

AMENDED IN ASSEMBLY MAY 26, 1999

SENATE BILL

No. 951

**Introduced by ~~Senator Hayden~~ *Senators Hayden and
Johnston***

February 25, 1999

An act to amend Sections 8547, 8547.2, 8547.3, and 8547.8 of, and to repeal and add Section 8547.1 of, the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 951, as amended, Hayden. State employees: disclosure of improper activities.

(1) Under the Reporting of Improper Governmental Activities Act, the State Auditor is authorized to conduct an investigative audit upon receiving confirmation that an employee or state agency has engaged in an improper governmental activity. A state employee is prohibited from using his or her official authority or influence to intimidate, threaten, coerce, or command a person in order to interfere with the right of that person to make a disclosure under the act.

This bill would rename the act as the "California Whistleblower Protection Act." The bill would also revise the protection afforded to persons who make a disclosure to include persons who make a protected disclosure, as defined, or refuse to obey an illegal order and would provide that a protected disclosure includes disclosure to anyone of information that may evidence an improper governmental activity or any condition that may significantly threaten the

health or safety of employees or the public. *The bill would also provide that nothing in the bill is intended to supersede or limit the right to make a privileged publication in an official proceeding with regard to information provided under the act.* Violation of the prohibition against interfering with the right of an employee to make a disclosure is a crime. Thus, this bill would impose a state-mandated local program by expanding the scope of an existing crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8547 of the Government Code is
2 amended to read:

3 8547. This article shall be known and may be cited as
4 the “California Whistleblower Protection Act.”

5 SEC. 2. Section 8547.1 of the Government Code is
6 repealed.

7 SEC. 3. Section 8547.1 is added to the Government
8 Code, to read:

9 8547.1. The Legislature finds and declares that state
10 employees should be free to report waste, fraud, abuse of
11 authority, violation of law, or threat to public health
12 without fear of retribution. The Legislature further finds
13 and declares that public servants best serve the citizenry
14 when they can be candid and honest without reservation
15 in conducting the people’s business.

16 SEC. 4. Section 8547.2 of the Government Code is
17 amended to read:

18 8547.2. For the purposes of this article:

19 (a) “Employee” means any individual appointed by
20 the Governor or employed or holding office in a state



1 agency as defined by Section 11000, *including any*
2 *employee of the California State University.*

3 (b) “Improper governmental activity” means any
4 activity by a state agency or by an employee that is
5 undertaken in the performance of the employee’s official
6 duties, whether or not that action is within the scope of
7 his or her employment, and that (1) is in violation of any
8 state or federal law or regulation, including, but not
9 limited to, corruption, malfeasance, bribery, theft of
10 government property, fraudulent claims, fraud, coercion,
11 conversion, malicious prosecution, misuse of government
12 property, or willful omission to perform duty, or (2) is
13 economically wasteful, or involves gross misconduct,
14 incompetency, or inefficiency. For purposes of Sections
15 8547.4, 8547.5, 8547.10, and 8547.11, “improper
16 governmental activity or activities” includes any activity
17 by the University of California or by an employee,
18 including an officer or faculty member, that otherwise
19 meets the criteria of this subdivision.

20 (c) “Person” means any individual, corporation, trust,
21 association, any state or local government, or any agency
22 or instrumentality of any of the foregoing.

23 (d) “Protected disclosure” means any ~~good—faith~~
24 communication that discloses or demonstrates an
25 intention to disclose information that may evidence an
26 improper governmental activity or any condition that
27 may significantly threaten the health or safety of
28 employees or the public.

29 (e) “Illegal order” means any directive to violate or
30 assist in violating a federal, state, or local law, rule, or
31 regulation or any order to work or cause others to work
32 in conditions that may threaten the health or safety of
33 employees or the public.

34 (f) “State agency” is defined by Section 11000. “State
35 agency” includes the University of California for
36 purposes of Sections 8547.5 to 8547.7, inclusive.

37 SEC. 5. Section 8547.3 of the Government Code is
38 amended to read:

39 8547.3. (a) An employee may not directly or
40 indirectly use or attempt to use the official authority or



1 influence of the employee for the purpose of
2 intimidating, threatening, coercing, commanding, or
3 attempting to intimidate, threaten, coerce, or command
4 any person for the purpose of interfering with the right
5 of that person to make a protected disclosure to anyone
6 or to refuse to obey an illegal order.

7 (b) For the purpose of subdivision (a), “use of official
8 authority or influence” includes promising to confer, or
9 conferring, any benefit; effecting, or threatening to
10 effect, any reprisal; or taking, or directing others to take,
11 or recommending, processing, or approving, any
12 personnel action, including, but not limited to,
13 appointment, promotion, transfer, assignment,
14 performance evaluation, suspension, or other disciplinary
15 action.

