



STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

***TESTIMONY PRESENTED BEFORE THE
GOVERNMENT ADMINISTRATION AND ELECTION COMMITTEE***

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*Statement of Albert P. Lenge, Executive Director and General Counsel
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Senate Bill No. 1009 – An Act Creating the Office of Governmental Accountability

Good morning, Chairperson Slossberg, Chairman Morin, Ranking Members Senator McLachlan and Representative Hwang, and distinguished Committee members. I am Albert Lenge, Executive Director and General Counsel of the Elections Enforcement Commission. Thank you for the opportunity to speak to the Committee today to present testimony concerning **Senate Bill 1009** and its direct impact on the Elections Enforcement Commission.

First of all, I want to know that I'm not up here fighting for my own job. I am a 28 year plus veteran with the state of Connecticut, have 4 different state agencies over a long career as a lawyer, and I can retire at any time with full retirement.

In addition, I have 8 years of private practice experience. I've tried matters to judges in the federal courts, federal court juries, state court judges, state court juries, and I've appeared and argued matters to decision before all of the appellate courts of this state as well as the 2nd Circuit Court of Appeals.

Two and a half years ago I was diagnosed with a particularly virulent form of cancer that had to be aggressively treated by drugs. I took the treatment and the cancer is completely gone. With this as a background, my friends, close colleagues and family all advised me to retire in July 2009 when the state offered its attractive 3 -year retirement incentive. I didn't.

I'm here not for self-serving, selfish or economic reasons, but because I share and am imbued by the mission of elections, the SEEC, its wonderful Commission and staff that have served all of you and the people of the state of Connecticut so well.

The Commission has a 35 year history going back to the mid-70s; it was established in the immediate aftermath of the Watergate scandal. I am the Commission's fifth executive director and I have been serving in that capacity for 15 months.

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Fred Herrmann, the now retired Executive Director of the New Jersey Elections Law Enforcement Commission, after which the SEEC was partially named, wrote an article in the 1997 issue of Public Integrity Magazine entitled “Bricks Without Straw”. I have been serving on the Editorial Board of that magazine. In his article, Fred talks about the “three pillars of empowerment” in an agency such as the SEEC. These three pillars are: 1) Autonomy; 2) Adequate Resources; and 3) Enforcement Capability.

I am going to analyze S.B. 1009 in light of the 3 pillars.

1. **Autonomy.** This bill would combine all of the main functions of the SEEC, FOI, Ethics, SCSB and JRC under a single executive director appointed by and serving at the will of one political partisan. This takes all autonomy away from the SEEC whose Executive Director serves at its pleasure, a 5 member Commission with equal number of Democrats and Republicans and a 5th member who is an unaffiliated elector appointed by the Governor. Those members serve rolling 5 year terms that are not subject to being cut short by politics. The SEEC would lose autonomy under this proposal.

A further loss of autonomy occurs because the new Executive Director will have to allocate and balance scarce resources between five competing agency missions that are incongruent. Inevitably priorities will be established by the new Executive Director in accordance with value systems held to by that Executive Director, which may not be in accord with the desires of the SEEC Commissioners, or which may be subordinated to a value system held to by the individual who appoints the Executive Director. Under SB 1009 the SEEC loses its autonomy.

2. **Adequate Resources.** The existing management of the SEEC is virtually eliminated in the OPM backup document that implements SB 1009. Twenty six positions are lost to the five agencies, including 6 of the SEEC management positions. Of the 9 new positions that would be created under the newly appointed Executive Director, 3 of them will be political appointees and 2 of them will serve functions exclusively dedicated to the SCSB: a Director of Contract Management and Review and a Contract Specialist.

I had an extended lunch with Gale Mattison who is Chairperson of the SCSB. He said that in order to provide the SCSB with adequate resources, the SCSB would need a Chief Procurement Officer who makes at least \$140,000 to \$150,000, roughly what the top procurement officials in the various state agencies, including OPM, that the SCSB would regulate, not the \$109,000 value assigned to it by the OPM document. In addition, the SCSB would need two high level, experienced contract specialists, not just one contract specialist earning only 80,000; a full time attorney and an executive assistant. He reasoned that you couldn't have a Chief Procurement

