



House of Representatives

General Assembly

File No. 490

February Session, 2010

Substitute House Bill No. 5348

House of Representatives, April 13, 2010

The Committee on Government Administration and Elections reported through REP. SPALLONE of the 36th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT IMPLEMENTING ADDITIONAL RECOMMENDATIONS OF
THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
CONCERNING RETALIATION FOR WHISTLEBLOWER COMPLAINTS.***

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

1 Section 1. Section 4-61dd of the 2010 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2010*):

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

13 concerning such matter to the Auditors of Public Accounts. The
14 Auditors of Public Accounts shall review such matter and report their
15 findings and any recommendations to the Attorney General. Upon
16 receiving such a report, the Attorney General shall make such
17 investigation as the Attorney General deems proper regarding such
18 report and any other information that may be reasonably derived from
19 such report. Prior to conducting an investigation of any information
20 that may be reasonably derived from such report, the Attorney
21 General shall consult with the Auditors of Public Accounts concerning
22 the relationship of such additional information to the report that has
23 been issued pursuant to this subsection. Any such subsequent
24 investigation deemed appropriate by the Attorney General shall only
25 be conducted with the concurrence and assistance of the Auditors of
26 Public Accounts. At the request of the Attorney General or on their
27 own initiative, the auditors shall assist in the investigation. The
28 Attorney General [shall have power to] may summon witnesses,
29 require the production of any necessary books, papers or other
30 documents and administer oaths to witnesses, where necessary, for the
31 purpose of an investigation pursuant to this section or for the purpose
32 of investigating a suspected violation of subsection (a) of section 17b-
33 301b until such time as the Attorney General files a civil action
34 pursuant to section 17b-301c. Upon the conclusion of the investigation,
35 the Attorney General shall where necessary, report any findings to the
36 Governor, or in matters involving criminal activity, to the Chief State's
37 Attorney. In addition to the exempt records provision of section 1-210,
38 the Auditors of Public Accounts and the Attorney General shall not,
39 after receipt of any information from a person under the provisions of
40 this section or sections 17b-301c to 17b-301g, inclusive, disclose the
41 identity of such person without such person's consent unless the
42 Auditors of Public Accounts or the Attorney General determines that
43 such disclosure is unavoidable, and may withhold records of such
44 investigation, during the pendency of the investigation.

45 (2) The Auditors of Public Accounts and the Attorney General shall
46 each post on their agency Internet web sites a summary of all matters
47 investigated by their agencies. Such summary shall include, but not be

48 limited to, a listing of the number of complaints for each state agency,
49 quasi-public agency or large state contractor, a description of the type
50 of allegations made, the date each such matter was referred to the
51 auditors or Attorney General and the status and disposition of each
52 such matter, including whether the allegation has been substantiated
53 in whole or in part and whether the agency or large state contractor
54 has attempted to take any corrective action. Such summary shall be
55 updated every six months.

56 (b) (1) No state officer or employee, as defined in section 4-141, no
57 quasi-public agency officer or employee, no officer or employee of a
58 large state contractor and no appointing authority shall take or
59 threaten to take any personnel action against any state or quasi-public
60 agency employee or any employee of a large state contractor in
61 retaliation for (A) such employee's [or contractor's] disclosure of
62 information to [(A)] (i) an employee of the Auditors of Public Accounts
63 or the Attorney General under the provisions of subsection (a) of this
64 section; [(B)] (ii) an employee of the state agency or quasi-public
65 agency where such state officer or employee is employed; [(C)] (iii) an
66 employee of a state agency pursuant to a mandated reporter statute or
67 pursuant to subsection (b) of section 17a-28; or [(D)] (iv) in the case of a
68 large state contractor, an employee of the contracting state agency
69 concerning information involving the large state contract; or (B) such
70 employee's testimony or assistance in any proceeding under this
71 section.

72 [(2) If a state or quasi-public agency employee or an employee of a
73 large state contractor alleges that a personnel action has been
74 threatened or taken in violation of subdivision (1) of this subsection,
75 the employee may notify the Attorney General, who shall investigate
76 pursuant to subsection (a) of this section.]

