



General Assembly

January Session, 2011

**Raised Bill No. 1087**

LCO No. 3661

\*03661\_\_\_\_\_PRI\*

Referred to Committee on Program Review and Investigations

Introduced by:  
(PRI)

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

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 Section 4-61dd of the general statutes is repealed and the  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 October 1, 2011*):

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 Auditors of Public Accounts or Attorney General shall investigate any  
28 such complaint.

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

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

39 (2) The complaint is better suited for investigation or enforcement  
40 by another state agency;

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

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

45 (5) The complaint is not timely or too long delayed to justify further

46 investigation.

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

71 (d) (1) Upon the request of the person who makes a complaint in  
72 accordance with subsection (a) of this section, the Auditors of Public  
73 Accounts or the Attorney General shall inform such person of the  
74 outcome of the investigation of such complaint, including whether the  
75 matter has been rejected pursuant to subsection (b) of this section or  
76 referred to another agency pursuant to subsection (c) of this section. If,  
77 at the conclusion of an investigation, the Auditors of Public Accounts  
78 or the Attorney General find such matter to be substantiated and

79 require corrective action on the part of the state agency, quasi-public  
80 agency or large state contractor, the Auditors of Public Accounts and  
81 the Attorney General, not later than one year after requiring such  
82 action, shall determine whether such corrective action has been taken.  
83 If they determine that the state agency, quasi-public agency or large  
84 state contractor has not taken such corrective action, they shall report  
85 such noncompliance to the Governor.

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

98 ~~[(b)]~~ (e) (1) No state officer or employee, as defined in section 4-141,  
99 no quasi-public agency officer or employee, no officer or employee of a  
100 large state contractor and no appointing authority shall take or  
101 threaten to take any personnel action against any state or quasi-public  
102 agency employee or any employee of a large state contractor in  
103 retaliation for (A) such employee's [or contractor's] disclosure of  
104 information to ~~[(A)]~~ (i) an employee of the Auditors of Public Accounts  
105 or the Attorney General under the provisions of subsection (a) of this  
106 section; ~~[(B)]~~ (ii) an employee of the state agency or quasi-public  
107 agency where such state officer or employee is employed; ~~[(C)]~~ (iii) an  
108 employee of a state agency pursuant to a mandated reporter statute or  
109 pursuant to subsection (b) of section 17a-28; or ~~[(D)]~~ (iv) in the case of a  
110 large state contractor, an employee of the contracting state agency  
111 concerning information involving the large state contract; or (B) such

112 employee's testimony or assistance in any proceeding under this  
113 section.

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

119 [(3)] (2) (A) Not later than [thirty] ninety days after learning of the  
120 specific incident giving rise to a claim that a personnel action has been  
121 threatened or has occurred in violation of subdivision (1) of this  
122 subsection, a state or quasi-public agency employee, an employee of a  
123 large state contractor or the employee's attorney may file a complaint  
124 against the state agency, quasi-public agency, large state contractor or  
125 appointing authority concerning such personnel action with the Chief  
126 Human Rights Referee designated under section 46a-57. Such  
127 complaint may be amended if an additional incident giving rise to a  
128 claim under this subdivision occurs subsequent to the filing of the  
129 original complaint. The Chief Human Rights Referee shall assign the  
130 complaint to a human rights referee appointed under section 46a-57,  
131 who shall conduct a hearing and issue a decision concerning whether  
132 the officer or employee taking or threatening to take the personnel  
133 action violated any provision of this section. [If] The human rights  
134 referee may order a state agency or quasi-public agency to produce (i)  
135 an employee of such agency or quasi-public agency to testify as a  
136 witness in any proceeding under this subdivision, or (ii) books, papers  
137 or other documents relevant to the complaint, without issuing a  
138 subpoena. If such agency or quasi-public agency fails to produce such  
139 witness, books, papers or documents, not later than thirty days after  
140 such order, the human rights referee may consider such failure as  
141 supporting evidence for the complainant. If, after the hearing, the  
142 human rights referee finds [such] a violation, the referee may award  
143 the aggrieved employee reinstatement to the employee's former  
144 position, back pay and reestablishment of any employee benefits for

145 which the employee would otherwise have been eligible if such  
146 violation had not occurred, reasonable attorneys' fees, and any other  
147 damages. For the purposes of this subsection, such human rights  
148 referee shall act as an independent hearing officer. The decision of a  
149 human rights referee under this subsection may be appealed by any  
150 person who was a party at such hearing, in accordance with the  
151 provisions of section 4-183.

