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Testimony in Support of Senate Bill 434

AAC The Department of Administrative Services and E-Government, Extensions of Existing Contracts, A State Americans With Disabilities Act Coordinator Advisory Committee and Settlements By The Claims Commissioner

Government Administration & Elections Committee
January 28, 2013

The Department of Administrative Services offers the following testimony in support of Senate Bill 434.

Section 1 of this proposal modifies language that passed in last year's budget implementer bill P.A. 12-2 (Special Session sec. 152) that provided authorization for state agencies to enter into contracts with private and non-profit entities to help get more government services and transactions online.

The modification enables the State to utilize an increasingly popular "self-funded" model for these contracts requiring the chosen vendor(s) to provide all initial development and on-going development and maintenance services to the State without any up-front financial investment by the State. In these self-funded contracts, the vendor(s) are reimbursed through administrative fees determined by the State. The current language in the statute, which requires these administrative fees to be deposited into the general fund, prohibits the State's use of this self-funded model.

Numerous state agencies and offices are moving forward with e-Government initiatives to enable their clients and the public to transact business with the state online, and to provide data and information in an easily accessible web-based format. Utilizing a self-funded e-government model would enable the State to dramatically improve and maintain a new online presence and to expeditiously move forward with e-Government initiatives. The chosen vendor(s) provide the work to transform State website portals and move State transactions and services online, with no up-front cost to the State, enabling us to move forward with these initiatives with no general fund appropriations or bond funds. The vendor works with the State to recommend certain transactions on which small administrative service fees may be added to support the system. No fees are ever imposed without review by members of the executive and legislative branches.

DAS and the Department of Economic & Community Development are currently working to establish a contract for an enterprise E-Government solution. Without the language change proposed in Section 1 of this bill, the State will not be able to utilize the self-funded model to do this work, but would instead have to seek bond funds or general fund appropriations. Additionally, utilizing the self-funded contract model rather than the traditional pay-for-services approach would enable us to do this work more rapidly, and consistently continue to add more on-line government transactions and services to our portal.

Section 2 of this bill modifies C.G.S. § 4a-59a, which relates to the extensions of contracts for goods and services. In general, once contracts expire, they must be competitively bid again. By statute, exceptions to this general rule apply when (1) soliciting competitive bids for a purchase would cause a hardship for the state, (2) when a competitive solicitation would result in a major increase in the cost of the goods or services under contract; or (3) when the contractor is the sole source for the products or services. In such instances, the DAS Commissioner must make a written determination of the exception used, and must also test the marketplace by soliciting at least three competitive quotes in addition to the contractor's quote, and making a written determination that no comparable competitive quote is lower than or equal to the contractor's price.

While DAS agrees that these guidelines are appropriate to protect against frequent, ill-advised, or ad hoc contract extensions, some flexibility is needed to address situations where failure to extend an existing contract would compromise continuity of state agency systems or operations. While infrequent, unforeseen situations do arise, particularly in the Information Technology area, when a new contract is not yet ready to be executed or a newly-chosen vendor is not yet ready to perform at the time an existing contract expires. In such situations, the existing statutory exceptions authorizing contract extensions do not apply, and the State has no recourse but to terminate the existing contract, leaving a gap in service. Such situations create severe problems when the contract at issue provides products or services that are critical to State agency systems or operations.

Existing statutes already recognize the importance of ensuring the continuity of State agency IT facilities, equipment and systems (see C.G.S. § 4d-44). Although contract provisions exist to address these contingencies, they do not help when the statute expressly provides that those contracts cannot be extended after their contract expiration date.

In order to address such situations, and to prevent a gap in critical products or services, DAS proposes a narrow exception allowing the DAS Commissioner to extend an existing contract, for a period not to exceed one additional year, if failure to provide

such extension would compromise continuity of state agency systems or operations. In such a case, the Commissioner would have to provide a written certification.

Lines 41-45 of the bill merely clarify the existing statute. As stated above, under current statute, the DAS Commissioner may extend an existing contract if he can show that (1) soliciting competitive bids for a purchase would cause a hardship for the state, (2) a competitive solicitation would result in a major increase in the cost of the goods or services under contract, or (3) the contractor is the sole source for the products or services. In such instances, the DAS Commissioner must still solicit at least three competitive quotes from other vendors. However, by definition, the requirement to solicit other bids is simply not possible in sole source situations. Therefore, DAS seeks to clarify this part of the statute and only require 3 competitive quotes in situations involving (1) or (2) above.

