AMENDED IN ASSEMBLY APRIL 23, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 567

Introduced by Assembly Member Villines

February 25, 2009

An act to amend Sections 8545.1, 8545.2, 8545.4, 8546.2, 8547.2, 8547.4, 8547.5, 8547.6, 8547.7, and 8548.9 of, and to add Section 8546.10 to, the Government Code, relating to government practices.

LEGISLATIVE COUNSEL'S DIGEST

AB 567, as amended, Villines. Government practices.

(1) Existing law sets forth the duties and powers of the Bureau of State Audits and makes reference to audits and investigative audits. Existing law also prohibits the State Auditor or his or her employees from releasing to the public, among other things, any papers, correspondence, or any substantive information pertaining to any audit not completed.

~~This bill would additionally prohibit the officers and any employee or former officers of employees of any state or local agency or publicly created entity that has been subject to or that has assisted the Bureau of State Audits with an audit or investigation or that has received a draft copy of any report or other draft document from the bureau for comment or review from releasing to the public, among other things, any papers, correspondence, or any substantive information pertaining to any audit not complete. The bill would prohibit any person, business entity, officer, or employee or former employee of a state or local agency or publicly created entity from publicly disclosing draft audit findings or information relating to those findings or other content of any draft audit or investigative report of the Bureau of State Audits, except as expressly~~

~~permitted by law, prior to that report being publicly issued by the State Auditor. The~~ *This* bill would revise the authority of the Bureau of State Audits to specifically perform investigations and would delete the reference to investigative audits. The bill would make conforming changes.

The bill would establish the Clearinghouse for Government Innovation and Improvement Program, as resources become available, within the Bureau of State Audits to receive and review, in good faith, submissions from the public that recommend how to improve the operations of the state or how to direct the focus of the state relative to its essential functions. The State Auditor would be required to take reasonable measures to create and maintain public awareness of the program as resources become available.

(2) The California Whistleblower Protection Act sets forth the circumstances and procedures under which a state employee, as defined, may report improper governmental activities, as defined, or make a protected disclosure, as defined, to the State Auditor, and prohibits retaliation or reprisal against a state employee for these acts.

This bill would add an individual appointed by the Legislature who is not an employee of the Legislature to the list of state employees covered by these provisions. The bill would change the definition of improper governmental activity to include any activity by an employee that is undertaken inside a state office or that is undertaken in any place other than a state office that directly relates to any responsibility of state government and specifically would include any good faith communication to the Bureau of State Audits alleging an improper governmental activity and the delivery of any evidence to the Bureau of State Audits in support of an allegation. After receiving a copy of the State Auditor's investigative report, the appointing power would have 60 days to serve a notice of adverse action upon the employee who is the subject of the investigative report. The State Auditor also would be authorized to provide any evidence gathered during the investigation that might be necessary to support an adverse action. The State Auditor would be required to create, as specified, the means for the submission of reports of improper governmental activity both by transmission via mail or other carrier to a specified mailing address and by electronic transmission through an Internet Web site portal. The State Auditor may include recommended actions to prevent the continuation or recurrence of the improper governmental activity with the report that details the improper governmental activity to the head of the employing agency. The State Auditor would be required to report, as specified, to the Joint Legislative Budget Committee, the Joint Legislative Audit Committee, and the Department of Finance with respect to each recommendation he or she has made, as specified, that was reported more than one year ago and that has not been fully implemented by the affected agency. The bill also would make conforming changes.

(3) This bill also would declare that the provisions of this act shall impose no cost on the state and shall be implemented solely using existing resources.

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

The people of the State of California do enact as follows:

SECTION 1. Section 8545.1 of the Government Code is amended to read:

8545.1. (a) The State Auditor, and any employee or former employee of the bureau, shall not divulge or make known to any person not employed by the bureau in any manner not expressly permitted by law any particulars of any record, document, or information the disclosure of which is restricted by law from release to the public. This prohibition includes, but is not limited to, the restrictions on the release of records, documents, or information set forth in Section 8545.

