



SB-51 Professional licensees: environmental sciences and climate change: whistleblower and data protection. (2017-2018)

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Date Published: 09/08/2017 04:00 AM

ENROLLED SEPTEMBER 07, 2017

PASSED IN SENATE SEPTEMBER 06, 2017

PASSED IN ASSEMBLY SEPTEMBER 05, 2017

AMENDED IN ASSEMBLY JULY 12, 2017

AMENDED IN ASSEMBLY JULY 03, 2017

AMENDED IN SENATE MAY 03, 2017

AMENDED IN SENATE MARCH 28, 2017

AMENDED IN SENATE FEBRUARY 22, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

NO. 51

Introduced by Senator Jackson

December 05, 2016

An act to add Section 494.7 to the Business and Professions Code, and to add Section 12812.7 to the Government Code, relating to government data.

LEGISLATIVE COUNSEL'S DIGEST

SB 51, Jackson. Professional licensees: environmental sciences and climate change: whistleblower and data protection.

The California Whistleblower Protection Act requires the State Auditor to administer the act and to investigate and report on improper governmental activities, as defined.

Existing law provides for the licensure and regulation of various professions and vocations by certain entities within state government. Existing law establishes various grounds upon which these entities may take disciplinary action against a licensee to suspend or revoke a license.

This bill would prohibit these licensing entities, except the State Bar of California, from taking disciplinary action, including suspension, loss of credential, registration, or other professional privilege, against a public employee, as defined to include those persons working in the environmental sciences and climate-change-related fields who are conducting scientific or technical

research, in connection with actions taken by that person to report improper federal governmental activity or disclose the results of or information about scientific or technical research to the public by means that include, but are not limited to, publishing the information in a scientific or a public forum or sharing it with the media.

Existing law requires the Secretary for Environmental Protection to coordinate greenhouse gas emission reductions and climate change activity in state government.

This bill would additionally require the Secretary for Environmental Protection to make every reasonable effort to preserve and make available to the public through its Internet Web site scientific information and other data that, in the secretary's opinion, are at risk of censorship or destruction by the federal government.

This bill would include findings and declarations related to the measure, including that the purpose of these provisions is, to the maximum extent feasible under state law, to ensure those persons may report improper federal governmental activity and to continue to make scientific and other information open to the public without fear of losing their professional licenses or credentials.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Current law does not provide adequate guidance and clarity for persons employed by, under contract with, or representing federal governmental organizations, including, but not limited to, scientists and other professionals who work in scientific fields to determine the circumstances under which they may properly seek to protect the public interest by reporting improper governmental activity to appropriate enforcement, regulatory, and oversight bodies and make information about improper governmental activity, including, but not limited to, improper governmental activity relating to science, open to the public.

(b) There are new efforts underway to limit the freedom of scientists and other professionals working for the federal government to report improper government activity, as well as to restrict or prohibit their freedom to publish scientific information and to freely associate with other parties.

(c) The purpose of this chapter is, to the maximum extent feasible under state law, to ensure those persons may report improper federal governmental activity and to continue to make scientific and other information open to the public without fear of losing their professional licenses or credentials.

SEC. 2. Section 494.7 is added to the Business and Professions Code, to read:

494.7. (a) For purposes of this section:

(1) "Improper federal governmental activity" means conduct by a federal governmental organization or by its employees, contractors, or agents, or that is undertaken in the performance of the employee's, contractor's, or agent's duties inside a governmental office or conduct by an employee, contractor, or agent that directly relates to the government, whether or not that activity is within the scope of the employee's, contractor's, or agent's duties, if undertaken outside a government office that meets one or more of the following:

(A) It 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, obstruction of justice, or willful omission to perform a duty.

(B) It is in violation of the federal Constitution, a federal rule of court, any policy or procedure mandated by the federal Contract Compliance Manual, or a federal court decision that is binding on the federal governmental organization.

(C) It is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

(D) It substantially conflicts with the consensus of peer-reviewed scientific or technical research.

(2) "Employee" means a person on the payroll of, employed by, or working as a contractor, subcontractor, or grantee of, a government contractor, subcontractor, or grantee, including, but not limited to, an employee who works in environmental sciences or a climate-change-related field who is conducting scientific or technical research.

(3) "Public employee" means a person employed by any federal agency, a business or organization that is wholly funded by federal funds, or any other tax-financed entity, including, but not limited to, a person who works in environmental sciences or a climate-change-related field who is conducting scientific or technical research.

(4) "Scientific or technical research" means the results of scientific activities related to environmental sciences or climate change, including, but not limited to, the analysis, synthesis, compilation, or translation of scientific information and data into formats used in official decisionmaking processes or publications.

(b) A licensing entity other than the State Bar of California shall not take disciplinary action, including suspension, loss of credential, registration, or other professional privilege, against a public employee based upon actions taken by that person to do any of the following:

(1) Report improper federal governmental activity, provided that the person takes one of the following actions:

(A) Urges reconsideration of the matter while explaining its likely consequences to the organization.

(B) Refers the matter to a higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest internal authority that can act on behalf of the organization.

(C) Refers the matter to the law enforcement agency charged with responsibility over the matter or to any other governmental agency or official charged with overseeing or regulating the matter if all of the following have occurred:

(i) The person has taken both actions described in subparagraphs (A) and (B) without the matter being resolved.

(ii) The person reasonably believes that the highest internal authority that can act on behalf of the organization has already, directly or indirectly, participated in the improper federal governmental activity.

(iii) The referral is warranted by the seriousness of the circumstances and is not otherwise prohibited by law.

(iv) Further action is required in order to prevent or rectify substantial harm to public health, safety, the environment, or the public interest or to the governmental organization resulting from the improper federal governmental activity.

(2) Disclose the results of or information about scientific or technical research to the public by means that include, but are not limited to, publishing the information in a scientific or public forum or sharing it with the media.

(3) This subdivision shall not be construed to require that the improper federal governmental activity subject to its provisions be related, directly or indirectly, to the matter for which the person makes a referral to law enforcement.

SEC. 3. Section 12812.7 is added to the Government Code, to read:

12812.7. The Secretary for Environmental Protection shall make every reasonable effort to preserve and make available to the public through its Internet Web site scientific information and other data that, in the secretary's opinion, are at risk of censorship or destruction by the federal government.