

ANALYSIS OF ORIGINAL BILL

Author: Salas Analyst: Janet Jennings Bill Number: AB 811
 See Legislative
 Related Bills: History Telephone: 845-3495 Introduced Date: February 26, 2015
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	State Employment/Adverse Actions Against State Employees Are Not Valid Unless Notice is Served Within One Year After Cause for Discipline Arose
-----------------	---

SUMMARY

This bill would modify the statute of limitations on valid adverse actions served against state employees.

RECOMMENDATION

No position.

REASON FOR THE BILL

The reason for the bill is to afford additional protections within the state’s disciplinary process for state employees.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2016, and would apply to adverse actions occurring on or after that date.

STATE LAW

The California Civil Service Act (Act) within the Government Code establishes procedures for taking disciplinary actions, called adverse actions, by the State Personnel Board. The Act provides a statute of limitations of three years to serve an adverse action on state employees. If the action is not served within three years after the cause for discipline, the action is deemed invalid. In a case where the adverse action is due to fraud, embezzlement, or falsification of records, the notice of adverse action must be served within three years after the discovery of the misconduct. Adverse actions served within the statute of limitations can result in dismissal, demotion, or reassignment.

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Any Franchise Tax Board (FTB) employee or member responsible for the unauthorized disclosure of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony. If the unauthorized disclosure involves the use of a state computer, it may be prosecuted as a felony. Additionally, the FTB may take disciplinary action against an employee who makes an unauthorized disclosure.

Board Position:	Executive Officer	Date
_____ S _____ NA _____ X _____ NP	Selvi Stanislaus	4/3/15
_____ SA _____ O _____ NAR		
_____ N _____ OUA _____		

THIS BILL

This bill would reduce the period for serving a state employee with an adverse action from three years to one year after the cause for discipline first arose; or in the case of fraud, embezzlement, or the falsification of records, one year after the discovery of the fraud, embezzlement, or falsification.

IMPLEMENTATION CONSIDERATIONS

A one-year statute of limitations to serve an adverse action would weaken the department's ability to use disciplinary action as a deterrent for violating the department's unauthorized access policies. Although the majority of the department's adverse actions, including the time to investigate currently meet the timeframes provided for in this bill, there are times when the department must work with external agencies such as the Treasury Inspector General for Tax Administration, the California Highway Patrol, the Employment Development Department, and the District Attorney's Office to complete the investigation. These investigations often involve a serious variety of types of misconduct, system misuse, and in some cases criminal activity that often extends the investigative time beyond one year. Allowing an employee to escape discipline due to a shortened statute of limitations would also weaken privacy protection for taxpayers' confidential information.

LEGISLATIVE HISTORY

AB 769 (Jones-Sawyer, 2015/2016), contains language similar to this bill, except it maintains the three-year statute for adverse actions for fraud, embezzlement, or falsification of records. AB 769 was introduced on January 25, 2015, and is currently pending before the Assembly Committee on Public Employees, Retirement, and Social Security.

AB 872 (Dickinson, 2013/2014), among other provisions, contained language similar to AB 769. AB 872 failed to pass out of the Assembly Appropriations Committee by the constitutional deadline.

AB 1161 (Buchanan, 2009/2010), contained language similar to AB 769. AB 1161 failed to pass out of the Assembly Appropriations Committee by the constitutional deadline.

OTHER STATES' INFORMATION

A comparison with other states would not be meaningful as this bill pertains to administrative procedures that are specific to California.

FISCAL IMPACT

The department would need to enhance the audit systems used to identify instances of inappropriate access of confidential taxpayer information and devote additional resources to analyze data collected to decrease the time it presently takes to uncover patterns of unauthorized access. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

ARGUMENTS

Proponents: Some could argue that it is unfair for state employees to wait up to three years for disciplinary investigations to be completed.

Opponents: Some could argue that the Government Code already affords state employees more than adequate protection from unfair disciplinary activity.

LEGISLATIVE STAFF CONTACT

Janet Jennings
Legislative Analyst, FTB
(916) 845-3495
janet.jennings@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484
jame.eiserman@ftb.ca.gov

Gail Hall
Legislative Director, FTB
(916) 845-6333
gail.hall@ftb.ca.gov