



House of Representatives

General Assembly

File No. 387

January Session, 2021

Substitute House Bill No. 6475

House of Representatives, April 12, 2021

The Committee on Labor and Public Employees reported through REP. PORTER of the 94th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING PUBLIC ENFORCEMENT ACTIONS.

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

1 Section 1. (NEW) (*Effective October 1, 2021*) (a) As used in this section:

2 (1) "Public enforcement action" means a civil action brought pursuant
3 to this section to enforce protections enforceable by the state pursuant
4 to chapter 557 or 558 of the general statutes or section 46a-60 or 46a-81c
5 of the general statutes;

6 (2) "Responsible state official" means a person authorized to enforce
7 any provision of chapter 557 or 558 of the general statutes or section 46a-
8 60 or 46a-81c of the general statutes or to impose or seek penalties or
9 other remedies for violations of such chapter or section, including
10 persons delegated to act on the responsible state official's behalf with
11 respect to enforcing such chapter or section, imposing or seeking
12 penalties or other remedies for violations of such chapter or section or
13 receiving and disposing of notices pursuant to this section;

14 (3) "Relator" means a whistleblower or a representative organization
15 that acts as a qui tam plaintiff in a public enforcement action under this
16 section;

17 (4) "Representative organization" means a nonprofit corporation or a
18 labor organization that assists in enforcement pursuant to this section
19 and that has been selected by a whistleblower, in writing, in a form
20 prescribed by the Attorney General, to initiate a public enforcement
21 action on the whistleblower's behalf; and

22 (5) "Whistleblower" means any current or former employee,
23 contractor, subcontractor or employee of a contractor or subcontractor
24 of a defendant.

25 (b) A relator may, on behalf of the state and in the name of the state,
26 initiate a public enforcement action pursuant to the procedures specified
27 in this section. Such action may be brought in the Superior Court and
28 may allege multiple violations of chapter 557 or 558 of the general
29 statutes or section 46a-60 or 46a-81c of the general statutes that have
30 affected different individuals aggrieved by the same defendant and may
31 seek any injunctive and declaratory relief that the state would be
32 entitled to seek.

33 (c) For purposes of a public enforcement action brought pursuant to
34 this section, whenever the state is authorized to assess a civil penalty,
35 the court is authorized to assess such a civil penalty. To the extent that
36 the state is authorized to determine whether an employer has violated a
37 provision of this section, the court is authorized to determine whether
38 an employer has committed such a violation.

39 (d) For any violation of a provision of this section where no civil
40 penalty is provided, there shall be a civil penalty of five hundred dollars.
41 Such civil penalty shall be awarded for each party aggrieved by each
42 violation during each two-week period that such violation is found to
43 have occurred.

44 (e) The court may award civil penalties in an amount that is less than

45 the amount specified in this section if the court determines to do
46 otherwise would result in an award that is arbitrary and oppressive or
47 confiscatory.

48 (f) The state is authorized to assess penalties if the state has
49 intervened in a public enforcement action brought pursuant to this
50 section.

51 (g) Nothing in this section shall limit the state's right to seek
52 restitution and damages, where available, for relators as part of a public
53 enforcement action in which it has intervened.

54 (h) A relator that prevails in a public enforcement action pursuant to
55 this section shall be entitled to an award by the court of reasonable
56 attorney's fees and costs, whether or not the state has intervened in such
57 action.

58 (i) Any civil penalty awarded in a public enforcement action
59 pursuant to this section shall be distributed as follows: (1) Where the
60 state has not intervened, (A) thirty per cent to the relator, (B) twenty per
61 cent to the Office of the Attorney General, and (C) fifty per cent to the
62 office of the state official responsible for enforcement of such action,
63 twenty-five per cent of which shall be deposited into the community
64 outreach and workplace account in accordance with subsection (b) of
65 section 2 of this act, and (2) where the state has intervened, (A) twenty
66 per cent to the relator, (B) thirty per cent to the Office of the Attorney
67 General, and (C) fifty per cent to the office of the state official responsible
68 for enforcement of such action, twenty-five per cent of which shall be
69 deposited into the community outreach and workplace account in
70 accordance with subsection (b) of section 2 of this act.

