

SB 1023

PA 345

1987

House 4894-4903

7068-7073

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Senate 1467-1469, 1494-1495,

3790-3791, 3854-3855

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G. A. E. 1015-1016, 1030-1031

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HOUSE

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4894-5269

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House of Representatives

Thursday, April 30, 1987

SPEAKER STOLBERG:

The Chair would entertain a motion that the House stand in recess for five minutes.

REP. FRANKEL: (121st)

Mr. Speaker, with that suggestion, I would at this time move the House stand at recess for five minutes.

SPEAKER STOLBERG:

Is there objection? Seeing no objection, the House is in recess.

The House recessed at 5:08 o'clock p.m., to reconvene at the Call of the Chair.

The House reconvened at 5:28 o'clock p.m., Speaker Stolberg in the Chair.

Will the House please come to order. Will the Clerk please return to the Call of the Calendar.

CLERK:

Please turn to Page 8, Calendar 414, Substitute for Senate Bill 1023, AN ACT CONCERNING BONDS FOR THE PROTECTION OF EMPLOYEES AND MATERIALMEN UNDER PUBLIC WORKS CONTRACTS, as amended by Senate Amendment Schedule "A". Favorable Report of the Committee on Government Administration and Elections.

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REP. LOONEY: (96th)

Mr. Speaker.

SPEAKER STOLBERG:

Representative Looney.

REP. LOONEY: (96th)

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

SPEAKER STOLBERG:

Will you remark?

REP. LOONEY: (96th)

Yes, Mr. Speaker, there is a Senate Amendment, Senate Amendment Schedule "A", which I would like the Clerk to call. The LCO No. is 6803. I'd like the Clerk to please call the amendment and may I be granted leave to summarize it?

SPEAKER STOLBERG:

The Clerk has an amendment, LCO 6803, Senate Amendment Schedule "A". Will the Clerk please call?

CLERK:

LCO 6803, previously designated Senate Amendment Schedule "A" offered by Senator Maloney.

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SPEAKER STOLBERG:

Is there objection to summarization? Seeing no objection, Representative Looney, please proceed.

REP. LOONEY; (96th)

Thank you, Mr. Speaker. Senate Amendment Schedule "A" would allow persons who provided labor or materials to contractors to which a payment is furnished and who have not been paid in full to bring action upon the payment bond in the Superior Court for such sums and prosecute the action to final execution and judgment. It also provides that in such legal actions the court judgment would award the prevailing party the cost for bring such suit, allow interest at the rate of interest specified in the labor and materials contract under which the claim arises or if no such interest rate is specified, at the legal rate of interest.

Mr. Speaker, we have an amendment which will supercede this and clarifies, represents an agreement of all interested parties to which we will offer after this, so I would move rejection of Senate Amendment Schedule "A", Mr. Speaker.

SPEAKER STOLBERG:

The motion is to reject Senate Amendment Schedule "A". Will you remark on the motion to reject? Representative

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Looney.

REP. LOONEY: (96th)

Yes, Mr. Speaker, the amendment will be improved and clarified by the subsequent House Amendment Schedule "A" which I intend to offer upon the rejection of this amendment.

SPEAKER STOLBERG:

That's good to hear. Will you remark further on Senate Amendment Schedule "A"? If not, all those in favor of the motion to reject, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

All those to the contrary nay.

The motion to reject passes.

Will you remark further? Representative Looney.

REP. LOONEY: (96th)

Yes, Mr. Speaker, thank you. At this point, Mr. Speaker, I would like to call another amendment which is in the Clerk's possession and this is LCO 4465. May the Clerk please call the amendment and may I be granted leave to summarize?

SPEAKER STOLBERG:

The Clerk has amendment LCO 4465, designated House

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Amendment Schedule "A". Will the Clerk please call?

CLERK:

LCO 4465, designated House Amendment Schedule "A"  
offered by Representative Looney.

SPEAKER STOLBERG:

Is there objection to summarization? Seeing none,  
please proceed.

REP. LOONEY: (96th)

Thank you, Mr. Speaker. This amendment, Mr. Speaker, would make two changes to Senate Amendment Schedule "A" which we just rejected. The first change would be to change from 60 days to 90 days in line 42 after service of the notice of claim that the surety shall make payment. This will give the surety companies the time they need to process the claim and make payment. The second change is technical substantive language that clarifies that when a contract contains a retainage clause that interest would only be collected on monies actually owed and not on the total contract including retainage. Both changes found in this proposed substantive have been made in an effort to meet the concerns of all sides of this issue and come up with legislation that meets the needs of the Insurance Association and the materialmen of Connecticut.

