



# Senate

General Assembly

**File No. 457**

January Session, 2011

Substitute Senate Bill No. 1119

*Senate, April 7, 2011*

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING LICENSING AGREEMENTS OF THE DEPARTMENT OF PUBLIC WORKS, THE PREQUALIFICATION OF BIDDERS AND BID PROTESTS.***

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

1 Section 1. Section 4b-38 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) Subject to the provisions of section 4b-30 the commissioner may  
4 lease state-owned land or buildings, or both, and facilities to (1)  
5 municipalities for municipal use, or (2) private individuals or concerns  
6 for private use, when such land, buildings and facilities are otherwise  
7 not used or needed for state use and such action seems desirable to  
8 produce income or is otherwise in the public interest, provided the  
9 Treasurer has determined that such action will not affect the status of  
10 any tax-exempt obligations issued or to be issued by the state of  
11 Connecticut.

12 (b) The commissioner may also lease or license any land or interest  
13 therein for the following purposes, provided the Treasurer has  
14 determined that such action will not affect the status of any tax-exempt  
15 obligations issued or to be issued by the state of Connecticut:

16 (1) To enter into leases [of] or licensing agreements concerning  
17 space on major pedestrian access levels and courtyards, [and] rooftops  
18 and other areas of any public building with persons, firms or  
19 organizations engaged in commercial, cultural, educational or  
20 recreational activities. The commissioner shall establish a rental rate or  
21 licensing fee for such leased space equivalent to the prevailing  
22 commercial rate or fee for comparable space devoted to a similar  
23 purpose in the vicinity of the public building. Such leases or licensing  
24 agreements may be negotiated without competitive bids, but shall  
25 contain such terms and conditions and be negotiated pursuant to such  
26 procedures as the commissioner deems necessary to promote  
27 competition and to protect the public interest;

28 (2) To make available, on occasion, or to lease at such rates and on  
29 such other terms and conditions as the commissioner deems to be in  
30 the public interest, auditoriums, meeting rooms, courtyards, rooftops  
31 and lobbies of public buildings to persons, firms or organizations  
32 engaged in cultural, educational or passive recreational activities that  
33 will not disrupt the operation of the building.

34 (c) The commissioner shall deposit all payments received under  
35 leases, licensing agreements or rentals executed pursuant to  
36 subdivisions (1) and (2) of subsection (b) of this section in the General  
37 Fund, and each such payment shall be credited to the appropriation  
38 made from such fund for the operation of such building.

39 (d) The commissioner may furnish utilities, maintenance, repair and  
40 other services to persons, firms or organizations leasing space  
41 pursuant to subdivisions (1) and (2) of subsection (b) of this section.  
42 Such services may be provided during and outside of regular working  
43 hours of state agencies.

44 (e) The commissioner shall, where practicable, give priority in the  
45 assignment of space on any major pedestrian access level not leased  
46 under the terms of subdivisions (1) and (2) of subsection (b) of this  
47 section, in such buildings, to state activities requiring regular contact  
48 with members of the public, including colocation requirements for  
49 human services agencies under section 4b-31. To the extent such space  
50 is unavailable, the commissioner shall provide space with maximum  
51 ease of access to building entrances.

52 (f) [Not] Except as provided in subsection (g) of this section, not less  
53 than two weeks before executing a lease [of] or license agreement  
54 concerning land, a building or facility or an interest in land under  
55 subsection (a) or (b) of this section, with a person, firm or corporation  
56 in the private sector, for a term of six months or more, the  
57 commissioner shall notify in writing the chief executive officer of the  
58 municipality in which the land, building, facility or interest is located  
59 concerning the proposed lease or licensing agreement and the manner  
60 in which the lessee or licensee proposes to use the land, building,  
61 facility or interest. Upon executing any such lease or licensing  
62 agreement, the commissioner shall forward a copy to the assessor or  
63 board of assessors of the municipality in which the leased or licensed  
64 property is located.

