

AMENDED IN ASSEMBLY JUNE 25, 2013

AMENDED IN ASSEMBLY JUNE 11, 2013

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 496

Introduced by Senator Wright

February 21, 2013

An act to amend Sections ~~905~~ 905.2 and 19683 of, and to add Section 8547.15 to, the Government Code, and to amend Section 1102.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 496, as amended, Wright. ~~California Whistleblower Protection Act: administrative procedure. Improper governmental activity: disclosure: protection.~~

(1) *The Government Claims Act sets forth the general procedure for the presentation of a claim for money or damages against the state.*

This bill would create an exception to the general procedure for a claim alleging a violation of the California Whistleblower Protection Act.

Existing law, the

(2) ~~The California Whistleblower Protection Act, provides that a person making a protected disclosure, as defined, about an improper governmental activity is to be free of intimidation or threat and that a person who intentionally engages in prohibits acts of reprisal, retaliation, coercion, or similar acts against a state employee or an applicant for state employment for having who made a protected disclosure is subject to civil liability and criminal penalties. Existing law also provides that civil damages are available to an injured party only if the State Personnel~~

~~Board has issued, or failed to issue, findings pursuant to specified procedures. Existing law relating to an improper governmental activity, as defined. The State Civil Service Act requires the State Personnel Board to initiate a hearing or investigation of a complaint of reprisal or retaliation in violation of the California Whistleblower Protection Act within 10 working days. Existing law also requires and the executive officer of the board to complete the findings of the hearing or investigation within 60 working days, but if the allegations contained in the complaint of reprisal or retaliation are the same or similar to those contained in another appeal, the. The State Civil Service Act authorizes the executive officer may to consolidate the appeals, in which case the time limits do not apply. a case with the same or similar allegations to those contained in an appeal and exempts consolidated cases from the time limits for hearings, investigations, and findings.~~

~~This bill would instead require modify these requirements to instead require the board to initiate an informal hearing or investigation to occur within 10 working days of submission of a complaint, followed by an evidentiary hearing, and the executive officer to complete the findings of the informal hearing within 60 working days, as specified. This bill would authorize the executive officer to consolidate a complaint with a related appeal and exempt the consolidated case from the proscribed time limits. The bill would provide that after an evidentiary hearing, authorize an aggrieved party to the decision may file a petition for writ of mandate for review of the decision, as specified. The bill would further provide that deem the complainant is deemed to have exhausted his or her administrative remedies and may would authorize the complainant to file an a civil action for civil damages after either 70 working days from submitting the complaint to the board or sooner if the issuance of findings by the executive officer issues findings or refers a consolidated appeal to an evidentiary hearing, as specified, whichever is sooner. The bill would provide that the executive officer's findings of the informal hearing or investigation are not binding or entitled to deference in a subsequent State Personnel Board evidentiary hearing or in a civil action for damages. The bill would specify that the filing of a civil action by a complainant does not preclude the request for an evidentiary hearing by a supervisor, manager, employee, or appointing power whom the executive office has found to have retaliated against the complainant nor does the request for an evidentiary hearing preclude the complainant's right to file an independent civil action, as specified. The bill would also make other technical changes.~~

The act further authorizes the State Auditor to investigate and report whether it finds that a state agency or employee may have engaged or participated in an improper governmental activity. Under the act, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having made a disclosure that may evidence an improper governmental activity or dangerous condition is subject to, among other things, liability in an action for damages brought against him or her by the injured party. Existing law, the Government Claims Act, sets forth the general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the state, and against the officers, employees, and servants of those entities.

This bill would establish an exception for an action for damages pursuant to the California Whistleblower Protection Act from the claims presentation requirements of the Government Claims Act.

Existing

(3) *Existing* law prohibits an employer from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a state or federal rule or regulation. Existing law prohibits any employer from retaliating against an employee for disclosing information to a government or law enforcement agency pursuant to these provisions or for refusing to participate in an activity that would result in a violation of a state or federal statute or noncompliance with a state or federal rule or regulation. Under existing law, an employer who violates these provisions is guilty of a crime.

This bill would expand these provisions to prohibit an employer from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, if the employee has reasonable cause to believe that the information discloses a violation of or noncompliance with a local rule or regulation. The bill would prohibit an employer from retaliating against an employee because the employer ~~perceives~~ *believes* that the employee *disclosed or* may disclose information to a government or law enforcement agency, or to a person with authority over the employee or another employee who has the authority to investigate,

discover, or correct the violation, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. The bill would also prohibit an employer from retaliating against an employee for disclosing, or refusing to participate in an activity that would result in, a violation of or noncompliance with a local rule or regulation.

