



Senate

General Assembly

File No. 354

February Session, 2004

Substitute Senate Bill No. 386

Senate, March 31, 2004

The Committee on Government Administration and Elections reported through SEN. DEFRONZO of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING WHISTLEBLOWER COMPLAINTS AND CIVIL RECOVERY OF MISAPPROPRIATED FUNDS.

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

1 Section 1. Section 4-61dd of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 (a) Any person having knowledge of any matter involving
4 corruption, unethical practices, violation of state laws or regulations,
5 mismanagement, gross waste of funds, abuse of authority or danger to
6 the public safety occurring in any state department or agency or any
7 quasi-public agency, as defined in section 1-120, or any person having
8 knowledge of any matter involving corruption, violation of state or
9 federal laws or regulations, gross waste of funds, abuse of authority or
10 danger to the public safety occurring in any large state contract, may
11 transmit all facts and information in [his] such person's possession
12 concerning such matter to the Auditors of Public Accounts. The

13 Auditors of Public Accounts shall review such matter and report their
14 findings and any recommendations to the Attorney General. Upon
15 receiving such a report, the Attorney General shall make such
16 investigation as [he] the Attorney General deems proper. Nothing in
17 this section shall be construed to limit such investigation to the
18 allegations or information transmitted pursuant to this section. At the
19 request of the Attorney General or on their own initiative, the auditors
20 shall assist in the investigation. The Attorney General shall have power
21 to summon witnesses, require the production of any necessary books,
22 papers or other documents and administer oaths to witnesses, where
23 necessary, for the purpose of an investigation pursuant to this section
24 or sections 2 to 5, inclusive, of this act. Upon the conclusion of [his] the
25 investigation, the Attorney General shall where necessary, report [his]
26 any findings to the Governor, or in matters involving criminal activity,
27 to the Chief State's Attorney. [The] In addition to the exempt records
28 provision of section 1-210, as amended, the Auditors of Public
29 Accounts and the Attorney General shall not, after receipt of any
30 information from a person under the provisions of this section or
31 sections 2 to 5, inclusive of this act, disclose the identity of such person
32 without [his] such person's consent unless the Auditors of Public
33 Accounts or the Attorney General determine that such disclosure is
34 unavoidable, and may withhold records of such investigation, during
35 the [course] pendency of the investigation.

36 (b) (1) No state officer or employee, as defined in section 4-141, no
37 quasi-public agency officer or employee, no officer or employee of a
38 large state contractor and no appointing authority shall take or
39 threaten to take: (A) [any] Any personnel action against any state or
40 quasi-public agency employee or any employee of a large state
41 contractor, or (B) any action to impede or terminate a contract between
42 a state agency and a large state contractor in retaliation for such
43 employee's or contractor's disclosure of information to an employee of
44 (i) the Auditors of Public Accounts or the Attorney General under the
45 provisions of subsection (a) of this section or sections or sections 2 to 5,
46 inclusive, of this act; (ii) the state agency or quasi-public agency where
47 such state officer or employee is employed; (iii) a state agency

48 pursuant to a mandated reporter statutes; or (iv) in the case of a large
49 state contractor, to an employee of the contracting state agency
50 concerning information involving the large state contract.

51 (2) If a state or quasi-public agency employee or an employee of a
52 large state contractor alleges that a personnel action has been
53 threatened or taken in [retaliation for such employee's disclosure of
54 information to the Auditors of Public Accounts or the Attorney
55 General under the provisions of subsection (a) of this section,]
56 violation of subdivision (1) of this subsection the employee may notify
57 the Attorney General, who shall investigate pursuant to subsection (a)
58 of this section. [After the conclusion of such investigation, the Attorney
59 General, the employee or]

60 (3) (A) Not later than thirty days after learning of the specific
61 incident giving rise to a claim that a personnel action has been
62 threatened or has occurred in violation of subdivision (1) of this
63 subsection, a state or quasi-public agency employee, an employee of a
64 large state contractor or the employee's attorney may file a complaint
65 concerning such personnel action with the Chief Human Rights
66 Referee designated under section 46a-57. The Chief Human Rights
67 Referee shall assign the complaint to a human rights referee appointed
68 under said section 46a-57, who shall conduct a hearing and issue a
69 decision concerning whether the officer or employee taking or
70 threatening to take the personnel action violated any provision of this
71 section. If the human rights referee finds such a violation, the referee
72 may award the aggrieved employee reinstatement to the employee's
73 former position, back pay and reestablishment of any employee
74 benefits to which the employee would otherwise have been eligible if
75 such violation had not occurred, reasonable attorneys' fees, and any
76 other damages. For the purposes of this subsection, such human rights
77 referee shall act as an independent hearing officer. The decision of a
78 human rights referee under this subsection may be appealed by any
79 person who was a party at such hearing, in accordance with the
80 provisions of section 4-183.

