An act to amend Section 8547.2 of, and to add Sections 9149.24, 9149.25, and 9149.26 to, the Government Code, relating to whistleblowers.

LEGISLATIVE COUNSEL’S DIGEST

AB 1200, as amended, Patterson. Whistleblower protection.

The California Whistleblower Protection Act prohibits an employee from interfering with a person’s rights to disclose improper activity and be free from reprisal under the act. The act authorizes the State Auditor to conduct an investigative audit upon receiving specific information that an employee or state agency has engaged in an improper governmental activity, as defined. The act California Whistleblower Protection Act applies to state agencies, as defined, and to the University of California, the California State University, and courts, as specified. The act requires the auditor to establish a means of submitting allegations of improper governmental activity, and generally requires the State Auditor to keep confidential every investigation, including all investigative files and work product. Under the act, California
The Whistleblower Protection Act, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or an applicant for state employment for having made a protected disclosure is subject to civil liability and criminal penalties. The act California Whistleblower Protection Act defines a “protected disclosure” to mean, among other things, a good faith communication that discloses information that may evidence an improper governmental activity.

This bill would expand the definition of the term “protected disclosure” to include a complaint made to a Member of the Legislature, the Legislature, or any subdivision thereof. By expanding the definition of a crime, the bill would impose a state-mandated local program.

Because this bill would expand the definition of a crime, it would impose a state-mandated local program.

(2) Other existing law, the Whistleblower Protection Act, prohibits a state or local governmental employee from interfering with the right of a person to disclose an improper governmental activity, as defined, to an investigating committee of the Legislature. The Whistleblower Protection Act defines other terms for its purposes, including defining “employee” to mean any individual appointed by the Governor or employed or holding office in a state agency, including the California State University and the University of California, defined public entities, or any agency of local government.

This bill would authorize a legislative investigative committee to investigate and report on improper governmental activities or to refer the improper governmental activity to the State Auditor for investigation pursuant to the California Whistleblower Protection Act. The bill would also authorize the committee to prepare and send copies of investigative reports to an employee’s appointing power if it finds that the employee may have participated in improper governmental activities. The bill would authorize a committee to request additional information from a person submitting an allegation, as specified. The bill would prescribe various requirements for maintaining the confidentiality of people providing information in confidence and information obtained on investigation. The bill would authorize a legislative investigative committee to request assistance from a state department, agency, or employee in evaluating an allegation or conducting any investigation of an improper governmental activity and would generally require that such assistance be provided, as specified.

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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.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.


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

SECTION 1. Section 8547.2 of the Government Code is amended to read:

8547.2. For the purposes of this article, the following terms have the following meanings:

(a) “Employee” means an individual appointed by the Governor, or employed or holding office in a state agency as defined by Section 11000, including, for purposes of Sections 8547.3 to 8547.7, inclusive, an employee of the California State University, or an individual appointed by the Legislature to a state board or commission and who is not a Member or employee of the Legislature. In addition, “employee” means a person employed by the Supreme Court, a court of appeal, a superior court, or the Administrative Office of the Courts for the purposes of Sections 8547.3 to 8547.7, inclusive, and Section 8547.13, except for those provisions of Section 8547.4 concerning notice of adverse action and the State Personnel Board. “Employee” includes a former employee who met the criteria of this subdivision during their employment.

(b) “Illegal order” means a directive to violate or assist in violating a federal, state, or local law, rule, or regulation, or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.
(c) “Improper governmental activity” means an activity by a state agency or by an employee that is undertaken in the performance of the employee’s duties, undertaken inside a state office, or, if undertaken outside a state office by the employee, directly relates to state government, whether or not that activity is within the scope of their employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, (2) is in violation of an Executive order of the Governor, a California Rule of Court, or any policy or procedure mandated by the State Administrative Manual or State Contracting Manual, or (3) is economically wasteful, involves gross misconduct, incompetency, or inefficiency. For purposes of Sections 8547.4, 8547.5, 8547.7, 8547.10, and 8547.11, “improper governmental activity” includes any activity by the University of California or by an employee, including an officer or faculty member, who otherwise meets the criteria of this subdivision. For purposes of Sections 8547.4, 8547.5, and 8547.13, “improper governmental activity” includes any activity by the Supreme Court, a court of appeal, a superior court, or the Administrative Office of the Courts, or by an employee thereof, who otherwise meets the criteria of this subdivision.

