



# House of Representatives

General Assembly

**File No. 623**

January Session, 2011

Substitute House Bill No. 6598

*House of Representatives, April 26, 2011*

The Committee on Judiciary reported through REP. FOX of the 146th 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  
CONSTRUCTION CONTRACT ARBITRATION PROCEEDINGS AND  
MEDIATION AND 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, 2011*) (a) For the purposes of  
2 this section, "construction contract" means any contract entered into on  
3 or after October 1, 2011, for construction, renovation or rehabilitation  
4 in this state, including any improvements to real property that are  
5 associated with such construction, renovation or rehabilitation, or any  
6 subcontract for construction, renovation or rehabilitation between an  
7 owner and a contractor, a contractor and a subcontractor or a  
8 subcontractor and another subcontractor. "Construction contract" does  
9 not include (1) any public works or other contract entered into with  
10 this state, any other state or the United States, or (2) a contract or  
11 project funded or insured by the United States Department of Housing  
12 and Urban Development.

13 (b) After a party to a construction contract has made a demand for

14 arbitration pursuant to the dispute resolution provision of the  
15 construction contract, such party may, not more than once and at any  
16 time before a final award is rendered by the arbitration panel, send by  
17 certified mail, return receipt requested, to the opposing party or the  
18 opposing party's attorney a written offer of compromise, signed by the  
19 party or the party's attorney and directed to the opposing party or  
20 attorney, offering to settle all of the claims set forth in the arbitration  
21 for a sum certain. Within thirty days after being notified of the offer of  
22 compromise and before a final award is rendered by the arbitration  
23 panel, the opposing party or the opposing party's attorney may reply,  
24 by certified mail, return receipt requested, with a written acceptance of  
25 the offer of compromise agreeing to settle all claims set forth in the  
26 arbitration for the sum certain specified in the offer of compromise. If  
27 the opposing party or attorney does not accept the offer of compromise  
28 within thirty days after being notified of the offer of compromise and  
29 before a final award is rendered by the arbitration panel, the offer of  
30 compromise shall be considered rejected and not subject to acceptance  
31 under this section.

32 (c) After issuance of a final arbitration award and upon the  
33 application of any party to a construction contract to confirm, vacate,  
34 modify or correct the award, any party who made an offer of  
35 compromise pursuant to subsection (b) of this section which the  
36 opposing party failed to accept may file with the court proof of the  
37 party's offer of compromise. If the court confirms the arbitration award  
38 and ascertains from the record that the party has recovered an  
39 arbitration award in an amount equal to or greater than the sum  
40 certain specified in the party's offer of compromise, the court shall add  
41 to the amount of the award eight per cent annual interest on the total  
42 amount of such award, in addition to any interest awarded by the  
43 arbitrator. The interest shall be computed from the date the original  
44 arbitration demand for the subject proceeding was filed. The court  
45 shall further award reasonable attorney's fees and costs for bringing  
46 the action to confirm, vacate, modify or correct the award and shall  
47 render judgment accordingly.

48 (d) This section shall not be interpreted to abrogate or modify the  
 49 contractual rights of any party concerning the recovery of attorney's  
 50 fees in accordance with the provisions of any written contract between  
 51 the parties to the arbitration.

52 Sec. 2. Section 42-158m of the general statutes is repealed and the  
 53 following is substituted in lieu thereof (*Effective October 1, 2011*):

54 Any provision in a construction contract for the performance of  
 55 work on a construction site located in this state that purports to require  
 56 that any dispute arising under the construction contract be mediated,  
 57 arbitrated or otherwise adjudicated in or under the laws of a state  
 58 other than Connecticut shall be void and of no effect, regardless of  
 59 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, 2011</i>	New section
Sec. 2	<i>October 1, 2011</i>	42-158m

***Statement of Legislative Commissioners:***

In Sec. 1(b), "within" and "the party's" were inserted, and the last sentence in Subsec. (c) was designated as Subsec. (d). The changes were made for clarity and consistency with the general statutes.

***JUD***      *Joint Favorable Subst.-LCO*

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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.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill has no fiscal impact, as it deals with private industry and does not impact the operations of the Judicial Department.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****HB 6598****AN ACT CONCERNING OFFERS OF COMPROMISE IN CONSTRUCTION CONTRACT ARBITRATION PROCEEDINGS AND MEDIATION AND ARBITRATION OF CONSTRUCTION CONTRACTS.****SUMMARY:**

This bill creates a procedure for parties in an arbitration proceeding related to certain construction contracts to send the opposing party an offer of compromise, offering to settle the underlying claim for a specified amount. It requires a court to add 8% annual interest to an arbitration award, and award reasonable attorney's fees and costs, if the opposing party rejected an offer of compromise that was less than the amount awarded to the recovering party following arbitration. These procedures are similar to those in existing law for offers of compromise in civil actions (CGS § 52-192a).

The bill also specifies that the existing prohibition on provisions in commercial construction contracts that require 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.

EFFECTIVE DATE: October 1, 2011

**OFFERS OF COMPROMISE*****Applicable Contracts***

The bill's provisions on offers of compromise apply to contracts entered into on or after October 1, 2011 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. However, these provisions do not apply to (1) contracts with any state or the federal government or (2) contracts or projects that are funded or insured by the U.S. Department of Housing and Urban Development (HUD).

***Offer***

The bill provides that after a party to a construction contract has demanded arbitration under the contract's dispute resolution provision, and before a final arbitration award is rendered, the party may send to the opposing party or his or her attorney a written offer of compromise, offering to settle the arbitration claims for a certain amount of money. A party may send such an offer only once.

The bill specifies that the offer must be signed by the party or attorney, and directed to the opposing party or attorney. It must be sent by certified mail, return receipt requested.

***Acceptance***

If the party receiving the offer of compromise wishes to accept it, the party must do so within 30 days of being notified of it and before a final arbitration award is rendered. The acceptance must be in writing, sent by the accepting party or that party's attorney. It must be sent by certified mail, return receipt requested.

If the party receiving the offer, or his or her attorney, does not accept it within this time frame, the offer is rejected and cannot be accepted.

***Interest, Attorney's Fees, and Costs***

After a party to a construction contract applies to confirm, vacate, modify, or correct a final arbitration award, the party to the arbitration who made an unaccepted offer of compromise may file proof of that offer with the court. If the court confirms the arbitration award and determines from the record that the recovering party was awarded an amount at least equal to the amount in that party's offer of compromise, the court must add 8% annual interest to the award. This interest must be computed from the date the arbitration began, and is

in addition to any interest awarded by the arbitrator. The court must also award reasonable attorney’s fees and court costs for bringing the court action on the arbitration award, and render judgment accordingly. However, the bill does not affect the parties’ contractual rights concerning attorney’s fees.

**PROHIBITION ON CONSTRUCTION CONTRACTS REQUIRING DISPUTES TO BE DECIDED IN ANOTHER STATE**

The bill specifies that construction contract provisions requiring disputes under the contract to be mediated or arbitrated in another state, or according to another state’s laws, are invalid. This prohibition applies to contracts for work at construction sites in Connecticut, regardless of whether the contract was signed here. But it does not apply to:

1. building contracts with any state, a municipality or other political subdivision of this or any state, or the federal government;
2. contracts or projects that are funded or insured by HUD;
3. contracts between an owner and a contractor for \$25,000 or less, or a subcontract resulting from such a contract; or
4. contracts for buildings intended for residential occupancy containing less than five units (CGS § 42-158i).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 41 Nay 0 (04/06/2011)