



Senate

General Assembly

File No. 511

January Session, 2019

Senate Bill No. 359

Senate, April 8, 2019

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT EXTENDING WHISTLEBLOWER PROTECTIONS TO EMPLOYEES OF BUSINESSES RECEIVING FINANCIAL ASSISTANCE FROM THE STATE.

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 Section 4-61dd of the general statutes is repealed and the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, 2019*):

3 (a) Any person having knowledge of any matter involving (1)
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, any
7 quasi-public agency, as defined in section 1-120, or any Probate Court,
8 [or any person having knowledge of any matter involving] (2)
9 corruption, violation of state or federal laws or regulations, gross
10 waste of funds, abuse of authority or danger to the public safety
11 occurring in any large state contract, or (3) corruption by an entity
12 receiving financial assistance pursuant to title 32 that has failed to meet
13 its contractual obligations or has failed to satisfy any condition

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

31 (b) (1) The Auditors of Public Accounts may reject any complaint
32 received pursuant to subsection (a) of this section if the Auditors of
33 Public Accounts determine one or more of the following:

34 (A) There are other available remedies that the complainant can
35 reasonably be expected to pursue;

36 (B) The complaint is better suited for investigation or enforcement
37 by another state agency;

38 (C) The complaint is trivial, frivolous, vexatious or not made in
39 good faith;

40 (D) Other complaints have greater priority in terms of serving the
41 public good;

42 (E) The complaint is not timely or is too long delayed to justify
43 further investigation; or

44 (F) The complaint could be handled more appropriately as part of

45 an ongoing or scheduled regular audit.

46 (2) If the Auditors of Public Accounts reject a complaint pursuant to
47 subdivision (1) of this subsection, the Auditors of Public Accounts
48 shall provide a report to the Attorney General setting out the basis for
49 the rejection.

50 (3) If at any time the Auditors of Public Accounts determine that a
51 complaint is more appropriately investigated by another state agency,
52 the Auditors of Public Accounts shall refer the complaint to such
53 agency. The investigating agency shall provide a status report
54 regarding the referred complaint to the Auditors of Public Accounts
55 upon request.

56 (c) Notwithstanding the provisions of section 12-15, the
57 Commissioner of Revenue Services may, upon written request by the
58 Auditors of Public Accounts, disclose return or return information, as
59 defined in section 12-15, to the Auditors of Public Accounts for
60 purposes of preparing a report under subsection (a) or (b) of this
61 section. Such return or return information shall not be published in
62 any report prepared in accordance with subsection (a) or (b) of this
63 section, and shall not otherwise be redisclosed, except that such
64 information may be redisclosed to the Attorney General for purposes
65 of an investigation authorized by subsection (a) of this section. Any
66 person who violates the provisions of this subsection shall be subject to
67 the provisions of subsection (g) of section 12-15.

68 (d) The Attorney General may summon witnesses, require the
69 production of any necessary books, papers or other documents and
70 administer oaths to witnesses, where necessary, for the purpose of an
71 investigation pursuant to this section or for the purpose of
72 investigating a suspected violation of subsection (a) of section 4-275
73 until such time as the Attorney General files a civil action pursuant to
74 section 4-276. Service of a subpoena ad testificandum, subpoena duces
75 tecum and a notice of deposition, may be made by: (1) Personal service
76 or service at the usual place of abode; or (2) registered or certified mail,
77 return receipt requested, a duly executed copy thereof addressed to the

