



House of Representatives

File No. 636

General Assembly

February Session, 2002

(Reprint of File No. 100)

Substitute House Bill No. 5575
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 4, 2002

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) (1) "Awarding authority"
2 means any person, including a contractor or subcontractor, who
3 awards or otherwise enters into a contract to perform food and
4 beverage services at Bradley International Airport.

5 (2) "Contractor" means any person who enters into a service contract
6 with the awarding authority and any subcontractors to such service
7 contract at any tier who employs ten or more persons.

8 (3) "Employee" means any person engaged to perform services
9 pursuant to a service contract, but does not include a person who is (A)
10 a managerial, supervisory or confidential employee, including any
11 person who would be so defined under the federal Fair Labor
12 Standards Act, or (B) employed for less than fifteen hours per week.

13 (4) "Person" means any individual, proprietorship, partnership, joint
14 venture, corporation, limited liability company, trust association or

15 other entity that may employ or enter into other contracts, including
16 the state and its political subdivisions.

17 (5) "Service contract" means a contract for the performance of food
18 and beverage services at Bradley International Airport, let by the
19 awarding authority (A) after July 1, 2001, and before July 1, 2002,
20 provided the successor contractor had actual knowledge of the
21 pendency in the General Assembly of proposed legislation with
22 content similar to this act, or (B) on or after July 1, 2002.

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

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

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

37 (1) The awarding authority shall give advance notice to a contractor
38 and the exclusive bargaining representative of any of the contractor's
39 employees, of the termination or nonrenewal of such service contract
40 and shall provide the contractor and the exclusive bargaining
41 representative with the name, telephone number and address of the
42 successor contractor or contractors, if known. The terminated
43 contractor shall, not later than three days after receipt of such notice,
44 provide the successor contractor with the name, date of hire and
45 employment occupation classification of each person employed by the
46 terminated contractor at the site or sites covered by the service contract

47 as of the date the terminated contractor receives the notice of
48 termination or nonrenewal.

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

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

64 (4) (A) Except as provided in subparagraph (D) of this subdivision,
65 a successor contractor shall retain, for at least ninety days from the
66 date of first performance of services under the successor service
67 contract, all of the employees who were continuously employed by the
68 terminated contractor at the site or sites covered by the service contract
69 during the six-month period immediately preceding the termination or
70 nonrenewal of such service contract, including any periods of layoff or
71 leave with recall rights.

72 (B) Except as provided in subparagraph (D) of this subdivision, if
73 the successor service contract is terminated prior to the expiration of
74 such ninety-day period, then any contractor awarded a subsequent
75 successor service contract shall be bound by the requirements set forth
76 in this subsection to retain, for a new ninety-day period commencing
77 with the onset of the subsequent successor service contract, all of the
78 employees who were previously employed by any one or more of the

79 terminated contractors at the site or sites covered by the service
80 contract continuously during the six-month period immediately
81 preceding the date of the most recently terminated service contract,
82 including any periods of layoff or leave with recall rights.

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

90 "IMPORTANT INFORMATION REGARDING YOUR
91 EMPLOYMENT

92 To: (Name of employee)

93 We have received information that you are employed by (name of
94 predecessor contractor) and are currently performing work at
95 (address of worksite). (Name of predecessor contractor's) contract
96 to perform (describe services under contract) at (address of
97 worksite) will terminate as of (last day of predecessor contract) and
98 it will no longer be providing those services as of that date.

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

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

107 Hours per shift:

108 Total hours per week:

109 Benefits:

110 You must respond to this offer within the next ten days. If you want to
111 continue working at (address of worksite) you must let us know by
112 (no later than ten days after the date of this letter). If we do not
113 receive your response by the end of business that day, we will not hire
114 you and you will lose your job. We can be reached at (successor
115 contractor telephone number).

116 Connecticut state law gives you the following rights:

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

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

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

125 From: (Name of successor contractor)

126 (Address of successor contractor)

127 (Telephone number of successor contractor)"

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

131 (D) The provisions of subparagraphs (A) and (B) of this subdivision
132 shall not be construed to require a successor contractor to retain any
133 employee whose attendance and performance records, while working
134 under the terminated service contract, would lead a reasonably
135 prudent employer to terminate the employee.

136 (5) If at any time a successor contractor determines that fewer
137 employees are required to perform the successor service contract than
138 were required by the terminated contractor, the successor contractor
139 shall be required to retain such employees by seniority within each job
140 classification, based upon the employees' total length of service at the
141 affected site or sites.

142 (6) During such ninety-day period, the successor contractor shall
143 maintain a preferential hiring list of employees eligible for retention
144 pursuant to subdivision (4) of this subsection, who were not initially
145 retained by the successor contractor, from which the successor
146 contractor shall hire additional employees, if necessary.

