

ASSEMBLY BILL

No. 289

Introduced by Assembly Member Melendez

February 11, 2015

An act to add Article 11 (commencing with Section 9149.30) to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, relating to the Legislature.

LEGISLATIVE COUNSEL'S DIGEST

AB 289, as introduced, Melendez. Legislature: Legislative Employee Whistleblower Protection Act.

Existing law provides procedures for a person to file a complaint alleging violations of legislative ethics. Existing law also authorizes each house of the Legislature to adopt rules for its proceedings and to select committees necessary for the conduct of its business.

This bill would prohibit interference with the right of legislative employees, as defined, to make protected disclosures of ethics violations and would prohibit retaliation against legislative employees who have made protected disclosures. This bill would establish a procedure for legislative employees to report violations of the bill to the Legislature. The bill would also impose civil and criminal liability on a person who interferes with a legislative employee's right to make a protected disclosure or who engages in retaliatory acts, as specified.

By creating new crimes, 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. Article 11 (commencing with Section 9149.30)
2 is added to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the
3 Government Code, to read:

4
5 Article 11. Legislative Employee Whistleblower Protection Act
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7 9149.30. This article shall be known and may be cited as the
8 Legislative Employee Whistleblower Protection Act.

9 9149.31. The Legislature finds and declares that legislative
10 employees should be free to report ethical violations without fear
11 of retribution.

12 9149.32. For the purposes of this article, the following terms
13 have the following meanings:

14 (a) "Legislative employee" means an individual, other than a
15 Member of either house of the Legislature, who is currently
16 employed by either house of the Legislature.

17 (b) "Protected disclosure" means the filing of a complaint
18 alleging a violation of Article 2 of Chapter 1 of this part or of any
19 standard of conduct, as defined by the standing rules of either
20 house of the Legislature.

21 (c) "Use of official authority or influence" includes promising
22 to confer, or conferring, any benefit; effecting, or threatening to
23 effect, any reprisal; or taking, or directing others to take, or
24 recommending, processing, or approving, any personnel action,
25 including, appointment, promotion, transfer, assignment,
26 performance evaluation, suspension, or other disciplinary action.

27 9149.33. (a) A Member of the Legislature or legislative
28 employee shall not directly or indirectly use or attempt to use that
29 person's official authority or influence for the purpose of
30 intimidating, threatening, coercing, commanding, or attempting
31 to intimidate, threaten, coerce, or command a legislative employee
32 for the purpose of interfering with the right of the legislative
33 employee to make a protected disclosure.

1 (b) Except to the extent that a Member of the Legislature is
2 immune from liability under the doctrine of legislative immunity,
3 a person who violates this section is subject to a fine not to exceed
4 ten thousand dollars (\$10,000) and imprisonment in a county jail
5 for a period not to exceed one year.

6 (c) In addition to all other penalties provided by law, except to
7 the extent that a Member of the Legislature is immune from
8 liability under the doctrine of legislative immunity, a person who
9 violates this section shall be liable in a civil action for damages
10 brought by a legislative employee.

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

14 (e) This section is not intended to prevent a supervisor, manager,
15 or other officer of the Legislature from taking, directing others to
16 take, recommending, or approving any personnel action or from
17 taking or failing to take a personnel action with respect to any
18 legislative employee if the supervisor, manager, or other officer
19 reasonably believes any action or inaction is justified on the basis
20 of evidence separate and apart from the fact that the person has
21 made a protected disclosure.

22 9149.34. A legislative employee may file a written complaint
23 with either house of the Legislature pursuant to its rules alleging
24 actual or attempted acts of reprisal, retaliation, threats, coercion,
25 or similar improper acts prohibited by Section 9149.33. The
26 complaint, together with a sworn statement under penalty of perjury
27 that the contents of the complaint are true, or are believed by the
28 affiant to be true, shall be filed within one year of the most recent
29 improper act complained about.

30 9149.35. Except to the extent that a Member of the Legislature
31 is immune from liability under the doctrine of legislative immunity,
32 a person who intentionally engages in acts of reprisal, retaliation,
33 threats, coercion, or similar acts against a legislative employee for
34 having made a protected disclosure is subject to a fine not to exceed
35 ten thousand dollars (\$10,000) and imprisonment in a county jail
36 for a period not to exceed one year.

37 9149.36. (a) In addition to all other penalties provided by law,
38 except to the extent that a Member of the Legislature is immune
39 from liability under the doctrine of legislative immunity, a person
40 who intentionally engages in acts of reprisal, retaliation, threats,

1 coercion, or similar acts against a legislative employee for having
2 made a protected disclosure shall be liable in a civil action for
3 damages brought by a legislative employee.

4 (b) (1) In any civil action, once it has been demonstrated by a
5 preponderance of the evidence that an activity protected by this
6 article was a contributing factor in the alleged retaliation against
7 a legislative employee, the burden of proof shall be on the
8 offending party to demonstrate by clear and convincing evidence
9 that the alleged action would have occurred for legitimate,
10 independent reasons even if the legislative employee had not made
11 a protected disclosure.

12 (2) Punitive damages may be awarded by the court if the acts
13 of the offending party are proven to be malicious. If liability is
14 established, the injured party shall also be entitled to reasonable
15 attorney’s fees as provided by law.

16 (c) A legislative employee is not required to file a complaint
17 pursuant to Section 9149.34 before bringing an action for civil
18 damages.

19 (d) This section is not intended to prevent a supervisor, manager,
20 or other officer of the Legislature from taking, directing others to
21 take, recommending, or approving any personnel action or from
22 taking or failing to take a personnel action with respect to any
23 legislative employee if the supervisor, manager, or other officer
24 reasonably believes any action or inaction is justified on the basis
25 of evidence separate and apart from the fact that the person has
26 made a protected disclosure.

27 (e) For purposes of this section, “legislative employee” shall
28 include a former employee of the Legislature.

29 9149.37. This article does not diminish the rights, privileges,
30 or remedies of a legislative employee under any other federal or
31 state law.

32 SEC. 2. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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