

By Mr. Marotta of Medford, petition of Angelo Marotta for legislation to further regulate the jurisdiction of the Division of Hearings Officers relative to construction claims and to provide for the arbitration of such claims. State Administration.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Eighty-Six.

AN ACT FURTHER REGULATING THE JURISDICTION OF THE DIVISION OF HEARINGS OFFICERS WITH RESPECT TO CONSTRUCTION CLAIMS, AND TO PROVIDE FOR ARBITRATION OF CERTAIN CONSTRUCTION CLAIMS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Subsection (b) of section 5 of chapter 16 of the  
2 General Laws as amended by section 61 of chapter 579 of the acts  
3 of 1980, is hereby further amended by striking out in line 3 the  
4 words "with exception of claims subject to" and inserting in place  
5 thereof the words: — subject to applicable provisions.

1 SECTION 2. Chapter 30 of the General Laws is hereby amend-  
2 ed by striking out section 39Q, as appearing in section 62 of said  
3 chapter 579, and inserting in place thereof the following section: —

4 Section 39Q. (1) Every contract awarded by any public agency  
5 or state agency as defined by section thirty-nine A of chapter  
6 seven, and in accordance with the provisions of either section  
7 forty-four A of chapter one hundred and forty-nine, or section  
8 thirty-nine M of chapter thirty, shall contain the following sub-  
9 paragraphs (d) to (e), inclusive: —

10 (a) Disputes regarding changes in and interpretations of the  
11 terms or scope of the contract and denials of or failures to act upon  
12 claims for payment for extra work or materials shall be resolved  
13 according to the following procedures, which shall constitute the  
14 exclusive method for resolving such disputes, except that in the  
15 case where a city or town is a party, the contractor shall carry on

16 the work and maintain the progress schedule during any arbitra-  
17 tion proceeding, unless otherwise agreed by him and the awarding  
18 authority in writing; provided, however, that if the matter in  
19 dispute is one concerning which the contractor has requested a  
20 certification that there is an appropriation of sufficient funds to  
21 pay for the disputed item or matter, by the city or town or its  
22 authorized representative, and the certification has not been issued  
23 by the persons and in the manner set forth in section thirty-one C of  
24 chapter forty-four, then in such event if the awarding authority  
25 does not so agree and demands that the work be carried on and the  
26 progress schedule maintained, then in such event such certification  
27 shall be deemed in law to have been given for the amount awarded  
28 to the contractor plus interest to the date of payment. In such event  
29 at the request of either party, such dispute shall be given priority  
30 over all of the pending matters by any public works commission or  
31 the chief executive official of the public agency or state agency  
32 involved in the hearing of such dispute and his designee, and by the  
33 division of hearing officers. Written notice of the matter in dispute  
34 shall be submitted promptly by the claimant to the public works  
35 commission or the chief executive official of the public agency or  
36 state agency which awarded the contract or his designee. No  
37 person or business entity having a contract with a public agency or  
38 state agency shall delay, suspend, or curtail performance under  
39 that contract as a result of any dispute subject to this section. Any  
40 disputed order, decision or action by the agency or its authorized  
41 representative shall be fully performed or complied with pending  
42 resolution of the dispute.

43 (b) Within thirty days of submission of the dispute to the public  
44 works commission or the chief executive official of the public  
45 agency or state agency or his designee, he shall issue a written  
46 decision stating the reasons therefor, and shall notify the parties of  
47 their right of appeal under this section. If the official or the public  
48 works commission or his or its designee is unable to issue a  
49 decision within thirty days, he or it shall notify the parties to the  
50 dispute in writing of the reasons why a decision cannot be issued  
51 within thirty days and of the date by which the decision shall issue,  
52 which date shall not be more than sixty days from the date of  
53 submission of the dispute. Failure to issue a decision within the  
54 initial thirty-day period or within the additional time period not

55 exceeding sixty days from the date of submission specified in such  
56 written notice as aforesaid, shall give either party the right any  
57 time thereafter to treat the claim as denied by availing itself of any  
58 of the remedies hereinafter provided for as if it were an aggrieved  
59 party. The decision of the public works commission or the chief  
60 executive official or the public agency or state agency or his  
61 designee shall be final and conclusive unless an appeal is taken as  
62 provided below.

