



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

OFFICE OF STATE ETHICS' STATEMENT IN SUPPORT OF RAISED BILL No. 6272 AN ACT CONCERNING REVISIONS TO THE STATE CODES OF ETHICS FEBRUARY 7, 2011

The purpose of this bill is to provide various revisions to the Codes of Ethics concerning conflict of interest provisions for public officials and state employees, lobbyist registration and reporting, matters involving contracting with the state, jurisdictional issues, technical amendments and other miscellaneous updates. The Office of State Ethics ("OSE") supports passage of Raised Bill No. 6272, and respectfully requests that the following comments be considered.

Code of Ethics for Public Officials

The OSE supports the following substantive amendments to the Code of Ethics for Public Officials with the purpose of providing greater clarity, consistency and transparency.

Section 1, lines 104 through 155, of Raised Bill No. 6272 amends two gift exceptions under section 1-79 (e) of the general statutes to include the term "candidate for public office." Subdivision (14) of 1-79 (e) exempts from gift restrictions admission to charitable and civic events. Subdivision (15) of 1-79 (e) exempts benefits provided by an employer when such benefits are provided to others under similar circumstances. Pursuant to § 1-84 (j) under the Code of Ethics for Public Officials, "[n]o public official, state employee or *candidate for public office*, or a member of any such person's staff or immediate family shall knowingly accept any gift, as defined in subsection (e) of section 1-79, from a person known to be a registrant or anyone known to be acting on behalf of a registrant." Other exceptions to the definition of gift under § 1-79 (e) apply to public officials, state employees and candidates for public office. This amendment will provide clarity and consistency regarding gift exceptions in light of the prohibition outlined in § 1-84(j) of the general statutes.

We would also recommend amending identical gift exceptions found under the Code of Ethics for Lobbyists (Section 11, lines 675 through 684, of Raised Bill No. 6272). Section 1-97 (a) of the general statutes prohibits registered lobbyists from giving gifts, as defined in § 1-91 (g) of the general statutes, to any state employee, public official, *candidate for public office* or a member of any such person's staff or immediate family. Similarly, just as in § 1-79 (e) of the general statutes, other exceptions to the definition of gift under § 1-91 (g) apply to public officials, state employees and candidates for public office. Again, this amendment will provide clarity and consistency regarding gift exceptions in light of the prohibition outlined in § 1-97 (a) of the general statutes.

Section 1, lines 160 through 171, of Raised Bill No. 6272 amends the definition of "quasi-public agency" under § 1-79 of the general statutes by including Bradley Board of Directors, Connecticut Transportation Strategy Board, The University of Connecticut Health Center Finance Corporation and Tweed-New Haven Airport Authority to the list of quasi-public agencies.

Section 1, lines 186 through 188, of Raised Bill No. 6272 modifies the definition of "client lobbyist" by replacing "a person" with "a lobbyist." Presently, definition of client lobbyist is inconsistent with the definition of the same under the Code of Ethics for Lobbyists. We would like to note that the definition of client lobbyist in section 13 of Raised Bill No. 6272 may have been amended inadvertently and should be corrected to its current language. The word "lobbyist" is a term of art which captures a person who expends \$2000 or more for lobbying. However, use of the term "person" in place of "lobbyist" in the definition of client lobbyist under section 13 of Raised Bill No. 6272 would be capturing anyone who spends less than \$2000.

Section 2 of Raised Bill No. 6272 removes the one-year cooling-off period regarding former Citizen's Ethics Advisory Board ("CEAB") members holding any other position in state employment. The CEAB has experienced a number of vacancies for a significant period of time. Some appointing authorities reported difficulty in finding qualified individuals to serve because of the statutory qualifications as well as the restrictions members face while serving and after leaving the CEAB. The purpose behind the proposal is to minimize the length of vacancies and attract more qualified individuals to serve on the CEAB.

Section 9 of Raised Bill No. 6272 includes the term "other employer" under potential conflicts of interest. Presently, public officials or state employees can vote or take official action on matters related to their other (non-state) employer. This proposal would extend the prohibition regarding conflicts of interest whereby public officials or state employees, *other than elected state officials*, would be restricted from taking official action for the benefit of other employers, and when necessary, disclose the existence of a conflict involving an outside employer.

Section 30 of Raised Bill No. 6272 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 more than \$100. The provision, however does not limit such gift-giving to any time period. Arguably, subordinates and supervisors could exchange large number of gifts so long as these did 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.

Code of Ethics for Lobbyists

The OSE supports the following substantive revisions to the Code of Ethics for Lobbyists contained in Raised Bill No. 6272.