78 person to be served at such person's principal place of business in this
79 state, or, if such person has no principal place of business in this state,
80 at such person's principal office or such person's residence. Upon the
81 conclusion of the investigation, the Attorney General shall where
82 necessary, report any findings to the Governor, or in matters involving
83 criminal activity, to the Chief State's Attorney. In addition to the
84 exempt records provision of section 1-210, the Auditors of Public
85 Accounts and the Attorney General shall not, after receipt of any
86 information from a person under the provisions of this section or
87 sections 4-276 to 4-280, inclusive, disclose the identity of such person
88 without such person's consent unless the Auditors of Public Accounts
89 or the Attorney General determines that such disclosure is
90 unavoidable, and may withhold records of such investigation, during
91 the pendency of the investigation. All documentary material or other
92 information furnished to the Attorney General, his or her deputy or
93 any assistant attorney general designated by the Attorney General,
94 pursuant to a demand issued under this subsection for the purpose of
95 investigating a suspected violation of subsection (a) of section 4-275,
96 shall be returned to the person furnishing such documentary material
97 or other information upon the termination of the Attorney General's
98 investigation or final determination of any action or proceeding
99 commenced thereunder.

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

113 contractor, an employee of the contracting state agency concerning
114 information involving the large state contract; or (B) such employee's
115 testimony or assistance in any proceeding under this section.

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

148 hearing, in accordance with the provisions of section 4-183.

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

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

165 (4) In any proceeding under subdivision (2) or (3) of this subsection
166 concerning a personnel action taken or threatened against any state or
167 quasi-public agency employee or any employee of a large state
168 contractor, which personnel action occurs not later than two years after
169 the employee first transmits facts and information concerning a matter
170 under subsection (a) of this section or discloses information under
171 subdivision (1) of this subsection to the Auditors of Public Accounts,
172 the Attorney General or an employee of a state agency, quasi-public
173 agency or Probate Court, as applicable, there shall be a rebuttable
174 presumption that the personnel action is in retaliation for the action
175 taken by the employee under subsection (a) of this section or
176 subdivision (1) of this subsection.

177 (5) If a state officer or employee, as defined in section 4-141, a quasi-
178 public agency officer or employee, an officer or employee of a large
179 state contractor or an appointing authority takes or threatens to take
180 any action to impede, fail to renew or cancel a contract between a state

181 agency and a large state contractor, or between a large state contractor
182 and its subcontractor, in retaliation for the disclosure of information
183 pursuant to subsection (a) of this section or subdivision (1) of this
184 subsection to any agency listed in subdivision (1) of this subsection,
185 such affected agency, contractor or subcontractor may, not later than
186 ninety days after learning of such action, threat or failure to renew,
187 bring a civil action in the superior court for the judicial district of
188 Hartford to recover damages, attorney's fees and costs.

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

200 (g) On or before September first, annually, the Auditors of Public
201 Accounts shall submit, in accordance with the provisions of section 11-
202 4a, to the clerk of each house of the General Assembly a report
203 indicating the number of matters for which facts and information were
204 transmitted to the auditors pursuant to this section during the
205 preceding state fiscal year and the disposition of each such matter.

206 (h) Each contract between a state or quasi-public agency and a large
207 state contractor shall provide that, if an officer, employee or
208 appointing authority of a large state contractor takes or threatens to
209 take any personnel action against any employee of the contractor in
210 retaliation for such employee's disclosure of information to any
211 employee of the contracting state or quasi-public agency or the
212 Auditors of Public Accounts or the Attorney General under the
213 provisions of subsection (a) or subdivision (1) of subsection (e) of this

214 section, the contractor shall be liable for a civil penalty of not more
215 than five thousand dollars for each offense, up to a maximum of
216 twenty per cent of the value of the contract. Each violation shall be a
217 separate and distinct offense and in the case of a continuing violation
218 each calendar day's continuance of the violation shall be deemed to be
219 a separate and distinct offense. The executive head of the state or
220 quasi-public agency may request the Attorney General to bring a civil
221 action in the superior court for the judicial district of Hartford to seek
222 imposition and recovery of such civil penalty.