77 [(3)] (2) (A) Not later than [thirty] ninety days after learning of the
78 specific incident giving rise to a claim that a personnel action has been
79 threatened or has occurred in violation of subdivision (1) of this
80 subsection, a state or quasi-public agency employee, an employee of a

81 large state contractor or the employee's attorney may file a complaint
82 against the state agency, quasi-public agency, large state contractor or
83 appointing authority concerning such personnel action with the Chief
84 Human Rights Referee designated under section 46a-57. Such
85 complaint may be amended if an additional incident giving rise to a
86 claim under this subdivision occurs subsequent to the filing of the
87 original complaint. The Chief Human Rights Referee shall assign the
88 complaint to a human rights referee appointed under section 46a-57,
89 who shall conduct a hearing and issue a decision concerning whether
90 the officer or employee taking or threatening to take the personnel
91 action violated any provision of this section. [If] The human rights
92 referee may order a state agency or quasi-public agency to produce (i)
93 an employee of such agency or quasi-public agency to testify as a
94 witness in any proceeding under this subdivision, or (ii) books, papers
95 or other documents relevant to the complaint, without issuing a
96 subpoena. If such agency or quasi-public agency fails to produce such
97 witness, books, papers or documents, the human rights referee may
98 consider such failure as supporting evidence for the complainant. If,
99 during the pendency of the hearing, the human rights referee has
100 reasonable cause to believe that any officer or employee has taken
101 personnel action in violation of subdivision (1) of this subsection, such
102 referee may order temporary equitable relief, including, but not
103 limited to, an order reinstating the person filing the complaint to the
104 same position held before such personnel action was taken. If, after the
105 hearing, the human rights referee finds [such] a violation, the referee
106 may award the aggrieved employee reinstatement to the employee's
107 former position, back pay and reestablishment of any employee
108 benefits for which the employee would otherwise have been eligible if
109 such violation had not occurred, reasonable attorneys' fees, and any
110 other damages. For the purposes of this subsection, such human rights
111 referee shall act as an independent hearing officer. The decision of a
112 human rights referee under this subsection may be appealed by any
113 person who was a party at such hearing, in accordance with the
114 provisions of section 4-183.

115 (B) The Chief Human Rights Referee shall adopt regulations, in

116 accordance with the provisions of chapter 54, establishing the
117 procedure for filing complaints and noticing and conducting hearings
118 under subparagraph (A) of this subdivision.

119 ~~[(4) As an alternative to the provisions of subdivisions]~~ (3) Any state
120 or quasi-public agency employee or large state contractor employee
121 who has not pursued a remedy under subdivision (2) ~~[and (3)]~~ of this
122 subsection may, in the case of: (A) A state or quasi-public agency
123 employee who alleges that a personnel action has been threatened or
124 taken, ~~[may]~~ file an appeal not later than ~~[thirty]~~ ninety days after
125 learning of the specific incident giving rise to such claim with the
126 Employees' Review Board under section 5-202, or, in the case of a state
127 or quasi-public agency employee covered by a collective bargaining
128 contract, in accordance with the procedure provided by such contract;
129 or (B) an employee of a large state contractor alleging that such action
130 has been threatened or taken, ~~[may,]~~ after exhausting all available
131 administrative remedies, bring a civil action in accordance with the
132 provisions of subsection (c) of section 31-51m.

133 ~~[(5)]~~ (4) In any proceeding under subdivision (2) ~~[,]~~ or (3) ~~[or (4)]~~ of
134 this subsection concerning a personnel action taken or threatened
135 against any state or quasi-public agency employee or any employee of
136 a large state contractor, which personnel action occurs not later than
137 ~~[one year]~~ two years after the employee first transmits facts and
138 information concerning a matter under subsection (a) of this section or
139 subdivision (1) of this subsection to the Auditors of Public Accounts,
140 ~~[or] the Attorney General~~ or an employee of a state agency, quasi-
141 public agency, large state contractor or appointing authority, as
142 applicable, there shall be a rebuttable presumption that the personnel
143 action is in retaliation for the action taken by the employee under
144 subsection (a) of this section or subdivision (1) of this subsection.

145 ~~[(6)]~~ (5) If a state officer or employee, as defined in section 4-141, a
146 quasi-public agency officer or employee, an officer or employee of a
147 large state contractor or an appointing authority takes or threatens to
148 take any action to impede, fail to renew or cancel a contract between a

149 state agency and a large state contractor, or between a large state
150 contractor and its subcontractor, in retaliation for the disclosure of
151 information pursuant to subsection (a) of this section or subdivision (1)
152 of this subsection to any agency listed in subdivision (1) of this
153 subsection, such affected agency, contractor or subcontractor may, not
154 later than ninety days after learning of such action, threat or failure to
155 renew, bring a civil action in the superior court for the judicial district
156 of Hartford to recover damages, attorney's fees and costs.

