



House of Representatives

File No. 727

General Assembly

January Session, 2021

(Reprint of File No. 596)

Substitute House Bill No. 6506
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 26, 2021

**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 Section 4-142 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) There shall be an Office of the Claims Commissioner which shall
4 hear and determine all claims against the state except: (1) Claims for the
5 periodic payment of disability, pension, retirement or other
6 employment benefits; (2) claims upon which suit otherwise is
7 authorized by law including suits to recover similar relief arising from
8 the same set of facts; (3) claims for which an administrative hearing
9 procedure otherwise is established by law; (4) requests by political
10 subdivisions of the state for the payment of grants in lieu of taxes; and
11 (5) claims for the refund of taxes.

12 (b) The Office of the Claims Commissioner shall consist of the Claims

13 Commissioner, six temporary deputies and such administrative staff as
14 may be provided by the Department of Administrative Services. The
15 Claims Commissioner, a temporary deputy or a magistrate assigned to
16 assist the Claims Commissioner pursuant to section 4-142b shall hear
17 and determine all claims against the state, except as otherwise provided
18 in subsection (a) of this section. Such claims shall be heard and
19 determined in accordance with the rules prescribed by the Claims
20 Commissioner pursuant to section 4-157, except as may be provided in
21 section 4-160, as amended by this act.

22 Sec. 2. Section 4-142a of the general statutes is repealed and the
23 following is substituted in lieu thereof (*Effective from passage*):

24 (a) (1) The Claims Commissioner shall be appointed by the Governor
25 with the advice and consent of the General Assembly to serve for a term
26 of four years from the first day in July in the year of his or her
27 appointment and until his or her successor has been appointed and has
28 qualified. The Claims Commissioner shall be an attorney-at-law and
29 shall have been admitted to practice before the courts of the state of
30 Connecticut for at least five years prior to his or her appointment. The
31 Claims Commissioner serving on the effective date of this section may
32 continue to serve until the expiration of his or her term. On and after the
33 effective date of this section, each nomination for appointment as
34 Claims Commissioner by the Governor shall be referred, without
35 debate, to the joint standing committee of the General Assembly having
36 cognizance of matters relating to the judiciary which shall report on each
37 appointment not later than thirty days after the date of reference. Each
38 appointment by the General Assembly of the Claims Commissioner
39 shall be by concurrent resolution.

40 (2) The Claims Commissioner shall receive such compensation as is
41 fixed under the provisions of section 4-40. The Claims Commissioner
42 may enter into such contractual agreements, in accordance with
43 established procedures, as may be necessary for the discharge of his or
44 her duties. Subject to the provisions of section 4-32, and unless otherwise
45 provided by law, the Claims Commissioner is authorized to receive any

46 money, revenue or services from the federal government, corporations,
47 associations or individuals, including payments from the sale of printed
48 matter or any other materials or services.

49 (b) The Office of the Claims Commissioner shall be within the
50 Department of Administrative Services, provided the office shall have
51 independent decision-making authority.

52 (c) (1) The Governor shall appoint six temporary deputies to serve in
53 the Office of the Claims Commissioner. A temporary deputy shall be an
54 attorney-at-law who has experience practicing law before the courts of
55 the state of Connecticut and has trial experience. A temporary deputy
56 may not be an employee of the office of the Attorney General or have a
57 claim pending before the Claims Commissioner, either as a claimant or
58 as an attorney appearing on behalf of a claimant. Each temporary
59 deputy shall serve at the pleasure of the Governor, for a term
60 coterminous with the Governor, or until a successor is appointed and
61 qualified, whichever is longer, provided no temporary deputy may be
62 appointed or serve in such position on or after October 1, 2023.

63 (2) A temporary deputy shall receive, for each day of service, the
64 same compensation as paid to a judge trial referee under subdivision (1)
65 of subsection (f) of section 52-434 for each day of service by such referee.

66 (3) Each temporary deputy shall have decision-making authority to
67 issue a final decision to grant or deny permission to sue for each claim
68 referred to such deputy under the provisions of subsection (b) or (c) of
69 section 4-160, as amended by this act.

