

AMENDED IN ASSEMBLY APRIL 10, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2472

Introduced by Assembly Member Romero
(Coauthors: Assembly Members Keeley and Longville)
(Coauthor: Senator Solis)

February 24, 2000

An act to amend Section 8547.2 of, and to add Section 8547.13 to, the Government Code, relating to public employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2472, as amended, Romero. Public school employees: disclosure of improper governmental activities.

Under the California Whistleblower Protection Act, the State Auditor is authorized to conduct an investigative audit upon receiving confirmation that an employee or state agency, as defined, has engaged in an improper governmental activity. The act prohibits an employee from using his or her official authority or influence to intimidate, threaten, coerce, or command any person in order to interfere with that person's right to make a disclosure under the act. The act protects employees who, among other things, make disclosures to anyone of information that may evidence an improper governmental activity, refusal to obey an illegal order, or any condition that may significantly threaten the health or safety of employees or the public if the disclosure is made for the purpose of remedying the condition.

The act also provides that a state employee who files a written complaint with his or her supervisor, manager, or the appointing power alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts because he or she has made a protected disclosure under the act, may also file a copy of the written complaint with the State Personnel Board, as specified. Any person who engages in the above-specified acts is guilty of a misdemeanor and subject to a \$10,000 fine, and is also subject to civil liability, as specified, except for any action or inaction that is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure.

This bill would extend the act's provisions to public school employees of any public school employer, as defined, and would add similar provisions by which a public school employee is authorized to file a written complaint with the State Auditor alleging acts or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts. By imposing new duties on local public school officials and by expanding the scope of an existing crime, the bill would create 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 8547.2 of the Government Code
2 is amended to read:

3 8547.2. For the purposes of this article:

4 (a) “Employee” means any individual appointed by
5 the Governor or employed or holding office in a state
6 agency as defined by Section 11000, or any public school
7 employee of any public school employer as defined in
8 subdivisions (j) and (k) of Section 3540.1, or, for purposes
9 of Sections 8547.3 to 8547.7, inclusive, any employee of the
10 California State University.

11 (b) “Improper governmental activity” means any
12 activity by a state agency or by an employee that is
13 undertaken in the performance of the employee’s official
14 duties, whether or not that action is within the scope of
15 his or her employment, and that (1) is in violation of any
16 state or federal law or regulation, including, but not
17 limited to, corruption, malfeasance, bribery, theft of
18 government property, fraudulent claims, fraud, coercion,
19 conversion, malicious prosecution, misuse of government
20 property, or willful omission to perform duty, or (2) is
21 economically wasteful, or involves gross misconduct,
22 incompetency, or inefficiency. For purposes of Sections
23 8547.4, 8547.5, 8547.10, and 8547.11, “improper
24 governmental activity” includes any activity by the
25 University of California or by an employee, including an
26 officer or faculty member, who otherwise meets the
27 criteria of this subdivision.

28 (c) “Person” means any individual, corporation, trust,
29 association, any state or local government, or any agency
30 or instrumentality of any of the foregoing.

31 (d) “Protected disclosure” means any good faith
32 communication that discloses or demonstrates an
33 intention to disclose information that may evidence (1)
34 an improper governmental activity, or (2) any condition
35 that may significantly threaten the health or safety of
36 employees or the public if the disclosure or intention to
37 disclose was made for the purpose of remedying that
38 condition.



1 (e) “Illegal order” means any directive to violate or
2 assist in violating a federal, state, or local law, rule, or
3 regulation or any order to work or cause others to work
4 in conditions outside of their line of duty that would
5 unreasonably threaten the health or safety of employees
6 or the public.

7 (f) “State agency” is defined by Section 11000. “State
8 agency” includes the University of California for
9 purposes of Sections 8547.5 to 8547.7, inclusive, and the
10 California State University for purposes of Sections 8547.3
11 to 8547.7, inclusive.

12 SEC. 2. Section 8547.13 is added to the Government
13 Code, to read:

14 8547.13. (a) A public school employee or applicant
15 for employment with a public school employer who files
16 a written complaint with his or her supervisor, a school
17 administrator, or the public school employer alleging
18 actual or attempted acts of reprisal, retaliation, threats,
19 coercion, or similar improper acts prohibited by Section
20 8547.3, for having disclosed improper governmental
21 activities or for refusing to obey an illegal order, may also
22 file a copy of the written complaint with the State
23 Auditor, together with a sworn statement that the
24 contents of the written complaint are true, or are
25 believed by the affiant to be true, under penalty of
26 perjury. The complaint filed with the State Auditor shall
27 be filed within 12 months of the most recent act of reprisal
28 complained about.

