

Statement – Debi Freund
Bill 1107 – Judiciary Committee – 2/16/07

Good morning

My name is Debi Freund and I am the director of equal opportunity and diversity for the state department of children and families, as well as the president of the Connecticut association of affirmative action professionals.

I am here today regarding bill 1107– concerning the investigation of a discrimination complaint against or by an agency head or state commission or board member. The intent of the bill is commendable – since by statute affirmative action personnel report directly to agency heads, no person should be called upon to investigate charges against the very person they report to. For the complainant – the person who filed the discrimination complaint - the integrity of the investigation would always be called into question as they would never feel that the investigation of their complaint had been done without bias. For the agency head or board member, a finding of nondiscrimination would always be suspect and general disbelieved; and finally, for the affirmative action professional they would be put into the untenable position of investigating the person who is responsible for their annual performance appraisal. This is not a good situation for any one.

I am here today however with concerns about a single word that has been added to this bill.

I call your attention to paragraph 4. In the original bill, the language read, “Each person designated by a state agency, department, board or commission as an affirmative action officer shall be responsible for investigating all complaints of discrimination ...” Under the proposed bill, the language would now read, “Each person designated by a state agency, department, board or commission as an affirmative action officer shall be responsible for investigating all internal complaints of discrimination ...”

I caution against using the phrase all internal complaints. The more appropriate phrase is the original ,”all complaints of discrimination.” We must not diminish the spirit and goals of affirmative action and equal opportunity. It must be acknowledged that affirmative action professionals have other complaints that they investigate – complaints from other outside agencies. Depending on the agency, they may investigate complaints from the federal EEOC, the Office of Civil Rights, the Department of Education, or Federal Highway Transit, just to name a few. These are not internal complaints. The concern here is that the inclusion of the word internal, in effect, stands to further remove allegations of discrimination from getting an independent and unbiased investigation.

I understand that this change in phraseology has been added in light of the passage of 03-151. Our field has changed since that time. Affirmative action personnel are no longer responsible for handling CHRO complaints. This was due to the real concerns that affirmative action professionals in some agencies were in the tenuous position of advocating for the complainant in an internal investigation, and then turning and representing the agency if the complaint went before CHRO. To address this, an attorney general designee, or the ag designee, was appointed in each agency to now represent that agency before the CHRO. While this has satisfied the concern of the aa officer being torn between opposing interests, it has opened up a myriad of other concerns.

In the spirit of the original regulations, the intent was to establish an independent person within each agency to investigate concerns of discrimination. This person was ordered to report directly to an agency head so that their investigation would not be influenced by others. It was this person’s job to examine allegations of discrimination and report back to the agency head so that remedial action could be taken.

This has now changed. In almost all of the agencies, the AG designee is either legal counsel (who wants to win at CHRO) or the human resources department (who, for all intents and purposes, is investigating itself). Nowhere is the affirmative action professional, who was the one originally charged with ensuring that all people are treated equally. Wait – you say – when a CHRO complaint is filed, the agency then generates an internal complaint to be investigated by the affirmative action personnel. There’s only one problem – the agency designee is not required to even consider the findings of the affirmative action investigation. Now this is fine – if both the AG designee and the affirmative action office agree on the findings of a case. But all too often, the affirmative action office may find concerns of disparate treatment while the ag designee finds none. This results in the affirmative action investigation and its findings being discarded in the agencies attempts to win.

With this proposed language change, it appears there would no longer be an internal investigation of a CHRO complaint. If this is taken away, the complainant no longer has the opportunity to receive a fair and impartial investigation. This also removes the agencies’ opportunity to resolve and mediate CHRO complaints internally – which is part of the very premise of the AA office by statute.

I have spoken with CHRO, and they have assured me that we will sit down together and take a look at these concerns. It is not that I am not in support of this bill – for I am. But I am concerned that some of the language could be misinterpreted and possibly misused, diminishing the regulations. What I am asking is that as it comes before you, you reexamine the language to clarify the intent. And I am confident that your intent is to uphold the spirit of the law and guarantee equal rights for all citizens of the state of Connecticut.