(b) Subdivision (a) also applies to ~~any~~ *either* of the following:

~~(1) The officers and any employee or former officers or employees of any state or local agency or publicly created entity that has been subject to or that has assisted the bureau with an audit or investigation or that has received a draft copy of any report or other draft document from the bureau for comment or review.~~

~~(2)~~

(1) Any person or business entity that is contracting with or has contracted with the bureau and to the employees and former employees of that person or business entity.

~~(3)~~

(2) The officers and employees of and any person or business entity that is contracting with or has contracted with any state or local governmental agency or publicly created entity that has assisted the bureau in the course of any audit or investigation or

that has received a draft copy of any report or other draft document from the bureau for comment or review.

~~(d)~~

~~(c) Any person, business entity, officer, or employee or former employee of a state or local agency or publicly created entity shall not publicly disclose draft audit findings or information relating to those findings or other content of any draft audit or investigative report of the bureau except as expressly permitted by law prior to the final report being publicly issued by the State Auditor.~~

(c) Any officer, employee, or person who discloses the particulars of any record, document, or other information in violation of this section is guilty of a misdemeanor.

SEC. 2. Section 8545.2 of the Government Code is amended to read:

8545.2. (a) Notwithstanding any other provision of law, the State Auditor during regular business hours shall have access to and authority to examine and reproduce, any and all books, accounts, reports, vouchers, correspondence files, and other records, bank accounts, and money or other property, of any agency of the state, whether created by the California Constitution or otherwise, any local governmental entity, including any city, county, and school or special district, and any publicly created entity, for any audit or investigation. Any officer or employee of any agency or entity having these records or property in his or her possession, under his or her control, or otherwise having access to them, shall permit access to, and examination and reproduction thereof, upon the request of the State Auditor or his or her authorized representative.

(b) For the purposes of access to and examination and reproduction of the records and property described in subdivision (a), an authorized representative of the State Auditor is an employee or officer of the state or local governmental agency or publicly created entity involved and is subject to any limitations on release of the information as may apply to an employee or officer of the state or local governmental agency or publicly created entity. For the purpose of conducting any audit or investigation, the State Auditor or his or her authorized representative shall have access to the records and property of any public or private entity or person subject to review or regulation by the public agency or public entity being audited or investigated to the same extent that employees or officers of that agency or public entity have access. No provision of law providing for the confidentiality of any records or property shall prevent disclosure pursuant to subdivision (a), unless the provision specifically refers to and precludes access and examination and reproduction pursuant to subdivision (a). This subdivision does not apply to records compiled pursuant to Part 1 (commencing with Section 8900) or Part 2 (commencing with Section 10200) of Division 2.

(c) Any officer or person who fails or refuses to permit access and examination and reproduction, as required by this section, is guilty of a misdemeanor.

SEC. 3. Section 8545.4 of the Government Code is amended to read:

8545.4. (a) In connection with any audit or investigation conducted by the State Auditor, the State Auditor or his or her designee, may do any of the following:

(1) Administer oaths.

(2) Certify to all official acts.

(3) Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, or documents, or for the making of oral or written sworn statements, in any interview conducted as part of an audit or investigation.

(b) Any subpoena issued under this section extends as process to all parts of the state and may be served by any person authorized to serve process of courts of record or by any person designated for that purpose by the State Auditor or his or her designee. The person serving this process may receive compensation as allowed by the State Auditor or his or her designee, not to exceed the fees prescribed by law for similar service.

(c) Notwithstanding Section 7470, 7474, or 7491, subpoenas issued under this section for financial records of financial institutions concerning customers of financial institutions or for information contained in those records shall not be subject to the requirement or conditions of Section 7474.

SEC. 4. Section 8546.2 of the Government Code is amended to read:

8546.2. (a) The State Auditor shall request that any state agency, as defined in Section 11000, whether created by the California Constitution or otherwise, any local governmental agency, including any city, county, city and county, school, or special district, or any publicly created entity, that is the subject of an audit or investigation conducted pursuant to this chapter provide updates on its progress in implementing the recommendations made by the State Auditor, at intervals prescribed by the State Auditor.

