



# House of Representatives

General Assembly

**File No. 23**

February Session, 2004

House Bill No. 5054

*House of Representatives, March 4, 2004*

The Committee on Labor and Public Employees reported through REP. RYAN, K. of the 139th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## **AN ACT CONCERNING THE EMPLOYEES' REVIEW BOARD.**

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

1 Section 1. Section 5-202 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 (a) Any employee who is not included in any collective bargaining  
4 unit of state employees and who has achieved a permanent  
5 appointment as defined in subdivision (19) of section 5-196 may appeal  
6 to the Employees' Review Board if [he or she] such employee receives  
7 an unsatisfactory performance evaluation or is demoted, suspended or  
8 dismissed, or is aggrieved as a result of alleged discrimination, or  
9 unsafe or unhealthy working conditions or violations involving the  
10 interpretation and application of a specific state personnel statute,  
11 regulation or rule. Such employee must have complied with  
12 preliminary review procedures, except as otherwise provided in  
13 subsection [(k)] (l) of this section. Such an appeal shall be submitted to  
14 the board [within] not later than thirty days [of] from the completion

15 of the final level of the preliminary review procedure, provided the  
16 first level of the procedure shall have been initiated no later than thirty  
17 calendar days from the date of the alleged violation, except that in  
18 cases of dismissal, demotion or suspension the grievance must be  
19 submitted directly to the third level of the procedure and shall have  
20 been initiated no later than thirty calendar days from the effective date  
21 of such action.

22 (b) Any group of employees that is not included in any collective  
23 bargaining unit of state employees may file an appeal as a group  
24 directly with the Employees' Review Board if such group of employees  
25 is laid off or dismissed, or is aggrieved as a result of alleged  
26 discrimination, or unsafe or unhealthy working conditions or  
27 violations involving the interpretation and application of a specific  
28 state personnel statute, regulation or rule, provided each member of  
29 such group (1) is appealing the same or a similar issue, as determined  
30 by the Employees' Review Board, (2) is a permanent employee, as  
31 defined in subdivision (20) of section 5-196, and (3) has achieved a  
32 permanent appointment, as defined in subdivision (19) of section 5-  
33 196. Such an appeal shall be submitted to the board not later than  
34 thirty calendar days from the specific incident or effective date of  
35 action giving rise to such appeal.

36 [(b)] (c) Upon receiving an appeal, the board shall assign a time and  
37 place for a hearing and shall give notice [thereof] of such time and  
38 place to the parties concerned. The hearing panel shall not be bound by  
39 technical rules of evidence prevailing in the courts. If, after hearing, a  
40 majority of the hearing panel determines that the action appealed from  
41 was arbitrary or taken without reasonable cause, the appeal shall be  
42 sustained; otherwise, the appeal shall be denied. The hearing panel  
43 shall have the power to direct appropriate remedial action and shall do  
44 so after taking into consideration just and equitable relief to the  
45 employee or group of employees and the best interests and  
46 effectiveness of the state service. The hearing panel shall render a  
47 decision [within] not later than sixty calendar days from the date of the  
48 conclusion of the hearing.

49        [(c)] (d) The employee or group of employees in any such case shall  
50 be furnished, upon [his] request, with a copy of the transcript of the  
51 proceedings before the board. The chairman of the board shall  
52 establish a fair and reasonable fee per page to be charged for such  
53 transcript which fee shall not exceed the fee per page for a transcript  
54 charged by court reporters for the judicial district of Hartford.

55        [(d) Within] (e) Not later than ten days [of] from the issuance date of  
56 a decision by a hearing panel sustaining an appeal, the appointing  
57 authority of the employee shall take such measures as are necessary to  
58 comply with the remedial action directed by the hearing panel.

59        [(e)] (f) An employee or group of employees laid off or dismissed by  
60 reason of economy, lack of work, insufficient appropriation, change in  
61 departmental organization or abolition of position may file an appeal  
62 with the board only on the grounds that the order of layoff or  
63 dismissal has not been determined in accordance with the provisions  
64 of section 5-241, provided (1) such employee has initiated the third  
65 level of the preliminary review procedure [within] not later than thirty  
66 calendar days [of] from the effective date of such layoff or dismissal, or  
67 (2) such group of employees submits such appeal to the board not later  
68 than thirty calendar days from the effective date of the layoff or  
69 dismissal.

