

AMENDED IN ASSEMBLY MAY 5, 2014

AMENDED IN ASSEMBLY APRIL 8, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2065

Introduced by Assembly Members Melendez and Gorell

February 20, 2014

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, Melendez. 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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 any of the following:
- 6 (A) An individual appointed by the Governor.
- 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.
- 11 (C) A Member or employee of the Legislature for purposes of
- 12 Sections 8547.3 to 8547.7, inclusive, except for those provisions

1 of Section 8547.4 concerning ~~notices~~ *notice* of adverse action and
2 the State Personnel Board.

3 (D) An individual appointed by the Legislature to a state board
4 or ~~commission~~. *commission*.

5 (E) A person employed by the Supreme Court, a court of appeal,
6 a superior court, or the Administrative Office of the Courts for the
7 purposes of Sections 8547.3 to 8547.7, inclusive, and Section
8 8547.13, except for those provisions of Section 8547.4 concerning
9 notice of adverse action and the State Personnel Board.

10 (2) For ~~purpose~~ *purposes* of this subdivision, “employee”
11 includes a former employee who met the criteria of this subdivision
12 during his or her employment.

13 (b) “Illegal order” means a directive to violate or assist in
14 violating a federal, state, or local law, rule, or regulation, or an
15 order to work or cause others to work in conditions outside of their
16 line of duty that would unreasonably threaten the health or safety
17 of employees or the public.

18 (c) “Improper governmental activity” means an activity by a
19 state agency or by an employee that is undertaken in the
20 performance of the employee’s duties, undertaken inside a state
21 office, or, if undertaken outside a state office by the employee,
22 directly relates to state government, whether or not that activity is
23 within the scope of his or her employment, and that (1) is in
24 violation of any state or federal law or regulation, including, but
25 not limited to, corruption, malfeasance, bribery, theft of
26 government property, fraudulent claims, fraud, coercion,
27 conversion, malicious prosecution, misuse of government property,
28 or willful omission to perform duty, (2) is in violation of an
29 Executive order of the Governor, a California Rule of Court, or
30 any policy or procedure mandated by the State Administrative
31 Manual or State Contracting Manual, or (3) is economically
32 wasteful, involves gross misconduct, incompetency, or inefficiency.
33 For purposes of Sections 8547.4, 8547.5, 8547.7, 8547.10, and
34 8547.11, “improper governmental activity” includes any activity
35 by the University of California or by an employee, including an
36 officer or faculty member, who otherwise meets the criteria of this
37 subdivision. For purposes of Sections 8547.4, 8547.5, and 8547.13,
38 “improper governmental activity” includes any activity by the
39 Supreme Court, a court of appeal, a superior court, or the
40 Administrative Office of the Courts, or by an employee thereof,

1 who otherwise meets the criteria of this subdivision. For purposes
2 of Sections 8547.4, 8547.5, 8547.7, and 8547.14, “improper
3 governmental activity” includes any activity by the Legislature or
4 by an employee thereof who otherwise meets the criteria of this
5 subdivision.

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

9 (e) “Protected disclosure” means a good faith communication,
10 including a communication based on, or when carrying out, job
11 duties, that discloses or demonstrates an intention to disclose
12 information that may evidence (1) an improper governmental
13 activity, or (2) a condition that may significantly threaten the health
14 or safety of employees or the public if the disclosure or intention
15 to disclose was made for the purpose of remedying that condition.
16 Protected disclosure specifically includes a good faith
17 communication to the California State Auditor’s Office alleging
18 an improper governmental activity and any evidence delivered to
19 the California State Auditor’s Office in support of the allegation.
20 “Protected disclosure” also includes, but is not limited to, a
21 complaint made to the Commission on Judicial Performance.

22 (f) “State agency” is defined by Section 11000. “State agency”
23 includes the University of California for purposes of Sections
24 8547.5 to 8547.7, inclusive, and the California State University
25 for purposes of Sections 8547.3 to 8547.7, inclusive. Sections
26 8547.3 to 8547.7, inclusive, shall apply to the Supreme Court, the
27 courts of appeal, the superior courts, the Administrative Office of
28 the Courts, and the Legislature in the same manner as they apply
29 to a state agency.

30 SEC. 2. Section 8547.3 of the Government Code is amended
31 to read:

32 8547.3. (a) An employee may not directly or indirectly use or
33 attempt to use the official authority or influence of the employee
34 for the purpose of intimidating, threatening, coercing, commanding,
35 or attempting to intimidate, threaten, coerce, or command any
36 person for the purpose of interfering with the rights conferred
37 pursuant to this article.