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SPEAKER STOLBERG:

Will you remark further on House Amendment Schedule "A"?

REP. JAEKLE: (122nd)

Mr. Speaker.

SPEAKER STOLBERG:

The distinguished Minority Leader, Representative Robert Jaekle,

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. A question, through you, to the proponent, please.

SPEAKER STOLBERG:

Please frame your question, Sir.

REP. JAEKLE: (122nd)

Yes, I notice that the file doesn't deal with much of the new substance of this amendment. I guess I'm curious and I would to pose the question, through you, Mr. Speaker, did your Committee deal with the substance of the amendment before us as a bill in the GAE Committee?

SPEAKER STOLBERG:

Representative Looney.

REP. LOONEY: (96th)

Yes, through you, Mr. Speaker, yes, the concept was discussed in the GAE Committee in general outline. There was

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no specific agreement on whether or how to proceed on this particular subject, however, at the time of the Committee's final deliberations.

REP. JAEKLE: (122nd)

Through you, Mr. Speaker, then did GAE J-F a bill perhaps to Judiciary that was at least the concept embodied in this amendment, through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Looney, do you care to respond to this refrain?

REP. LOONEY: (96th)

Mr. Speaker, no, we did not, but Mr. Speaker, I would expect and believe entirely appropriate that upon the adoption of this amendment, this bill would be referred to the Committee on Judiciary.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker, that is the answer to the next question that I was going to pose and my thoughts as well. Thank you.

SPEAKER STOLBERG:

That was good anticipation, Representative Looney. Will you remark further on House Amendment Schedule "A"? If not, all those in favor of the amendment please indicate

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by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

All those to the contrary nay.

The amendment is adopted and ruled technical.

\* \* \* \* \*

House Amendment Schedule "A".

In line 1, before the word "Section", insert "Section 1."

After line 42, insert the following:

"Sec. 2. Section 49-42 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Every person who has furnished labor or material in the prosecution of the work provided for in such contract in respect of which a payment bond is furnished under the provisions of section 49-41 and who has not been paid in full therefore before the expiration of a period of ninety days after the day on which the last labor was done or performed by him or material was furnished or supplied by him for which the claim is made, (has the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of the suit and to prosecute the action to final execution and judgment for the sum or sums justly due him.) MAY ENFORCE HIS RIGHT TO PAYMENT UNDER THE BOND BY SERVING A NOTICE OF CLAIM WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE DATE ON WHICH HE PERFORMED THE LAST OF THE LABOR OR FURNISHED THE LAST OF THE MATERIAL FOR WHICH THE CLAIM IS MADE, ON THE SURETY THAT ISSUED THE BOND AND A COPY OF THE NOTICE ON THE CONTRACTOR NAMED AS PRINCIPAL IN THE BOND. THE NOTICE OF CLAIM SHALL STATE WITH SUBSTANTIAL ACCURACY THE AMOUNT CLAIMED, THE NAME OF THE PARTY FOR WHOM THE LABOR WAS PERFORMED OR TO WHOM THE MATERIALS WERE FURNISHED AND SHALL PROVIDE A DETAILED DESCRIPTION OF THE BONDED PUBLIC PROJECT FOR WHICH THE LABOR

