



# House of Representatives

General Assembly

**File No. 596**

January Session, 2021

Substitute House Bill No. 6506

*House of Representatives, April 26, 2021*

The Committee on Judiciary reported through REP. STAFSTROM of the 129th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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

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

1 Section 1. Section 4-141 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 As used in this chapter:

4 (1) "Affidavit attesting to the validity of a claim" means the affidavit  
5 referred to under section 4-160, as amended by this act;

6 ~~[(1)]~~ (2) "Claim" means a petition for the payment or refund of money  
7 by the state or for permission to sue the state;

8 ~~[(2)]~~ (3) "Just claim" means a claim which in equity and justice the  
9 state should pay, provided the state has caused damage or injury or has  
10 received a benefit;

11 ~~[(3)]~~ (4) "Person" means any individual, firm, partnership,

12 corporation, limited liability company, association or other group,  
13 including political subdivisions of the state;

14 [(4)] (5) "State agency" includes every department, division, board,  
15 office, commission, arm, agency and institution of the state government,  
16 whatever its title or function; and

17 [(5)] (6) "State officers and employees" includes (A) every person  
18 elected or appointed to or employed in any office, position or post in the  
19 state government, whatever such person's title, classification or function  
20 and whether such person serves with or without remuneration or  
21 compensation, including judges of probate courts, employees of such  
22 courts and special limited conservators appointed by such courts  
23 pursuant to section 17a-543a, and (B) attorneys appointed as victim  
24 compensation commissioners, attorneys appointed by the Public  
25 Defender Services Commission as public defenders, assistant public  
26 defenders or deputy assistant public defenders and attorneys appointed  
27 by the court as Division of Public Defender Services assigned counsel,  
28 individuals appointed by the Public Defender Services Commission, or  
29 by the court, as a guardian ad litem or attorney for a party in a neglect,  
30 abuse, termination of parental rights, delinquency or family with service  
31 needs proceeding, the Attorney General, the Deputy Attorney General  
32 and any associate attorney general or assistant attorney general, any  
33 other attorneys employed by any state agency, any commissioner of the  
34 Superior Court hearing small claims matters or acting as a fact-finder,  
35 arbitrator or magistrate or acting in any other quasi-judicial position,  
36 any person appointed to a committee established by law for the purpose  
37 of rendering services to the Judicial Department, including, but not  
38 limited to, the Legal Specialization Screening Committee, the State-  
39 Wide Grievance Committee, the Client Security Fund Committee, the  
40 advisory committee appointed pursuant to section 51-81d and the State  
41 Bar Examining Committee, any member of a multidisciplinary team  
42 established by the Commissioner of Children and Families pursuant to  
43 section 17a-106a, the Municipal Electric Consumer Advocate selected  
44 pursuant to section 7-121f, the Independent Consumer Advocate  
45 selected pursuant to section 7-334a, and any physicians or psychologists

46 employed by any state agency. "State officers and employees" does not  
47 include any medical or dental intern, resident or fellow of The  
48 University of Connecticut when (i) the intern, resident or fellow is  
49 assigned to a hospital affiliated with the university through an  
50 integrated residency program, and (ii) such hospital provides protection  
51 against professional liability claims in an amount and manner  
52 equivalent to that provided by the hospital to its full-time physician  
53 employees.

54 Sec. 2. Section 4-147 of the general statutes is repealed and the  
55 following is substituted in lieu thereof (*Effective from passage*):