81 [(3)] (B) The Chief Human Rights Referee shall adopt regulations, in
82 accordance with the provisions of chapter 54, establishing the
83 procedure for filing complaints and noticing and conducting hearings
84 under [subdivision (2) of this subsection] subparagraph (A) of this
85 subdivision.

86 (4) As an alternative to the provisions of subdivisions (2) and (3) of
87 this subsection (A) a state or quasi-public agency employee who
88 alleges that a personnel action has been threatened or taken may file an
89 appeal within thirty days of knowledge of the specific incident giving
90 rise to such claim with the Employees' Review Board under section 5-
91 202, or, in the case of a state or quasi-public agency employee covered
92 by a collective bargaining contract, in accordance with the procedure
93 provided by such contract, or (B) an employee of a large state
94 contractor alleging that such action has been threatened or taken may,
95 after exhausting all available administrative remedies, bring a civil
96 action in accordance with the provisions of subsection (c) of section 31-
97 51m.

98 (5) In any proceeding under subdivision (2), (3) or (4) of this
99 subsection concerning a personnel action taken or threatened against
100 any state or quasi-public agency employee or any employee of a large
101 state contractor, which personnel action occurs within one year after
102 the employee first transmits facts and information concerning a matter
103 under subsection (a) of this section or sections 2 to 5, inclusive, of this
104 act to the Auditors of Public Accounts or the Attorney General, there
105 shall be a rebuttable presumption that the personnel action is in
106 retaliation for the action taken by the employee under subsection (a) of
107 this section.

108 (6) If a state officer or employee, as defined in section 4-141, a quasi-
109 public agency officer or employee, an officer or employee of a large
110 state contractor or an appointing authority takes or threatens to take
111 any action to impede or cancel a contract between a state agency and a
112 large state contractor, in violation of subdivision (1) of this subsection,
113 such person may, not later than ninety days from the date of such

114 violation, bring a civil action in the superior court for the judicial
115 district of Hartford to recover damages, attorney's fees and costs.

116 (c) Any employee of a state or quasi-public agency or large state
117 contractor, who is found to have knowingly and maliciously made
118 false charges under subsection (a) of this section shall be subject to
119 disciplinary action by [his] such employee's appointing authority up to
120 and including dismissal. In the case of a state or quasi-public agency
121 employee, such action shall be subject to appeal to the Employees'
122 Review Board in accordance with section 5-202, or in the case of state
123 or quasi-public agency employees included in collective bargaining
124 contracts, the procedure provided by such contracts.

125 (d) On or before September first, annually, the Auditors of Public
126 Accounts shall submit to the clerk of each house of the General
127 Assembly a report indicating the number of matters for which facts
128 and information were transmitted to the auditors pursuant to this
129 section during the preceding state fiscal year and the disposition of
130 each such matter.

131 (e) Each contract between a state or quasi-public agency and a large
132 state contractor shall provide that, if an officer, employee or
133 appointing authority of a large state contractor takes or threatens to
134 take any personnel action against any employee of the contractor in
135 retaliation for such employee's disclosure of information to any
136 employee of the contracting state or quasi-public agency or the
137 Auditors of Public Accounts or the Attorney General under the
138 provisions of subsection (a) of this section, the contractor shall be liable
139 for a civil penalty of not more than five thousand dollars for each
140 offense, up to a maximum of twenty per cent of the value of the
141 contract. Each violation shall be a separate and distinct offense and in
142 the case of a continuing violation each calendar day's continuance of
143 the violation shall be deemed to be a separate and distinct offense. The
144 executive head of the state or quasi-public agency may request the
145 Attorney General to bring a civil action in the superior court for the
146 judicial district of Hartford to seek imposition and recovery of such

147 civil penalty.

148 (f) Each large state contractor shall post a notice of the provisions of
149 this section relating to large state contractors in a conspicuous place
150 which is readily available for viewing by the employees of the
151 contractor.

152 (g) No person who, in good faith discloses information to the
153 Auditors of Public Accounts or the Attorney General in accordance
154 with this section shall be liable for any civil damages resulting from
155 such good faith disclosure.