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OR MATERIALS WERE PROVIDED. WITHIN NINETY DAYS AFTER SERVICE OF THE NOTICE OF CLAIM, THE SURETY SHALL MAKE PAYMENT UNDER THE BOND AND SATISFY THE CLAIM, OR ANY PORTION OF THE CLAIM WHICH IS NOT SUBJECT TO A GOOD FAITH DISPUTE, AND SHALL SERVE A NOTICE ON THE CLAIMANT DENYING LIABILITY FOR ANY UNPAID PORTION OF THE CLAIM. THE NOTICES REQUIRED UNDER THIS SECTION SHALL BE SERVED BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID IN ENVELOPES ADDRESSED TO ANY OFFICE AT WHICH THE SURETY, PRINCIPAL OR CLAIMANT CONDUCTS HIS BUSINESS, OR IN ANY MANNER IN WHICH CIVIL PROCESS MAY BE SERVED. IF THE SURETY DENIES LIABILITY ON THE CLAIM, OR ANY PORTION THEREOF, THE CLAIMANT MAY BRING ACTION UPON THE PAYMENT BOND IN THE SUPERIOR COURT FOR SUCH SUMS AND PROSECUTE THE ACTION TO FINAL EXECUTION AND JUDGMENT. AN ACTION TO RECOVER ON A PAYMENT BOND UNDER THIS SECTION SHALL BE PRIVILEGED WITH RESPECT TO ASSIGNMENT FOR TRIAL. THE COURT SHALL NOT CONSOLIDATE FOR TRIAL ANY ACTION BROUGHT UNDER THIS SECTION WITH ANY OTHER ACTION BROUGHT ON THE SAME BOND UNLESS THE COURT FINDS THAT A SUBSTANTIAL PORTION OF THE EVIDENCE TO BE ADDUCED, OTHER THAN THE FACT THAT THE CLAIMS SOUGHT TO BE CONSOLIDATED ARISE UNDER THE SAME GENERAL CONTRACT, IS COMMON TO SUCH ACTIONS AND THAT CONSOLIDATION WILL NOT RESULT IN EXCESSIVE DELAYS TO ANY CLAIMANT WHOSE ACTION WAS INSTITUTED AT A TIME SIGNIFICANTLY PRIOR TO THE MOTION TO CONSOLIDATE. IN ANY SUCH PROCEEDING, THE COURT JUDGMENT SHALL AWARD THE PREVAILING PARTY THE COSTS FOR BRINGING SUCH PROCEEDING AND ALLOW INTEREST AT THE RATE OF INTEREST SPECIFIED IN THE LABOR OR MATERIALS CONTRACT UNDER WHICH THE CLAIM ARISES OR, IF NO SUCH INTEREST RATE IS SPECIFIED, AT THE RATE OF INTEREST AS PROVIDED IN SECTION 37-3a UPON THE AMOUNT RECOVERED, COMPUTED FROM THE DATE OF SERVICE OF THE NOTICE OF CLAIM, PROVIDED, FOR ANY PORTION OF THE CLAIM WHICH THE COURT FINDS WAS DUE AND PAYABLE AFTER THE DATE OF SERVICE OF THE NOTICE OF CLAIM, SUCH INTEREST SHALL BE COMPUTED FROM THE DATE SUCH PORTION BECAME DUE AND PAYABLE. THE COURT JUDGMENT MAY AWARD REASONABLE ATTORNEYS FEES TO EITHER PARTY IF UPON REVIEWING THE ENTIRE RECORD, IT APPEARS THAT EITHER THE ORIGINAL CLAIM, THE SURETY'S DENIAL OF LIABILITY, OR THE DEFENSE INTERPOSED TO THE CLAIM IS WITHOUT SUBSTANTIAL BASIS IN FACT OR LAW. Any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond shall have a right of action upon the payment bond upon giving written notice (to such contractor within ninety days from the date on which the person performed the last of the labor or

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furnished or supplied the last of the material for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. That notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business or at his residence) OF CLAIM AS PROVIDED IN THIS SECTION.

(b) Every suite instituted under this section shall be brought in the name of the person suing, in the superior court for the judicial district where the contract was to be performed, irrespective of the amount in controversy in the suite, but no such suit may be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by (him) THE CLAIMANT.

(c) The word "material" as used in sections 49-41 to 49-43, inclusive, includes the rental of equipment used in the prosecution of work provided for in the contract."

\* \* \* \* \*

SPEAKER STOLBERG:

Will you remark further on the bill. Representative Balducci, would you like to move a reference to the Judiciary Committee?

REP. BALDUCCI: (27th)

That's an excellent idea, Mr. Speaker, yes, I would move that this item be referred to the Committee on Judiciary.

SPEAKER STOLBERG:

Is there objection? Is there objection. Seeing no objection, it's so ordered.

Just to give the Chamber information on the anticipated

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Would the Clerk please call Calendar 414?

CLERK:

Please turn to page 38, Calendar 414. Substitute for Senate Bill 1023. AN ACT CONCERNING BONDS FOR THE PROTECTION OF EMPLOYEES AND MATERIALMEN UNDER PUBLIC WORKS CONTRACTS. (As amended by Senate "A" and House "A"). Favorable Report of the Committee on JUDICIARY.

House rejected Senate "A" on 4/30.

REP. LOONEY: (96th)

Mr. Speaker?

