

Act Number:	09-044	
Bill Number:	1136	
Senate Pages:	1601, 1657, 1659	3
House Pages:	2922, 3305-3306	3
Committee:	Judiciary: 5109-5118, 5414	10

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**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2009**

**VOL. 52
PART 5
1351 - 1666**

md
SENATE

105
April 29, 2009

SENATOR LOONEY:

Thank you, Mr. President. Moving to calendar page 21, Calendar 503, passed temporarily.

Calendar 504, Senate Bill 939, Mr. President, I move to refer this item to the Committee on Higher Education.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 505, Senate Bill 1016, I move to refer this item to the Committee on Planning and Development.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 506, Senate Bill 1136, Mr. President, I move to place this item on the Consent Calendar.

THE CHAIR:

Motion is on the floor to place the item on consent. Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 507, Senate Bill 1141, likewise, I move to place this item on the

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Calendar page 6, Calendar 245, Substitute for House Bill 6266.

Calendar page 7, Calendar 272, Substitute for Senate Bill 1040.

Calendar Page 8, Calendar 359, Senate Bill 1082.

Calendar page 10, Calendar 389, Substitute for House Bill 6327; Calendar 391, Substitute for House Bill 5930.

Calendar page 11, Calendar 395, Substitute for House Bill 5297; Calendar 403, House Bill 6462.

Calendar page 12, Calendar 414, Senate Bill 905.

Calendar page 13, Calendar 416, Senate Bill 998;
Calendar 432, Substitute for Senate Bill 1020.

Calendar page 15, Calendar 457, Substitute for House Bill 6356.

Calendar page 16, Calendar 460, Substitute for House Bill 6301; Calendar 465, Senate Bill 963.

Calendar page 18, Calendar 487, Senate Bill 707;
Calendar 489, Substitute for Senate Bill 810.

Calendar page 21, Calendar Number 506, Senate Bill 1136; Calendar 507, Senate Bill 1141.

Calendar page 22, Calendar 515, Substitute for Senate Bill 832.

Calendar page 23, Calendar 524, Substitute for

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SENATE

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April 29, 2009

Have all Senators voted?

If all Senators have voted, please check the machine. The machine will be locked, the Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number 1. Total number voting, 36; those voting yea, 36; those voting nay, 0; those absent/not voting, 0.

THE CHAIR:

Consent Calendar Number 1 passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, I would move that all items referred to various committees from the chamber today be transmitted to those committees immediately.

THE CHAIR:

Without objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, also, would announce that we will be convening tomorrow about -- at 11:30 a.m., it's our intention to pick up with bills that had previously been marked "go" today. So I would move that all items previously marked go

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

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ks/med/eb

HOUSE OF REPRESENTATIVES

May 5, 2009

Madam Speaker, I will move that that following
items be placed on the consent calendar: Calendar
Number 262, House Bill Number 5809; Calendar Number
580, Senate Bill Number 905; Calendar Number 585,
Senate Bill Number 1040; Calendar Number 587, Senate
Bill 1136; Calendar Number 588, Senate Bill Number
1411.

A VOICE:

(Inaudible) ask him to repeat the last one.

SPEAKER LEWIS:

Would you kindly repeat the last one,
Representative Mioli?

REP. MIOLI (136TH):

Calendar Number 588, Senate Bill Number 1141.

SPEAKER LEWIS:

Thank you. Hearing no objections, so ordered.

CLERK:

Madam Speaker, there is no further business on
the Clerk's desk.

SPEAKER LEWIS:

The Chair recognizes Representative Mioli of the
136th.

REP. MIOLI (136TH):

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

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3246 - 3577**

dt/rgd
HOUSE OF REPRESENTATIVES

381
May 6, 2009

SPEAKER DONOVAN:

Good evening, Representative.

REP. OLSON (46th):

We're now going to be voting on the Consent Calendar. There were several items moved to the Consent Calendar yesterday, items 262, 580, 587 and 588.

