



# Senate

General Assembly

**File No. 471**

February Session, 2010

Senate Bill No. 306

*Senate, April 12, 2010*

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 IMPLEMENTING THE RECOMMENDATIONS OF THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING WHISTLEBLOWERS.***

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

1 Section 1. (NEW) (*Effective October 1, 2010*) The General Assembly  
2 finds and declares that it is in the vital interest of the people of this  
3 state that their government operate in accordance with the law and  
4 without fraud, waste or mismanagement. To that end, the purpose of  
5 section 4-61dd of the general statutes, as amended by this act, is to  
6 create a climate where conscientious service is encouraged and  
7 disclosures of illegalities and improprieties may be made without  
8 reprisal or fear of retaliation.

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10 is repealed and the following is substituted in lieu thereof (*Effective*  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

12 (a) Any person having knowledge of any matter involving  
13 corruption, unethical practices, violation of state laws or regulations,  
14 mismanagement, gross waste of funds, abuse of authority or danger to  
15 the public safety occurring in any state department or agency or any  
16 quasi-public agency, as defined in section 1-120, or any person having  
17 knowledge of any matter involving corruption, violation of state or  
18 federal laws or regulations, gross waste of funds, abuse of authority or  
19 danger to the public safety occurring in any large state contract, may  
20 transmit all facts and information in such person's possession  
21 concerning such matter to the Auditors of Public Accounts. [The  
22 Auditors of Public Accounts shall review such matter and report their  
23 findings and any recommendations to the Attorney General. Upon  
24 receiving such a report, the Attorney General shall make such  
25 investigation as the Attorney General deems proper regarding such  
26 report and any other information that may be reasonably derived from  
27 such report. Prior to conducting an investigation of any information  
28 that may be reasonably derived from such report, the Attorney  
29 General shall consult with the Auditors of Public Accounts concerning  
30 the relationship of such additional information to the report that has  
31 been issued pursuant to this subsection. Any such subsequent  
32 investigation deemed appropriate by the Attorney General shall only  
33 be conducted with the concurrence and assistance of the Auditors of  
34 Public Accounts. At the request of the Attorney General or on their  
35 own initiative, the auditors shall assist in the investigation.] The  
36 Auditors of Public Accounts or Attorney General shall investigate such  
37 matter.

38 (b) The Auditors of Public Accounts and the Attorney General shall  
39 enter into a memorandum of understanding in order to develop a  
40 system for managing complaints received pursuant to subsection (a) of  
41 this section jointly and the assignment of such complaints  
42 appropriately. The Auditors of Public Accounts and the Attorney  
43 General may reject any such complaint if either the Auditors of Public  
44 Accounts or the Attorney General determines one or more of the  
45 following:

46 (1) There are other available remedies that the complainant can  
47 reasonably be expected to pursue;

48 (2) The matter complained of is better suited for investigation or  
49 enforcement by another state agency;

50 (3) The complaint is trivial, frivolous, vexatious or not made in good  
51 faith;

52 (4) Other complaints have greater priority in terms of serving the  
53 public good;

54 (5) Investigation into the complaint would require resources that  
55 either the Auditors of Public Accounts or the Attorney General lack; or

56 (6) The complaint is not timely or too long delayed to justify further  
57 investigation.

58 (c) If at any time the Auditors of Public Accounts or the Attorney  
59 General determines that a complaint is more appropriately  
60 investigated by another state agency, they shall refer the complaint to  
61 such agency. The Attorney General [shall have power to] may  
62 summon witnesses, require the production of any necessary books,  
63 papers or other documents and administer oaths to witnesses, where  
64 necessary, for the purpose of an investigation pursuant to this section  
65 or for the purpose of investigating a suspected violation of subsection  
66 (a) of section 17b-301b until such time as the Attorney General files a  
67 civil action pursuant to section 17b-301c. Upon the conclusion of the  
68 investigation, the Attorney General shall where necessary, report any  
69 findings to the Governor, or in matters involving criminal activity, to  
70 the Chief State's Attorney. In addition to the exempt records provision  
71 of section 1-210, the Auditors of Public Accounts and the Attorney  
72 General shall not, after receipt of any information from a person under  
73 the provisions of this section or sections 17b-301c to 17b-301g,  
74 inclusive, disclose the identity of such person without such person's  
75 consent unless the Auditors of Public Accounts or the Attorney  
76 General determines that such disclosure is unavoidable, and may