63 (c) Within twenty-one calendar days of the receipt of a written  
64 decision or at any time in the case of a failure to issue a decision as  
65 stated in the preceding subparagraph, any party may file a notice  
66 of claim for an adjudicatory hearing with the division of hearing  
67 officers or if the amount in controversy exceeds ten thousand  
68 dollars in lieu of appealing the decision of the chief executive  
69 official or the public works commission, the aggrieved party may  
70 file an action directly in a court of competent jurisdiction or make  
71 a demand for arbitration in accordance with the construction  
72 industry rules of the American Arbitration Association. If the  
73 claim is filed with the division of hearing officers the party shall  
74 serve copies thereof upon all other parties in the form and the man-  
75 ner prescribed by the rules governing the conduct of adjudicatory  
76 proceedings of the division of hearing officers, and the appeal shall  
77 be referred to a hearing officer experienced in construction law  
78 and shall be prosecuted in accordance with the formal rules of  
79 procedure for the conduct of adjudicatory hearings of the division  
80 of hearing officers, except as provided below. The hearing officer  
81 shall issue a final decision as expeditiously as possible, but in no  
82 event more than one hundred and twenty calendar days after  
83 conclusion of the adjudicatory hearing, unless the decision is  
84 delayed by a request for an extension of time for filing post-  
85 hearing or other submissions assented to by all parties.

86 Whenever, because an extension of time has been granted, the  
87 hearing officer is unable to issue a decision within one hundred and  
88 twenty days, he shall notify all parties of the reason for the delay  
89 and the date when the decision will be issued, provided that such  
90 date shall not be more than one hundred and eighty calendar days  
91 after conclusion of the adjudicatory hearing. Failure to issue a  
92 decision within the one hundred and twenty day period or within  
93 the additional period not to exceed a total of one hundred and

94 eighty days, specified in such written notice, shall give the petition-  
95 er the right to pursue any legal remedies available to him without  
96 further delay. In the event that an adjudicatory hearing has not  
97 been concluded or a decision has not been issued within a period of  
98 three hundred and sixty calendar days or if adjudicatory hearing is  
99 not commenced within one hundred and eighty calendar days  
100 from the date of the filing of a notice for claim for an adjudicatory  
101 hearing with the division of hearing officers, then in either of such  
102 events, either party shall have the right to pursue any legal reme-  
103 dies available to him without further delay.

104 (d) When the amount in dispute is less than ten thousand dol-  
105 lars, a contractor who is party to the dispute may elect to submit  
106 the appeal to a hearing officer experienced in construction law for  
107 expedited hearing in accordance with the informal rules of practice  
108 and procedure of the division of hearing officers. An expedited  
109 hearing under this subparagraph shall be available at the sole  
110 option of the contractor. The hearing officer shall issue, a decision  
111 no later than sixty days following the conclusion of any hearing  
112 conducted pursuant to this subparagraph. The hearing officer's  
113 decision shall be final and conclusive, and shall not be set aside  
114 except in cases of fraud.

115 (2) The commissioner of administration shall require the di-  
116 vision of hearing officers to prepare annually a report concerning  
117 the construction contract claims submitted to the division during  
118 the preceding twelve months, in such form as the commissioner  
119 shall prescribe. The report shall contain, at a minimum, the follow-  
120 ing information: the number of claims submitted; the names of all  
121 parties to each such claim; a brief description of the claim; the date  
122 of submission and of disposition of the claim; its disposition,  
123 whether by settlement, withdrawal, default or written decision;  
124 and the number of claims currently pending. The original of the  
125 report shall be submitted to the commissioner of administration  
126 by January fifteenth, and a copy shall be filed with the state  
127 librarian and shall be a public document.

128 (e) Subject to the provisions of subparagraph (a) to (d), inclu-  
129 sive, where applicable, all disputes as set forth in subparagraph (a)  
130 and all other claims, controversies, disputes and other matters in  
131 question arising out of, or relating to, this contract or the breach  
132 thereof, except as to an architect's decision on matters relating to

133 artistic effect, if the same is governed by another provision of this  
134 contract, shall at the option of any party be decided by arbitration  
135 before the American Arbitration Association unless the parties  
136 mutually agree otherwise. This agreement to arbitrate shall be  
137 specifically enforceable under the arbitration laws of the com-  
138 monwealth of Massachusetts and judgement upon the award ren-  
139 dered by the arbitrators may be entered in any court of competent  
140 jurisdiction.





