

Legislative History for Connecticut Act

SB 411 = PA 77-356 (FAY) 1977
House 4297-4305 (9)
Senate 1933-1934 (2)
State + Urban Development 261, 285,
348-349 (4)

15

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
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JOINT
STANDING
COMMITTEE
HEARINGS

STATE &
URBAN
DEVELOPMENT

1977
INDEX

March 1, 1977

27
SA

STATE AND URBAN DEVELOPMENT

COMR. WEINERMAN. (CONT.): we work very closely with the state police who enforce the fire safety code and that in any re write of the basic building code we would want to work very closely with the state police people as well as with the Fire Code Standards Committee because our code talks to fire safety and of course they have primary responsibility so we will, I want to assure you that we are going to work with every interested group in rewriting this.. Briefly, and we will submit written reports on these I would like to just state a position on several other bills, on bill number 410 AN ACT CONCERNING THE ENFORCEMENT OF PUBLIC BIDDING LAWS we are opposed to this bill we feel that to submit this to the claims commissioner for adjudication would be a delaying process that would not ameliorate the concerns of aggrieved parties, we have set up objective criteria which defines this matter and we are opposed to this particular bill. On bill 411 AN ACT CONCERNING AN AMENDMENT EXEMPTING OWNERS AND CONTRACTORS FROM LIABILITY FOR NEGLIGENCE VOID AND UNENFORCEABLE we are in favor of this bill. We agree with its purpose, we feel that it is unfair to ask the contractor to be responsible for somebody else's negligence.

Bill #412 AN ACT CONCERNING THE RELEASE OF PAYMENT ON PUBLIC WORKS CONSTRUCTION PROJECTS we are opposed to this bill. This bill would ask for reduction to 5% of the 10% withholding on state jobs to 5%. We feel that the present arrangement safeguards the state's interest and until our department feels that we can come up with an adequate substitute that would enable us to have control over our jobs to see that they are completed in a timely fashion. We would be at this moment opposed to relaxing that standard. Bill 884 AN ACT CONCERNING BIDS FOR STATE CONTRACTS we are in favor of such a bill. Bill 885 AN ACT CONCERNING THE DISCLOSURE OF BIDS FOR STATE CONTRACTS we are opposed to it only because we feel that it doesn't state any additional useful purpose. All bids taken are publicly open and read aloud so that at the moment of the bid opening becomes public knowledge. So it is hard for us to understand how this gives us additional safeguards to encourage people to compete for state work. Proposed bill 1355 AN ACT CONCERNING STATE ACTION TO MINIMIZE OR ELIMINATE DAMAGE TO SCENIC AND HISTORIC RESOURCES we are in favor of such a bill. We feel that it is very important that the state continually be involved in preserving the affectiveness of important scenic and historic places and edifices. Bill #1459 AN ACT CONCERNING THE ELIMINATION FOR THE NEED TO ADVERTISE FOR A LEASE SPACE WHEN IT WOULD SERVE NO USEFUL PURPOSE. Mr. Chairman, this is a bill that was introduced by the Department of Public Works we would respectfully

51
SA

March 1, 1977

STATE AND URBAN DEVELOPMENT

SEN. CLOUD (CONT.): Thank you very much Mr. Lash, B. Higgins.

B. HIGGINS: My name is B. Alber Higgins the ... Company of Newington Connecticut. I am also here today as president of the sub contractors association of Connecticut to speak in support of S.B. 410, 411, 412, and 413 all realting to the construction industry. S.B. 412 AN ACT CONCERNING THE RELEASE OF PAYMENTS ON PUBLIC WORK CONSTRUCTION PROJECTS this proposal seeks to reduce the retaining requirements on public construction projects which are already covered by payments and performance bond. It is traditional industry practice to withhold 10% of the cost of a project from the sub - contractor performing this work. Today's tight money market and in light of the extremely depressed state of the construction industry a 10% retaining requirement is unwarranted for this reason we request that retainage requirements be reduced from the stan 10% to a 5% level. In this way the contract is able to maintain its cash flow and in so doing keep its head above water.

The awarding authority is still able to withhold some money from the sub... which will insure the satisfaction and completion of the project. In addition these projects are already protected by payment of performance bonds. I might add the Commonwealth of Massachusetts has reduced retainage on their work with the state housing work or any work where state funds are involved from 10% to 5% six years ago and I have not in all of the work that we have performed up there found any adverse results from that. S.B. 411

SEN. PUTNAM: Do you mean to say that you have to, the state holds back 10% of the payment and besides that you have a performance bond that you have to pay for is that correct?