77 withhold records of such investigation, during the pendency of the  
78 investigation. Upon the request of the person who makes a complaint  
79 in accordance with subsection (a) of this section, the Auditors of Public  
80 Accounts or the Attorney General shall inform such person of the  
81 outcome of the investigation of such complaint. If, at the conclusion of  
82 an investigation, the Auditors of Public Accounts or the Attorney  
83 General find such matter to be substantiated and require corrective  
84 action on the part of the state agency, quasi-public agency or large  
85 state contractor, the Auditors of Public Accounts and the Attorney  
86 General, not later than a year after requiring such action, shall  
87 determine whether such corrective action has been taken. If they  
88 determine that the state agency, quasi-public agency or large state  
89 contractor has not taken such corrective action, they shall report such  
90 noncompliance to the Governor.

91 [(b)] (d) (1) No state officer or employee, as defined in section 4-141,  
92 no quasi-public agency officer or employee, no officer or employee of a  
93 large state contractor and no appointing authority shall take or  
94 threaten to take any personnel action against any state or quasi-public  
95 agency employee or any employee of a large state contractor in  
96 retaliation for such employee's or contractor's disclosure of  
97 information to (A) an employee of the Auditors of Public Accounts or  
98 the Attorney General under the provisions of subsection (a) of this  
99 section; (B) an employee of the state agency or quasi-public agency  
100 where such state officer or employee is employed; (C) an employee of  
101 a state agency pursuant to a mandated reporter statute or pursuant to  
102 subsection (b) of section 17a-28; or (D) in the case of a large state  
103 contractor, an employee of the contracting state agency concerning  
104 information involving the large state contract.

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

110 (3) (A) Not later than thirty days after learning of the specific  
111 incident giving rise to a claim that a personnel action has been  
112 threatened or has occurred in violation of subdivision (1) of this  
113 subsection, a state or quasi-public agency employee, an employee of a  
114 large state contractor or the employee's attorney may file a complaint  
115 concerning such personnel action with the Chief Human Rights  
116 Referee designated under section 46a-57. The Chief Human Rights  
117 Referee shall assign the complaint to a human rights referee appointed  
118 under section 46a-57, who shall conduct a hearing and issue a decision  
119 concerning whether the officer or employee taking or threatening to  
120 take the personnel action violated any provision of this section. If the  
121 human rights referee finds such a violation, the referee may award the  
122 aggrieved employee reinstatement to the employee's former position,  
123 back pay and reestablishment of any employee benefits for which the  
124 employee would otherwise have been eligible if such violation had not  
125 occurred, reasonable attorneys' fees, and any other damages. For the  
126 purposes of this subsection, such human rights referee shall act as an  
127 independent hearing officer. The decision of a human rights referee  
128 under this subsection may be appealed by any person who was a party  
129 at such hearing, in accordance with the provisions of section 4-183.

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

134 (4) As an alternative to the provisions of subdivisions (2) and (3) of  
135 this subsection: (A) A state or quasi-public agency employee who  
136 alleges that a personnel action has been threatened or taken may file an  
137 appeal not later than thirty days after learning of the specific incident  
138 giving rise to such claim with the Employees' Review Board under  
139 section 5-202, or, in the case of a state or quasi-public agency employee  
140 covered by a collective bargaining contract, in accordance with the  
141 procedure provided by such contract; or (B) an employee of a large  
142 state contractor alleging that such action has been threatened or taken  
143 may, after exhausting all available administrative remedies, bring a

144 civil action in accordance with the provisions of subsection (c) of  
145 section 31-51m.

146 (5) In any proceeding under subdivision (2), (3) or (4) of this  
147 subsection concerning a personnel action taken or threatened against  
148 any state or quasi-public agency employee or any employee of a large  
149 state contractor, which personnel action occurs not later than one year  
150 after the employee first transmits facts and information concerning a  
151 matter under subsection (a) of this section to the Auditors of Public  
152 Accounts or the Attorney General, there shall be a rebuttable  
153 presumption that the personnel action is in retaliation for the action  
154 taken by the employee under subsection (a) of this section.

155 (6) If a state officer or employee, as defined in section 4-141, a quasi-  
156 public agency officer or employee, an officer or employee of a large  
157 state contractor or an appointing authority takes or threatens to take  
158 any action to impede, fail to renew or cancel a contract between a state  
159 agency and a large state contractor, or between a large state contractor  
160 and its subcontractor, in retaliation for the disclosure of information  
161 pursuant to subsection (a) of this section to any agency listed in  
162 subdivision (1) of this subsection, such affected agency, contractor or  
163 subcontractor may, not later than ninety days after learning of such  
164 action, threat or failure to renew, bring a civil action in the superior  
165 court for the judicial district of Hartford to recover damages, attorney's  
166 fees and costs.

