

AMENDED IN ASSEMBLY APRIL 8, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2065

Introduced by Assembly Member ~~Gorell~~ Members *Melendez and Gorell*

February 20, 2014

~~An act to repeal and add Section 19132.5 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor. An act to amend Sections 8547.2 and 8547.3 of, and to add Section 8547.14 to, the Government Code, relating to the Legislature.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2065, as amended, ~~Gorell~~ *Melendez*. ~~Income taxation: timeliness penalty: abatement.~~ *California Whistleblower Protection Act: Legislature: employees.*

The California Whistleblower Protection Act prohibits an employee from using his or her official authority or influence for the purpose of intimidating, threatening, coercing, or commanding any person for the purpose of interfering with his or her right to make a protected disclosure of improper governmental activity. "Employee" is defined to include specified employees in the executive and judicial branches of state government. The act requires the State Auditor to investigate and report on improper governmental activities, as specified. The act authorizes an employee or applicant for employment who files a written complaint alleging reprisal, retaliation, or similar prohibited acts to also file a copy of the written complaint with the State Personnel Board, together with a sworn statement that the complaint is true, under penalty of perjury. The act provides that any person who intentionally engages in acts of reprisal, retaliation, or similar prohibited acts against a state

employee or applicant for state employment for having made a protected disclosure, is subject to punishment for a misdemeanor, and shall be liable in an action for civil damages brought by the injured party.

This bill would make these provisions of the act applicable to the Legislature, except for procedures regarding notices of adverse action and the State Personnel Board and except that penalties would not apply to the extent that a Member of the Legislature is immune from liability under the doctrine of legislative immunity. The bill would authorize an employee of the Legislature or an applicant for employment with the Legislature to file a written complaint with his or her supervisor, manager, or other officer designated by the Committee on Rules of the Assembly or Senate, as applicable, alleging improper acts, together with a sworn statement that the complaint is true, under penalty of perjury, within one year of the most recent improper act complained about. The bill would require the Committees on Rules of the Assembly and Senate to each designate an officer to receive these written complaints. By expanding the scope of crimes under the act, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law imposes penalties when a taxpayer fails to timely file an income tax return or fails to timely pay the tax due as shown on, or as required to be shown on, the tax return, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.~~

~~The bill would require the Franchise Tax Board, upon taxpayer request, to abate a failure-to-file or failure-to-pay timeliness penalty when specified circumstances are met, including where the taxpayer has paid, or is in a current arrangement to pay, all tax currently due and the Franchise Tax Board has not imposed a timeliness penalty in the year of the request or prior 4 years. The bill would make a continuous appropriation from the General Fund to the Franchise Tax Board in those amounts necessary to make payments to those taxpayers who have paid the penalty that is being abated before the effective date of this bill.~~

~~The bill would make a legislative finding and declaration regarding the public purpose served by the bill.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes~~-no. Fiscal committee:
yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8547.2 of the Government Code is
2 amended to read:

3 8547.2. For the purposes of this article, the following terms
4 have the following meanings:

5 (a) (1) "Employee" means ~~an~~ any of the following:

6 (A) An individual appointed by the Governor, ~~or an~~.

7 (B) An individual employed or holding office in a state agency
8 as defined by Section 11000, including, for purposes of Sections
9 8547.3 to 8547.7, inclusive, an employee of the California State
10 University, ~~or an~~.

11 (C) A Member or employee of the Legislature for purposes of
12 Sections 8547.3 to 8547.7, inclusive, except for those provisions
13 of Section 8547.4 concerning notices of adverse action and the
14 State Personnel Board.

15 (D) An individual appointed by the Legislature to a state board
16 or commission ~~and who is not a Member or employee of the~~
17 Legislature. In addition, "employee" means a person.

18 (E) A person employed by the Supreme Court, a court of appeal,
19 a superior court, or the Administrative Office of the Courts for the
20 purposes of Sections 8547.3 to 8547.7, inclusive, and Section
21 8547.13, except for those provisions of Section 8547.4 concerning
22 notice of adverse action and the State Personnel Board. ~~"Employee"~~
23 includes

24 (2) For purpose of this subdivision, "employee" includes a
25 former employee who met the criteria of this subdivision during
26 his or her employment.

27 (b) "Illegal order" means a directive to violate or assist in
28 violating a federal, state, or local law, rule, or regulation, or an
29 order to work or cause others to work in conditions outside of their
30 line of duty that would unreasonably threaten the health or safety
31 of employees or the public.