223 (i) Each state agency or quasi-public agency shall post a notice of the
224 provisions of this section relating to state employees and quasi-public
225 agency employees in a conspicuous place that is readily available for
226 viewing by employees of such agency or quasi-public agency. Each
227 Probate Court shall post a notice of the provisions of this section
228 relating to Probate Court employees in a conspicuous place that is
229 readily available for viewing by employees of such court. Each large
230 state contractor shall post a notice of the provisions of this section
231 relating to large state contractors in a conspicuous place which is
232 readily available for viewing by the employees of the contractor.

233 (j) No person who, in good faith, discloses information in
234 accordance with the provisions of this section shall be liable for any
235 civil damages resulting from such good faith disclosure.

236 (k) As used in this section:

237 (1) "Large state contract" means a contract having a value of five
238 million dollars or more (A) between an entity and a state or quasi-
239 public agency, [having a value of five million dollars or more] or (B)
240 for the receipt of financial assistance by an entity from the state
241 pursuant to title 32; and

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

244 (l) (1) No officer or employee of a state shellfish grounds lessee shall

245 take or threaten to take any personnel action against any employee of a
246 state shellfish grounds lessee in retaliation for (A) such employee's
247 disclosure of information to an employee of the leasing agency
248 concerning information involving the state shellfish grounds lease, or
249 (B) such employee's testimony or assistance in any proceeding under
250 this section.

251 (2) (A) Not later than ninety days after learning of the specific
252 incident giving rise to a claim that a personnel action has been
253 threatened or has occurred in violation of subdivision (1) of this
254 subsection, an employee of a state shellfish grounds lessee or the
255 employee's attorney may file a complaint against the state shellfish
256 grounds lessee concerning such personnel action with the Chief
257 Human Rights Referee designated under section 46a-57. Such
258 complaint may be amended if an additional incident giving rise to a
259 claim under this subdivision occurs subsequent to the filing of the
260 original complaint. The Chief Human Rights Referee shall assign the
261 complaint to a human rights referee appointed under section 46a-57,
262 who shall conduct a hearing and issue a decision concerning whether
263 the officer or employee taking or threatening to take the personnel
264 action violated any provision of this subsection. The human rights
265 referee may order a state shellfish grounds lessee to produce (i) an
266 employee of such lessee to testify as a witness in any proceeding under
267 this subdivision, or (ii) books, papers or other documents relevant to
268 the complaint, without issuing a subpoena. If such state shellfish
269 grounds lessee fails to produce such witness, books, papers or
270 documents, not later than thirty days after such order, the human
271 rights referee may consider such failure as supporting evidence for the
272 complainant. If, after the hearing, the human rights referee finds a
273 violation, the referee may award the aggrieved employee
274 reinstatement to the employee's former position, back pay and
275 reestablishment of any employee benefits for which the employee
276 would otherwise have been eligible if such violation had not occurred,
277 reasonable attorneys' fees and any other damages. For the purposes of
278 this subsection, such human rights referee shall act as an independent
279 hearing officer. The decision of a human rights referee under this

280 subsection may be appealed by any person who was a party at such
281 hearing, in accordance with the provisions of section 4-183.

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

286 (3) As an alternative to the provisions of subdivision (2) of this
287 subsection, an employee of a state shellfish grounds lessee who alleges
288 that a personnel action has been threatened or taken may, after
289 exhausting all available administrative remedies, bring a civil action in
290 accordance with the provisions of subsection (c) of section 31-51m.

291 (4) In any proceeding under subdivision (2) or (3) of this subsection
292 concerning a personnel action taken or threatened against any
293 employee of a state shellfish grounds lessee, which personnel action
294 occurs not later than two years after the employee first transmits facts
295 and information to an employee of the leasing agency concerning the
296 state shellfish grounds lease, there shall be a rebuttable presumption
297 that the personnel action is in retaliation for the action taken by the
298 employee under subdivision (1) of this subsection.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	4-61dd

