



Senate

File No. 836

General Assembly

January Session, 2005

(Reprint of File No. 603)

Substitute Senate Bill No. 948
As Amended by Senate Amendment
Schedules "A" and "B" and House
Amendment Schedule "A"

Approved by the Legislative Commissioner
June 3, 2005

**AN ACT CONCERNING THE FAILURE OF A MUNICIPALITY TO
OBTAIN A BOND FROM CERTAIN CONTRACTORS, PREPAID HOME
HEATING OIL CONTRACTS AND HEAT AND UTILITY SURCHARGE
CLAUSES IN RESIDENTIAL LEASES.**

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

1 Section 1. Section 49-41 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

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

13 furnished (1) in relation to any general bid in which the total estimated
14 cost of labor and materials under the contract with respect to which
15 such general bid is submitted is less than fifty thousand dollars, (2) in
16 relation to any sub-bid in which the total estimated cost of labor and
17 materials under the contract with respect to which such sub-bid is
18 submitted is less than fifty thousand dollars, or (3) in relation to any
19 general bid or sub-bid submitted by a consultant, as defined in section
20 4b-55. Any such bond furnished shall have as principal the name of the
21 person awarded the contract.

22 (b) Nothing in this section or sections 49-41a to 49-43, inclusive, as
23 amended by this act, shall be construed to limit the authority of any
24 contracting officer to require a performance bond or other security in
25 addition to the bond referred to in subsection (a) of this section, except
26 that no such officer shall require a performance bond in relation to any
27 general bid in which the total estimated cost of labor and materials
28 under the contract with respect to which such general bid is submitted
29 is less than twenty-five thousand dollars or in relation to any sub-bid
30 in which the total estimated cost of labor and materials under the
31 contract with respect to which such sub-bid is submitted is less than
32 fifty thousand dollars.

33 (c) No contract for the construction, alteration or repair of any
34 public building or public work of the state or of any subdivision
35 thereof that requires a person to supply the state or subdivision with a
36 bond may include a provision that requires the person to obtain the
37 bond from a specific surety, agent, broker or producer. No contracting
38 officer may require that a bond be obtained from a specific surety,
39 agent, broker or producer.

40 (d) In the event that any political subdivision of the state enters into
41 a contract described in subsection (a) of this section and fails to obtain
42 delivery from the contractor of the bond required by this section, any
43 person who has not been paid by the contractor for labor or materials
44 supplied in the performance of work under the contract shall have the
45 same legal right of action against such political subdivision of the state

46 as such person would have had against a surety under the provisions
47 of section 49-42. Nothing in this section shall be construed to extend
48 liability to the state for any person's right to payment or constitute a
49 waiver of the state's sovereign immunity.

50 Sec. 2. Section 16a-23n of the general statutes is repealed and the
51 following is substituted in lieu thereof (*Effective from passage*):

52 (a) A contract for the retail sale of home heating oil that offers a
53 guaranteed price plan, including fixed price contracts and any other
54 similar terms, shall be in writing and the terms and conditions of such
55 price plans shall be disclosed. Such disclosure shall be in plain
56 language and shall immediately follow the language concerning the
57 price or service that could be affected and shall be printed in no less
58 than twelve-point boldface type of uniform font.

59 (b) A home heating oil dealer that advertises a price shall offer said
60 price for a period of no less than twenty-four hours or until the next
61 advertised price is publicized, whichever occurs first.

62 (c) No home heating oil dealer shall enter into a prepaid home
63 heating oil contract unless such dealer has either: (1) Obtained and
64 maintained heating oil futures contracts or other similar commitments
65 that allow such dealer to purchase, at a fixed price, heating oil in an
66 amount not less than seventy-five per cent of the maximum number of
67 gallons that such dealer is committed to deliver pursuant to all prepaid
68 home heating oil contracts entered into by such dealer, or (2) obtained
69 and maintained a surety bond in an amount not less than fifty per cent
70 of the total amount of funds paid to the dealer by consumers pursuant
71 to prepaid home heating oil contracts. Such dealer shall maintain the
72 amount of futures contracts or the amount of the surety bond required
73 by this subsection for the period of time for which such prepaid home
74 heating oil contracts are effective, except that the amount of such
75 futures contracts or surety bond may be reduced during such period of
76 time to reflect any amount of home heating oil already delivered to
77 and paid for by the consumer.

