



# House of Representatives

General Assembly

**File No. 100**

February Session, 2002

Substitute House Bill No. 5575

*House of Representatives, March 21, 2002*

The Committee on Labor and Public Employees reported through REP. DONOVAN of the 84th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT PROTECTING DISPLACED WORKERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective July 1, 2002*) (a) As used in this section:
- 2 (1) "Awarding authority" means any person, including a contractor  
3 or subcontractor, who awards or otherwise enters into a contract to  
4 perform any of the following services at Bradley International Airport:  
5 Security, food and beverage, hotel service, hotel physical plant  
6 engineering and physical plant engineering.
- 7 (2) "Contractor" means any person who enters into a service contract  
8 with the awarding authority and any subcontractors to such service  
9 contract at any tier who employs ten or more persons.
- 10 (3) "Employee" means any person engaged to perform services  
11 pursuant to a service contract, but does not include a person who is (A)  
12 a managerial, supervisory or confidential employee, including any

13 person who would be so defined under the federal Fair Labor  
14 Standards Act, or (B) employed for less than fifteen hours per week.

15 (4) "Person" means any individual, proprietorship, partnership, joint  
16 venture, corporation, limited liability company, trust association or  
17 other entity that may employ or enter into other contracts, including  
18 the state and its political subdivisions.

19 (5) "Service contract" means a contract let to a contractor on or after  
20 July 1, 2002, by the awarding authority for the performance of any of  
21 the services listed in subdivision (1) of this subsection.

22 (6) "Successor service contract" means a service contract with the  
23 awarding authority under which substantially the same services to be  
24 performed have previously been rendered to the awarding authority  
25 as part of the same program or at the same facility under another  
26 service contract or have previously been rendered by the awarding  
27 authority's own employees.

28 (7) "Terminated contractor" means a contractor whose service  
29 contract expires without renewal or whose contract is terminated, and  
30 includes the awarding authority itself when work previously rendered  
31 by the awarding authority's own employees is the subject of a  
32 successor service contract.

33 (b) Each contractor and awarding authority that enters into a service  
34 contract to be performed at Bradley International Airport shall be  
35 subject to the following obligations:

36 (1) The awarding authority shall give advance notice to a contractor  
37 and the exclusive bargaining representative of any of the contractor's  
38 employees, of the termination of such service contract and shall  
39 provide the contractor and the exclusive bargaining representative  
40 with the name, telephone number and address of the successor  
41 contractor or contractors, if known. The terminated contractor shall,  
42 not later than three days after receipt of such notice, provide the  
43 successor contractor with the name, date of hire and employment

44 occupation classification of each person employed by the terminated  
45 contractor at the site or sites covered by the service contract as of the  
46 date the terminated contractor receives the notice of termination.

47 (2) On the date the service contract terminates, the terminated  
48 contractor shall provide the successor contractor with updated  
49 information concerning the name, date of hire and employment  
50 occupation classification of each person employed by the terminated  
51 contractor at the site or sites covered by the service contract, to ensure  
52 that such information is current up to the actual date of service  
53 contract termination.

54 (3) If the awarding authority fails to notify the terminated contractor  
55 of the identity of the successor contractor, as required by subdivision  
56 (1) of this subsection, the terminated contractor shall provide the  
57 information described in subdivision (2) of this subsection to the  
58 awarding authority not later than three days after receiving notice that  
59 the service contract will be terminated. The awarding authority shall  
60 be responsible for providing such information to the successor  
61 contractor as soon as the successor contractor has been selected.

62 (4) (A) A successor contractor shall retain, for at least ninety days  
63 from the date of first performance of services under the successor  
64 service contract, all of the employees who were employed by the  
65 terminated contractor at the site or sites covered by the service contract  
66 during the eight-month period immediately preceding the termination  
67 date of such service contract.

68 (B) If the successor service contract is terminated prior to the  
69 expiration of such ninety-day period, then any contractor awarded a  
70 subsequent successor service contract shall be bound by the  
71 requirements set forth in this subsection to retain, for a new ninety-day  
72 period commencing with the onset of the subsequent successor service  
73 contract, all of the employees who were previously employed by any  
74 one or more of the terminated contractors at the site or sites covered by  
75 the service contract during the eight-month period immediately  
76 preceding the date of the most recently terminated service contract.

