



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

AB-31 Whistleblowers: California State Auditor. (2017-2018)

SHARE THIS:  

Date Published: 10/09/2017 09:00 PM

Assembly Bill No. 31

CHAPTER 605

An act to amend Section 8547.5 of the Government Code, relating to whistleblowers.

[Approved by Governor October 09, 2017. Filed with Secretary of State October 09, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 31, Rodriguez. Whistleblowers: California State Auditor.

Existing law creates the California State Auditor's Office, which is independent of the executive branch and legislative control, to examine and report annually upon the financial statements prepared by the executive branch. Existing law exempts the California State Auditor from specific provisions of existing law relating to oversight by state control agencies, including specific provisions relating to employment, administration, contracting, fiscal matters, and the adoption of regulations.

Existing law, the California Whistleblower Protection Act, authorizes the 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 requires the auditor to establish a means of submitting allegations of improper governmental activity, and generally requires the auditor to keep confidential every investigation, including all investigative files and work product.

This bill would require the auditor to create an alternative system for submission to an independent investigator of allegations of improper governmental activity engaged or participated in by employees of the office. The bill would require submissions to be delivered to the Employment and Administrative Mandate Section of the Department of Justice without prior review by the auditor. The bill would require the section to review submissions and, if it determines that a submission constitutes an allegation of improper governmental activity, to transmit the submission to the independent investigator for further action. The bill would define "improper governmental activity" and "independent investigator" for its purposes. The bill would require the independent investigator to conduct investigations in a manner consistent with provisions of the act relating to other state civil service employees. The bill would require the independent investigator, if he or she finds that the facts support a conclusion that an employee engaged or participated in improper governmental activities, to prepare a confidential investigative report and, subject to specific limitations, send a copy of the report and gathered evidence to the auditor and certain other persons within the office. The bill would require the independent investigator, if the independent investigator determines it to be appropriate, to report this information to the Attorney General, to the policy committees of the Senate and Assembly having jurisdiction over the subject involved, and to any other authority that the independent investigator determines appropriate. The bill would authorize the independent investigator, subject to specific limitations, to provide to the auditor any evidence gathered during the investigation that, in the judgment of the independent investigator, is necessary to support any of the report's recommendations. The bill would require the auditor to report specific information to the independent investigator. The bill would require the independent investigator, if the auditor elects not to take adverse action, to notify the Joint Legislative Audit Committee (JLAC) of the report and, upon request, to provide JLAC a copy as prescribed. The bill would authorize the independent investigator to seek consent from the State Personnel Board to file disciplinary charges if the office does not.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 8547.5 of the Government Code is amended to read:

8547.5. (a) The California State Auditor shall create the means for the submission of allegations of improper governmental activity both by transmission via mail or other carrier to a specified mailing address and electronic submission through an Internet Web site portal. The California State Auditor may request that a person submitting an allegation provide his or her name and contact information and provide the names and contact information for any persons who could help to substantiate the claim. However, the California State Auditor shall not require any person submitting an allegation to provide his or her name or contact information and shall clearly state on the agency Internet Web site that this information is not required in order to submit an allegation.

(b) Upon receiving specific information that any employee or state agency has engaged in an improper governmental activity, the California State Auditor 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 California State Auditor may make the disclosure to a law enforcement agency that is conducting a criminal investigation.

(c) (1) The California State Auditor shall create an alternative system for submission to an independent investigator of allegations of improper governmental activity engaged or participated in by employees of the California State Auditor's Office. The system shall allow for submission of allegations both by delivery to a specified mailing address and electronic submission through an Internet Web site portal. The system may request that people submitting allegations provide their name and contact information and the names and contact information for any persons who could help to substantiate the claim. However, the system shall not require people submitting an allegation to provide their name or contact information and shall clearly state that this information is not required to submit an allegation. The system shall ensure that all submissions are promptly and directly delivered to the Employment and Administrative Mandate Section of the Department of Justice without prior review by the California State Auditor. The Employment and Administrative Mandate Section of the Department of Justice shall review submissions. If the Employment and Administrative Mandate Section of the Department of Justice determines that a submission constitutes an allegation of improper governmental activity, it shall transmit the submission to the independent investigator for further action in accordance with this section.

(2) (A) The independent investigator shall conduct investigations in a manner consistent with the provisions of this article relating to other state civil service employees. If the independent investigator finds that the facts support a conclusion that an employee engaged or participated in improper governmental activities, the investigator shall prepare a confidential investigative report and, subject to the limitations of this section, send a copy of the report and all evidence gathered during the investigation to the California State Auditor, the Chief Deputy California State Auditor, and the California State Auditor's Office chief counsel and human resource manager.

(B) If the independent investigator determines it to be appropriate, the independent investigator shall report this information to the Attorney General, to the policy committees of the Senate and Assembly having jurisdiction over the subject involved, and to any other authority that the independent investigator determines appropriate. Subject to the limitations of this section, the independent investigator may provide to the California State Auditor any evidence gathered during the investigation that, in the judgment of the independent investigator, is necessary to support any of the report's recommendations. Within 60 days of receiving the independent investigator's report, the California State Auditor shall report to the independent investigator any actions that it has taken or that it intends to take to implement the recommendations. The California State Auditor shall file subsequent reports on a monthly basis until final action has been taken.

(3) (A) Within 60 days after receiving a copy of the independent investigator's report, the California State Auditor's Office shall either serve a notice of adverse action upon the employee who is the subject of the investigative report, or submit to the independent investigator in writing its reasons for not taking adverse action.

(B) If the California State Auditor's Office elects not to serve a notice of adverse action upon the employee who is the subject of the investigative report, then, within 10 days of receiving the reasons provided by the California State Auditor's Office pursuant to subparagraph (A), the independent investigator shall:

(i) Notify the Joint Legislative Audit Committee, as described in Section 10501, that it has provided a report to the California State Auditor's Office pursuant to this paragraph.

(ii) Upon request, provide a copy of the report described in this paragraph, redacted to remove all information that could identify any reporting party, witness, or employee, to the Joint Legislative Audit Committee, as described in Section 10501.

(C) If the California State Auditor's Office does not take adverse action, the independent investigator may seek consent from the State Personnel Board to file charges in accordance with Section 19583.5.

(D) The following shall not be confidential:

(i) A notice of adverse action served by the California State Auditor.

(ii) A request to file charges filed by the independent investigator with the State Personnel Board.

(4) The California State Auditor's Office shall reimburse the Employment and Administrative Mandate Section of the Department of Justice for the costs of retaining the independent investigator.

(5) For purposes of this subdivision and any investigation conducted pursuant thereto, "improper governmental activity" has the same meaning as set forth in subdivision (c) of Section 8547.2, except that it shall not include violations of an executive order of the Governor, any policy or procedure mandated by the State Administrative Manual or State Contracting Manual, or any other rule, regulation, or requirement that the California State Auditor's Office, because of its independence from executive branch and legislative control, is not required to follow.

(d) For purposes of this section, "independent investigator" means an investigator who is retained by the Employment and Administrative Mandate Section of the Department of Justice who is all of the following:

(1) An attorney who is licensed to practice law in this state or a certified fraud examiner.

(2) A person who is experienced in investigating allegations of improper governmental activity in a confidential manner.

(3) A person who is outside of, and independent from, the California State Auditor's Office and also independent of the executive branch and legislative control.