officer regulating the processes established by other procurement officials in OPM, DAS, the DOT, and elsewhere making 1/3rd less than the salaries earned by those other officials. The SCSB's Chief Procurement Officer would have to be a very high level individual who participates in at least one of the two national procurement organizations in the U.S. and who had wide experience in either federal procurement, or private procurement such as Boeing Aircraft, etc. Most agencies, like the DOT, do not do their own work but negotiate with contractors to get the work done and this work in the state, awarded by state agencies, is in the billions and billions of dollars. Gale made it clear that the 5 positions he said were necessary for the SCSB were start up costs only, and that the scope of the work of the SCSB, done correctly, was massive and would grow as the work began and procurement processes were established. The OPM document, by contrast, clearly only assigns 2 of the 5 SCSB positions Gale thought were necessary as startup costs. It is clear to me that the mission of the SEEC would be swallowed by that of the SCSB alone and its mission is incongruent with that of the SEEC which does little or no procurement and doesn't know the difference between a POS contract, a PSA contract, an invitation to bid or an RFP.

Similarly, each of the other agencies proposed in this combination serve different ends and approaches its mission differently. The FOI, OSE and SEEC each perform separate and distinct functions and have specialized expertise; they are not interchangeable. They regulate each other. The SEEC has many times been a Respondent with the FOI. The SEEC has no specialized expertise with respect to conflicts of interest law or the Connecticut gift laws. Campaign contributions are not gifts and SEEC staff stands in relationship to these rules as all other state employees. Each watchdog is effective because of its autonomy and independence. Creation of a "super-agency" would invite a diversion of staff to fulfill the mission of the other agencies within the conglomerate. The SEEC may be unable to fulfill its vital functions because its resources may be diverted to another watchdog's needs by the Executive Director of the new agency. For example, such a diversion may compromise the SEEC's ability to meet the 4-day statutory turnaround to complete a review of a candidate's grant application. It must take necessary steps in order to ensure that the State Comptroller *disburses* funds within two business days of the SEEC's decision approving a grant application. These requirements, among many others, are labor intensive within the SEEC and a diversion of resources from the SEEC may impinge on SEEC's ability to accomplish these statutory objectives.

As this Committee considers what I have said about the affect of this proposal on our agency's ability to perform its core mission, I would ask that the Committee consider whether this drastic approach to our agency is necessary. At present, the SEEC, FOI and OSE's staffing complement consists of 90 positions and the CSB and the JRC had 6 positions allocated to them in 2011. As proposed, the Office of Governmental Accountability would be staffed by 78 employees, which

represents a total staff reduction of 18 individuals or a percentage reduction of 19% from current staffing levels which make up only .2% of the state workforce. At the same time, the combined budgets of the agencies that would comprise the OGA represent only .06% of the state budget. This is budget dust. It is my conclusion that the SEEC would not have adequate resources to fulfill its mission.

3. **Enforcement.** Due to varying lengths of service among managerial lawyers, the proposed cuts would likely result in the layoff of the SEEC's Legal Program Director responsible for enforcement. This would not bode well for the SEEC's enforcement capability in the aftermath of such reorganization as this individual is a longitudinal thinker and has an outstanding comprehension of the intricacies of the state campaign finance law. In addition to moving the case load since August 13, 2010, this individual is the keystone of the state's defense of the Green Party of Conn. v. Lenge, now pending before the United States Supreme Court. By contrast, OSE and FOI lawyer managers have no understanding of the state elections laws and regulations which are highly intricate.

All of this strikes me as unfair in view of what the SEEC has already done in terms of efficiencies and savings.

58.5 million dollars have been swept in the aggregate from the CEP funds in FYs 2009 through 2011.

The biennial budget (PA 09-3) made the Commission on Enhancing Agency Outcomes responsible for budget lapses in FY 2010 of \$3 million and FY 2011 of \$50 million as stated in its final report dated Dec. 30, 2010. In accordance with these requirements:

- The SEEC has lapsed its budgeted accounts in the amount of \$684,737.34 in FY 2010; and
- The SEEC is projecting to lapse \$605,277.40 in its budgeted accounts in FY 2011.

Both last Fiscal year and this the SEEC, in view of the state's dire financial straits, adhered to a no frills budget.

By continuing to adhere to this strict no frills regime, the SEEC this year and next stands ready to lapse its budgeted accounts as follows:

- By \$455,782.98 in FY 2012; and
- By another \$452,169.72 in FY 2013.

