
OLR Bill Analysis

sHB 6664

AN ACT CONCERNING QUASI-PUBLIC AGENCY TRANSPARENCY.

SUMMARY

This bill makes numerous changes that, generally, increase the executive and legislative branches' oversight of quasi-public agencies. (By law, the state has 17 quasi-public agencies.) The changes include the following:

1. subjecting certain quasi-public agency contracts to review and comment by the attorney general (§ 2);
2. requiring the Department of Administrative Services (DAS) commissioner to develop model operating procedures for quasi-public agencies (§ 3);
3. creating additional procedural requirements for new quasi-public agencies (e.g., adopting organizational and governance procedures) (§ 4);
4. increasing, from biennially to annually, the frequency with which the state auditors must audit quasi-public agencies' activities (§ 8);
5. requiring quasi-public agencies to annually report on employee salaries and notify legislative committees of cognizance about certain proposed salary increases (§ 9);
6. requiring that the Office of Policy and Management (OPM) secretary or her designee be a member of any finance committee formed by a quasi-public agency (§ 10); and
7. subjecting quasi-public agency members and directors to the state ethics code's "open-and-public process" requirement for

entering into state contracts (§ 11).

Additionally, the bill allows quasi-public agency boards to fill certain board vacancies and deems members of certain agencies' boards to have resigned if they miss a specified number of meetings (§§ 6 & 14-20). It specifies that certain communications to the state auditors or a legislative committee do not waive the attorney-client privilege (§§ 12 & 13).

The bill also subjects all quasi-public agency expenses to approval by the agency's executive director or board of directors. Specifically, it requires the (1) executive director's approval for expenses of less than \$5,000 and (2) board's approval for expenses of \$5,000 or more (§ 5).

The bill requires quasi-public agencies to notify their legislative committee of cognizance (or the Government Administration and Elections (GAE) Committee if there is none) within 15 days after receiving a (1) notice that it is the subject of a state or federal regulatory or criminal investigation or (2) subpoena for a criminal matter. The notice may be electronic (§ 7).

Lastly, the bill makes technical changes (§ 1).

EFFECTIVE DATE: October 1, 2021, except that the provisions on (1) DAS model procedures, new quasi-public agencies, certain reports to the legislature, OPM secretary finance committee membership, and board member meeting attendance are effective July 1, 2021, and (2) contract review and comment are effective October 1, 2021, and applicable to contracts entered into or renewed on or after that date.

§ 2 — QUASI-PUBLIC AGENCY CONTRACTS

The bill requires quasi-public agencies to submit certain contracts to the attorney general for his review and comment before entering into or renewing them. They must do so for (1) employment or consulting contracts (a) costing more than \$1 million annually or (b) lasting at least five years and (2) separation agreements where the agency pays a departing employee less than \$50,000 (a) to avoid litigation costs or (b) under a nondisparagement agreement. Existing law prohibits

payments of greater than \$50,000 under these agreements (CGS § 1-125a).

The bill also requires quasi-public agencies to provide notice and a public comment opportunity at least two weeks before entering into or renewing a construction or consulting contract exceeding \$1 million. This requirement excludes employment contracts. The bill does not specify the manner for providing the notice.

§ 3 — MODEL RULES OF PROCEDURE

The bill requires the DAS commissioner to (1) examine existing quasi-public agencies' procedures and practices and (2) develop and publish model procedures for governance, organization, and procurement based on existing quasi-public agencies' best practices. The commissioner must publish the model procedures on the department's website by January 1, 2022, and update them as necessary. Quasi-public agencies may adopt them as procedures.

The model procedures must include provisions on at least the following:

1. adopting an annual budget, operations plan, and affirmative action policy;
2. hiring, dismissing, promoting, and compensating employees;
3. acquiring personal property and personal services;
4. contracting for financial, legal, and other professional services;
5. issuing bonds to refund or refinance existing debt, and retiring bonds, bond anticipation notes, and other obligations; and
6. using grant funds.

§ 4 — NEW QUASI-PUBLIC AGENCIES

The bill requires quasi-public agencies established on or after July 1, 2021, to do the following:

1. (a) adopt procedures setting forth their organization and governance and (b) submit the procedures to the agency's legislative committee of cognizance for review before it conducts any business;
2. hire an executive director, subject to board of directors approval, and any necessary staff;
3. create a staff and member organizational chart and provide it to the executive director and, at least annually, to the legislative committee of cognizance;
4. establish a budget and implement tracking software before incurring expenses other than initial expenses for establishing the agency; and
5. establish an accounting methodology using software that incorporates commonly accepted accounting standards.

The bill requires a quasi-public agency subject to these provisions to submit status reports to its legislative committee of cognizance (or the GAE Committee if none). Specifically, it must submit (1) an initial status report within months after it is established, (2) an updated status report within six months after the initial report's submission, and (3) annual reports thereafter.

§ 6 — BOARD MEMBER VACANCIES

The bill allows a quasi-public agency's board of directors to fill vacancies in its appointed membership if (1) it notifies the applicable appointing authority at least three months after the vacancy occurs and (2) the vacancy remains at least six months after notifying the appointing authority. Under these conditions, a quorum of the board's membership may fill the vacancy for the rest of its term by voting to appoint someone who satisfies the appointment's statutory qualifications. The bill specifies that subsequent appointments must be made as provided in existing law unless the bill's provisions apply.

