



# Senate

General Assembly

**File No. 420**

February Session, 2008

Substitute Senate Bill No. 335

*Senate, April 3, 2008*

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***AN ACT CONCERNING THE PROTECTION OF WHISTLEBLOWERS.***

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 Section 4-61dd of the general statutes is repealed and the  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 July 1, 2008*):

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 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 the Attorney General deems proper regarding such  
17 report and any other information that may be reasonably derived from  
18 such report. Prior to conducting an investigation of any information  
19 that may be reasonably derived from such report, the Attorney  
20 General shall consult with the Auditors of Public Accounts concerning  
21 the relationship of such additional information to the report that has  
22 been issued pursuant to this subsection. Any such subsequent  
23 investigation deemed appropriate by the Attorney General shall only  
24 be conducted with the concurrence and assistance of the Auditors of  
25 Public Accounts. At the request of the Attorney General or on their  
26 own initiative, the auditors shall assist in the investigation. The  
27 Attorney General shall have power to summon witnesses, require the  
28 production of any necessary books, papers or other documents and  
29 administer oaths to witnesses, where necessary, for the purpose of an  
30 investigation pursuant to this section. Upon the conclusion of the  
31 investigation, the Attorney General shall where necessary, report any  
32 findings to the Governor, or in matters involving criminal activity, to  
33 the Chief State's Attorney. In addition to the exempt records provision  
34 of section 1-210 of the 2008 supplement to the general statutes, the  
35 Auditors of Public Accounts and the Attorney General shall not, after  
36 receipt of any information from a person under the provisions of this  
37 section, disclose the identity of such person without such person's  
38 consent unless the Auditors of Public Accounts or the Attorney  
39 General determines that such disclosure is unavoidable, and may  
40 withhold records of such investigation, during the pendency of the  
41 investigation.

42 (b) (1) No state officer or employee, as defined in section 4-141, no  
43 quasi-public agency officer or employee, no officer or employee of a  
44 large state contractor and no appointing authority shall take or  
45 threaten to take any personnel action against any state or quasi-public  
46 agency employee or any employee of a large state contractor in  
47 retaliation for such employee's or contractor's disclosure of  
48 information to (A) an employee of the Auditors of Public Accounts or  
49 the Attorney General under the provisions of subsection (a) of this

50 section; (B) an employee of the state agency or quasi-public agency  
51 where such state officer or employee is employed; (C) an employee of  
52 a state agency pursuant to a mandated reporter statute; or (D) in the  
53 case of a large state contractor, an employee of the large state  
54 contractor or the contracting state agency concerning information  
55 involving the large state contract.

56 (2) If a state or quasi-public agency employee or an employee of a  
57 large state contractor alleges that a personnel action has been  
58 threatened or taken in violation of subdivision (1) of this subsection,  
59 the employee may notify the Attorney General, who shall investigate  
60 pursuant to subsection (a) of this section. If the Attorney General  
61 determines that such personnel action was in retaliation for such  
62 employee's or contractor's disclosure of information pursuant to this  
63 section, the Attorney General may intervene in any proceeding  
64 pursuant to subdivision (3) of this subsection.

65 (3) (A) Not later than [thirty] ninety days after learning of the  
66 specific incident giving rise to a claim that a personnel action has been  
67 threatened or has occurred in violation of subdivision (1) of this  
68 subsection, a state or quasi-public agency employee, an employee of a  
69 large state contractor or the employee's attorney may file a complaint  
70 against the state agency, the quasi-public agency, or the large state  
71 contractor concerning such personnel action with the Chief Human  
72 Rights Referee designated under section 46a-57. Such complaint may  
73 be amended if an additional incident giving rise to a claim under this  
74 subdivision occurs subsequent to the filing of the original complaint.  
75 The Chief Human Rights Referee shall assign the complaint to a  
76 human rights referee appointed under section 46a-57, who shall  
77 conduct a hearing and issue a decision concerning whether the officer  
78 or employee taking or threatening to take the personnel action violated  
79 any provision of this section. If, during the pendency of the hearing,  
80 the human rights referee has reasonable cause to believe that an officer  
81 or employee has taken additional personnel action in violation of  
82 subdivision (1) of this subsection, such referee may order temporary  
83 equitable relief, including, but not limited to, an order reinstating the