78 (d) No prepaid home heating oil contract shall require any
79 consumer commitment to purchase home heating oil pursuant to the
80 terms of such contract for a period of more than eighteen months.

81 (e) Any prepaid home heating oil contract shall indicate: (1) The
82 amount of funds paid by the consumer to the dealer under such
83 contract, (2) the maximum number of gallons of home heating oil
84 committed by the dealer for delivery to the consumer pursuant to such
85 contract, and (3) that performance of such prepaid home heating oil
86 contract is secured by one of the two options described in subsection
87 (c) of this section. Any such contract shall provide that the contract
88 price of any undelivered home heating oil owed to the consumer
89 under the contract, on the end date of such contract, shall be
90 reimbursed to the consumer not later than thirty days after the end
91 date of such contract unless the parties to such contract agree
92 otherwise.

93 Sec. 3. Section 16a-23p of the general statutes is repealed and the
94 following is substituted in lieu thereof (*Effective from passage*):

95 The Department of Consumer Protection may suspend or revoke
96 any registration issued under section 16a-23m if the holder of such
97 registration is grossly incompetent, engages in malpractice or unethical
98 conduct or knowingly makes false, misleading or deceptive
99 representations regarding such holder's work, [or] violates any
100 provision of section 16a-23n, as amended by this act, or violates any
101 regulations adopted under section 16a-23q. Before any such
102 registration is suspended or revoked, such holder shall be given notice
103 and opportunity for hearing as provided in regulations adopted by the
104 Commissioner of Consumer Protection in accordance with the
105 provisions of chapter 54.

106 Sec. 4. Section 16a-23r of the general statutes is repealed and the
107 following is substituted in lieu thereof (*Effective from passage*):

108 (a) A violation of the provisions of section 16a-23m, 16a-23n, as
109 amended by this act, or 16a-23o constitutes an unfair trade practice

110 under subsection (a) of section 42-110b.

111 (b) In accordance with the provisions of section 53a-11, any home
112 heating oil dealer who knowingly violates the provisions of subsection
113 (c) of section 16a-23n, as amended by this act, shall have committed a
114 class A misdemeanor.

115 Sec. 5. Subsection (b) of section 49-41a of the general statutes is
116 repealed and the following is substituted in lieu thereof (*Effective*
117 *October 1, 2005*):

118 (b) If payment is not made by the general contractor or any of its
119 subcontractors in accordance with such requirements, the
120 subcontractor shall set forth his claim against the general contractor
121 and the subcontractor of a subcontractor shall set forth its claim
122 against the subcontractor through notice by registered or certified
123 mail. Ten days after the receipt of that notice, the general contractor
124 shall be liable to its subcontractor, and the subcontractor shall be liable
125 to its subcontractor, for interest on the amount due and owing at the
126 rate of one per cent per month. In addition, if a surety bond is not in
127 place, the general contractor, upon written demand of its
128 subcontractor, or the subcontractor, upon written demand of its
129 subcontractor, shall be required to place funds in the amount of the
130 claim, plus interest of one per cent, in an interest-bearing escrow
131 account in a bank in this state, provided the general contractor or
132 subcontractor may refuse to place the funds in escrow on the grounds
133 that the subcontractor has not substantially performed the work
134 according to the terms of his or its employment. In the event that such
135 general contractor or subcontractor refuses to place such funds in
136 escrow, and the party making a claim against it under this section is
137 found to have substantially performed its work in accordance with the
138 terms of its employment in any arbitration or litigation to determine
139 the validity of such claim, then such general contractor or
140 subcontractor shall pay the attorney's fees of such party.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	49-41
Sec. 2	<i>from passage</i>	16a-23n
Sec. 3	<i>from passage</i>	16a-23p
Sec. 4	<i>from passage</i>	16a-23r
Sec. 5	<i>October 1, 2005</i>	49-41a(b)

