

## CBA LPRC POSITION REQUEST FORM

The CBA Construction Law Section **position request** is as follows:

- 1) Proposed legislative or regulatory concept:

**Pass-Through Claims.** The Construction Law Section supports legislation amending Conn. Gen. Stat. § 4-61 to allow general contractors to include subcontractor pass-through claims in a claim against the state arising out of a highway or public works contract without requiring the general contractor to first admit liability for the subcontractor's claim.

- 2) Explanation and rationale for advancing this position:

The present statutory scheme set forth in Conn. Gen. Stat. §4-61 restricting direct claims against the state on state construction projects is unfair to general contractors, subcontractors and materials suppliers. In those instances where the state may, however inadvertently, be responsible for loss, damages or delay to a general contractor on a public works project - - and in turn for loss, damages or delay to "downstream" entities such as subcontractors and materials suppliers - - it is inefficient and unfair for the latter parties to be barred from making their own direct claims against the state.

Under the present statutory framework, general contractors face an unenviable "Hobson's Choice" of either accepting less from the state in settlement of a claim (where the subcontractor's claim, which but for Conn. Gen. Stat. §4-61 would otherwise have been included in the general's claim, is not countenanced by the state) and, in effect, short-changing the subcontractor pressing its own separate but non-included claim against the state; or *not* reaching a settlement with the state, thereby necessitating subsequent time-consuming and expensive litigation with the state in order to ensure proper and full presentation and resolution of the subcontractors' and/or suppliers' own underlying claims.

- 3) Is draft regulation, legislation or proposed bill included?

No.

- 4) What is the date of any legislative hearing, if known?

Unknown.

- 5) Was this position previously approved by the CBA? If so, when does/did it expire?

Yes. Approved by the House of Delegates, June 20, 2016; Expired on June 30, 2019.

- 6) Is the CBA section or committee seeking to join a previously approved CBA section or committee position?

No.

- 7) Potential or actual CBA opposition from another CBA section or committee?

Unlikely.

8) Strength of section position (including process and results of section vote taken on issue):

All those present at the Construction Law Section meeting held on October 3, 2019 voted unanimously in favor of this position. In the past, a handful of private practitioners who represent the state on public works construction projects have opposed this position.

9) Fiscal impact (on the state):

The State has historically taken the position that amending Conn. Gen. Stat. §4-61 would cause undue expense by opening the proverbial “floodgates” to litigation with hundreds of subcontractors and suppliers filing claims on public works projects. However, what is not recognized in this argument is the present-day inefficiencies and enormous expense involved in having construction industry parties and professionals grappling with *ad hoc* efforts to resolve disputes with subcontractors and materialmen when the state turns a blind eye to those parties’ direct claims alleging loss, damage or delay caused by the state. Moreover, the incremental additional expense to the state would not be overwhelming, if indeed appreciable at all in the first instance, given that the state already has to expend resources in resolving the same subject matter with the general contractors, however inefficient that process may be.

10) Are you seeking “fast-track” approval?<sup>1</sup> No.

---

<sup>1</sup> A “fast track” recommendation will be submitted to the House of Delegates (HOD) or Board of Governors (BOG) at its next scheduled meeting (or, if between meetings of the HOD or BOG and during the legislative session, to the Executive Committee), and is warranted only when the Legislative Policy & Review Committee concludes that further analysis and study is unnecessary and where there is legitimate time pressure to address pending legislation.