



General Assembly

January Session, 2009

Amendment

LCO No. 6018

HB0540006018HDO

Offered by:
REP. ESPOSITO, 116th Dist.

To: House Bill No. 5400

File No. 63

Cal. No. 106

**"AN ACT CONCERNING THE DISCLOSURE OF LEASED ITEMS IN
REAL ESTATE TRANSACTIONS."**

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 4-61 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective January 1, 2010*):

5 (a) Any person, firm or corporation which has entered into a
6 contract with the state, acting through any of its departments,
7 commissions or other agencies, for the design, construction,
8 construction management, repair or alteration of any highway, bridge,
9 building or other public works of the state or any political subdivision
10 of the state may, in the event of any [disputed claims under such
11 contract] (1) claims arising out of such contract, including
12 subcontractor or supplier pass-through claims, but not including any
13 claim for personal injury or any other tort in which it is alleged that the
14 state is or may be liable in whole, or in part, or (2) claims arising out of
15 the awarding of a contract by the Commissioner of Public Works,

16 bring an action against the state to the superior court for the judicial
17 district of Hartford for the purpose of having such claims determined,
18 provided, (A) notice of each such claim [under] arising out of such
19 contract and the factual bases for each such claim shall have been
20 given in writing to the agency head of the department administering
21 the contract within the period which commences with the execution of
22 the contract or the authorized commencement of work on the contract
23 project, whichever is earlier, and which ends two years after the
24 acceptance of the work by the agency head evidenced by a certificate
25 of acceptance issued to the contractor or two years after the
26 termination of the contract, whichever is earlier, and (B) such claim has
27 been submitted for mediation pursuant to subsection (f) of this section.
28 No action on a claim [under] arising out of such contract shall be
29 brought except within the period which commences with the execution
30 of the contract or the authorized commencement of work on the
31 contract project, whichever is earlier, and which ends three years after
32 the acceptance of the work by the agency head of the department
33 administering the contract evidenced by a certificate of acceptance
34 issued to the contractor or three years after the termination of the
35 contract, whichever is earlier. Issuance of such certificate of acceptance
36 shall not be a condition precedent to the commencement of any such
37 action. Acceptance of an amount offered as final payment shall not
38 preclude any person, firm or corporation from bringing a claim under
39 this section. Such action shall be tried to the court without a jury.
40 Sovereign immunity shall not be a defense to any such claim,
41 including subcontractor or supplier pass-through claims, asserted by
42 any person, firm or corporation that has a contract with the state,
43 provided such claim arises out of such contract and does not include
44 any claim for personal injury or any other tort. All other legal defenses
45 [except governmental immunity shall be] are reserved to the state. In
46 no event shall interest be awarded under section 13a-96 and section 37-
47 3a by a court or an arbitrator to the claimant for the same debt for the
48 same period of time. Interest under section 37-3a shall not begin to
49 accrue to a claimant under this section until at least thirty days after
50 the claimant submits a bill or claim to the agency for the unpaid debt

51 upon which such interest is to be based, along with appropriate
52 documentation of the debt when applicable. Any action brought under
53 this subsection shall be privileged in respect to assignment for trial
54 upon motion of either party.

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

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

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

112 (e) The arbitrators shall conduct the hearing and shall hear evidence
113 as to the facts, and arguments as to the interpretation and application
114 of contractual provisions. After the hearing, the arbitrators shall issue
115 in writing: (1) Findings of fact, (2) a decision in which the arbitrators
116 interpret the contract and apply it to the facts found, and (3) an award.
117 The arbitrators' findings of fact and decision shall be final and
118 conclusive and not subject to review by any forum, tribunal, court or

119 government agency, for errors of fact or law. Awards shall be final and
120 binding and subject to confirmation, modification or vacation pursuant
121 to chapter 909.

122 (f) Claims brought pursuant to this section [may] on or after October
123 1, 2008, shall be submitted for mediation under the mediation rules of
124 such dispute resolution entity as the parties may agree upon, provided
125 if the parties do not agree upon mediation rules, the mediation rules of
126 the American Arbitration Association shall apply.

127 (g) All claims made pursuant to subsection (a) of this section may be
128 consolidated in a single proceeding in the superior court for the
129 judicial district of Hartford, or, in the alternative, consolidated in a
130 single arbitration proceeding pursuant to subsection (b) of this section,
131 at the discretion of the court or arbitration panel before which the
132 matter is pending. The adjudication of such arbitration or proceeding
133 shall be bifurcated and the court or arbitrator shall first make findings
134 as to liability. If it is determined that the state is liable, in whole or in
135 part, for the claim, the court or arbitrator shall then make findings as to
136 the damages for which the state is liable.

137 (h) Nothing in this section shall be construed to permit a
138 subcontractor or supplier that does not have a contract with the state to
139 bring a direct action against the state.

140 [(g)] (i) This section shall apply to claims brought on or after July 1,
141 1991. The provisions of sections 4-61, 4b-97, 13b-57a, 13b-57b and 13b-
142 57c of the general statutes, revised to January 1, 1991, shall apply to
143 claims brought before July 1, 1991."