The Associated Sheet Metal & Roofing Contractors of Connecticut

Senate Bill 1032, 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
Judiciary Committee
March 6, 2015

The Associated Sheet Metal & Roofing Contractors of Connecticut is an association of commercial, industrial and residential sheet metal contractors and roofing contractors employing the skilled craftsmen of Locals #40 and #38 of the Sheet Metal, Air, Rail, and Transportation Workers International Union and also Locals #9 and #12 of the United Union of Roofers, Waterproofers, and Allied Workers. ASMRCC seeks to provide services that will enhance members' businesses, markets and profitability in all sectors of the unionized sheet metal and roofing industry in Connecticut and vicinity.

Senate Bill 1032, An Act Concerning the Applicability of Statute of Limitations to Construction and Design Actions Brought by the State or a Political Subdivision of the State, is designed to address the decision in State of Connecticut v. Lombardo Brothers Mason Contractors, Inc., et al. 307 Conn. 412 (2012) by abrogating the common law doctrine of *nullum tempus occurrit regi* (no time runs against the king) in certain contract and tort actions. ASMRCC signed onto an *amicus curiae* brief submitted to the Connecticut Supreme Court in support of the defendant-contractors, and is a member of a coalition of engineering, design and construction contracting trade associations in support of addressing the decision through legislation.

In Lombardo, the state Supreme Court found that statutes of limitation for asserting claims against construction contractors and professional engineers do not apply to the state of Connecticut. The coalition seeks a statute of limitations that applies to potential claims by the state relating to or arising from all potential design and construction related matters consistent with other states and the federal government. Senate Bill 1032 would require the state to bring a claim against an architect or engineer for injury arising out of construction of a state project within 10 years of its substantial completion.

The bill should be amended to adopt a statute of limitations that would apply to the state of Connecticut in the same manner as to actions brought by private persons. This is only fair for companies like sheet metal and roofing contractors that contract with the state. There is no valid reason that the state should not be subject to the same statute of limitations as companies that contract with the state.

If the bill is amended accordingly, the Associated Sheet Metal & Roofing Contractors of Connecticut would support it for the following reasons:

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- Statutes of limitations are a fundamental part of law and equity. It is unreasonable to expect construction firms to be subject to claims by the state many years after a project has been built.
- It is impractical, unfair, and in some cases, fundamentally impossible, to bring a claim against a construction company or design firm 15, 20, 30, or even 50 years after the completion of a construction project. With the passage of time, it would be challenging, not to mention costly or impossible, to obtain documentation and records, and to locate key stakeholders. Such a claim would be cost-prohibitive for a small contractor to defend.
- Public owners could, years after completion of a project, assert claims that are more likely to have arisen from maintenance, life span or other factors not caused by the original design or construction team. The threat of litigation costs or damaging their relationship with the state may compel many contractors to compromise claims that have limited merit.
- As a result of the Lombardo decision, contractors may not be able to purchase completed operations insurance coverage, or tail coverage, on state projects because insurers may not offer it or they unable to quantify the risk.
- The decision may have a chilling effect on the ability of some bond producers to provide surety coverage on state projects. Some contractors may not be able to bid projects because their sureties would not provide a bond on projects for which there is open-ended liability.

Allowing the state to commence litigation solely at its convenience, which is the logical effect of the Lombardo decision, is unfair and would harm the state and potential defendants. In Lombardo, problems arose with the UConn Law School library less than a year after the building opened, however, the state waited twelve years to assert a claim. Those intervening years resulted in documents being lost, memories fading and key individuals involved in the project no longer being available. Thus, any trial that results would not be fair to any party, including the state or the defendants.

The lack of a statute of limitations that applies to the state makes Connecticut unfriendly to business. Construction companies and sheet metal and roofing contractors employ many workers in the state. Many other states, including neighboring states of Massachusetts, New York and New Jersey, have enacted laws to impose statutes of limitations against the state. Connecticut should join that majority in an effort to be business-friendly and fair to constituents and contractors.

For additional information or any questions concerning Senate Bill 1032, please contact Michael Thompson, Executive Director of ASMRCC, at (860) 413-3188.