These are substantial cost savings. The SEEC has been, and will continue to be under its current management structure, a good team player within the state enterprise system and is making substantial contributions to the turnaround called for by Governor Malloy who we want to succeed.

In the 15 months since I became the SEEC's executive director, I have reduced the SEEC's management from 10 managers to 8 managers—a 20% reduction of the managerial workforce. I did this by not replacing myself as Deputy Director and by consolidating two legal units into a single office of counsel, laying off a legal manager and consolidating the legal operation under a single person for efficiencies.

The lapsing to the SEEC budgeted accounts in FY 2012 and 2013 includes savings associated with my decision to not refill Beth Rotman's position, which brings the total number of managers down 30%, to 7, which includes my position. I say that because I'm not sure that the call of the Commission on Enhancing Agency Outcomes includes Commissioners and Executive Directors in its proposed management to employee count. [1-Office of Counsel; 2-Campaign Disclosure, Reports Analysis and Audit; 3-Candidate Services; 4-Fiscal, Administrative and Grants Payments; 5- Information Technology.]

The SEEC has been and will continue to be a good team player in confronting this financial crisis and stands ready, willing and able to be a productive participant in the turnaround called for by Governor Malloy.

The Commission on Enhancing Agency Outcomes calls for consolidation of back office functions wherever possible between agencies. The SEEC has already done this and has been working creatively toward this goal for a number of years and continues to do so.

- 1) The SEEC became responsible for building a list of state contractors and prospective state contractors who were prohibited from giving to Connecticut campaigns as a result of legislation passed in 2005. The SEEC didn't build this list on its own. It integrated the list build into CORE-CT functionalities with the facilitation of Lieutenant Governor Nancy Wyman, then State Comptroller, her high level executive aids Mary Carlson and

Mark Ojakian, who shared key personnel from the State Comptroller's accounts payable unit to work together with us on this project. In 2006, over four Saturdays we held meetings that began at 7:30 a.m. and went in some instances until after 6 p.m. to build a reporting module off of CORE-CT that generated a list of state contractors or prospective state contractors who had contracts or prospective contracts with any one state agency at over \$50,000 or more than \$100,000 with more than one state agency. This is an ongoing project that produces revisions to the EPM module, modifying what the report brings in as we find that inappropriate entities are swept into the list that the SEEC published on its website monthly. There have been many upgrades to this back office system since 2006.

- 2) The campaign finance law passed in 2005 also prohibited political committees established or controlled by lobbyists from making campaign contributions to General Assembly candidates and candidates for statewide office. The campaign finance law requires at the point of political committee registration each political committee to state whether one of its principal officers is a lobbyist and to identify such individual. From the inception of the electronic filing system build in 2007, which went live on January 3, 2008 and was built at an incredible one-year pace, the SEEC's IT department went to the Office of State Ethics and put into play a back office computerized way that new lobbying registrations at the OSE would be imported into the e-CRIS system. The SEEC has been a good team player on these issues and has been sharing back office functionalities for a long time.

- 3) There is a state property surplus distribution that is run by the Department of Administrative Services. Since 2007, I have been in conversation with Carlos Velez and Attorney Andrea Keilty exploring the possibility of integrating the state surplus property system with the e-CRIS system that we were building relating to the campaign distribution of surplus of equipment and furniture purchased by CEP funds. This idea poses many potential benefits to both the state and campaign treasurers by maximizing the yield on the surplus of state property and by eliminating the exposure to campaign treasurers from the allegation that they achieved less than fair market value for equipment and furniture privately sold by them and then given to the CEP or that they effectively converted these items to personal use as a result of these private sales in violation of the campaign finance law. This discussion has been on an ongoing one each year but has not yet ripened into a program of back office sharing because of a quick turn over and succession of DAS Commissioners. It was discussed again this year with Carlos Velez and Andrea Keilty before the appointment of DAS Commissioner Dominic DeFronzo but there wasn't time to meet with him before the start of this legislative session. Any such back office sharing through the state surplus system will require modifying legislation to

both the DAS statute and the campaign finance laws (4a-57a and the CEP statute (9-751). It is also important that we determine that there is a supporting infrastructure to accommodate candidate treasurers who live throughout the entire state. After all of this year's candidate committees terminate, the SEEC will be running an e-CRIS report to determine the amount of equipment and furniture purchased in the 2010 election cycle to determine the scope of the project.

