

---

---

## OLR Bill Analysis

### sSB 1010

***AN ACT CONCERNING THE TRANSFER OF FUNCTIONS FROM THE DEPARTMENTS OF PUBLIC WORKS, INFORMATION TECHNOLOGY, PUBLIC SAFETY AND EDUCATION AND THE JUDICIAL SELECTION COMMISSION TO THE DEPARTMENT OF ADMINISTRATIVE SERVICES AND ESTABLISHING THE DEPARTMENT OF CONSTRUCTION SERVICES.***

#### **SUMMARY:**

This bill dissolves the Department of Public Works (DPW) and establishes a Department of Construction Services (DCS) for purposes of construction, construction management, and security management. It makes the DCS commissioner, rather than the DPW commissioner, responsible for constructing and developing state-owned buildings and real estate. It generally shifts all other DPW duties to the Department of Administrative Services (DAS) (see COMMENT). Under the bill, the DAS commissioner is responsible for acquiring, selling, and leasing state-owned property to house state offices and equipment.

The bill also:

1. transfers, from the Department of Public Safety (DPS) to DCS, responsibility for enforcing the Fire Safety Code and the State Building Code and
2. transfers, from the State Department of Education (SDE) to DCS, responsibility for reviewing and approving school construction grant applications.

With these changes, the bill transfers to DCS the corresponding personnel powers, duties, obligations, and other government functions of each transferring agency or division, whichever applies.

In addition, it:

1. reduces state school construction grant reimbursement rates for new construction and restricts eligible project costs, among other changes to that process;
2. dissolves the Department of Information Technology (DOIT), establishes it as a division within DAS, and eliminates the chief information officer (CIO) as its designated department head;
3. transfers, from the Commission on Human Rights and Opportunities (CHRO) to DAS, responsibility for approving and monitoring state agency affirmative action plans, exempts agencies with 25 or fewer employees from filing these plans, and changes the plans' contents; and
4. places the Judicial Selection Commission within DAS, but specifies that it retains independent decision-making authority and that DAS must provide the commission with support staff (§ 1).

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: July 1, 2011, except the provisions concerning affirmative action plans and diversity training, which are effective upon passage.

**§§ 2-19, 39-40, 42, & 61-70 — DEPARTMENT OF PUBLIC WORKS DISSOLUTION**

The bill dissolves DPW and transfers its personnel powers, duties, obligations, and other government functions that do not relate to construction or construction management to DAS beginning July 1, 2011. Under the bill, the DAS commissioner generally assumes responsibility for (1) purchasing, selling, leasing, subleasing, and acquiring property for state agencies and (2) surplus state property disposition.

On the same date, the bill establishes DCS as an independent executive branch agency headed by a commissioner with the authority to, among other things, designate a deputy or deputies. DCS is a

successor department to (1) DPW with respect to the construction and maintenance of state buildings and property and (2) the DPS Division of Fire, Emergency, and Building Services with respect to fire safety and building code enforcement. DCS also assumes SDE's responsibilities for school construction projects.

Under the bill, DCS assumes DPW's construction-related functions, which generally include (1) administering most state capital improvement construction and planning projects and (2) selecting consultants to assist on these projects.

### ***Care and Control of State Property***

The bill appears to give DCS care and control of most state property. However, with respect to surplus property disposition, the bill provides for agencies with surplus property to transfer care and control of such property to DAS and not DCS.

The bill also appears to give DPS control of state police property in Hartford. Under current law, DPW has care and control of most state property in Hartford, including state police property. However, the bill also provides for DCS to assume from DPW care and control of property in Hartford. It is thus unclear whether this would include state police property.

### ***Security Standards***

With respect to the Freedom of Information Act, the bill provides for DAS to make certain determinations concerning the security risk associated with disclosing certain records, even though the bill transfers DPW's security responsibilities to DCS.

The bill also requires DAS to be familiar with security standards developed by DCS. It prohibits DAS from executing a new lease unless (1) it determines that a security audit was conducted that was comparable to audits conducted by DCS, (2) it determines, in consultation with DCS, that the building meets DCS's security standards, or (3) the building's owner has implemented recommendations from the security audit (this provision is in current

law). Under current law, DPW makes these determinations and is responsible for security standards and audits.

### ***State Facilities Plan***

The bill requires state agencies to submit a copy of their long-range facilities plans and related facility project requests to DAS. It requires DAS to (1) give the Office of Policy and Management (OPM) Secretary a review of such plans for consistency with certain factors, including the need for maintenance, improvement, and replacement of state facilities and (2) monitor the amount of leased space being requested and the costs of all proposed and approved facility project actions.

