



Senate

General Assembly

File No. 548

January Session, 2009

Senate Bill No. 768

Senate, April 8, 2009

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 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 Section 4-61dd of the general statutes is repealed and the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, 2009*):

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, the Auditors of Public Accounts and the Attorney
35 General shall not, after receipt of any information from a person under
36 the provisions of this section, disclose the identity of such person
37 without such person's consent unless the Auditors of Public Accounts
38 or the Attorney General determines that such disclosure is
39 unavoidable, and may withhold records of such investigation, during
40 the pendency of the investigation.

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

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

55 (2) If a state or quasi-public agency employee or an employee of a
56 large state contractor alleges that a personnel action has been
57 threatened or taken in violation of subdivision (1) of this subsection,
58 the employee may notify the Attorney General or the Auditors of
59 Public Accounts, who shall investigate pursuant to subsection (a) of
60 this section. If the Attorney General determines that such personnel
61 action was in retaliation for such employee's or contractor's disclosure
62 of information pursuant to this section, the Attorney General may
63 intervene in any proceeding pursuant to subdivision (3) of this
64 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 any
81 officer or employee has taken 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 forward the decision finding such violation and award to
92 the head of the agency and the supervisor of the employee or officer
93 who violated subdivision (1) of this subsection who shall take
94 appropriate personnel action. For the purposes of this subsection, such
95 human rights referee shall act as an independent hearing officer. The
96 decision of a human rights referee under this subsection may be
97 appealed by any person who was a party at such hearing, in
98 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	<i>July 1, 2009</i>	4-61dd

GAE *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:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Auditors	GF - Cost	Potential	Potential
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill expands current protections for whistleblowers and establishes new ones. The bill allows whistleblowers to report allegations of retaliatory action to the Auditors of Public Accounts, not only the Attorney General. This bill places new review and reporting requirements on the Auditors.

In FY 08, the Auditors referred 11 whistleblower retaliation complaints to the Attorney General for investigation. In the first nine months of the current fiscal year, the Auditors have referred 12 whistleblower retaliation complaints to the Attorney General. Under the bill, the Auditors would be responsible for reviewing and reporting on each whistleblower retaliation complaint it receives (instead of solely referring the complaint to the Attorney General). Depending on how many whistleblower retaliation complaints the

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

Auditors have to review and the staff hours needed to complete the review and report, the Auditors may require one new Associate Auditor position, with a salary of \$79,000 (plus fringe benefits).

The Office of the Attorney General and the Commission on Human Rights and Opportunities can handle the provisions of the bill with existing resources.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Source: Auditors of Public Accounts, Office of the Attorney General, Commission on Human Rights and Opportunities

OLR Bill Analysis**SB 768*****AN ACT CONCERNING THE PROTECTION OF WHISTLEBLOWERS.*****SUMMARY:**

This bill expands current protections for whistleblowers and establishes new ones. Generally, it (1) extends, from 30 to 90 days, 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 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. It also protects individuals from civil liability for all good faith disclosures.

Finally, the bill makes technical changes.

EFFECTIVE DATE: July 1, 2009

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; officers and employees of quasi-public agencies; 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 (i.e., an assumption that stands as fact unless contested and proven otherwise). 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.

Reporting Retaliatory Actions, Rebuttable Presumption, and Deadline for Filing Complaints

The bill (1) allows whistleblowers to report allegations of retaliatory action to the auditors of public accounts, not only the attorney general and (2) extends, from one to three years, the period during which there is a rebuttable presumption that any such 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 suffered retaliation for his or her report to the auditors or the attorney general, or for any internal disclosure.

Temporary Equitable Relief

The bill authorizes CHRO hearing officers to order temporary equitable relief if they have reason to believe that, during the course of the hearing, any officer or employee has taken retaliatory action against the whistleblower. Temporary equitable 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 20% 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. Among others, mandated reporters include, battered women's and sexual assault counselors; Department of Children and Families employees; police and probation or parole officers; and school guidance counselors, paraprofessionals, principals, and teachers.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 11 Nay 4 (03/25/2009)