71 (j) The relator shall equitably distribute all penalties due the relator
72 among the parties aggrieved by the practices complained of in the
73 public enforcement action. The relator shall submit a written
74 distribution summary to the state and the state may order a different
75 distribution not later than sixty days after receipt of the summary,
76 provided the relator shall receive compensation in an amount that

77 reflects the burdens and risks assumed by the relator in prosecuting the
78 action, including any costs incurred by a representative organization
79 that serves as a relator.

80 (k) The right to bring a public enforcement action under this section
81 shall not be impaired by any private agreement.

82 (l) Notwithstanding any other provision of the general statutes, a
83 public enforcement action to recover penalties imposed pursuant to this
84 section shall be commenced within the same period of time that the state
85 is authorized to file a public enforcement action based on the same set
86 of alleged violations. The statute of limitations for bringing a public
87 enforcement action pursuant to this section shall be tolled from the date
88 a relator files a notice pursuant to subsection (q) of this section or the
89 date the state commences an investigation, whichever is earlier.

90 (m) A relator may not bring a public enforcement action pursuant to
91 this section: (1) If the state, on the same facts and theories, cites a person
92 within the period of time that the state is authorized to file a public
93 enforcement action for a violation of the same authority under which
94 such relator is attempting to recover a civil penalty or other remedy, or
95 (2) for any violation of a posting, notice, agency reporting or filing
96 requirement, except where the filing or reporting requirement involves
97 mandatory payroll or injury reporting.

98 (n) No person shall retaliate in any manner against any relator or
99 potential relator or person, or threaten to retaliate against any relator,
100 potential relator or person, because: (1) The relator or potential relator
101 has brought or is perceived to have brought a public enforcement action,
102 (2) the relator or potential relator has cooperated in a public enforcement
103 action, or (3) the person believes that the relator or potential relator may
104 bring a public enforcement action or cooperate with one.

105 (o) Any person aggrieved by a violation of subsection (n) of this
106 section may bring an action in the Superior Court for compensatory,
107 liquidated and punitive damages or equitable relief, including restraint
108 of prohibited acts, restitution of wages or benefits, reinstatement of

109 employment, costs, reasonable attorney's fees and other appropriate
110 relief.

111 (p) There is a rebuttable presumption that any adverse action taken
112 against a relator not later than ninety days after the relator has filed an
113 action pursuant to subsection (b) of this section is retaliatory.

114 (q) Before filing a public enforcement action pursuant to this section,
115 a relator shall submit written notice of such action to each responsible
116 state official and to the Attorney General. The notice shall be construed
117 by the responsible state office and the Attorney General in the light most
118 favorable to the relator and shall include: (1) The name, address and
119 contact information of the alleged violator, (2) the name and contact
120 information of the relator, (3) the name, address and contact information
121 of the representative organization and, if the action is brought by a
122 representative organization, a statement of the organization's
123 qualifications as a representative organization, (4) the name, address
124 and contact information of the relator's legal counsel, if such relator has
125 legal counsel, and (5) a statement of the underlying claim.

126 (r) If the state intends to investigate the alleged violation contained in
127 the public enforcement action, it shall notify the relator of its decision
128 not later than sixty days after receiving notice pursuant to subsection (q)
129 of this section.

130 (s) After the filing of a public enforcement action, the state may
131 intervene as of right and proceed with any and all claims in the action.

132 (t) The provisions of this section shall be construed in light of its
133 remedial purpose to expand the enforcement of state law protecting
134 employees.

135 Sec. 2. (NEW) (*Effective October 1, 2021*) (a) There is established an
136 account to be known as the "community outreach and workplace
137 account" which shall be a separate, nonlapsing account within the
138 General Fund. The account shall contain any moneys required by law to
139 be deposited in the account. Moneys in the account shall be expended

140 by the Labor Department for the purpose of awarding grants as
141 provided in subsection (c) of this section.

142 (b) Twenty-five per cent of any civil penalties distributed in
143 accordance with subparagraph (C) of subdivision (1) of subsection (i) of
144 section 1 of this act and subparagraph (C) of subdivision (2) of
145 subsection (i) of section 1 of this act shall be deposited into the
146 community outreach and workplace account.

