Ethics Advisory Board ("CEAB"), matters involving contracting with the state, provisions related to the lobbyist registration and reporting, expansion of certain conflict of interest provisions for public officials and state employees, technical amendments to the Codes of Ethics and other miscellaneous updates. The Office of State Ethics ("OSE") supports passage of Raised Bill No. 5403, and respectfully requests that the following comments be considered.

Although considerable numbers of proposed revisions to the Codes of Ethics contained in this bill can be classified as clean-up or technical amendments to the 2005 legislative overhaul of the Codes of Ethics, a number of provisions are substantive attempts to strengthen and clarify the statutory language that comprises the Codes. First and foremost, the bill addresses several issues concerning the governance of the CEAB. The CEAB is the governing body of the OSE, which is statutorily tasked with the interpretation of the Codes of Ethics through the issuance of Advisory Opinions and adjudication of ethics enforcement matters brought under the ethics laws. Members of the CEAB hail from all areas of the state and all walks of life. The CEAB cannot act unless it has a quorum of six members. Pursuant to recently amended section 1-82 and section 1-83 of the general statutes, the CEAB members must be physically present in order to vote on whether a violation of the Codes of Ethics has occurred. Lack of a quorum in CEAB proceedings would have devastating consequences to the operations of the agency. In 2009, the CEAB issued twelve Advisory Opinions, approved 60 audits of registered client and communicator lobbyists, and was responsible for overseeing numerous settlements and Uniform Administrative Procedures Act (UAPA) Hearing matters related to disclosures. In addition, in 2009, the CEAB completed its first adjudicatory board hearing where it acted as a fact finder under the direction of a judge trial referee. There are currently many pending enforcement matters that can potentially lead to additional adjudicatory board hearings.

The proposed revisions to the governance of the CEAB presented in Raised Bill No. 5403 will minimize the possibility of a lack of a quorum and provide for more gradual replacement of its members through a staggering of terms. The amendment would alter the replacement of members so only two, and in one instance three members, would be replaced each year. The OSE also supports the language that would require prospective members of the CEAB to certify that they are aware of special restrictions imposed on board members under the Code of Ethics for Public Officials.

The OSE supports the language in section 3 of Raised Bill No. 5403 that will permit CEAB members to continue serving for the limited purpose of adjudicating at a board hearing. Similar language can be found in general statutes § 51-50e, under which judges may complete pending matters after expiration of their assignment. In addition, the OSE is supportive of the language that excludes from the term "public office" a justice of the peace or a notary public and thus permits such individuals to serve on the CEAB. The language in essence mirrors a similar provision that is found in the elections statutes. This amendment to the term "public office" will expand the pool of qualified candidates who could be eligible to serve on the CEAB, without diluting the conflict of interest requirements for such appointments.

The proposed amendments contained in Raised Bill No. 5403 will also provide greater clarity regarding ethics enforcement standards that are applied to contractors and bidders who execute and/or pursue state contracts. The OSE supports section 15 of Raised Bill No. 5403, which permits the OSE to recover the amount of any financial advantage knowingly received by a state contractor through a violation of § 1-101nn of the general statutes, or through a violation of § 1-86e in the case of consultants or independent contractors. The recovery of any financial advantage received through a violation of § 1-101nn or § 1-86e of the general statutes will provide for an important remedy of restitution in the case of large state contracts.

The OSE also supports section 30 of Raised Bill No. 5403, which changes § 4e-34 (b) (8) under the State Contracting Standards Board law to include § 1-101nn violations. Section 4e-34 (b) (8) of the general statutes provides that a willful or egregious violation of the ethical standards set forth in § 1-84 and § 1-86e of the general statutes, as determined by the Citizen's Ethics Advisory Board, can be cause for disqualification of a contractor. Section 4e-34 (b)(8) does not include violations of § 1-101nn, even though § 1-101nn of the Code of Ethics specifically deals with contracting matters.

Section 26 of Raised Bill No. 5403 is also supported by the OSE as it clarifies that when a person is found in violation of § 1-101nn of the general statutes such person may be deemed a nonresponsible bidder by governmental bodies. The current language of subsection (c) of section 1-101nn does not make a distinction that there must be a finding of violation of § 1-101nn pursuant to § 1-82 of the general statutes. As such, the language may be misinterpreted as to whether those who are subject to § 1-101nn are afforded administrative review before they are deemed a nonresponsible bidder. The amendment will provide greater clarity to the regulated community and governmental bodies alike that violations of ethics codes are established through the administrative process set forth in § 1-82.

The OSE is also supportive of several revisions to the Code of Ethics for Lobbyists that are contained in Raised Bill No. 5403. Specifically, OSE supports the increase in the lobbyist registration threshold from \$2000 to \$3000. The threshold has been adjusted over the years from \$300 in 1978 to \$500 in 1981, \$1,000 in 1991, and \$2,000 in 1997. \$2,000 in 1997 dollars is worth nearly \$2,700 now. In 2008, such a change would affect 45 registrants who spent more than \$2,000 but less than \$3,000.

