
OLR Bill Analysis

sHB 6506 (as amended by House "A")*

AN ACT CONCERNING THE PROCEDURES OF THE OFFICE OF THE CLAIMS COMMISSIONER.

SUMMARY

This bill makes various changes in the laws concerning claims presented to the claims commissioner exclusively seeking permission to sue the state (rather than seeking payment through the claims process).

It requires the governor to appoint six attorneys to serve as temporary deputies to hear claims seeking permission to sue that are pending for certain periods. The deputies may serve until September 30, 2023, at the latest. The bill requires them, within 90 days after a claim's referral, to either deny or dismiss the claim or grant authorization to sue. Among other things, it allows claimants to request that the legislature review a deputy's decision to deny or dismiss a claim.

The bill allows the claims commissioner, without holding a hearing, to grant that permission based on the claim notice or supporting evidence if the attorney or claimant files a motion and an affidavit attesting to the claim's validity. It (1) specifies the types of opposition that the state may file and (2) requires the court, in some situations, to impose sanctions if the attorney or claimant did not file the affidavit in good faith. It also deems permission to sue granted if the attorney general files a stipulation to that effect.

The bill requires claims commissioner nominations to be referred to the Judiciary Committee rather than the Executive and Legislative Nominations Committee.

The bill makes minor changes in the law governing medical malpractice claims. It also makes other minor, technical, and

conforming changes.

*House Amendment "A" replaces the underlying bill. It adds the provisions on temporary deputies and the claims commissioner's nomination process. It removes various provisions from the underlying bill, such as those that would (1) generally deem permission to sue granted if a claim remains pending as of a certain date and (2) prohibit these cases from being cited as precedent in future cases.

It makes various changes to underlying provisions, such as (1) adding the requirement for the affidavit of a claim's validity to be notarized and (2) setting a deadline for the state to file its opposition. The amendment also makes various minor, technical, and conforming changes.

EFFECTIVE DATE: Upon passage

§§ 1 & 2 — TEMPORARY DEPUTY APPOINTMENTS

The bill requires the governor to appoint six attorneys to serve as temporary deputies in the Office of the Claims Commissioner. To qualify, they must have (1) experience practicing in Connecticut courts and (2) trial experience. But they may not (1) be employees of the attorney general's office or (2) have claims pending before the claims commissioner, as either a claimant or claimant's attorney.

The deputies serve at the governor's pleasure. Their terms coincide with the governor's term or until a successor is appointed and qualified, whichever is longer. The last day they may serve is September 30, 2023.

The bill authorizes these temporary deputies to issue final decisions to grant or deny permission to sue for claims referred to them as set forth below. They receive the same per-diem rate as judge trial referees (\$259).

§§ 3-6 — CLAIMS EXCLUSIVELY SEEKING PERMISSION TO SUE ***Granting Permission to Sue Without a Hearing (§ 6(a))***

Under current law, if a claimant exclusively seeks permission to sue the state, the claims commissioner may hold a hearing on the sole issue of the state's liability, and the state may assert the lack of damages as an affirmative defense. The bill instead allows the commissioner to grant this permission without a hearing, based solely on the claim notice, any supporting evidence submitted, or both if the claimant or attorney files the motion and affidavit described below. The bill specifically allows claimants exclusively seeking permission to sue to submit supporting evidence (such as transcripts, records, documents, reports, affidavits, or memoranda) (§ 3).

Under the bill, the commissioner may grant this authorization when the attorney or pro se claimant files (1) a motion for approval to assert a claim without a hearing and (2) an affidavit attesting to the claim's validity. The attorney and client, or pro se claimant as applicable, must sign and file the affidavit and get it notarized. The affidavit must attest to the following in the following form: "I have made a reasonable inquiry, as permitted by the circumstances, which has given rise to a good faith belief that grounds exist for a suit against the state. Such inquiry includes, (provide a brief description of the inquiry made)."

The bill requires the claimant to serve the motion and affidavit on (1) the attorney general's office and (2) any state agency that is subject to the claim. The state may file an opposition within 30 days after service. The bill limits the types of opposition to jurisdictional grounds (e.g., that the claim concerns a matter outside the commissioner's authority or was filed outside the statute of limitations) or prosecutorial, judicial, quasi-judicial, or legislative immunity.

Sanctions for Affidavits Not Made in Good Faith (§ 6(g)). Under certain circumstances, if the claims commissioner grants permission to sue based on an affidavit attesting to the claim's validity, the bill requires the judge in the subsequent court case to impose a sanction on the attorney and claimant or on the pro se claimant. The requirement applies if the judge determines, after discovery is completed, that (1) the affidavit was not made in good faith, (2) no justiciable issue was presented against the state, and (3) the state cooperated in good faith

by providing informal discovery. The judge must do so upon the state's motion or upon his or her own initiative.