157 (c) Any employee of a state or quasi-public agency or large state
158 contractor, who is found by the Auditors of Public Accounts, the
159 Attorney General, a human rights referee or the Employees' Review
160 Board to have knowingly and maliciously made false charges under
161 subsection (a) of this section, shall be subject to disciplinary action by
162 such employee's appointing authority up to and including dismissal.
163 In the case of a state or quasi-public agency employee, such action
164 shall be subject to appeal to the Employees' Review Board in
165 accordance with section 5-202, or in the case of state or quasi-public
166 agency employees included in collective bargaining contracts, the
167 procedure provided by such contracts.

168 (d) On or before September first, annually, the Auditors of Public
169 Accounts and the Attorney General shall submit, in accordance with
170 the provisions of section 11-4a, to the clerk of each house of the
171 General Assembly a joint report indicating the number of matters for
172 each agency or large state contractor for which facts and information
173 were transmitted to the auditors pursuant to this section during the
174 preceding state fiscal year, [and the] a description of the type of
175 allegations made, the date each such matter was referred to the
176 auditors and the status and disposition of each such matter, including
177 whether the allegation has been substantiated in whole or in part and
178 whether the agency or large state contractor has attempted to take any
179 corrective action.

180 (e) Each contract between a state or quasi-public agency and a large
181 state contractor shall provide that, if an officer, employee or

182 appointing authority of a large state contractor takes or threatens to
183 take any personnel action against any employee of the contractor in
184 retaliation for such employee's disclosure of information to any
185 employee of the contracting state or quasi-public agency or the
186 Auditors of Public Accounts or the Attorney General under the
187 provisions of subsection (a) or subdivision (1) of subsection (b) of this
188 section, the contractor shall be liable for a civil penalty of not more
189 than five thousand dollars for each offense, up to a maximum of
190 twenty per cent of the value of the contract. Each violation shall be a
191 separate and distinct offense and in the case of a continuing violation
192 each calendar day's continuance of the violation shall be deemed to be
193 a separate and distinct offense. The executive head of the state or
194 quasi-public agency may request the Attorney General to bring a civil
195 action in the superior court for the judicial district of Hartford to seek
196 imposition and recovery of such civil penalty.

197 (f) Each state agency or quasi-public agency shall post a notice of the
198 provisions of this section relating to state employees and quasi-public
199 agency employees in a conspicuous place that is readily available for
200 viewing by employees of such agency or quasi-public agency. Each
201 large state contractor shall post a notice of the provisions of this section
202 relating to large state contractors in a conspicuous place which is
203 readily available for viewing by the employees of the contractor.

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

208 (h) As used in this section:

209 (1) "Large state contract" means a contract between an entity and a
210 state or quasi-public agency, having a value of five million dollars or
211 more; and

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

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which expands current protections for whistleblowers and establishes new ones, does not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sHB 5348

AN ACT IMPLEMENTING ADDITIONAL RECOMMENDATIONS OF THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING RETALIATION FOR WHISTLEBLOWER COMPLAINTS.

SUMMARY:

This bill expands current protections for whistleblowers and establishes new ones. Generally, it (1) extends, from one to two years after reporting misconduct, the period during which there is a rebuttable presumption that negative personnel actions against whistleblowers are retaliatory; (2) extends, from 30 to 90 days, the time whistleblowers have to file complaints of retaliation; and (3) expands the rebuttable presumption to protect individuals retaliated against for making internal disclosures, such as a disclosure to a supervisor.

The bill appears to eliminate the attorney general's role in investigating complaints of retaliation but maintains the complainants' right to a hearing before the Commission on Human Rights and Opportunities (CHRO). During the course of a CHRO proceeding, the bill allows (1) whistleblowers to amend their complaints in light of subsequent retaliatory incidents, (2) hearing officers to grant temporary equitable relief for the same reason, and (3) hearing officers to order state agencies and quasi-public agencies to produce witnesses and evidence without issuing a subpoena.

The bill protects from retaliation employees who testify or provide assistance in any proceeding concerning a whistleblower complaint. It also protects individuals from civil liability for all good faith disclosures and maintains penalties for false charges made knowingly and maliciously.

Lastly, it requires the Auditors of Public Accounts and the attorney general to post on their websites summaries of all matters investigated by their agencies and include this information in a jointly-submitted annual report, and it requires the state comptroller to post on its website the names and addresses of all large state contractors (those with contracts valued at \$5 million or more).

