

ASSEMBLY BILL

No. 1788

Introduced by Assembly Member Melendez

February 4, 2016

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 1788, 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 prohibitions 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
6

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 with
18 any of the following:

19 (1) The Joint Legislative Ethics Committee pursuant to Section
20 8944, alleging a violation by a member of the Legislature.

21 (2) The Senate Committee on Legislative Ethics, alleging that
22 a Member, officer, or employee of the Senate violated any standard
23 of conduct, as defined by the standing rules of the Senate.

24 (3) The Assembly Legislative Ethics Committee, alleging that
25 a Member of the Assembly violated any standard of conduct, as
26 defined by the standing rules of the Assembly.

27 (4) The Assembly Rules Committee, alleging that an employee
28 of the Assembly violated Article 2 of Chapter 1 of this part.

29 (5) An ethics ombudsperson designated by either house of the
30 Legislature to receive information about potential ethical violations.

31 (c) "Use of official authority or influence" includes promising
32 to confer, or conferring, any benefit; effecting, or threatening to
33 effect, any reprisal; or taking, or directing others to take, or

1 recommending, processing, or approving, any personnel action,
2 including appointment, promotion, transfer, assignment,
3 performance evaluation, suspension, or other disciplinary action.

4 9149.33. (a) A Member of the Legislature or legislative
5 employee shall not directly or indirectly use or attempt to use that
6 person's official authority or influence to intimidate, threaten,
7 coerce, or command, or attempt to intimidate, threaten, coerce, or
8 command, a legislative employee for the purpose of interfering
9 with the right of the legislative employee to make a protected
10 disclosure.

11 (b) Except to the extent that a Member of the Legislature is
12 immune from liability under the doctrine of legislative immunity,
13 a person who violates this section is subject to a fine not to exceed
14 ten thousand dollars (\$10,000) and imprisonment in a county jail
15 for a period not to exceed one 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
18 liability under the doctrine of legislative immunity, a person who
19 violates this section is liable in a civil action for damages brought
20 by a legislative employee.

21 (d) This section shall not be construed to authorize an individual
22 to disclose information otherwise prohibited by or under law.

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

31 9149.34. A legislative employee may file a written complaint
32 with his or her supervisor or manager, or with any other officer
33 designated by the house of the Legislature by which he or she is
34 employed, alleging actual or attempted acts of reprisal, retaliation,
35 threats, coercion, or similar improper acts prohibited by Section
36 9149.33 for having made a protected disclosure. The complaint,
37 together with a sworn statement under penalty of perjury that the
38 contents of the complaint are true, or are believed by the affiant
39 to be true, shall be filed within one year of the most recent improper
40 act complained about.

1 9149.35. (a) Except to the extent that a Member of the
2 Legislature is immune from liability under the doctrine of
3 legislative immunity, a person who intentionally engages in acts
4 of reprisal, retaliation, threats, coercion, or similar acts against a
5 legislative employee for having made a protected disclosure is
6 subject to a fine not to exceed ten thousand dollars (\$10,000) and
7 imprisonment in a county jail for a period not to exceed one year.

8 (b) For purposes of this section, “legislative employee” includes
9 a former employee of the Legislature if the complaint is filed within
10 one year of the most recent improper act complained about.

11 9149.36. (a) In addition to all other penalties provided by law,
12 except to the extent that a Member of the Legislature is immune
13 from liability under the doctrine of legislative immunity, a person
14 who intentionally engages in acts of reprisal, retaliation, threats,
15 coercion, or similar acts against a legislative employee for having
16 made a protected disclosure is liable in a civil action for damages
17 brought by a legislative employee.

18 (b) (1) In any civil action, once it has been demonstrated by a
19 preponderance of the evidence that an activity protected by this
20 article was a contributing factor in the alleged retaliation against
21 a legislative employee, the burden of proof is on the offending
22 party to demonstrate by clear and convincing evidence that the
23 alleged action would have occurred for legitimate, independent
24 reasons even if the legislative employee had not made a protected
25 disclosure.

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

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

33 (d) This section is not intended to prevent a supervisor, manager,
34 or other officer of the Legislature from taking, directing others to
35 take, recommending, or approving any personnel action or from
36 taking or failing to take a personnel action with respect to any
37 legislative employee if the supervisor, manager, or other officer
38 reasonably believes any action or inaction is justified on the basis
39 of evidence separate and apart from the fact that the person has
40 made a protected disclosure.

1 (e) For purposes of this section, “legislative employee” includes
2 a former employee of the Legislature if the complaint is filed within
3 one year of the most recent improper act complained about.

4 9149.37. This article does not diminish the rights, privileges,
5 or remedies of a legislative employee under any other federal or
6 state law.

7 SEC. 2. 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.