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-Effect	FY 06 \$	FY 07 \$
Judicial Dept.; Correction, Dept.	GF - Cost	Potential	Potential
Judicial Dept.	GF - Revenue Gain	Less than 50,000	Less than 50,000
Consumer Protection, Dept.; Attorney General	Various - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 06 \$	FY 07 \$
Various Municipalities	Cost	Potential	Potential

Explanation

Section 4 of the bill makes it a crime, designated as a class A misdemeanor, for any home heating oil dealer to knowingly violate the bill's requirement to obtain and maintain future contracts or a security bond. An offense is subject to a penalty of up to one year in prison, a fine of up to \$2,000, or both. It is anticipated that few offenses would be prosecuted each year and, consequently, any revenue gain from criminal fines under the bill would be minimal. To the extent that offenders are prosecuted criminally and subsequently convicted or plead guilty, the state could incur a cost associated with incarceration and/or probation supervision in the community. On average, it costs the state \$2,150 to supervise an offender on probation in the community as compared to \$35,040 to incarcerate the offender (note that both figures include fringe benefits).

The bill makes a violation of its provisions an unfair trade practice. Under the Connecticut Unfair Trade Practices Act (CUTPA), the Department of Consumer Protection (DCP) and the Attorney General

can impose CUTPA fines. In FY 04, \$18,789 was deposited in the General Fund as a result of such fines.

In the case of settlements, depending on the negotiation terms, funds are either deposited into the DCP's Consumer Protection Settlement Account or the General Fund. Funds deposited into the Consumer Protection Settlement Account are used only to enhance activities that further consumer protection. In FY 04, \$86,500 in CUTPA fines were deposited into the DCP Consumer Protection Settlement Account. Additionally, in FY 04, \$135,212 in CUTPA fines were deposited into the General Fund as a result of settlements negotiated by the Office of the Attorney General (OAG). The state agencies could accommodate the workload associated with enforcement of the bill without requiring additional resources. To the extent that the bill increases the potential for future violations, the bill could result in a minimal revenue gain to the state.

Section 3 authorizes the Department of Consumer Protection to suspend or revoke a registration for violating the bill's requirements and prohibitions. This has no fiscal impact.

Municipal

Section 1 gives a subcontractor recourse against a municipality to collect payment for labor, materials, equipment and/or supplies in cases where: (1) the municipality fails to meet the statutory requirement that a surety bond purchase provision be included in any contract over \$50,000, and (2) the contractor fails to pay the subcontractor. This will result in a cost to any municipality that fails to comply with the surety bond contract requirement in cases where a contractor for the municipality defaults on payment to a subcontractor on the project.

House "A" and Senate "B" make clarifying changes to the language of the bill that have no fiscal impact. Senate "A" changes the effective date of Section 5, however this section is eliminated in House "A". Eliminating Section 5 has no fiscal impact.

OLR Bill Analysis

sSB 948 (as amended by Senate "A" and "B" and House "A")*

AN ACT CONCERNING THE FAILURE OF A MUNICIPALITY TO OBTAIN A BOND FROM CERTAIN CONTRACTORS, PREPAID HOME HEATING OIL CONTRACTS AND HEAT AND UTILITY SURCHARGE CLAUSES IN RESIDENTIAL LEASES

SUMMARY:

The law requires public works contracts, including those issued by political subdivisions, valued at \$50,000 or more to require the contractor to furnish a payment bond from a surety company. Under the bill, if a political subdivision fails to obtain the required bond from its general contractor to pay anyone not paid by the contractor for work or materials supplied under the public works contract, the unpaid subcontractor or supplier may sue the political subdivision in the same way that he may sue a surety company for payment (see BACKGROUND). The bill states that it must not be construed to extend liability to the state for anyone's right to be paid or to constitute a waiver of the state's sovereign immunity.

The bill limits the circumstances under which a general contractor or subcontractor must deposit disputed funds into an escrow account to those in which it has failed to obtain a surety bond.