29 (b) Any person who intentionally engages in acts of
30 reprisal, retaliation, threats, coercion, or similar acts
31 against a public school employee or applicant for
32 employment with a public school employer for having
33 made a protected disclosure, is subject to a fine not to
34 exceed ten thousand dollars (\$10,000) and imprisonment
35 in the county jail for a period not to exceed one year. Any
36 public school employee, officer, or administrator who
37 intentionally engages in that conduct shall also be subject
38 to discipline by the public school employer. If no adverse
39 action is instituted by the public school employer, the



1 State Auditor shall proceed pursuant to subdivision (a) of
2 Section 8547.7.

3 (c) In addition to all other penalties provided by law,
4 any person who intentionally engages in acts of reprisal,
5 retaliation, threats, coercion, or similar acts against a
6 public school employee or applicant for employment
7 with a public school employer for having made a
8 protected disclosure shall be liable in an action for
9 damages brought against him or her by the injured party.
10 Punitive damages may be awarded by the court where
11 the acts of the offending party are proven to be malicious.
12 Where liability has been established, the injured party
13 shall also be entitled to reasonable attorney's fees as
14 provided by law. However, any action for damages shall
15 not be available to the injured party unless the injured
16 party has first filed a complaint with the State Auditor
17 pursuant to subdivision (a), and the State Auditor has
18 failed to take any action pursuant to Section 8547.7.

19 (d) This section is not intended to prevent a public
20 school employer, school administrator, or supervisor from
21 taking, directing others to take, recommending, or
22 approving any personnel action or from taking or failing
23 to take a personnel action with respect to any public
24 school employee or applicant for employment with a
25 public school employer if the public school employer,
26 school administrator, or supervisor reasonably believes
27 any action or inaction is justified on the basis of evidence
28 separate and apart from the fact that the person has made
29 a protected disclosure as defined in subdivision (b) of
30 Section 8547.2.

31 (e) In any civil action or administrative proceeding,
32 once it has been demonstrated by a preponderance of
33 evidence that an activity protected by this article was a
34 contributing factor in the alleged retaliation against a
35 former, current, or prospective public school employee,
36 the burden of proof shall be on the supervisor, school
37 administrator, or public school employer to demonstrate
38 by clear and convincing evidence that the alleged action
39 would have occurred for legitimate, independent reasons
40 even if the public school employee had not engaged in



1 protected disclosures or refused an illegal order. If the
2 supervisor, school administrator, or public school
3 employer fails to meet this burden of proof in an adverse
4 action against the public school employee in any
5 administrative review, challenge, or adjudication in
6 which retaliation has been demonstrated to be a
7 contributing factor, the public school employee shall
8 have a complete affirmative defense in the adverse
9 action.

10 (f) Nothing in this article shall be deemed to diminish
11 the rights, privileges, or remedies of any public school
12 employee under any other federal or state law or under
13 any employment contract or collective bargaining
14 agreement.

15 (g) If the provisions of this section are in conflict with
16 the provisions of a memorandum of understanding
17 reached pursuant to Chapter 10.7 (commencing with
18 Section 3540) of Division 4 of Title 1 the memorandum of
19 understanding shall be controlling without further
20 legislative action.

21 SEC. 3. Nothing in this act is intended to supersede or
22 limit the application of the privilege of subdivision (b) of
23 Section 47 of the Civil Code to informants and
24 proceedings conducted pursuant to Article 3
25 (commencing with Section 8547) of Chapter 6.5 of
26 Division 1 of Title 2 of the Government Code, as
27 confirmed in *Braun v. Bureau of State Audits* (1998) 67
28 Cal.App.4th 1382.

29 SEC. 4. No reimbursement is required by this act
30 pursuant to Section 6 of Article XIII B of the California
31 Constitution for certain costs that may be incurred by a
32 local agency or school district because in that regard this
33 act creates a new crime or infraction, eliminates a crime
34 or infraction, or changes the penalty for a crime or
35 infraction, within the meaning of Section 17556 of the
36 Government Code, or changes the definition of a crime
37 within the meaning of Section 6 of Article XIII B of the
38 California Constitution.

39 However, notwithstanding Section 17610 of the
40 Government Code, if the Commission on State Mandates



1 determines that this act contains other costs mandated by
2 the state, reimbursement to local agencies and school
3 districts for those costs shall be made pursuant to Part 7
4 (commencing with Section 17500) of Division 4 of Title
5 2 of the Government Code. If the statewide cost of the
6 claim for reimbursement does not exceed one million
7 dollars (\$1,000,000), reimbursement shall be made from
8 the State Mandates Claims Fund.

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