



# House of Representatives

General Assembly

**File No. 595**

February Session, 2014

Substitute House Bill No. 5570

*House of Representatives, April 16, 2014*

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING THE APPLICABILITY OF THE STATUTE OF LIMITATIONS TO CONSTRUCTION AND DESIGN ACTIONS BROUGHT BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE.***

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

1 Section 1. Section 52-584a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2014, and*  
3 *applicable to actions accruing on or after said date*):

4 (a) No action or arbitration, whether in contract, in tort, or  
5 otherwise, (1) to recover damages (A) for any deficiency in the design,  
6 planning, contract administration, supervision, observation of  
7 construction or construction of, or land surveying in connection with,  
8 an improvement to real property; (B) for injury to property, real or  
9 personal, arising out of any such deficiency; (C) for injury to the  
10 person or for wrongful death arising out of any such deficiency, or (2)  
11 for contribution or indemnity which is brought as a result of any such  
12 claim for damages, shall be brought against any architect, professional

13 engineer or land surveyor performing or furnishing the design,  
14 planning, supervision, observation of construction or construction of,  
15 or land surveying in connection with, such improvement more than  
16 seven years after substantial completion of such improvement.

17 (b) Notwithstanding the provisions of subsection (a) of this section,  
18 in the case of such an injury to property or the person or such an injury  
19 causing wrongful death, which injury occurred during the seventh  
20 year after such substantial completion, an action in tort to recover  
21 damages for such an injury or wrongful death may be brought within  
22 one year after the date on which such injury occurred, irrespective of  
23 the date of death, but in no event may such an action be brought more  
24 than eight years after [the] substantial completion of [construction of  
25 such an] such improvement.

26 (c) Notwithstanding the provisions of subsections (a) and (b) of this  
27 section, no action described in subsection (a) or (b) of this section that  
28 accrues on or after October 1, 2014, may be brought by the state or any  
29 political subdivision of the state more than ten years after substantial  
30 completion of such improvement.

31 [(c)] (d) For the purposes of subsections (a), [and] (b) and (c) of this  
32 section, an improvement to real property shall be considered  
33 substantially complete when (1) it is first used by the owner or tenant  
34 thereof or (2) it is first available for use after having been completed in  
35 accordance with the contract or agreement covering the improvement,  
36 including any agreed changes to the contract or agreement, whichever  
37 occurs first.

38 [(d)] (e) The limitation prescribed by this section shall not be  
39 asserted by way of defense by any person in actual possession or [the]  
40 control, as owner, tenant or otherwise, of such an improvement at the  
41 time any deficiency in such an improvement constitutes the proximate  
42 cause of the injury or death for which it is proposed to bring action.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014, and applicable to actions accruing on or after said date</i>	52-584a

**Statement of Legislative Commissioners:**

In section 1, the new language was reorganized and rewritten for accuracy.

**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.

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**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 15 \$</b>	<b>FY 16 \$</b>
Resources of the General Fund	GF - Potential Revenue Loss	See Below	See Below

**Municipal Impact:** None

**Explanation**

The bill subjects the state to the same statutes of limitations that are applicable to private parties. To the extent that the state does not file cases within the statute of limitation, this bill may result in potential revenue loss through legal settlements.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis**

**sHB 5570**

***AN ACT CONCERNING THE APPLICABILITY OF THE STATUTE OF LIMITATIONS TO CONSTRUCTION AND DESIGN ACTIONS BROUGHT BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE.***

**SUMMARY:**

This bill subjects the state and its political subdivisions to a 10-year statute of limitations for bringing certain actions against design professionals in connection with the improvement of real property. The affected design professionals are architects, professional engineers, and land surveyors.

The bill applies to actions against a design professional performing or furnishing the design, planning, supervision, observation of construction, or construction of, or land surveying in connection with, the improvement:

1. to recover damages for (a) any deficiency in performing these services, (b) injury to property or a person, or (c) wrongful death arising out of the deficiency or
2. for a contribution or indemnity brought as a result of such claims for damages.

The bill applies to actions in contract, tort, or otherwise.

Under the bill, the 10-year period for the state and its subdivisions runs from the substantial completion of the improvement. The improvement is substantially complete when (1) the owner or tenant first uses it or (2) it is first available for use after having been completed in accordance with the contract or agreement covering the improvement, including any agreed changes to the contract or

agreement, whichever is earlier.

EFFECTIVE DATE: October 1, 2014, and applicable to actions accruing on or after that date.

## **BACKGROUND**

### ***Related Court Case***

Under the common law doctrine of *nullum tempus occurrit regi* (no time runs against the king), a statute of limitations does not apply to a state unless a law specifically provides that it does.

In *State of Connecticut v. Lombardo Brothers Mason Contractors, Inc., et al.*, 307 Conn. 412 (2012), the Connecticut Supreme Court unanimously held that this doctrine is part of the Connecticut common law and that the state could proceed with an action for damages against contractors of the UConn Law School library, notwithstanding the statute of limitations that would otherwise apply. It also held that the public works commissioner lacked statutory authority to waive the state's rights by contract, as he had done in this instance.

### ***Statute of Limitations for Nongovernmental Parties***

By law, the statute of limitations for actions by nongovernmental parties against design professionals is generally seven years after substantial completion of the improvement. But, in the case of an injury to property or persons or wrongful death arising from an injury when the injury occurred during the seventh year after substantial completion, an action in tort to recover damages may be brought within one year after the date of injury, but no more than eight years after the substantial completion of construction of the improvement.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (04/02/2014)