(d) “Person” means an individual, corporation, trust, association, a state or local government, or an agency or instrumentality of any of the foregoing.

(e) “Protected disclosure” means a good faith communication, including a communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence (1) an improper governmental activity, or (2) a condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition. Protected disclosure specifically includes a good faith communication to the California State Auditor’s Office alleging an improper governmental activity and any evidence delivered to the California State Auditor's Office in support of the allegation. “Protected disclosure” also includes, but is not limited to, a complaint made to the Commission on Judicial Performance or to
a Member of the Legislature, the Legislature, or any subdivision thereof.

(f) “State agency” is defined by Section 11000. “State agency” includes the University of California for purposes of Sections 8547.5 to 8547.7, inclusive, and the California State University for purposes of Sections 8547.3 to 8547.7, inclusive. Sections 8547.3 to 8547.7, inclusive, shall apply to the Supreme Court, the courts of appeal, the superior courts, and the Administrative Office of the Courts in the same manner as they apply to a state agency.

SEC. 2. Section 9149.24 is added to the Government Code, to read:

9149.24. A committee may investigate and report on improper governmental activities, or may refer the improper governmental activity to the State Auditor for investigation pursuant to Article 3 (commencing with Section 8547) of Chapter 6.5 of Division 1. If, after investigating, the committee finds that an employee may have engaged or participated in improper governmental activities, the committee may prepare an investigative report and send a copy of the investigative report to the employee’s appointing power.

SEC. 3. Section 9149.25 is added to the Government Code, to read:

9149.25. (a) A committee may request that persons submitting an allegation provide their name and contact information and provide the names and contact information for any persons who could help to substantiate the claim. However, the committee shall not require persons submitting an allegation to provide their name or contact information.

(b) Upon receiving specific information that any employee or state agency has engaged in an improper governmental activity, the committee may conduct an investigation of the matter. The identity of the person providing the information that initiated the investigation, or of any person providing information in confidence to further an investigation, shall not be disclosed without the express permission of the person providing the information except that the committee may make the disclosure to a law enforcement agency that is conducting a criminal investigation, or to the State Auditor for investigation pursuant to Article 3 (commencing with Section 8547) of Chapter 6.5 of Division 1.

SEC. 4. Section 9149.26 is added to the Government Code, to read:
9149.26. A committee may request the assistance of any state
department, agency, or employee in evaluating an allegation or
conducting any investigation of an improper governmental activity
as authorized by this article. In response to a request for assistance
from the committee, that state department, agency, or employee
shall provide the assistance, including, but not limited to, providing
access to documents or other information in a timely manner. If
an investigation conducted by the committee involves access to
confidential academic peer review records of University of
California academic personnel, these records shall be provided
in a form consistent with university policy effective on August 1,
1992. Information obtained from the committee by any department,
agency, or employee as a result of the committee’s request for
assistance, nor any information obtained thereafter as a result of
further investigation, shall not be divulged or made known to any
person without the prior approval of the committee.

SEC. 5. No reimbursement is required by this act pursuant to
Section 6 of Article XIIIB of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.

SEC. 6. The Legislature finds and declares that Section 4 of
this act, which adds Section 9149.26 to the Government Code,
imposes a limitation on the public’s right of access to the meetings
of public bodies or the writings of public officials and agencies
within the meaning of Section 3 of Article I of the California
Constitution. Pursuant to that constitutional provision, the
Legislature makes the following findings to demonstrate the interest
protected by this limitation and the need for protecting that
interest:

In order to protect the identity of whistleblowers, it is necessary
that information related to protected disclosures remain
confidential.

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