Sections 11, 14, and 15 of Raised Bill No. 6272 contain the proposal to increase 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 \$2,800 today. Such a change would affect an estimated 45 registrants who spent more than \$2,000 but less than \$3,000 for a net decrease of approximately \$11,000.¹

Section 16 of Raised Bill No. 6272 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. The OSE would also recommend expanding the itemization requirements under lobbyist financial reports to include "candidate for public office." As previously mentioned, § 1-97 (a) of the general statutes prohibits registered lobbyists from giving gifts to any state employee, public official, or *candidate for public office*.

Sections 14, 16 and 29 of Raised Bill No. 6272 provide amendments 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." 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 OSE. The proposed language in the bill stems from concerns raised by the Association of Connecticut Lobbyists regarding a lack of clarity as to the lobbyist registration requirements of certain individuals.

Ethical Considerations Concerning Bidding and State Contracts

The OSE also supports the following amendments contained in Raised Bill No. 6272 concerning ethics enforcement standards that are applied to contractors and bidders who execute and/or pursue state contracts.

Section 10 of Raised Bill No. 6272 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.

Section 24 of Raised Bill No. 6272 amends 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 CEAB, 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

¹ The OSE notes that a regulatory change in May 2010 increased registration fees from \$150 to \$250 for registration in odd years and \$75 to \$125 for registration in even years. The OSE estimates that this will result in a net increase of registration fees in excess of \$300,000 for 2011 and 2012. Registration fees cannot exceed the cost of administering the lobbyist registration and reporting system.

specifically deals with contracting matters.

Jurisdictional Matters Under the Codes of Ethics

The OSE also supports the following amendments contained in Raised Bill No. 6272 which clarify various jurisdictional matters under the Codes of Ethics.

Sections 3 and 13 of Raised Bill No. 6272 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. Part III deals with miscellaneous lobbying provisions and Part IV applies to state contracting and bidding. The enforcement division of the OSE 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.

Sections 25 and 27 of Raised Bill No. 6272 make enforceable under the Code of Ethics for Public Officials 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.

Section 26 of Raised Bill No. 6272 would require Public Utility Control Authority Commissioners to file their financial disclosures not with the Secretary of the State but with the OSE pursuant to General Statutes § 1-83. Public Utilities Control Authority commissioners already file their annual Statements of Financial Interests (SFI), pursuant to section 1-83 of the general statutes. The disclosures that are to be submitted by the DPUC commissioners to the Secretary of the State are very general and the information required for disclosure is already covered in greater detail on the SFI. This proposal would reduce the number of redundant financial filings.

Section 28 of Raised Bill No. 6272 would add OSE attorneys who represent the CBAB and the agency in their official capacity in matters initiated before Connecticut State Courts to the list of those attorneys employed by the state who are exempted from paying certain court fees. Currently, there is no general exemption that is applicable to all state government attorneys. Section 52-259a of the general statutes exempts attorneys only from certain statutorily delineated state entities.

Although in the instances when the CEAB elects to seek legal representation from the Office of the Attorney General, payment of court fees is waived because of the applicable exemption given to the Attorney General under § 52-259a, the same exemption cannot be claimed by the OSE if it pursues a matter on its own. Since the CEAB is not mandated under the general statutes to obtain legal representation from the Office of the Attorney General and the Attorney General may and has exercised his discretion by declining legal representation in matters initiated by the CEAB, the OSE seeks a statutory exemption for the CEAB from paying court fees when initiating legal actions in Connecticut State Courts.

Technical Amendments to the Codes of Ethics

Finally, the OSE supports various technical changes made throughout Raised Bill No. 6272. These include replacing references to the former State Ethics Commission, which OSE superseded, to the "Office of State Ethics," "Citizen's Ethics Advisory Board," or "board."

Section 3 of Raised Bill No. 6272 eliminates a duplication of reporting to the Governor by making February 15, in both the Code of Ethics for Public Officials and the Code of Ethics for Lobbyists, as the reporting date for the annual report. Currently, § 1-81(a) (6) of the general statutes mandates April 15 as the reporting date, while § 1-92(f) mandates February 15.

However, the OSE would not recommend the change in line 454 under section 5 of Raised Bill No. 6272 wherein the phrase "next in" is changed with the word "following." The public officials and state employees who are required to file Statements of Financial Interests ("SFI") must file the SFIs no later than May 1 for the preceding calendar year. Thus, for example, a public official who commences state service on January 1, 2011, must file his or her SFI for calendar year 2010 no later than May 1, 2011. If the phrase "next in" is replaced with the word "following," then a person who commenced state service on January 1, 2011, would not have to file his or her 2010 SFI until May 2012. Both the statutory and regulatory framework for filing SFIs was intended to provide a *timely* accounting of financial holdings for the preceding calendar year in which a public official or state employee holds an office or position.

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