70 Sec. 3. Section 4-147 of the general statutes is repealed and the
71 following is substituted in lieu thereof (*Effective from passage*):

72 Any person wishing to present a claim against the state shall file with
73 the Office of the Claims Commissioner a notice of claim, in duplicate,
74 containing the following information: (1) The name and address of the
75 claimant; the name and address of his principal, if the claimant is acting
76 in a representative capacity, and the name and address of his attorney,

77 if the claimant is so represented; (2) a concise statement of the basis of
78 the claim, including the date, time, place and circumstances of the act or
79 event complained of; (3) a statement of the amount requested; and (4) a
80 request for permission to sue the state, if such permission is sought. A
81 claim exclusively setting forth a request for permission to sue the state
82 may be accompanied by supporting evidence, including, but not limited
83 to, transcripts, records, documents, reports, affidavits or memoranda. A
84 notice of claim, if sent by mail, shall be deemed to have been filed with
85 the Office of the Claims Commissioner on the date such notice of claim
86 is postmarked. Claims in excess of five thousand dollars shall be
87 accompanied by a check or money order in the sum of fifty dollars
88 payable to the Treasurer, state of Connecticut. Claims for five thousand
89 dollars or less shall be accompanied by a check or money order in the
90 sum of twenty-five dollars payable to the Treasurer, state of
91 Connecticut. Except as provided in section 4-165b, fees may be waived
92 by the Claims Commissioner for good cause but such action by the
93 Claims Commissioner shall not relieve the claimant from the obligation
94 of filing the notice of claim in timely fashion within the statute of
95 limitations under section 4-148. The Office of the Claims Commissioner
96 shall promptly deliver a copy of the notice of claim to the Attorney
97 General. Such notice shall be for informational purposes only and shall
98 not be subject to any formal or technical requirements, except as may be
99 necessary for clarity of presentation and facility of understanding.

100 Sec. 4. Subsection (b) of section 4-158 of the general statutes is
101 repealed and the following is substituted in lieu thereof (*Effective from*
102 *passage*):

103 (b) Any person who has filed a claim for more than fifty thousand
104 dollars may request the General Assembly to review a decision of the
105 Claims Commissioner (1) ordering the denial or dismissal of the claim
106 pursuant to subdivision (1) of subsection (a) of this section, including
107 denying or dismissing a claim that requests permission to sue the state,
108 or (2) ordering immediate payment of a just claim in an amount not
109 exceeding thirty-five thousand dollars pursuant to subdivision (2) of
110 subsection (a) of this section. A person who has filed a claim that has

111 been denied or dismissed by a temporary deputy pursuant to subsection
112 (d) of section 4-160, as amended by this act, may request the General
113 Assembly to review such denial or dismissal. A request for review shall
114 be in writing and filed with the Office of the Claims Commissioner not
115 later than twenty days after the date the person requesting such review
116 receives a copy of the decision. The filing of a request for review shall
117 automatically stay the decision of the Claims Commissioner or
118 temporary deputy.

119 Sec. 5. Subsections (a) and (b) of section 4-159 of the general statutes
120 are repealed and the following is substituted in lieu thereof (*Effective*
121 *from passage*):

122 (a) Not later than five days after the convening of each regular session
123 and at such other times as the speaker of the House of Representatives
124 and president pro tempore of the Senate may desire, the Office of the
125 Claims Commissioner shall submit to the General Assembly (1) all
126 claims for which the Claims Commissioner or a magistrate
127 recommended payment of a just claim in an amount exceeding thirty-
128 five thousand dollars pursuant to subdivision (3) of subsection (a) of
129 section 4-158, and (2) all claims for which a request for review has been
130 filed pursuant to subsection (b) of section 4-158, as amended by this act,
131 together with a copy of the Claims Commissioner's, [or] the magistrate's
132 or the temporary deputy's findings and the hearing record, if any, of
133 each claim so reported.

134 (b) The General Assembly shall:

135 (1) With respect to a decision of the Claims Commissioner ordering
136 the denial or dismissal of a claim pursuant to subdivision (1) of
137 subsection (a) of section 4-158 or a decision of a temporary deputy
138 ordering the denial or dismissal of a claim pursuant to subsection (d) of
139 section 4-160, as amended by this act:

140 (A) Confirm the decision; or

141 (B) Vacate the decision and, in lieu thereof, (i) order the payment of

142 the claim in a specified amount, or (ii) authorize the claimant to sue the
143 state;

144 (2) With respect to a decision of the Claims Commissioner ordering
145 the immediate payment of a just claim in an amount not exceeding
146 thirty-five thousand dollars pursuant to subdivision (2) of subsection (a)
147 of section 4-158:

148 (A) Confirm the decision;

149 (B) Modify the decision by ordering that a different amount be paid;
150 or

151 (C) Vacate the decision and, in lieu thereof, (i) order no payment be
152 made, or (ii) authorize the claimant to sue the state;

153 (3) With respect to a decision of the Claims Commissioner
154 recommending payment of a just claim in an amount exceeding thirty-
155 five thousand dollars pursuant to subdivision (3) of subsection (a) of
156 section 4-158:

