



General Assembly

January Session, 2005

Raised Bill No. 6731

LCO No. 3640

* HB06731GL_JUD030405 *

Referred to Committee on General Law

Introduced by:
(GL)

AN ACT CONCERNING CERTAIN CLAIMS AGAINST THE STATE.

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

1 Section 1. Section 4-61 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

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] claims arising out of such contract in which it is alleged that
10 the state is or may be liable, in whole, or in part, or claims arising out
11 of the awarding of a contract by the Commissioner of Public Works,
12 bring an action against the state to the superior court for the judicial
13 district of Hartford for the purpose of having such claims determined,
14 provided, (1) notice of each such claim under such contract and the
15 factual bases for each such claim shall have been given in writing to
16 the agency head of the department administering the contract within
17 the period which commences with the execution of the contract or the

18 authorized commencement of work on the contract project, whichever
19 is earlier, and which ends two years after the acceptance of the work
20 by the agency head evidenced by a certificate of acceptance issued to
21 the contractor or two years after the termination of the contract,
22 whichever is earlier, and (2) such claim has been submitted for
23 mediation pursuant to subsection (f) of this section. No action on a
24 claim under such contract shall be brought except within the period
25 which commences with the execution of the contract or the authorized
26 commencement of work on the contract project, whichever is earlier,
27 and which ends three years after the acceptance of the work by the
28 agency head of the department administering the contract evidenced
29 by a certificate of acceptance issued to the contractor or three years
30 after the termination of the contract, whichever is earlier. Issuance of
31 such certificate of acceptance shall not be a condition precedent to the
32 commencement of any such action. Acceptance of an amount offered
33 as final payment shall not preclude any person, firm or corporation
34 from bringing a claim under this section. Such action shall be tried to
35 the court without a jury. Sovereign immunity shall not be a defense to
36 any such claim asserted by any person, firm or corporation that has a
37 contract with the state provided such claim arises out of such contract
38 and does not include any claim for personal injury or any other tort.
39 All other legal defenses [except governmental immunity shall be] are
40 reserved to the state. In no event shall interest be awarded under
41 section 13a-96 and section 37-3a by a court or an arbitrator to the
42 claimant for the same debt for the same period of time. Interest under
43 section 37-3a shall not begin to accrue to a claimant under this section
44 until at least thirty days after the claimant submits a bill or claim to the
45 agency for the unpaid debt upon which such interest is to be based,
46 along with appropriate documentation of the debt when applicable.
47 Any action brought under this subsection shall be privileged in respect
48 to assignment for trial upon motion of either party.

49 (b) As an alternative to the procedure provided in subsection (a) of
50 this section, any such person, firm or corporation having a claim under
51 said subsection (a) may submit a demand for arbitration of such claim

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

79 (c) Once a notice of claim is given to the agency head as required by
80 subsection (b) of this section, each party shall allow the other to
81 examine and copy any nonprivileged documents which may be
82 relevant either to the claimant's claims or to the state's defenses to such
83 claims. Requests to examine and copy documents which have been
84 prepared by the contractor in order to submit a bid shall be subject to a
85 claim of privilege and grounds for an application to any court or judge

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

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

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

116 (f) Claims brought pursuant to this section [may] on or after October
117 1, 2005, shall be submitted for mediation under the mediation rules of

118 such dispute resolution entity as the parties may agree upon, provided
119 if the parties do not agree upon mediation rules, the mediation rules of
120 the American Arbitration Association shall apply. Such mediation
121 procedures shall be exhausted prior to the commencement of any
122 action under the provisions of this section.

123 (g) All such claims arising out of any contract with the state in
124 which it is alleged that the state may be liable, in whole or in part, may
125 be consolidated in a single proceeding in the superior court for the
126 judicial district of Hartford, or, in the alternative, consolidated in a
127 single arbitration proceeding pursuant to subsection (b) of this section.
128 The adjudication of such arbitration or proceeding shall be bifurcated,
129 and the court or arbitrator shall first make findings as to liability. If it is
130 determined that the state is liable, in whole or in part, for such claim,
131 the court or arbitrator shall then make findings as to the damages for
132 which the state is liable.

133 [(g)] (h) This section shall apply to claims brought on or after July 1,
134 1991. The provisions of sections 4-61, 4b-97, 13b-57a, 13b-57b and 13b-
135 57c of the general statutes, revised to January 1, 1991, shall apply to
136 claims brought before July 1, 1991.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2005	4-61

GL

Joint Favorable C/R

JUD