OLR Bill Analysis
sSB 917

AN ACT CONCERNING THE STATE CONTRACTING STANDARDS BOARD AND REQUIREMENTS FOR PRIVATIZATION CONTRACTS.

SUMMARY

This bill expands the requirements for privatizing state services, including the (1) contracts and agencies subject to the state's privatization law and (2) steps agencies must take to comply with the law. It does the following, among other things:

1. expands the definition of “privatization contract” to include procurement contracts that will require subsequent related services of more than $50,000 per year;

2. subjects quasi-public agencies to the state's privatization law;

3. requires that, for privatization contracts for currently privatized services, the state or quasi-public agency provide a business case for the privatization if the contract is for more than $1 million, in addition to the cost-effectiveness evaluation required by existing law;

4. requires state and quasi-public agencies that enter into privatization contracts due to insufficient staffing levels to submit plans for hiring more state employees;

5. prohibits (a) state and quasi-public agencies from entering into a privatization contract without the attorney general's formal approval and (b) privatization contracts from being valid unless certain certifications are posted on the State Contracting Portal at least 30 days before the contract's execution;

6. expands the State Contracting Standards Board's (SCSB's) authority over the constituent units of higher education;
7. requires the auditors of public accounts and state contracting agencies to assume certain duties if SCSB is determined to be understaffed; and

8. adds additional requirements to the state agency budgeting process concerning estimates for funding additional positions in lieu of privatization.

The bill changes SCSB's quorum requirements from eight members to a majority of the members actually appointed. As under existing law, at least one legislative appointee must be present. The board's full membership is 14 members: eight appointed by the governor and six appointed by legislative leaders (§ 3).

Lastly, the bill makes technical changes.

EFFECTIVE DATE: July 1, 2019

§§ 1 & 2 — APPLICABILITY OF PRIVATIZATION LAW

Definition of Privatization Contract (§ 1)

The bill expands the definition of privatization contract to include any procurement contract entered into on and after July 1, 2019 that will require subsequent related services of more than $50,000 per year. Under existing law, a privatization contract is an agreement or series of agreements between a state contracting agency and a person or entity that agrees to provide services that are substantially similar to and in place of services provided, in whole or in part, by state employees. It does not include contracts with a nonprofit agency that were in effect as of January 1, 2009, and that, through a renewal, modification, extension, or rebidding of contracts, continue to be provided by a nonprofit agency.

State Contracting Agency (§ 2)

The bill subjects quasi-public agencies, including quasi-public agencies that provide financing to a constituent unit of higher education, to the state's privatization law by defining them as “state contracting agencies.” Under existing law, state contracting agencies are executive branch agencies, boards, commissions, departments,
offices, institutions, and councils, except for (1) the offices of the state treasurer, comptroller, attorney general, and secretary of the state with respect to their constitutional functions or (2) state agencies with respect to contracts specific to the state treasurer’s functions. By law, the definition includes the constituent units of higher education for purposes of the privatization law.

§ 5 — CONTRACTS FOR SERVICES THAT ARE CURRENTLY PRIVATIZED

Business Case

By law, if a state contracting agency seeks to enter into a contract that privatizes services performed by state employees, it generally must conduct a cost-benefit analysis and submit a business case to SCSB for its approval. The business case must include, among other things, the cost-benefit analysis and 11 other analyses relating to the privatized service, such as its goals, a rational for them, and options for achieving them (CGS § 4e-16(d)).

For privatization contracts not subject to this requirement (i.e., contracts for services that are currently privatized), state contracting agencies must instead evaluate the contract, using a template prescribed by the Office of Policy and Management (OPM) secretary, to determine if entering into or renewing it is the most cost-effective way of delivering the service. The bill requires agencies to additionally provide a business case for the privatization if the contract is for more than $1 million.

Cost-Effectiveness Evaluation

Under the bill, the OPM-prescribed template for the cost-effectiveness evaluation must require the state contracting agency to (1) certify that it has complied with the requirements for the cost-effective analysis and (2) explain why it is not subject to the requirement to produce a business case (see above).

The bill prohibits agencies from entering into the contract whenever the cost-effectiveness evaluation does not demonstrate savings from privatization, unless they (1) provide the OPM secretary with a written
report explaining why they want to enter into the contract despite the lack of savings and (2) receive the secretary's written approval. Unless the contract is a renewal, the agency must also report to the secretary whether the quality of services could be diminished by privatization and any risks associated with terminating or rescinding the contract.

§§ 4 & 6 — PRIVATIZATION CONTRACTS GENERALLY

Notice to Collective Bargaining Agents (§ 6)

The bill requires state contracting agencies, before entering into or renewing any privatization contract, to provide at least 60 days' written notice to any collective bargaining agent that represents state employees performing work of the type and nature required by the contract. The notice must (1) include all privatization analyses required by existing law and the bill (e.g., the cost-effectiveness evaluation or business case) and (2) offer the bargaining agent a meeting with the agency to discuss the analyses and whether state employees could more appropriately perform the work.

