



OLR RESEARCH REPORT

July 20, 2005

2005-R-0572

2005 VETO PACKAGE

By: Joseph Holstead, Research Analyst

The governor vetoed nine acts (eight public and one special act) passed in the 2005 session. They may be considered during the veto session (scheduled for July 25).

The nine vetoed acts are:

1. "An Act Concerning the Authority of the Commissioner of Social Services with Respect to the Administration of the Medicaid Program" (PA 05-40),
2. "An Act Concerning the Illegal Sale or Possession with Intent to Sell of Cocaine" (PA 05-83),
3. "An Act Concerning Legislative Review and Approval of Waiver Applications Prior to Submittal to the Federal Government" (PA 05-112),
4. "An Act Concerning School Nutrition" (PA 05-117),
5. "An Act Concerning Impact Statements for Reductions in State Services" (PA 05-126),
6. "An Act Concerning Regulation of Telecommunications Services" (PA 05-231),
7. "An Act Concerning Conservation Law Enforcement" (PA 05-278),

8. “An Act Concerning Reform of the State Contracting Process” (PA 05-286), and
9. “An Act Concerning the Future of the Connecticut Juvenile Training School” (SA 05-11).

A vetoed act will not become law unless it is reconsidered and passed again by a two-thirds vote of each house of the General Assembly (24 votes are necessary in the Senate and 101 in the House). The General Assembly has scheduled a veto session on July 25, 2005.

This report contains a brief summary of each act in numerical order, the final vote tallies, and excerpts from the governor's veto messages.

AN ACT CONCERNING THE AUTHORITY OF THE COMMISSIONER OF SOCIAL SERVICES WITH RESPECT TO THE ADMINISTRATION OF THE MEDICAID PROGRAM

PA 05-40—SB 1100

Human Services Committee

This act continues until June 30, 2007 the prohibition against the social services commissioner agreeing to any Medicaid waiver in which the federal government, as a condition of granting the waiver, limits the program's normal 50% federal cost-sharing. The prohibition was scheduled to end on June 30, 2005.

EFFECTIVE DATE: Upon passage

Senate Vote: 34-0 (April 20)

House Vote: 89-57 (May 5)

EXCERPT FROM THE GOVERNOR'S VETO MESSAGE

“Senate Bill 1100 does not provide the Department of Social Services the flexibility to negotiate on behalf of the State of Connecticut certain waivers of the requirements of the Medicaid program administered by the United States Department of Health and Human Services (the ‘USHHS’). The loss of flexibility and bargaining position by the State of Connecticut while negotiating with the USHHS will be detrimental to the interests of the citizens of our state.

“Connecticut, like all other states, aggressively pursues federal revenue enhancements through the submission of waivers to the Centers for Medicare and Medicaid Services at the USHHS. Waiver submissions may seek to initiate a non-traditional service package, or introduce a non-traditional method of service delivery or deliver defined services to a specified segment of the population. In essence, waivers from Medicaid requirements request that the federal government share in the costs of health care, by reimbursing the state for services that the state feels are appropriate for the health care needs of its citizens.”

AN ACT CONCERNING THE ILLEGAL SALE OR POSSESSION WITH INTENT TO SELL OF COCAINE

PA 05-83—HB 6635
Judiciary Committee

This act increases, from one-half gram to one ounce, the minimum amount of crack cocaine a non-drug dependent person must possess to be guilty of selling or manufacturing, distributing, prescribing, compounding, transporting, or possessing cocaine with intent to sell. The increase eliminates the legal disparity between crack and powder cocaine for commission of this crime.

EFFECTIVE DATE: October 1, 2005

Senate Vote: 21-15 (May 19)

House Vote: 93-52 (May 10)

EXCERPT FROM THE GOVERNOR’S VETO MESSAGE

“As currently written, House Bill 6635 proposes a dramatic shift in our public policy regarding the illegal possession, use and sale of drugs. The statutes amended by House Bill 6635 were originally enacted to send a clear message: the State of Connecticut’s policy is to impose harsh criminal penalties in order to curb the use of crack cocaine and the violence associated with the drug. Enactment of House Bill 6635 would signal a significant departure from this policy. As drafted, the bill sends the inappropriate message that the enforcement of our drug laws, especially with respect to crack cocaine, is being eased.