The bill provides for DCS to (1) assist agencies and departments with such long-range facilities planning and (2) implement the state facilities plan, including the approval of agencies' implementation actions. But the bill does not authorize DCS to request the attorney general's assistance in contract negotiations concerning the construction of real estate, which DPW can currently do.

DCS is responsible for implementing the state facilities plan, including trying to locate human service agencies in the same buildings as municipal and private agencies that provide human services. If the plan provides for an agency located in Hartford to relocate outside of the city, the bill allows the governor, at the agency's request and with the Finance Advisory Committee's consent, to transfer to the agency appropriations made to DCS for rents and moving in order to facilitate the move. Currently, the money is taken from DPW's appropriations. The bill also requires an estimate of the amount DAS needs for leasing additional facilities to be included in DCS's budget request, not DAS's.

### **§§ 20-24 — AFFIRMATIVE ACTION PLANS AND TRAINING**

The bill transfers, from CHRO to DAS, responsibility for reviewing, approving, and monitoring state agency affirmative action plans. (State agencies include departments, boards, and commissions). It also decreases how frequently certain agencies must file their affirmative action plans and exempts others. However, CHRO remains responsible

for state contractors' and bidders' affirmative action plans.

Under current law, agencies with more than 20 full-time employees file their plans annually if they have already had a plan approved by CHRO and semi-annually if they have not. Agencies with 20 or fewer full-time employees file biennially if they have already had a plan approved and annually if they have not.

Under the bill, only agencies with 100 or more full-time employees file semi-annually or annually, depending on the existence of previously approved plans. Agencies with between 26 and 99 full-time employees file biennially (unless the plan is not approved, in which case DAS may require that it be resubmitted until it is). Those with 25 or fewer full-time employees are exempt from the filing requirement.

The bill also:

1. requires agencies with 100 or more full-time employees to file their semi-annual plans with DAS electronically, while annual plans are filed in a manner prescribed by DAS, and
2. reduces the frequency with which CHRO and the Permanent Commission on the Status of Women must train affirmative action officers (the bill renames such officers as equal employment opportunity ((EEO) officers) on state and federal discrimination laws).

Beginning October 1, 2011, the bill reduces training for EEO officers from (1) 10 to five hours during their first year of service and (2) five to three hours every two, rather than one, year thereafter. It also specifies that such officers are only responsible for investigating internal discrimination complaints made against an agency.

### ***Affirmative Action Plan Development***

By law, all state agencies and most state contractors and bidders must develop and implement an affirmative action plan. Under current law, state agencies must develop such plans in cooperation with CHRO and in accordance with its regulations. CHRO must

provide training and technical assistance on the plans' development and implementation to affirmative action officers in these entities. The plans must (1) ensure compliance with applicable state and federal laws; (2) provide for equal employment opportunities; and (3) comply with a number of nondiscrimination statutes, including career enhancement training.

The bill alters the plans' contents. Instead of the above, the plans must describe agencies' efforts to (1) provide equal employment opportunities and (2) comply with state and federal nondiscrimination laws. The plans must include race, gender, occupational category, and age data for all full-time employees.

The bill eliminates the requirements for (1) state agencies to cooperate with CHRO and follow its regulations when developing a plan and (2) CHRO to train agencies' affirmative action officers.

The bill also eliminates a requirement for state agencies to demonstrate in their affirmative action plans their compliance with diversity training and education requirements. However, agencies remain responsible for providing this information in an annual report to CHRO.

### ***Approval and Monitoring***

The bill transfers, from CHRO to DAS, responsibility for (1) approving and monitoring state agencies' affirmative action plans, (2) issuing certificates of noncompliance to agencies that do not have an approved plan, and (3) submitting an annual report to the governor and General Assembly on the results of the affirmative action plans.

By law, a state agency's affirmative action plan must be approved, conditionally approved, or disapproved within 90 days of its submission. If no action is taken within 90 days, the plan is considered approved. CHRO may issue a certificate of noncompliance to agencies with disapproved plans.

With certain exceptions, agencies that receive the noncompliance certificate may not fill a position or position classification by hire or

promotion. Under current law, these exceptions are (1) CHRO determines that the agency has achieved compliance, (2) the noncompliant agency requests a hearing during which CHRO is unable to show why the certificate should not be rescinded, or (3) the DAS commissioner and the OPM secretary certify to CHRO that the position must be filled immediately because of an emergency.