156 (h) As used in this section:

157 (1) "Large state contract" means a contract between an entity and a
158 state or quasi-public agency, having a value of five million dollars or
159 more; [, except for a contract for the construction, alteration or repair of
160 any public building or public work;] and

161 (2) "Large state contractor" means an entity that has entered into a
162 large state contract with a state or quasi-public agency.

163 Sec. 2. (NEW) (*Effective October 1, 2004*) For purposes of sections 2 to
164 5, inclusive, of this act:

165 (1) "Claim" means any request or demand for money or property
166 made (A) to a state officer, state employee, state agent or any other
167 representative of the state, or (B) to a contractor, subcontractor, grantee
168 or other person if the state provides any portion of the money or
169 property requested or demanded, or if the state will reimburse directly
170 or indirectly such contractor, subcontractor, grantee or other person for
171 any portion of the money or property requested or demanded;

172 (2) "Knowing" and "knowingly" means a person, with respect to
173 information, does any of the following: (A) Has actual knowledge of
174 the information, (B) acts in deliberate ignorance of the truth or falsity
175 of the information, or (C) acts in reckless disregard of the truth or
176 falsity of the information;

177 (3) "Original source" means an individual who has direct and
178 independent knowledge of information that the individual voluntarily
179 provided to the Attorney General or the Auditors of Public Accounts,
180 without public disclosure, and on which the Attorney General has
181 based an action brought pursuant to section 4 of this act;

182 (4) "Person" means any natural person, corporation, partnership,
183 association, trust or other business or legal entity; and

184 (5) "State" means any state agency in the executive, legislative and
185 judicial branch, including any quasi-public authority as defined in
186 section 1-120 of the general statutes.

187 Sec. 3. (NEW) (*Effective October 1, 2004*) (a) A person defrauds the
188 state when such person:

189 (1) Knowingly presents, or causes to be presented, to any state
190 official or employee a false or fraudulent claim;

191 (2) Knowingly makes, uses or causes to be made or used, a false
192 record or statement to obtain payment or approval of a claim by the
193 state;

194 (3) Conspires to defraud the state through the allowance or payment
195 of a false or fraudulent claim;

196 (4) Pursuant to a certificate or receipt, has possession, custody or
197 control of property or money used, or to be used, by the state and
198 knowingly delivers, or causes to be delivered, to the state less property
199 than the amount indicated on such certificate or receipt with the intent
200 to knowingly conceal the property;

201 (5) Is authorized to make or deliver a document certifying receipt of
202 property used, or to be used, by the state and with the intent to deceive
203 the state, knowingly makes or delivers the receipt without verifying
204 that the information on the receipt is true;

205 (6) Buys, or receives as a pledge of an obligation or debt, public

206 property from an officer or employee of the state knowing that such
207 officer or employee may not lawfully sell or pledge the property;

208 (7) Enters into an agreement, contract or understanding with an
209 official or employee of the state knowing the information contained
210 therein is false;

211 (8) Knowingly makes, uses or causes to be made or used a false
212 record or statement to conceal, avoid or decrease an obligation to pay
213 or transmit money or property to the state; or

214 (9) Is a beneficiary of an inadvertent submission of a false claim to
215 the state and subsequently discovers the falsity of the claim but
216 knowingly fails to disclose the false claim to the state within a
217 reasonable time after discovery of the falsity of the claim.

218 (b) This section shall not be construed to apply to an act that would
219 constitute workers' compensation fraud pursuant to section 31-290c of
220 the general statutes, an act that violates any provision of title 12 of the
221 general statutes or an act where the alleged loss to the state is less than
222 twenty-five thousand dollars.

223 Sec. 4. (NEW) (*Effective October 1, 2004*) (a) Whenever the Attorney
224 General has reason to believe that a person may have defrauded the
225 state, in violation of section 3 of this act, the Attorney General may
226 investigate such act and bring a civil action in the superior court
227 against such person to recover civil penalties and damages as provided
228 in this section and to obtain such equitable relief as the court deems
229 appropriate.

230 (b) Proof that a person acted with the specific intent to defraud the
231 state shall not be required for a finding that such person has defrauded
232 the state pursuant to section 3 of this act. Innocent mistake shall be an
233 affirmative defense to any action brought pursuant to this section. The
234 state shall prove all essential elements of such cause of action,
235 including damages, by a preponderance of the evidence. A
236 corporation, limited liability corporation, partnership or other person

237 shall be liable to the state for the acts of its agent where the agent acted
238 with apparent authority to defraud the state in violation of section 3 of
239 this act.

