

Senate, April 2, 1998. The Committee on Government Administration and Elections reported through SEN. LEBEAU, 3rd DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE PROCEDURE AND ACCOUNTABILITY FOR THE CONTRACTING OUT OF STATE SERVICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) As used in this act:

2 (1) "Agency" means a department, board,
3 institution or commission established by statute,
4 not a part of any other department, board,
5 institution or commission.

6 (2) "Core function" means an ongoing
7 operation related to an agency's mission.

8 (3) "Essential services" means any service
9 that generally is performed by agencies,
10 including, but not limited to, data processing.

11 (4) "Privatization contract" means an
12 agreement or series of agreements, valued at one
13 hundred thousand dollars or more, by which a
14 nongovernmental person or entity agrees to assume
15 all or part of an agency's core function or to
16 provide essential services to the state which are
17 substantially similar to and in lieu of services
18 provided or functions performed, in whole or in
19 part, by regular employees of an agency prior to
20 such privatization contract, but excludes an
21 agreement solely to provide legal or management
22 consulting.

23 (5) "Public-private partnership" means any
24 arrangement through a privatization contract,
25 other than such an arrangement with a quasi-public
26 corporation established pursuant to this act.

27 (6) "Corporation" or "partnership" means
28 either a quasi-public corporation or a
29 public-private partnership.

30 Sec. 2. (NEW) No state agency or agencies
31 shall agree to a privatization contract except
32 with a quasi-public corporation or a
33 public-private partnership created by law for that
34 purpose. Such corporation or partnership shall be
35 a successor employer to the state and shall
36 recognize existing bargaining units and collective
37 bargaining agreements existing at the time of
38 transfer of the function or service to the
39 corporation or partnership. The employees of the
40 corporation or partnership shall be considered
41 state employees under the provisions of sections
42 5-270 to 5-280, inclusive, of the general
43 statutes. The corporation or partnership shall not
44 be required to comply with personnel policies and
45 procedures of the Department of Administrative
46 Services and the Office of Policy and Management
47 with regard to approval for the creation of new
48 positions, the number of such positions, the
49 decision to fill such positions or the time for
50 filling such positions. The corporation or
51 partnership shall have the power to determine
52 whether an individual is qualified to fill a
53 vacancy at the corporation or partnership.
54 Nonmanagerial employees of the corporation or
55 partnership shall be members of the classified
56 service. Managerial employees shall be exempt from
57 the classified service. The corporation or
58 partnership shall have the ability to determine
59 the qualifications and set the terms and
60 conditions of employment of managerial employees.
61 State employees who transfer to a public-private
62 partnership shall remain employees of the state
63 for all purposes under this act, the general
64 statutes and all applicable collective bargaining
65 agreements.

66 Sec. 3. (NEW) Existing employees of an agency
67 as of the date of execution of a privatization
68 contract who are in collective bargaining units
69 shall be offered the opportunity to transfer with
70 their position to the corporation or partnership.

71 If the corporation or partnership elects to employ
72 a smaller number of persons in such positions at
73 the corporation or partnership than exist in the
74 agency or agencies, the opportunity to transfer to
75 the corporation or partnership shall be offered on
76 the basis of seniority. Employees who are offered
77 the opportunity to transfer to the corporation or
78 partnership may decline to do so. Any person who
79 is covered by a collective bargaining agreement as
80 an employee of an agency who accepts employment
81 with the corporation or partnership shall transfer
82 with his position and shall remain in the same
83 bargaining unit of which he was a member as an
84 employee of his former agency.

85 Sec. 4. (NEW) No employee who is covered by a
86 collective bargaining agreement as an employee of
87 an agency shall be laid off as a result of the
88 creation of a corporation or partnership. Each
89 employee who is not employed by the corporation or
90 partnership and, by virtue of the act creating the
91 corporation or partnership, is no longer employed
92 by his former agency shall be assigned to a
93 comparable position in another agency. Such
94 assignment shall be offered in the order of
95 seniority. Seniority shall be defined in the same
96 way as cases of transfer under the appropriate
97 collective bargaining agreements. Such assignments
98 shall be made only with the approval of the Office
99 of Policy and Management and shall be reported at
100 the end of the fiscal year to the Finance Advisory
101 Committee. Employees may choose to be laid off in
102 lieu of accepting any such assignment. In such
103 case, they shall be entitled to all rights under
104 their respective collective bargaining agreements,
105 including applicable agreements between the state
106 and the State Employees Bargaining Agent Coalition
107 (SEBAC).