56 Any person wishing to present a claim against the state shall file with  
57 the Office of the Claims Commissioner a notice of claim, in duplicate,  
58 containing the following information: (1) The name and address of the  
59 claimant; the name and address of his principal, if the claimant is acting  
60 in a representative capacity, and the name and address of his attorney,  
61 if the claimant is so represented; (2) a concise statement of the basis of  
62 the claim, including the date, time, place and circumstances of the act or  
63 event complained of; (3) a statement of the amount requested; and (4) a  
64 request for permission to sue the state, if such permission is sought. A  
65 claim exclusively setting forth a request for permission to sue the state  
66 may be accompanied by supporting evidence, including, but not limited  
67 to, records, documents, reports, affidavits or memoranda. A notice of  
68 claim, if sent by mail, shall be deemed to have been filed with the Office  
69 of the Claims Commissioner on the date such notice of claim is  
70 postmarked. Claims in excess of five thousand dollars shall be  
71 accompanied by a check or money order in the sum of fifty dollars  
72 payable to the Treasurer, state of Connecticut. Claims for five thousand  
73 dollars or less shall be accompanied by a check or money order in the  
74 sum of twenty-five dollars payable to the Treasurer, state of  
75 Connecticut. Except as provided in section 4-165b, fees may be waived  
76 by the Claims Commissioner for good cause but such action by the  
77 Claims Commissioner shall not relieve the claimant from the obligation  
78 of filing the notice of claim in timely fashion within the statute of  
79 limitations under section 4-148. The Office of the Claims Commissioner

80 shall promptly deliver a copy of the notice of claim to the Attorney  
81 General. Such notice shall be for informational purposes only and shall  
82 not be subject to any formal or technical requirements, except as may be  
83 necessary for clarity of presentation and facility of understanding.

84 Sec. 3. Subsection (a) of section 4-159a of the general statutes is  
85 repealed and the following is substituted in lieu thereof (*Effective from*  
86 *passage*):

87 (a) Not later than five days after the convening of each regular  
88 session, the Office of the Claims Commissioner shall report to the  
89 General Assembly on all claims that have been filed with the Office of  
90 the Claims Commissioner pursuant to section 4-147 and have not been  
91 disposed of by the Office of the Claims Commissioner within two years  
92 of the date of filing or within any extension thereof granted by the  
93 General Assembly pursuant to subsection (c) of this section or deemed  
94 granted pursuant to subsection (b) of section 4-160, as amended by this  
95 act, except claims in which the parties have stipulated to an extension of  
96 time for the Office of the Claims Commissioner to dispose of the claim.

97 Sec. 4. Section 4-160 of the general statutes is repealed and the  
98 following is substituted in lieu thereof (*Effective from passage*):

99 (a) Whenever the Claims Commissioner deems it just and equitable,  
100 the Claims Commissioner may authorize suit against the state on any  
101 claim which, in the opinion of the Claims Commissioner, presents an  
102 issue of law or fact under which the state, were it a private person, could  
103 be liable. [Whenever a person files a claim that exclusively seeks  
104 permission to sue the state, the Claims Commissioner may hold a  
105 hearing on the sole issue of the state's liability. During such hearing, the  
106 state may present as an affirmative defense the claimant's lack of  
107 damages. The Claims Commissioner may prescribe rules pursuant to  
108 section 4-157 concerning a hearing that is held solely to address the  
109 state's liability under this subsection.] The claims commissioner may  
110 grant permission for a claim that exclusively seeks permission to sue the  
111 state based solely on the notice of claim or any supporting evidence  
112 submitted pursuant to section 4-147, as amended by this act, or both,

113 without holding a hearing, upon the filing by the attorney or pro se  
114 claimant of (1) a motion for approval to assert a claim without a hearing,  
115 requesting a ruling based solely on the notice of the claim and any  
116 supporting evidence submitted under the provisions of this chapter,  
117 and (2) an affidavit attesting to the validity of a claim. Such affidavit,  
118 shall be signed and filed by both the attorney and claimant or a pro se  
119 claimant, attesting to the following, in the following form: "I have made  
120 a reasonable inquiry, as permitted by the circumstances, which has  
121 given rise to a good faith belief that grounds exist for a suit against the  
122 state. Such inquiry includes, (provide a brief description of the inquiry  
123 made)". Any notice of opposition filed by the Attorney General or a state  
124 agency or department pursuant to section 4-149 in response to a claim  
125 that exclusively seeks permission to sue the state shall be limited to  
126 opposition of the claim based solely on jurisdictional grounds or  
127 prosecutorial, judicial, quasi-judicial or legislative immunity.

128 (b) Except for claims in which an uncontested dispositive motion is  
129 pending, any claim exclusively requesting permission to sue the state  
130 that was filed on or before January 1, 2019, and is not disposed of by the  
131 Office of the Claims Commissioner, shall be deemed to have been  
132 granted by the Claims Commissioner, and authorization to sue the state  
133 shall become effective in accordance with the provisions of this  
134 subsection.