32 (c) "Improper governmental activity" means an activity by a
33 state agency or by an employee that is undertaken in the
34 performance of the employee's duties, undertaken inside a state
35 office, or, if undertaken outside a state office by the employee,

1 directly relates to state government, whether or not that activity is
2 within the scope of his or her employment, and that (1) is in
3 violation of any state or federal law or regulation, including, but
4 not limited to, corruption, malfeasance, bribery, theft of
5 government property, fraudulent claims, fraud, coercion,
6 conversion, malicious prosecution, misuse of government property,
7 or willful omission to perform duty, (2) is in violation of an
8 Executive order of the Governor, a California Rule of Court, or
9 any policy or procedure mandated by the State Administrative
10 Manual or State Contracting Manual, or (3) is economically
11 wasteful, involves gross misconduct, incompetency, or inefficiency.
12 For purposes of Sections 8547.4, 8547.5, 8547.7, 8547.10, and
13 8547.11, “improper governmental activity” includes any activity
14 by the University of California or by an employee, including an
15 officer or faculty member, who otherwise meets the criteria of this
16 subdivision. For purposes of Sections 8547.4, 8547.5, and 8547.13,
17 “improper governmental activity” includes any activity by the
18 Supreme Court, a court of appeal, a superior court, or the
19 Administrative Office of the Courts, or by an employee thereof,
20 who otherwise meets the criteria of this subdivision. *For purposes*
21 *of Sections 8547.4, 8547.5, 8547.7, and 8547.14, “improper*
22 *governmental activity” includes any activity by the Legislature or*
23 *by an employee thereof who otherwise meets the criteria of this*
24 *subdivision.*

25 (d) “Person” means an individual, corporation, trust, association,
26 a state or local government, or an agency or instrumentality of any
27 of the foregoing.

28 (e) “Protected disclosure” means a good faith communication,
29 including a communication based on, or when carrying out, job
30 duties, that discloses or demonstrates an intention to disclose
31 information that may evidence (1) an improper governmental
32 activity, or (2) a condition that may significantly threaten the health
33 or safety of employees or the public if the disclosure or intention
34 to disclose was made for the purpose of remedying that condition.
35 Protected disclosure specifically includes a good faith
36 communication to the California State Auditor’s Office alleging
37 an improper governmental activity and any evidence delivered to
38 the California State Auditor’s Office in support of the allegation.
39 “Protected disclosure” also includes, but is not limited to, a
40 complaint made to the Commission on Judicial Performance.

1 (f) “State agency” is defined by Section 11000. “State agency”
2 includes the University of California for purposes of Sections
3 8547.5 to 8547.7, inclusive, and the California State University
4 for purposes of Sections 8547.3 to 8547.7, inclusive. Sections
5 8547.3 to 8547.7, inclusive, shall apply to the Supreme Court, the
6 courts of appeal, the superior courts, ~~and~~ the Administrative Office
7 of the Courts, *and the Legislature* in the same manner as they apply
8 to a state agency.

9 *SEC. 2. Section 8547.3 of the Government Code is amended*
10 *to read:*

11 8547.3. (a) An employee may not directly or indirectly use or
12 attempt to use the official authority or influence of the employee
13 for the purpose of intimidating, threatening, coercing, commanding,
14 or attempting to intimidate, threaten, coerce, or command any
15 person for the purpose of interfering with the rights conferred
16 pursuant to this article.

17 (b) For the purpose of subdivision (a), “use of official authority
18 or influence” includes promising to confer, or conferring, any
19 benefit; effecting, or threatening to effect, any reprisal; or taking,
20 or directing others to take, or recommending, processing, or
21 approving, any personnel action, including, but not limited to,
22 appointment, promotion, transfer, assignment, performance
23 evaluation, suspension, or other disciplinary action.

24 (c) Any employee who violates subdivision (a) may be liable
25 in an action for civil damages brought against the employee by
26 the offended party, *except to the extent that a Member of the*
27 *Legislature is immune from liability under the doctrine of*
28 *legislative immunity.*

29 (d) Nothing in this section shall be construed to authorize an
30 individual to disclose information otherwise prohibited by or under
31 law.

32 *SEC. 3. Section 8547.14 is added to the Government Code, to*
33 *read:*

34 8547.14. (a) *An employee of the Legislature or applicant for*
35 *employment with the Legislature may file a written complaint with*
36 *his or her supervisor, manager, or other officer designated for*
37 *that purpose by the Committee on Rules of the Assembly or Senate,*
38 *as applicable, alleging actual or attempted acts of reprisal,*
39 *retaliation, threats, coercion, or similar improper acts prohibited*
40 *by Section 8547.3, together with a sworn statement that the*

1 contents of the written complaint are true, or are believed by the
2 affiant to be true, under penalty of perjury. The complaint shall
3 be filed within one year of the most recent improper act complained
4 about. The Committees on Rules of the Assembly and Senate shall
5 each designate an officer to receive written complaints for purposes
6 of this subdivision.

7 (b) Except to the extent that a Member of the Legislature is
8 immune from liability under the doctrine of legislative immunity,
9 any person who intentionally engages in acts of reprisal,
10 retaliation, threats, coercion, or similar improper acts against an
11 employee of the Legislature or applicant for employment with the
12 Legislature for having made a protected disclosure, is subject to
13 a fine not to exceed ten thousand dollars (\$10,000) and
14 imprisonment in the county jail for a period not to exceed one
15 year.

16 (c) In addition to all other penalties provided by law, except to
17 the extent that a Member of the Legislature is immune from liability
18 under the doctrine of legislative immunity, any person who
19 intentionally engages in acts of reprisal, retaliation, threats,
20 coercion, or similar acts against a state employee or applicant for
21 state employment for having made a protected disclosure shall be
22 liable in an action for damages brought against him or her by the
23 injured party. Punitive damages may be awarded by the court
24 where the acts of the offending party are proven to be malicious.
25 Where liability has been established, the injured party shall also
26 be entitled to reasonable attorney's fees as provided by law.

