



General Assembly

Amendment

February Session, 2010

LCO No. 5343

HB0534805343HDO

Offered by:
REP. MUSHINSKY, 85th Dist.

To: Subst. House Bill No. 5348

File No. 490

Cal. No. 292

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

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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4 statutes is repealed and the following is substituted in lieu thereof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

6 (a) Any person having knowledge of any matter involving
7 corruption, unethical practices, violation of state laws or regulations,
8 mismanagement, gross waste of funds, abuse of authority or danger to
9 the public safety occurring in any state department or agency or any
10 quasi-public agency, as defined in section 1-120, or any person having
11 knowledge of any matter involving corruption, violation of state or

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

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

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

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

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

46 (4) Other complaints have greater priority in terms of serving the
47 public good; or

48 (5) The complaint is not timely or too long delayed to justify further
49 investigation.

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

74 (d) (1) Upon the request of the person who makes a complaint in
75 accordance with subsection (a) of this section, the Auditors of Public

76 Accounts or the Attorney General shall inform such person of the
77 outcome of the investigation of such complaint, including whether the
78 matter has been rejected pursuant to subsection (b) of this section or
79 referred to another agency pursuant to subsection (c) of this section. If,
80 at the conclusion of an investigation, the Auditors of Public Accounts
81 or the Attorney General find such matter to be substantiated and
82 require corrective action on the part of the state agency, quasi-public
83 agency or large state contractor, the Auditors of Public Accounts and
84 the Attorney General, not later than a year after requiring such action,
85 shall determine whether such corrective action has been taken. If they
86 determine that the state agency, quasi-public agency or large state
87 contractor has not taken such corrective action, they shall report such
88 noncompliance to the Governor.

89 (2) The Auditors of Public Accounts and the Attorney General shall
90 each post on their agency Internet web sites a summary of all matters
91 investigated by their agencies. Such summary shall include, but not be
92 limited to, the number of complaints for each state agency, quasi-
93 public agency or large state contractor, a description of the type of
94 allegations made, the date each such matter was referred to the
95 auditors or Attorney General and the status and disposition of each
96 such matter, including whether the allegation has been substantiated
97 in whole or in part and whether the agency or large state contractor
98 has attempted to take any corrective action. Such summary shall not
99 include the name of any large state contractor. Such summary shall be
100 updated every six months.

101 [(b)] (e) (1) No state officer or employee, as defined in section 4-141,
102 no quasi-public agency officer or employee, no officer or employee of a
103 large state contractor and no appointing authority shall take or
104 threaten to take any personnel action against any state or quasi-public
105 agency employee or any employee of a large state contractor in
106 retaliation for (A) such employee's [or contractor's] disclosure of
107 information to [(A)] (i) an employee of the Auditors of Public Accounts
108 or the Attorney General under the provisions of subsection (a) of this
109 section; [(B)] (ii) an employee of the state agency or quasi-public

110 agency where such state officer or employee is employed; [(C)] (iii) an
111 employee of a state agency pursuant to a mandated reporter statute or
112 pursuant to subsection (b) of section 17a-28; or [(D)] (iv) in the case of a
113 large state contractor, an employee of the contracting state agency
114 concerning information involving the large state contract; or (B) such
115 employee's testimony or assistance in any proceeding under this
116 section.

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

122 [(3)] (2) (A) Not later than [thirty] ninety days after learning of the
123 specific incident giving rise to a claim that a personnel action has been
124 threatened or has occurred in violation of subdivision (1) of this
125 subsection, a state or quasi-public agency employee, an employee of a
126 large state contractor or the employee's attorney may file a complaint
127 against the state agency, quasi-public agency, large state contractor or
128 appointing authority concerning such personnel action with the Chief
129 Human Rights Referee designated under section 46a-57. Such
130 complaint may be amended if an additional incident giving rise to a
131 claim under this subdivision occurs subsequent to the filing of the
132 original complaint. The Chief Human Rights Referee shall assign the
133 complaint to a human rights referee appointed under section 46a-57,
134 who shall conduct a hearing and issue a decision concerning whether
135 the officer or employee taking or threatening to take the personnel
136 action violated any provision of this section. [If] The human rights
137 referee may order a state agency or quasi-public agency to produce (i)
138 an employee of such agency or quasi-public agency to testify as a
139 witness in any proceeding under this subdivision, or (ii) books, papers
140 or other documents relevant to the complaint, without issuing a
141 subpoena. If such agency or quasi-public agency fails to produce such
142 witness, books, papers or documents, not later than thirty days after
143 issuing such order, the human rights referee may consider such failure

144 as supporting evidence for the complainant. If, during the pendency of
145 the hearing, the human rights referee has reasonable cause to believe
146 that any officer or employee has taken personnel action in violation of
147 subdivision (1) of this subsection, such referee may order temporary
148 equitable relief, including, but not limited to, an order reinstating the
149 person filing the complaint to the same position held before such
150 personnel action was taken. If, after the hearing, the human rights
151 referee finds [such] a violation, the referee may award the aggrieved
152 employee reinstatement to the employee's former position, back pay
153 and reestablishment of any employee benefits for which the employee
154 would otherwise have been eligible if such violation had not occurred,
155 reasonable attorneys' fees, and any other damages. For the purposes of
156 this subsection, such human rights referee shall act as an independent
157 hearing officer. The decision of a human rights referee under this
158 subsection may be appealed by any person who was a party at such
159 hearing, in accordance with the provisions of section 4-183.