Because

(4) *Because* this bill would change the definition of a crime, this 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 905 of the Government Code is amended~~
- 2 ~~to read:~~
- 3 ~~905. There shall be presented in accordance with Chapter 1~~
- 4 ~~(commencing with Section 900) and Chapter 2 (commencing with~~
- 5 ~~Section 910) all claims for money or damages against local public~~
- 6 ~~entities except any of the following:~~
- 7 ~~(a) Claims under the Revenue and Taxation Code or other statute~~
- 8 ~~prescribing procedures for the refund, rebate, exemption,~~
- 9 ~~cancellation, amendment, modification, or adjustment of any tax,~~
- 10 ~~assessment, fee, or charge or any portion thereof, or of any~~
- 11 ~~penalties, costs, or charges related thereto.~~
- 12 ~~(b) Claims in connection with which the filing of a notice of~~
- 13 ~~lien, statement of claim, or stop notice is required under any law~~
- 14 ~~relating to liens of mechanics, laborers, or materialmen.~~
- 15 ~~(c) Claims by public employees for fees, salaries, wages,~~
- 16 ~~mileage, or other expenses and allowances.~~
- 17 ~~(d) Claims for which the workers' compensation authorized by~~
- 18 ~~Division 4 (commencing with Section 3200) of the Labor Code is~~
- 19 ~~the exclusive remedy.~~

- 1 ~~(e) Applications or claims for any form of public assistance~~
2 ~~under the Welfare and Institutions Code or other provisions of law~~
3 ~~relating to public assistance programs, and claims for goods,~~
4 ~~services, provisions, or other assistance rendered for or on behalf~~
5 ~~of any recipient of any form of public assistance.~~
- 6 ~~(f) Applications or claims for money or benefits under any public~~
7 ~~retirement or pension system.~~
- 8 ~~(g) Claims for principal or interest upon any bonds, notes,~~
9 ~~warrants, or other evidences of indebtedness.~~
- 10 ~~(h) Claims that relate to a special assessment constituting a~~
11 ~~specific lien against the property assessed and that are payable~~
12 ~~from the proceeds of the assessment, by offset of a claim for~~
13 ~~damages against it or by delivery of any warrant or bonds~~
14 ~~representing it.~~
- 15 ~~(i) Claims by the state or by a state department or agency or by~~
16 ~~another local public entity or by a judicial branch entity.~~
- 17 ~~(j) Claims arising under any provision of the Unemployment~~
18 ~~Insurance Code, including, but not limited to, claims for money~~
19 ~~or benefits, or for refunds or credits of employer or worker~~
20 ~~contributions, penalties, or interest, or for refunds to workers of~~
21 ~~deductions from wages in excess of the amount prescribed.~~
- 22 ~~(k) Claims for the recovery of penalties or forfeitures made~~
23 ~~pursuant to Article 1 (commencing with Section 1720) of Chapter~~
24 ~~1 of Part 7 of Division 2 of the Labor Code.~~
- 25 ~~(l) Claims governed by the Pedestrian Mall Law of 1960 (Part~~
26 ~~1 (commencing with Section 11000) of Division 13 of the Streets~~
27 ~~and Highways Code).~~
- 28 ~~(m) Claims made pursuant to Section 340.1 of the Code of Civil~~
29 ~~Procedure for the recovery of damages suffered as a result of~~
30 ~~childhood sexual abuse. This subdivision shall apply only to claims~~
31 ~~arising out of conduct occurring on or after January 1, 2009.~~
- 32 ~~(n) Claims made pursuant to Section 701.820 of the Code of~~
33 ~~Civil Procedure for the recovery of money pursuant to Section~~
34 ~~26680.~~
- 35 ~~(o) Claims made pursuant to Section 49013 of the Education~~
36 ~~Code for reimbursement of pupil fees for participation in~~
37 ~~educational activities.~~
- 38 ~~(p) Claims made for a violation of Article 3 (commencing with~~
39 ~~Section 8547) of Chapter 6.5 of Division 1 of Title 2.~~

1 *SECTION 1. Section 905.2 of the Government Code is amended*
2 *to read:*

3 905.2. (a) This section shall apply to claims against the state
4 filed with the California Victim Compensation and Government
5 Claims Board.

6 (b) There shall be presented in accordance with Chapter 1
7 (commencing with Section 900) and Chapter 2 (commencing with
8 Section 910) all claims for money or damages against the state:

9 (1) For which no appropriation has been made or for which no
10 fund is available but the settlement of which has been provided
11 for by statute or constitutional provision.