135 (1) Any such claim that was filed with the Office of the Claims  
136 Commissioner on or before January 1, 2016, and remains pending with  
137 the Office of the Claims Commissioner as of the effective date of this  
138 section, shall be deemed to have been granted by the Claims  
139 Commissioner and authorization to sue the state shall be effective as of  
140 the effective date of this section.

141 (2) Any such claim that was filed with the Office of the Claims  
142 Commissioner on or before January 1, 2017, and remains pending with  
143 the Office of the Claims Commissioner as of October 1, 2021, shall be  
144 deemed to have been granted by the Claims Commissioner and  
145 authorization to sue the state shall be effective as of October 1, 2021.

146 (3) Any such claim that was filed with the Office of the Claims  
147 Commissioner on or before January 1, 2019, and remains pending with  
148 the Office of the Claims Commissioner as of December 31, 2021, shall be  
149 deemed to have been granted by the Claims Commissioner and  
150 authorization to sue the state shall be effective as of December 31, 2021.

151 (c) Any claim exclusively requesting permission to sue the state that  
152 remains pending with the Office of the Claims Commissioner for  
153 twenty-four months or longer as of July 1, 2022, shall be deemed granted  
154 upon the filing of an affidavit attesting to the validity of a claim with the  
155 Office of the Claims Commissioner.

156 (d) On and after July 1, 2022, any claim exclusively requesting  
157 permission to sue the state that remains pending with the Office of the  
158 Claims Commissioner for twenty-four months shall be deemed granted  
159 upon the filing of an affidavit attesting to the validity of a claim with the  
160 Office of the Claims Commissioner. The provisions of this subsection  
161 shall not apply to a claim in which the parties have stipulated to an  
162 extension of time for the Office of the Claims Commissioner to dispose  
163 of the claim.

164 (e) When a claim exclusively seeking permission to sue the state is  
165 not contested by the state, permission to sue the state shall be deemed  
166 granted upon the filing with the Office of the Claims Commissioner of  
167 a stipulation signed by the Attorney General authorizing permission to  
168 sue the state.

169 [(b)] (f) In any claim alleging malpractice against the state, a state  
170 hospital or against a physician, surgeon, dentist, podiatrist, chiropractor  
171 or other licensed health care provider employed by the state, the  
172 attorney or pro se party filing the claim may submit a certificate of good  
173 faith to the Office of the Claims Commissioner in accordance with  
174 section 52-190a. If such a certificate is submitted, [the Claims  
175 Commissioner shall authorize suit against the state on such claim]  
176 permission to sue the state shall be deemed granted by the Claims  
177 Commissioner upon the filing of the certificate of good faith with the  
178 Office of the Claims Commissioner. In lieu of filing a notice of claim

179 pursuant to section 4-147, as amended by this act, a claimant may  
180 commence a medical malpractice action against the state prior to the  
181 expiration of the limitation period set forth in section 4-148 and  
182 authorization for such action against the state shall be deemed granted.  
183 Any such action shall be limited to medical malpractice claims only and  
184 any such action shall be deemed a suit otherwise authorized by law in  
185 accordance with subsection (a) of section 4-142.

186 (g) After completion of discovery in a suit filed in the Superior Court  
187 after receiving permission to sue the state on the basis of an affidavit  
188 attesting to the validity of a claim filed in accordance with subsection  
189 (a), (c) or (d) of this section, if the court determines that such affidavit  
190 was not made in good faith, that no justiciable issue was presented  
191 against the state and that the state cooperated in good faith with the  
192 claimant by providing informal discovery, the court, upon motion or on  
193 its own initiative, shall impose upon the attorney and claimant or pro se  
194 claimant who signed such affidavit an appropriate sanction, which may  
195 include an order to pay to the state the reasonable expenses incurred by  
196 the state because of the filing of the suit. The court may also submit the  
197 matter to the appropriate authority for disciplinary review of any  
198 attorney who submitted the affidavit.