The bill (1) makes DAS, not CHRO, responsible for determining that an agency has achieved compliance and for conducting hearings requested by noncompliant agencies and (2) requires the OPM secretary to certify to the DAS commissioner, not CHRO, if a position must be filled immediately. The bill allows DAS to adopt regulations governing noncompliance; current law requires CHRO to adopt such regulations.

The bill removes from CHRO any involvement in ensuring that the State Personnel Act and personnel regulations are administered and collective bargaining conducted consistently with affirmative action requirements. Under current law, the DAS commissioner and OPM secretary have this responsibility but must exercise it in cooperation with CHRO.

### ***Complaints***

The bill also eliminates CHRO's authority to issue a complaint if a state agency (1) fails to submit an affirmative action plan or (2) submits one that violates certain state laws. The bill does not transfer this authority to DAS. Thus, there appear to be no consequences if any agency fails to file a plan or files a flawed plan.

### **§§ 25-38 — DOIT**

The bill (1) dissolves DOIT and establishes it as a division within DAS, which becomes its successor agency and (2) eliminates the CIO position. Beginning July 1, 2011, DAS assumes DOIT's personnel powers, duties, obligations, and other government functions. Among other things, the bill makes the DAS commissioner, rather than the CIO, responsible for:

1. developing and updating an annual information and telecommunications (IT) strategic plan;
2. identifying and implementing telecommunication systems to efficiently service state agencies and opportunities for reducing costs associated with these systems;
3. approving or disapproving state agency acquisition of hardware and software;
4. approving or disapproving state agency requests or proposed contracts for IT systems consultants;
5. purchasing, leasing, or contracting for telecommunication system facilities, equipment, and services for Executive Branch agencies other than the constitutional offices; and
6. serving on the Geospatial Information Systems Council (see COMMENT).

Under the bill, DAS does not inherit the CIO's responsibility to develop (1) and implement an integrated set of IT policies for state agencies and (2) a series of comprehensive standards and planning guidelines pertaining to the development, acquisition, implementation, and management of IT systems.

The bill removes the requirements that the strategic plan include (1) direction for state agencies to collect, store, manage, and use information in an efficient manner; (2) a comprehensive information policy for state agencies; and (3) a policy concerning the infusion of new technology for state agency IT systems. It requires the strategic plan to be developed in accordance with the policies established by OPM, but it is unclear what those policies are. The bill also repeals a requirement for professional development for the state's IT professionals.

**§§ 41, 44-47 & 71-77 — DIVISION OF FIRE AND BUILDING SERVICES**

The bill transfers, from DPS to DCS, most of the Division of Fire,

Emergency, and Building Services and its functions and renames it the Division of Fire and Building Services. It makes DCS responsible for enforcing the Fire Safety Code and the State Building Code by transferring the division's offices of the State Fire Marshal and the State Building Inspector to DCS. The bill also transfers, from DPS to DCS, responsibility for adopting regulations concerning building demolition and the licensure of persons engaged in such business.

Under the bill, the heads of the two transferring offices report to the DCS commissioner rather than the head of the division. The bill also eliminates a provision under which the State Building Inspector serves as the administrative head of the Office of the State Building Inspector. The bill allows the DCS commissioner to appoint a deputy commissioner to lead the division but eliminates the requirement for the deputy commissioner to be a civilian.

The bill removes the Office of State-Wide Emergency Telecommunications from the division, thus keeping that office in DPS. However, the bill gives DCS some authority over emergency telecommunications. This authority includes (1) the development of regulations concerning public and private safety answering points and municipal enhanced 9-1-1 service utilization plans and (2) decisions concerning the use of the Enhanced 9-1-1 Telecommunications Fund's resources.

### ***State Building Inspector***

The bill transfers the Office of the State Building Inspector from DPS to DCS. The office's responsibilities include (1) the adoption, administration, and interpretation of the State Building Code and (2) licensure of municipal building officials.

The Office of the State Building Inspector also oversees elevators, escalators, and boilers. However, current law, unchanged by the bill, provides for the DPS Commissioner to retain his or her responsibilities in these areas. These responsibilities include, among other things, (1) adopting regulations, (2) hearing and adjudicating appeals of the building inspector's decisions, (3) investigating elevator and escalator

accidents, and (4) commissioning boiler inspectors. The bill does not address how these functions would be affected by moving the building inspector's office to DCS.

**State Fire Marshal**

The bill transfers the State Fire Marshal's Office from DPS to DCS. Under current law, the DPS commissioner or a member of the State Police to whom he or she delegates powers is the state fire marshal. The bill instead requires the DCS commissioner to appoint the state fire marshal (see COMMENT).