65 (g) If the licensing agreement entered into in accordance with  
66 subsection (b) of this section grants the licensee only the right to access  
67 state-owned property (1) to perform a study or investigation of such  
68 property or any structures located on such property, or (2) to perform  
69 work on such property or structures, the commissioner shall not be  
70 required to notify the municipality of such agreement as required  
71 under subsection (f) of this section.

72 [(g)] (h) Notwithstanding the provisions of this section, the board of  
73 trustees of a constituent unit of the state system of higher education  
74 may lease land or buildings, or both, and facilities under the control  
75 and supervision of such board when such land, buildings or facilities  
76 are otherwise not used or needed for use by the constituent unit and

77 such action seems desirable to produce income or is otherwise in the  
78 public interest, provided the Treasurer has determined that such action  
79 will not affect the status of any tax-exempt obligations issued or to be  
80 issued by the state of Connecticut. Upon executing any such lease, said  
81 board shall forward a copy to the assessor or board of assessors of the  
82 municipality in which the leased property is located. The proceeds  
83 from any lease or rental agreement pursuant to this subsection shall be  
84 retained by the constituent unit. Any land so leased for private use and  
85 the buildings and appurtenances thereon shall be subject to local  
86 assessment and taxation annually in the name of the lessee, assignee or  
87 sublessee, whichever has immediate right to occupancy of such land or  
88 building, by the town wherein situated as of the assessment day of  
89 such town next following the date of leasing. Such land and the  
90 buildings and appurtenances thereon shall not be included as property  
91 of the constituent unit for the purpose of computing a grant in lieu of  
92 taxes pursuant to section 12-19a provided, if such property is leased to  
93 an organization which, if the property were owned by or held in trust  
94 for such organization would not be liable for taxes with respect to such  
95 property under section 12-81, such organization shall be entitled to  
96 exemption from property taxes as the lessee under such lease, and the  
97 portion of such property exempted and leased to such organization  
98 shall be eligible for a grant in lieu of taxes pursuant to [said] section 12-  
99 19a.

100 Sec. 2. Subsection (c) of section 4b-91 of the general statutes is  
101 repealed and the following is substituted in lieu thereof (*Effective*  
102 *October 1, 2011*):

103 (c) No person may bid on a contract or perform work pursuant to a  
104 contract that is subject to the provisions of subsection (a) of this section  
105 unless the person is prequalified in accordance with section 4a-100,  
106 except the awarding authority may permit a person who was  
107 prequalified under section 4a-100 when awarded the contract or  
108 subcontract but whose prequalification certificate was subsequently  
109 revoked, denied or not renewed during the course of such person's  
110 performance of the contract or subcontract, to continue to perform

111 such contract or subcontract upon a written determination by the  
 112 awarding authority that such continuance is in the best interest of the  
 113 state or municipality and that there is good cause for such continuance.  
 114 Such written determination shall be included in the report provided in  
 115 accordance with section 4b-101a.

116 Sec. 3. Subsection (b) of section 4b-100 of the general statutes is  
 117 repealed and the following is substituted in lieu thereof (*Effective*  
 118 *October 1, 2011*):

119 (b) The Commissioner of Public Works shall adopt regulations, in  
 120 accordance with the provisions of chapter 54, establishing a procedure  
 121 for promptly hearing and ruling on claims alleging a violation or  
 122 violations of sections 4b-91 to 4b-100, inclusive, as amended by this act.  
 123 Such claims may be initiated by the Department of Public Works or  
 124 any [party] general bidder whose financial interests may be affected by  
 125 the decision on such a claim.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	4b-38
Sec. 2	<i>October 1, 2011</i>	4b-91(c)
Sec. 3	<i>October 1, 2011</i>	4b-100(b)

**GAE**      *Joint Favorable Subst.*

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:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 12 \$</b>	<b>FY 13 \$</b>
Pub. Works, Dept.	GF - Cost Avoidance	See Below	See Below
Pub. Works, Dept.	GF - Revenue Gain	Minimal	Minimal