240 (c) Any person who is found by a court of competent jurisdiction to
241 have defrauded the state shall be liable to the state for (1) three times
242 the amount of damages that the state sustained due to the fraudulent
243 act, (2) a civil penalty of not less than five thousand dollars and not
244 more than ten thousand dollars for each act that constitutes a violation
245 of section 3 of this act, and (3) reasonable attorney's fees and costs.

246 (d) Notwithstanding the provisions of subsection (c) of this section,
247 a court may, within its discretion, reduce an award of damages to the
248 state upon finding any violation of section 3 of this act, provided such
249 award includes an award for the consequential damages the state
250 sustained as a result of the person's violation. The court may, within its
251 discretion, decide not to impose a civil penalty against such person
252 provided the court finds all of the following:

253 (1) The person committing the violation provided the Attorney
254 General with all the information known to such person about the
255 violation not later than thirty days after the date on which the person
256 first obtained the information;

257 (2) The person fully cooperated with any state investigation of such
258 violation; and

259 (3) At the time such person provided the Attorney General with
260 such information, no criminal prosecution, civil action or
261 administrative action had commenced with respect to the defrauding
262 of the state, and the person did not have actual knowledge of the
263 existence of an investigation into the defrauding of the state.

264 Sec. 5. (NEW) (*Effective October 1, 2004*) (a) The superior court shall
265 approve any settlement of an action brought under section 4 of this act.
266 In approving a settlement of, or rendering a judgment in, an action
267 brought under section 4 of this act, the court, upon application by the

268 Attorney General, may award to an original source not more than five
 269 per cent of the award of actual damages paid to the state, taking into
 270 consideration the significance of the information provided by the
 271 original source to the court's finding of a violation of section 3 of this
 272 act or the settlement of the action.

273 (b) Notwithstanding the provisions of subsection (a) of this section,
 274 an original source is not entitled to receive a portion of any court
 275 judgment or settlement if: (1) The action brought pursuant to section 4
 276 of this act is based on allegations or transactions that are the subject of
 277 another criminal, civil, administrative or legislative proceeding; (2) the
 278 information provided by the original source is based on the public
 279 disclosure of allegations or transactions in a criminal, civil,
 280 administrative or legislative proceeding or hearing or from the news
 281 media; (3) the original source is an individual who is or was employed
 282 by the state whose scope of employment includes investigating or
 283 prosecuting fraud against the state and the information was gathered
 284 in the course of such employment; or (4) the original source planned,
 285 initiated or knowingly participated in the defrauding of the state.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>
Sec. 5	<i>October 1, 2004</i>

GAE *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:

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Attorney General; Auditors	GF - None	None	None
Resources of the General Fund	GF - Revenue Gain	Potential Significant	Potential Significant
Human Rights & Opportunities, Com.	GF - Potential Cost	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill permits the Office of the Attorney General (OAG) to expand the scope of its investigations into large public works contracts beyond any specific allegations or information transmitted by a whistleblower. The OAG could accommodate the bill's increased investigatory powers without requiring additional appropriations. The bill establishes civil penalties for defrauding the state which include treble damages, attorney's fees and costs. The likelihood and regularity of future recoveries is uncertain, but could be significant (i.e., greater than \$100,000) in any given year.

The bill authorizes the court to give a portion of actual damages awarded to the person who volunteered information. The number of additional whistleblower matters filed with the state as a result of the bill's provision of an award is unknown, but not expected to be substantial. The Auditors of Public Accounts have received an average of 88 such matters annually over the last four fiscal years. For illustrative purposes, a ten per cent increase would yield eight to nine additional cases.

The bill revises the procedure by which a whistleblower complaint

is brought to the Commission on Human Rights and Opportunities' (CHRO) Chief Human Rights Referee. Currently, the Office of the Attorney General may refer complaints to the Chief Human Rights Referee. Under the bill, a state or quasi-public agency employee, an employee of a large state contractor or the employee's attorney may file directly with the Chief Human Rights Referee. Although it is certain that the bill would result in increased workload, to what extent is unknown. Since the enactment of Public Act 02-91, "An Act Concerning State Employee and Contractor Whistleblowing Complaints," seven complaints have been referred to the Chief Human Rights Referee, two of which have been dismissed. Should the number of complaints rise because of directly filing with the Chief Human Rights Referee, there would be a minimal cost.