DEPUTY SPEAKER LAVINE:

Representative Looney, and before we start, Representative Looney, ... Thank you, ladies and gentlemen of the Chamber.

Will you proceed, sir?

REP. LOONEY: (96th)

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

DEPUTY SPEAKER LAVINE:

Will you remark, sir?

REP. LOONEY: (96th)

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Yes, Mr. Speaker, thank you. On April 30th, this Chamber rejected Senate "A" and adopted House "A", and the bill now as amended has two distinct parts. The first part, represented in the file copy, raises the minimum dollar value of State, municipal and quasi-public authority Public Works Contracts for which contractors have to post or may be required to post certain bonds.

It also makes a language change for consistency, replacing a \$1,000 figure in the payment bond statute with a \$25,000 figure. The \$1,000 figure was meaningless, since exemptions were higher than that amount.

The amendment that was adopted as House "A", Mr. Speaker, provides that, it addresses the problem of collecting under a payment bond. To collect under a payment bond, under current law, the only way a sub-contractor or a sub-sub-contractor can collect overdue payments is by bringing suit. This bill authorizes the sub-contractor or the sub-sub contractor who has not been paid within 90 days to collect directly from the company that provided the Contractor's payment bond, going to court only if the bond company

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fails to satisfy his claim.

It makes direct collection from the bond company available for contractors who have supplied labor or materials for State, municipal, and quasi-public authority Public Works projects large enough to require a payment bond.

Under the mechanics of the amendment that we adopted, to collect under the payment bond, the subcontractor would have to serve notice on the bond company within 180 days after the date he completed the labor or furnished the last material for which he is claiming payment. He must then send a copy of the notice to the contractor who bought the bond.

The notice must state with a substantial accuracy the amount he is claiming and the person for whom the work was done or materials supplied and describe the project in some detail. Then, within 90 days of receiving the claim, the bond company must either pay the entire claim or any part on which there is no good faith dispute, and send the claimant notice denying liability of any amount that it does not pay at that time.

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Both of these notices would have to be certified registered or certified mail. The notice requirements are similar to what current law prescribes for a subcontractor initiating a suit to collect on a bond furnished by a contractor with whom he is in a direct contractual relationship.

The bill also allows 180 days, rather than 90, for initiating the process, and allows the notice to be served as civil process is served, rather than just through the mail. It allows the claimant to bring action in Superior Court to collect on the payment bond, if the bond company denies all or any liability on the claim, and any such action must be privileged and the court may not consolidate for trial multiple claims on the same bond, unless it finds that a substantial portion of the evidence would be common to the claims, and that also, consolidating them would not excessively delay a claimant whose action was pending for a significant length of time.

Under the bill, as amended, also, Mr. Speaker, the court must award costs to the prevailing party and allow interest, either at the rate specified

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in the contract or in none was specified in the contract, at the rate recoverable as damages. That would be 10% currently, computed from the date of notice of the claim was served.

The court may also award reasonable attorney's fees to either party if it determines that the claim or the bond company's denial of liability or the defense against the claim was without a substantial basis in factor law.

I urge passage of the bill, as amended, Mr. Speaker.

DEPUTY SPEAKER LAVINE:

Will you remark further? Will you remark further? If not, staff and guests will come to the Well of the House, and the machine will be opened.

CLERK:

The House of Representatives is currently voting by roll call. Members, kindly return to the Chamber. The House of Representatives is voting by roll. If members would please return to the Chamber.

DEPUTY SPEAKER LAVINE:

Will you please check the board and see that

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your vote is properly cast? If so, the machine will be locked, and the Clerk will take a tally.

Clerk will please announce the tally.

CLERK:

Senate Bill 1023:

Total Number Voting	138
Necessary for Passage	70
Those voting Yea	138
Those voting Nay	0
Those absent and not Voting	13

DEPUTY SPEAKER LAVINE:

The bill is passed.

Points of personal privilege or introductions?

Representative Frankel.

REP. FRANKEL: (121st)

Mr. Frankel?

(laughter)

DEPUTY SPEAKER LAVINE:

Mr. Lavine.

REP. FRANKEL: (121st)

Thank you. Mr. Speaker and ladies and gentlemen, first let me indicate to you what our intentions

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dk

THE CLERK:

Cal. 297, File 447, Substitute for Senate Bill 1023. An Act Concerning Bonds for the Protection of Employees and Materialmen Under Public Works Contracts. Favorable Report of the Committee on Government Administration and Elections.

THE CHAIR:

Senator Maloney.