The bill eliminates the deputy state fire marshal as a statutory position. However, it retains the position in the list of those exempted from classified service and refers to the deputy fire marshal as having the same powers as the state fire marshal with respect to investigating of fires and explosions.

The fire marshal is responsible for, among other things:

1. adopting and administering the State Fire Prevention Code and Fire Safety Code;
2. certifying local fire marshals, deputy fire marshals, fire inspectors, and investigators;
3. hearing and adjudicating complaints against local fire marshals, deputy fire marshals, and fire inspectors;
4. abating fire hazards;
5. investigating fires and explosions;
6. approving fire extinguishing systems;
7. regulating oil burners;
8. regulating (a) flammable and combustible liquids, (b) liquefied petroleum gas, (c) hazardous chemicals, (d) explosives and blasting agents, and (e) fireworks, including storage, use,

transportation, and transmission, as applicable;

9. regulating the installation and operation of gas equipment and gas piping; and
10. overseeing the sale and testing of cigarettes.

While the bill transfers the responsibility for regulating fireworks from DPS to DCS, it retains a requirement for DPS to define the term “pyrotechnics.” Additionally, under current law, unchanged by the bill, DPS appears to retain responsibility for regulating rockets. The bill also retains a requirement for people keeping and storing explosives to report to DPS instead of DCS.

### **§§ 39, 43, 48-60, & 78 — STATE SCHOOL CONSTRUCTION PROJECTS**

Under the bill, DCS assumes responsibility from SDE for the school construction grant process, which involves reviewing and approving school building project grant applications from local and regional boards of education.

The bill also makes numerous changes to the grant process. Among other things, it:

1. requires the governor to review and approve the priority list of proposed school construction projects before it is submitted to the legislature and changes the submission date from December 15 to the date the governor submits the state budget;
2. eliminates reimbursement for portable classrooms, even under accelerated procedures for code violations;
3. eliminates the special legislative committee that reviews school construction projects and transfers its duties and responsibilities to the Education Committee;
4. authorizes DCS to reject applications whose estimated cost exceeds the cost per square foot cost for the geographical area, which the commissioner determines;

5. requires the commissioner to cancel existing grant commitments for projects that do not begin construction by April 1, 2012, but allows towns and districts to reapply for the project;
6. for applications made on or after July 1, 2011, reduces the reimbursement rate for new construction, from 20% to 80% of eligible costs to 15% to 65% of these costs, while continuing the 20% to 80% reimbursement rate for renovations;
7. reduces, from 85% to 65%, the maximum reimbursement percentage for which incorporated or endowed high schools are eligible;
8. for projects authorized on or after July 1, 2011, eliminates attorney's fees and court costs related to litigation as eligible project costs;
9. eliminates reimbursement for leasing as an eligible project cost;
10. for purposes of determining project costs eligible for state reimbursement, changes how districts must calculate enrollment and bases the calculation on average student growth rate during the prior 10-year period rather than on the highest projected enrollment in the coming eight years starting from the date the district notifies the state of the project;
11. sets a maximum cost per square foot, which the DCS commissioner establishes, allows the commissioner to reject applications with estimated construction costs that exceed the standard, and reimburses towns based on the standard;
12. makes roof replacement and heating ventilation or air conditioning system projects eligible for 20% to 80% reimbursement if they provide greater energy efficiency or reduces heating costs.
13. exempts project management and construction management fees from the prohibition against increases in school construction project professional or consulting fees;

14. reduces the reimbursement rate for interdistrict magnet schools from 95% to 80% of eligible costs; and
15. eliminates the ability of the Connecticut Science Center, Inc. to qualify for school construction grants on the same basis as an interdistrict magnet school.

Beginning July 1, 2012, the bill (1) limits, from two to one, the number of times the legislature may reauthorize grant increases for projects that change in scope by more than 10% and (2) eliminates funding for board of education administrative and service facilities, which are currently reimbursed at one-half the district's regular rate.

***Education-Related Duties Transferred to DCS***

The bill authorizes DCS to make certain decisions that appear to be more education- than construction-related. For instance, in the case of a pilot program for developing a facility to be used as a state charter school, the bill allows DCS to waive charter school enrollment limits. It also allows DCS to determine the number of gross square feet per pupil that is adequate for the kind of educational program or programs intended for a facility.

If a building ceases to be used as a charter school, current law, unchanged by the bill, requires SDE to determine whether title to the building and any legal interest in related land revert to the state. However, in the case of an interdistrict magnet school, under the bill DCS makes this determination, and DCS, not SDE, must develop a comprehensive statewide interdistrict magnet school plan.