70        [(f)] (g) All matters involving examination, including application  
71 rejection, type of examination or results, compensation for class or  
72 classes, establishment of a new class or classes, classification of a  
73 position, occupational group or career progression level, compliance  
74 with health and safety standards and the Connecticut Occupational  
75 Safety and Health Act or alleged discrimination in cases where an  
76 appeal has been filed with the Commission on Human Rights and  
77 Opportunities, shall not be appealable under this section.

78        [(g)] (h) The first level of the preliminary review procedure  
79 preparatory to the filing of an appeal from an alleged grievable action  
80 under subsection (a) of this section other than dismissal, demotion or  
81 suspension shall be the aggrieved employee's supervisor or

82 department chief or other employee as designated by the employee's  
83 appointing authority. Such aggrieved employee shall present the  
84 employee's grievance in writing on a form developed by the Secretary  
85 of the Office of Policy and Management and the Employee Review  
86 Board which form shall contain a statement of the date the alleged  
87 violation occurred and the relief sought in answer to the grievance.  
88 The first level designee shall give said designee's answer to such  
89 employee [within] not later than seven calendar days from the date the  
90 grievance is submitted to said designee or [within] not later than seven  
91 days from the date of a meeting convened for the purpose of reviewing  
92 the grievance, in which case such meeting shall be convened [within]  
93 not later than seven calendar days from the date the grievance is  
94 submitted.

95 [(h)] (i) The second level of the preliminary review procedure  
96 preparatory to the filing of an appeal from an alleged grievable action  
97 under subsection (a) of this section other than dismissal, demotion or  
98 suspension shall be the aggrieved employee's appointing authority or  
99 designated representative. Such employee, upon receiving a response  
100 at the first level which [he] the employee deems to be unsatisfactory,  
101 may proceed to this level by presenting the same form containing the  
102 first level answers [within] not later than seven calendar days from the  
103 date the answer was given at the first level. The appointing authority  
104 or designated representative shall answer such employee [within] not  
105 later than seven calendar days from the date the grievance is received  
106 or [within] not later than seven calendar days from the date of a  
107 meeting convened for the purpose of reviewing such grievance, in  
108 which case such meeting shall be convened [within] not later than  
109 seven calendar days from the date such grievance is received.

110 [(i)] (j) The third level of the preliminary review procedure  
111 preparatory to the filing of an appeal from an alleged grievable action  
112 under subsection (a) of this section including dismissal, demotion or  
113 suspension shall be the Secretary of the Office of Policy and  
114 Management or the secretary's designated representative. The  
115 employee, upon receiving a response at the second level which [he] the

116 employee deems to be unsatisfactory, may proceed to this level by  
117 presenting the same form containing the first and second level answers  
118 [within] not later than seven calendar days from the date the answer  
119 was given at the second level, except in the case of a dismissal,  
120 demotion or suspension in which case such employee must present the  
121 form, completed but without answers at lower levels [within] not later  
122 than thirty calendar days [of] from the effective date of such action.  
123 The Secretary of the Office of Policy and Management or the  
124 secretary's designated representative shall reply to such employee  
125 [within] not later than thirty calendar days from the date such  
126 grievance is received or [within] not later than fifteen calendar days  
127 from the date of a meeting convened for the purpose of reviewing such  
128 grievance, in which case such meeting shall be convened [within] not  
129 later than thirty calendar days from the date such grievance is  
130 received.

131 [(j)] (k) Employees shall be entitled to have representation of their  
132 own choosing at any or all levels of the review or appeal procedure.  
133 No verbatim records shall be required in the preliminary procedure  
134 and no oaths or affirmations shall be administered.

135 [(k)] (l) Any state officer or employee, as defined in section 4-141, or  
136 any appointing authority shall not take or threaten to take any  
137 personnel action against any state employee or group of state  
138 employees in retaliation for [such employee's] the filing of an appeal  
139 with the Employees' Review Board or a grievance with any level of the  
140 preliminary review procedure pursuant to this section. An employee  
141 or group of employees alleging that such action has been threatened or  
142 taken may file an appeal directly with the board [within] not later than  
143 thirty days [of] from knowledge of the specific incident giving rise to  
144 such claim.

145 [(l)] (m) Either the Secretary of the Office of Policy and Management  
146 or any employee or group of employees aggrieved by a decision of the  
147 Employees' Review Board may appeal [therefrom] from such decision  
148 in accordance with section 4-183. The board may intervene as a party

149 in any appeal of its decision. Any employee or group of employees  
 150 who prevails in a decision of the Employees' Review Board shall be  
 151 entitled to recover court costs and reasonable attorney's fees if such  
 152 decision is appealed by the Secretary of the Office of Policy and  
 153 Management and affirmed by the court in such appeal.

