

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: July 11, 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 AMENDMENT

The July 11, 2001, amendment would expand the definition of "adverse employment action" in relation to actions that are taken against an employee for participating in protected activities. Adverse employment action would include providing or promising to provide any benefit, or taking or threatening to take, any reprisal.

The July 11, 2001, amendment did not address the department's prior implementation or technical concerns. 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.

Board Position:

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Legislative Director

Date

Brian Putler

07/31/01

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 an adverse action against 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.

Existing law under the CWPA gives guidelines for the State Auditor to follow when investigating 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. The CWPA already 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.

Section 19683 of the Government Code would be amended by this bill to 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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