199 [(c)] (h) (1) In each action authorized by the Claims Commissioner or  
200 any action where permission to sue the state has been deemed to have  
201 been granted by the Claims Commissioner pursuant to [subsection (a)  
202 or (b)] subsections (a) to (e), inclusive, of this section or by the General  
203 Assembly pursuant to section 4-159 or 4-159a, as amended by this act,  
204 the claimant shall allege such authorization or permission and the date  
205 on which it was granted, except that evidence of such authorization or  
206 permission shall not be admissible in such action as evidence of the  
207 state's liability. [The] Except as provided in subdivision (2) of this  
208 subsection, (1) the state waives its immunity from liability and from suit  
209 in each such action and waives all defenses which might arise from the  
210 eleemosynary or governmental nature of the activity complained of, [  
211 The] and (2) the rights and liability of the state in each such action shall

212 be coextensive with and shall equal the rights and liability of private  
213 persons in like circumstances.

214 (2) In each action in which suit is authorized pursuant to subsections  
215 (b) to (d), inclusive, of this section, sovereign immunity is waived  
216 subject to the state having the ability to raise prosecutorial, judicial,  
217 quasi-judicial or legislative immunity or any jurisdictional defense that  
218 otherwise could have been raised at the Office of the Claims  
219 Commissioner. Any such defense shall not implicate the subject matter  
220 jurisdiction of the court. No such action authorized, pursuant to  
221 subsections (b) to (d), inclusive, of this section, shall be cited as  
222 precedent in future cases.

223 [(d)] (i) No such action shall be brought but within one year from the  
224 date such authorization becomes effective or permission to sue is  
225 granted, whichever date is later. With respect to any claim presented to  
226 the Office of the Claims Commissioner for which authorization or  
227 permission to sue is granted, any statute of limitation applicable to such  
228 action shall be tolled until the date such authorization or permission to  
229 sue is granted. The claimant shall bring such action against the state as  
230 party defendant in the judicial district in which the claimant resides or,  
231 if the claimant is not a resident of this state, in the judicial district of  
232 Hartford or in the judicial district in which the claim arose.

233 [(e)] (j) Civil process directed against the state shall be served as  
234 provided by section 52-64.

235 [(f)] (k) Issues arising in such actions shall be tried to the court  
236 without a jury.

237 [(g)] (l) The laws and rules of practice governing disclosures in civil  
238 actions shall apply against state agencies and state officers and  
239 employees possessing books, papers, records, documents or  
240 information pertinent to the issues involved in any such action.

241 [(h)] (m) The Attorney General, with the consent of the court, may  
242 compromise or settle any such action. The terms of every such



243 compromise or settlement shall be expressed in a judgment of the court.

244 [(i)] (n) Costs may be allowed against the state as the court deems just,  
245 consistent with the provisions of chapter 901.

246 [(j)] (o) The clerk of the court in which judgment is entered against  
247 the state shall forward a certified copy of such judgment to the  
248 Comptroller. The Attorney General shall certify to the Comptroller  
249 when the time allowed by law for proceeding subsequent to final  
250 judgment has expired and the Attorney General shall designate the state  
251 agency involved in the action. Upon receipt of such judgment and  
252 certification the Comptroller shall make payment as follows: Amounts  
253 directed by law to be paid from a special fund shall be paid from such  
254 special fund; amounts awarded upon contractual claims for goods or  
255 services furnished or for property leased shall be paid from the  
256 appropriation of the agency which received such goods or services or  
257 occupied such property; all other amounts shall be paid from such  
258 appropriation as the General Assembly may have made for the payment  
259 of claims.

260 [(k)] (p) Not later than five days after the convening of each regular  
261 session, the Attorney General shall report to the joint standing  
262 committee of the General Assembly having cognizance of matters  
263 relating to the judiciary on the status and disposition of all actions  
264 authorized pursuant to this section or section 4-159, or brought against  
265 the state under any other provision of law and in which the interests of  
266 the state are represented by the Attorney General. The report shall  
267 include: (1) The number of such actions pending in state and federal  
268 court, categorized by the alleged ground for the action, (2) the number  
269 of new actions brought in the preceding year in state and federal court,  
270 categorized by the alleged ground for the action, (3) the number of  
271 actions disposed of in the preceding year, categorized by the ground for  
272 the action that was disposed of and whether the action was disposed of  
273 by settlement or litigation to final judgment, and the amount paid for  
274 actions within the respective categories, and (4) such other information  
275 as may be requested, from time to time, by the joint standing committee

276 of the General Assembly having cognizance of matters relating to the  
 277 judiciary. The report shall identify each action disposed of by payment  
 278 of an amount exceeding one hundred thousand dollars.