27 (d) This section does not prevent a supervisor, manager, or
28 other officer of the Legislature from taking, directing others to
29 take, recommending, or approving any personnel action or from
30 taking or failing to take a personnel action with respect to any
31 employee of the Legislature or applicant for employment with the
32 Legislature if the supervisor, manager, or other officer reasonably
33 believes any action or inaction is justified on the basis of evidence
34 separate and apart from the fact that the person has made a
35 protected disclosure.

36 (e) In any civil action, once it has been demonstrated by a
37 preponderance of evidence that an activity protected by this article
38 was a contributing factor in the alleged retaliation against a
39 former, current, or prospective employee, the burden of proof shall
40 be on the supervisor, manager, or other officer of the Legislature

1 to demonstrate by clear and convincing evidence that the alleged
2 action would have occurred for legitimate, independent reasons
3 even if the employee had not engaged in protected disclosures or
4 refused an illegal order.

5 (f) This article does not diminish the rights, privileges, or
6 remedies of any employee under any other federal or state law.

7 SEC. 4. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

16 SECTION 1. ~~Section 19132.5 of the Revenue and Taxation~~
17 ~~Code is repealed.~~

18 SEC. 2. ~~Section 19132.5 is added to the Revenue and Taxation~~
19 ~~Code, to read:~~

20 19132.5. (a) (1) A taxpayer may elect to request abatement
21 of a timeliness penalty under this section for a timeliness penalty
22 that has been considered and rejected for abatement, waiver, or
23 rescission pursuant to the provisions of the section under which
24 the penalty is imposed.

25 (2) A taxpayer may, in lieu of requesting consideration for
26 abatement, waiver, or rescission pursuant to the provisions of the
27 section under which the timeliness penalty is imposed, instead
28 request abatement of a timeliness penalty under this section.

29 (b) If a taxpayer described in subdivision (a) requests, either
30 orally or in writing, the abatement of a timeliness penalty pursuant
31 to this section, the timeliness penalty shall be abated if all of the
32 following apply:

33 (1) The taxpayer has not previously been required to file a
34 California return under Part 10 (commencing with Section 17001),
35 this part, or Part 11 (commencing with Section 23001), or no other
36 timeliness penalty has been imposed by the Franchise Tax Board
37 in the calendar year of the request for abatement or in the prior
38 four tax years.

39 (2) The taxpayer has filed all returns required under Part 10
40 (commencing with Section 17001), this part, or Part 11

1 (~~commencing with Section 23001~~), as of the date of the taxpayer’s
2 request for abatement.

3 ~~(3) Excluding the timeliness penalty that is the subject of the~~
4 ~~abatement request, the taxpayer has paid in full, or arranged to pay~~
5 ~~pursuant to an installment agreement, any tax, penalties, fees, and~~
6 ~~interest due for all currently required returns and the taxpayer is~~
7 ~~current with all installment payments.~~

8 ~~(e) For purposes of this section, “timeliness penalty” means a~~
9 ~~penalty imposed under Section 19131, 19132, 19172, or 19172.5.~~

10 ~~(d) For purposes of this section:~~

11 ~~(1) A timeliness penalty imposed and subsequently abated due~~
12 ~~to a determination of reasonable cause or reasonable cause and~~
13 ~~not willful neglect with respect to the taxpayer or the taxpayer’s~~
14 ~~spouse, shall be considered to have not been imposed.~~

15 ~~(2) A timeliness penalty is considered imposed on the original~~
16 ~~due date of the return for the taxable year for which the penalty is~~
17 ~~imposed.~~

18 ~~(3) If a taxpayer requests abatement for more than one taxable~~
19 ~~year and two or more taxable years would be eligible for abatement~~
20 ~~under this section, then only the penalty for the earliest taxable~~
21 ~~year shall be abated.~~

22 ~~(4) This section shall apply to requests for abatement made~~
23 ~~before, on, or after the effective date of the act adding this section.~~

24 ~~(e) The Franchise Tax Board may issue any regulations~~
25 ~~necessary or appropriate to implement this section.~~

26 ~~(f) Notwithstanding Section 13340 of the Government Code,~~
27 ~~and without regard to fiscal year, there is hereby continuously~~
28 ~~appropriated from the General Fund to the Franchise Tax Board~~
29 ~~those amounts necessary to make the payments required by the~~
30 ~~act adding this subdivision with respect to the abatement of~~
31 ~~penalties paid before the effective date of the act adding this~~
32 ~~subdivision.~~

33 ~~SEC. 3. The Legislature finds and declares that the abatement~~
34 ~~by this act of timeliness penalties with respect to the abatement of~~
35 ~~penalties paid before the effective date of the act adding this~~
36 ~~subdivision, serves a public purpose and does not constitute a gift~~
37 ~~of public funds within the meaning of Section of Article XVI of~~
38 ~~the California Constitution.~~

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