84 person filing the complaint to the same position held before such  
85 personnel action was taken. If, after the hearing, the human rights  
86 referee finds [such] a violation, the referee may award the aggrieved  
87 employee reinstatement to the employee's former position, back pay  
88 and reestablishment of any employee benefits for which the employee  
89 would otherwise have been eligible if such violation had not occurred,  
90 reasonable attorneys' fees, and any other damages. The human rights  
91 referee shall also forward the decision finding such violation and  
92 award to the head of the agency and the supervisor of the employee or  
93 officer who violated subdivision (1) of subsection (b) of this section  
94 who shall take appropriate personnel action. For the purposes of this  
95 subsection, such human rights referee shall act as an independent  
96 hearing officer. The decision of a human rights referee under this  
97 subsection may be appealed by any person who was a party at such  
98 hearing, in accordance with the provisions of section 4-183.

99 (B) The Chief Human Rights Referee shall adopt regulations, in  
100 accordance with the provisions of chapter 54, establishing the  
101 procedure for filing complaints and noticing and conducting hearings  
102 under subparagraph (A) of this subdivision.

103 (4) As an alternative to the provisions of subdivisions (2) and (3) of  
104 this subsection: (A) A state or quasi-public agency employee who  
105 alleges that a personnel action has been threatened or taken may file an  
106 appeal not later than [thirty] ninety days after learning of the specific  
107 incident giving rise to such claim with the Employees' Review Board  
108 under section 5-202, or, in the case of a state or quasi-public agency  
109 employee covered by a collective bargaining contract, in accordance  
110 with the procedure provided by such contract; or (B) an employee of a  
111 large state contractor alleging that such action has been threatened or  
112 taken may, after exhausting all available administrative remedies,  
113 bring a civil action in accordance with the provisions of subsection (c)  
114 of section 31-51m.

115 (5) In any proceeding under subdivision (2), (3) or (4) of this  
116 subsection concerning a personnel action taken or threatened against

117 any state or quasi-public agency employee or any employee of a large  
118 state contractor, which personnel action occurs not later than [one  
119 year] three years after the employee first transmits or discloses facts  
120 and information concerning a matter under subsection (a) of this  
121 section or subdivision (1) of this subsection to the Auditors of Public  
122 Accounts, [or] the Attorney General or an employee of the state  
123 agency, quasi-public agency or large state contractor, as applicable,  
124 there shall be a rebuttable presumption that the personnel action is in  
125 retaliation for the action taken by the employee under subsection (a) of  
126 this section or subdivision (1) of this subsection.

127 (6) If a state officer or employee, as defined in section 4-141, a quasi-  
128 public agency officer or employee, an officer or employee of a large  
129 state contractor or an appointing authority takes or threatens to take  
130 any action to impede, fail to renew or cancel a contract between a state  
131 agency and a large state contractor, or between a large state contractor  
132 and its subcontractor, in retaliation for the disclosure of information  
133 pursuant to subsection (a) of this section or subdivision (1) of this  
134 subsection to any agency listed in subdivision (1) of this subsection,  
135 such affected agency, contractor or subcontractor may, not later than  
136 ninety days after learning of such action, threat or failure to renew,  
137 bring a civil action in the superior court for the judicial district of  
138 Hartford to recover damages, attorney's fees and costs.

139 (c) Any employee of a state or quasi-public agency or large state  
140 contractor, who is found to have knowingly and maliciously made  
141 false charges under subsection (a) of this section, shall be subject to  
142 disciplinary action by such employee's appointing authority up to and  
143 including dismissal. In the case of a state or quasi-public agency  
144 employee, such action shall be subject to appeal to the Employees'  
145 Review Board in accordance with section 5-202, or in the case of state  
146 or quasi-public agency employees included in collective bargaining  
147 contracts, the procedure provided by such contracts.

148 (d) On or before September first, annually, the Auditors of Public  
149 Accounts shall submit to the clerk of each house of the General

150 Assembly a report indicating the number of matters for which facts  
151 and information were transmitted to the auditors pursuant to this  
152 section during the preceding state fiscal year and the disposition of  
153 each such matter.