OLR Bill Analysis

sSB 386

AN ACT CONCERNING WHISTLEBLOWER COMPLAINTS AND CIVIL RECOVERY OF MISAPPROPRIATED FUNDS**SUMMARY:**

This bill gives the attorney general unlimited scope in his investigation of state agency whistleblower complaints. It expands the whistleblower statutes' applicability to include retaliation for certain disclosures to state employees. It also subjects large state contracts for public buildings or public works to the whistleblower provisions. The bill extends contract provisions addressing the contractor's civil liability to retaliations for disclosure to the contracting agency's employees. It bars civil liability for good faith disclosure of information to the attorney general or auditors of public accounts.

The bill establishes civil penalties for defrauding the state, such as presenting false claims for payment or receiving property from state officials and employees knowing the official or employee lacks the authority to sell or pledge the property. It allows the attorney general to investigate the defrauding of the state and bring civil actions against alleged violators. It makes anyone who defrauded the state liable for treble damages, civil penalties, attorney's fees, and costs. The bill also gives the court discretion not to impose penalties for voluntary cooperation with the investigation.

The bill allows the court to give a portion of the actual damages award to someone who volunteered information to the attorney general, enabling him to bring the action. But it prohibits this person from receiving any money if (1) the action is based on allegations or transactions that are the subject of another proceeding, (2) the information he provided is based on public disclosure of those allegations or transactions, (3) the source gained the information in his role as a state employee, or (4) the source knowingly participated in the defrauding of the state.

EFFECTIVE DATE: October 1, 2004

WHISTLEBLOWERS

Attorney General's Authority

The bill gives the attorney general unlimited authority to investigate state agency whistleblower allegations or information he receives from the auditors of public accounts. It allows the auditors or attorney general, in addition to the exempt records provision of the Freedom of Information Act, to withhold the investigation records while the investigation is pending.

Whistleblower Protections

The law prohibits appointing authorities and officers and employees of the state, quasi-public agencies, or large state contractors from taking or threatening to take personnel action against an employee in retaliation for his disclosure of information to the auditors of public accounts or the attorney general. The bill also bars them from taking or threatening to take action to impede or terminate a contract between a state agency and large state contractor in retaliation for the employee's or contractor's disclosure to an employee of (1) the auditors or the attorney general, (2) the agency where the state officer or employee works, (3) a state agency pursuant to a mandated reporter statute; or (4) in the case of a large state contractor, an employee of the contracting state agency concerning information about the large state contract.

Current law defines a large state contract as a contract for at least \$5 million with a state or quasi-public agency, other than a contract to construct, alter, or repair a public building or public work, and a large state contractor as an entity that enters into such a contract. The bill eliminates the public building or public work exception.

Complaints

Current law allows the attorney general, the employee, or the employee's attorney to file a complaint about the personnel action with the chief human rights referee after the investigation concludes. The bill eliminates the attorney general's ability to file a complaint. It requires the employee or his attorney to file the complaint with the referee within 30 days after learning of the specific incident giving rise to a claim that a personnel action has occurred or been threatened.

Civil Actions and Damages

If a state or quasi-public agency officer or employee, a large state contractor officer or employee, or an appointing authority takes or threatens to take action impeding or canceling a contract between a state agency and a large state contractor in violation of the whistleblower statutes, the bill allows the person to bring a civil action in Hartford Superior Court within 90 days of the violation to recover damages, attorney's fees, and costs (see COMMENT).

The law requires contracts between a state or quasi-public agency and a large state contractor to provide for the contractor's civil liability for up to \$5,000 per offense, up to 20% of the contract value, for personnel actions the contractor's officer, employee, or appointing authority takes or threatens to take against its employees in retaliation for the employee's disclosure of information to the auditors of public accounts or the attorney general. The bill extends this monetary penalty to retaliations against the contractor's employees for disclosing information to the contracting state or quasi-public agency's employees.

The bill prohibits anyone from being held liable for civil damages as a result of his good faith disclosure of information to the auditors or the attorney general.