(b) Any state agency described in subdivision (a) shall provide the State Auditor, in the form prescribed by the State Auditor, with updates on implementation of recommendations as described in subdivision (a).

SEC. 5. Section 8546.10 is added to the Government Code, to read:

8546.10. (a) Notwithstanding Section 8544.5, as resources become available, the State Auditor shall establish the Clearinghouse for Government Innovation and Improvement Program.

(b) Upon establishing the program, the State Auditor shall create the means for members of the public to submit recommendations for improving the operations of the state or for directing the focus of the activities of the state toward the essential functions of government both via mail or other carrier and electronic submission through an Internet Web site portal. The State Auditor shall review, in good faith, submissions that recommend improvements to the efficiency of government operations or that recommend an approach that the state can take relative to an essential function of government. At the discretion of the State Auditor, selected recommendations shall be forwarded to the Governor, the Director of Finance, and the majority and minority party leaders in both houses of the Legislature for review.

(c) Upon establishing the Clearinghouse for Government Innovation and Improvement Program, as resources become available, the State Auditor shall take reasonable measures to create and maintain public awareness of the program.

SEC. 6. Section 8547.2 of the Government Code is amended to read:

8547.2. For the purposes of this article, the following terms have the following meanings:

(a) "Employee" means any individual appointed by the Governor or employed or holding office in a state agency as defined by Section 11000, including, for purposes of Sections 8547.3 to 8547.7, inclusive, any employee of the California State University or an individual appointed by the Legislature who is not an employee of the Legislature.

(b) "Improper governmental activity" means any activity by a state agency or by an employee that is undertaken inside a state office or that is undertaken in any place other than a state office that directly relates to any responsibility of state government whether or not that action is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. For purposes of Sections 8547.4, 8547.5, 8547.10, and 8547.11, "improper governmental activity" includes any activity by the University of California or by an employee, including an officer or faculty member, who otherwise meets the criteria of this subdivision.

(c) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(d) "Protected disclosure" means any good faith communication that discloses or demonstrates an intention to disclose information that may evidence (1) an improper governmental activity or (2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition. Protected disclosure specifically includes any good faith communication to the Bureau of State Audits alleging an improper governmental activity and the delivery of any evidence to the Bureau of State Audits in support of an allegation.

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

(f) "State agency" is defined by Section 11000. "State agency" includes the University of California for purposes of Sections 8547.5 to 8547.7, inclusive, and the California State University for purposes of Sections 8547.3 to 8547.7, inclusive.

SEC. 7. Section 8547.4 of the Government Code is amended to read:

8547.4. The State Auditor shall administer this article and shall investigate and report on improper governmental activities. If, after investigating, the State Auditor finds that an employee may have engaged or participated in improper governmental activities, the State Auditor shall prepare an investigative report and send a copy of the investigative report to the employee's appointing power. Subject to the limitations of Section 8547.5, the State Auditor also may provide any evidence gathered during the investigation that might be necessary to support an adverse action or an action recommended pursuant to subdivision (a) of Section 8547.7. Within 60 days after receiving a copy of the State Auditor's investigative report, the appointing power shall either serve a notice of adverse action upon the employee who is the subject of the investigative report or set forth in writing its reasons for not taking adverse action. The appointing power shall file a copy of the notice of adverse action with the State Personnel Board in accordance with Section 19574, and shall submit a copy to the State Auditor. If the appointing power does not take adverse action within 60 days of receiving a copy of the State Auditor's investigative report, it shall submit its written reasons for not doing so to the State Auditor and the State Personnel Board, and adverse action may be taken as provided in Section 19583.5. Any employee who is served with a notice of adverse action may appeal to the State Personnel Board in accordance with Section 19575.

