

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.

1870

THE

REPORT

OF THE

COMMISSIONERS

OF THE

LAND OFFICE

FOR THE YEAR

1870

IN

ANSWER TO A RESOLUTION

PASSED BY THE HOUSE OF COMMONS

ON THE 12TH MARCH 1870

BY

W. E. GLADSTONE

SECRETARY

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