



General Assembly

**Substitute Bill No. 1087**

January Session, 2011

\* \_\_\_\_\_SB01087GAE\_\_\_033111\_\_\_\_\_\*

**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 Section 4-61dd of the general statutes is repealed and the  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.

27 (b) The Auditors of Public Accounts or the Attorney General may  
28 reject any complaint received pursuant to subsection (a) of this section  
29 if either the Auditors of Public Accounts or the Attorney General  
30 determines one or more of the following:

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

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

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

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

39 (5) The complaint is not timely or is too long delayed to justify  
40 further investigation; or

41 (6) The complaint could be handled more appropriately as part of  
42 an ongoing or scheduled regular audit.

43 (c) If at any time the Auditors of Public Accounts or the Attorney  
44 General determines that a complaint is more appropriately  
45 investigated by another state agency, the Auditors of Public Accounts  
46 or the Attorney General shall refer the complaint to such agency. The  
47 investigating agency shall provide a status report regarding the  
48 referred complaint to the Auditors of Public Accounts or the Attorney  
49 General upon request. The Attorney General [shall have power to]

50 may summon witnesses, require the production of any necessary  
51 books, papers or other documents and administer oaths to witnesses,  
52 where necessary, for the purpose of an investigation pursuant to this  
53 section or for the purpose of investigating a suspected violation of  
54 subsection (a) of section 17b-301b until such time as the Attorney  
55 General files a civil action pursuant to section 17b-301c. Upon the  
56 conclusion of the investigation, the Attorney General shall where  
57 necessary, report any findings to the Governor, or in matters involving  
58 criminal activity, to the Chief State's Attorney. In addition to the  
59 exempt records provision of section 1-210, the Auditors of Public  
60 Accounts and the Attorney General shall not, after receipt of any  
61 information from a person under the provisions of this section or  
62 sections 17b-301c to 17b-301g, inclusive, disclose the identity of such  
63 person without such person's consent unless the Auditors of Public  
64 Accounts or the Attorney General determines that such disclosure is  
65 unavoidable, and may withhold records of such investigation, during  
66 the pendency of the investigation.

67 [(b)] (d) (1) No state officer or employee, as defined in section 4-141,  
68 no quasi-public agency officer or employee, no officer or employee of a  
69 large state contractor and no appointing authority shall take or  
70 threaten to take any personnel action against any state or quasi-public  
71 agency employee or any employee of a large state contractor in  
72 retaliation for (A) such employee's or contractor's disclosure of  
73 information to [(A)] (i) an employee of the Auditors of Public Accounts  
74 or the Attorney General under the provisions of subsection (a) of this  
75 section; [(B)] (ii) an employee of the state agency or quasi-public  
76 agency where such state officer or employee is employed; [(C)] (iii) an  
77 employee of a state agency pursuant to a mandated reporter statute or  
78 pursuant to subsection (b) of section 17a-28; or [(D)] (iv) in the case of a  
79 large state contractor, an employee of the contracting state agency  
80 concerning information involving the large state contract; or (B) such  
81 employee's testimony or assistance in any proceeding under this  
82 section.

83 [(2) If a state or quasi-public agency employee or an employee of a

84 large state contractor alleges that a personnel action has been  
85 threatened or taken in violation of subdivision (1) of this subsection,  
86 the employee may notify the Attorney General, who shall investigate  
87 pursuant to subsection (a) of this section.]

88 [(3)] (2) (A) Not later than [thirty] ninety days after learning of the  
89 specific incident giving rise to a claim that a personnel action has been  
90 threatened or has occurred in violation of subdivision (1) of this  
91 subsection, a state or quasi-public agency employee, an employee of a  
92 large state contractor or the employee's attorney may file a complaint  
93 against the state agency, quasi-public agency, large state contractor or  
94 appointing authority concerning such personnel action with the Chief  
95 Human Rights Referee designated under section 46a-57. Such  
96 complaint may be amended if an additional incident giving rise to a  
97 claim under this subdivision occurs subsequent to the filing of the  
98 original complaint. The Chief Human Rights Referee shall assign the  
99 complaint to a human rights referee appointed under section 46a-57,  
100 who shall conduct a hearing and issue a decision concerning whether  
101 the officer or employee taking or threatening to take the personnel  
102 action violated any provision of this section. [If] The human rights  
103 referee may order a state agency or quasi-public agency to produce (i)  
104 an employee of such agency or quasi-public agency to testify as a  
105 witness in any proceeding under this subdivision, or (ii) books, papers  
106 or other documents relevant to the complaint, without issuing a  
107 subpoena. If such agency or quasi-public agency fails to produce such  
108 witness, books, papers or documents, not later than thirty days after  
109 such order, the human rights referee may consider such failure as  
110 supporting evidence for the complainant. If, after the hearing, the  
111 human rights referee finds [such] a violation, the referee may award  
112 the aggrieved employee reinstatement to the employee's former  
113 position, back pay and reestablishment of any employee benefits for  
114 which the employee would otherwise have been eligible if such  
115 violation had not occurred, reasonable attorneys' fees, and any other  
116 damages. For the purposes of this subsection, such human rights  
117 referee shall act as an independent hearing officer. The decision of a

118 human rights referee under this subsection may be appealed by any  
119 person who was a party at such hearing, in accordance with the  
120 provisions of section 4-183.

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

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

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

151        [(6)] (5) If a state officer or employee, as defined in section 4-141, a  
152 quasi-public agency officer or employee, an officer or employee of a  
153 large state contractor or an appointing authority takes or threatens to  
154 take any action to impede, fail to renew or cancel a contract between a  
155 state agency and a large state contractor, or between a large state  
156 contractor and its subcontractor, in retaliation for the disclosure of  
157 information pursuant to subsection (a) of this section or subdivision (1)  
158 of this subsection to any agency listed in subdivision (1) of this  
159 subsection, such affected agency, contractor or subcontractor may, not  
160 later than ninety days after learning of such action, threat or failure to  
161 renew, bring a civil action in the superior court for the judicial district  
162 of Hartford to recover damages, attorney's fees and costs.

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

174        [(d)] (f) On or before September first, annually, the Auditors of  
175 Public Accounts shall submit, in accordance with the provisions of  
176 section 11-4a, to the clerk of each house of the General Assembly a  
177 report indicating the number of matters for which facts and  
178 information were transmitted to the auditors pursuant to this section  
179 during the preceding state fiscal year and the disposition of each such  
180 matter.

181        [(e)] (g) Each contract between a state or quasi-public agency and a  
182 large state contractor shall provide that, if an officer, employee or  
183 appointing authority of a large state contractor takes or threatens to

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

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

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

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

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

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

216       Sec. 2. (*Effective from passage*) On or before February 1, 2012, the  
217 Attorney General and the Auditors of Public Accounts shall submit a  
218 joint report to the Legislative Program Review and Investigations  
219 Committee, in accordance with the provisions of section 11-4a of the  
220 general statutes, concerning the status of modifications made to the  
221 Attorney General's and Auditors' implementation of section 4-61dd of  
222 the general statutes, as amended by this act.

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>from passage</i>	New section

**Statement of Legislative Commissioners:**

In section 1(g) an incorrect internal reference was changed for accuracy.

**PRI**       *Joint Favorable Subst. C/R*

GAE

**GAE**       *Joint Favorable Subst.-LCO*