HB 5809
SB 905
SB 1136
SB 1141

Earlier today we moved Item 569 to the Consent Calendar, and that completes the Consent Calendar for today. Thank you, Mr. Speaker.

SB 312

SPEAKER DONOVAN:

Motion before us is passage of the bills on today's Consent Calendar. Remark? Remark? If not, staff and guests please come to the well of the House. Members take their seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is voting today's consent calendar by roll call. Members to the chamber.

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted? Have all the members voted? Have all the members voted? Representative Mioli.

dt/rgd
HOUSE OF REPRESENTATIVES

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May 6, 2009

Please check the board to make sure your vote has been properly cast. If all of the members have voted, the machine will be locked. Hold it.

The machine will be locked and the Clerk will take a tally. Will the Clerk please announce the tally?

THE CLERK:

On today's Consent Calendar:

Total Number Voting	142
Necessary for Passage	72
Those voting Yea	142
Those voting Nay	0
Those absent and not voting	9

SPEAKER DONOVAN:

Consent Calendar passes.

Representative Olson.

REP. OLSON (46th):

Thank you Mr. Speaker. I move to suspend the rules for the immediate transmittal of Senate Bill 1092, which we just recently voted on, to the Governor. Thank you, Mr. Speaker.

SPEAKER DONOVAN:

The motion is for suspension of rules for immediate transmittal of Senate Bill 1092 to the

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 16
4929 - 5265**

2009

Mr. Chairman.

SENATOR MCDONALD: Thank you. Is there anything further? Thanks very much, Dr. Jonathan Greenwald. Ernie Titell, followed by Tanya Snow-Bugg. Is Tanya here? Okay, you'll be next.

ERNIE TITELL: Good afternoon, Mr. Chairman and members of the Judiciary Committee. My name is Ernie Titell. These are my clients, Sue Burke-Nelson and Glen Nelson. They are the parents of Valerie Nelson, a little girl, which is why this all came about. We're here to support bill 1136 and what that does is that allows the Claims Commissioner to discretion, to reopen dismissals where he had previously dismissed a case, a practice that he has long been doing. And all this law does is really clarify what we think is the existing practice and existing law. The Claims Commissioner has had a practice of reopening dismissals like dismissals of failure to prosecute where he deems it just and equitable.

This came about as a result of a case I have with the Nelsons where the little girl had severe respiratory distress and needed to be resuscitated and there was a substantial delay in resuscitation, we think that was medical malpractice. A claim was brought before the Claims Commissioner since it involves John Dempsey Hospital, and by previous lawyers. That case was dismissed by the Claims Commissioner for failure to prosecute. We then got involved and within two and a half months, filed a motion to reopen the case, and filed -- also complied with discovery requests in two and half months, and filed a certificate of good faith, as required under

existing law. And the Claims Commissioner reopened it. At the hearing, he said -- the Claims Commissioner said that main question is whether the Commissioner has jurisdiction over this claim once the dismissal for failure to prosecute is entered. And as I stated before, on numerous occasions with the consent of the Attorney General, or at least with the acquiescence of the Attorney General, I have reopened claims prior to the date that they go to the General Assembly. And in his decision, he also said, when he reopen the case, the Claims Commissioner has frequently considered claimant request to revisit dismissals entered for failure to prosecute, and has vacated orders of dismissal when justice and equity requires such action. We're asking that the legislature just codify and clarify what he has been doing. I have Sue Burke-Nelson, she would like briefly address the Committee.

SUE BURKE-NELSON: Hi, thanks for hearing us today. My daughter was born April 30, 2005. I had no problems with my pregnancy, nothing. I went in, had a plain old C-section and she couldn't breathe. They told me that they needed to transport her and transport didn't come for thirteen and a half hours. She was left without respiration for that time. Now, I love her, she's gorgeous, she's my heart but she has severe cerebral palsy and brain damage due to this lapse in respiration. I hired an attorney who agreed with my case. I made sure that -- I'm sorry, I guess I'm out of time.

SENATOR MCDONALD: You are, but I suspect people have questions and let me just -- ask Mr. Titell. I just want to be clear about -- this was a procedural default because of failure to prosecute by prior attorneys?