Note: GF=General Fund

### **Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 12 \$</b>	<b>FY 13 \$</b>
Various Municipalities	Cost Avoidance	See Below	See Below

### **Explanation**

Section 2 permits the state to avoid costs in situations where the prequalification of a contractor is not renewed, revoked or denied while they are actively engaged in the performance of work on a state project. Under current law the contractor would have to be terminated and a new one hired. This would result in a project delay of six or more months while the Department of Public Works (DPW) procured a new contractor to restart and finish the construction project. The state would be likely to incur the following costs:

- An increase in architects and engineers (A/E) fees by as much as 50% because the A/E must document the percentage of construction completed on the plans before the project can be rebid. A/E fees normally range between 6% and 12% of the project's total cost.
- An increase in DPW and construction administrator (CA) fees by up to 50% because DPW staff and the CA must document the percent of work completed on the project before final payment can be made to the first contractor. The

fees may also increase if the DPW staff and CA are “on hold” and not available for other projects. DPW fees for administering the project normally range between 2 to 6% of the project’s total cost.

- An increase of 20 to 30% in total construction cost for the new contractor to complete the project due to: (1) an increase in management time to understand the project, re-plan project management and procure materials or subcontractors to complete the project; (2) a detailed inspection of work completed by the first contractor; (3) corrections to prior work and damage that may have occurred while the project was shut down; and (4) the risk and responsibility for completing work to the state’s satisfaction at the end of the project.
- The warranties for some building systems, like roofs and heating, ventilation and air conditioning (HVAC) equipment, may be voided by the manufacturer because the system was installed by two different contractors. This could result in a cost to the state if these systems needed to be repaired before their warranty would have expired.

The licensing agreement fee established in Section 1 is expected to be minimal (less than \$1,000) because DPW is expected to enter into few licensing agreements. There is no cost to DPW to adopt the regulations specified in Section 3.

Section 2 is expected to have the same cost avoidance impact on municipalities as mentioned above for the state.

### ***The Out Years***

The fiscal impact identified above for Section 2 is expected to continue into the future subject to inflation.

Sources: *Department of Public Works*

**OLR Bill Analysis****sSB 1119*****AN ACT CONCERNING LICENSING AGREEMENTS OF THE DEPARTMENT OF PUBLIC WORKS, THE PREQUALIFICATION OF BIDDERS AND BID PROTESTS.*****SUMMARY:**

By law, with certain exceptions, contracts for the construction, reconstruction, alteration, remodeling, repair, or demolition of a public building or other public work that are estimated to cost more than \$500,000 must be awarded through competitive bidding to the lowest responsible prequalified bidder. This bill allows a contractor or subcontractor whose prequalification certificate is revoked, denied, or not renewed while a project is in progress to continue working on the project if the awarding authority makes a written determination that (1) it is in the best interests of the state or municipality and (2) there is good cause for doing so. This determination must also be included in the awarding authority's report to the governor and legislature on the status of certain construction projects and property management contracts.

The bill also allows the Department of Public Works (DPW) to license land or land interests granting temporary access to state property for certain purposes, including space on major pedestrian access levels and courtyards, rooftops, and other areas of public buildings. It requires DPW to (1) establish licensing fees comparable to prevailing fees for comparable commercial space and (2) deposit such fees in the General Fund. It also allows the licensing agreements to be entered into without competitive bidding. Under current law, unchanged by the bill, DPW has the authority to lease such property and establish a rental fee.

If the license is for six months or more, DPW must provide the

affected municipality with at least two weeks' written notice and forward a copy of the agreement to the municipality's board of assessors. However, the notice provisions do not apply if DPW grants the licensee access to state-owned property to study, investigate, or work on the property or structures on it.

Lastly, the bill specifies that only a general bidder may file a claim with DPW protesting a contract award. Under current law, any party whose financial interests may be affected by the award can file a claim.

EFFECTIVE DATE: October 1, 2011

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 15    Nay 0    (03/23/2011)