

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Galgiani Analyst: Janet Jennings Bill Number: SB 646
Related Bills: See Legislative History Telephone: 845-3495 Introduced Date: February 17, 2017
Attorney: Bruce Langston Sponsor: _____

SUBJECT: State Employment/Adverse Actions Against State Employees Are Not Valid Unless Notice & Investigation is Completed Within One Year After Cause for Discipline Arose Unless Specified

SUMMARY

This bill would modify the statute of limitations on 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, 2018, and would apply to adverse actions discovered 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.

THIS BILL

This bill would prohibit adverse actions against state employees unless the notice of adverse action is served within one year after the cause for discipline, upon which the notice is based, first arose.

Adverse actions for fraud, embezzlement, or falsification of records would remain subject to a three-year period after the discovery of the fraud, embezzlement, or falsification of records for service of the notice of action.

IMPLEMENTATION CONSIDERATIONS

A one-year statute of limitations to serve an adverse action from the date the cause for discipline first arose 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 investigations 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), similar to this bill, would have prohibited adverse actions against state employees unless notice of the adverse action is served and the investigation is completed within one year of the date the cause for discipline arose. Adverse actions based on fraud, embezzlement, the falsification of records, or the unauthorized accessing or disclosure of confidential tax information would be valid if notice of the adverse action is served within three years after the discovery of the fraud, embezzlement, falsification, or unauthorized accessing or disclosure. AB 769 was vetoed by Governor Brown on September 30, 2016.

The Governor's veto message stated in part: I am unwilling to reduce longstanding civil service adverse action timeframes because it may take state agencies longer than a year to investigate and serve adverse actions in complex cases involving employee misconduct or unsatisfactory work performance. Further, this bill hinders the progressive discipline process which is intended to give employees a reasonable amount of time to correct problems at an early stage.

AB 811 (Salas, 2015/2016), contained language similar to AB 769, but would have reduced the three-year statute for adverse actions for fraud, embezzlement, or falsification of records to one year. AB 811 failed passage from the Assembly Appropriations Committee.

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

Implementing this bill would not significantly impact the department's programs and operations.

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 reducing the timeframe allowed the state to identify and serve notice on a cause for discipline other than fraud, embezzlement, or falsification of records is appropriate given the evolution of automated forensic tools available to identify inappropriate activity.

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

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