ERNIE TITELL: Absolutely. It was a procedural default (inaudible) the discovery so when -- and then the Claims Commissioner reopened it and then gave permission to sue. So this is a case where the Claims Commissioner reopened it and gave her permission to sue.

SENATOR MCDONALD: So why didn't the claim--

ERNIE TITELL: Good point and I didn't get to that, good question. The reason we're asking for this bill is because the Superior Court judge determined that the Claims Commissioner didn't have jurisdiction because it wasn't specifically stated in the statute. And so what we're essentially asking, it's not just for this case, but because, as I stated, the Claims Commissioner has had that practice and has reopened many cases with things like failure to prosecute, a Superior Court judge could take that away and would deny all those claimants a hearing on the merits.

SENATOR MCDONALD: So did the Superior Court do that sua sponte or on motion?

ERNIE TITELL: On motion by the defendant after the case was filed in court. After the Claims Commissioner gave us permission to sue.

SENATOR MCDONALD: Okay. But do you have any quantification of how many times the Claims Commissioner had opened up procedural defaults?

ERNIE TITELL: No, other than his --

SENATOR MCDONALD: And when you're saying -- what are you referencing?

ERNIE TITELL: I'm referencing the hearing

transcript in our case, where he said frequently he has reopened dismissals for failure to prosecute with the knowledge of the Attorney General. And I'm also reading from his decision where he reopened the case and gave us permission to sure.

SENATOR MCDONALD: Okay. In the decision to reopen, what did he say?

ERNIE TITELL: In the decision to reopen, he said the Claims Commissioner has frequently considered claimant requests to revisit dismissals entered for failure to prosecute and vacated orders of dismissal when justice and equity requires such action. The Claims Commissioner retains jurisdiction and considers such requests until such time as a claim is submitted to the General Assembly Public Hearings.

SENATOR MCDONALD: Okay. So I guess the natural -- if we didn't pass something like this, the natural consequences, the Claims Commissioner would be much less likely to ever dispose of cases, knowing that there -- for procedural reasons, knowing that there's no chance that it would ever be revisited.

ERNIE TITELL: Yes. I think so. I mean, in other words, it would be --

SENATOR MCDONALD: So it would have the counterproductive aspect of actually slowing down the claims process as opposed to expediting it and getting final resolution to claims?

ERNIE TITELL: I think that's right. In other words, it really would deprive him of the ability to control his docket. I mean, under

this scenario, if he wants to enter a disciplinary dismissal for failure to prosecute for not answering interrogatories for production like Superior Court judges do all the time, he couldn't reopen it two days later. ' If you wanted to send a message, in order to move the case, which courts do all the time. It would deprive him of that opportunity to really control his docket expeditiously. I think that's exactly right.

SENATOR MCDONALD: Actually, that's a good point. Judges do have that authority --

ERNIE TITELL: All the time, all the time. And you have 90 days with which to reopen dismissal and that's the way judges control their docket. We want them to do that.

SENATOR MCDONALD: It's not terribly relevant to the bill, but is there any claim of malpractice against the prior attorneys?

ERNIE TITELL: No, there is not.

SENATOR MCDONALD: Senator Kissel and then Representative Fox.

SENATOR KISSEL: Attorney Titell, great to see you and, folks, you have my deepest sympathies. Nothing can be more heart-wrenching than something that happens to one's child. I just search my soul and I can't, for the life of me, of a stronger bond than that between parents and their children. So I applaud you for being brave enough to come here this afternoon. Just very briefly, when the judge made his or her decision regarding this was it in the form of a written decision?

ERNIE TITELL: Yes.

SENATOR KISSEL: Could you please provide the Committee with a copy of that?

ERNIE TITELL: Yes, yes, Senator Kissel, I will.

SENATOR KISSEL: Okay. Because I want to make sure that, if we do have the desire to address this, that we don't miss anything that may have been articulated in that decision.

ERNIE TITELL: Yes.

SENATOR MCDONALD: Representative Fox.