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

164 [(4) As an alternative to the provisions of subdivisions] (3) Any state
165 or quasi-public agency employee or large state contractor employee
166 who has not pursued a remedy under subdivision (2) [and (3)] of this
167 subsection may, in the case of: (A) A state or quasi-public agency
168 employee who alleges that a personnel action has been threatened or
169 taken, [may] file an appeal not later than [thirty] ninety days after
170 learning of the specific incident giving rise to such claim with the
171 Employees' Review Board under section 5-202, or, in the case of a state
172 or quasi-public agency employee covered by a collective bargaining
173 contract, in accordance with the procedure provided by such contract;
174 or (B) an employee of a large state contractor alleging that such action
175 has been threatened or taken, [may,] after exhausting all available
176 administrative remedies, bring a civil action in accordance with the
177 provisions of subsection (c) of section 31-51m.

178 [(5)] (4) In any proceeding under subdivision (2) [~~]~~ or (3) [or (4)] of
179 this subsection concerning a personnel action taken or threatened
180 against any state or quasi-public agency employee or any employee of
181 a large state contractor, which personnel action occurs not later than
182 [one year] two years after the employee first transmits facts and
183 information concerning a matter under subsection (a) of this section or
184 subdivision (1) of this subsection to the Auditors of Public Accounts,
185 [or] the Attorney General or an employee of a state agency or quasi-
186 public agency, as applicable, there shall be a rebuttable presumption
187 that the personnel action is in retaliation for the action taken by the
188 employee under subsection (a) of this section or subdivision (1) of this
189 subsection.

190 [(6)] (5) If a state officer or employee, as defined in section 4-141, a
191 quasi-public agency officer or employee, an officer or employee of a
192 large state contractor or an appointing authority takes or threatens to
193 take any action to impede, fail to renew or cancel a contract between a
194 state agency and a large state contractor, or between a large state
195 contractor and its subcontractor, in retaliation for the disclosure of
196 information pursuant to subsection (a) of this section or subdivision (1)
197 of this subsection to any agency listed in subdivision (1) of this
198 subsection, such affected agency, contractor or subcontractor may, not
199 later than ninety days after learning of such action, threat or failure to
200 renew, bring a civil action in the superior court for the judicial district
201 of Hartford to recover damages, attorney's fees and costs.

202 [(c)] (f) Any employee of a state or quasi-public agency or large state
203 contractor, who is found by the Auditors of Public Accounts, the
204 Attorney General, a human rights referee or the Employees' Review
205 Board to have knowingly and maliciously made false charges under
206 subsection (a) of this section, shall be subject to disciplinary action by
207 such employee's appointing authority up to and including dismissal.
208 In the case of a state or quasi-public agency employee, such action
209 shall be subject to appeal to the Employees' Review Board in
210 accordance with section 5-202, or in the case of state or quasi-public
211 agency employees included in collective bargaining contracts, the

212 procedure provided by such contracts.

213 [(d)] (g) On or before September first, annually, the Auditors of
214 Public Accounts and the Attorney General shall submit, in accordance
215 with the provisions of section 11-4a, to the clerk of each house of the
216 General Assembly a joint report indicating the number of matters for
217 each agency or large state contractor for which facts and information
218 were transmitted to the auditors pursuant to this section during the
219 preceding state fiscal year, [and the] a description of the type of
220 allegations made, the date each such matter was referred to the
221 auditors and the status and disposition of each such matter, including
222 whether the allegation has been substantiated in whole or in part and
223 whether the agency or large state contractor has attempted to take any
224 corrective action. Such report shall not include the name of any large
225 state contractor.

226 [(e)] (h) Each contract between a state or quasi-public agency and a
227 large state contractor shall provide that, if an officer, employee or
228 appointing authority of a large state contractor takes or threatens to
229 take any personnel action against any employee of the contractor in
230 retaliation for such employee's disclosure of information to any
231 employee of the contracting state or quasi-public agency or the
232 Auditors of Public Accounts or the Attorney General under the
233 provisions of subsection (a) or subdivision (1) of subsection (b) of this
234 section, the contractor shall be liable for a civil penalty of not more
235 than five thousand dollars for each offense, up to a maximum of
236 twenty per cent of the value of the contract. Each violation shall be a
237 separate and distinct offense and in the case of a continuing violation
238 each calendar day's continuance of the violation shall be deemed to be
239 a separate and distinct offense. The executive head of the state or
240 quasi-public agency may request the Attorney General to bring a civil
241 action in the superior court for the judicial district of Hartford to seek
242 imposition and recovery of such civil penalty.

243 [(f)] (i) Each state agency or quasi-public agency shall post a notice
244 of the provisions of this section relating to state employees and quasi-

245 public agency employees in a conspicuous place that is readily
 246 available for viewing by employees of such agency or quasi-public
 247 agency. Each large state contractor shall post a notice of the provisions
 248 of this section relating to large state contractors in a conspicuous place
 249 which is readily available for viewing by the employees of the
 250 contractor.

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

255 ~~[(h)]~~ (k) As used in this section:

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

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

261 Sec. 2. Subdivision (13) of subsection (b) of section 1-210 of the 2010
 262 supplement to the general statutes is repealed and the following is
 263 substituted in lieu thereof (*Effective October 1, 2010*):

264 (13) Records of an investigation or the name of an employee
 265 providing information under the provisions of section 4-61dd or
 266 sections 17b-301c to 17b-301g, inclusive, except that the summary
 267 posted in accordance with subsection (d) of section 4-61dd, as
 268 amended by this act, and the report submitted in accordance with
 269 subsection (g) of section 4-61dd, as amended by this act, shall not be
 270 considered records of an investigation for purposes of this
 271 subdivision;"

This act shall take effect as follows and shall amend the following sections:		
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Section 1	October 1, 2010	4-61dd
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Sec. 2	<i>October 1, 2010</i>	1-210(b)(13)
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