- 4) Lastly, we have had back office sharing with the Secretary of the State's office relating to special election calendars as well as Secretarial determinations that an individual has achieved ballot status or an entity, called a party designation committee, which lends its name to candidates on the ballot is entitled to minor party or major party status following an election. Under the previous administration, this was accomplished by having an SEEC employee go back and forth between our two adjacent buildings twice a day. After Secretary of the State Merrill took office both offices immediately began exploring more dynamic ways for back office sharing. This dual effort has already been partially realized in the way information was shared in connection with the eight special elections for General Assembly seats that were held on February 22nd. Both of our two offices had a dynamic link on their web home pages that brought the public information found in the drill down to information contained in the other office's webpage. For example, people visiting the SEEC homepage could find where their polling places were located by typing their first name, last name and date of birth in data fields dynamically linked to the Secretary's statewide voter registration system. Both offices were able to share a toll free number developed by the SEEC and published in every phone book throughout the state. Through the miracle of technology both legal staffs were able to share emailed help questions from the public to a common email address and our respective staffs could transparently see between offices the individual who claimed the telephone call ticket and whether and how it was answered. I don't think I'm not overstating this success; it is a tremendous step forward and continues to be a high priority work in progress for back office sharing.

The SEEC has taken a number of other aggressive steps to realize goals called for in the report of Commission on Enhancing Agency Outcomes. For example, every member of our agency does time and attendance using CORE-CT since April 2009; I do my own attendance online and managers review and sign off on the time of their employees online.

All SEEC employees have direct deposit paychecks directly into their bank accounts and this was established after 1996.

Similarly with the help of the State Comptroller, all grant payments under the CEP are made as Electronic Fund or ACH transfers to the committee's accounts. This was done from the inception of the Citizens' Election Program. The SEEC provides this with complete financial security, it has both a physical and electronic secured filing system and validation methods, including the variable penny test, that ensures that the payments go to the correct committee account in the correct amounts.

I want to emphasize that there are no functional overlaps between the SEEC, FOI, OSE, JRC and the SCSB. The SEEC has many times been a Respondent before the FOI. As a result of its law enforcement mission it regularly meets in executive session and claims exemptions to records on the basis of confidentiality exemptions. By contrast, the Secretary of the State is the public filing repository of the schedule of all public state agencies regular and special meetings, and she houses the regulations of state agencies and many other public records. The Secretary of the State is a single member public agency that typically doesn't hold public meetings to come to her decisions. Thus a case could be built of a functional overlap between the FOI and the Secretary of the State and the same case could be built around each and every state agency which must keep its records open and receives documents from outside the agency.

My conversation with Gale Mattison made it abundantly clear that there is no functional overlap between the SEEC and the SCSB. The SEEC has little to do with procurement processes. It buys things from standard state contracts.

I've heard it said that the Public Disclosure Commission of the State of Washington has combined campaign finance disclosure with ethics. This is untrue. There has been a separate ethics agency that stands apart from the Washington Public Disclosure Commission and this has been true since its inception in the early 1970s. When it began, the Washington Public Disclosure Commission did include within its campaign finance disclosure mission the state freedom of information decision-making function for other state agencies. However, that separate mission quickly was transferred to the State Attorney General's office and, as we speak, the State of Washington is actively considering creating a separate Freedom of information Commission.

I would like this Committee to fully appreciate that the model that we have in Connecticut of 3 separate agencies, State Elections Enforcement Commission, Freedom of Information Commission and Office of State Ethics is a model widely imitated throughout the country; and that all three agencies are highly respected and looked up to both nationally and internationally.

It is extremely important that this Committee flatly reject this proposed consolidation and that it do it soon. We have an extremely talented staff at the SEEC. Several of the lawyers have clerked for federal appellate judges; others state court judges. The other professional disciplines within the SEEC have equally talented people. Even in this flat economy I have no doubt that they could quickly get jobs. I have no fear as I have said about my getting my next job. As long as this proposal hangs out there I can envision losing key staff, even in this economy, to other state operations and to the private sector. For example, one of my key managers is leaving this week to become the Director of Operations at the State Lottery Corporation. We could quickly unravel as an agency if there isn't quick closure to this issue even if it is voted down later this session.

With all respect and due deference to the Governor and this assembly's leadership, I think this proposal presents a very bad choice. For all of the reasons stated, I would urge the committee to vote this bill down and to do so at the earliest opportunity. Thank you.