DEFRAUDING THE STATE***Defrauding the State Defined***

The bill describes actions in which a person may engage which qualify as defrauding the state, such as knowingly presenting or paying a false claim or knowingly delivering to the state less property than is owed. It defines "knowing" and "knowingly" to mean a person, with respect to information, (1) has actual knowledge of the information, (2) acts in deliberate ignorance of the information's truth or falsity, or (3) acts in reckless disregard of the information's truth or falsity. It defines a "claim" as any request or demand for money or property made to (1) a state officer, state employee, state agent, or other state representative or (2) to a contractor, subcontractor, grantee, or other person if the state provides any part of the money or property requested or demanded, or if the state will reimburse the person directly or indirectly for any part of the money or property requested or demanded.

The bill specifies that a person defrauds the state when he:

1. knowingly presents, or causes to be presented, a false or fraudulent claim to any state official or employee;
2. knowingly makes, uses, or causes to be made or used, a false record or statement to obtain the state's payment or approval of a claim;
3. conspires to defraud the state through the allowance or payment of a false or fraudulent claim;
4. pursuant to a certificate or receipt, has possession, custody, or control of property or money the state used or will use, and knowingly delivers or causes to be delivered to the state less property than the amount the certificate or receipt indicates with the intent to knowingly conceal the property;
5. is authorized to make or deliver a document certifying receipt of property the state used or will use, and with intent to deceive the state, knowingly makes or delivers the receipt without verifying that the information on it is true;
6. buys, or receives as a pledge of an obligation or debt, public property from a state officer or employee knowing that the officer or employee may not lawfully sell or pledge the property;
7. enters into an agreement, contract, or understanding with a state official or employee knowing the information contained in it is false;
8. knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state; or
9. is a beneficiary of an inadvertent submission to the state of a false claim and later discovers the claim's falsity but knowingly fails to disclose the false claim to the state within a reasonable time after discovering the falsity.

The bill specifies that these provisions do not apply to acts constituting workers compensation fraud, violating Connecticut tax laws, or where

the alleged loss to the state is less than \$25,000.

Civil Actions for Defrauding the State

Whenever the attorney general believes that a person may have defrauded the state, the bill allows him to investigate the act and bring an action against the person in Superior Court to recover civil penalties and damages and obtain any equitable relief the court deems appropriate. The bill does not require proof that a person acted with the specific intent to defraud the state in order to find that he defrauded the state. But it does allow “innocent mistake” as an affirmative defense to such a charge. It requires the state to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence. It makes a corporation, limited liability corporation, partnership, or other person liable to the state for its agent’s acts where the agent acted with apparent authority to defraud the state.

Judgments and Settlements

If the court finds that anyone defrauded the state, the bill makes that person liable to the state for (1) three times the amount of damages that state sustained due to his fraudulent act, (2) a \$5,000 to \$10,000 civil penalty for each violation, and (3) reasonable attorney’s fees and costs.

The bill allows the court to use its discretion to reduce a damage award as long as the judgment includes an award for consequential damages the state sustained from the person’s violation. It also allows the court to use its discretion not to impose a civil penalty against the person if the court finds all of the following:

1. the person committing the violation provided the attorney general with all the information he knew about the violation within 30 days after the person obtained the information;
2. the person fully cooperated with any state investigation of the violation; and
3. at the time the person provided the attorney general with the information, no criminal prosecution, civil action, or administrative action about the defrauding of the state had commenced, and the person did not have actual knowledge that an investigation into the

defrauding existed.

The bill requires the Superior Court to approve any settlement of an action for defrauding the state. In approving a settlement or rendering a judgment for defrauding the state, the bill allows the court, on the attorney general's application, to give up to 5% of the actual damages awarded to an original source, taking into consideration the significance of the information the original source provided to the court's finding of a violation or the settlement. It defines an "original source" as an individual with direct and independent knowledge of information that he voluntarily provided to the attorney general or auditors of public accounts, without public disclosure, and on which the attorney general based a civil action for defrauding the state.

The bill prohibits an original source from receiving any of the court judgment or settlement if (1) the civil action is based on allegations or transactions that are the subject of another criminal, civil, administrative, or legislative proceeding; (2) the information the original source provided is based on public disclosure of allegations or transactions in a criminal, civil, administrative, or legislative proceeding or hearing or from the news media; (3) the original source is or was a state employee whose job includes investigating or prosecuting fraud against the state and he gathered the information in the course of his employment; or (4) the original source planned, initiated, or knowingly participated in the defrauding of the state.

COMMENT

Civil Action for Contract Impediment or Cancellation

The bill inadvertently fails to identify the party entitled to bring a civil action when someone takes or threatens to take action to impede or cancel a state contract.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 11 Nay 6