Section 5 of the bill modifies C.G.S. §4-61aa, which established a committee to encourage the employment by the State of persons with disabilities. To be chaired by DAS and consisting of representatives from the Board of Education and Services to the Blind, the Commission on the Deaf and Hearing Impaired, the Department of Rehabilitation Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Developmental Services and the Labor Department, this Committee's mandate was to advise and develop written guidelines "regarding the adaptation of employment examinations and alternative hiring processes for, and the reasonable accommodation of, persons with disabilities." This Committee was also expected to review career mobility programs with specific regard to individuals with disabilities.

This Committee has not met in several years. The Auditors have cited DAS for not convening this committee and have recommended that the agency seek its elimination legislatively, or reconstitute it.

The narrow scope of this committee's charge makes a statutorily-required standing committee impractical.

At this time, the Commissioner of DAS has been appointed by the Governor to serve as the Statewide ADA Coordinator. As a result of this experience, DAS believes that an Advisory Committee, comprised of agencies and individuals with experience in the challenges faced by individuals with disabilities and the State's legal obligations under the Americans with Disabilities Act, would provide valuable insight and assistance to the Statewide ADA Coordinator. Therefore, DAS proposes to re-name the Committee to Encourage Employment by the State of Persons with Disabilities, and to modify its charge.

Specifically, DAS proposes that the committee be re-named the "State Americans with Disabilities Act Coordinator Advisory Committee." This Advisory Committee will consist of representatives from the same agencies as its predecessor, as well as any other individuals designated by the State ADA Coordinator. Its function would be to advise the State ADA Coordinator, as needed, on issues relating to not only the employment by the state of individuals with disabilities, but also, on measures the State can take to fulfill its other obligations under the Americans with Disabilities Act, including its obligations as a provider of public services and a place of accommodation.

Sections 6-8 are submitted on behalf of the Claims Commissioner. The Office of the Claims Commissioner ("OCC") was established to assess claims brought against the State to determine which claims have merit, therefore warranting the State to waive its sovereign immunity and agree to be sued; and to expeditiously resolve such claims against the State.

C.G.S. § 4-158 outlines the Claims Commissioner's authority. When a claim is brought against the State or one of its agencies, the Claims Commissioner may 1) order that a claim be denied or dismissed; 2) order immediate payment of a just claim in an amount not exceeding \$7,500; 3) recommend to the General Assembly payment of a just claim in an amount exceeding \$7,500; or 4) authorize a claimant to sue the State.

This statute was originally enacted in 1959. At that time, the Claims Commissioner had the authority to order and enforce judgments up to \$2,000. In 1975, the \$2,000 threshold was increased to \$5,000. In 1984, the threshold was raised again, to \$7,500. The statutes have not been updated in nearly 20 years; the \$7,500 threshold has been in place since 1984. Increasing the threshold to \$20,000 would make the state claims process more efficient by enabling the OCC to handle these smaller cases expeditiously, without clogging up the Judicial dockets.

Currently, for example, if the Claims Commissioner is able to settle a claim for \$10,000, he must grant permission to sue the State and then transfer the case to the Judicial Branch where the matter is placed on a judge's docket for approval and processing. It simply does not make sense to utilize the resources of both the OCC and the Judicial Branch (and the Office of the Attorney General, which is generally involved in these cases both when they are at the OCC and when they are in Court) on these low-dollar claims.

Finally, Section 9 of this bill repeals two obsolete statutes. C.G.S. § 4a-55 provides that any institution or state agency, with the approval of the DAS Commissioner, may become a member of a corporation established to provide hospital laundry services and supplies on a cooperative basis to its members and may, with DAS's approval, enter into a contract with such a corporation.

This statute was enacted in 1969 and was amended only once, in 1977, to update DAS's agency name. No state agency is currently a member of any laundry cooperative corporation, and it is our understanding that these cooperatives have not been established in many years. We respectfully recommend that this statute is repealed. C.G.S § 4-61t makes DAS responsible for appointing members to and chairing the Committee on Career Entry and Mobility. The statute specifies that this unwieldy committee, consisting of designees from DAS, OPM, CHRO, PCSW, and OP&A as well as at least 10 other state employees representing different specified interests, should determine how career counseling can be best provided and training opportunities best met and made available with the funds allotted.