77 (C) At least five days prior to the termination of a service contract,  
78 or at least fifteen days prior to the commencement of the first  
79 performance of service under a successor service contract, whichever is  
80 later, the successor contractor shall hand-deliver a written offer of  
81 employment in substantially the form set forth below to each such  
82 employee in such employee's native language or any other language in  
83 which such employee is fluent:

84                   IMPORTANT INFORMATION REGARDING YOUR  
85                   EMPLOYMENT

86 To: .... (Name of employee)

87 We have received information that you are employed by .... (name of  
88 predecessor contractor) and are currently performing work at ....  
89 (address of worksite). .... (Name of predecessor contractor's) contract  
90 to perform .... (describe services under contract) at .... (address of  
91 worksite) will terminate as of .... (last day of predecessor contract) and  
92 it will no longer be providing those services as of that date.

93 We are .... (name of successor contractor) and have been hired to  
94 provide services similar to those of .... (name of predecessor  
95 contractor) at .... (address of worksite). We are offering you a job with  
96 us for a ninety-day probationary period starting .... (first day of  
97 successor contract) to perform the same type of work that you have  
98 already been doing for .... (name of predecessor contractor) under the  
99 following terms:

100 Payrate (per hour): \$....

101 Hours per shift: ....

102 Total hours per week: ....

103 Benefits: ....

104 You must respond to this offer within the next ten days. If you want to  
105 continue working at .... (address of worksite) you must let us know by

106 .... (no later than five days prior to the expiration of the predecessor  
107 contract or ten days after the date of this letter if the predecessor  
108 contract has already expired). If we do not receive your response by  
109 the end of business that day, we will not hire you and you will lose  
110 your job. We can be reached at .... (successor contractor telephone  
111 number).

112 Connecticut state law gives you the following rights:

113 1. You have the right with certain exceptions, to be hired by our  
114 company for the first ninety days that we begin to provide services at  
115 .... (address of worksite).

116 2. During this ninety-day period, you cannot be fired without just  
117 cause.

118 3. If you believe that you have been fired or laid off in violation of  
119 this law, you have the right to sue us and be awarded back pay,  
120 attorneys' fees and court costs.

121 From: .... (Name of successor contractor)

122 .... (Address of successor contractor)

123 .... (Telephone number of successor contractor)

124 Each offer of employment shall state the time within which such  
125 employee must accept such offer but in no case shall that time be less  
126 than ten days from the date of the offer of employment.

127 (5) If at any time a successor contractor determines that fewer  
128 employees are required to perform the successor service contract than  
129 were required by the terminated contractor, the successor contractor  
130 shall be required to retain such employees by seniority within each job  
131 classification, based upon the employees' total length of service at the  
132 affected site or sites.

133 (6) During such ninety-day period, the successor contractor shall  
134 maintain a preferential hiring list of employees eligible for retention

135 pursuant to subdivision (4) of this subsection, who were not initially  
136 retained by the successor contractor, from which the successor  
137 contractor shall hire additional employees, if necessary.

138 (7) Except as provided under subdivision (5) of this subsection,  
139 during such ninety-day period, the successor contractor shall not  
140 discharge without just cause an employee retained pursuant to this  
141 section. For purposes of this subdivision, "just cause" shall be  
142 determined solely by the performance or conduct of the particular  
143 employee.

144 (8) If the performance of an employee retained pursuant to this  
145 section is satisfactory during the ninety-day period, the successor  
146 contractor shall offer the employee continued employment under the  
147 terms and conditions established by the successor contractor, or as  
148 required by law.

149 (c) (1) An employee displaced or terminated in violation of this  
150 section may bring an action in Superior Court against the awarding  
151 authority, the terminated contractor or the successor contractor, jointly  
152 or severally, to recover damages for any violation of the obligations  
153 imposed under this section.

