

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: August 20, 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 August 20, 2001, amendment resolved an implementation concern and a technical concern as addressed in the department's analysis of the bill as amended July 11, 2001. Specifically, the amendments would:

- * revise the language regarding actions for damages that are available to an injured party by eliminating the requirement that the State Personnel Board (SPB) must fail to reach a decision regarding any hearing and adding a new requirement that the SPB has issued, or failed to issue, findings pursuant to a hearing;
- * require state agencies to notify employees of the written explanation of the CWPA via electronic mail. The requirement would be clarified to include only those employees that have authorized access to electronic mail instead of all employees; and
- * correct a cross-reference within the Government Code.

Board Position:

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Legislative Director

Date

Brian Putler

09/04/01

The department's existing 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 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.

In addition, 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.

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.

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