157 (A) Accept the recommendation and order payment of the specified
158 amount;

159 (B) Modify the recommendation by ordering that a different amount
160 be paid; or

161 (C) Reject the recommendation and, in lieu thereof, (i) order no
162 payment be made, or (ii) authorize the claimant to sue the state; or

163 (4) With respect to a decision of the Claims Commissioner pursuant
164 to subdivision (1), (2) or (3) of subsection (a) of section 4-158, or a
165 decision of a temporary deputy pursuant to subsection (d) of section 4-
166 160, as amended by this act, remand the claim to the Office of the Claims
167 Commissioner for such further proceedings as the General Assembly
168 may direct.

169 Sec. 6. Section 4-160 of the general statutes is repealed and the

170 following is substituted in lieu thereof (*Effective from passage*):

171 (a) Whenever the Claims Commissioner deems it just and equitable,
172 the Claims Commissioner may authorize suit against the state on any
173 claim which, in the opinion of the Claims Commissioner, presents an
174 issue of law or fact under which the state, were it a private person, could
175 be liable. [Whenever a person files a claim that exclusively seeks
176 permission to sue the state, the Claims Commissioner may hold a
177 hearing on the sole issue of the state's liability. During such hearing, the
178 state may present as an affirmative defense the claimant's lack of
179 damages. The Claims Commissioner may prescribe rules pursuant to
180 section 4-157 concerning a hearing that is held solely to address the
181 state's liability under this subsection.] The Claims Commissioner may
182 grant permission to sue for a claim that exclusively seeks permission to
183 sue the state based solely on the notice of claim or any supporting
184 evidence submitted pursuant to section 4-147, as amended by this act,
185 or both, without holding a hearing, upon the filing by the attorney or
186 pro se claimant of (1) a motion for approval to assert a claim without a
187 hearing, requesting a ruling based solely on the notice of the claim and
188 any supporting evidence submitted under the provisions of this chapter,
189 and (2) an affidavit attesting to the validity of a claim. Such affidavit,
190 shall be signed, notarized and filed by both the attorney and claimant or
191 a pro se claimant, attesting to the following, in the following form: "I
192 have made a reasonable inquiry, as permitted by the circumstances,
193 which has given rise to a good faith belief that grounds exist for a suit
194 against the state. Such inquiry includes, (provide a brief description of
195 the inquiry made)". The claimant shall serve any motion for approval
196 and affidavit on the office of the Attorney General and any state agency
197 that is a subject of the claim. The state may file an opposition to the
198 motion for approval and the affidavit not later than thirty days after
199 such service of the motion and affidavit. Such opposition shall be
200 limited to opposition of the claim based solely on jurisdictional grounds,
201 including pursuant to section 4-142, as amended by this act, or
202 subsection (a) of section 4-148, or prosecutorial, judicial, quasi-judicial
203 or legislative immunity.

204 (b) Any claim exclusively requesting permission to sue the state that
205 was filed more than three years prior to the effective date of this section
206 that has not been disposed of by the Office of the Claims Commissioner,
207 shall be referred to a temporary deputy for proceedings in accordance
208 with subsection (d) of this section, unless the claimant expressly states
209 the desire to have his or her claim remain before the Claims
210 Commissioner.

211 (c) On and after July 1, 2022, if a claim exclusively requesting
212 permission to sue the state remains pending with the Office of the
213 Claims Commissioner eighteen months after such claim was filed with
214 the office, a claimant may file a notice indicating the passage of such
215 eighteen months with the Attorney General, the Governor and the joint
216 standing committee of the General Assembly having cognizance of
217 matters relating to the judiciary. The Claims Commissioner shall issue a
218 decision on such claim not later than ninety days after the filing of such
219 notice. If the Claims Commissioner does not issue a decision during
220 such ninety-day period, the claim shall be referred to a temporary
221 deputy for proceedings in accordance with subsection (d) of this section,
222 provided no claim may be referred to a temporary deputy on or after
223 July 1, 2023. The provisions of this subsection shall not apply to a claim
224 in which the parties have stipulated to an extension of time for the Office
225 of the Claims Commissioner to dispose of the claim.