147 (c) Funds in the community outreach and workplace account shall be
148 granted from time to time by the Labor Commissioner to labor or
149 nonprofit organizations to fund outreach, education and technical
150 assistance pertaining to employee rights in the workplace. Grants
151 provided under this section shall be used for activities to assist workers
152 in enforcing employment rights, including outreach, community-based
153 education events, training materials, technical assistance, counseling,
154 research and referral services. When considering applications for such
155 grants, the commissioner shall give priority to projects that provide
156 services to especially vulnerable workers, including low-wage,
157 immigrant, refugee and contingent workers, women, lesbian, gay,
158 bisexual or transgendered workers, workers with disabilities and
159 injured workers.

160 (d) The Labor Department may adopt regulations in accordance with
161 the provisions of chapter 54 of the general statutes to implement the
162 provisions of subsections (a) to (c), inclusive, of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2021	New section
Sec. 2	October 1, 2021	New section

Statement of Legislative Commissioners:

In Section 1(a)(2), "title" was changed to "chapter" for accuracy; in Section 1(b), "of any provision of chapter 557 or 558 of the general statutes or section 46a-60 or 46a-81c of the general statutes" was added after "violations" for accuracy and clarity; in Section 1(d), "violation of

a" was added before "provision" for accuracy and clarity, "specifically provided by law" was changed to "provided" for clarity and consistency with standard drafting conventions and "occurs" was changed to "found to have occurred" for accuracy; Section 1(e) was rewritten for clarity and consistency with standard drafting conventions; in Section 1(f), "brought" was added before "pursuant" for clarity and accuracy; in Section 1(g), "operate to" was deleted for consistency with standard drafting conventions; Section 1(h) was rewritten for clarity; Section 1(i) was rewritten for clarity and consistency with standard drafting conventions; in Section 1(j), "a service award" was changed to "compensation in an amount" for clarity and consistency with standard drafting conventions; in Section 1(l), "pursuant to this section" was changed to "pursuant to subsection (q) of this section" for clarity and accuracy; Section 1(m)(1) and Section 1(n) were rewritten for clarity; in Section 1(o), "of employment" was added after "reinstatement" for clarity; in Section 1(q), "by the responsible state official and the Attorney General" was added after "construed" for clarity and accuracy and Subdiv. (3) was rewritten for clarity; Sections 1(t) to 1(w), inclusive, were renumbered as Sections 2(a) to 2(d) for clarity and consistency with standard drafting conventions; and Section 1(x) was redesignated as Section 1(t) for consistency with standard drafting conventions.

LAB *Joint Favorable Subst.*

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:

Agency Affected	Fund-Effect	FY 22 \$	FY 23 \$
Labor Dept.	GF - Potential Cost	Up to 513,786	Up to 576,010
State Comptroller - Fringe Benefits ¹	GF - Potential Cost	Up to 210,438	Up to 235,950
Labor Dept.	GF- Community Outreach and Workplace Account - Potential Revenue Gain	See Below	See Below
Resources of the General Fund	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 22 \$	FY 23 \$
Various Municipalities	Potential Cost	See Below	See Below

Explanation

The bill, which creates a method for a whistleblower to initiate an action in Superior Court to enforce certain employee protections, results in: 1) a potential General Fund cost of up to \$724,224 in FY 22 and up to \$811,960 in FY 23, 2) a potential revenue gain to the extent there are

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.3% of payroll in FY 22 and FY 23.

violations and associated civil penalties are imposed by a court,² and 3) a potential cost to municipalities to the extent that it increases the number of lawsuits to which municipalities are party.³

The bill requires that 25% of any civil penalties distributed to the state official responsible for enforcing the complaint that was the subject of the public enforcement action be deposited in the community outreach and workplace account and used by the Department of Labor (DOL) to award grants to labor or nonprofit organizations to fund outreach, education, and technical assistance pertaining to employee rights in the workplace. To the extent any such penalties are deposited in the account this results in an annualized cost of up to \$811,960 to the DOL associated with establishing a new unit to handle the grant program, including \$807,260 in salary and fringe benefit costs for up to 6 positions and \$4,700 in associated overhead costs (computers, office supplies, etc.). The unit would need to develop the policies, procedures, eligibility, contracts, method of payment, and reporting and provide ongoing monitoring for the grants.

The bill allows aggrieved parties to bring an action before Superior Court over alleged violations, which does not result in any cost impact to the Judicial Department. The court system disposes of over 400,000 cases annually and the number of cases is not anticipated to be great enough to require additional resources.

