

# SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Speier Analyst: LuAnna Hass Bill Number: SB 413

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: June 14, 2001

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** California Whistleblower Protection Act/State Agencies Print, Post & Email Notice Explaining the Act

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended March 26, 2001.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED March 26, 2001, STILL APPLIES.
- OTHER - See comments below.

**SUMMARY**

This bill would make various changes to the laws regarding the California Whistleblower Protection Act (CWPA), including requiring state agencies to distribute a notice explaining the CWPA to all employees.

**SUMMARY OF AMENDMENTS**

The June 14, 2001, amendments would:

- Remove language stating the State Personnel Board (SPB) must take adverse action against a state employee or applicant for state employment that intentionally engaged in acts of reprisal if the state employee's appointing power failed to take adverse action.
- Insert language that any state employee who intentionally engages in acts of reprisal shall be disciplined by adverse action pursuant to procedures outlined under current law.
- Remove the requirement that the notice of the written explanation of the CWPA must be posted in a state office location where employees would be expected to see it weekly and replace it with a requirement that the notice must be posted in state office locations where employee notices are maintained.
- Require state agencies to send the information contained in the notice to its employees via electronic mail annually instead of every six months.
- Clarify that a manager, supervisor, or employee that violates the CWPA and is named a party to the retaliation complaint must have imposed on them a just and proper penalty for that violation.

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- Require the SPB to notify the appointing power of any manager, supervisor, or employee that is not a named party to a retaliation complaint that may have committed a CWPA violation and establish procedures for adverse action in such circumstances.
- Insert language that the appointing power or executive officer of SPB may file charges against a state employee who violates current law regarding prohibited behavior in accordance with current law that outlines the requirements of SPB to investigate, conduct hearings, order relief, and take adverse action.

The June 14, 2001, amendments did not address the department's prior implementation or technical concerns. As a result of the amendments, the department has identified a new technical concern regarding a cross reference within the Government Code. The department's unresolved concerns are provided below for convenience. The remainder of the department's analysis of the bill as amended March 26, 2001, still applies.

## **POSITION**

Pending.

## **IMPLEMENTATION CONSIDERATIONS**

In this bill, the State Auditor would send a copy of an investigative report to the employee's appointing power if the State Auditor finds that the employee "may have" participated in improper governmental activities. The appointing power would either take adverse action with the employee or give a written explanation of its reasons for not taking adverse action. The phrase "may have" would leave the findings of the investigation open to debate as it suggests the findings were not conclusive, yet allows the appointing power to take adverse action. Furthermore, existing law under the CWPA outlines guidelines for the State Auditor to follow regarding the investigations of employees that have participated or engaged in improper activities. The guidelines include reporting requirements for the State Auditor and the appointing power. The added guidelines in this bill would create two different provisions in the law regarding guidelines for the State Auditor. The author may wish to amend the bill to remove the phrase "may have," which would permit adverse action only when the findings were conclusive, or consolidate the two provisions.

This bill would define "state agency" within the CWPA. Existing law under the CWPA specifically defines "state agency" by reference to the Government Code. Multiple definitions for the same term could lead to confusion and complicate implementation and administration of this bill. The author may wish to remove one definition or consolidate the definitions.

This bill would require state agencies to notify employees of the CWPA by e-mail annually. The department does not currently provide an e-mail address and access to a computer to all employees. It would be helpful if the bill could be amended to allow state agencies more latitude on how employees are informed, so that the department could continue with the current practice of requiring supervisors to print notices for employees without access to e-mail.

If this bill were amended to resolve these implementation considerations, implementing this bill would not significantly impact the department.

### TECHNICAL CONSIDERATIONS

This bill would require the employee's appointing power to either serve notice of an adverse action or give a written explanation for not taking adverse action within **60 days** of receiving the State Auditor's investigative report. Existing law requires SPB to complete findings of a hearing or investigation into a complaint of reprisal or retaliation within **60 working days** and provide a copy to the employee and appropriate supervisor. For consistency, the author may wish to amend the bill to allow the employee's appointing power 60 working days to take action as opposed to just 60 days.

The June 14, 2001, amendments to Section 19683 of the Government Code outline the procedures for SPB to take adverse action against a manager, supervisor, or employee that is not a named party to a retaliation complaint. The language discusses an appeal process and makes reference to Section 19595 of the Government Code, which is a non-existent code section. The author may wish to amend the bill to refer to the appeal provisions located in Section 19575 of the Government Code.

### **LEGISLATIVE STAFF CONTACT**

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