

NULLUM TEMPUS COALITION

PLEASE SUPPORT HB 5570: AAC THE APPLICABILITY OF STATUTES OF LIMITATIONS TO ACTIONS BROUGHT BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE

The Associated Sheet Metal
& Roofing Contractors of
Connecticut

Connecticut Associated
Builders and Contractors

Connecticut Chapter of the
American Institute of
Architects

Connecticut Construction
Industries Association

Connecticut Home Builders
Association

Connecticut Chapter of the
American Society of
Landscape Architects

Mason Contractors
Association of Connecticut

Utility Contractors
Association of Connecticut

National Association of
Surety Bond Producers

American Council of
Engineering Companies of
Connecticut

THE ISSUE

A Connecticut Supreme Court Decision (State of Connecticut v. Lombardo Brothers Mason Contractors, Inc., et al), released November 13, 2012, will significantly and very adversely affect the costs of contracting for goods and services for the State of Connecticut and the costs for those doing business with the State. The decision similarly impacts the nature of business relationships between contractors and municipalities.

This is because the decision held that the State is not subject to any statute of limitation or repose in asserting claims. Similarly, the decision also concludes that municipalities are not subject to any statute of limitation or repose in asserting claims in matters involving statewide interests.

WHY THIS IS A PROBLEM

Reason 1 Without a clear and reasonable period of time by which the State and municipalities may assert a claim, businesses will be discouraged from contracting with them. Why? Because businesses will remain liable, ad infinitum. This means that, for example, contractors involved in highway and public works projects may remain liable for the duration of their lives, and perhaps even their probate estates would be liable thereafter.

Reason 2 The costs of doing business for everyone, including the State and local governments, will increase dramatically. For instance, if claims can be asserted against a bonding company in perpetuity, its risk naturally increases. Accordingly, its insurance costs increase, and those higher costs are unavoidably passed on to the local government and its taxpayers.

WHAT'S THE SOLUTION?

The legislature must set a clear and reasonable period of time by which the State may initiate claims arising from highway and other public work projects after substantial completion of project. And the legislature must bring clarity to the question of whether statute of limitations that applies to the State extends to Connecticut's municipalities, and if so, in what areas.

The following states have either entirely or substantially eliminated the doctrine of *nullum tempus* by statute, or have otherwise sought to refine its applicability by statute:

California	Kentucky	Montana	North Carolina	West Virginia
Florida	Massachusetts	Nebraska	North Dakota	Wisconsin
Georgia	Michigan	Nevada	South Dakota	
Idaho	Minnesota	New Jersey	Utah	
Kansas	Missouri	New York	Vermont	

Colorado abolished the doctrine of *nullum tempus* judicially in 1996.

The following states continue to adhere to some form of the doctrine of *nullum tempus* pursuant to the common law, either subject to exception or limiting the its applicability (*i.e.*, precluding municipalities from relying up the doctrine):

Alabama	Illinois	Maine	Oklahoma	Wyoming
Arkansas	Indiana	New Hampshire	Pennsylvania	
Connecticut	Iowa	New Mexico	Rhode Island	
Delaware	Maryland	Ohio	Texas	

The following states have codified the doctrine of *nullum tempus* through statute and/or state constitution:

Arizona	Hawaii	Mississippi	Tennessee	Washington
Arkansas	Louisiana	Oregon	Virginia	Washington DC

Alaska does not appear to have any legislation or case law even referring to the doctrine of *nullum tempus*.