The OSE also supports section 21 of Raised Bill No. 5403, which adds state employees to lobbyists' reporting of gifts. Due to the large scope of administrative lobbying, lobbyists should also have to disclose benefits provided to any state employee. This amendment also expands itemization requirements under lobbyist financial reports to include "any candidate for public office" due to the concurrently proposed amendment to the gift exceptions under § 1-79 (e) and § 1-91 (g).

The OSE supports amendment to §§1-94 and 1-96 of the general statutes to redefine lobbyist registration and reporting requirements by those who lobby "within the scope of employment." The amendment to §1-94 provides that those persons who lobby within the scope of their employment will be required to track their time and expenditures in furtherance of lobbying for the purpose of reporting and registration with the Office of State Ethics. The proposed language in the bill stems from concerns raised by the Association of Connecticut Lobbyists ("ACL") regarding a lack of clarity as to the lobbyist registration requirements of certain individuals.

Further, the OSE supports various substantive amendments to the Code of Ethics for Public Officials with the purpose of providing greater clarity, consistency and transparency. Specifically, the OSE supports section 9 of Raised Bill No. 5403, which limits gift giving between supervisors and subordinates to \$100 per calendar year. Currently, under subsection (p) of section 1-84 of the general statutes, supervisors and subordinates and members of their immediate families are restricted from accepting and/or receiving gifts costing \$100 or more. The provision, however, does not limit such gift-giving to any time-period. Arguably, subordinates and supervisors could exchange large numbers of gifts so long as they do not exceed the \$100 threshold per gift. Such amendment would place the subordinate-supervisor gift-giving in line with the limits set for the regulated donors and provide greater clarity as to the applicable time period.

In addition, the OSE supports sections 3 and 18 of Raised Bill No. 5403, which provide the General Counsel and the legal division of the OSE with authority to interpret Parts III and IV of chapter 10 of the general statutes. In contrast, the enforcement division presently has the authority to enforce parts of Parts I, II and § 1-101nn of Part IV of chapter 10. This change will alleviate the confusion among those who are regulated regarding the powers vested in the OSE.

The OSE is also supportive of section 10 of Raised Bill No. 5403, which amends § 1-84(q) of the general statutes by adding the word "knowingly" to the prohibition wherein "no public official or state employee shall counsel, authorize or otherwise sanction action" that violates the codes. As currently in effect, the prohibition is overly broad and could result in a violation by an agency counsel's good faith interpretation of the Code of Ethics.

The OSE supports sections 31 and 32 of Raised Bill No. 5403, which make enforceable under the Code of Ethics revolving door restrictions of former Gaming Policy Board members and Department of Public Utility Control Commissioners. The existing revolving door restriction provided in § 12-557d (c) specifically prevents Gaming Policy Board members from accepting any form of employment by a business organization regulated by the Gaming Policy Board for

two years following the board member's termination as a board member. Similarly, the existing revolving door restriction under § 16-2 (k) prevents former Department of Public Utility Control commissioners from accepting employment from certain public service companies for a period of one year following the expiration of their DPUC service. The section also prevents former commissioners who are also lawyers from appearing or participating in a matter for a period of one year following expiration of DPUC service. However, both statutes are currently unenforceable under the Code of Ethics for Public Officials. This proposed amendment would make these specific restrictions enforceable under the code.

The OSE also supports sections 6, 13 and 14 of Raised Bill No. 5403, which strengthen current conflict of interest provisions by extending the conflicts to non-state employers who employ state public officials and state employees. The extension of the conflict of interest restrictions to non-state outside employers will address those situations where public officials and/or state employees take official action for the benefit of their non-state employers, e.g., acting favorably toward an outside employer's interests with the expectation of promotions or other benefits.

Finally, Section 11 of Raised Bill No. 5403 aims to provide each prospective executive branch or quasi-public official or employee with actual notice of the Code's post-state employment restrictions and require such individuals to sign certifications confirming their awareness of the applicable law.

While the OSE supports the general intent of the amendment, the OSE does not believe that the ethical burden to sign certifications should fall upon individuals. As proposed, if an executive branch or quasi-public agency fails to provide such certifications for signature; individual public servants may be subject to ethics complaints. This would create too great of an individual legal burden upon the majority of incoming public servants.

We believe that the duty for providing actual notice to incoming and outgoing executive branch or quasi-public officials that they are subject to the Code should fall upon state agencies or quasi-public agencies. This is already occurring, not by statute, but by Governor Rell's Executive Order No. 1, as implemented by the Ethics Compliance Plan. Compliance with this plan, the procedural requirements of which are beyond the jurisdiction of the OSE, is monitored by the Auditors of Public Accounts through routine audits.

So long as the Governor's Ethics Compliance Plan remains in effect, meaningfully implemented and in its current form, the OSE views a statutory mandate as proposed in section 11 as unnecessary. Should the legislature see fit to impose a statutory mandate, the OSE believes the burden for compliance, in this regard, should not be placed on individuals but upon state agencies.

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