279 Sec. 5. Section 3-125a of the general statutes is repealed and the  
 280 following is substituted in lieu thereof (*Effective from passage*):

281 (a) Notwithstanding the provisions of subsection [(h)] (j) of section 4-  
 282 160, as amended by this act, the Attorney General shall not enter into  
 283 any agreement or stipulation in connection with a lawsuit to which the  
 284 state is a party that contains any provision which requires an  
 285 expenditure from the General Fund budget in an amount in excess of  
 286 two million five hundred thousand dollars over the term of the  
 287 agreement or stipulation, unless the General Assembly, by resolution,  
 288 accepts the terms of such provision. The General Assembly may reject  
 289 such provision by a three-fifths vote of each house. Such provision shall  
 290 be deemed approved if the General Assembly fails to vote to approve or  
 291 reject such provision within thirty days of the date of submittal pursuant  
 292 to subsection (b) of this section.

293 (b) Each such agreement or stipulation shall be submitted to the  
 294 General Assembly by the Attorney General and shall be referred to the  
 295 committees of cognizance which shall report thereon by resolution.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	4-141
Sec. 2	<i>from passage</i>	4-147
Sec. 3	<i>from passage</i>	4-159a(a)
Sec. 4	<i>from passage</i>	4-160
Sec. 5	<i>from passage</i>	3-125a

**Statement of Legislative Commissioners:**

The description of the contents of the affidavit attesting to the validity of a claim and the motion for approval to assert a claim without a hearing were moved from the definitions in Section 1 to the text of Section 4(a) for consistency with standard drafting conventions, and the

provisions of Section (4)(h)(1) were revised for consistency with the provisions of Section (4)(h)(2).

**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.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 22 \$	FY 23 \$
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Potential Cost	200,007	207,007
Attorney General	GF - Potential Cost	484,278	501,228

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill makes various changes to laws concerning claims presented to the claims commissioner regarding permission to sue the state, expanding the circumstances under which the state may be sued.

Specifically, the bill allows the claims commissioner to grant permission to sue the state without a hearing under certain circumstances and to an expanded pool of pending claims. However, Section 4 of the bill targets only those that "exclusively" request permission to sue. Under this provision, it is anticipated that few pending claims include this exclusive request.

To the extent the bill requires the Office of Attorney General (OAG) to represent the state in Court in an increased number of currently pending cases, there may be costs associated with hiring six additional agency staff, including attorneys and support staff. Costs to OAG would be \$484,278 in FY 22 and \$501,228 in FY 23 (not including associated

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.3% of payroll in FY 22 and FY 23.

fringe benefits of approximately \$200,000 annually.) This total cost, of \$684,285 in FY 22 and \$708,235 in FY 23 depends on the number of pending claims that are granted by the claims commissioner.

There may also be costs the state associated with additional litigation (i.e. experts, depositions, and discovery) when cases go to Court, in addition to liability cost in the form of judgments.

Additionally, the bill revises timelines of the Office of the Claims Commissioner (OCC) to grant claimants permission to sue the state. This will not result in a fiscal impact to the OCC as it attempts to eliminate the backlog of claims and create new mechanisms to move claims out of the office more efficiently.

The bill makes other changes that are not anticipated to result in a fiscal impact.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation, the number of claims that are granted by the claims commissioner and are brought before Court and the extent of any liability to the state.

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**OLR Bill Analysis**

**sHB 6506**

***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 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 also specifies the types of opposition that the state may file.

For claims filed by January 1, 2019, the bill generally deems permission to sue granted if the claim remains pending as of a certain date (ranging from the bill's passage to December 31, 2021). It also generally deems this permission granted for claims that remain pending for at least two years as of July 1, 2022, or later if the attorney or pro se claimant files an affidavit attesting to the claim's validity.