154 (2) If the employee prevails in such action, the court may award the  
155 employee (A) back pay, including the value of benefits, for each day  
156 during which the violation continues, that shall be calculated at a rate  
157 of compensation not less than the higher of (i) the average regular rate  
158 of pay received by the employee during the last year of employment in  
159 the same job occupation classification, or, if the employee has been  
160 employed for less than one year, the average rate of pay for the  
161 employee's entire employment multiplied by the average number of  
162 hours worked per day over the last four months of employment  
163 preceding the date of the violation, or (ii) the final regular rate of pay  
164 received by the employee at the date of termination multiplied by the  
165 average number of hours worked per day over the last four months,  
166 and (B) reinstatement to the employee's former position at not less  
167 than the most recent rate of compensation received by the employee,

168 including the value of any benefits.

169 (3) If the employee prevails in such action, the court shall award the  
170 employee reasonable attorney fees and costs.

171 (4) Nothing in this subsection shall be construed to limit an  
172 employee's right to bring a common law cause of action for wrongful  
173 termination against the awarding authority, the terminated contractor  
174 or the successor contractor.

175 (d) Any awarding authority or contractor who knowingly violates  
176 the provisions of this section shall pay a penalty not to exceed one  
177 hundred dollars per employee for each day the violation continues.

This act shall take effect as follows:	
Section 1	July 1, 2002

**LAB** Joint Favorable Subst.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Fund-Type	Agency Affected	FY 03 \$	FY 04 \$
Bradley Enterprise Fund - Revenue Loss	Transportation, Dept.	Potential Significant	Potential Significant
Bradley Enterprise Fund - Cost	Transportation, Dept.	Potential Significant	Potential Significant
GF - Cost	Attorney General	Potential Minimal	Potential Minimal

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

This bill could result in significant revenue loss and significant costs to the state’s Bradley Enterprise Fund, and could also result in minimal, absorbable costs to the Office of the Attorney General.

The Department of Transportation (DOT) is the contacting authority for the airport and it funds the operations of Bradley International Airport through the Bradley Enterprise Fund. The fund obtains its revenues from both the airlines and on-the-ground sources. The revenue from restaurants, the hotel and other concessions was about \$6.3 million, or 14% of the fund’s total FY 01 revenues of \$44.5 million.

The bill requires new contractors for these and other specified services at Bradley International Airport to retain their predecessor’s employees for at least 90 days. If an employee performs satisfactorily during the 90-day period, the contractor must offer him continued employment. These employment restrictions could result in fewer successor contractors competing for the airport’s business and could

also result in lower bids since the new contractor would have less control over their personnel costs. This could result in lower revenue for the fund that could be significant.

The bill makes the awarding authority, the original contactor and the successor contractor liable for damages for violation of the bill's provisions. It allows any aggrieved employee to sue any of these parties in Superior Court for damages and lost wages. Potential awards could be significant and they would be paid from the Bradley Enterprise Fund.

The Attorney General would represent the state in any legal proceedings. Their potential costs would be minimal and absorbed within existing appropriations.

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**OLR Bill Analysis**

sHB 5575

***AN ACT PROTECTING DISPLACED WORKERS***

**SUMMARY:**

This bill requires entities that take over contracts to provide certain services at Bradley International Airport to retain their predecessors' employees for at least 90 days. It imposes responsibilities on the authority that initially awards the contract, the original contractor, and successor contractors. It bars the successor contractor from firing the retained employees during the 90-day period except for just cause. The successor contractor can lay them off, but must do so by seniority. An employee displaced or terminated in violation of these provisions can sue for damages and reinstatement to his job. If a retained employee's performance during the 90-day period is satisfactory, the successor contractor must offer him continued employment under terms and conditions it sets, or as required by law.

An awarding authority or contractor that knowingly violates these provisions is subject to a fine of up to \$100 per employee for each day the violation continues.

The bill applies to contracts entered on or after July 1, 2002 with (1) entities that agree to provide the covered services and (2) their subcontractors at any tier who employ 10 or more people. It does not apply to employees in managerial, supervisory, or confidential positions, or who work less than 15 hours per week.