16 (c) Any employee who violates subdivision (a) may be
17 liable in an action for civil damages brought against the
18 employee by the offended party.

19 (d) Nothing in this section shall be construed to
20 authorize an individual to disclose information otherwise
21 prohibited by or under law.

22 SEC. 6. Section 8547.8 of the Government Code is
23 amended to read:

24 8547.8. (a) A state employee or applicant for state
25 employment who files a written complaint with his or her
26 supervisor, manager, or the appointing power alleging
27 actual or attempted acts of reprisal, retaliation, threats,
28 coercion, or similar improper acts prohibited by Section
29 8547.3, may also file a copy of the written complaint with
30 the State Personnel Board, together with a sworn
31 statement that the contents of the written complaint are
32 true, or are believed by the affiant to be true, under
33 penalty of perjury. The complaint filed with the board,
34 shall be filed within 12 months of the most recent act of
35 reprisal complained about.

36 (b) Any person who intentionally engages in acts of
37 reprisal, retaliation, threats, coercion, or similar acts
38 against a state employee or applicant for state
39 employment for having disclosed improper
40 governmental activities, is subject to a fine not to exceed



1 ten thousand dollars (\$10,000) and imprisonment in the
2 county jail for a period not to exceed one year. Any state
3 civil service employee who intentionally engages in that
4 conduct shall be disciplined by adverse action as provided
5 by Section 19572. If no adverse action is instituted by the
6 appointing power, the State Personnel Board shall invoke
7 adverse action as provided in Section 19583.5.

8 (c) In addition to all other penalties provided by law,
9 any person who intentionally engages in acts of reprisal,
10 retaliation, threats, coercion, or similar acts against a state
11 employee or applicant for state employment for having
12 disclosed improper governmental activities shall be liable
13 in an action for damages brought against him or her by
14 the injured party. Punitive damages may be awarded by
15 the court where the acts of the offending party are
16 proven to be malicious. Where liability has been
17 established, the injured party shall also be entitled to
18 reasonable attorney's fees as provided by law. However,
19 any action for damages shall not be available to the
20 injured party unless the injured party has first filed a
21 complaint with the State Personnel Board pursuant to
22 subdivision (a) , and the board has failed to reach a
23 decision regarding any hearing conducted pursuant to
24 Section 19683.

25 (d) This section is not intended to prevent an
26 appointing power, manager, or supervisor from taking,
27 directing others to take, recommending, or approving
28 any personnel action or from taking or failing to take a
29 personnel action with respect to any state employee or
30 applicant for state employment if the appointing power,
31 manager, or supervisor reasonably believes any action or
32 inaction is justified on the basis of evidence separate and
33 apart from the fact that the person has disclosed improper
34 governmental activities as defined in subdivision (b) of
35 Section 8547.2.

36 (e) Any violation of this article shall constitute a
37 complete, affirmative defense to any adverse action
38 against an employee in any administrative review,
39 challenge, or adjudication of that action.



1 (f) In any civil action or administrative proceeding,
 2 once it has been demonstrated by a preponderance of
 3 evidence that an activity protected by this article was a
 4 contributing factor in the alleged retaliation against a
 5 former, current, or prospective employee, the burden of
 6 proof shall be on the supervisor, manager, or appointing
 7 power to demonstrate by clear and convincing evidence
 8 that the alleged action would have occurred for
 9 legitimate, independent reasons even if the employee
 10 had not engaged in protected disclosures or refused an
 11 illegal order.

12 (g) Nothing in this section shall be deemed to diminish
 13 the rights, privileges, or remedies of any employee under
 14 any other federal or state law or under any employment
 15 contract or collective bargaining agreement.

16 *SEC. 7. Nothing in this act is intended to supersede or*
 17 *limit the application of the privilege of subdivision (b) of*
 18 *Section 47 of the Civil Code to informants and*
 19 *proceedings conducted pursuant to Article 3*
 20 *(commencing with Section 8547) of Chapter 6.5 of*
 21 *Division 1 of Title 2 of the Government Code, as*
 22 *confirmed in Braun v. Bureau of State Audits (1998) 67*
 23 *Cal.App.4th 1382.*

24 *SEC. 8. No reimbursement is required by this act*
 25 *pursuant to Section 6 of Article XIII B of the California*
 26 *Constitution because the only costs that may be incurred*
 27 *by a local agency or school district will be incurred*
 28 *because this act creates a new crime or infraction,*
 29 *eliminates a crime or infraction, or changes the penalty*
 30 *for a crime or infraction, within the meaning of Section*
 31 *17556 of the Government Code, or changes the definition*
 32 *of a crime within the meaning of Section 6 of Article*
 33 *XIII B of the California Constitution.*