SEC. 8. Section 8547.5 of the Government Code is amended to read:

8547.5. (a) The State Auditor shall create the means for the submission of allegations of improper governmental activity both by transmission via mail or other carrier to a specified mailing address and electronic submission through an Internet Web site portal. The State Auditor may request that a person submitting an allegation provide his or her name and contact information and provide the names and contact information for any persons who could help to substantiate the claim. However, the State Auditor shall not require any person submitting an allegation to provide his or her name or contact information and shall clearly state on the agency Web site that this information is not required in order to submit an allegation.

(b) Upon receiving specific information that any employee or state agency has engaged in an improper governmental activity, the State Auditor may conduct an investigation of the matter. The identity of the person providing the information that initiated the investigation, or of any person who the State Auditor has determined to be a confidential informant, shall not be disclosed without the written permission of the person providing the information except that the State Auditor may make the disclosure to a law enforcement agency that is conducting a criminal investigation.

SEC. 9. Section 8547.6 of the Government Code is amended to read:

8547.6. The State Auditor may request the assistance of any state department, agency, or employee in conducting any investigation required by this article. If an investigation conducted by the State Auditor involves access to confidential academic peer review records of University of California academic personnel, these records shall be provided in a form consistent with university policy effective on August 1, 1992. No information obtained from the State Auditor by any department, agency, or employee as a result of the State Auditor's request for assistance, nor any information obtained thereafter as a result of further investigation, shall be divulged or made known to any person without the prior approval of the State Auditor.

SEC. 10. Section 8547.7 of the Government Code is amended to read:

8547.7. (a) If the State Auditor determines that there is reasonable cause to believe that an employee or state agency has engaged in any improper governmental activity, he or she shall report the nature and details of the activity to the head of the employing agency, or the appropriate appointing authority, and may include recommended actions to prevent the continuation or recurrence of the activity. If appropriate, the State Auditor shall report this information to the Attorney General, the policy committees of the Senate and Assembly having jurisdiction over the subject involved, and to any other authority that the State Auditor determines appropriate.

(b) The State Auditor shall not have any enforcement power. In any case in which the State Auditor submits a report of alleged improper activity to the head of the employing agency or appropriate appointing authority, that individual shall report to the State Auditor with respect to any action taken by the individual regarding the activity, the first report being transmitted no later than 60 days after the date of the State Auditor's report and monthly thereafter until final action has been taken.

(c) The State Auditor shall keep confidential every investigation, including, but not limited to, all investigative files and work product, except that the State Auditor may issue any report of an investigation that has been substantiated, keeping confidential the identity of the individual or individuals involved, or, subject to the limitations of Section 8547.5, release any findings or evidence supporting any findings resulting from an investigation conducted pursuant to this article that is deemed necessary to serve the interests of the state.

(d) This section does not limit any authority conferred upon the Attorney General or any other department or agency of government to investigate any matter.

SEC. 11. Section 8548.9 of the Government Code is amended to read:

8548.9. (a) The State Auditor shall, by January 15th of each year, report to the Joint Legislative Budget Committee, the Joint Legislative Audit Committee, and the Department of Finance with respect to each recommendation he or she has made based on an audit or investigation that was reported more than one year ago, is more than one year old, and that has not been fully implemented by the affected agency.

(b) The report shall clearly identify the state agency audited or investigated, the audit or investigation that contained the recommendation, a brief description of the recommendation, the date it was issued, and the most recent explanation provided by the agency to the State Auditor on the status of the recommendation.

(c) Any state agency that is notified by the State Auditor that it has not fully implemented a recommendation made pursuant to this chapter more than one year prior, shall do either of the following:

(1) Provide a written report to the State Auditor, the respective policy committees and budget subcommittees of the Assembly and Senate with oversight of the agency, and the Department of

Finance, explaining why the audit recommendation or investigation has not been fully implemented.

(2) Notify all entities described in subdivision (a) that it will begin implementing the audit recommendation or investigation recommendation within 90 days of the notification by the State Auditor, and include the estimated date of full implementation.

SEC. 12. The provisions enacted in this act shall impose no cost on the state and shall be implemented solely using existing resources.

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