12 (2) For which the appropriation made or fund designated is
13 exhausted.

14 (3) For money or damages on express contract, or for an injury
15 for which the state is liable.

16 (4) For which settlement is not otherwise provided for by statute
17 or constitutional provision.

18 (c) Claimants shall pay a filing fee of twenty-five dollars (\$25)
19 for filing a claim described in subdivision (b). This fee shall be
20 deposited into the General Fund and may be appropriated in support
21 of the board as reimbursements to Item 1870-001-0001 of Section
22 2.00 of the annual Budget Act.

23 (1) The fee shall not apply to the following persons:

24 (A) Persons who are receiving benefits pursuant to the
25 Supplemental Security Income (SSI) and State Supplemental
26 Payments (SSP) programs (Section 12200 to 12205, inclusive, of
27 the Welfare and Institutions Code), the California Work
28 Opportunity and Responsibility to Kids Act (CalWORKs) program
29 (Chapter 2 (commencing with Section 11200) of Part 3 of Division
30 9 of the Welfare and Institutions Code), the Food Stamp program
31 (7 U.S.C. Sec. 2011 et seq.), or Section 17000 of the Welfare and
32 Institutions Code.

33 (B) Persons whose monthly income is 125 percent or less of the
34 current monthly poverty line annually established by the Secretary
35 of California Health and Human Services pursuant to the federal
36 Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35),
37 as amended.

38 (C) Persons who are sentenced to imprisonment in a state prison
39 or confined in a county jail, or who are residents in a state
40 institution and, within 90 days prior to the date the claim is filed,

1 have a balance of one hundred dollars (\$100) or less credited to
2 the inmate's or resident's trust account. A certified copy of the
3 statement of the account shall be submitted.

4 (2) Any claimant who requests a fee waiver shall attach to the
5 application a signed affidavit requesting the waiver and verification
6 of benefits or income and any other required financial information
7 in support of the request for the waiver.

8 (3) Notwithstanding any other provision of law, an applicant
9 shall not be entitled to a hearing regarding the denial of a request
10 for a fee waiver.

11 (d) The time for the board to determine the sufficiency,
12 timeliness, or any other aspect of the claim shall begin when any
13 of the following occur:

14 (1) The claim is submitted with the filing fee.

15 (2) The fee waiver is granted.

16 (3) The filing fee is paid to the board upon the board's denial
17 of the fee waiver request, so long as payment is received within
18 10 calendar days of the mailing of the notice of the denial.

19 (e) Upon approval of the claim by the board, the fee shall be
20 reimbursed to the claimant, except that no fee shall be reimbursed
21 if the approved claim was for the payment of an expired warrant.
22 Reimbursement of the filing fee shall be paid by the state entity
23 against which the approved claim was filed. If the claimant was
24 granted a fee waiver pursuant to this section, the amount of the
25 fee shall be paid by the state entity to the board. The reimbursement
26 to the claimant or the payment to the board shall be made at the
27 time the claim is paid by the state entity, or shall be added to the
28 amount appropriated for the claim in an equity claims bill.

29 (f) The board may assess a surcharge to the state entity against
30 which the approved claim was filed in an amount not to exceed
31 15 percent of the total approved claim. The board shall not include
32 the refunded filing fee in the surcharge calculation. This surcharge
33 shall be deposited into the General Fund and may be appropriated
34 in support of the board as reimbursements to Item 1870-001-0001
35 of Section 2.00 of the annual Budget Act.

36 (1) The surcharge shall not apply to approved claims to reissue
37 expired warrants.

38 (2) Upon the request of the board in a form prescribed by the
39 Controller, the Controller shall transfer the surcharges and fees
40 from the state entity's appropriation to the appropriation for the

1 support of the board. However, the board shall not request an
2 amount that shall be submitted for legislative approval pursuant
3 to Section 13928.

4 (g) The filing fee required by subdivision (c) shall apply to all
5 claims filed after June 30, 2004, or the effective date of this statute.
6 The surcharge authorized by subdivision (f) may be calculated and
7 included in claims paid after June 30, 2004, or the effective date
8 of the statute adding this subdivision.

9 (h) *This section shall not apply to claims made for a violation*
10 *of the California Whistleblower Protection Act (Article 3*
11 *(commencing with Section 8547) of Chapter 6.5 of Division 1 of*
12 *Title 2).*

13 SEC. 2. Section 8547.15 is added to the Government Code, to
14 read:

15 8547.15. An action for damages pursuant to this article shall
16 not be subject to the claims presentation requirements of the
17 Government Claims Act (Division 3.6 (commencing with Section
18 810) of Title 1).