154 (e) Each contract between a state or quasi-public agency and a large  
155 state contractor shall provide that, if an officer, employee or  
156 appointing authority of a large state contractor takes or threatens to  
157 take any personnel action against any employee of the contractor in  
158 retaliation for such employee's disclosure of information [to any  
159 employee of the contracting state or quasi-public agency or the  
160 Auditors of Public Accounts or the Attorney General under the  
161 provisions of] pursuant to subdivision (1) of subsection (b) of this  
162 section or subsection (a) of this section, the contractor shall be liable for  
163 a civil penalty of not more than five thousand dollars for each offense,  
164 up to a maximum of twenty per cent of the value of the contract. Each  
165 violation shall be a separate and distinct offense and in the case of a  
166 continuing violation each calendar day's continuance of the violation  
167 shall be deemed to be a separate and distinct offense. The executive  
168 head of the state or quasi-public agency may request the Attorney  
169 General to bring a civil action in the superior court for the judicial  
170 district of Hartford to seek imposition and recovery of such civil  
171 penalty.

172 (f) Each large state contractor shall post a notice of the provisions of  
173 this section relating to large state contractors in a conspicuous place  
174 which is readily available for viewing by the employees of the  
175 contractor.

176 (g) No person who, in good faith, discloses information [to the  
177 Auditors of Public Accounts or the Attorney General] in accordance  
178 with the provisions of this section shall be liable for any civil damages  
179 resulting from such good faith disclosure.

180 (h) As used in this section:

181 (1) "Large state contract" means a contract between an entity and a

182 state or quasi-public agency, having a value of five million dollars or  
183 more; and

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2008	4-61dd

**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 chamber thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Attorney General	GF - Cost	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill results in a potential cost the Office of the Attorney General (AG) for personnel. However the bill provides discretion to the AG as to whether to intervene in an action brought by a whistleblower for retaliation before the human rights hearing officer which would minimize any such costs.

**The Out Years**

The ongoing fiscal impact identified above would continue into the future.

**OLR Bill Analysis****sSB 335****AN ACT CONCERNING THE PROTECTION OF WHISTLEBLOWERS.****SUMMARY:**

This bill expands current protections for whistleblowers and establishes new ones. Generally, it (1) extends the time whistleblowers have to file complaints of retaliation; (2) extends, from one to three years, the period during which there is a rebuttable presumption that negative personnel actions against whistleblowers are retaliatory; (3) expands the rebuttable presumption to protect individuals who are retaliated against for making internal disclosures; and (4) authorizes the attorney general to join certain retaliation proceedings before the Commission on Human Rights and Opportunities (CHRO).

The bill extends whistleblower protection to employees of large state contractors who report violations to the contractor, rather than just to the state contracting agency.

During the course of a CHRO proceeding, the bill allows (1) whistleblowers to amend their complaints in light of subsequent retaliatory incidents and (2) hearing officers to grant temporary equitable relief for the same reason.

The bill requires hearing officers to send findings of retaliation to the agency head and supervisor of the person who committed the offense.

The bill also protects individuals from civil liability for all good faith disclosures.

Finally, the bill makes technical changes.

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EFFECTIVE DATE: July 1, 2008

## **COMPLAINT PROCESS**

By law, anyone who knows of any corruption, unethical practices, state law or regulation violations, mismanagement, gross waste of funds, abuse of authority, or danger to public safety occurring in any state or quasi-public agency or large state contract may send information to the state auditors.

Under current law, state officers, employees, and appointing authorities; quasi-public agency officers or employees; and large state contractors are prohibited from taking or threatening to take any personnel action in retaliation for a whistleblower disclosure. Any negative personnel action that occurs within one year after the initial report to the auditors of public accounts or the attorney general is presumed to be retaliatory. The presumption is rebuttable. An employee who believes he or she has been retaliated against has 30 days to file a complaint with the chief human rights referee at CHRO. Alternatively and within the same period of time, a state or quasi-public agency employee can file an appeal to the Employees' Review Board. A large state contractor's employee can bring a civil action after exhausting all administrative remedies.

### ***Rebuttable Presumption and Deadline for Filing Complaints***

The bill extends, from one to three years, the period during which there is a rebuttable presumption that a negative personnel action is retaliatory.