“House Bill 6635 equalizes the quantities of powdered cocaine and crack cocaine that a person must possess to trigger the imposition of

mandatory minimum prison sentences. The mandatory minimum sentences established by our laws are meant to create real and meaningful consequences for those who possess illegal drugs for sale and/or use. Changing the amount of illegal crack cocaine from the present one-half gram (0.5g) to the proposed one ounce (1 oz.) increases by approximately fifty-six times the amount of drugs necessary to a trigger mandatory minimum prison sentence.

“We must acknowledge the discussion and debate surrounding the impact on the urban and minority communities from disparities between powder cocaine and crack cocaine. Advocates of House Bill 6335 link the high rates of incarceration for African Americans and Latinos to inequities in plea bargaining and sentencing created by the disparities between quantities of powder cocaine and crack cocaine. However, addressing the impacts of our drug policy on the minority community should be accomplished without the dramatic increase in the amount of crack cocaine one must possess before a mandatory sentence is imposed. We should address the disparities created by our statutes without ceding control of our urban centers to those who deal illegal drugs. We should remember the innocent, hard-working families who live in our cities and who feel the tragic impact on their communities and neighborhoods from illegal drugs and drug-related violence.”

AN ACT CONCERNING LEGISLATIVE REVIEW AND APPROVAL OF WAIVER APPLICATIONS PRIOR TO SUBMITTAL TO THE FEDERAL GOVERNMENT

PA 05-112—SB 801

Human Services Committee

Appropriations Committee

Legislative Management Committee

Government Administration and Ethics Committee

This act strengthens legislative oversight of the Department of Social Services' (DSS) federal waiver applications. By law, whenever DSS submits an application to the federal government to waive certain requirements of a federal program, it must first submit the waiver application to the Human Services and Appropriations committees. Currently, the committees can, but are not required to, advise the DSS commissioner of their opinion of the application, which, in practice, has not been binding on her.

The act (1) requires, rather than allows, the committees to advise the DSS commissioner of their approval, rejection, or modification of the

application within 30 days of receiving it; (2) requires the committees to hold a public hearing on the application after they receive it and before they advise the commissioner; and (3) makes failure to advise an approval.

If the committees reject the waiver application, the commissioner may not submit it to the federal government. She must modify the application when the committees advise her to do so.

If the committees disagree, the act requires the committee chairpersons to appoint a six-member conference committee.

EFFECTIVE DATE: July 1, 2005

Senate Vote: 22-12 (April 27)

House Vote: 87-59 (May 25)

EXCERPT FROM THE GOVERNOR'S VETO MESSAGE

“The bill unnecessarily constrains the authority of the Commissioner of Social Services, on behalf of the State of Connecticut, to submit waiver applications to the federal government. In my opinion, these constraints create ill-advised bureaucratic burdens and potential financial risks to the state.

“The procedural requirements of Senate Bill 801 impose a series of prolonged and unnecessary bureaucratic steps. Imposition of such steps does not promote the timely and efficient management of the Department’s budgeted objectives.

“State budgets are adopted by the full General Assembly, after discussions and negotiations between legislative leadership and the administration, and often assume financial savings achieved through waivers granted by the federal government. The law requires the Department of Social Services to implement its departmental budget in a manner consistent with budget acts passed by the General Assembly. However, enactment of Senate Bill 801 raises the possibility that individual committees of the General Assembly can circumvent the budget process by rejecting or modifying waiver applications relied upon by the full General Assembly and the Administration when negotiating the Department’s budget. In instances where waiver applications are included within the state budget, rejection or substantial modification by the individual committees of the General Assembly can prevent the

Department from implementing its departmental budget and can have a dramatic negative effect on the state's financial condition.

“Additionally, the legislative review and approval process mandated by the bill could cause delays in responding to changes in federal law, thus putting at risk much-needed federal funds. Should delays result from a rejection or modification of a waiver application, the State of Connecticut could lose substantial federal funding. In contrast, the current process of department submission, with legislative consultation, has proven to be timely and efficient.”