LAB *Joint Favorable*

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 expands the state's whistleblower protection law to cover certain entities that receive financial assistance from the State under economic and community development laws. Current law allows whistleblowers who believe they are being retaliated against to file a complaint with the chief human rights referee at the Commission of Human Rights and Opportunities (CHRO). No fiscal impact is anticipated as few complaints are expected to be filed with CHRO as a result of this bill.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**SB 359*****AN ACT EXTENDING WHISTLEBLOWER PROTECTIONS TO EMPLOYEES OF BUSINESSES RECEIVING FINANCIAL ASSISTANCE FROM THE STATE.*****SUMMARY**

This bill expands the state's whistleblower protection law to cover entities that receive state financial assistance under the commerce and economic and community development laws ("financial aid recipients"). It does so by making them "large state contractors" under the law.

In general, the whistleblower law allows anyone to report specific kinds of misconduct by state agencies or large state contractors to the state auditors of public accounts for investigation. Whistleblowers who believe they are being retaliated against may, among other actions, file a complaint with the chief human rights referee at the Commission of Human Rights and Opportunities (CHRO).

By making state financial aid recipients large state contractors under the law, the bill, among other things:

1. allows people to report to the state auditors about corruption occurring in a recipient's contract for assistance and requires the auditors to subsequently review the matter and make recommendations to the attorney general;
2. prohibits the recipients from taking or threatening to take any personnel action against an employee (i.e., whistleblower) for disclosing information to the state auditors or assisting in a subsequent proceeding;
3. allows a whistleblower who feels that he or she was retaliated

against to file a complaint with CHRO's chief human rights referee; and

4. requires the recipient's contract for state financial assistance to include a provision that makes the recipient liable for a civil penalty of up to \$5,000 per offense, for a retaliatory personnel action taken against a whistleblower employee.

EFFECTIVE DATE: October 1, 2019

WHISTLEBLOWER LAW

Whistleblower Reports to State Auditors

The bill allows anyone to inform the state auditors about (1) any corruption, violation of state or federal laws, gross waste of funds, or public safety danger occurring in the state financial aid recipient's contract for such aid or (2) corruption by a recipient that failed to meet its contractual obligations or satisfy any condition for its financial aid. As under the current law for other large state contractors, the auditors must review the matter and report their findings and recommendations to the attorney general, who must investigate as he deems proper. After the investigation, the attorney general must, when necessary, report his findings to the governor, or if the matter involves a crime, to the chief state's attorney.

Retaliation

As the current law provides for other large state contractors, the bill prohibits a state financial aid recipient's officers or employees from taking, or threatening to take, any personnel action against an employee (i.e., whistleblower) for disclosing information to (1) the state auditors or (2) a state employee of the contracting state agency about information involving the contract for state aid. In addition, the recipient's officers or employees cannot take or threaten a personnel action against an employee for testifying or providing assistance in a proceeding allowed under the whistleblower law.

As under current law, a whistleblower who learns of a prohibited retaliatory personnel action may file a complaint with CHRO's chief

human rights referee or, after exhausting all available administrative remedies, bring a civil suit. In addition, if the personnel action occurred within two years after the whistleblower informed the state auditors, the law creates a rebuttable presumption that the action was taken in retaliation.

As with other large state contractors, if an officer or employee of the financial aid recipient takes or threatens to take any action to impede, fail to renew, or cancel a contract between it and the state or one of the recipient's subcontractors, in retaliation for the disclosure of information to the state auditors, the affected state agency or subcontractor may bring a civil action in Hartford Superior Court for damages, attorney's fees, and costs.

Contract Provision on Retaliation

As under the current law for other large state contractors, the bill requires each contract between a state or quasi-public agency and a state financial aid recipient to include a provision that makes the recipient liable for a civil penalty of up to \$5,000 per offense, up to 20% of the contract's value, for any personnel action taken by the recipient's officers or employees in retaliation against a whistleblower.

It also requires each recipient to post a notice of the whistleblower law's provisions that relate to state financial aid recipients in a conspicuous place that is readily available for viewing by its employees.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 13 Nay 0 (03/21/2019)