B. HIGGINS: That's correct. S.B. 411 concerning agreements exempting owners in context from liability for negligence void and unenforceable. It is traditional requiriement within our industry that owners require general contractors and general contractors their sub to sign an agreement known as a whole harmless agreement. The purpose of this agreement is to indemnify an individual for liability for damages resulting from there sole negligence. Ridiculous as it sounds the sub contract is often put in the untenable position of having to sign such an agreement in order to receive a contract. It is our contention is that a person should be responsible for their own negligence and that such whole harmeless clauses or agreement to contracts are against public policy and at this state over 23 states have taken action to avoid full homage agreement to contract with New York and Rhode Island being two of the most recent. This proposal was presented to the Judiciary Committee last year and received a favorable report. It passed the consent challenge in the Senate but was returned to the House for unknown reason. We feel that a worthwhile proposal shall become part of the statutes of Connecticut.

SUBCONTRACTORS ASSOCIATION OF CONNECTICUT

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Statement in Support of Proposed Bills 410,
411, 412, 413
Presented Before the State and Urban Develop-
ment Committee, State Capitol
Tuesday, March 1, 1977
Hartford, Connecticut

Good Afternoon. My name is B. Albert Higgins of the M. Frank Higgins Company of Newington, Connecticut. I am also here today as President of the Subcontractors Association of Connecticut to speak in support of Senate Bills 410, 411, 412 and 413 all relating to the construction industry. I would also like to take this opportunity to introduce Burton Karp of Eagle Sheet Metal Works of West Hartford who is the Past President of the Subcontractors Association of Connecticut. With the Committee's permission we would like to address ourselves briefly to each of the bills mentioned.

Senate Bill 412 "An Act Concerning the Release of Payments on Public Works Construction Projects." This proposal seeks to reduce retainage requirements on public construction projects which are already covered by a payment and performance bond. It is traditional industry practice to withhold 10% of the cost of a project from the subcontractor performing the work. In today's tight money market and in light of the extremely depressed state of the construction industry, a 10% retainage requirement is unwarranted. For this reason we would request that retainage requirements be reduced from the standard 10% to a 5% level. In this way the contractor is able to maintain his cash flow and in so doing keep his head above water. The Awarding Authority is still able to withhold some money from the sub which will insure the satisfactory completion of the project. In addition these projects are already protected by payments and performance bonds.

Senate Bill 411 "An Act Concerning Agreements Exempting Owners and Contractors From Liability for negligence void and unenforceable." It is a traditional requirement within our industry that owners require General Contractors and General Contractors their subs to sign an agreement known as a hold harmless agreement. The purpose of this agreement is to indemnify an individual for liability for damages resulting from their sole negligence.

ridiculous as this sounds, the subcontractor is often put in the untenable position of having to sign such an agreement in order to receive a contract.

It is our contention that a person should be responsible for their own negligence and that such hold harmless clauses or agreements in contracts are against public policy. As of this date over 23 states have taken action to void hold harmless agreements in contracts with New York and Rhode Island being two of the most recent. This proposal was presented through the Judiciary Committee last year and received a favorable report. It passed the Consent Calendar in the Senate but was returned by the House for unknown reasons. We feel that this is a worthwhile proposal and should become part of the Statutes in Connecticut.

Senate Bill 413 "An Act Concerning Bidding on Public Construction Contracts." This proposal seeks to expand bidding requirements which are now in effect for state construction work to municipality construction work. These procedures known as Prefiled Bidding require the subcontractor to bid directly to the Awarding Authority. The General Contractor must use those bid prices that have been prefiled in the compilation of his general bid. This prefilling of bids all but eliminates what is called bid peddling or bid shopping. The Awarding Authority therefore gets the best possible building for the best possible price. The State Department of Public Works strongly endorses this form of bidding for major construction projects and feels that the state has saved on the overall cost of construction since the inception of these prefiled bid requirements. As we mentioned earlier, this proposal will expand these requirements to municipalities and in so doing save money for the municipality. Massachusetts, which has had prefiled bidding on both the state and municipal level for the last 28 years, clearly recognizes that prefiled bidding is a cost saving measure.