167 [(c)] (e) Any employee of a state or quasi-public agency or large  
168 state contractor, who is found to have knowingly and maliciously  
169 made false charges under subsection (a) of this section, shall be subject  
170 to disciplinary action by such employee's appointing authority up to  
171 and including dismissal. In the case of a state or quasi-public agency  
172 employee, such action shall be subject to appeal to the Employees'  
173 Review Board in accordance with section 5-202, or in the case of state  
174 or quasi-public agency employees included in collective bargaining  
175 contracts, the procedure provided by such contracts.

176 [(d)] (f) On or before September first, annually, the Auditors of

177 Public Accounts shall submit to the clerk of each house of the General  
178 Assembly a report indicating the number of matters for which facts  
179 and information were transmitted to the auditors pursuant to this  
180 section during the preceding state fiscal year and the disposition of  
181 each such matter.

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

199 [(f)] (h) Each large state contractor shall post a notice of the  
200 provisions of this section relating to large state contractors in a  
201 conspicuous place which is readily available for viewing by the  
202 employees of the contractor.

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

207 [(h)] (j) As used in this section:

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



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.

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***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill, which restructures the process for investigating whistleblower complaints, does not result in a fiscal impact.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****SB 306*****AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING WHISTLEBLOWERS.*****SUMMARY:**

This bill restructures the process for investigating whistleblower complaints. It eliminates the current requirement for the Auditors of Public Accounts to initially review all complaints before referring them to the attorney general for further investigation. Instead, it requires the auditors and the attorney general to enter into a memorandum of understanding that outlines a system for jointly handling and appropriately assigning whistleblower complaints, and it authorizes either to reject a complaint or refer it to another entity.

The bill requires the auditors and attorney general to inform a complainant of an investigation's outcome, follow up with agencies within one year to ensure that any required corrective action is taken, and report any noncompliance to the governor.

Lastly, the bill adds a statement of purpose to the whistleblower statutes and makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2010

**INVESTIGATION OF COMPLAINTS**

Under current law, the auditors conduct an initial review of all whistleblower complaints and report any findings or recommendations to the attorney general, who may investigate further with the concurrence and assistance of the auditors.

The bill requires the auditors and the attorney general to enter into a memorandum of understanding that outlines a system for jointly

handling and appropriately assigning whistleblower complaints. It requires the auditors or the attorney general to investigate complaints but, unlike current law, allows them to refer a complaint to another state agency if either determines that another agency is better suited to investigate the complaint.

Under current law, neither the auditors nor the attorney general have the authority to reject a complaint. The bill allows either to do so if:

1. a complainant has other available remedies that he or she could reasonably be expected to pursue;
2. another agency is better suited to investigate or enforce the complaint;
3. the complaint is trivial, frivolous, vexatious, or made in bad faith;
4. other complaints have greater priority in terms of serving the public good;
5. the auditors or attorney general lack the resources to investigate the complaint; or
6. the complaint is not timely or is has been delayed too long.

The bill also requires the auditors and attorney general, at a whistleblower's request, to notify that person of the investigation's outcome. If a complaint is substantiated and requires a state agency, quasi-public agency, or large state contractor to take corrective action, the bill requires the auditors or attorney general to (1) follow up with that entity within one year to determine if it has taken corrective action and (2) report noncompliance to the governor.

#### **STATEMENT OF PURPOSE**

The bill adds a statement of purpose to the whistleblower statutes. The purpose is to "create a climate where conscientious service is

encouraged and disclosures of illegalities and improprieties may be made without reprisal or fear of retaliation.”

## **BACKGROUND**

### ***Whistleblower Complaints***

By law, actions by a state agency, quasi-public agency, or large state contractor that may trigger a whistleblower complaint include (1) corruption, (2) unethical practices, (3) violation of state or federal laws or regulations, (4) mismanagement, (5) gross waste of funds, (6) abuse of authority, or (7) danger to the public safety.

### ***Related Bill***

sHB 5348, favorably reported by the Program Review Investigations and Government Administration and Elections committees, expands protections for whistleblowers and establishes new ones.

## **COMMITTEE ACTION**

Program Review and Investigations Committee

Joint Favorable Change of Reference

Yea 12 Nay 0 (03/11/2010)

Government Administration and Elections Committee

Joint Favorable

Yea 15 Nay 0 (03/24/2010)