SENATOR MALONEY:

Thank you Mr. President. I move acceptance of the Joint Committee's Report and adoption of the bill. I believe there is an amendment.

THE CHAIR:

Clerk please call the amendment.

THE CLERK:

L.C.O. 6803, designated Senate Amendment Schedule "A", offered by Senator Maloney of the 24th District.

THE CHAIR:

Senator Maloney.

SENATOR MALONEY:

Yes, Mr. President. I move adoption of the amendment and request leave to summarize?

THE CHAIR:

Without objection, you may proceed.

SENATOR MALONEY:

Thank you Mr. President. The amendment revises the procedures for claims under materialmen's bonds. What it does is in effect require that non-disputed claims be paid, and only the contested portion of a claim would go to litigation. This will simplify the... well, first of all, eliminate a number of cases that otherwise might be brought. And will generally improve the orderliness of the materialmen's bonds procedure. I'd only add further that one of the other deterrents for either frivolously making a claim or objecting to a claim is that there would be costs, including legal fees, for the party that fails to make out its case.

THE CHAIR:

Further remarks on the amendment? All those in favor of the amendment, signify by saying aye. Those opposed? The amendment is adopted.

SENATOR MALONEY:

Thank you Mr. President. On the bill?

THE CHAIR:

We're now on the bill, as amended.

SENATOR MALONEY:

Thank you Mr. President. On the bill itself, the bill merely increases the limits... the thresholds for materialmen bonds, which are currently ten-thousand dollars for general contractors and twenty-thousand dollars for subs. The bill would increase those

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limits to twenty-five thousand for general contractors and fifty thousand for subcontractors. I would note that the fiscal note attached to the file copy of the bill says there's a minimal impact. In fact, I would submit that the impact will be beneficial to the State. Bonds such as this are becoming very expensive to obtain. And by raising the threshold, there will be some for small contracts who will no longer be required, and the State should, as a result, recognize a savings. Because that price will not be passed along to the State or to the people.

THE CHAIR:

Further remarks on the bill, as amended? Senator Maloney.

SENATOR MALONEY:

Yes, Mr. President, if there's no objection, I'd move the matter to the Consent Calendar.

THE CHAIR:

Hearing none, so ordered.

THE CLERK:

Cal. 298, File 449, Substitute for Senate Bill 1052. An Act Concerning the Sale of Surplus State Personal Property to Municipalities and Transit Districts. Favorable Report of the Committee on Government Administration and Elections.

THE CHAIR:

Senator Maloney.

Consent Calendar, will all Senators please return to the Chamber.

An immediate roll call has been ordered in the Senate on the Consent Calendar, will all Senators please return to the Chamber.

THE CHAIR:

Please give your attention to the Clerk, who will now read the second Consent Calendar. And the Clerk will please proceed.

THE CLERK:

Calendar page 1, Cal. 228, Senate Bill 1114. Cal. 255, Substitute for Senate Bill 861.

Calendar page 5, Cal. 283, Substitute for Senate Bill 632.

Calendar page 6, Cal. 290, Substitute for Senate Bill 248.  
Cal. 292, Senate Bill 820.

Calendar page 7, Cal. 296, Substitute for Senate Bill 337.  
Cal. 297, Substitute for Senate Bill 1023. Cal. 298, Substitute  
for Senate Bill 1052.

Calendar page 9, Cal. 308, Substitute for House Bill 6262.  
Cal. 309, Substitute for House Bill 7422, Cal. 310, Substitute for  
House Bill 6112.

Calendar page 11, Cal. 319, Substitute for House Bill 5699.  
Cal. 321, Substitute for House Bill 7351.

Calendar page 12, Cal. 322, Substitute for House Bill 5647.  
Cal. 325, Substitute for House Bill 7456. Cal. 326, Substitute for  
House Bill 7460.

And Calendar page 13, Cal. 327, House Bill 7462.

THE CHAIR:

Any corrections or omissions? We'll now proceed to vote. The machine is open, please record your vote. Senator Atkin. Has everyone voted? The machine is closed, Clerk please tally the vote.

Result of the vote: 36 yea, 0 nay. The second Consent Calendar is adopted.

THE CLERK:

Calendar page 15, Disagreeing Actions, Cal. 151, File 179 and 343, Substitute for Senate Bill 972. An Act Requiring Supervision of Deputy Fire Marshals and Fire Inspectors and Permitting the Appointment of Regional Fire Marshals. As amended by House Amendment Schedules "A" and "B". Favorable Report of the Committee on Public Safety.

