

AMENDED IN SENATE AUGUST 1, 2016  
AMENDED IN SENATE JUNE 15, 2016  
AMENDED IN ASSEMBLY JANUARY 4, 2016  
AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1233**

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**Introduced by Assembly Member Levine**

February 27, 2015

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*An act to amend Section 8547.2 of, and to add Section 8547.16 to, the Government Code, relating to improper governmental activities.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1233, as amended, Levine. Whistleblower investigation policy: state agencies.

The California Whistleblower Protection Act requires the State Auditor to administer the act and to investigate and report on improper governmental activities, as defined. The act requires the State Auditor to establish a means of submitting allegations of improper governmental activity, and generally requires the State Auditor to keep confidential every investigation, including all investigative files and work-product.

~~The product.~~ The act authorizes the State Auditor to issue a public report of an investigation that has substantiated an improper governmental activity, keeping confidential the identity of the employee or employees involved. The act ~~also~~ further authorizes the State Auditor to release any findings or evidence supporting any findings resulting from an investigation whenever the State Auditor determines it necessary to serve the interests of the state.

This bill would require a state agency, as defined, that utilizes a whistleblower investigation policy separate from the act to publicly report, in the manner in which the State Auditor is authorized to publicly report, any investigation of a whistleblower complaint that has substantiated improper government activities. *The bill would specify that its provisions shall not be deemed to require the disclosure of a public record that is otherwise not required to be disclosed pursuant to any other state law.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*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) "Employee" means an individual appointed by the Governor,  
6 or employed or holding office in a state agency as defined by  
7 Section 11000, including, for purposes of Sections 8547.3 to  
8 8547.7, inclusive, an employee of the California State University,  
9 or an individual appointed by the Legislature to a state board or  
10 commission and who is not a Member or employee of the  
11 Legislature. In addition, "employee" means a person employed by  
12 the Supreme Court, a court of appeal, a superior court, or the  
13 Administrative Office of the Courts for the purposes of Sections  
14 8547.3 to 8547.7, inclusive, and Section 8547.13, except for those  
15 provisions of Section 8547.4 concerning notice of adverse action  
16 and the State Personnel Board. "Employee" includes a former  
17 employee who met the criteria of this subdivision during his or  
18 her employment.

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

24 (c) "Improper governmental activity" means an activity by a  
25 state agency or by an employee that is undertaken in the  
26 performance of the employee's duties, undertaken inside a state  
27 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.

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

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

37 (f) “State agency” is defined by Section 11000. “State agency”  
38 includes the University of California for purposes of Sections  
39 8547.5 to 8547.7, inclusive, and *Section 8547.16*, and the  
40 California State University for purposes of Sections 8547.3 to

1 8547.7, ~~inclusive~~; *inclusive, and Section 8547.16*. Sections 8547.3  
2 to 8547.7, inclusive, shall apply to the Supreme Court, the courts  
3 of appeal, the superior courts, and the Administrative Office of  
4 the Courts in the same manner as they apply to a state agency.

5 SECTION 1.

6 SEC. 2. Section 8547.16 is added to the Government Code, to  
7 read:

8 8547.16. ~~Any~~ (a) A state agency that utilizes a whistleblower  
9 investigation policy separate from this article shall publicly report,  
10 in the manner in which the State Auditor is authorized to publicly  
11 report pursuant to subdivision (c) of Section 8547.7, any  
12 investigation of a whistleblower complaint that has substantiated  
13 improper governmental activities.

14 (b) *This section shall not be deemed to require the disclosure*  
15 *of a public record that is otherwise not required to be disclosed*  
16 *pursuant to any other state law, including, but not limited to, the*  
17 *California Public Records Act (Chapter 3.5 (commencing with*  
18 *Section 6250) of Division 7 of Title 1).*