



General Assembly

January Session, 2001

Raised Bill No. 6894

LCO No. 4301

Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT CONCERNING ACTIONS AGAINST THE STATE ON
HIGHWAY AND PUBLIC WORKS CONTRACTS.**

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

1 Section 4-61 of the general statutes is repealed and the following is
2 substituted in lieu thereof:

3 (a) Any person, firm or corporation which has entered into a
4 contract with the state, acting through any of its departments,
5 commissions or other agencies, for the design, construction,
6 construction management, repair or alteration of any highway, bridge,
7 building or other public works of the state or any political subdivision
8 of the state may, in the event of [any disputed claims under such
9 contract or] any claims arising out of or relating to such contract for
10 which it is alleged that the state is or may be liable in whole or in part
11 or any claims arising out of or relating to the awarding of a contract by
12 the Commissioner of Public Works, bring an action against the state to
13 the superior court for the judicial district of Hartford for the purpose of
14 having such claims determined, provided notice of each such claim
15 under such contract and the factual bases for each such claim shall
16 have been given in writing to the agency head of the department

17 administering the contract within the period which commences with
18 the execution of the contract or the authorized commencement of work
19 on the contract project, whichever is earlier, and which ends two years
20 after the acceptance of the work by the agency head evidenced by a
21 certificate of acceptance issued to the contractor or two years after the
22 termination of the contract, whichever is earlier. No action on a claim
23 under such contract shall be brought except within the period which
24 commences with the execution of the contract or the authorized
25 commencement of work on the contract project, whichever is earlier,
26 and which ends [three] six years after the acceptance of the work by
27 the agency head of the department administering the contract
28 evidenced by a certificate of acceptance issued to the contractor or
29 three years after the termination of the contract, whichever is earlier.
30 Issuance of such certificate of acceptance shall not be a condition
31 precedent to the commencement of any action. Acceptance of an
32 amount offered as final payment shall not preclude any person, firm or
33 corporation from bringing a claim under this section. Such action shall
34 be tried to the court without a jury. [All legal defenses except
35 governmental immunity] The defense of governmental or sovereign
36 immunity shall not apply to any claim asserted by the person, firm or
37 corporation having a contract with the state, provided the claim arises
38 out of or relates to the contract with the state, notwithstanding that the
39 claim or any portion thereof may include claims of other persons, firms
40 or corporations that have provided materials, labor or services relating
41 to the contract. All other legal defenses shall be reserved to the state. In
42 no event shall interest be awarded under section 13a-96 and section 37-
43 3a by a court or an arbitrator to the claimant for the same debt for the
44 same period of time. Interest under section 37-3a shall not begin to
45 accrue to a claimant under this section until at least thirty days after
46 the claimant submits a bill or claim to the agency for the unpaid debt
47 upon which such interest is to be based, along with appropriate
48 documentation of the debt when applicable. Any action brought under
49 this subsection shall be privileged in respect to assignment for trial
50 upon motion of either party.

51 (b) As an alternative to the procedure provided in subsection (a) of
52 this section, any such person, firm or corporation having a claim under
53 said subsection (a) may submit a demand for arbitration of such claim
54 or claims for determination under (1) the rules of any dispute
55 resolution entity, approved by such person, firm or corporation and
56 the agency head, and (2) the provisions of subsections (b) to (e),
57 inclusive, of this section, except that if the parties cannot agree upon a
58 dispute resolution entity, the rules of the American Arbitration
59 Association and the provisions of said subsections shall apply. The
60 provisions of this subsection shall not apply to claims under a contract
61 unless notice of each such claim and the factual bases of each claim has
62 been given in writing to the agency head of the department
63 administering the contract within the time period which commences
64 with the execution of the contract or the authorized commencement of
65 work on the contract project, whichever is earlier, and which ends two
66 years after the acceptance of the work by the agency head evidenced
67 by a certificate of acceptance issued to the contractor or two years after
68 the termination of the contract, whichever is earlier. A demand for
69 arbitration of any such claim shall include the amount of damages and
70 the alleged facts and contractual or statutory provisions which form
71 the basis of the claim. No action on a claim under such contract shall
72 be brought under this subsection except within the period which
73 commences with the execution of the contract or the authorized
74 commencement of work on the contract project, whichever is earlier,
75 and which ends [three] six years after the acceptance of the work by
76 the agency head of the department administering the contract
77 evidenced by a certificate of acceptance issued to the contractor or
78 three years after the termination of the contract, whichever is earlier.
79 Issuance of such certificate of acceptance shall not be a condition
80 precedent to the commencement of any action.

81 (c) Once a notice of claim is given to the agency head as required by
82 subsection (b) of this section, each party shall allow the other to
83 examine and copy any nonprivileged documents which may be
84 relevant either to the claimant's claims or to the state's defenses to such

85 claims. Requests to examine and copy documents which have been
86 prepared by the contractor in order to submit a bid shall be subject to a
87 claim of privilege and grounds for an application to any court or judge
88 pursuant to section 52-415 for a decision on whether such documents
89 constitute trade secrets or other confidential research, development or
90 commercial information and whether such documents shall not be
91 disclosed to the state or shall be disclosed to the state only in a
92 designated way. Any such documents for which no decision is sought
93 or privilege obtained shall not be subject to disclosure under section 1-
94 210 and shall not be disclosed by the agency to any person or agency
95 that is not a party to the arbitration. Such documents shall be used
96 only for settlement or litigation of the parties' claims. The arbitrators
97 shall determine any issue of relevance of such documents after an in
98 camera inspection. The arbitrators shall seal such documents during
99 arbitration and shall return such documents to the claimant after final
100 disposition of the claim.

101 (d) Hearings shall be scheduled for arbitration in a manner that
102 shall ensure that each party shall have reasonable time and
103 opportunity to prepare and present its case, taking into consideration
104 the size and complexity of the claims presented. Unless the parties
105 agree otherwise, no evidentiary hearing on the merits of the claim may
106 be held less than six months after the demand for arbitration is filed
107 with the dispute resolution entity.

108 (e) The arbitrators shall conduct the hearing and shall hear evidence
109 as to the facts, and arguments as to the interpretation and application
110 of contractual provisions. After the hearing, the arbitrators shall issue
111 in writing: (1) Findings of fact, (2) a decision in which the arbitrators
112 interpret the contract and apply it to the facts found, and (3) an award.
113 The arbitrators' findings of fact and decision shall be final and
114 conclusive and not subject to review by any forum, tribunal, court or
115 government agency, for errors of fact or law. Awards shall be final and
116 binding and subject to confirmation, modification or vacation pursuant
117 to chapter 909.

118 (f) Claims brought pursuant to this section may be submitted for
119 mediation under the mediation rules of such dispute resolution entity
120 as the parties may agree upon.

121 (g) This section shall apply to claims brought on or after July 1, 1991.
122 The provisions of sections 4-61, 4b-97, 13b-57a, 13b-57b and 13b-57c of
123 the general statutes, revised to January 1, 1991, shall apply to claims
124 brought before July 1, 1991.

Statement of Purpose:

To authorize any person, firm or corporation that has entered into a highway or public works contract with the state to bring an action in the event of any claim arising out of or relating to such contract for which the state is or may be liable in whole or in part, to bar the defense of governmental or sovereign immunity against the claim of a contractor even where the claim includes the claims of others who have provided materials or services relating to the contract, and to extend the period for bringing an action on such contract.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]