19 SEC. 3. Section 19683 of the Government Code is amended
20 to read:

21 19683. (a) The State Personnel Board shall initiate an informal
22 hearing or investigation of a written complaint of ~~reprisal or~~
23 ~~retaliation as~~ *conduct* prohibited by Section 8547.3 within 10
24 working days of its submission. The executive officer shall
25 complete findings of the informal hearing or investigation within
26 60 working days thereafter, and shall provide a copy of the findings
27 to the complaining state employee or applicant for state
28 employment and to the appropriate supervisor, manager, employee,
29 or appointing authority. *If the allegations contained in the*
30 *complaint are related to matters raised in one or more appeals by*
31 *the complainant to the State Personnel Board, the executive officer*
32 *may consolidate the complaint and the related appeal or appeals*
33 *for evidentiary hearing. The time limits described in this*
34 *subdivision shall not apply to cases that are consolidated by the*
35 *executive officer.*

36 (b) ~~The~~ *Except for complaints that are consolidated with one*
37 *or more appeals pursuant to subdivision (a), the complainant is*
38 *deemed to have exhausted his or her administrative remedies and*
39 *may file an independent civil action for civil damages, pursuant*
40 *to Section 8547.8, after either 70 working days from submitting*

1 the complaint to the State Personnel Board, or sooner upon either
2 of the following: *the issuance of findings by the executive officer,*
3 *whichever is sooner.*

4 ~~(1) The executive officer issues the findings of the informal~~
5 ~~hearing or investigation, as set forth in subdivision (a).~~

6 ~~(2) The executive officer consolidates the complainant's multiple~~
7 ~~appeals pursuant to subdivision (e) and refers the consolidated~~
8 ~~appeal directly to an evidentiary hearing.~~

9 (c) If, after the informal hearing *or investigation*, the executive
10 officer finds that the supervisor, manager, employee, or appointing
11 power retaliated against the complainant for engaging in protected
12 whistleblower activities, the supervisor, manager, employee, or
13 appointing power may request an evidentiary hearing before the
14 State Personnel Board regarding the findings of the executive
15 officer. A complainant's filing of a civil action does not preclude
16 the request for an evidentiary hearing by the supervisor, manager,
17 employee, or appointing power under this subdivision, nor does
18 the request for hearing preclude the complainant's right to file an
19 independent civil action pursuant to subdivision (b). The request
20 for hearing and any subsequent determination by the board shall
21 be made in accordance with the board's normal rules governing
22 appeals, hearings, investigations, and disciplinary proceedings.

23 (d) The executive officer's findings of the informal hearing or
24 investigation, as set forth in subdivision (a), are not binding *or*
25 *entitled to deference* in *either* a subsequent State Personnel Board
26 evidentiary hearing requested by the complainant or pursuant to
27 subdivision (e) or (e), nor in *or* a *subsequent or concurrent* civil
28 action for damages, pursuant to subdivision (b).

29 ~~(e) If the allegations contained in a complaint of reprisal or~~
30 ~~retaliation are the same as, or similar to, those contained in another~~
31 ~~appeal to the State Personnel Board by the complainant as~~
32 ~~authorized by another law or under a separate cause of action, the~~
33 ~~executive officer may consolidate the appeals into the most~~
34 ~~appropriate format. In these cases, the time limits described in~~
35 ~~subdivision (a) shall not apply.~~

36 ~~(f)~~

37 (e) After an evidentiary hearing requested by the complainant
38 ~~or on a complaint~~ pursuant to subdivision (c) ~~or (e)~~ the State
39 Personnel Board shall issue a decision. Any aggrieved party to the
40 decision may file a petition for writ of mandate with the superior

1 court for review of the decision pursuant to Section 1094.5 of the
 2 Code of Civil Procedure. This subdivision shall not apply to
 3 *preclude* a claimant’s right to pursue an independent *civil* action
 4 for civil damages pursuant to subdivision (b). A decision by the
 5 State Personnel Board shall not be binding in any concurrent or
 6 subsequent independent civil action pursuant to subdivision (b).