AN ACT CONCERNING SCHOOL NUTRITION

PA 05-117—SB 1309

Education Committee

This act requires students in full-day kindergarten and grades one through five to be provided with the opportunity to engage in physical exercise at least 20 minutes per full school day in addition to any physical education requirements. Prior law required boards of education to include a period of physical exercise in the regular school day but did not specify the duration. As under prior law, a planning and placement team may develop a different schedule for a child requiring special education services.

The act allows boards to establish wellness committees to monitor nutrition and physical activity policies required by federal law. It limits the beverages that may be offered in schools and requires boards to implement and enforce a State Department of Education (SDE)-published list of recommended foods that may be offered to students at schools.

EFFECTIVE DATE: July 1, 2005

Senate Vote: 25-11 (May 25)

House Vote: 88-55 (May 18)

EXCERPT FROM THE GOVERNOR'S VETO MESSAGE

“While improving the health and wellness of Connecticut’s children is a laudable goal, this bill, in my opinion reaches too far by reducing Connecticut’s long and proud tradition of local control of schools. If enacted, Senate Bill 1309 would limit parental and local board of education participation in addressing their children’s health and dietary needs. While it is undeniable that more needs to be done to encourage school nutrition, initiatives should be taken on the local level by locally elected school boards, in cooperation with parents and students.”

AN ACT CONCERNING IMPACT STATEMENTS FOR REDUCTIONS IN STATE SERVICES

PA 05-126—SB 846

Labor and Public Employees Committee

Government Administration and Elections Committee

Legislative Management Committee

This act requires, before any governor-recommended major layoff or dismissal of state employees takes place, the Office of Policy and Management secretary, or his designee, to submit to the General Assembly a written statement on the effect the layoff or dismissal will have on (1) the affected agency, department, board, or commission and (2) any clients or consumers it serves. The act defines a major layoff or dismissal as at least 5% of the total agency positions.

The act does not define “position,” but it defines “state employee” as any full- or part-time employee in the Executive, Legislative, or Judicial branches and any employee of a quasi-public agency. The definition excludes judges.

EFFECTIVE DATE: Upon passage

Senate Vote: 29-6 (May 4)

House Vote: 99-46 (May 25)

EXCERPT FROM THE GOVERNOR'S VETO MESSAGE

“This legislation, in reality, prevents the executive branch from making decisions that are properly within its authority, such as whether the executive branch agencies should continue to provide particular services or engage in certain businesses. The executive branch must have the flexibility to address serious issues facing the state’s agencies and to take action in response to economic conditions and exigent circumstances affecting the state.

“This legislation applies whether the state employees are full- or part-time, classified or unclassified, or employed by a quasi-public agency. Consequently, this legislation poses a number of problems.

“Unclassified employees serve at the pleasure of the Administration or the board or commission that governs the particular agency. Were this bill to become law, the Administration would be prohibited from replacing the department head of a small state agency without first providing a written impact statement to the General Assembly.

“There is another important element to this legislation that cannot be overlooked. “Layoff” is a term of art in the state collective bargaining arena. At times, employees may receive layoff notices from the state even though they will continue on the state payroll. These notices are required to trigger the rights afforded to laid-off employees, so as to place such employees in other agencies, oftentimes in the same classification, with the same pay and benefits. I believe that Senate Bill 846 would prohibit the state from providing layoff notices, even if the eventual outcome is no loss of jobs.

“This legislation also fails to distinguish between dismissals and dismissals for cause.”

AN ACT CONCERNING REGULATION OF TELECOMMUNICATIONS SERVICES

PA 05-231—SB 1097

Energy and Technology Committee

This act deems certain services offered by telephone companies (Verizon in parts of Greenwich, SBC elsewhere) or their affiliates to be competitive and therefore subject to less extensive regulation. But it precludes a telephone company from obtaining a waiver from a pricing

standard with regard to these services before January 1, 2010. It modifies the factors the Department of Public Utility Control (DPUC) must consider in reclassifying other services.