The Out Years

The annualized ongoing state cost impact identified above would continue into the future subject to inflation; the ongoing municipal cost and revenue impacts would continue into the future subject to the number of actions initiated and adjudicated.

² The bill specifies percentages of any penalties recovered to be distributed amongst the relator, the Attorney General, the office of the state official responsible for the enforcement action, and the community outreach and workplace account.

³ Any cost depends on the results of a lawsuit brought against a municipal employer as a result of the bill.

OLR Bill Analysis**sHB 6475*****AN ACT CONCERNING PUBLIC ENFORCEMENT ACTIONS.*****SUMMARY**

This bill creates a method for a whistleblower or a representative organization to initiate an action in Superior Court on behalf of, and in the name of, the state to enforce certain employee protections (i.e., a public enforcement action). The action may allege multiple violations affecting different individuals aggrieved by the same defendant and may seek any injunctive and declaratory relief that the state would be entitled to seek. A “representative organization” is a nonprofit corporation or a labor organization that a whistleblower selected to initiate a public enforcement action on the whistleblower’s behalf.

For purposes of public enforcement actions brought under the bill, whenever the state is authorized to assess a civil penalty, the court may assess the same penalty. To the extent that the state is authorized to determine if an employer violated a provision of the bill, the court may determine that an employer has committed such a violation.

The bill details how any civil penalty awarded by the court would be divided between state agencies and the relator (i.e., whistleblower or a representative organization) (see BACKGROUND). It also establishes the process a relator must follow, including a notice to the Attorney General’s Office (AG), and anti-retaliation provisions.

The bill states that its provisions must be construed in light of its remedial purpose to expand the enforcement of state law protecting employees and that the right to bring a public enforcement action under the bill cannot be impaired by any private agreement.

Finally, the bill creates a community outreach and workplace account

as a separate, nonlapsing General Fund account and directs 25% of any civil penalties distributed under the bill to this account. The labor commissioner can grant the funds to labor or nonprofit organizations to fund outreach, education, and technical assistance related to employee workplace rights.

EFFECTIVE DATE: October 1, 2021

REQUIRED PROCESS FOR A RELATOR TO SEEK A PUBLIC ENFORCEMENT ACTION

The bill creates a method for a whistleblower (i.e., a current or former employee, contractor, subcontractor, or contractor or subcontractor employee) or a representative organization to initiate a public enforcement action in Superior Court on behalf of, and in the name of, the state. The bill defines “public enforcement action” as a civil action brought to enforce employee protections regarding employment regulation (including prevailing wage and paid family and medical leave), wages (including minimum wage and overtime), and discriminatory employment practices.

Under the bill, a whistleblower may select a representative organization, which is either a nonprofit corporation or a labor organization, in writing on a form prescribed by the attorney general, to initiate a public enforcement action on the whistleblower’s behalf. (The bill does not specifically direct the attorney general to create the form.)

Notice of Action

Before filing a public enforcement action under the bill, a relator (i.e., a whistleblower or a representative organization) must submit written notice of the action to each responsible state official and the attorney general. The responsible state official is the state official authorized to (1) enforce the covered laws or (2) impose or seek penalties or other remedies for violations of these laws. It includes people delegated to act on the responsible state official’s behalf for these purposes or for receiving and disposing of notices under the bill. The responsible officials and covered laws include the labor commissioner for overtime law and the Commission on Human Rights and Opportunities for unfair

labor practices such as racial or gender discrimination at the workplace.

The notice must be construed in the light most favorable to the relator. It must include a statement about the underlying claim and the name, address, and contact information of the:

1. alleged violator;
2. relator;
3. representative organization (if applicable), and a statement of its qualifications as a representative organization; and
4. relator's legal counsel, if there is legal counsel.

If the state intends to investigate the alleged violation contained in the public enforcement action, it must notify the relator of its decision no later than 60 days after receiving the required notice. (The bill does not indicate whether the AG or the responsible state official must notify the relator.)

Window to File a Public Enforcement Action

Regardless of any other state statute, a public enforcement action to recover penalties imposed under the bill must be commenced within the same period of time that the state may file a public enforcement action based on the same set of alleged violations. This means the window to file a public enforcement action depends upon the law for the violation being alleged. The statute of limitations for bringing a public enforcement action under the bill is tolled from the date a relator files a notice required by the bill or the date the state commences an investigation, whichever is earlier.