Senate Bill 410 "An Act Concerning Enforcement of Public Bidding Laws." This proposal seeks to establish a means of enforcing prefiled bidding laws by providing for a review procedure when grievances with regard to prefiled bidding arises. Our State Statutes regarding prefilling were modeled after the Massachusetts law. Massachusetts has such a review procedure where Connecticut does not at this time. We feel strongly that there is a definite need for a quick and effective review of grievances so that major problems can be eliminated and possible litigation avoided. We have met with Commissioner Weirman and his staff in regard to this proposal. They too feel that there is need for such a speedy review when grievances arise and would support such a procedure which would eliminate

mostly litigation against the Department.

Our proposal seeks to establish this procedure through Connecticut's Claims Commissioner. We were advised by our legal counsel that this would be an appropriate means to review grievances on an impartial basis. The General Assembly in its wisdom has given additional substance to its bidding laws. We urgently support this proposal to provide for the effective enforcement of these public bidding laws.

In closing, we would like to thank the Committee for the opportunity to present our position on these proposals. Should there be any questions we would be more than willing to attempt to answer them at this time. Thank you again.

For additional information please contact C. Mitchell Sorensen or Lee Isenberg, Sub-Contractors Association of Connecticut, 179 Allyn St., Suite 304, Hartford, CT (telephone 246-6566).

S-124

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1917

VOL. 29
PART 2
1685-2045

Tuesday, May 10, 1977

122

roc

been cut from the present list and this would mean a further savings to the state. If there is no objection, I would move that this be placed on the Consent Calendar.

THE PRESIDENT:

Without objection, it is so ordered.

THE CLERK:

Please turn to page fourteen of the Calendar, top of the page, Cal. 721, File 868. Favorable report of the joint standing Committee on Judiciary. Substitute for Senate Bill 411. AN ACT MAKING AGREEMENTS EXEMPTING OWNERS AND CON-TRACTORS FROM LIABILITY FOR NEGLIGENCE, VOID AND UNENFORCEABLE.

THE PRESIDENT:

Senator Ballen.

SENATOR BALLEEN: (28th)

Mr. President, I would move acceptance of the joint committee's favorable report and passage of the bill.

THE PRESIDENT:

Will you remark, Senator?

SENATOR BALLEEN:

Yes, Mr. President, this bill would declare void and against policy any agreement entered into in connection with a construction contract which relieves a person from liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from his negligence or the negligence of his agents or employees. Contracts affected by this bill would include those for construction, alteration,

Tuesday, May 10, 1977

123.

repair or maintenance of a building, including moving, demolition and excavation. The bill would not affect the validity of any insurance contract or compensation agreement or other agreement issued by a licensed insurer. The provisions of the bill would affect contracts and agreements entered into on or after thirty days succeeding the effective date of the bill. roc

THE CLERK:

The Clerk does have an amendment which changes the date. The Clerk has Senate Amendment Schedule A, File 868, Substitute Senate Bill 411, LCO 8517, copies were not made. It simply says in line 1, strike section 1. Strike Section 2 in its entirety.

SENATOR DEPIANO:

The amendment basically says that the bill will become effective on October first of 1976? instead of upon passage. If there is no objection, I move that it be passed.

THE PRESIDENT:

The question is on the adoption of Senate Amendment Schedule A. Will you remark further? If not, all in favor say Aye. Opposed Nay. The Ayes have it. THE AMENDMENT IS ADOPTED.

SENATOR BALLEEN:

If there is no objection, Mr. President, I would move the bill as amended to be placed on the Consent Calendar.

THE PRESIDENT:

Without objection, so ord-ered.

H-191

CONNECTICUT
GEN. ASSEMBLY

HOUSE

PROCEEDINGS

1977

VOL. 20

PART 10

3864-4326

House of Representatives

Friday, May 20, 1977

83
teg

the assembly that if Representative Glassman and Senator Schneller don't call such a meeting of the Education Committee to discuss this, that I will.

MR. SPEAKER:

You've heard the motion, any objection to the motion?
If not, so ordered.

MR. SPEAKER:

Page six of the Calendar, Cal. 1101, substitute for S.B. no. 411, files 868 and 990, An Act Making Agreements Exempting Owners and Contractors from Liability for Negligence, Void and Unenforceable, as amended by Senate Amendment Schedule A, Favorable Report of the Committee on Judiciary.