Under prior law, DPUC had to order a telephone company to unbundle its network, under certain circumstances, to make its components available to the company's competitors. (Federal law has a similar provision.) The act exempts a company's hybrid fiber coaxial facilities or networks from unbundling unless specifically ordered by the Federal Communications Commission.

By law, DPUC can investigate any tariff and suspend a tariff during the investigation. The act specifies that the investigation can include a determination as to whether the tariff is predatory, deceptive, anti-competitive, or violates the pricing standard.

The law specifies the state's telecommunications goals. The act specifies that DPUC can enter into memoranda of understanding with third parties to foster these goals.

By law, DPUC must report to the legislature annually on the status of telecommunications competition and regulation. The act requires that the report describe the implementation of the act.

EFFECTIVE DATE: July 1, 2005

Senate Vote: 36-0 (June 7)

House Vote: 144-4 (June 7)

EXCERPT FROM THE GOVERNOR'S VETO MESSAGE

"The propriety of the conduct and participation of [the DPUC] Commissioner in the legislative process leading to the bill has been questioned and an independent review of that conduct has not been concluded. As no independent determination has been made on the alleged impropriety, I must exercise caution and act in such a way as to preserve the integrity of the legislative process and Connecticut's laws by disapproving of Senate Bill 1097.

"Soon after passage of the bill by the General Assembly, my office received a letter written by the legal counsel to Gemini Networks CT, Inc. ("Gemini") stating reasons why I should consider vetoing Senate Bill 1097."

The governor states that she asked the State Ethics Commission to review the issues raised by Gemini's counsel, but the commission responded that, without allegations or evidence of an inappropriate financial interest, they have no jurisdiction. She then sought further review by the Judicial Review Council. The council provided an initial determination on the matter, but is scheduled to meet on July 20, 2005, to give final consideration to it.

She goes on to say, "by law I must consider and act upon Senate Bill 1097 by July 11, 2005, nine days before the Council's meeting."

"In light of the unresolved questions concerning this legislation, I believe it is preferable to veto Senate Bill 1097 – offering the General Assembly in the next legislative session the opportunity to ratify its action in passing the bill."

AN ACT CONCERNING CONSERVATION LAW ENFORCEMENT

PA 05-278—SB 6774

Environment Committee

Government Administration and Ethics Committee

This act exempts from the Freedom of Information Act (FOIA) disclosure requirements e-mail messages sent to or by legislators and legislative employees.

The act requires, rather than authorizes, public agencies to keep the home addresses of their own officials and employees confidential, and expands the prohibition to the officials and employees of all public agencies, regardless of whether their home addresses are listed on the public record of another agency.

The act requires, rather than authorizes, all public agencies to keep confidential the home address of any federal or state judge or magistrate. But the prohibition against disclosure apparently no longer applies to the home addresses of former prosecutors and public defenders.

The act does not exempt from disclosure home addresses (1) of elected officials or (2) listed on a grand list, tax delinquency list, elector registration or enrollment form, voting list, or any record the law requires be made public.

It extends, from 90 days to 18 months, the deadline by which the House of Representatives or Senate must deliver to the State Library for preservation and archiving documents, data, information or other tangible materials prepared, received, owned, used, or retained in the course of any impeachment proceeding conducted under Article Ninth of the state constitution. As under prior law, (1) the deadline runs from the conclusion of the last-occurring inquiry, investigation, impeachment, trial or other proceeding; (2) an electronic version of these materials must be provided to the House and Senate clerks; and (3) items exempt from disclosure under state or federal law are excluded. The act requires the State Library to keep confidential any portion of the documents, data, information or other tangible materials the House has redacted for at least 10 years after it receives them.

EFFECTIVE DATE: Upon passage

Senate Vote: 31-5 (June 8)

House Vote: 145-2 (June 8)

EXCERPT FROM THE GOVERNOR'S VETO MESSAGE

“House Bill 6774 attempts to exclude from the Connecticut [FOIA] electronic mail messages of any member or employee of the General Assembly that relate to those persons whom such member represents or that are sent to or by such member or employee.” This proposed exclusion violates the very spirit of this State’s open government statutes. Further, the loophole created within the FOIA is not based on the content of the materials, but rather is based solely on the method in which it was communicated. I will not sign the bill because the public is ill-served by legislation that is overly broad and limits or undermines transparency in government.