EFFECTIVE DATE: October 1, 2010

REPORTING RETALIATORY ACTIONS

Rebuttable Presumption and Deadline for Filing Complaints

Under current law, state officers, employees, and appointing authorities; officers and employees of quasi-public agencies; and large state contractors may not take or threaten 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 currently 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.

The bill (1) extends, from one to two years, the period during which there is a rebuttable presumption that any such action is retaliatory; and (2) 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 and explicitly states that such employees may appeal to the board only if they have not appealed to CHRO.

Attorney General

The bill appears to eliminate the ability of a whistleblower to file a retaliation complaint with the attorney general. Under current law, a whistleblower may file a retaliation complaint with the attorney general, who then investigates the complaint and reports any findings, but may not provide any relief (i.e. reinstatement or back pay) to a complainant. The bill eliminates this provision. However, by law, anyone can file a complaint regarding any violation of state law.

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 consider only the original retaliatory incident.

HEARING PROCESS

Witnesses and Evidence

By law, CHRO may issue subpoenas compelling the appearance of witnesses and production of evidence relevant to a proceeding. The bill allows hearing officers to, without issuing a subpoena, order state agencies and quasi-public agencies to produce for a proceeding (1) an employee to testify as a witness and (2) books, papers, or other documents relevant to the complaint. It allows hearing officers to consider the failure to produce a witness, books, papers, or documents as supporting evidence for the complainant.

The bill prohibits agencies and contractors from retaliating against employees who testify in or provide assistance to (1) a CHRO hearing, (2) an Employees' Review Board hearing; or (3) a civil action concerning a whistleblower complaint.

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 of a state agency, quasi-public agency, or large state contractor has taken retaliatory action against the whistleblower. Temporary equitable relief may include reinstating the

aggrieved employee to his or her original position.

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 a state contracting agency, in the case of a large state contract; (3) a state agency employee pursuant to a mandated reporter statute (see BACKGROUND); or (4) testimony or assistance in a whistleblower hearing or civil action.

The bill also appears to apply the rebuttable presumption to an employee of a large state contractor. However, under current law, unchanged by the bill, retaliation against internal disclosures by a contractors' employees is not explicitly prohibited.

Contracts

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 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 any testimony or assistance with a proceeding.

The bill also requires contracts between state or quasi-public agencies and large state contractors to protect employees' testimony and assistance, rather than only their initial reports to the auditors of public accounts or the attorney general. The bill also appears to extend protection to include employees' internal disclosures, but under current law, unchanged by the bill, these disclosures are not explicitly protected.

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 report to the auditors of public accounts or the attorney general.

FALSE CHARGES

By law, whistleblowers who knowingly and maliciously make false charges are subject to disciplinary action up to and including dismissal by their employer. The bill specifies that a finding of false charges may be made by the auditors, the attorney general, a human rights referee, or the Employees' Review Board.

REPORTING AND POSTING REQUIREMENTS

The bill requires the auditors and the attorney general to post on their respective websites summaries of all whistleblower complaints they have investigated. The summaries must be updated every six months and include:

1. the number of complaints for each state agency, quasi-public agency, or large state contractor;
2. a description of the type of allegations made;
3. the date the matter was referred to the auditors or attorney general; and
4. the status and disposition of each matter, including whether the allegation has been substantiated and whether corrective action has been attempted.

Additionally, the bill requires the auditors and attorney general to include this information in a jointly-submitted annual report to the legislature. Under current law, this report is submitted by the auditors,

but its requirements are not as detailed.

The bill also extends to each state agency and quasi-public agency a requirement to post notice of whistleblower protections in a conspicuous place that is readily viewable by employees. This requirement currently applies to large state contractors.

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 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, probation, and parole officers; and school guidance counselors, paraprofessionals, principals, and teachers.

Related Bill

SB 306, favorably reported by the Program Review and Investigations and Government Administration and Elections committees, restructures the process for investigating whistleblower complaints.

sSB 182, favorably reported by the Energy and Technology Committee, extends, from 30 to 90 days, the period the Department of Public Utility Control has to issue preliminary findings for whistleblower complaints filed by energy industry employees.

COMMITTEE ACTION

Program Review and Investigations Committee

Joint Favorable Substitute Change of Reference
Yea 12 Nay 0 (03/11/2010)

Government Administration and Elections Committee

Joint Favorable

Yea 15 Nay 0 (03/26/2010)