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## **OLR Bill Analysis**

**sSB 391 (File 429, as amended by Senate "A")\***

### ***AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE STATE CONTRACTING STANDARDS BOARD.***

#### **SUMMARY**

This bill makes several changes in the laws governing the State Contracting Standards Board (SCSB). It gives the board certain protections against modifications to its budget request and reductions in its allotments. It also (1) requires agency procurement officers to advise bidders, proposers, and contractors about certain rights enforced by SCSB (e.g., the right to contest a contract solicitation or award) and (2) broadens the reasons for which SCSB may disqualify contractors, bidders, and proposers.

The bill also makes changes to the privatization law, which generally requires state contracting agencies to meet certain requirements when they want to privatize services performed by state employees. Among other things, the bill (1) adds to the analyses that agencies must conduct for a proposed privatization, (2) lowers the number of employees who must potentially be affected by a privatization to trigger a requirement for the employees to be given an opportunity to reduce costs, and (3) broadens the range of core governmental functions that have a rebuttable presumption against privatization.

Additionally, the bill requires contracting agencies to (1) post information on their websites about certain emergency procurements they enter into and (2) evaluate bidders' and proposers' financial condition before selecting one to perform a contract or subcontract (§ 18).

It also specifies that the provisions of the law on state contracting (Title 4e) supersede any contrary provision about a state contracting agency in the general statutes (§ 19). Among other things, state law

includes provisions on state agency personal services agreements (CGS § 4-212 et seq.), goods and services purchases (CGS § 4a-50 et seq.), and capital projects (CGS § 4b-51 et seq.).

Lastly, the bill makes numerous other minor, technical, and conforming changes (§§ 2, 4-5, 7-8, 13 & 15-17).

\*Senate Amendment "A" replaces the underlying bill and removes provisions that would have subjected quasi-public agencies to SCSB's full authority.

EFFECTIVE DATE: July 1, 2024, except that the provision on budget request modifications and allotment reductions is effective upon passage.

### **§§ 1 & 3 — SCSB BUDGET AND STAFFING**

The bill requires the Office of Policy and Management (OPM) secretary to include the SCSB executive director's estimates of the board's expenditure requirements and recommended adjustments and revisions in the proposed budget documents that OPM submits to the legislature, without altering them. It also prohibits the governor from reducing SCSB's allotment requisitions or allotments in force. Existing law grants these same protections to the (1) Office of State Ethics (CGS § 1-81a), (2) Freedom of Information Commission (CGS § 1-205a), and (3) State Elections Enforcement Commission (CGS § 9-7c).

Separately, the bill requires that SCSB employ at least five full-time employees, subject to the State Personnel Act.

### **§ 6 — AGENCY PROCUREMENT OFFICERS**

Existing law requires the head of each state contracting agency to appoint an agency procurement officer who must, among other things, (1) assure that contractors are properly screened before a contract award and (2) evaluate contractor performance during and at the conclusion of a contract. The bill additionally requires procurement officers to advise bidders, proposers, and contractors about their right to contest a contract solicitation or award. Specifically, procurement officers must ensure that (1) each bid, request for proposals, or other solicitation for

goods and services contains a notice about these rights; (2) contractors are advised about these rights before entering a contract; and (3) unsuccessful bidders, proposers, and respondents are advised about these rights when the contract is awarded.

#### **§ 14 — DISQUALIFICATION BY SCSB**

The law generally allows SCSB to disqualify a contractor (including bidders and proposers) from bidding on, applying for, or participating in state contracts for up to five years if it finds that certain violations occurred. Under current law, the board may do this for the fraudulent or criminal conduct of any officer, director, shareholder, partner, employee, or other individual associated with the contractor, if the (1) conduct occurred in connection with the person performing their duties on the contractor's behalf and (2) contractor knew or had reason to know about it. The bill more broadly allows the board to impose the disqualification for any of these individuals' fraudulent or criminal conduct, regardless of whether it occurred on the contractor's behalf or the contractor knew about it.

#### **§§ 9 & 10 — PRIVATIZATION LAW**

##### ***Business Case***

Under the privatization law, if a state contracting agency seeks to enter into a contract that privatizes services performed by state employees, it generally must do 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 of the privatized service, such as its goals and their rationale, and options for achieving them. The bill requires that the business case additionally include analyses of a proposed contract's potential impact on workers of color or workers who are women, including whether it will lessen or increase historical patterns that produce inequities between these workers and other workers.

##### ***Employee Opportunity to Reduce Costs***

Under current law, if a proposed privatization contract would result in the layoff, transfer, or reassignment of at least 100 state agency employees, then the agency generally must give the employees (1) an

opportunity to reduce the costs of conducting the potentially privatized operations and (2) reasonable resources to encourage and help them to organize and submit a bid to provide the potentially privatized services. The bill decreases, from 100 to 25, the number of employees who must potentially be affected by a privatization to trigger this requirement. As under current law, the state agency retains sole discretion over whether to proceed with the privatization as long as SCSB approves the business case.

### ***Core Governmental Function***

The privatization law establishes a rebuttable presumption that “core governmental functions” should not be privatized. Under current law, these generally include functions such as inspecting for adherence to health and safety standards, enforcing statutory requirements governing public health or safety, and criminal or civil law enforcement. The bill expands the core governmental functions subject to the presumption to also include providing essential human services to state residents who would otherwise lack the support needed to assure basic human needs.

### ***Cost-Effectiveness Evaluation***

For privatization contracts not subject to the business case requirement (i.e., contracts for services that are currently privatized), current law requires contracting agencies to evaluate the contract, using a template the OPM secretary prescribes, to determine if entering into or renewing it is the most cost-effective way to deliver the service. The bill requires that the (1) evaluation be submitted to the board, rather than being subject to the secretary’s verification and (2) secretary consult with (a) SCSB when prescribing the evaluation template and (b) the chief procurement officer when deciding whether to waive the evaluation requirement because of exigent or emergent circumstances.

## **§§ 11 & 12 — EMERGENCY PROCUREMENTS**

### ***Purchases of \$10,000 or Less (§ 11)***

The law allows SCSB, in consultation with the Department of Administrative Services (DAS) commissioner, to waive competitive bidding or negotiation requirements for minor, nonrecurring, or

emergency purchases of \$10,000 or less. The bill allows it to do so upon application by a contracting agency. It requires contracting agencies that get this waiver to post notice about the emergency purchase on their websites before making the purchase. (Existing law also allows the DAS commissioner to waive these requirements for purchases of \$25,000 or less for similar reasons without consulting the board (CGS § 4a-57(b)).)

***Threats to Public Health, Welfare, or Safety (§ 12)***

Current law requires SCSB to adopt regulations allowing emergency procurements when a threat to public health, welfare, or safety exists. (In practice, the board has not done so.) The bill instead directly allows contracting agencies to enter into these procurements and makes the board’s adoption of regulations permissive.

The bill requires contracting agencies to (1) notify SCSB about the need for the procurement and (2) post on their websites their written determination of the basis for the emergency and selection of the particular contractor. As under existing law, the (1) determination must also be in the contract file and sent to the governor and legislative leaders and (2) emergency procurement must be made with competition, as practicable under the circumstances.

Existing law allows the DAS commissioner or the state’s chief information officer to allow emergency procurements, subject to the Standardization Committee’s approval if the cost is \$100,000 or more (CGS § 4a-58).

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 13    Nay 6    (03/22/2024)