Under existing law, if a privatization contract for a service that is not currently privatized would result in the layoff, transfer, or reassignment of 100 or more state employees, the state contracting agency must, after conducting a cost-benefit analysis and consulting with potentially affected bargaining units, notify the state employees in these bargaining units. The agency must allow the employees an opportunity to reduce the cost of the service, but has sole discretion in determining whether to proceed with the privatization, provided SCSB has approved its business case (CGS § 4e-16(c)(3)).

Plan for Hiring Additional State Employees (§ 6)

Under existing law, if any part of a business case for a privatization contract is based on evidence that a state contracting agency is not sufficiently staffed to provide a core governmental function, then the agency must include with the business case a plan to remediate the understaffing so that the agency may provide the services directly in the future (CGS § 4e-16(d)).

The bill additionally requires state contracting agencies that (1) seek
to enter into any privatization contract that could be done at a lesser cost by state employees and (2) determine that there are not enough employees in the agency to perform the contract, to submit a plan to the OPM secretary to hire more state employees in order to prevent the recurrence of insufficient staffing levels. Presumably, the cost determination is based on the cost-benefit analysis or cost-effectiveness evaluation, as appropriate.

The agencies must submit this plan within 60 days after making the determination. The OPM secretary, as part of any proposed budget or budget adjustment submitted by the governor, must report to the Appropriations and Government Administration and Elections committees on whether and to what extent the agency's plans are included in the proposal, and the rationale for this action.

**Attorney General Approval (§ 6)**

The bill prohibits state and quasi-public agencies from entering into a privatization contract without the attorney general's formal approval. It requires agencies, as part of their submission to the attorney general, to include the following:

1. a copy of the proposed contract;

2. any certifications required by the bill and the existing privatization law; and

3. a (a) certification that the contract was approved by SCSB or not subject to its approval or (b) copy of an exemption granted by the governor for certain emergency procurements for public health, safety, or welfare purposes.

Under the bill, a privatization contract entered into on or after July 1, 2019 is not binding on the state unless it (1) has the attorney general's approval and (2) complies with the above submission requirements.

**State Contracting Portal Postings (§ 4)**

The bill prohibits privatization contracts from being valid unless all
certifications required by the bill and existing law are posted (presumably, by the state contracting agency) on the State Contracting Portal at least 30 days before the contract's execution. In addition to the certifications required by the bill, existing law requires agencies to certify, as part of a cost-benefit analysis, that all projected costs, savings, and benefits are valid and achievable (CGS § 4e-16(b)).

§ 7 — CONSTITUENT UNITS OF HIGHER EDUCATION

By law, the state’s constituent units of higher education are, generally, not subject to SCSB’s authority, except for the privatization law. Current law requires SCSB to adopt regulations to apply the requirements of specified SCSB-related statutes to the constituent units. (To date, the board has not adopted these regulations.)

The bill instead requires (1) each of the constituent units, by January 1, 2020, to propose regulations concerning its contracting procedures to SCSB and (2) SCSB to adopt the regulations with any modifications it deems appropriate. It subjects all constituent unit expenditures, regardless of funding source, to the requirements of the SCSB-related statutes until the board adopts the regulations. For example SCSB may hear and decide contests by bidders and proposers of contract solicitations or awards by the constituent units (CGS §§ 4e-36 and 4e-40).

However, under existing law, several SCSB-related statutes do not become operative until the board adopts its implementing regulations. To date, SCSB has not adopted these implementing regulations; therefore, it is unclear how these statutes would apply to the constituent units.

§ 8 — SCSB STAFFING

The bill requires the OPM secretary, within 90 days after the legislature adjourns a regular session sine die, to recommend an appropriate staffing level for SCSB to fulfill its duties. If the OPM secretary determines that the board is staffed at “substantially lower levels” than recommended by the auditors, the auditors may issue a compliance report for each state contracting agency. Existing law
requires SCSB to (1) audit contracting agencies' compliance with procurement statutes and regulations every three years and (2) issue a compliance report within 30 days after completing the audit.

Under the bill, if SCSB has not issued a compliance report for an agency for three years or more as of December 31 in any year, the auditors must issue the report by the following April 1. Presumably, this means the auditors must also audit the contracting agency before issuing the report.

The bill also requires state contracting agencies, if SCSB remains below the auditors' recommended staffing level, to designate liaisons to SCSB. The liaison must notify the board of any privatization contract of more than $50,000 and provide the board with any contract evaluations or analyses within 10 days after their completion. Under the bill, sufficient notice includes directing SCSB staff members to postings on the State Contracting Portal. Agencies must notify liaisons that such reporting is an essential part of their duties.

§§ 9 & 10 – STATE AGENCY BUDGETING REQUIREMENTS

The bill requires the administrative head of each budgeted agency to include in its biennial expenditure requirement estimates transmitted to the OPM secretary, an estimate of the amount required to hire additional employees in lieu of any privatization proposal. In his recommended biennial budget document transmitted to the General Assembly, the bill permits the governor to include the same estimates. To the extent the governor includes these estimates, the bill also requires the rationale for determining to what extent to fund the additional positions within a budgeted agency in lieu of privatization.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 10  Nay 5  (03/06/2019)