



Senate

General Assembly

File No. 567

January Session, 2003

Substitute Senate Bill No. 1137

Senate, April 29, 2003

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING SALES TAX BOND REQUIREMENTS FOR
NONRESIDENT CONTRACTORS.***

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

1 Section 1. Subdivision (7) of section 12-430 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2003, and applicable to contracts entered into on or after July 1, 2003*):

4 [(7) (a) (i) When a nonresident contractor enters into a contract with
5 a person other than a direct payment permit holder, as the term is used
6 in section 12-409a, pursuant to which, or in the carrying out of which,
7 tangible personal property will be consumed or used in this state, such
8 nonresident contractor shall deposit with the Commissioner of
9 Revenue Services at the commencement of such contract a sum
10 equivalent to five per cent of the total amount to be paid under the
11 contract or shall furnish the Commissioner of Revenue Services with a
12 guarantee bond satisfactory to said commissioner in a sum equivalent

13 to five per cent of such total amount, to secure payment of the taxes
14 payable with respect to tangible personal property consumed or used
15 pursuant to or in the carrying out of such contract or any other state
16 taxes, and shall obtain a certificate from the Commissioner of Revenue
17 Services that the requirements of this subsection have been met.

18 (ii) When a nonresident contractor enters into a contract with a
19 direct payment permit holder pursuant to which, or in the carrying out
20 of which, tangible personal property will be consumed or used in this
21 state, such nonresident contractor shall deposit with the Commissioner
22 of Revenue Services at the commencement of such contract a sum
23 equivalent to two per cent of the total amount to be paid under the
24 contract or shall furnish the Commissioner of Revenue Services with a
25 guarantee bond satisfactory to said commissioner in a sum equivalent
26 to two per cent of such total amount, to secure payment of the taxes
27 payable with respect to tangible personal property consumed or used
28 pursuant to or in the carrying out of such contract or any other state
29 taxes, and shall obtain a certificate from the Commissioner of Revenue
30 Services that the requirements of this subsection have been met.

31 (b) (i) Any person other than a direct payment permit holder
32 dealing with a nonresident contractor without first obtaining a copy of
33 such certificate from said commissioner shall no later than ninety days
34 after the commencement of such contract or, if the contract is to be
35 completed in less than ninety days, no later than forty-five days after
36 the commencement of such contract deduct five per cent of all
37 amounts payable to such nonresident contractor and pay it over to said
38 commissioner on behalf of or as agent for such nonresident contractor
39 or shall furnish said commissioner with a guarantee bond satisfactory
40 to said commissioner in a sum equivalent to five per cent of such total
41 amount, to secure payment of the taxes payable with respect to such
42 tangible personal property consumed or used pursuant to or in the
43 carrying out of such contract or any other state taxes.

44 (ii) Any direct payment permit holder dealing with a nonresident
45 contractor without first obtaining a copy of such certificate from said

46 commissioner shall no later than ninety days after the commencement
47 of such contract or, if the contract is to be completed in less than ninety
48 days, no later than forty-five days after the commencement of such
49 contract deduct two per cent of all amounts payable to such
50 nonresident contractor and pay it over to said commissioner on behalf
51 of or as agent for such nonresident contractor or shall furnish said
52 commissioner with a guarantee bond satisfactory to said commissioner
53 in a sum equivalent to two per cent of such total amount, to secure
54 payment of the taxes payable with respect to such tangible personal
55 property consumed or used pursuant to or in the carrying out of such
56 contract or any other state taxes.

57 (c) If any person dealing with such nonresident contractor fails to
58 comply with subdivision (b) of this subsection, such person shall be
59 personally liable for payment of the taxes imposed by this chapter with
60 respect to such tangible personal property consumed or used pursuant
61 to or in carrying out such contract or any other state taxes.]

62 (7) (A) As used in this section, "nonresident contractor" means a
63 contractor who does not maintain a regular place of business in
64 this state and "regular place of business" means any bona fide
65 office, factory, warehouse or other space in this state at which a
66 contractor is doing business in its own name in a regular and
67 systematic manner, and which place is continuously maintained,
68 occupied, and used by the contractor in carrying on its business
69 through its employees regularly in attendance, except that "regular
70 place of business" does not include a place of business for a
71 statutory agent for service of process or a temporary office at the
72 site of construction.

73 (B) Any person doing business with a nonresident contractor shall
74 withhold payment in an amount of five per cent of the contract price
75 and remit such amount as a deposit to the Commissioner of Revenue
76 Services not later than thirty days after the completion of the contract.

77 (C) A nonresident contractor shall request, in writing, that the
78 Commissioner of Revenue Services audit the records of such

79 contractor for a project for which a deposit was made under
 80 subparagraph (B) of this subdivision. The commissioner shall, after
 81 receipt of such request, issue to the nonresident contractor a
 82 certificate of no tax due or a certificate of tax due from the
 83 nonresident contractor. Upon issuance of a certificate of no tax due,
 84 the commissioner shall return such deposit to the nonresident
 85 contractor. Upon issuance of a certificate of taxes due, the
 86 commissioner may pay to the nonresident contractor out of the
 87 deposit any excess over the amount of taxes set forth in the
 88 certificate together with the interest and penalties then assessed.