108 Sec. 5. (NEW) (a) In addition to the
109 positions transferred to a corporation or
110 partnership under section 3 of this act, the
111 corporation or partnership may create one or more
112 new classifications of employees. Such
113 classifications, unless exempt under chapter 68 of
114 the general statutes, shall be assigned to the
115 collective bargaining unit which most closely
116 encompasses the work to be performed by such
117 classifications.

118 (b) For the period commencing on the
119 effective date of the act creating a corporation
120 or partnership until the expiration of the
121 collective bargaining agreement in effect for
122 transferred employees or the date of approval by
123 the legislature of any interim agreement,
124 whichever is earlier, the corporation or
125 partnership may hire employees into a new
126 classification without regard to any collective
127 bargaining agreement then in effect and may set
128 the initial terms and conditions of employment for
129 all employees in a new classification.

130 (c) Not later than six months after the
131 hiring of the first employee in any such new
132 classification, the collective bargaining agent of
133 the transferred employees and the executive branch
134 on behalf of the corporation or partnership shall
135 engage in mid-term bargaining for such
136 classification at the request of either party. The
137 scope of such mid-term bargaining shall include
138 all terms of employment.

139 (d) Upon the expiration of the collective
140 bargaining agreement covering transferred
141 employees, all terms and conditions of employment
142 in any new classification shall be subject to
143 collective bargaining as part of the negotiation
144 of a common successor agreement.

145 Sec. 6. (NEW) The executive branch shall be
146 empowered to negotiate on behalf of the
147 corporation or partnership for employees of the
148 corporation or partnership covered by collective
149 bargaining and represent the corporation or
150 partnership in all other collective bargaining
151 matters. The corporation or partnership shall be
152 entitled to have a representative present at all
153 such bargaining.

154 Sec. 7. (NEW) The officers and all other
155 employees of a corporation or partnership shall be
156 state employees for the purposes of group welfare
157 benefits and retirement, including, but not
158 limited to, those provided under chapter 66 of the
159 general statutes and sections 5-257 and 5-259 of
160 the general statutes, as amended. The corporation
161 or partnership shall reimburse the appropriate
162 agencies for all costs incurred by such
163 designation. Any officer of the corporation or
164 partnership employed less than full time by the
165 corporation or partnership may opt out of group

166 welfare and retirement benefits by stating so, in
167 writing, on a form provided by the State
168 Comptroller. The State Comptroller shall make such
169 form available to said officers.

170 Sec. 8. (NEW) Nothing in this act shall
171 prevent the state from delegating some or all of
172 the management of public or private partnerships
173 to its private partner or affect the collective
174 bargaining rights of employees of any agency.

175 Sec. 9. This act shall take effect July 1,
176 1998.

177 STATEMENT OF LEGISLATIVE COMMISSIONERS: In
178 subdivision (1) of section 1, the reference to the
179 definition of "agency" in section 5-196 has been
180 removed and replaced with the full text of that
181 definition for clarity. In addition, minor errors
182 in grammar and punctuation detected in the final
183 proofreading of the bill were corrected.

184 LAB COMMITTEE VOTE: YEA 8 NAY 5 JF C/R GAE

185 GAE COMMITTEE VOTE: YEA 11 NAY 6 JFS-LCO

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OLR BILL ANALYSIS

SSB 310

AN ACT CONCERNING THE PROCEDURE AND ACCOUNTABILITY FOR THE CONTRACTING OUT OF STATE SERVICES

SUMMARY: This bill bars state agencies from contracting out ongoing operations or other services generally performed by state agencies except to quasi-public corporations or public-private partnerships created by law to perform the operation or service. It requires state employees who become employees of these entities to (1) remain state employees; (2) be covered by the state collective bargaining law; (3) retain their existing contracts and union representatives; (4) receive regular state employee benefits; and (5) if they are not managerial, remain members of the state classified service.

The bill prohibits the state from laying off any employee because of the creation of a quasi-public corporation or public-private partnership. And it guarantees state collective bargaining rights and state benefits to new employees hired by the corporation or partnership.

The bill specifies that its provisions do not prevent the state from delegating some or all of the management of a public-private partnership to the private partner. And it specifies that its provisions do not affect the collective bargaining rights of any state agency employee.