The bill also transfers, from SDE to DCS, the ability to require a school district to repay a grant that was provided for an interdistrict magnet school facility. If the district does not reimburse the state, the bill appears to allow DCS to withhold the district's non-construction state aid (see COMMENT).

SDE appears to retain authority to determine which construction projects qualify as "Sheff" magnet schools. Such projects are those that, in the commissioner's opinion, assist the state in meeting the goals of

the 2008 stipulation and order in the *Sheff* case. However, the bill is inconsistent in this respect because, in some places, it appears to give this authority to DCS (see COMMENT). For example, it requires DCS to determine which grant applications for interdistrict magnet schools would reduce racial, ethnic, and economic isolation.

***School Construction-Related Duties Not Transferred to DCS***

There are a number of school construction-related duties that the bill does not transfer from SDE to DCS. Under the bill, SDE (or the State Board of Education, as appropriate) remains responsible for, among other things:

1. establishing standards, requirements, and school building priorities;
2. requiring renovation projects to meet the same state and federal codes and regulations as are required for alteration projects;
3. granting waivers from required acoustical standards;
4. certifying dates and amounts of grant payments;
5. reviewing and approving certain interest rates;
6. determining whether certain orders or contracts are of an emergency nature;
7. determining whether a building project has not met the approved conditions of the original application, in which case the State Board of Education may withhold subsequent grant payments or require repayment of grants previously made;
8. withholding 10% of the state's reimbursement if a town or regional school district fails to submit its final grant application on time;
9. issuing hardship grants to towns or districts unable to finance a project;

10. approving the relocation or replacement of agricultural science and technology education centers;
11. approving cooperative regional special education facilities;
12. collecting, publishing, and distributing information on procedures for school building committees, building methods and materials suitable for school construction, and on relevant educational methods, requirements, and materials;
13. not requiring code compliance improvements in a part of a school building unaffected by a renovation; and
14. auditing and withholding interest subsidy grant payments.

Generally, the bill is ambiguous regarding DCS's relationship to the State Board of Education. For example, while the bill authorizes DCS to adopt regulations concerning school construction grants, it also maintains the State Board of Education's authority to do so. The bill thus gives two different entities the authority to separately adopt regulations for the same set of statutes.

Additionally, there are several instances where it is unclear whether DCS or SDE has a particular responsibility; the bill simply refers to "the commissioner" without specifying which commissioner. In some of these cases, as in the "Sheff" magnet schools described above, the bill could be interpreted as making one department responsible for something that appears more appropriately suited for the other department.

## **BACKGROUND**

### ***Related Bill***

sHB 6385, reported favorably by the Education Committee to the Appropriations Committee, also addresses school construction grants but maintains SDE's authority over the process.

## **COMMENT**

### ***Inconsistencies with respect to DAS and DCS***

There are several instances where the bill is inconsistent in terms of the respective public works-related roles and responsibilities of DAS and DCS. In Section 40, it appears that several DPW functions do not transfer to DCS, including (1) maintaining an inventory of all state-owned or -leased properties and premises, (2) supervising the care and control of certain buildings and grounds, and (3) establishing and maintaining security standards for most state facilities. However, in other sections (e.g., Section 39), the bill appears to provide for DCS to have these responsibilities.

It also appears to allow DCS to publicly disclose State Properties Review Board decisions regarding state facility needs (see § 64). However, it also provides that only the DAS commissioner can authorize the disclosure of an agency's real estate needs or interests (§ 3).

#### ***DAS Commissioner Performing CIO Duties***

Although the bill (§ 25) requires the DAS commissioner to assume all of the duties and responsibilities of the CIO, including service on the Geospatial Information Systems Council, the commissioner is not added as a council member in Section 12.

#### ***Fire Marshal Duties***

The bill (§ 74) permits the DCS Commissioner to delegate to any DPS employee any powers associated with fire hazards and enforcement and regulation of the state fire prevention and safety codes.

#### ***SDE and DCS Inconsistencies***

The bill is inconsistent as to whether SDE or DCS determines which construction projects qualify as "Sheff" magnet schools. For example, Section 49 provides for both SDE and DCS to make the determination (this issue is also present in Section 60).

Under current law, unchanged by the bill, SDE is responsible for non-construction state aid (i.e., education cost-sharing (ECS) grants) to school districts. However, if a district abandons an interdistrict magnet

school facility and is required to reimburse the state, in Section 60 the bill appears to allow DCS to withhold ECS funds. It is unclear how DCS could accomplish this.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 14 Nay 1 (03/23/2011)