89 (D) When a person doing business with the nonresident
 90 contractor deposits with the Commissioner of Revenue Services
 91 the amount set forth in subparagraph (B) of this subdivision, the
 92 commissioner shall issue such person a receipt for such amount.
 93 Upon the issuance of such receipt, the person doing business with
 94 the nonresident contractor shall not be liable for any claim of the
 95 nonresident contractor for such amount or for any claim of the
 96 commissioner for any taxes arising from the activities of the
 97 nonresident contractor on the project for which the deposit was
 98 made.

99 [(d)] (E) When a nonresident contractor enters into a contract with
 100 the state, said contractor shall provide the Labor Department with
 101 evidence demonstrating compliance with the provisions of chapters
 102 567 and 568, the prevailing wage requirements of chapter 557 and any
 103 other provisions of the general statutes related to conditions of
 104 employment.

This act shall take effect as follows:	
Section 1	<i>July 1, 2003, and applicable to contracts entered into on or after July 1, 2003</i>

Statement of Legislative Commissioners:

The text which appeared as a "(NEW)" section was incorporated into an existing statute for consistency with the general statutes.

FIN *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Revenue Serv., Dept.	GF - Revenue Impact	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill would result in a revenue loss if it makes it more difficult for the Department of Revenue Services to collect tax revenue due to the state from purchases and services performed by out-of-state contractors.

OLR Bill Analysis

sSB 1137

AN ACT CONCERNING SALES TAX BOND REQUIREMENTS FOR NONRESIDENT CONTRACTORS**SUMMARY:**

This bill changes the requirements for posting security to guarantee that (1) required Connecticut sales or use taxes are paid on property a nonresident (out-of-state) contractor uses to carry out a contract in Connecticut and (2) the contractor pays any other required state taxes.

It requires a customer dealing with a nonresident contractor to withhold a share of the contract price and pay it to the Department of Revenue Services (DRS) commissioner. The bill requires DRS to deduct any taxes due from the customer's deposit and eliminates the customer's liability for any taxes payable on the project once he makes the deposit and gets a DRS receipt for it.

The bill eliminates requirements that either (1) the contractor post a bond or deposit a sum equal to a percentage of the contract amount with DRS or (2) the customer post the bond or deposit the sum with DRS. It also eliminates lower security requirements for customers who are direct pay permit holders. (Direct pay permit holders pay sales and use taxes directly to DRS rather than through vendors.)

Finally, the bill changes the deadlines for posting tax security and defines a nonresident contractor for purposes of the tax security requirements.

EFFECTIVE DATE: July 1, 2003 and applicable to contracts entered into on or after that date.

SECURITY REQUIREMENTS

Current law requires either (1) a nonresident contractor dealing with a Connecticut customer to deposit a percentage of total amount to be paid under the contract or post an equivalent bond with the revenue services commissioner when the contract begins or (2) the contractor's customer to withhold a percentage of the contract amount and pay it to

the commissioner or post an equivalent bond with her.

These security requirements must be carried out within 90 days or, in the case of shorter contract within 45 days, after the contract starts. The required security percentages are 5% of the contract amount for anyone who does not hold a direct pay permit and 2% for direct pay permit holders. A contractor who posts the required security receives a certificate to that effect from the commissioner. The customer must post the security if the contractor has no certificate.

The bill eliminates the requirement for the contractor to post the security. Instead, it requires the customer to withhold part of the contract price and deposit it with the commissioner. It eliminates the 2% security requirement for direct pay permit holders and establishes a standard 5% withholding for everyone. It also changes the deadline for paying the withholding deposit to the commissioner from 45 or 90 days after the contract starts to 30 days after it is completed.

TAX LIABILITY

Under current law, any customer of a nonresident contractor who fails to either (1) obtain a copy of the contractor's deposit or bond certificate or (2) post the required security with the commissioner himself, is personally liable for paying any sales, use, or other taxes due in carrying out the contract. The bill eliminates this provision and instead requires the commissioner to give the customer a receipt for the required deposit. Once the commissioner issues the receipt, the bill relieves the customer of any liability (1) to the nonresident contractor for the deposit amount or (2) for any claim from the commissioner for taxes on the project.

The bill requires the contractor to ask the DRS commissioner to audit his records for the project and, after the commissioner receives the request, requires her to either (1) issue a certificate that there is no tax due and "return" the deposit to the contractor (even though the customer, not the contractor, made the deposit) or (2) issue a certificate that taxes are due and pay the contractor any part of the deposit that exceeds those taxes plus any interest or penalties.

NONRESIDENT CONTRACTOR DEFINITION

Under the bill, a nonresident contractor is one who does not

continuously maintain or occupy any Connecticut office, factory, warehouse, or other space where it regularly and systematically does business in its own name through employees in regular attendance there. Having a statutory agent for service of process with a regular place of business in Connecticut is not enough to meet this definition. Current law does not define “nonresident contractor.”

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute
Yea 44 Nay 0