



House of Representatives

General Assembly

File No. 563

February Session, 2010

Substitute House Bill No. 5379

House of Representatives, April 15, 2010

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING OFFERS OF COMPROMISE IN ARBITRATION OF CONSTRUCTION CONTRACTS.

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

1 Section 1. (NEW) (*Effective October 1, 2010*) (a) For the purposes of
2 this section, "construction contract" means any contract entered into on
3 or after the effective date of this section, for construction, renovation or
4 rehabilitation in this state, including any improvements to real
5 property that are associated with such construction, renovation or
6 rehabilitation, or any subcontract for construction, renovation or
7 rehabilitation between an owner and a contractor, a contractor and a
8 subcontractor or a subcontractor and another subcontractor.

9 (b) After any party to a construction contract has made a demand
10 for arbitration pursuant to the dispute resolution provision of such
11 contract, the claimant may, at any time before an award is rendered,
12 apply to the court in the judicial district in which the arbitration is
13 pending for permission to file a written offer of compromise, which
14 offer shall be attached to the application, signed by the claimant or the

15 claimant's attorney and directed to the respondent or the respondent's
16 attorney, offering to settle the claim underlying the arbitration for a
17 sum certain. The court shall grant permission to file such offer if the
18 application and offer of compromise complies with this section. The
19 claimant shall give notice of the offer of compromise to the
20 respondent's attorney or, if the respondent is not represented by an
21 attorney, to the respondent himself or herself. Within thirty days after
22 being notified of the filing of the offer of compromise and prior to the
23 rendering of an order confirming, vacating, modifying or correcting an
24 award or the entering of a judgment or decree upon an award, the
25 respondent or the respondent's attorney may file with the clerk of the
26 court a written acceptance of the offer of compromise agreeing to settle
27 the claim underlying the arbitration for the sum certain specified in the
28 claimant's offer of compromise. Upon such filing and the receipt by the
29 claimant of such sum certain, the claimant shall file a withdrawal of
30 the arbitration with the clerk and the clerk shall record the withdrawal
31 of the arbitration accordingly. If the offer of compromise is not
32 accepted within thirty days and prior to the rendering of an order or
33 the entering of a judgment or decree by the court, the offer of
34 compromise shall be considered rejected and not subject to acceptance
35 unless refiled. Any such offer of compromise and any acceptance of
36 the offer of compromise shall be included by the clerk in the record of
37 the case.

38 (c) After arbitration and upon the application of any party to
39 confirm, vacate or correct the award, the court shall examine the
40 record to determine whether the claimant made an offer of
41 compromise which the respondent failed to accept. If the court
42 confirms the arbitration award and ascertains from the record that the
43 claimant has recovered an arbitration award in an amount equal to or
44 greater than the sum certain specified in the claimant's offer of
45 compromise, the court shall add to the amount of the award eight per
46 cent annual interest on said amount, in addition to any interest
47 awarded by the arbitrator. The interest shall be computed from the
48 date the arbitration commenced. The court shall award reasonable
49 attorney's fees and shall render judgment accordingly. This section

50 shall not be interpreted to abrogate the contractual rights of any party
51 concerning the recovery of attorney's fees in accordance with the
52 provisions of any written contract between the parties to the
53 arbitration.

54 Sec. 2. Section 42-158m of the general statutes is repealed and the
55 following is substituted in lieu thereof (*Effective October 1, 2010*):

56 Any provision in a construction contract for the performance of
57 work on a construction site located in this state that purports to require
58 that any dispute arising under the construction contract be mediated,
59 arbitrated or otherwise adjudicated in or under the laws of a state
60 other than Connecticut shall be void and of no effect, regardless of
61 whether the construction contract was executed in this state.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	New section
Sec. 2	<i>October 1, 2010</i>	42-158m

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill would alter the procedure by which construction contracts may be arbitrated. There would be no fiscal impact associated with implementing this new procedure.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5379*****AN ACT CONCERNING OFFERS OF COMPROMISE IN ARBITRATION OF CONSTRUCTION CONTRACTS.*****SUMMARY:**

This bill creates a procedure for claimants in an arbitration proceeding related to a construction contract to file an offer of compromise, offering to settle the underlying claim for a specified sum. It requires a court to add 8% annual interest to a claimant's arbitration award if the opposing party rejected an offer of compromise that was less than the amount awarded to the claimant following arbitration.

The bill also specifies that the prohibition on construction contract provisions requiring disputes to be adjudicated in another state or according to the laws of another state includes provisions concerning mediation or arbitration, as well as other types of adjudication. The prohibition applies to construction contracts for work at construction sites in Connecticut, regardless of whether the contract was signed in this state.

EFFECTIVE DATE: October 1, 2010

OFFER OF COMPROMISE***Applicable Contracts***

The bill applies to contracts entered into on or after October 1, 2010 for construction, renovation, or rehabilitation in Connecticut, including improvements to real property associated with such work, or a subcontract for such work between an owner and contractor, a contractor and subcontractor, or two subcontractors.

Procedure

The bill provides that after a party to a construction contract has demanded arbitration under the contract's dispute resolution provision, and before an award is rendered, the claimant may apply to the court for permission to file a written offer of compromise. The application must be made in the judicial district where the arbitration is pending, and the claimant must attach the offer of compromise to the application. The claimant or the claimant's attorney must sign the offer and direct it to the opposing party or attorney. If the application and offer comply with these requirements, the court must allow the claimant to file the offer.

The claimant must notify the opposing party (if unrepresented) or the party's attorney of the offer of compromise. Within 30 days of such notice, and before the court renders an order confirming, vacating, modifying, or correcting an arbitration award or enters a judgment or decree on an award, the opposing party or attorney may file with the court a written acceptance of the offer of compromise, agreeing to settle the underlying claim for the amount specified in the claimant's offer. After the acceptance is filed and the claimant receives the sum certain, the claimant must withdraw the arbitration and the court clerk must record that withdrawal.

If the opposing party does not accept the offer of compromise within 30 days, and the court has not yet rendered an order confirming, vacating, modifying, or correcting an award or entered a judgment, the offer of compromise must be considered rejected. Such an offer cannot be accepted unless refiled. The court clerk must include any offer of compromise and acceptance of an offer in the case record.

Upon a party's application to confirm, vacate, or correct an award following arbitration, the court must examine the record to determine whether the claimant made an offer of compromise that the opposing party did not accept. If the court confirms the arbitration award and determines that the claimant recovered an award at least equal to the sum certain in the offer of compromise, it must add 8% annual interest

to the award, computed from the date the arbitration began, in addition to any interest awarded by the arbitrator. The court must also award reasonable attorney's fees and render judgment accordingly. However, the bill does not affect the parties' contractual rights concerning attorney's fees.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (03/29/2010)