

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 06/25/2013
POSITION: Oppose
SPONSOR: Union of American Physicians and Dentists

BILL NUMBER: SB 496
AUTHOR: Wright, Roderick

BILL SUMMARY: California Whistleblower Protection Act: administrative procedure.

This bill clarifies that state employees and applicants for state employment (claimants) do not have to exhaust the administrative process through the State Personnel Board (SPB) before filing a civil suit related to the California Whistleblower Protection Act (CWPA), in part, conforming state law to a 2009 California Supreme Court ruling. This bill excludes claimants pursuing claims under the CWPA from fees and procedural requirements of the California Victim Compensation and Government Claims Board (CalVCP) and Government Claims Act. This bill also broadens the scope of activities that are prohibited by the CWPA to include violations and non-compliance of local rules and regulations.

FISCAL SUMMARY

This bill could increase state costs by enabling claimants to pursue an independent civil action against a state employee prior to exhausting the SPB administrative process. This action could potentially require that state departments provide legal representation for both an SPB evidentiary hearing and the independent civil trial simultaneously. Additionally, expediting the process to file a civil action could encourage more claimants to pursue a civil suit when they might otherwise have not. To the extent that the number of civil trials increase, the state will incur increased legal costs.

This bill removes fees and procedural requirements for claimants filing claims for violations of the CWPA. Excluding claimants from fees and procedural requirements could encourage frivolous lawsuits against the state. To the extent that they do, additional legal and administrative costs would be incurred by the state. Additionally, eliminating the filing fee requirement would result in a loss of revenue to the state.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the April 15, 2013 version include the following significant amendments which do not change our position:

- Excludes claimants filing claims for violations of the CWPA from fees and procedural processes of the CalVCP and Government Claims Act.
Expands the definition of a crime within the California Labor Code, which is currently any violation of federal and/or state statutes, to include violation and/or non-compliance with local rules and regulations.
Authorizes the State Auditor to investigate and report whether a state agency or employee may have engaged in improper governmental activity.

Analyst/Principal (0931) K.Martone Date Program Budget Manager Richard Gillihan Date
Department Deputy Director Date
Governor's Office: By: Date: Position Approved Position Disapproved
BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

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COMMENTS

The Department of Finance is opposed to this bill because it would increase state administrative and legal costs and eliminate certain procedural requirements and filing fees for claims made for violations of the CWPA.

The CWPA provides that claimants are protected from acts of retaliation if they disclose information that may be evidence of improper activity by a state employee. The current administrative process provides that if the SPB executive officer concludes an act of retaliation did not occur, the administrative process is completed and the claimant can decide to proceed with an independent civil action. However, if the SPB executive officer concludes that an act of retaliation did occur, the administrative process enables the accused employee to first request an evidentiary hearing before a claimant can file a civil action.

Prior to a 2009 California Supreme Court ruling (Arbuckle), if a claimant received an adverse opinion they could request an evidentiary hearing before the SPB. In the Arbuckle case, the claimant did not exercise the right to an evidentiary hearing and instead pursued an independent civil action against the accused employee. The civil action was denied by a trial court because it was determined that the claimant had not exhausted the administrative process. The California Supreme court overturned this ruling and established that a claimant has exhausted the administrative process if they receive an adverse finding.

This bill codifies the Supreme Court ruling by enabling claimants to pursue a civil action if they receive an adverse finding. However, this bill goes beyond the requirements of the ruling and also enables the claimant to pursue an independent civil action if the accused employee requests an evidentiary hearing. In this case, the bill enables two parallel proceedings adjudicating the same dispute. In the event that the claimant initiates an independent civil action and the accused employee requests an evidentiary hearing, the department would be required to provide legal representation for the employee in both forums.

CalVCP and the Government Claims Act prescribe specific filing fees and procedural requirements when making a claim against the state. This bill would exempt claimants from these requirements when filing a claim against the state. Fees and procedures for filing a claim are designed to prevent frivolous lawsuits and enable the efficient investigation and processing of claims. Removing established fees and procedures could increase state legal costs for litigating claims without merit. Excluding claimants from the filing fee requirement would also result in a loss of revenue to the state.

This bill expands the definition of a crime within the California Labor Code. Currently, a crime is any violation of federal and/or state statutes. This bill adds violations and/or infractions of local rules and regulations to the definition. Specifically, any employer in California is prohibited from preventing an employee from disclosing information related to a violation or non-compliance of a local rule or regulation to a government or a law enforcement agency. Further, this bill also prohibits any employer in California from retaliating against an employee for disclosing such information. In this case, an argument could be made that expanding the definition might require the state to reimburse local agencies and school districts for costs incurred to prosecute such infractions. However, pursuant to Government Code 17556, costs are not mandated to be paid by the state if a statute creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction. In effect, this bill is creating a new crime; therefore, it would not be a reimbursable mandate for the state.

This bill also makes the following procedural changes to the retaliation complaint process:

- Distinguishes between a preliminary hearing and an evidentiary hearing and clarifies that findings identified in the preliminary hearing are not binding in a subsequent SPB evidentiary hearing.
- Enables the executive officer of SPB to consolidate a claimant's multiple CWPA retaliation complaints and refer the appeal to an evidentiary hearing.

BILL ANALYSIS--(CONTINUED)

AUTHOR

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Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)					Fund Code	
	LA	(Dollars in Thousands)						
	CO	PROP						
	RV	98	FC	2013-2014	FC	2014-2015	FC	2015-2016
7503/SPB	SO	No		-----	See Fiscal Summary	-----		0001
1253/Proc Fees	RV	No		-----	See Fiscal Summary	-----		0214
<u>Fund Code</u>			<u>Title</u>					
0001			General Fund					
0214			Restitution Fund					