

**House Bill No. 6706**

**Public Act No. 13-247**

**AN ACT IMPLEMENTING PROVISIONS OF THE STATE BUDGET FOR THE BIENNIUM ENDING JUNE 30, 2015 CONCERNING GENERAL GOVERNMENT.**

**Sec. 347.** Section 5-202 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2013*):

(a) Any employee who is not included in any collective bargaining unit of state employees and who has achieved a permanent appointment as defined in [subdivision (19) of] section 5-196, as amended by this act, may appeal to the Employees' Review Board if such employee receives an unsatisfactory performance evaluation or is demoted, suspended or dismissed, or is aggrieved as a result of (1) alleged unlawful discrimination, [or] unless a complaint is or has been filed by such employee with the Commission on Human Rights and Opportunities or the Equal Employment Opportunity Commission, (2) unsafe or unhealthy working conditions, unless a complaint is or has been filed by such employee with the state or federal Occupational Safety and Health Administration, or (3) violations involving the interpretation and application of a specific state personnel statute, regulation or rule. Such employee must have complied with preliminary review procedures, except as otherwise provided in subsection (l) of this section. Such an appeal shall be submitted to the board not later than thirty days from the completion of the final level of the preliminary review procedure, provided the first level of the procedure shall have been initiated no later than thirty calendar days from the date of the alleged violation, except that in cases of dismissal, demotion or suspension the grievance must be submitted directly to the third level of the procedure and shall have been initiated no later than thirty calendar days from the effective date of such action.

(b) Any group of employees that is not included in any collective bargaining unit of state employees may file an appeal as a group directly with the Employees' Review Board if such group of employees is laid off or dismissed, or is aggrieved as a result of alleged unlawful discrimination, unless a complaint is or has been filed by such group of employees with the Commission on Human Rights and Opportunities or the Equal Employment Opportunities Commission, or unsafe or unhealthy working conditions, unless a complaint is or has been filed by such group of employees with the state or federal Occupational Safety and Health Administration, or violations involving the interpretation and application of a specific state personnel statute, regulation or rule, provided each member of such group (1) is appealing the same or a similar issue, as determined by the Employees' Review Board, (2) is a permanent employee, as defined in [subdivision (20) of] section 5-196, as amended by this act, and (3) has achieved a

permanent appointment, as defined in [subdivision (19) of] section 5-196, as amended by this act. Such an appeal shall be submitted to the board not later than thirty calendar days from the specific incident or effective date of action giving rise to such appeal.

(c) Upon receiving an appeal, the board shall assign a time and place for a hearing and shall give notice of such time and place to the parties concerned. The hearing panel shall not be bound by technical rules of evidence prevailing in the courts. If, after hearing, a majority of the hearing panel determines that the action appealed from was arbitrary or taken without reasonable cause, the appeal shall be sustained; otherwise, the appeal shall be denied. The hearing panel shall have the power to direct appropriate remedial action and shall do so after taking into consideration just and equitable relief to the employee or group of employees and the best interests and effectiveness of the state service. The hearing panel shall render a decision not later than sixty calendar days from the date of the conclusion of the hearing.

(d) The employee or group of employees in any such case shall be furnished, upon request, with a copy of the transcript of the proceedings before the board. The chairman of the board shall establish a fair and reasonable fee per page to be charged for such transcript which fee shall not exceed the fee per page for a transcript charged by court reporters for the judicial district of Hartford. Notwithstanding any provision of law to the contrary, such fee shall not be waived for any party.

(e) Not later than ten days from the issuance date of a decision by a hearing panel sustaining an appeal, the appointing authority of the employee shall take such measures as are necessary to comply with the remedial action directed by the hearing panel.

(f) An employee or group of employees laid off or dismissed by reason of economy, lack of work, insufficient appropriation, change in departmental organization or abolition of position may file an appeal with the board only on the grounds that the order of layoff or dismissal has not been determined in accordance with the provisions of section 5-241, provided (1) such employee has initiated the third level of the preliminary review procedure not later than thirty calendar days from the effective date of such layoff or dismissal, or (2) such group of employees submits such appeal to the board not later than thirty calendar days from the effective date of the layoff or dismissal.

