

AMENDED IN ASSEMBLY APRIL 20, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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) A legislative employee may file a written
32 complaint with his or her supervisor or manager, or with any other
33 officer designated by the house of the Legislature by which he or
34 she is employed, alleging actual or attempted acts of reprisal,
35 retaliation, threats, coercion, or similar improper acts prohibited
36 by Section 9149.33 for having made a protected disclosure. ~~The~~

37 (b) *The* complaint, together with a sworn statement under penalty
38 of perjury that the contents of the complaint are true, or are believed
39 by the affiant to be true, shall be filed within one year of the most
40 recent improper act complained about.

1 (c) A recipient of a written complaint submitted pursuant to
2 subdivision (a) shall keep the identity of complainants and
3 witnesses confidential unless expressly authorized by those persons
4 to reveal them, except if requested by a law enforcement agency
5 conducting a criminal investigation.

6 (d) Records relating to an investigation conducted pursuant to
7 subdivision (a), including investigative files and work product, are
8 confidential, except if requested by a law enforcement agency
9 conducting a criminal investigation.

10 (e) This section does not limit the authority conferred upon the
11 Attorney General, any state or federal law enforcement agency,
12 or any other commission, department, or agency authorized to
13 investigate the Legislature.

14 9149.35. (a) Except to the extent that a Member of the
15 Legislature is immune from liability under the doctrine of
16 legislative immunity, a person who intentionally engages in acts
17 of reprisal, retaliation, threats, coercion, or similar acts against a
18 legislative employee for having made a protected disclosure is
19 subject to a fine not to exceed ten thousand dollars (\$10,000) and
20 imprisonment in a county jail for a period not to exceed one year.

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

24 9149.36. (a) In addition to all other penalties provided by law,
25 except to the extent that a Member of the Legislature is immune
26 from liability under the doctrine of legislative immunity, a person
27 who intentionally engages in acts of reprisal, retaliation, threats,
28 coercion, or similar acts against a legislative employee for having
29 made a protected disclosure is liable in a civil action for damages
30 brought by a legislative employee.

31 (b) (1) In any civil action, once it has been demonstrated by a
32 preponderance of the evidence that an activity protected by this
33 article was a contributing factor in the alleged retaliation against
34 a legislative employee, the burden of proof is on the offending
35 party to demonstrate by clear and convincing evidence that the
36 alleged action would have occurred for legitimate, independent
37 reasons even if the legislative employee had not made a protected
38 disclosure.

39 (2) Punitive damages may be awarded by the court if the acts
40 of the offending party are proven to be malicious. If liability is

1 established, the injured party is also entitled to reasonable
2 attorney’s fees as provided by law.

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

6 (d) This section is not intended to prevent a supervisor, manager,
7 or other officer of the Legislature from taking, directing others to
8 take, recommending, or approving any personnel action or from
9 taking or failing to take a personnel action with respect to any
10 legislative employee if the supervisor, manager, or other officer
11 reasonably believes any action or inaction is justified on the basis
12 of evidence separate and apart from the fact that the person has
13 made a protected disclosure.

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

17 9149.37. This article does not diminish the rights, privileges,
18 or remedies of a legislative employee under any other federal or
19 state law.

20 SEC. 2. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.

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