PROHIBITED PUBLIC ENFORCEMENTS

The bill bars a relator from bringing a public enforcement action under the following circumstances:

1. if the state, on the same facts and theories, cites a person within the period of time that the state may file a public enforcement

action for a violation of the same authority under which the relator is attempting to recover a civil penalty or other remedy, or

2. for any violation of a posting, notice, agency reporting, or filing requirement, unless the filing or reporting requirement involves mandatory payroll or injury reporting.

STATE INTERVENTION

After the filing of a public enforcement action, the state may intervene as of right and proceed with any and all claims in the action. The state may assess penalties if it has intervened in a public enforcement action under the bill.

If the state intervenes, the bill specifies that it does not limit the state's right to seek restitution and damages, where available, for relators as part of a public enforcement action.

PENALTIES

Amount

For any provision of the bill where no civil penalty is specifically provided by law, the bill imposes a civil penalty of \$500. This penalty must be imposed for each party aggrieved by each violation during each two-week period that the violation occurs.

The court may impose a lesser amount of civil penalties than those specified if, based on the facts and circumstances of the particular case, to do otherwise would result in a penalty that is arbitrary and oppressive or confiscatory.

A relator that prevails in an action under the bill, whether or not the state has intervened in the action, is entitled to an award by the court of reasonable attorney's fees and costs.

Award Distribution

Civil penalties recovered in a public enforcement action pursuant to the bill must be distributed as follows:

1. where the state has not intervened, (a) 30% to the relator, (b) 20% to the AG, and (c) 50% to the office of the state official responsible for enforcing the action; and
2. where the state has intervened, (a) 20% to the relator, (b) 30% to the AG, and (C) 50% to the office of the state official responsible for the enforcement.

Furthermore, 25% of the amount that goes to the state office responsible for enforcing the action must be deposited in the community outreach and workplace account (see below).

The relator must equitably distribute all penalties due to the relator among the parties aggrieved by the practices cited in the public enforcement action. The relator must submit a written distribution summary to the state (presumably to the attorney general's office) and the state may order a different distribution within 60 days after receiving it. The bill requires that the relator receive compensation that reflects the burdens and risks assumed by the relator in prosecuting the action, including any costs incurred by a representative organization that services as a relator.

ANTI-RETALIATION

The bill bans any person from retaliating in any manner against a relator, potential relator, or person, or threatening to retaliate against a relator, potential relator, or person, because:

1. the relator or potential relator brought, or is perceived to have brought, a public enforcement action;
2. the relator or potential relator cooperated in a public enforcement action; or
3. the person believes that the relator or potential relator may bring a public enforcement action or cooperate with one.

Any person aggrieved by a violation of any of the above may bring an action in the Superior Court for compensatory, liquidated, and

punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement of employment, costs, reasonable attorney's fees and other appropriate relief.

The bill also creates a rebuttable presumption that any adverse action taken against a relator within 90 days after the relator filed a public enforcement action is retaliatory.

COMMUNITY OUTREACH AND WORKPLACE ACCOUNT AND GRANT PROGRAM

The bill establishes an account to be known as the "community outreach and workplace account" as a separate, nonlapsing account within the General Fund.

The bill requires that 25% of the civil penalties distributed to the state official responsible for enforcing the complaint that was the subject of the public enforcement action be deposited into the new account. The labor department must use the account's funds to award grants to labor or nonprofit organizations to fund outreach, education, and technical assistance pertaining to employee rights in the workplace. Grants provided under the bill must be used for activities to assist workers in enforcing employment rights, including outreach, community-based education events, training materials, technical assistance, counseling, research, and referral services.

The bill requires the commissioner to give priority to projects that provide services to vulnerable workers, including low-wage, immigrant, refugee and contingent workers; women; lesbian, gay, bisexual, or transgendered workers; workers with disabilities; and injured workers.

The bill authorizes the labor department to adopt implementing regulations related to the community outreach and workplace account and the related grants.

BACKGROUND

Relator

A relator is a private party that brings a court action on the government's behalf. The government, not the relator, is considered the real plaintiff. If the action succeeds in court, the relator receives a share of the award.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 4 (03/23/2021)