(g) All matters involving examination, including application rejection, type of examination or results, compensation for class or classes, establishment of a new class or classes, classification of a position, occupational group or career progression level, compliance with health and safety standards and the Connecticut Occupational Safety and Health Act or alleged discrimination in cases where an appeal has been filed with the Commission on Human Rights and Opportunities, shall not be appealable under this section.

(h) The first level of the preliminary review procedure preparatory to the filing of an appeal from an alleged grievable action under subsection (a) of this section other than

dismissal, demotion or suspension shall be the aggrieved employee's supervisor or department chief or other employee as designated by the employee's appointing authority. Such aggrieved employee shall present the employee's grievance in writing on a form developed by the Secretary of the Office of Policy and Management and the Employee Review Board which form shall contain a statement of the date the alleged violation occurred and the relief sought in answer to the grievance. The first level designee shall give said designee's answer to such employee not later than seven calendar days from the date the grievance is submitted to said designee or not later than seven days from the date of a meeting convened for the purpose of reviewing the grievance, in which case such meeting shall be convened not later than seven calendar days from the date the grievance is submitted.

(i) The second level of the preliminary review procedure preparatory to the filing of an appeal from an alleged grievable action under subsection (a) of this section other than dismissal, demotion or suspension shall be the aggrieved employee's appointing authority or designated representative. Such employee, upon receiving a response at the first level which the employee deems to be unsatisfactory, may proceed to this level by presenting the same form containing the first level answers not later than seven calendar days from the date the answer was given at the first level. The appointing authority or designated representative shall answer such employee not later than seven calendar days from the date the grievance is received or not later than seven calendar days from the date of a meeting convened for the purpose of reviewing such grievance, in which case such meeting shall be convened not later than seven calendar days from the date such grievance is received.

(j) The third level of the preliminary review procedure preparatory to the filing of an appeal from an alleged grievable action under subsection (a) of this section including dismissal, demotion or suspension shall be the Secretary of the Office of Policy and Management or the secretary's designated representative. The employee, upon receiving a response at the second level which the employee deems to be unsatisfactory, may proceed to this level by presenting the same form containing the first and second level answers not later than seven calendar days from the date the answer was given at the second level, except in the case of a dismissal, demotion or suspension in which case such employee must present the form, completed but without answers at lower levels not later than thirty calendar days from the effective date of such action. The Secretary of the Office of Policy and Management or the secretary's designated representative shall reply to such employee not later than thirty calendar days from the date such grievance is received or not later than fifteen calendar days from the date of a meeting convened for the purpose of reviewing such grievance, in which case such meeting shall be convened not later than thirty calendar days from the date such grievance is received.

(k) Employees shall be entitled to have representation of their own choosing at any or all levels of the review or appeal procedure. No verbatim records shall be required in the preliminary procedure and no oaths or affirmations shall be administered.

(l) Any state officer or employee, as defined in section 4-141, or any appointing authority shall not take or threaten to take any personnel action against any state employee or group of state employees in retaliation for the filing of an appeal with the Employees' Review Board or a grievance with any level of the preliminary review procedure pursuant to this section. An employee or group of employees alleging that such action has been threatened or taken may file an appeal directly with the board not later than thirty days from knowledge of the specific incident giving rise to such claim.

(m) Either the Secretary of the Office of Policy and Management or any employee or group of employees aggrieved by a decision of the Employees' Review Board may appeal from such decision in accordance with section 4-183. The board may intervene as a party in any appeal of its decision. Any employee or group of employees who prevails in a decision of the Employees' Review Board shall be entitled to recover court costs and reasonable attorney's fees if such decision is appealed by the Secretary of the Office of Policy and Management and affirmed by the court in such appeal.

(n) Any time limit set forth in this section may be waived by mutual written agreement of the employee or group of employees, or the designated representative of the employee or group of employees, and the Secretary of the Office of Policy and Management or the secretary's designee.

**OLR Analysis of Sec. 347:**

Limits non-union state employees' appeals to the Employees' Review Board (ERB) for alleged discrimination to alleged "unlawful" discrimination. Prohibits these employees from appealing to the ERB for discrimination if they also file a complaint with CHRO. Prohibits these employees from filing an appeal with ERB over unhealthy working conditions if they also file a complaint with state or federal OSHA. Prohibits parties from waiving transcript fees. Allows parties to mutually agree to waive appeals process deadlines (§ 347).