It extends, from 30 to 90 days, the amount of time a whistleblower who believes he or she is a victim of retaliation has to file a complaint with CHRO. It makes the same change for state or quasi-public agency employees who opt to file an appeal with the Employees' Review Board.

### ***Amended Claims***

Under the bill, whistleblowers may amend complaints they have already filed with CHRO if an additional retaliatory incident occurs.

Under current law, these complaints may contemplate the original retaliatory incident only.

### **HEARING PROCESS**

By law, the chief human rights referee assigns complaints of retaliation to human rights referees (hearing officers), who conduct hearings and issue decisions. If an officer finds a violation, he or she may award the aggrieved employee reinstatement to his or her former position, back pay and reestablishment of employee benefits, reasonable attorney fees, or any other damages.

#### ***Attorney General***

The bill expands the attorney general's authority with respect to the hearing process. Specifically, it authorizes him to intervene in any retaliation proceeding before CHRO if he determines that a whistleblower was retaliated against for his or her report to the auditors or the attorney general, or for any internal disclosure.

#### ***Temporary Equitable Relief***

The bill authorizes hearing officers to order temporary injunctive relief if they have reason to believe that, during the course of the hearing, the officer or employee against whom the complaint was filed has taken additional retaliatory action. Temporary injunctive relief may include reinstating the aggrieved employee to his or her original position.

#### ***Findings***

If a hearing officer finds that a violation occurred, the bill requires that he or she forward the decision and award to the head of the agency and to the supervisor of the individual who committed the act. The agency head and supervisor must take appropriate personnel action.

### **INTERNAL DISCLOSURES**

The bill expands the rebuttable presumption to include retaliatory personnel actions for internal disclosures, or disclosures of information

to (1) an employee of the state or quasi-public agency where the individual is employed; (2) an employee of the large state contractor or state contracting agency, in the case of a large state contract; or (3) a state agency employee pursuant to a mandated reporter statute (see BACKGROUND).

The bill makes a similar change concerning actions or threats to impede, cancel, or fail to renew contracts. Under current law, an agency, contractor, or subcontractor can bring a civil action in Hartford Superior Court if an officer or employee in a state or quasi-public agency or large state contractor, whichever is applicable, takes or threatens to take an action to impede, cancel, or fail to renew a contract in retaliation for the initial report to the auditors of public accounts or the attorney general. The bill expands this protection to include retaliation for internal disclosures from one employee to another within an agency or contractor.

The bill also requires contracts between state or quasi-public agencies and large state contractors to protect employees' internal disclosures, not only their initial reports to the auditors of public accounts or the attorney general. As under current law, anyone who takes or threatens to take retaliatory action against an employee who makes an internal disclosure may be subject to a civil penalty of up to \$5,000 for each offense, up to a maximum of 25% of the contract's value. Each violation, and each calendar day that it continues, is a separate offense.

## **GOOD FAITH DISCLOSURES**

The bill protects whistleblowers from civil liability for all good faith disclosures, not only those made in their initial report to the auditors of public accounts or the attorney general.

## **BACKGROUND**

### ***Mandated Reporter Statute***

Connecticut law requires people in professions or occupations that have contact with children or whose primary focus is children to

report suspected child abuse or neglect. They must make a report when, in the ordinary course of their employment or profession, they have reasonable cause to suspect that a child under age 18 has been abused, neglected, or is placed in imminent risk of serious harm.

Section 17a-101 of the Connecticut General Statutes makes the following people mandated reporters:

1. any person paid to care for a child in any licensed public or private facility, child day care center, group day care home, or family day care home;
2. battered women's and sexual assault counselors;
3. dentists and dental hygienists;
4. Department of Children and Families employees;
5. Department of Public Health employees responsible for licensing child care facilities or group homes;
6. licensed chiropractors, mental health professionals, optometrists, physicians, physical therapists, and podiatrists;
7. licensed or certified professional or alcohol and drug counselors, emergency medical services providers, marital and family therapists, and resident interns;
8. physician assistants and licensed or registered nurses and practical nurses;
9. police and probation or parole officers;
10. school guidance counselors, paraprofessionals, principals, and teachers;
11. school, intramural, or interscholastic athletics coaches; and
12. the child advocate and her employees.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/17/2008)