Under existing law, quasi-public agency boards of directors

generally consist of (1) legislative and gubernatorial appointees and (2) ex-officio members or their designees.

§ 8 — AUDITING FREQUENCY

The bill increases, from biennially to annually, the frequency with which the state auditors must audit quasi-public agencies' activities (or contract with a person, firm, or corporation for the audit). It also requires the auditors to submit the audit report to the quasi-public agency's legislative committee of cognizance, in addition to the governor as existing law requires.

Under the bill, if the auditors do not complete an audit within the annual period, then they must notify the applicable legislative committee of cognizance about the delay and the report's expected completion date.

§ 9 — REPORTING REQUIREMENTS

The bill requires each quasi-public agency board of directors to report its employees' salaries to the state comptroller, Office of Fiscal Analysis, and legislative committee of cognizance annually by January 15. It also requires the boards to notify their legislative committee of cognizance (or the Appropriations Committee if there is none) at least 30 days before acting on a proposed salary increase, other than one due to a promotion, that exceeds 5% or results in an annual salary exceeding \$200,000.

Additionally, the bill requires boards of directors to biennially report to their legislative committee of cognizance (or the GAE Committee if there is none) beginning January 15, 2022. It requires the recipient committee to hold a hearing on the report within 30 days after receiving it or the start of a regular legislative session, whichever is later. A representative of the quasi-public agency must appear at the hearing.

The bill does not specify any required contents for the report. Rather, it requires the OPM secretary, by August 1, 2021, to adopt guidelines for the report's format and content and mail them to each

quasi-public agency.

§ 10 — QUASI-PUBLIC AGENCY FINANCE COMMITTEES

The bill requires that the OPM secretary or her designee be a member of any finance committee formed by a quasi-public agency. It requires these committees to notify her electronically of any scheduled meeting at least seven days in advance. By law, the secretary (or her designee) is an ex-officio board member for 12 of the 17 quasi-public agencies.

§ 11 — CODE OF ETHICS

With certain exceptions, the state Code of Ethics for Public Officials prohibits public officials and state employees (and their immediate family members and associated businesses) from entering into contracts worth \$100 or more with state agencies unless the contract was (1) awarded through an open and public process or (2) pursuant to a court appointment (i.e., the “open-and-public process requirement”). Under the ethics code, “public official” and “state employee” include quasi-public agency members and directors and employees, respectively (CGS § 1-79(11) & (13)).

The bill eliminates an exception in current law for quasi-public agency members and directors who receive no compensation other than per diem payments or reimbursement for actual or necessary expenses. Therefore, it subjects them to the open-and-public process requirement.

§§ 12 & 13 — ATTORNEY-CLIENT PRIVILEGE

State Auditors (§ 12)

Under existing law, when the state auditors and their representatives access records, accounts, or examinations of a nongovernmental entity that are maintained by a state agency and covered by statutory confidentiality requirements, they are subject to the same confidentiality requirements and penalties as the state agency.

The bill specifies that this requirement also applies to records,

accounts, and examinations covered by common law confidentiality requirements, including the attorney-client privilege. It also specifies that disclosing information under this requirement that is covered by the attorney-client privilege does not waive the privilege.

Legislative Proceedings (§ 13)

Under existing law, certain confidential communications between a public official or public agency employee and a government attorney are privileged in any (1) civil or criminal or case or proceeding and (2) legislative or administrative proceeding. It prohibits the attorney from disclosing these materials unless the agency consents. For purposes of this privilege, a (1) public agency is any agency defined as such by the Freedom of Information Act (FOIA) (e.g., state, municipal, and quasi-public agencies) and (2) government attorney is an attorney admitted to the state bar and employed or retained by the agency to provide legal advice.

The bill explicitly provides that this privilege is not waived by disclosures in certain legislative proceedings by a government attorney representing a quasi-public agency. This applies to confidential communications provided to a legislative committee conducting an investigation pursuant to its statutory authority (CGS § 2-46). It also provides that these confidential communications are not subject to disclosure under FOIA.

§§ 14-20 — BOARD MEMBER ATTENDANCE

The bill deems appointed members of specified quasi-public agency boards of directors to have resigned from the board if they miss three consecutive board meetings or more than 50% of the board's meetings in a calendar year. The bill applies this requirement to members of Connecticut Innovations, Inc.; the Connecticut Health and Education Facilities Authority; Connecticut Higher Education Supplemental Loan Authority; Connecticut Housing Finance Authority; Connecticut Lottery Corporation; Connecticut Green Bank; and Retirement Security Authority. Existing law applies this requirement to other quasi-public agencies.

BACKGROUND

Related Bills

sHB 6194, reported favorably by the GAE Committee, generally subjects quasi-public agencies to state competitive bidding requirements for goods and services purchases.

sHB 6577, reported favorably by the GAE Committee, requires the State Properties Review Board to review and approve or disapprove certain real estate transactions proposed by quasi-public agencies.

sSB 1071, reported favorably by the GAE Committee, makes numerous changes affecting the state auditors, several of which conform to current law's requirement that they conduct biennial audits of quasi-public agencies (conflicting with provisions in this bill requiring annual audits).

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 19 Nay 0 (03/31/2021)