The Committee was also to develop mechanisms to communicate information about State employment opportunities to State employees and persons with disabilities who wish to become State employees; advise the Commissioner of DAS concerning broader usage of classification titles affecting upward mobility, the entry level employment of persons with disabilities and an effective procedure for reporting compliance to the legislature. The committee was to meet at least quarterly and submit periodic reports to the Commissioner of Administrative Services; however, it has not met in several years.

Notwithstanding the Committee's inaction, the goals of the Committee have been achieved through a variety of measures, including the clarification of the process for promotions by reclassification, the establishment of the Connecticut Careers Trainee and Leadership Associate classes, the creation of various trainee classes, and ongoing re-evaluation of the minimum qualifications needed to qualify for state job classifications. DAS has consistently striven to achieve the goal of greater communication about employment opportunities, first by posting information about examinations and job openings on the DAS website, then by establishing the e-Alert system, which enables applicants to receive emails about new examinations and postings automatically, and, coming soon, a web-based applicant examination list information system that will enable applicants to check whether they are on current examination lists and when those lists expire. Also coming soon, DAS is developing an e-Recruit module through the Core-CT system that will simplify the path toward state employment even further. Many of these efforts have been and continue to be achieved through labor-management committees, regular meetings of human resources professionals throughout the state, and with other input from stakeholders.

The Auditors of Public Accounts have recommended that DAS either seek statutory elimination of this committee or resume it. DAS believes that the sheer size of the committee makes the committee unmanageable, and requiring such a committee to meet at least quarterly to continuously review a fairly narrow scope of topics is not practical nor an efficient use of state time or resources. While such a committee may have added value in the 1980s and 1990s, technology advancements, and the establishment of labor-management committees and regular human resources

professional meetings have enabled the goals of this committee to be met in much more practical and efficient ways. This committee is obsolete and should be eliminated.

DAS thanks the Committee for raising this bill, and we respectfully ask for the Committee's support. Please contact DAS's legislative liaison, Terrence Tulloch-Reid (860)713-5085, if you have any questions or require further information.

Senate Bill 434

An Act Concerning the Department of Administrative Services and E-Government,
Extensions of Existing Contracts, A State Americans with Disabilities Act
Coordinator Advisory Committee and Settlements by the Claims Commissioner

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Good afternoon, and thank you Honorable Members of the Government Administrations and Elections Committee. My name is J. Paul Vance, Jr. and I have had the honor of serving for the past seventeen months as the state's Claims Commissioner.

I am here today to testify on, and ask your support for, the sections of Senate Bill 434 that relate to Claims Commissioner operations.

For those of you who are not familiar, my position as Claims Commissioner is similar to an 'internal affairs' judge for the State of Connecticut. Since the State of Connecticut cannot be sued without its consent, by statute the Claims Commissioner has the authority to determine if a claim against the State has merit. We have hundreds of claims that are brought against the State that are different and range from a slip and fall claim in a judicial building to lost property at a state university to an assault in a correctional facility. Many different state agencies have been the 'defendant' so to speak and it is important that I maintain both independence and a sense of fairness to serve as what has been called 'the conscious of the State.' I take this role very seriously and I weigh each claim carefully to ensure that that the resident has been treated fairly and determine if the State has acted appropriately or not.

While I have great responsibility in the position, the authority is guided by C.G.S. Section 4-158, which allows me to: (1) order that a claim be denied or dismissed; (2) order immediate payment for the claim up to \$7,500; (3) recommend to the General Assembly payment of a just claim in an amount exceeding \$7,500; or (4) authorize a claimant to sue the State. Senate Bill 434 raises the thresholds in the statute from \$7,500 to \$20,000, and therefore would allow the Claims Commissioner to expeditiously resolve more cases.

The statutes that set forth the jurisdictional limits of the Claims Commissioner have not been updated in almost twenty years, and I submit that the proposal to increase these limits will save the State resources. By raising the threshold, the claimants and

respondents that appear before me have a bit more room to settle just claims without being compelled to clog the agenda of the GA or clog the docket of the judicial department with lawsuits that have a value of less than \$20,000. Not only will this change help my office be more efficient in attempting to settle valid claims, but it will lessen the strain on the attorneys in the Office of the Attorney General who litigate these claims, giving them greater ability to negotiate settlements and enabling them to avoid going to court.

In my confirmation hearing for this position, I spoke about my desire to make the Office of the Claims Commissioner more efficient, and I believe this is one such step in the right direction.

I thank you for your time, and the opportunity to testify today. I am happy to answer any questions the Committee may have now, or at any time, about this proposal or the work that my office performs.