



Senate

General Assembly

February Session, 2004

File No. 171

Senate Bill No. 477

Senate, March 22, 2004

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING CONSTRUCTION CONTRACTS.

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

1 Section 1. Subsection (a) of section 49-41 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2004*):

4 (a) Each contract exceeding fifty thousand dollars in amount for the
5 construction, alteration or repair of any public building or public work
6 of the state or of any subdivision thereof shall include a provision that
7 the person to perform the contract or the construction manager shall
8 furnish to the state or the subdivision on or before the award date, a
9 bond in the amount of the contract which shall be binding upon the
10 award of the contract to that person, with a surety or sureties
11 satisfactory to the officer awarding the contract, for the protection of
12 persons supplying labor or materials in the prosecution of the work
13 provided for in the contract for the use of each such person, provided
14 no such bond shall be required to be furnished (1) in relation to any

15 general bid in which the total estimated cost of labor and materials
16 under the contract with respect to which such general bid is submitted
17 is less than fifty thousand dollars, (2) in relation to any sub-bid in
18 which the total estimated cost of labor and materials under the contract
19 with respect to which such sub-bid is submitted is less than fifty
20 thousand dollars, or (3) in relation to any general bid or sub-bid
21 submitted by a consultant, as defined in section 4b-55, as amended.
22 Any such bond furnished shall have as principal the name of the
23 person awarded the contract.

24 Sec. 2. Subsection (b) of section 49-41a of the general statutes is
25 repealed and the following is substituted in lieu thereof (*Effective*
26 *October 1, 2004*):

27 (b) If payment is not made by the general contractor or any of its
28 subcontractors in accordance with such requirements, the
29 subcontractor shall set forth [his] such subcontractor's claim against
30 the general contractor or the owner, as defined in subdivision (1) of
31 section 42-158i, as amended by this act, and the subcontractor of a
32 subcontractor shall set forth its claim against the subcontractor
33 through notice by registered or certified mail. Ten days after the
34 receipt of that notice, the general contractor or the owner shall be liable
35 to its subcontractor, and the subcontractor shall be liable to its
36 subcontractor, for interest on the amount due and owing at the rate of
37 one per cent per month. In addition, the general contractor or the
38 owner, upon written demand of its subcontractor, or the subcontractor,
39 upon written demand of its subcontractor, shall be required to place
40 funds in the amount of the claim, plus interest of one per cent, in an
41 interest-bearing escrow account in a bank in this state, provided the
42 general contractor, the owner or the subcontractor may refuse to place
43 the funds in escrow on the grounds that the subcontractor has not
44 substantially performed the work according to the terms of [his or its]
45 such subcontractor's employment. In the event that such general
46 contractor, the owner or the subcontractor refuses to place such funds
47 in escrow, and the party making a claim against it under this section is
48 found to have substantially performed its work in accordance with the

49 terms of its employment in any arbitration or litigation to determine
50 the validity of such claim, then such general contractor, the owner or
51 the subcontractor shall pay the attorney's fees of such party.

52 Sec. 3. Subdivision (1) of section 42-158i of the general statutes, as
53 amended by section 5 of public act 03-167, is repealed and the
54 following is substituted in lieu thereof (*Effective October 1, 2004*):

55 (1) "Owner" means any individual, corporation, nonprofit
56 corporation, partnership, limited partnership, limited liability
57 company or other business entity that is the owner of record or lessee
58 of real property upon which a commercial or industrial building is to
59 be or is being constructed, renovated or rehabilitated pursuant to a
60 construction contract regarding such real property.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>

GL *Joint Favorable*

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: None

Municipal Impact: None

Explanation

The bill modifies commercial construction contract law and has no fiscal impact.

OLR Bill Analysis

SB 477

AN ACT CONCERNING CONSTRUCTION CONTRACTS**SUMMARY:**

By law, any state or municipal construction contract worth over \$50,000 for constructing, altering, or repairing state or municipal buildings or public work projects must require the contractor to furnish a bond to guarantee payment to subcontractors providing labor or material. The bill requires construction managers also to post the bond.

The law requires contracts for these projects to include provisions requiring contractors to pay their subcontractors within 30 days after being paid by the state or municipality. Similarly, the contracts must require subcontractors to pay their subcontractors within 30 days. The law establishes a procedure that subcontractors can follow to enforce claims when they are not paid on time. The bill allows subcontractors to use this procedure to enforce claims against owners in commercial construction contracts.

The bill specifies that the law concerning commercial construction contracts applies to nonprofit corporations. Existing law defines "owner" for this purpose as an individual, corporation, partnership, limited partnership, limited liability corporation, or other business entity that is the owner of record or lessee of real property on which a commercial or industrial building is to be built, renovated, or rehabilitated. The bill adds nonprofit corporation to the list of entities.

EFFECTIVE DATE: October 1, 2004

SUBCONTRACTOR'S PROCEDURE TO ENFORCE CLAIMS

If a payment is not made by a general contractor or one of its subcontractors on time under a commercial construction contract, the bill authorizes a subcontractor to state his claim by registered or certified mail. Ten days after receiving the claim, the owner is liable for interest on the amount owed, calculated at 1% per month. Further, the

owner, on written demand, must place the claimed amount, with interest, in an interest-bearing escrow account in a bank in Connecticut. The owner can refuse to do so on the grounds that the subcontractor has not substantially performed the work according to the terms of his employment. The bill requires the owner to pay the subcontractor's attorney's fees if (1) the owner refuses to place the funds in escrow and (2) the subcontractor is found to have substantially performed his work in any arbitration or litigation to determine the validity of the claim.

COMMERCIAL CONSTRUCTION CONTRACT LAW

The bill specifies that nonprofit corporations must comply with the commercial construction contract law. The law:

1. requires contracts to include payment schedule provisions, unless the parties explicitly agree otherwise;
2. limits retainage to 7.5% and generally requires most escrow funds to be kept in an escrow account;
3. prohibits contract provisions in which the subcontractor waives the right to a mechanic's lien;
4. prohibits contract provisions requiring disputes to be settled in, or under the laws of, another state; and
5. requires certain notices to be posted at the job site.

COMMITTEE ACTION

General Law Committee

Joint Favorable Report
Yea 19 Nay 0