“A review of the legislative record reveals that the blanket exclusion of the legislative branch’s electronic mail from the FOIA as proposed in Section 3 of House Bill 6774 was adopted without any public hearing.

“Without public hearings, public testimony and a complete, thoughtful and open discussion of the issues involved, the public is barred from participating in changes to the very laws which are designed to provide access to government.

“House Bill 6774 does not construct a narrowly drafted exemption based on legitimate concerns of confidentiality. Rather, the bill excludes any electronic mail regardless of its content and regardless of the legitimate public purpose that may be served by its disclosure. If enacted, House Bill 6774 would even prevent discovery of inappropriate or illicit activity – neither of which should be hidden by operation of the FOIA.

“The FOIA presently contains a number of exemptions from disclosure for materials which contain sensitive information or which raise legitimate concerns of personal safety or privacy. The Freedom of Information Commission has a long-standing published opinion stating that records relating to constituent services are not subject to the FOIA.

“The Commission has also found that the activities of political parties and caucuses are not covered by the FOIA. Thus, House Bill 6774 offers little additional protection to the public and simply shields legislators and their staff from disclosure of records related to their official duties”.

AN ACT CONCERNING REFORM OF THE STATE CONTRACTING PROCESS

PA 05-286—SB 94 (as amended by HB 7502 (PA 05-03, June Special Session))

Government Administration and Elections Committee

Judiciary Committee

Labor and Public Employees Committee

Environment Committee

Energy and Technology Committee

Legislative Management Committee

Appropriations Committee

Transportation Committee

Finance, Revenue and Bonding Committee

Commerce Committee

This act establishes a State Contracting Standards Board (SCSB) as an independent state agency and the successor agency to the State Properties Review Board (SPRB). It dissolves the SPRB on October 1, 2007 and transfers its duties and responsibilities to the SCSB on that date. The new board is also charged with various other responsibilities that reform state contracting processes. It must establish uniform procurement standards, audit state contracting agencies, and discipline them for failure to comply with the act or the uniform procurement code.

The act requires the Judicial Branch to prepare its own procurement code.

The act establishes:

1. grounds for suspending and disqualifying contractors and subcontractors from bidding on or participating in state contracts,
2. conditions precedent to state privatization contracts,
3. a procedure for the legislature to exempt construction contracts from the competitive bidding process, and
4. procedures for state agencies to use when entering purchase of service agreements.

It eliminates certain requirements from the contractor prequalification process and generally bans state and municipal agencies from receiving state funds for construction if they accept bids from a contractor without proof of his prequalification.

The act conforms the Department of Public Works' contractor selection law to practice and increases the number of days it and constituent units of higher education have to award contracts.

The act prohibits the state from contracting with corporations that receive a tax benefit as a result of reincorporating outside of the United States.

It bans, with some exceptions, the use of state bond revenues or appropriated or allocated state funds for outdoor lighting that is not energy efficient or that exceeds the brilliance required to achieve its purpose. It establishes a schedule for floodlight violators to comply with the law.

The act permits documents public agencies receive in response, and related, to a procurement request for proposal to be exempt from disclosure under the FOIA for a limited time.

The act changes the definition of small contractor under the set-aside program.

Lastly, the act requires state agencies to obtain from certain contractors an affidavit identifying consultants who work with them on that contract.

EFFECTIVE DATE: Upon passage, except for the provisions:

1. establishing the SCSB, establishing the date for SPRB duties to transfer, on the Judicial Branch's procurement code, on contractors under the set-aside program, and on nonresponsible bidders, which are effective on July 1, 2005;
2. on full cut-off luminaire requirements and reincorporated companies, which are effective on October 1, 2005;
3. on prequalification and small contractors under the set-aside program, which are effective on January 1, 2006;
4. on SCSB duties, other than the uniform procurement code, which are effective on July 1, 2007; and
5. on SCSB audits and contract reviews, contractor disqualification and suspension, SCSB appeals, advisory council, and SPRB dissolution, which are effective on October 1, 2007.