147 (7) Except as provided under subdivision (5) of this subsection,
148 during such ninety-day period, the successor contractor shall not
149 discharge without just cause an employee retained pursuant to this
150 section. For purposes of this subdivision, "just cause" shall be
151 determined solely by the performance or conduct of the particular
152 employee.

153 (8) If the performance of an employee retained pursuant to this
154 section is satisfactory during the ninety-day period, the successor
155 contractor shall offer the employee continued employment under the
156 terms and conditions established by the successor contractor, or as
157 required by law.

158 (c) (1) An employee displaced or terminated in violation of this
159 section may bring an action in Superior Court against the awarding
160 authority, the terminated contractor or the successor contractor, jointly
161 or severally, to recover damages for any violation of the obligations
162 imposed under this section.

163 (2) If the employee prevails in such action, the court may award the
164 employee (A) back pay, including the value of benefits, for each day
165 during which the violation continues, that shall be calculated at a rate
166 of compensation not less than the higher of (i) the average regular rate
167 of pay received by the employee during the last year of employment in

168 the same job occupation classification, or, if the employee has been
 169 employed for less than one year, the average rate of pay for the
 170 employee's entire employment multiplied by the average number of
 171 hours worked per day over the last four months of employment
 172 preceding the date of the violation, or (ii) the final regular rate of pay
 173 received by the employee at the date of termination multiplied by the
 174 average number of hours worked per day over the last four months,
 175 and (B) reinstatement to the employee's former position at not less
 176 than the most recent rate of compensation received by the employee,
 177 including the value of any benefits.

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

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

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

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

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	Department of Transportation (Bradley International Airport)	Potential Significant	Potential Significant
Bradley Enterprise Fund - Cost	Department of Transportation (Bradley International Airport)	Potential Significant	Potential Significant
GF - Cost	Attorney General	Minimal	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 bill requires new contractors for food and beverage 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 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 and other concessions was about \$6 million, or 13.4% of the fund's total FY 01 revenues of \$44.5 million.

The bill also 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.

House Amendment "A" alters the original bill by limiting its requirements to successor contractors for food and beverage services at Bradley International Airport, eliminating contractors for security, hotel service, hotel physical plant engineering and physical plant engineering services. This is anticipated to have a minimal impact on the potential significant costs and revenue loss of the original bill.

OLR Amended Bill Analysis

sHB 5575 (as amended by House "A")*

AN ACT PROTECTING DISPLACED WORKERS**SUMMARY:**

This bill requires entities that take over contracts to provide food and beverage services at Bradley International Airport to retain their predecessors' employees for at least 90 days. The successor contractor does not have to retain an employee with a poor attendance or performance record.

The bill imposes responsibilities on the authority that initially awards the contract, the original contractor, and successor contractors who have 10 or more employees. 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. The bill also applies to contracts awarded between July 1, 2001 and July 1, 2002, so long as the successor contractor actually knew that the legislature was considering legislation like the bill.

EFFECTIVE DATE: July 1, 2002

*House Amendment "A" (1) exempts hotel, plant engineering, and airport security contractors from the bill's; (2) subjects certain contracts awarded between July 1, 2001 and July 1, 2002 to the bill; (3) requires successor contractors to hire workers employed by the terminated contractor six, rather than eight, months before the termination and requires that such employees have been continuously employed, but counts periods of lay off or leave with recall rights as employment for this purpose; (4) allows a successor contractor to release an employee with a poor attendance and performance record; and (5) resolves a contradiction in the bill as to the amount of time the employee has to respond to the successor contractor's job offer.

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 food and beverage services at Bradley. 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 or not renewed and the union representing any of the contractor's employees. 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 generally must retain all of the employees that the terminated contractor continuously employed at the affected site during the six-month period before the date its contract was terminated. For this purpose, an employee is considered to have been continuously employed during this time if he was laid off or on leave with recall rights. However, a successor contractor does not have to retain an employee whose attendance and performance while working for the terminated contractor would have lead a prudent employer to terminate him.

The successor contractor must retain the employee for at least 90 days from the date it begins to provide service. If it is terminated before the end of the 90 days, the subsequent successor contractor must retain all of the employees who were continuously employed by any of the terminated contractors at the site covered by the contract during the six-month period before the most recent termination. Periods of lay-off or leave with recall rights count as employment for this purpose. 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 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. It must state that the employee has t10 days to respond.

During the 90-day period, the contractor must keep a preferential hiring list of employees eligible for retention that it did not initially retain. (It is not clear which employees would be affected by this provision.) 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 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 back pay 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.

BACKGROUND

Legislative History

On April 3, 10, and 18, the House referred the original version of the bill (File 100) to the Judiciary, Transportation, and Appropriations committees respectively. The committees reported it favorably on April 8, 17, and 24, respectively.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 5

Judiciary Committee

Joint Favorable Report

Yea 26 Nay 11

Transportation Committee

Joint Favorable Report

Yea 20 Nay 10

Appropriations Committee

Joint Favorable Report

Yea 31 Nay 15