



912 Silas Deane Highway  
Wethersfield, CT 06109

Tel: 860.529.6855

Fax: 860.563.0616

ccia-info@ctconstruction.org

www.ctconstruction.org

## **Raised Bill No. 5570, AAC The Applicability Of Statutes Of Limitations To Actions Brought By The State Or A Political Subdivision Of The State**

**Committee on Judiciary**

**March 17, 2014**

**CCIA Position: Supports**

The Connecticut Construction Industries Association is comprised of a number of substantial firms in various sectors of the construction industry who have a long history of providing quality work for the public benefit and a great deal of experience performing work on public projects. Those firms include building contractors, heavy civil contractors, environmental contractors, utility contractors, transportation contractors, quarry operators, asphalt producers, ready mixed concrete producers, and equipment dealers that rely on public sector contracting as their core business.

In 2012, the Connecticut Supreme Court wrote a decision that compromised the contracting system that supports the entire realm of public construction in the state. It held there is no statute of limitations against the state in order to preserve the State's claims against designers and contractors for alleged construction defects on the UConn law library project. Fortunately, the General Assembly can address this situation before it manifests into making state contracting untenable.

The court's decision means that every time a designer, engineer, contractor or subcontractor performs work under a state contract, that party is incurring exposure for an infinite period of time to allegations that its work was defective. Those parties, their insurers, and their bonding companies are concerned that they are facing unending liability on public projects if the decision is not addressed. This would run not only to the public work that they may chose to perform in the future, but the state now has the ability to bring up issues with projects that were completed many years ago.

This presents a fundamental problem. Drafting and entering into contracts in the design and construction industries is basically an exercise in identifying, measuring and handling risk. When contractual risk management works properly, the risk is identified, equitably allocated, priced, and the cost associated with the risk allocation becomes part of the bargain between the contracting parties, on every level.

However, under the Court's decision, the risk profile of every public project in Connecticut has been materially altered and dramatically heightened because a risk



that extends for an infinite period of time cannot be identified or allocated. Additionally, the participants may be assuming risk they can't afford. Taking on increased unquantifiable risk has the potential, if that risk hits, to cause bankruptcy through no fault of the contractor.

The influence of this new risk on the industry has yet to accrue in any significant way, but it is raising concerns about the ability to price and allocate the cost of uncertainty into the future. Design and engineering firms are wondering if this will affect their ability to purchase Errors & Omissions insurance. Construction companies are wondering if this will affect their ability to insure their business and provide performance bonds. Insurance and bonding companies are wondering how many claims are going to have to be made before the risk impacts the market. This could have an overall effect of excluding many qualified participants from the marketplace.

The most troubling aspect of all of this is that there is an entire industry operating as if nothing changed, with each firm hoping that it will not happen to them. Everyone is making imprudent decisions with risk, because the reality of the situation is that if the participants in the design and construction process properly identify and price this unlimited exposure, the cost would be so high that many public projects would be unaffordable. Even on the smaller projects, if any participant properly prices the risk, their bid could never be competitive. It would affect insurers and bonding companies the same way. If they were to properly price the risk, the cost would be prohibitive.

The central question is whether it is good public policy for an industry to continue to operate under the uncertainty created by this decision, or if the Connecticut General Assembly should address the risk before it manifests into a series of major problems that could have disastrous consequences on everyone in the process, including the public owners.

It's a risk we don't have to take. Enacting this bill would easily address the Court's decision without cost to the state or the industry. Left alone, the situation will lead to damaging long-term outcomes that may be impossible to solve.

For questions and further information, please contact Don Shubert at 860-529-6855 or [dshubert@ctconstruction.org](mailto:dshubert@ctconstruction.org).

*For more than 80 years, CCIA has represented the commercial construction industry in Connecticut, carrying on its founding members' belief in the power of collective action and cooperation to grow the industry. One of the Association's oldest entities, the Connecticut Road Builders Association, was formed in 1933. CCIA is an organization of associations, where various segments of the commercial construction industry work together to advance and promote their shared interests. CCIA is comprised of over 300 members, including contractors, subcontractors, material producers, equipment and material suppliers, professionals such as accountants, attorneys, engineers, surety and insurance companies, as well as other professionals allied with the state's construction industry.*