226 (d) (1) If a claim is referred to a temporary deputy under subsection
227 (b) or (c) of this section, such temporary deputy shall review the notice
228 of claim, the state's notice of opposition and any discovery or other
229 supporting evidence, and may, if the temporary deputy deems it
230 necessary, hold a conference with the parties using telephonic or video
231 conferencing technology. Consideration of the state's opposition to such
232 claims shall be limited to jurisdictional grounds or prosecutorial,
233 judicial, quasi-judicial or legislative immunity. The temporary deputy
234 shall make a determination to deny or dismiss a claim or authorize a
235 claimant to sue the state, not later than ninety days after the claim is
236 referred to such temporary deputy. A temporary deputy shall authorize
237 suit against the state if the claim, in the opinion of the temporary deputy,

238 presents an issue of law or fact under which the state, were it a private
239 person, could be liable. If the resolution of the state's opposition to the
240 claim is based on a dispute of a material fact, the temporary deputy shall
241 grant permission to sue the state and preserve the state's right to pursue
242 such defense in court.

243 (2) A temporary deputy shall make a finding of fact for each claim
244 and file such finding with the order or authorization disposing of the
245 claim with the Claims Commissioner. The temporary deputy shall
246 deliver a copy of such finding and order or authorization to the claimant
247 and to the representative for the state, which representative may in
248 appropriate cases be the Attorney General.

249 (e) A claimant exclusively seeking permission to sue the state shall be
250 deemed to have been granted permission to sue the state by the Claims
251 Commissioner if the Attorney General files with the Office of the Claims
252 Commissioner a signed stipulation authorizing permission to sue the
253 state for a particular claim of the claimant.

254 [(b)] (f) In any claim alleging malpractice against the state, a state
255 hospital or against a physician, surgeon, dentist, podiatrist, chiropractor
256 or other licensed health care provider employed by the state, the
257 attorney or pro se party filing the claim may submit a certificate of good
258 faith to the Office of the Claims Commissioner in accordance with
259 section 52-190a. If such a certificate is submitted, [the Claims
260 Commissioner shall authorize suit against the state on such claim]
261 permission to sue the state shall be deemed granted by the Claims
262 Commissioner (1) upon the effective date of this section, if the certificate
263 has been filed with the Claims Commissioner prior to the effective date
264 of this section, or (2) upon the filing of the certificate with the Office of
265 the Claims Commissioner, if such certificate is filed on or after the
266 effective date or this section. In lieu of filing a notice of claim pursuant
267 to section 4-147, as amended by this act, a claimant may commence a
268 medical malpractice action against the state prior to the expiration of the
269 limitation period set forth in section 4-148 and authorization for such
270 action against the state shall be deemed granted. Any such action shall

271 be limited to medical malpractice claims only and any such action shall
272 be deemed a suit otherwise authorized by law in accordance with
273 subsection (a) of section 4-142, as amended by this act. The provisions
274 of this subsection shall apply to any claim alleging malpractice against
275 the state that was timely filed with the Claims Commissioner and
276 remains pending with said commissioner, regardless of whether such
277 claim was filed before, on or after October 1, 2019.

278 (g) After completion of discovery in a suit filed in the Superior Court
279 after receiving permission to sue the state on the basis of an affidavit
280 attesting to the validity of a claim filed in accordance with subsection (a)
281 of this section, if the court determines that such affidavit was not made
282 in good faith, that no justiciable issue was presented against the state
283 and that the state cooperated in good faith with the claimant by
284 providing informal discovery, the court, upon motion or on its own
285 initiative, shall impose upon the attorney and claimant or pro se
286 claimant who signed such affidavit an appropriate sanction, which may
287 include an order to pay to the state the reasonable expenses incurred by
288 the state because of the filing of the suit. The court may also submit the
289 matter to the appropriate authority for disciplinary review of any
290 attorney who submitted the affidavit.

291 [(c)] (h) In each action authorized by the Claims Commissioner or a
292 temporary deputy, or any action where permission to sue the state has
293 been deemed to have been granted by the Claims Commissioner,
294 pursuant to [subsection (a) or (b)] subsections (a) to (f), inclusive, of this
295 section or by the General Assembly pursuant to section 4-159, as
296 amended by this act, or 4-159a, the claimant shall allege such
297 authorization or permission and the date on which it was granted,
298 except that evidence of such authorization or permission shall not be
299 admissible in such action as evidence of the state's liability. [The] Except
300 as provided in subsection (d) of this section, (1) the state waives its
301 immunity from liability and from suit in each such action and waives all
302 defenses which might arise from the eleemosynary or governmental
303 nature of the activity complained of, [The] and (2) the rights and
304 liability of the state in each such action shall be coextensive with and

305 shall equal the rights and liability of private persons in like
306 circumstances.