MR. SPEAKER:

Representative Frankel.

MR. FRANKEL (121st):

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

MR. SPEAKER:

The question is on acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate and will your remark sir?

MR. FRANKEL (121st):

Mr. Speaker, there is a Senate Amendment A, L.C.O. No. 8517, I would ask the Clerk to call and I seek permission to summarize.

House of Representatives

Friday, May 20, 1977

84
teg

MR. SPEAKER:

The Clerk has L.C.O. 8517, Senate Amendment Schedule A.
Would the Clerk please call?

THE CLERK:

Senate Amendment Schedule A, L.C.O. 8517, offered by
Senator DePiano of the 23rd district.

MR. SPEAKER:

Is there any objection from any of the members of the
Gentleman from the 121st to summarize? Please proceed sir.

MR. FRANKEL (121st):

Mr. Speaker, The amendment simply changes the effective
date from the date of passage to October 1st, 1977. I move
adoption of Senate Amendment Schedule A.

MR. SPEAKER:

The question is on adoption of Senate Amendment Schedule A.
Would you remark? If not, all those in favor will indicate by
saying aye. Those opposed? Senate A is adopted and ruled tech-
nical. Would you remark further on the bill as amended? Re-
presentative Frankel.

MR. FRANKEL (121st):

Mr. Speaker, thank you. This bill would nullify a pro-
vision which was contained in a construction contract when the
provision grants immunity to either of the parties for their
future acts of negligence. There not a good reason why a party to
a contract should be given a license negligently. In my opinion,

House of Representatives

Friday, May 20, 1977

85
teg

it's contrary to fair principles of law. I believe the bill is a worthwhile bill and I encourage you to vote yes.

MR. SPEAKER:

9 Will you remark further on the bill? Representative Scully.

MR. SCULLY (75th):

Mr. Speaker, a question to you to Mr. Frankel. Mr. Frankel is this a what is better known as a whole harmless agreement?

MR. FRANKEL (121st):

The provision of a contract which this seeks to nullify would be a so-called whole harmless provision or sometimes called a waiver of right, waiver of negligent claim.

MR. SCULLY (75th):

Through you again, Mr. Speaker. In other words, I contract with somebody to build a building for me and the contract between myself and the builder I requested he hold me harmless from any of his negligent acts, would this be eliminating that theory?

MR. FRANKEL (121st):

Through you, sir, it would apply to both of the parties. In the event the builder was negligent by way of creating personal injury to people or damage to other individuals, you would be not as such responsible because of his so-called claim for immunity. Therefore, he would be responsible. By the same token, if you had done something negligent which would not likely be the case because you're a passive party to that contract. You in turn would be responsible.

House of Representatives

Friday, May 20, 1977

86
teg

MR. SCULLY (75th):

Thank you.

MR. SPEAKER:

Representative Berman.

MRS. BERMAN (92nd):

Through you, Mr. Speaker, I have a question for Representative Frankel.

MR. SPEAKER:

Please proceed.

MRS. BERMAN (92nd):

Mr. Frankel, does this bill apply to the State of Connecticut? As a contractor?

MR. FRANKEL (121st):

Through you, Mr. Speaker, I see no provision exempting the State of Connecticut and it would be my opinion, therefore that the State of Connecticut would fall within the preview of the proposed bill.

MRS. BERMAN (92nd):

Thank you.

MR. SPEAKER:

Would you remark further? Representative Zamm.

MR. ZAMM (139th):

Mr. Speaker, through you, may I propose a question to the proponent of this legislation?

House of Representatives

Friday, May 20, 1977

87
teg

MR. SPEAKER:

Please proceed sir.

MR. ZAMM (139th):

Mr. Frankel, would you indicate please whether or not this bill would pertain to municipalities?

MR. FRANKEL (121st):

Through you, Mr. Speaker, the comment I made to the last individual I believe would be applicable to situations such as this.

MR. ZAMM (139th):

Well in that case, if I may make some further comments, Mr. Speaker? I would have to oppose this bill, Mr. Speaker. I seems to me that when a municipality puts out a contract for 10 million dollars school it should not be burdened with any liability or obligations that might result because of the contractor's liability and I think we're imposing additional burdens on the instrumentalities of Government and I would have to oppose this bill for that reason, Mr. Speaker. Thank you.

MR. SPEAKER:

Representative Frankel.