The bill prohibits home heating oil dealers from entering into prepaid contracts with consumers unless the dealers secure the contracts with either a minimum level of heating oil futures contracts or a surety bond of a certain amount. It sets standards for prepaid home heating oil contracts and establishes civil and criminal penalties for violating its provisions.

*Senate Amendment "A" changes the effective date of a rental agreement provision that was part of an earlier version of the bill (File 603) to upon passage from October 1, 2005.

*Senate Amendment "B" adds the provision limiting the application of the escrow account requirement under certain public works contracts.

*House Amendment "A" (1) revises the payment bond provision and (2) eliminates a provision in the bill related to rental agreements and utilities charges.

EFFECTIVE DATE: Upon passage

ESCROW ACCOUNTS

The law requires public works contracts for which such a payment bond is required to include certain provisions establishing a payment schedule. It also establishes a procedure for subcontractors to follow to enforce their payment claim against a general contractor or another subcontractor who has not complied with the payment schedule. The law makes a general or subcontractor who has been properly notified of such an outstanding debt liable for the amount due and, 10 days after receiving notice, for 1% per month interest. In these cases, current law also requires a general contractor or subcontractor, on a written demand from his subcontractor, to place the amount of the claim, plus the 1% interest, in an escrow account unless the general contractor or subcontractor contends that his subcontractor has not substantially completed the work according to the terms of the contract. The bill instead requires a general contractor or subcontractor to place the money in an escrow account only if the surety bond described above is not in place.

HOME HEATING OIL CONTRACTS

Futures Contracts and Security Bonds

The bill allows a dealer to secure prepaid contracts with heating oil futures contracts or similar commitments that allow him to purchase at a fixed price at least 75% of the oil that he commits to providing under all of his prepaid contracts. Alternatively, the bill allows a dealer to secure contracts with a surety bond of at least 50% of the total amount he received from consumers under his prepaid contracts. The futures contracts or bonds must be maintained for as long as the prepaid contracts are in force, but the amount may be reduced to reflect deliveries.

Contract Standards

The bill requires the contracts to state (1) the amount the consumer must pay, (2) the maximum number of gallons the dealer is committed to deliver, and (3) that the dealer's ability to fulfill the contract is secured by either futures contracts or a surety bond. It prohibits prepaid home heating oil contracts from committing consumers to purchase oil for longer than 18 months. It requires contracts to provide that the contract price of undelivered heating oil owed on its end date must be reimbursed to the consumer within 30 days of that date, unless the dealer and consumer agree otherwise.

Civil and Criminal Penalties

The law makes it an unfair trade practice for a dealer to fail to use written contracts when offering a guaranteed price plan or to fail to offer advertised prices for a minimum time period. The bill also makes it an unfair trade practice to fail to meet its requirements to secure prepaid home heating oil contracts.

The law requires home heating oil dealers to register with the Department of Consumer Protection (DCP) and authorizes DCP to suspend or revoke a registration after notice and hearing for such things as gross incompetency. The bill also authorizes DCP to suspend or revoke a registration for home heating oil contract or advertising violations.

A home heating oil dealer who knowingly violates the bill's requirement to obtain and maintain futures contracts or a security bond commits a class A misdemeanor, and is subject to a penalty of up to one year in prison, a fine of up to \$2,000, or both.

BACKGROUND

Enforcing the Right for Payment on a Bond for Labor or Materials Provided Under a Public Works Contract

A subcontractor or supplier who has not been fully paid by the contractor after 60 days for work performed or material supplied on a public works project may file a payment claim with the surety company. If the surety has not paid the contractor within 180 days after the requisition for work or material was submitted or, if the work or material was not included in a requisition or estimate, within 180 days after the work was performed or material supplied, the

subcontractor or supplier may file a claim against the surety.

Connecticut Unfair Trade Practices Act

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Legislative History

The Senate referred the bill to the Planning and Development Committee on May 11, which reported the bill favorably without change on May 16.

COMMITTEE ACTION

General Law Committee

Joint Favorable Change of Reference
Yea 17 Nay 0

Judiciary Committee

Joint Favorable Substitute
Yea 40 Nay 0

Planning and Development Committee

Joint Favorable Report
Yea 17 Nay 0