307 [(d)] (i) No such action shall be brought but within one year from the
308 date such authorization becomes effective or permission to sue is
309 granted, whichever date is later. With respect to any claim presented to
310 the Office of the Claims Commissioner for which authorization or
311 permission to sue is granted, any statute of limitation applicable to such
312 action shall be tolled until the date such authorization or permission to
313 sue is granted. The claimant shall bring such action against the state as
314 party defendant in the judicial district in which the claimant resides or,
315 if the claimant is not a resident of this state, in the judicial district of
316 Hartford or in the judicial district in which the claim arose.

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

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

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

325 [(h)] (m) The Attorney General, with the consent of the court, may
326 compromise or settle any such action. The terms of every such
327 compromise or settlement shall be expressed in a judgment of the court.

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

330 [(j)] (o) The clerk of the court in which judgment is entered against
331 the state shall forward a certified copy of such judgment to the
332 Comptroller. The Attorney General shall certify to the Comptroller
333 when the time allowed by law for proceeding subsequent to final
334 judgment has expired and the Attorney General shall designate the state

335 agency involved in the action. Upon receipt of such judgment and
336 certification the Comptroller shall make payment as follows: Amounts
337 directed by law to be paid from a special fund shall be paid from such
338 special fund; amounts awarded upon contractual claims for goods or
339 services furnished or for property leased shall be paid from the
340 appropriation of the agency which received such goods or services or
341 occupied such property; all other amounts shall be paid from such
342 appropriation as the General Assembly may have made for the payment
343 of claims.

344 [(k)] (p) Not later than five days after the convening of each regular
345 session, the Attorney General shall report to the joint standing
346 committee of the General Assembly having cognizance of matters
347 relating to the judiciary on the status and disposition of all actions
348 authorized pursuant to this section or section 4-159, as amended by this
349 act, or brought against the state under any other provision of law and in
350 which the interests of the state are represented by the Attorney General.
351 The report shall include: (1) The number of such actions pending in state
352 and federal court, categorized by the alleged ground for the action, (2)
353 the number of new actions brought in the preceding year in state and
354 federal court, categorized by the alleged ground for the action, (3) the
355 number of actions disposed of in the preceding year, categorized by the
356 ground for the action that was disposed of and whether the action was
357 disposed of by settlement or litigation to final judgment, and the amount
358 paid for actions within the respective categories, and (4) such other
359 information as may be requested, from time to time, by the joint
360 standing committee of the General Assembly having cognizance of
361 matters relating to the judiciary. The report shall identify each action
362 disposed of by payment of an amount exceeding one hundred thousand
363 dollars.

364 Sec. 7. Section 3-125a of the general statutes is repealed and the
365 following is substituted in lieu thereof (*Effective from passage*):

366 (a) Notwithstanding the provisions of subsection [(h)] (m) of section
367 4-160, as amended by this act, the Attorney General shall not enter into

368 any agreement or stipulation in connection with a lawsuit to which the
 369 state is a party that contains any provision which requires an
 370 expenditure from the General Fund budget in an amount in excess of
 371 two million five hundred thousand dollars over the term of the
 372 agreement or stipulation, unless the General Assembly, by resolution,
 373 accepts the terms of such provision. The General Assembly may reject
 374 such provision by a three-fifths vote of each house. Such provision shall
 375 be deemed approved if the General Assembly fails to vote to approve or
 376 reject such provision within thirty days of the date of submittal pursuant
 377 to subsection (b) of this section.

378 (b) Each such agreement or stipulation shall be submitted to the
 379 General Assembly by the Attorney General and shall be referred to the
 380 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>	4-142
Sec. 2	<i>from passage</i>	4-142a
Sec. 3	<i>from passage</i>	4-147
Sec. 4	<i>from passage</i>	4-158(b)
Sec. 5	<i>from passage</i>	4-159(a) and (b)
Sec. 6	<i>from passage</i>	4-160
Sec. 7	<i>from passage</i>	3-125a

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 \$
Department of Administrative Services	GF - Cost	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires the Governor to appoint six temporary deputies to serve in the Office of the Claims Commissioner within the Department of Administrative Services. It stipulates that the deputies would be paid \$259 per day plus mileage reimbursement (the same rate as judge trial referees). This will result in a minimal cost to the Office of the Claims Commissioner within the Department of Administrative Service in both FY 22 and FY 23.

The bill makes various other changes which are not anticipated to result in a fiscal impact to the state or municipalities.

House "A" replaces the underlying bill with the provisions and impact described above.

The Out Years

There are no ongoing fiscal impacts as the costs identified above would terminate in FY 23.

The preceding Fiscal Impact statement is prepared for the benefit of the members of the General Assembly, solely for the purposes of information, summarization and explanation and does 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.

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)