The bill requires the judge to impose an appropriate sanction, which may include an order to pay the state its reasonable expenses due to the filing of the lawsuit. The bill also allows the court to submit the matter to the appropriate authority for disciplinary review of the attorney who submitted the affidavit.

Claims Referred to Temporary Deputies (§§ 4-6)

Under the bill, claims exclusively seeking permission to sue the state must be referred to temporary deputies if the claims remain pending for a specified period, as follows.

The bill automatically refers those pending claims that were filed more than three years before the bill's passage, unless the claimant expressly states the desire for the claim to remain with the commissioner.

Starting July 1, 2022, for claims pending for at least 18 months, the bill allows the claimant to file a notice indicating that fact with the attorney general, governor, and Judiciary Committee. The bill requires the claims commissioner to issue a decision on the claim within 90 days after the notice is filed. If she does not meet this deadline, the claim must be referred to a temporary deputy through June 30, 2023. These provisions do not apply if the parties stipulated to an extension of time for the commissioner to dispose of the claim.

Proceedings After Referral (§ 6(d)). Under the bill, after a claim is referred to a temporary deputy, the deputy must review the claim notice, the state's notice of opposition, and any discovery or other supporting evidence. The deputy may hold a telephonic or video conference with the parties if he or she deems it necessary. Regarding the state's opposition, the deputy may only consider arguments based on jurisdictional grounds or prosecutorial, judicial, quasi-judicial, or legislative immunity.

Within 90 days after the referral, the deputy must either deny or

dismiss the claim or authorize the claimant to sue the state. The deputy must authorize the claimant to sue if, in the deputy's opinion, the claim presents an issue of law or fact under which the state, were it a private person, could be liable. (This is the same standard under which the claims commissioner may authorize suit under existing law.)

The bill requires the deputy to grant permission to sue if ruling on the state's opposition requires the determination of a disputed issue of material fact. The deputy must preserve the state's right to pursue that defense in court.

Under the bill, a temporary deputy must make a factual finding for each claim and file with the claims commissioner that finding with the order or authorization disposing of the claim. The deputy must deliver a copy of these documents to the claimant and to the state's representative.

General Assembly Review (§§ 4 & 5). The bill allows claimants whose claims were denied or dismissed by a temporary deputy to request that the legislature review that decision. Under existing law, a claimant who filed a claim for more than \$50,000 may request that the legislature review the claims commissioner's decision to deny or dismiss the claim, including denying or dismissing a claim requesting permission to sue.

The bill grants the legislature the same authority regarding these claims as for other denied or dismissed claims requesting permission to sue for which the claimant requested review. Thus, the legislature may confirm the temporary deputy's decision, authorize the claimant to sue, or remand the claim to the claims commissioner's office for further proceedings.

Uncontested Claims (§ 6(e))

Under the bill, permission for claims exclusively seeking to sue the state is deemed granted if the attorney general files a signed stipulation with the claims commissioner that authorizes permission for a particular claim.

General Provisions (§ 6(h) & (i))

Under the bill, in any of the above situations, evidence that permission to sue was granted or authorized is not admissible as evidence of the state's liability. Existing law similarly provides this as to evidence of the commissioner granting authorization to sue.

Under current law, if the claims commissioner authorizes a claimant to sue, the claimant has one year to bring the lawsuit. The bill gives a claimant one year from the later of when (1) the authorization takes effect or (2) permission to sue is granted.

§ 2 — CLAIMS COMMISSIONER NOMINATIONS

The bill requires each of the governor's nominations for claims commissioner to be referred, without debate, to the Judiciary Committee instead of to the Executive and Legislative Nominations Committee. Under the bill, the Judiciary Committee must report on the appointment within 30 days after the referral, and the General Assembly appointment must be by concurrent resolution.

The bill specifies that the current claims commissioner may continue to serve until her term expires.

§ 6 — MEDICAL MALPRACTICE CLAIMS

For medical malpractice claims, current law requires the claims commissioner to grant authorization to sue if the claimant files the good faith certificate required for medical malpractice lawsuits. The bill instead specifies that for these claims, authorization to sue is deemed granted upon (1) the bill's passage, if the certificate was filed with the claims commissioner before then, or (2) the certificate's filing, if it is filed after that.

The bill specifies that these provisions apply to medical malpractice claims that were timely filed with the commissioner and remain pending, regardless of whether the claims were filed before, on, or after October 1, 2019. (PA 19-182, § 4, effective October 1, 2019, added to the law a provision allowing medical malpractice claimants to directly sue without first filing a claim.)

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 1 (04/08/2021)