REP. FOX: Thank you, Mr. Chairman and good afternoon all of you, thank you for coming today. I have a question regarding the Claims Commissioner frequently reopens these cases, you've testified. And did he give any kind of criteria that he looks to, because we spoke about this situation in Superior Court, at least we know there's some kind of time frame within which something has to be done in order to get the case reopened. What is -- the question for me right now is just he does it because he hears it and he does this --

ERNIE TITELL: I think it's similar -- I think he views his role similar to a Superior Court judge. A Superior Court judge takes into consideration all factors in terms of reopening dismissal. Has the -- he wanted the case, he wanted interrogatories and productions filed. Have they been filed, what are the circumstances? And I think that's what he considered here in this case, as I said, within two, less than two and a half months we filed all the discovery requests, we filed the expert opinion required under the existing case law, we filed a bunch of motions

to reopen. And he heard - reviewed all that material, heard it and then made a decision that he believed that this was -- under the standards, that we had a prima facie meritorious case, so he should give us permission to sue. And because everything was complied with, he should reopen the case. So I think what he did is use the kind of discretion that we ask trial judges to do all the time. And not that there was a rule about time, but it was within 90 days which is the Superior Court, the trial court rule. So I don't think you can look at this and say it was -- the time was so long that it was beyond the discretion. I think that's what he looked at.

REP. FOX: I think you're correct. The Superior Court rule is you get cases moving, not to create an injustice which could happen if you strictly interpret, which apparently was done in the Superior Court in this case (inaudible).

ERNIE TITELL: I think that's right and I think that's, as Senator McDonald has pointed out, I think this will discourage the Claims Commissioner from doing things to keep cases moving, if he knew, once he ended any kind of disciplinary dismissal that he would lose jurisdiction and couldn't reopen it and that was it. I don't think that that makes sense in terms of how cases are processed and how he runs his docket.

REP. FOX: And lastly, your client was in the middle of testifying when the bell went off. Is there anything you want to add, you did take the time to come all the way here so...

SUE BURKE-NELSON: I just wanted to add that this -

- unfortunately, the wrong, I hired the wrong lawyer. I hired him right away. It was a year and a half and I continually asked him, actually it was a year. I continually asked him and asked him, have you filed, are you set because I knew that there might be a statute of limitations. He reassured me, oh yes, yes, everything has been taken care of, there's been no problems, no problems. It's all been filed and then he dismissed himself from my case a month after he had done nothing, it turns out, a year later. So Mr. Titell could inform you on that kind of thing.

The big thing that I wanted to also say is, you know, we brought a suit because we felt what happened was wrong and our attorney agreed, our doctors agreed, our experts agreed. And you heard from him why the current laws precluded us from getting compensation for our daughter's injuries and we're hoping that you pass this clarification for families like us, who are in the same situation, because this affects an enormous amount of people, I have heard.

REP. FOX: Well, thank you, thank you again for (inaudible).

SUE BURKE-NELSON: Thank you again for having us.

SENATOR MCDONALD: Representative Tong.

REP. TONG:: Thank you both for coming today. Thank you, Attorney Titell, for bringing them up here to speak with us. A couple of questions, just to be clear, what is the procedural posture now of your case?

ERNIE TITELL: The procedural posture of our case is that the claim against the state has been

dismissed by the Superior Court. It is pending on appeal to the Appellate Court.

REP. TONG:: Okay. And do you have a sense of how any action by us would play into your process?

ERNIE TITELL: I believe, if this bill is passed, that we would be able to get the case reinstated, because then it would be a clarification that the Claims Commissioner had the authority to do what he has been doing. And I think it's not only our case, as I said, all those pending cases, all those cases would be under the same thing.

REP. TONG:: And do you have any timing issues that you're dealing with right now or is there any special time considerations that we should know about?

ERNIE TITELL: Well, I mean, if you're asking me as the lawyer handling the case, I think the sooner the better, but as I said, the posture is that the case is before the appellate court. I think that if the legislature acts and passes the bill and it's signed, I think that we would have the opportunity to go back to the Superior court because then it will with special authority that the Claims Commissioner didn't have discretion to do this.