EFFECTIVE DATE: July 1, 2002

**AWARDING AUTHORITY'S RESPONSIBILITIES**

Under the bill, an awarding authority is any person or entity that awards or otherwise enters into a contract to perform the following services at Bradley: security, food and beverage, hotel, hotel physical plant engineering, and physical plant engineering (presumably physical plant engineering at the airport as distinct from the hotel). It can be an individual, business, the state or its political subdivisions, or

any other entity that may employ or enter into contracts.

The awarding authority must give advance notice to a contractor whose contract will be terminated and the union representing any of the contractor's employees. (It appears that this provision also applies when the authority fails to renew a contract.) The authority must give the contractor and union the name, address, and telephone number of the successor contractor or contractors, if known.

### **TERMINATED CONTRACTOR'S RESPONSIBILITY**

Within three days of receiving the notice, the terminated contractor must provide the successor contractor with the name, hiring date, and job classification of each person employed by the terminated contractor at the site covered by the contract as of the date the contractor receives the notice. On the date the contract ends, the terminated contractor must provide the successor contractor with updated information on these employees.

If the awarding authority failed to notify the terminated contractor of the name of the successor contractor, the terminated contractor must provide the information about its employees to the authority within three days of receiving notice that the contract will be terminated. The authority must give this information to the successor contractor, once it has been selected.

### **RESPONSIBILITIES OF SUCCESSOR CONTRACTORS**

A successor contractor must retain all of the employees that the terminated contractor employed at the affected site during the eight-month period before the date its contract was terminated. It must do this for at least 90 days from the date it begins to provide service. If the successor contract is terminated before the end of the 90 days, the subsequent successor contractor must retain all of the employees who were employed by any of the terminated contractors at the site covered by the contract during the eight-month period before the most recent termination. The new contractor must retain these employees for a new 90-day period, which starts when it begins its contract.

The successor contractor must hand deliver a written employment offer to each employee who is eligible for retention. It must be written in a language the employee understands and delivered by the later of

five days before the termination of the original contract or 15 days before the contractor begins to provide service.

The bill specifies the notice's content. Among other things, the contractor must inform the employee of pay rate, hours (per shift and per week), and benefits it is offering. The notice must describe the employee's rights under the bill and the contractor's name, address, and telephone number. The bill has contradictory language regarding how long the employee has to respond to the offer (see COMMENT).

During the 90-day period, the contractor must keep a preferential hiring list of employees eligible for retention that it did not initially retain. The contractor must hire additional employees, if needed, from this list. During this period, the employer cannot fire any retained employee except for just cause, i.e., poor performance or misconduct. However, if the contractor determines at any time that it needs fewer employees than the terminated contractor had, he can lay employees off. In doing so, it must retain employees by seniority within each job class, based on an employee's total length of service at the affected site. It appears that laid off employees are not eligible to be placed on the preferential hiring list.

If an employee performs satisfactorily during the 90-day period, the contractor must offer him continued employment, under terms and conditions it sets or as required by law.

## **REMEDIES FOR A DISPLACED EMPLOYEE**

An employee who is displaced or terminated in violation of the above provisions can sue the awarding authority, terminated contractor, or successor for damages. He can sue one or all of these parties. If the employee wins the case, the court can award backpay and benefits and reinstatement to his former position at his most recent salary and benefit level. Back pay must be at least the higher of (1) the employee's regular pay rate for his last year on the job (his last four months on the job if he was employed for less than one year) or (2) his final regular rate of pay on his last day multiplied by his average number of hours worked per day over the last four months. The court must award prevailing employees reasonable attorney fees and costs.

These provisions do not limit an employee's right to file suit against the awarding authority, terminated contractor, or successor contractor

for wrongful termination under common law.

**COMMENT**

***Contradictory Provisions On When an Employee Must Respond***

The bill requires that the successor contractor give the employee at least 10 days to respond to its offer of employment. But its provisions regarding the notice the contractor must give to the employee appear to give the employee less time to decide, if the offer is made while the original contract is still in effect. In such cases, the successor contractor's notice must inform the employee that he must respond no later than five days before the original contract expires. Since the bill allows the successor contractor to provide the notice as late as five days before the original contract expires, the date specified in the notice could require the employee to respond on the day he receives the offer.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9      Nay 5