THE CHAIR:

Senator Herbst.

SENATOR HERBST:

Mr. President, I move passage of this act, as amended by the House, "A" and "B".

THE CHAIR:

Will you remark?

SENATOR HERBST:

On the amendments. One merely indicates at the end of the bill, in line 83, that the fire marshal's approval... State Fire Marshal's approval is necessary in the appointment of local, regional fire

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Senator Smith and the opportunity to work on the issue that we have just avoided having to deal with if there is no other discussion on the Bill I would move it to the consent calendar.

THE CHAIR:

Without objection, so noted. Clerk, please call the next item.

THE CLERK:

Page 27, Calendar Number 297, File 447 and 972, substitute for Senate Bill 1023, AN ACT CONCERNING BONDS FOR THE PROTECTION OF EMPLOYEES AND MATERIAL MEN UNDER PUBLIC WORKS CONTRACTS, as amended by Senate Amendment Schedule "A", and House Amendment Schedule "A", a favorable report of the Committee on Judiciary. The House rejected Senate Amendment Schedule "A" on April 30.

THE CHAIR:

Senator Maloney.

SENATOR MALONEY:

Thank you, Mr. President. I would move adoption of the Bill in accordance with the House.

THE CHAIR:

You may proceed.

SENATOR MALONEY:

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STUDY Mr. President, this Bill in its original form as it came from the Senate, my recollection is that it came on, went to the House on consent. The House passed an Amendment which made a slightly difference balance in the Bill. They extended the amount of time from 60 days to 90 days in which a surety would have an opportunity to review and make payment on a claim. And then, on the other hand, altered the interest payment due on a claim that was not paid but later found judicially due to be paid which in the Senate version would have been 8 percent, it's raised to 10 percent. So it's a very minor change to the Bill. Strikes a very slightly difference balance, but, as a matter of legislation and public policy the Bill remains the same.

THE CHAIR:

Any remarks further?

SENATOR MALONEY:

Yes, Mr. President, if there's no objection, I move the matter to the consent calendar.

THE CHAIR:

Without objection, so ordered.

THE CLERK:

Calendar Page 28, Calendar Number 471, File 665 and 966, substitute for Senate Bill 531, AN ACT CONCERNING A

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the Senate, please return to the Chamber.

THE CHAIR:

Mr. Clerk, would you please list the items for  
Consent?

THE CLERK:

Beginning on page 13, Calendar 692, Substitute for  
House Bill 5443, Calendar 693, Substitute for House Bill  
6454, Calendar 694, House Bill 6764, Calendar page 14,  
Calendar 696, Substitute for House Bill 7425, Calendar 697,  
House Bill 7442, Calendar 699, House Bill 7593, Calendar 700,  
Substitute for House Bill 5622.

Calendar 701, Substitute for House Bill 5700, Calendar  
page 15, Calendar 703, Substitute for House Bill 6750,  
Calendar 704, Substitute for House Bill 7271, Calendar page  
27, Calendar 297, Substitute for Senate Bill 1023, Calendar  
page 28, Calendar 404, Substitute for House Bill 7314,  
Calendar 471, Substitute for Senate Bill 531, Calendar page  
29, Calendar 513, Substitute for Senate Bill 1187, that  
concludes the Consent Calendar.

THE CHAIR:

Are there any additions or deletions? The machine is  
open. Has everyone voted? The machine is closed. The  
Clerk will register the tally.

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ned

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32 Yea

0 Nay

The Consent Calendar is adopted.

THE CLERK:

Mr. President, the Clerk is also in possession of Senate Agenda #5 dated Thursday, May 21, 1987.

THE CHAIR:

The Chair recognized Senator O'Leary.

SENATOR O'LEARY:

Mr. President, I would first like to suspend the rules to transmit those items which are on their way to the House.

THE CHAIR:

Hearing no objections, the rule is suspended.

SENATOR O'LEARY:

Thank you, and Mr. President, I move that all items on Senate Agenda #5, dated May 21, 1987 be acted upon as indicated, and that the Agenda be incorporated by reference into the Senate Journal and the Senate Transcript.

THE CHAIR:

If there's no objection, it is so ordered.