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

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

170 [(5)] (4) In any proceeding under subdivision (2) [,] or (3) [or (4)] of  
171 this subsection concerning a personnel action taken or threatened  
172 against any state or quasi-public agency employee or any employee of  
173 a large state contractor, which personnel action occurs not later than  
174 [one year] two years after the employee first transmits facts and  
175 information concerning a matter under subsection (a) of this section or  
176 discloses information under subdivision (1) of this subsection to the

177 Auditors of Public Accounts, [or] the Attorney General or an employee  
178 of a state agency or quasi-public agency, as applicable, there shall be a  
179 rebuttable presumption that the personnel action is in retaliation for  
180 the action taken by the employee under subsection (a) of this section or  
181 subdivision (1) of this subsection.

182 ~~[(6)]~~ (5) If a state officer or employee, as defined in section 4-141, a  
183 quasi-public agency officer or employee, an officer or employee of a  
184 large state contractor or an appointing authority takes or threatens to  
185 take any action to impede, fail to renew or cancel a contract between a  
186 state agency and a large state contractor, or between a large state  
187 contractor and its subcontractor, in retaliation for the disclosure of  
188 information pursuant to subsection (a) of this section or subdivision (1)  
189 of this subsection to any agency listed in subdivision (1) of this  
190 subsection, such affected agency, contractor or subcontractor may, not  
191 later than ninety days after learning of such action, threat or failure to  
192 renew, bring a civil action in the superior court for the judicial district  
193 of Hartford to recover damages, attorney's fees and costs.

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

205 ~~[(d)]~~ (g) On or before September first, annually, the Auditors of  
206 Public Accounts and the Attorney General shall submit, in accordance  
207 with the provisions of section 11-4a, to the clerk of each house of the  
208 General Assembly a joint report indicating the number of matters for

209 each agency or large state contractor for which facts and information  
210 were transmitted to the auditors pursuant to this section during the  
211 preceding state fiscal year, [and the] a description of the type of  
212 allegations made, the date each such matter was referred to the  
213 auditors and the status and disposition of each such matter, including  
214 whether the allegation has been substantiated in whole or in part and  
215 whether the agency or large state contractor has attempted to take any  
216 corrective action. Such report shall not include the name of any large  
217 state contractor.

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

235 [(f)] (i) Each state agency or quasi-public agency shall post a notice  
236 of the provisions of this section relating to state employees and quasi-  
237 public agency employees in a conspicuous place that is readily  
238 available for viewing by employees of such agency or quasi-public  
239 agency. Each large state contractor shall post a notice of the provisions  
240 of this section relating to large state contractors in a conspicuous place  
241 which is readily available for viewing by the employees of the

242 contractor.

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

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

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

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

253 Sec. 2. Subdivision (13) of subsection (b) of section 1-210 of the  
254 general statutes is repealed and the following is substituted in lieu  
255 thereof (*Effective October 1, 2011*):

256 (13) Records of an investigation or the name of an employee  
257 providing information under the provisions of section 4-61dd or  
258 sections 17b-301c to 17b-301g, inclusive, except that the summary  
259 posted in accordance with subsection (d) of section 4-61dd, as  
260 amended by this act, and the report submitted in accordance with  
261 subsection (g) of section 4-61dd, as amended by this act, shall not be  
262 considered records of an investigation for purposes of this subdivision;

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	4-61dd
Sec. 2	<i>October 1, 2011</i>	1-210(b)(13)

**Statement of Purpose:**

To implement the recommendations of the Legislative Program Review and Investigations Committee concerning whistleblowers: To require the Attorney General and the Auditors of Public Accounts to

post a summary of all complaints on their web site every six months, to require a more detailed report be submitted to the General Assembly, to extend the filing requirement for complaints to ninety days, to extend the rebuttable presumption period for retaliation complaints to two years, to permit amendments to complaints and to repeal the provision setting forth a process for requesting the Attorney General to investigate retaliation complaints.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*