Senate Vote: 34-1 (June 4)

House Vote: 133-14 (June 8)

EXCERPT FROM THE GOVERNOR'S VETO MESSAGE

"The revisions to Senate Bill 94, contained in LCO #8368 of House Bill 7502, adopted by the General Assembly as part of its June, 2005 Special Session, create unacceptable and far-reaching consequences for state government and those state government seeks to serve. Indeed, LCO #8368 amends Senate Bill 94 in such a way that it will jeopardize the continued provision of routine as well as critical services and programs.

"The amended Senate Bill 94 would prohibit the Department of Children and Families or other state social service agencies from providing new childcare and other services through private, non-profit social service providers. Attempts by the Department of Mental Health and Addiction Services to expand mental health programs and services to more clients could be severely curtailed by amended Senate Bill 94. The state's colleges and universities, such as the constituent units of the Connecticut State University system, would be seriously constrained in their ability to provide food services at dining and residence halls for students and faculty through private contracts.

“The amended Senate bill goes too far in prohibiting the renewal, modification, extension, or re-bidding of too many vital contracts, which are necessary to serve the state’s citizens.

“Contracts for services are essential tools in the management of state government, allowing agencies to deliver services in the most innovative, cost-efficient and consumer-responsive manner. When used properly, contracts with private providers support the mission of the state and its employees. However, the broad prohibition against nearly all contracts with private providers prevents the state from making appropriate business decisions and will have severe financial impacts on the state’s budget.

“In an effort to preserve the basic reform measures of Senate Bill 94, I, concurrently with the delivery of this veto message, am issuing Executive Order No. 7 to continue the momentum for positive change in the state contracting process and establish a new, much needed procurement code.”

AN ACT CONCERNING THE FUTURE OF THE CONNECTICUT JUVENILE TRAINING SCHOOL

SA 05-11—SB 6982

Judiciary Committee

Legislative Management Committee

Government Administration and Ethics Committee

Human Services Committee

This act establishes a critical response team to make recommendations about the reorganization and operation of the Connecticut Juvenile Training School (CJTS). Under the act, the critical response team’s primary purpose is examining the possible reorganization of the CJTS for educational or health care use, excluding it as an adult correctional facility. If the team determines reorganization is in the best interest of juveniles, its secondary purpose is to development recommendations for relocating the children at CJTS to more appropriate regional facilities. The act requires the critical response team to submit its recommendations to the Judiciary, Human Services, and Children’s committees by January 1, 2006.

It requires the Children and Families Commissioner, by August 1, 2005, to submit copies of the feasibility plan prepared for the governor concerning the future of the CJTS to the chairpersons and ranking

members of Judiciary, Appropriations, and Children's committees. (The plan for the governor includes closing the CJTS and transferring its students to community-based, residential, or other types of treatment programs.)

The act also requires that the critical response team consist of 25 members, including the Secretary of the Office of Policy and Management or his designee and the Commissioner of Children and Families or her designee. The bill requires the team to select co-chairpersons from its members and specifies that (1) one co-chairperson must be a member of the General Assembly or an appointee of either the speaker of the House of Representatives or the president pro tempore of the Senate and (2) one co-chairperson must be a representative of the executive branch or an appointee of the governor.

EFFECTIVE DATE: Upon Passage

Senate Vote: 36-0 (June 8)

House Vote: 143-0 (June 3)

EXCERPT FROM THE GOVERNOR'S VETO MESSAGE

“The bill requires that a critical response team be established to make recommendations regarding the reorganization and operation of the [CJTS]. The creation of such a response team would be duplicative of the initiatives I have already ordered and which are currently underway. The bill also requires that the Commissioner of the Department of Children and Families (‘DCF’) submit a feasibility plan, which was already ordered by my office, and that it be addressed to the joint standing committees of the General Assembly. In view of of [sic] the fact that I have already asked the DCF Commissioner to provide me with such a plan, it would be an unnecessary expenditure of state resources to proceed in the fashion outlined by House Bill 6982.”

JH:dw