154 Sec. 2. Subsection (a) of section 5-240 of the general statutes is  
 155 repealed and the following is substituted in lieu thereof (*Effective*  
 156 *October 1, 2004*):

157 (a) An appointing authority, subject to any regulations issued by the  
 158 Secretary of the Office of Policy and Management, may reprimand or  
 159 warn an employee in the classified service under the appointing  
 160 authority's jurisdiction or suspend such an employee without pay or  
 161 with reduced pay for an aggregate period not exceeding sixty calendar  
 162 days in any calendar year. For any employee not included in any  
 163 collective bargaining unit of state employees, any written reprimand or  
 164 warning shall be included in the employee's personnel file and, if not  
 165 merged in the next service rating, shall be expunged after twelve  
 166 months from the date of reprimand or warning. Any such written  
 167 reprimand or warning may be reviewed in accordance with the  
 168 procedures established in subsections [(g) and] (h) and (i) of section 5-  
 169 202, as amended by this act.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>

**LAB**      *Joint Favorable*

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:

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**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 05 \$</b>	<b>FY 06 \$</b>
Department of Administrative Services	GF - Cost	Potential Minimal	Potential Minimal

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

This bill allows a group of non-unionized permanent state employees to appeal directly to the Employees’ Review Board. The Employees’ Review Board functions to resolve grievances and disciplinary action issues of permanent state employees not covered under collective bargaining. The Employees’ Review Board is assigned to the Department of Administrative Services (DAS) for administrative purposes only.

This bill will result in potential minimal costs to DAS. The number of additional appeals that may be brought before the Employees’ Review Board as a result of this bill is not expected to be significant.

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**OLR Bill Analysis**

HB 5054

**AN ACT CONCERNING THE EMPLOYEES' REVIEW BOARD****SUMMARY:**

This bill, in certain circumstances, allows nonunion executive branch civil-service managers to appeal directly, as a group, to the Employees' Review Board. Under current law, individual nonunion employees can, under most circumstances, appeal an employment-related issue to the board only after going through a three-stage grievance procedure. The bill extends the hearing and related provisions that apply to individual appeals to such group appeals.

EFFECTIVE DATE: October 1, 2004

**GROUP APPEALS TO THE BOARD**

By law, a nonunionized permanent state employee can appeal to the board after going through a grievance procedure. The procedure usually involves the following three stages: (1) his immediate supervisor, (2) his appointing authority (e.g., his agency commissioner), and (3) the Office of Policy and Management (OPM) secretary. (The latter two officers can name designees to hear grievances.) An individual can grieve a wide range of issues. Cases involving dismissal, demotion, or suspension must go directly to the third stage of the grievance procedure.

The bill allows any group of permanent, nonunion, civil-service employees (executive branch managers) to appeal directly, as a group to the board if the group (1) has been laid off or dismissed or (2) is aggrieved by (a) alleged discrimination; (b) unsafe or unhealthy working conditions; or (c) the interpretation and application of a specific state personnel statute, regulation, or rule. (Individual employees can already grieve these issues.) Each member of the group must be (1) appealing the same or similar issue as determined by the Employees' Review Board and (2) an employee holding a permanent civil-service appointment. The group must submit its appeal to the board within 30 days of the specific incident or effective date that caused the complaint.

The bill extends to group appeals provisions that apply to individual appeals. Among other things, these provisions (1) require the board to name a panel to hear the appeal and require the panel to issue its decision within 60 days of the end of the hearing; (2) bar state officers or employees from retaliating against employees who appeal to the board; and (3) allow employees or the OPM secretary, if aggrieved by the board's decision, to appeal it to the courts.

By law, individual employees can appeal layoffs and dismissals that arise from certain causes only on the grounds that the dismissal or layoff has not complied with relevant state law. The causes are lack of work, economy, insufficient appropriation, change in departmental organization, or abolition of a position. The bill extends these provisions to group appeals. Such appeals must be made to the board no later than 30 days from the layoff or dismissal effective date. By law, the employee can only appeal to the board under these circumstances if he has initiated the third stage of the grievance procedure within 30 days of the layoff or dismissal.

## **BACKGROUND**

### ***Employees' Review Board***

The board hears complaints from nonunion state employees regarding issues such as unsatisfactory performance evaluations, demotions, suspensions, or dismissals.

## **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Report

Yea 10    Nay 3