7 (g)

8 (f) If, after the evidentiary hearing, the State Personnel Board
 9 determines that a violation of Section 8547.3 occurred, or if no
 10 evidentiary hearing is requested and the findings of the executive
 11 officer conclude that ~~the complainant was retaliated against, a~~
 12 *violation of Section 8547.3 occurred*, the board may order any
 13 appropriate relief, including, but not limited to, reinstatement,
 14 backpay, restoration of lost service credit, compensatory damages,
 15 and the expungement of any adverse records of the state employee
 16 or applicant for state employment who was the subject of the
 17 alleged acts of misconduct prohibited by Section 8547.3.

18 (h)

19 (g) Whenever the board determines that a manager, supervisor,
 20 or employee, who is named a party to the retaliation complaint,
 21 has violated Section 8547.3 and that violation constitutes legal
 22 cause for discipline under one or more subdivisions of Section
 23 19572, it shall impose a just and proper penalty and cause an entry
 24 to that effect to be made in the manager’s, supervisor’s, or
 25 employee’s official personnel records.

26 (i)

27 (h) Whenever the board determines that a manager, supervisor,
 28 or employee, who is not named a party to the retaliation complaint,
 29 may have engaged in or participated in any act prohibited by
 30 Section 8547.3, the board shall notify the manager’s, supervisor’s,
 31 or employee’s appointing power of that fact in writing. Within 60
 32 days after receiving the notification, the appointing power shall
 33 either serve a notice of adverse action on the manager, supervisor,
 34 or employee, or set forth in writing its reasons for not taking
 35 adverse action against the manager, supervisor, or employee. The
 36 appointing power shall file a copy of the notice of adverse action
 37 with the board in accordance with Section 19574. If the appointing
 38 power declines to take adverse action against the manager,
 39 supervisor, or employee, it shall submit its written reasons for not
 40 doing so to the board, which may take adverse action against the

1 manager, supervisor, or employee as provided in Section 19583.5.
2 A manager, supervisor, or employee who is served with a notice
3 of adverse action pursuant to this section may file an appeal with
4 the board in accordance with Section 19575.

5 (j)

6 (i) In order for the Governor and the Legislature to determine
7 the need to continue or modify state personnel procedures as they
8 relate to the investigations of reprisals or retaliation for the
9 disclosure of information by public employees, the State Personnel
10 Board, by June 30 of each year, shall submit a report to the
11 Governor and the Legislature regarding complaints filed, hearings
12 held, and legal actions taken pursuant to this section.

13 SEC. 4. Section 1102.5 of the Labor Code is amended to read:

14 1102.5. (a) An employer shall not make, adopt, or enforce any
15 rule, regulation, or policy preventing an employee from disclosing
16 information to a government or law enforcement agency, *or to a*
17 *person with authority over the employee or to another employee*
18 *who has authority to investigate, discover, or correct the violation*
19 *or noncompliance*, if the employee has reasonable cause to believe
20 that the information discloses a violation of state or federal statute,
21 or a violation of or noncompliance with a local, state, or federal
22 rule or regulation, *regardless of whether disclosing the information*
23 *is part of the employee's job duties.*

24 (b) An employer shall not retaliate against an employee for
25 disclosing information, or because the employer ~~perceives~~ *believes*
26 that the employee *disclosed or* may disclose information, to a
27 government or law enforcement agency, or to a person with
28 authority over the employee or another employee who has the
29 authority to investigate, discover, or correct the violation *or*
30 *noncompliance*, if the employee has reasonable cause to believe
31 that the information discloses a violation of state or federal statute,
32 or a violation of or noncompliance with a local, state, or federal
33 rule or regulation, *regardless of whether disclosing the information*
34 *is part of the employee's job duties.*

35 (c) An employer shall not retaliate against an employee for
36 refusing to participate in an activity that would result in a violation
37 of state or federal statute, or a violation of or noncompliance with
38 a local, state, or federal rule or regulation.

1 (d) An employer shall not retaliate against an employee for
2 having exercised his or her rights under subdivision (a), (b), or (c)
3 in any former employment.

4 (e) A report made by an employee of a government agency to
5 his or her employer is a disclosure of information to a government
6 or law enforcement agency pursuant to subdivisions (a) and (b).

7 (f) In addition to other penalties, an employer that is a
8 corporation or limited liability company is liable for a civil penalty
9 not exceeding ten thousand dollars (\$10,000) for each violation
10 of this section.

11 (g) This section does not apply to rules, regulations, or policies
12 that implement, or to actions by employers against employees who
13 violate, the confidentiality of the lawyer-client privilege of Article
14 3 (commencing with Section 950), the physician-patient privilege
15 of Article 6 (commencing with Section 990) of Chapter 4 of
16 Division 8 of the Evidence Code, or trade secret information.

17 SEC. 5. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.