JOINT  
STANDING  
COMMITTEE  
HEARINGS

GOVERNMENT  
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AND ELECTIONS

PART 3

690-1040

1987

JOYCE WOJTAS: (continued)

if the low bid exceeds the amount of money available for a project can be rejected, or if the awarding authority determines that the project should not go forward. By adding the language that rejection can also be if it is in the best interest of the state we feel that this will broaden the discretion on the awarding authority and could lead to abuse of that type of discretion.

Back in 1974 this statute was amended to take out language that used to say if it is in the public interest to do so. It seems as though what goes around is coming around again. If you look at an instance, say you have one bidder on a contract or say you have two bidders and somebody said well, we just don't like those two bidders, the bids are open so that that information becomes available when the project is readvertised for bids other people may decide to get in the second time around because they have got a better handle on the bids that were originally put in.

I think if you keep in mind that the statute currently allows for rejection of bids for many reasons, legitimate reasons and the awarding authority shouldn't just have the discretion that it is in the best interest of the state.

I also want to comment on Raised Committee Bill 1023. This Bill is changing the amount of bonds, when bonds should be posted (inaudible) on contracts. Apparently payment bonds for general contractors have to be posted when the contract awarded is \$10,000, and \$20,000 for sub-bids. They are increasing this bid for general contractor \$25,000 and sub to \$50,000 which more or less kind of makes sense. I don't when these figures were put on the statutes as to when the requirements for posting bonds was necessary, but with prices increasing, and the cost of doing any type of work increasing that probably makes sense.

Performance bond part of the Bill though, currently

JOYCE WOJTAS: (continued)

on a general bid you post a performance bond, if the contract is \$10,000 or more and the sub-bid is \$20,000 or more. You are increasing that from \$10,000 to \$100,000 and \$20,000 to \$250,000 and I think that's quite a big jump because what you are saying is that on a general contract you only have to post a bond if its \$100,000 or more, and a sub-contract to \$250,000 or more. If you are going to increase I think the level should probably go more in line with what you have done in the Bill with the payment bond requirement.

I also want to go on record in opposition to raised Committee Bill 1049 concerning disqualification of certain persons from bidding on state contracts. This again, is giving some very broad language as to how setting up a two year period for being disqualified from bidding, giving the Commissioner of Administrative Services the say over all state agencies bidding. I don't know how DOT would feel about this, but DOT is the agency that does award the DOT contracts. Many times there are legitimate disagreements that wouldn't warrant the borrowing that are often settled and right now the awarding authority does have the right to reject a bid from a person if they don't feel is the lowest responsible bidder.

If a person is not performing properly, or not completing a contract on time, or getting into all types of trouble, another problem that contractor will have would be with the insurance companies who will post the surety bond for him. He just won't be able to stay in business if he is that bad off because again when he is looking at performance and financial capability so we feel that the statute now gives the awarding authority enough authority to do the right thing. If you have any questions I'd be glad to answer them.

REP. LOONEY: Thank you, questions members of the Committee? Representative Schmidle.

REP. SCHMIDLE: Representative Schmidle from the 6th District. Do you know at this time if there any contractors disqualified from bidding?

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MR. HOWROYD: (continued)

section C of this bill. The Dept. believes that this legislation may provide an effective deterrent to the submission of frivolous bids.

The next is Senate Bill 1052, an act concerning the sale of surplus state property to municipalities and (inaudible). This bill repeals a seldom used statute, section 4-12(a), allowing municipalities in transit districts, advance opportunity to bid on state surplus highway funds. The repealed section is incorporated into section 4-1-12, allowing state-aided institution as well as transit districts and municipalities the opportunity to purchase other types of surplus state property.

House Bill 7373, an act prohibiting discrimination by contractors on the basis of physical or mental disability would conform section 4-1-14(a) of the General Statutes with amendment 6 of the Connecticut constitution approved in 1984.

The constitution prohibits discrimination based on physical or mental disability, while the General Statute prohibits discrimination based on mental retardation or physical disability.

I also have two bills from the Bureau of Public Works, Senate Bill 1021, an act concerning the rejection of bids on public works contracts. This bill, the existing language from section 4-137(d), limits the reasons on which the state can reject bids. This language does not always conform to the state's best interests, nor is it consistent with good business practice.

DOT presently has a similar statute in relation to bidding on state highway contracts. Senate Bill 1023, an act concerning bonds for the protection of employees from material men under public works contracts. This bill would change the dollar values in section 49-41 of the General Statutes to more accurately reflect current conditions in the construction industry. This change may occur additional participation by minority or set aside contractors in seeking smaller

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MR. HOWROYD: (continued)

state projects.