MR. FRANKEL (121st):

9 Mr. Speaker, for the second time, perhaps there is some misunderstanding and a situation addresses itself to where a municipality was hiring a contractor to do certain construction

House of Representatives

Friday, May 20, 1977

87
teg

work. The contractor would be liable and could not by any contractual provision avoid his liability for his negligent acts. The municipality would be a passive agent, would be doing nothing and as such I can hardly imagine that there would be any negligence involved. But clearly if the municipality, one of its agents or one of its servants did something in a negligent matter, then likewise, the municipality should be responsible in that case. But I think clearly the concept of this is to the active party. The party who is likely to be causing any negligent act. That would be the contractor because the municipality takes no active part in these contracts. So for all practical purposes, it would effect nothing because in the first instances, I don't imagine any municipality including my own which would allow such a clause, in the first place. But even if there was such a clause, a municipality would be protected rather than the contractor.

MR. SPEAKER:

Representative Hanlon:

MR. HANLON (70th):

Mr. Speaker, through you, Mr. Speaker, a question to the Gentleman reporting out the bill.

MR. SPEAKER:

Please proceed sir.

MR. HANLON (70th):

Through you, Mr. Speaker, would you please indicate who

House of Representatives

Friday, May 20, 1977

88
teg

proposed this legislation?

MR. SPEAKER:

Representative Frankel.

MR. FRANKEL (121st):

Through you, Mr. Speaker, I am not aware of the proponent. It is my understanding that it originally went from State Urban to the Judiciary Committee which finally sent the favorable report out.

MR. HANLON (70th):

Through you, Mr. Speaker, if I can direct a question to the chairman of the State Urban and Development Committee in the chamber, I would ask the same question.

MR. SPEAKER:

Apparently the chairman is not in the chamber.

MR. HANLON (70th):

Through you, Mr. Speaker, question the Gentleman reporting out the bill. Can you explain the reasons for the exclusion on lines 14 through 16 that is that the action not provide the validity of insurance contracts, workmens compensation agreement, etc?

MR. SPEAKER:

Representative Frankel.

MR. FRANKEL (121st):

Through you, Mr. Speaker, yes, insurance companies are in the business of holding harmless individuals for acts of negligence, so if we did not exempt them, in effect we would not be

House of Representatives

Friday, May 20, 1977

89

teg

(rec.13)

nullifying insurance contracts in the State of Connecticut.

MR. HANLON (70th):

Mr. Speaker, I share Representative Zammis concerns about this legislation. I am not entirely convinced that the municipality or the State of Connecticut for that matter could not be held responsible as jointly with a contractor particularly in a case where such a case where a contractor builds a wall to wall full sound of interest and that wall is built on the municipalities land. I'm very concerned about it. I question the motivations behind this legislation, exactly who it's trying to protect. I certainly don't think it's going to protect municipalities in the State of Connecticut. I think it's misguided and I urge rejection of the bill.

MR. SPEAKER:

Are you prepared to vote? Will members please take their seats, staff and guests please come to the well of the House, the machine will be opened. Have all the members voted and is your vote properly recorded? If so, the machine will be closed and the Clerk will take a tally. The Clerk will please announce the tally.

THE CLERK:

Total number voting	142
Necessary for Passage	72
Those voting Yea	99
Those voting Nay	43
Those absent and not voting	9

House of Representatives

Friday, May 20, 1977

90
teg

MR. SPEAKER:

The bill as amended is passed.

THE CLERK:

Cal. no. 1105, substitute for S.B. No. 1422, file 796,
An Act Concerning Withdrawal from or Dissolution of Certain Re-
gional School Districts, Favorable Report of the Committee on
Education.

MR. SPEAKER:

Representative Glassman.

MR. GLASSMAN (14th):

Mr. Speaker, I move acceptance of the Joint Committee's
Favorable Report and passage of the bill.

MR. SPEAKER:

The question is on acceptance of the Joint Committee's
Favorable Report and passage of the bill and would you remark sir?

MR. GLASSMAN (14th):

Yes, Mr. Speaker, as a result of the United States Supreme
Courts decision in March 1976 requiring membership on a regional
school board to be in proportion to the voters in the municipality
that they represent. Many regional boards in our state were
forced to reapportion and in most instances this was accomplished
satisfactorily. However, in several instances there was considerable
unhappiness and concern by a few communities who now feel they are
completely dominated by larger communities whereas before when they