The bill applies to contracts, other than those for legal or management consulting, worth at least \$100,000 under which a nongovernmental entity assumes all or part of an operation related to an agency's mission or agrees to provide services, including data processing, that are like, and instead of, services or functions performed wholly or partly by agency employees ("privatization contracts"). The state agencies covered are the departments, boards, institutions, and commissions established by statute that are not part of other departments, boards, institutions, or

commissions.

EFFECTIVE DATE: July 1, 1998

FURTHER EXPLANATION

Personnel Policies of Corporation or Partnership

The bill requires the quasi-public corporation or public-private partnership that takes over an agency's function or services to recognize all existing bargaining units and collective bargaining agreements. State employees who transfer to the new entity remain state employees for all purposes. Corporation or partnership employees must retain the collective bargaining rights granted under the state employee collective bargaining law.

The bill exempts the corporation or partnership from the Department of Administrative Services' and the Office of Policy and Management's (OPM) requirements and procedures for creating new positions and from approvals regarding the number of those positions and whether and when to fill them. It leaves the employment qualifications for filling vacant positions to the corporation or partnership.

All of the partnership's or corporation's nonmanagerial employees must remain in the state classified service, but its managers are exempt. The corporation or partnership may set the employment qualifications and terms and conditions for its managers.

State Employee Transfers to New Entity

State agency employees who are members of state bargaining units on the date a privatization agreement is executed must be offered a transfer to the same position in the new entity. If there are to be fewer employees in such positions in the new entity than in the agency, transfer opportunities must be offered on the basis of seniority.

Employees may decline to transfer. Any transferred employee must remain in the same position and bargaining unit.

State Employees Who Do Not Transfer

The bill bars the state from laying off any employee on account of the new entity's creation. Any employee who loses his job in his old agency because of the privatization contract and who is not employed by the new entity must be assigned to a comparable position in another state agency, in order of seniority as defined in applicable collective bargaining agreements. Assignments must be approved by OPM and reported to the Finance Advisory Committee at the end of the fiscal year.

Employees who choose to be laid off instead of accepting reassignment retain all layoff and reemployment rights under applicable collective bargaining agreements.

New Employment Classifications

A corporation or partnership may create one or more new employee classifications in addition to the transferred positions. Unless the positions are managerial or confidential, and thus exempt from collective bargaining under the state employee collective bargaining law, the new positions must be assigned to the bargaining unit that most closely matches their work.

Between the effective date of a law creating the corporation or partnership and either the expiration date of the transferred employees' collective bargaining agreement or the legislative approval date of any interim agreement, whichever is earlier, the bill allows the corporation or partnership to hire employees for new classifications without regard to the collective bargaining agreement then in effect. The corporation or partnership may set the initial employment terms and conditions for employees in these new classifications.

Within six months after the first employee is hired for a new classification, the bill requires the union representing the transferred employees and the executive branch of state government, representing the corporation or partnership, to conduct mid-term bargaining for the classification at either party's request. The mid-term bargaining must cover all employment terms for the new classification.

Once the collective bargaining agreement covering transferred employees expires, employment terms and conditions for new classifications must be subject to bargaining as part of the negotiations on a successor agreement.

Collective Bargaining Representation

The bill requires the state executive branch to represent the corporation or partnership in collective bargaining negotiations. It allows the corporation or partnership to have a representative at any bargaining.

Employee Benefits

Under the bill, the officers and employees of a corporation or partnership are entitled to state employee pensions and other benefits, including group life and health insurance coverage. The bill requires the corporation or entity to reimburse the state for the cost of providing these benefits.

A corporation or partnership officer who is employed only part-time may choose not to accept state benefits. The officer must make his choice in writing on a form the state comptroller must make available.

BACKGROUND

Related Statute

The bill's provisions on personnel policies are similar to those in CGS Sec. 12-280(e) through (i) of Chapter 229a, which establishes the Connecticut Lottery Corporation.

Related Bill

On March 16 the Government Administration and Elections Committee reported sSB 561, which establishes procedures agencies must follow before contracting with a private entity to provide public services. The bill's provisions apply to executive branch agency contracts valued at \$750,000 or more, except those for legal or management consulting or information technology systems. The procedures include cost-benefit analyses, bid listings for wage rates, opportunities for state employees to bid and be hired by the contractor, and

the comptroller's and legislature's contract review.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Change of Reference
Yea 8 Nay 5

Government Administration and Elections Committee

Joint Favorable Report
Yea 11 Nay 6