I have three other bills I'd like to comment, wish to comment, some concern or opposition to.

Senate Bill 1050, an act concerning bid procedures for state public works contracts. DAS opposes this bill as written, as it would limit the present statutory authority permitting the substitution of subcontractors. We believe the Committee should instead consider a substantive provision to the present bid laws to provide a more easily understood and manageable system.

Under the present bid laws, DAS has been rejecting a number of bids for failure to comply with current bid formats described in section 4-137(e). The majority of rejected bids are disqualified because of technical defects in the bid document. One reason for the rejection of these bids may be because of errors caused (inaudible).

The Dept. has recommended enacting a single bid format whereby this would be received from a general contractor. The successful bidder would then be required to furnish the awarding authority within a specified time period the names of proposed subcontractors, minority contractors, and set aside contractors. We believe that this proposal would effect a dollar savings for the state.

It is also the Dept.'s belief that the change to a less complicated format would increase the number of contractors willing to submit a bid to the state, and as a result, offer greater competition and lower bids.

It should be noted that this proposal is consistent with that presently employed by DOT.

Raised Committee Bill 1163, an act to retain jobs and to retain and expand business and industry in the state, and to attract new jobs, businesses, and industry to the state. This bill came to our attention late. We have some concerns regarding the drafting of this

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MR. HOWROYD: (continued)

bill, and we'd like to take the opportunity to submit some documentation to the Committee at a later date.

And finally, on House Bill 7542, an act concerning subbids for public bidding contractors. This, as with House Bill 6463 on Friday, the Dept. opposes, as it would return to the prefile bidding which the General Assembly repealed in 1982.

In fact, that is why we are proposing a substantive revision to the bidding laws. This, in addition to the bills we heard on Friday, we'd appreciate the opportunity to sit down with the Committee at a later date and expand upon our proposal.

I have with me Deputy Commissioner John Ottovine from the Bureau of Purchases, Sue Savage from the Bureau of Purchases, and Frank Rondo, our chief administrative officer, if you have any questions on any of these bills.

REP. LOONEY: Josh, one question. To go over the other people with you the reason behind the increase in the limits in Proposed Bill 1021. Over those specific figures. 1023, rather. How were those specific figures arrived at?

MR. HOWROYD: To be perfectly candid with you, there is no scientific formula. My review of the statutes shows that, tracking the legislative history, it's been quite some time since they've been changed.

Particularly, I would in fact question the numbers in subsection b, where, as Joyce pointed out, the \$100,000 and \$250,000 appear to be out of line with the changes we're making in section a, subsection a, and in fact, we would feel comfortable with language, in place of the \$100,000 in line 42, if that read \$25,000, and on line 44, the \$250,000 to make that \$50,000, that is consistent, I believe, with the increases in subsection a, and I think that meets our needs.

REP. LOONEY: Okay, thank you very much. Any questions from members of the Committee? Rep. Schmidle.

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REP. SCHMIDLE: I had a fair number of questions, and I don't know whether you want to handle this at a later date when Josh comes back to the Committee with some other explanation, or do you want to do some of it here now, how do you want to?

REP. LOONEY: I think it's better to ask the questions now of the bills that we have immediately before us.

REP. SCHMIDLE: Okay. I guess my first question is on 1023. Whose bill is that? Is that a Dept. bill that you?

MR. HOWROYD: That is a DAS bill.

REP. SCHMIDLE: That's a Dept. bill, and where did the figures in section b come from if DAS submitted the bill, and now you're saying that you think they might be a bit high?

MR. HOWROYD: To be perfectly honest with you, I had not reviewed the figures in subsection b, and I cannot testify as to what the intent was.

REP. SCHMIDLE: Okay, we'll ask that question then...

MR. HOWROYD: I will get an answer for you, though.

REP. SCHMIDLE: Okay. Under 7373, which is an act prohibiting discriminating by state contractors, and I understand that's in compliance. However, I guess I have a question. If someone has a real serious physical disability, could they still seek employment with a state contractor? You know, it could be dangerous to their health or something. What in there would protect an individual?

MR. HOWROYD: It is my understanding the language relating to physical disability is in the present statute.

REP. SCHMIDLE: I understand that. What I'm saying, in the case of a contractor, suppose you have someone who is putting up structural steel? How do you accomodate a person with a physical disability when you're doing some structural steel work?