For claims where permission to sue is deemed granted, the bill (1) specifies certain allowable defenses for the state and (2) prohibits these cases from being cited as precedent in future cases. The bill also requires the court, in some situations, to impose sanctions if the attorney or claimant did not file the affidavit in good faith.

Among other things, the bill makes corresponding changes to a reporting requirement and the time frame for claimants to file suit.

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

conforming changes.

EFFECTIVE DATE: Upon passage

## **CLAIMS EXCLUSIVELY SEEKING PERMISSION TO SUE**

### ***Granting Permission to Sue Without a Hearing***

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 can assert the lack of damages as an affirmative defense. The bill instead allows her 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 these claimants to submit supporting evidence (such as records, documents, reports, affidavits, or memoranda).

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, which 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)."

For claims exclusively seeking permission to sue, the bill limits the types of opposition that the attorney general or state agency may file. It only allows opposition based on jurisdictional grounds or prosecutorial, judicial, quasi-judicial, or legislative immunity.

### ***Permission to Sue Deemed Granted***

For claims exclusively requesting permission to sue the state, the bill deems permission to have been granted by the commissioner if the claim remains pending for a certain period, depending on when it was filed.

For these claims filed on or before January 1, 2019, the bill deems

permission to have been granted if the claim remains pending as of the dates shown in the table below. This authorization does not apply if there is an uncontested dispositive motion pending (e.g., a motion to dismiss).

**Dates by Which Pending Claims Filed through January 1, 2019, Exclusively Seeking Permission to Sue Are Deemed Granted**

<i>Claim Filing Time Frame</i>	<i>Date Authorization to Sue is Granted if Claim Still Pending</i>
On or before January 1, 2016	Bill's passage
January 2, 2016, through January 1, 2017	October 1, 2021
January 2, 2017, through January 1, 2019	December 31, 2021

The bill also grants permission for claims exclusively requesting permission to sue that remain pending for at least 24 months as of July 1, 2022. This permission is deemed granted when the attorney or pro se claimant files an affidavit attesting to the claim's validity as specified above.

Similarly, on and after July 1, 2022, the bill generally grants permission for claims exclusively seeking permission to sue that remain pending for 24 months, upon the filing of the described affidavit. But this authorization does not apply if the parties stipulated to an extension of time for the commissioner to dispose of the claim.

In any of the above situations where permission to sue is deemed granted, the bill specifies certain defenses that the state can raise in the subsequent court case. The bill provides that while the state waives sovereign immunity, the state may raise prosecutorial, judicial, quasi-judicial, or legislative immunity or any jurisdictional defense that it otherwise could have asserted at the claims commissioner's office. The bill further provides that (1) these defenses do not implicate the court's



subject matter jurisdiction (i.e., the court's authority to hear the case) and (2) these cases cannot be cited as precedent in future cases.

Additionally, if any claim exclusively seeks permission to sue and the state does not contest it, the bill grants that permission when the parties file a stipulation with the claims commissioner, signed by the attorney general, authorizing permission to sue.

Under the bill, in any of the above situations, evidence that permission to sue was deemed granted 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.

### ***Sanctions for Affidavits Not Made in Good Faith***

Under the bill, for any claims requiring an affidavit attesting to their validity as noted above, the judge in the subsequent court case must impose sanctions on the attorney and claimant or on the pro se claimant if certain criteria are met. This 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.

### ***Reporting Requirement (§ 3)***

Existing law requires the claims commissioner to report to the legislature within five days after it convenes each regular session on all claims not disposed of within two years after they were filed, except claims where the parties have agreed to an extension. The bill extends this requirement to also include claims filed by January 1, 2019, for which permission to sue is deemed granted (see the table above).

**MEDICAL MALPRACTICE CLAIMS**

For medical malpractice claims, current law requires the claims commissioner to grant authorization to sue when 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 the filing of the good faith certificate.

Existing law also authorizes claimants, in cases of alleged medical malpractice, to directly sue the state without first filing a claim with the commissioner.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 1 (04/08/2021)