

Senate Bill 451
An Act Concerning Government Administration, State Contracting, Regional School Boards
And the State Elections Enforcement Commission

My name is Mathew Longanecker and I would like to thank the Committee for allowing me the opportunity to provide testimony in support of Senate Bill 451; and particularly Sec. 21 of this bill calling for the repeal of Section 4b-4 of the 2014 supplement to the general statutes.

Sec. 4b-4 reads as follows:

Sec. 4b-4 (Formerly Sec. 4-26f). Restrictions on Department of Administrative Services employees responsible for acquiring, leasing and selling real property. Filing of statement of financial interests. (a) No nonclerical employee in the unit in the Department of Administrative Services that is responsible for acquiring, leasing and selling real property on behalf of the state shall be directly involved in any enterprise that does business with the state or be directly or indirectly involved in any enterprise concerned with real estate acquisition or development. Each member of the State Properties Review Board shall file, with the State Properties Review Board and with the Office of State Ethics, and each such employee of the Department of Administrative Services shall file, with the Department of Administrative Services and with the Office of State Ethics, a statement of financial interests pursuant to the provisions of section 1-83

INTRODUCTION:

In 2008, I was hired as a Property Agent 2 in the State's Department of Public Work's (DPW) Leasing and Property Transfer Unit which was later consolidated into the Department of Administrative Services (DAS). My job responsibilities include negotiating commercial real estate leases. Before being employed with the State, I held several different positions in the real estate industry and legal field. I am a law school graduate and also a licensed real estate broker. Sec. 4b-4 of the general statutes has had a chilling effect on my professional aspirations outside of state employment. The Statute essentially shuts the door on all outside employment opportunities in my field of expertise. Any real estate related activity I engage in outside of my state employment could be perceived as a violation of 4b-4 depending on who is interrupting the Statute at any particular time.

REASONS WHY SEC. 4B-4 SHOULD BE ELIMINATED:

- 1) Sec. 4b-4 should be eliminated because it treats certain state employees unfairly.

The language in the first sentence of Sec. 4b-4 applies only to three property agents (and two supervisors) employed in DAS' Leasing and Property Transfer Unit. There are at least several dozen property agents at other state agencies who are not governed by 4b-4 or any other similar statute. These property agents' outside employment activities are restricted only by the State Code of Ethics laws which all state employees are required to abide by, including employees in DAS' Leasing and Property Transfer Unit. Unlike the 4b-4 statute, the Code of Ethics, Sections 1-84(b) and 1-84(c), does not contain a blanket provision against outside employment. To the best of my knowledge, there are no other job classifications at the State of Connecticut that fall under a statute like 4b-4 that bans outside employment activities in the profession or field of expertise of that particular state employee. This Statute is certainly one of a kind.

2) Sec. 4b-4 should be eliminated because the Statute's language is overly broad and vague.

The language in Sec. 4b-4 is expressed in a way that makes it impossible to ascertain the full scope of the law without seeking out the advice of legal counsel. The Statute itself does not explicitly define any of the terms used in the provision; and there isn't any legislative history which would help explain the legislature's intent behind the use of particular language in the Statute. Seeking out advice from the Office of State Ethics, DAS, and its predecessor DPW, has only resulted in less clarity and more confusion.

The meaning of certain words used in the Statute is still unclear to me. For example, I've received two conflicting opinions with regard to the meaning of the word "enterprise". DPW defined the word "enterprise" broadly as "a project, undertaking or business" while DAS narrowly defines enterprise as "a corporation, business, firm, company, or registered group with a designated purpose". The legislature's intended meaning of the word "enterprise" remains unknown; making it impossible for me to know the true scope of the law since the words used in the Statute can mean different things to different people.

Similarly, the meaning behind the words "acquisition" and "development" has alluded me. What if I limited a real estate brokerage business to the "disposition" of real estate, not the "acquisition or development" of real estate? I've asked my agency this question but DAS maintains that 4b-4 prohibits me from using my real estate license in outside employment in any manner. So what exactly did the legislature intend when it used the words "acquisition or development"? If they intended to include disposition of real estate, why was this term not included in the language, especially since each term has its own distinct legal definition?

3) Sec. 4b-4 should be eliminated because it violates the Constitutional rights of the individual state employee.

I strongly believe that the Statute's language violates my constitutionally protected due process right to economic liberty including the right to gainful employment and the freedom to contract.

Procedurally, there is no formal hearing process or appeal procedure established to hear my concerns or objection to my agency's interpretation of 4b-4. In the beginning, I inquired with the Office of State Ethics about 4b-4 but OSE and the Citizen's Ethics Advisory Board (CEAB) concluded that they did not have the authority to interpret Sec. 4b-4.

Furthermore, there is no rational basis for the existence of this Statute since the State Ethics Code, today, addresses all the same ethical concerns that were presumably in the minds of the drafters of this legislation in the 1970's. The State Ethics Code covers ethical issues such as conflicts of interest, independence of judgment, financial entanglements and confidentiality concerns.

CLOSING REMARK:

The State Ethics Code already applies to all State employees; making Sec. 4b-4 redundant, unnecessary and obsolete. For the above reasons, I support Senate Bill 451 and the repeal of Sec. 4b-4 of the general statutes. Thank you for your time.