38 (b) For the purpose of subdivision (a), “use of official authority
39 or influence” includes promising to confer, or conferring, any
40 benefit; effecting, or threatening to effect, any reprisal; or taking,

1 or directing others to take, or recommending, processing, or
2 approving, any personnel action, including, but not limited to,
3 appointment, promotion, transfer, assignment, performance
4 evaluation, suspension, or other disciplinary action.

5 (c) Any employee who violates subdivision (a) may be liable
6 in an action for civil damages brought against the employee by
7 the offended party, except to the extent that a Member of the
8 Legislature is immune from liability under the doctrine of
9 legislative immunity. *For purposes of this section, a Member of*
10 *the Legislature is not an offended party who may bring an action*
11 *for damages if the employee who violates subdivision (a) is a*
12 *Member or an employee of the Legislature.*

13 (d) Nothing in this section shall be construed to authorize an
14 individual to disclose information otherwise prohibited by or under
15 law.

16 SEC. 3. Section 8547.14 is added to the Government Code, to
17 read:

18 8547.14. (a) An employee of the Legislature or applicant for
19 employment with the Legislature may file a written complaint with
20 his or her supervisor, manager, or other officer designated for that
21 purpose by the Committee on Rules of the Assembly or Senate,
22 as applicable, alleging actual or attempted acts of reprisal,
23 retaliation, threats, coercion, or similar improper acts prohibited
24 by Section 8547.3, together with a sworn statement that the
25 contents of the written complaint are true, or are believed by the
26 affiant to be true, under penalty of perjury. The complaint shall be
27 filed within one year of the most recent improper act complained
28 about. The Committees on Rules of the Assembly and Senate shall
29 each designate an officer to receive written complaints for purposes
30 of this subdivision.

31 (b) Except to the extent that a Member of the Legislature is
32 immune from liability under the doctrine of legislative immunity,
33 any person who intentionally engages in acts of reprisal, retaliation,
34 threats, coercion, or similar improper acts against an employee of
35 the Legislature or applicant for employment with the Legislature
36 for having made a protected disclosure, is subject to a fine not to
37 exceed ten thousand dollars (\$10,000) and imprisonment in ~~the a~~
38 county jail for a period not to exceed one year.

39 (c) In addition to all other penalties provided by law, except to
40 the extent that a Member of the Legislature is immune from

1 liability under the doctrine of legislative immunity, any person
 2 who intentionally engages in acts of reprisal, retaliation, threats,
 3 coercion, or similar acts against a state employee or applicant for
 4 state employment for having made a protected disclosure shall be
 5 liable in an action for damages brought against him or her by the
 6 injured party. Punitive damages may be awarded by the court
 7 where the acts of the offending party are proven to be malicious.
 8 Where liability has been established, the injured party shall also
 9 be entitled to reasonable attorney’s fees as provided by law.

10 (d) This section does not prevent a supervisor, manager, or other
 11 officer of the Legislature from taking, directing others to take,
 12 recommending, or approving any personnel action or from taking
 13 or failing to take a personnel action with respect to any employee
 14 of the Legislature or applicant for employment with the Legislature
 15 if the supervisor, manager, or other officer reasonably believes
 16 any action or inaction is justified on the basis of evidence separate
 17 and apart from the fact that the person has made a protected
 18 disclosure.

19 (e) In any civil action, once it has been demonstrated by a
 20 preponderance of evidence that an activity protected by this article
 21 was a contributing factor in the alleged retaliation against a former,
 22 current, or prospective employee, the burden of proof shall be on
 23 the supervisor, manager, or other officer of the Legislature to
 24 demonstrate by clear and convincing evidence that the alleged
 25 action would have occurred for legitimate, independent reasons
 26 even if the employee had not engaged in protected disclosures or
 27 refused an illegal order.

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

30 SEC. 4. No reimbursement is required by this act pursuant to
 31 Section 6 of Article XIII B of the California Constitution because
 32 the only costs that may be incurred by a local agency or school
 33 district will be incurred because this act creates a new crime or
 34 infraction, eliminates a crime or infraction, or changes the penalty
 35 for a crime or infraction, within the meaning of Section 17556 of
 36 the Government Code, or changes the definition of a crime within
 37 the meaning of Section 6 of Article XIII B of the California
 38 Constitution.

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