Joint Committee on Judiciary

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Public Hearing

Written Testimony

By

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Co-Chairs, Ranking Members, and Members of the Joint Committee on Judiciary, thank you for the opportunity to submit written testimony on Raised bill 5570, *An Act Concerning the Applicability of Statutes of Limitations to Actions Brought by the State or a Political Subdivision of the State.*

The University is neutral on the substance of the bill which would make all state agencies subject to the same statutes of limitation that are applicable private parties.

However, UConn respectfully requests that the effective date of the bill be revised so that instead of applying the statutes of limitations to "actions brought on or after October 1, 2014," the statutes of limitations would apply to "claims arising on or after October 1, 2014." The reason for the requested change is to prevent the extinguishment of existing claims and to avoid needless litigation.

On the merits, the argument against the bill is that the state should retain the freedom to bring a claim at any time, no matter how old it is. The converse argument is that fundamental fairness requires the state to abide by the same rules as other claimants. Moreover, in the construction industry, the argument is that if the state exposes private contractors to liability unlimited in time, then contractors will increase their prices to compensate for the additional risk and the state will pay a higher price for construction services. UConn does not take a position on the merits at this time.

The effective date, however, we believe should be modified. Under existing law, state agencies and the Attorney General's office have had no legal reason to process claims and initiate suit within the statute of limitations applicable to private parties. If the bill passes as written, it will change the rules with a relatively short time to change historic practice before October 1. The practical consequence will be that every state agency – not just UConn – will have to evaluate all claims or potential claims that may be time barred and commence litigation before October 1 in order to avoid having the state lose the claim. This change of the "rules" on short notice will have two undesirable consequences.

First, many claims that are in the process of investigation or negotiation may be forced into litigation before October 1 to avoid the risk of being time barred. In other words, lawsuits will be started that may be unnecessary. Second, it is highly likely that some older claims will be missed, will not be put into suit, and

that existing rights of the state will be extinguished. These risks can be avoided my modifying the effective date.

If the effective date is changed to apply to "claims arising on or after October 1, 2014," the newly applicable statutes of limitations will only apply prospectively to new claims, not retrospectively to existing claims. This will give all state agencies a reasonable opportunity to adjust their process for investigating and evaluating potential claims and a reasonable time to initiate legal action. This approach will provide for an orderly transition to the new system without the risk of an artificial spike in lawsuits between now and October 1, 2014.

Moreover, to the extent that one of the goals of the bill is to make the state a more attractive client for construction contractors and others, the bill will still achieve that goal. Upon passage, bidders will know that any future work will not be subject to liability which is unlimited in time. Thus, the incentive for contractors to raise prices because of increase risk will be removed immediately upon passage.

Accordingly, although neutral on the merits, UConn respectfully requests that the effective date language be changed to apply to "claims arising on or after October 1, 2014."

Respectfully submitted,

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