REP. TONG:: I just want to echo what Senator Kissel said. As a parent of two young daughters and an eight-month old and (inaudible) almost the same (inaudible) three years ago. We go into a hospital expecting good things to happen for us and we hear about the circumstances of your case and it's wonderful to hear that your daughter is beautiful and with us and she has two great

parents. I want to thank you both.

REP. LAWLOR: Anything further. If not, thank you very much.

ERNIE TITELL: Thank you. Thank you. Mr. Chairman, thank you and members of the Committee for allowing us to speak.

REP. LAWLOR: Next is Tanya Snow-Bugg and she is followed by Deputy Chief State's Attorney Paul Murray who was left over from the (inaudible), so he will be after this. Mr. Murray will be followed then by Rachel Moyer.

TANYA SNOW-BUGG: My name is Tanya Snow-Bugg and my son died in New Haven Jail, on Mother's Day, May 9th, 2004. I'm here because I want -- I would like this Assembly to overturn the decision of the Claims Commissioner. New Haven DOC people failed to protect and prevent my son, Marlon, from committing suicide while in court custody of the New Haven Correctional Center.

HJ59

As a result of the correction officers' failure to conduct their regularly scheduled rounds, my son's life was needlessly lost. The officers were reprimanded for falsifying documents. I respectfully disagree with the Claims Commissioner's decision, dated September 9th. I was misrepresented by my attorney. I'm here alone without a lawyer because, since the Claims Commissioner dismissed my case, I went to like five or six different lawyers all around the Waterbury and Hartford area and I couldn't get anybody to come here with me today. I can't understand if New Haven -- the correction officers were reprimanded for falsifying documents, my son -- and they didn't make their tours -- I

**JOINT
STANDING
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HEARINGS**

**JUDICIARY
PART 17
5266 - 5611**

2009

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Raised Bill 1136
 Public Hearing: 3-20-09

TO: MEMBERS OF THE JUDICIARY COMMITTEE
 FROM: SILVER, GOLUB & TEITELL
 DATE: MARCH 20, 2009

RE: SUPPORT OF RAISED BILL 1136 – AN ACT CONCERNING CLAIMS
 AGAINST THE STATE

We support bill 1136, and respectfully contend that the bill should be passed.

The proposed change to Chapter 53 of the Connecticut General Statutes, Claims Against The State, allows Claims Commissioners to re-open dismissed cases when they deem it "just and equitable." This will apply to all claims currently pending before the Claims Commissioner and all claims where dismissals have already been vacated. It will allow the Claims Commissioner to use his own discretion in deciding what is fair and appropriate.

The Claims Commissioner has always acted as if this was the rule, and the General Assembly and Attorney General have always been aware of this. The Claims Commissioner has been able to go back on his own decisions when new facts have been presented that call into question the fairness of preventing a claim from going forward. This has been an effective practice, ensuring that justice is not hindered by rigid and unresponsive rules and technicalities. However, because this is not explicitly stated in the wording of the Connecticut General Statutes, any vacating of a dismissal by a Claims Commissioner, regardless of the facts surrounding the claim, is at risk of being overturned by a Superior Court judge on the grounds that the Claims Commissioner does not have the proper authority to re-open the claim.

This question of jurisdiction is not an issue that should decide the merit of a claim. Clarifying this part of the Connecticut General Statutes will make it clear that the General Assembly has always intended to allow the Claims Commissioner to continue to exercise his discretion in reopening cases he has dismissed, when "just and equity" require it.

This revision would not alter the law as it has existed; it would simply prevent a Superior Court judge's interpretation of the statute from changing the way the Claims Commissioner has been operating, a change that would deprive many Claimants from a hearing on the merits. Granting the Claims Commissioner the discretion to vacate his own prior dismissals when he considers it "just and equitable" will help the justice system better serve the people it is intended to serve.

WE RESPECTFULLY URGE YOU TO SUPPORT RAISED BILL 1136. Thank you.