

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE

House Bill 766 (Delegate Shank, *et al.*)
 Appropriations

State Employees - Whistleblower Protection

This bill makes a number of changes to the Maryland Whistleblower Law, which applies to the Executive Branch of State government.

Fiscal Summary

State Effect: The Department of Budget and Management (DBM) general fund expenditures would increase by \$98,500 in FY 2008 and \$122,300 by FY 2012. Potential minimal increase in general fund revenues from the bill's penalty provision.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
GF Revenue	-	-	-	-	-
GF Expenditure	98,500	110,600	114,300	118,200	122,300
Net Effect	(\$98,500)	(\$110,600)	(\$114,300)	(\$118,200)	(\$122,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill is not expected materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill:

- requires the Secretary of Budget and Management to provide copies of all regulations adopted for processing and resolving whistleblower complaints to employees each year;

- adds the *agent* of a supervisor, appointing authority, or the head of a principal unit to the list of individuals who are prohibited from taking any adverse personnel action against an employee in retaliation for taking action under the Whistleblower Law and extends the prohibition to *threats* to take an adverse personnel action;
- adds *misuse of public resources* to the list of activities for which an employee may report misconduct and would be protected from doing so under the Whistleblower Law;
- prohibits any adverse personnel action from being taken against an employee in retaliation for (1) that employee being a member of an employee organization or (2) engaging in or refusing to engage in political activity – unless the employee is on duty, acting in an official capacity, or otherwise authorized or prohibited by State or federal law;
- prohibits an employee from (1) being terminated, (2) having salary increases or benefits withheld, (3) being transferred or reassigned, (4) being denied a promotion, or (5) being demoted solely because the employee exercised a right granted under the Whistleblower Law; and
- allows an employee to provide a copy of a complaint or grievance to any person 30 or more days after filing the complaint or grievance.

A person who takes an adverse action against an employee for taking a protected action listed in the Whistleblower Law is guilty of a misdemeanor and subject to a fine of up to \$5,000.

The Attorney General must adopt regulations establishing procedures for processing information filed under the Whistleblower Law.

Current Law: Currently only a supervisor, an appointing authority, and the head of a principal unit are prohibited from taking or refusing to take any personnel action as a reprisal against an employee who discloses information that he/she reasonable believes evidences (1) an abuse of authority, gross mismanagement, or gross waste of money; (2) a substantial and specific danger to public health or safety; or (3) a violation of law. It is also illegal to take any personnel action or refuse to do so against an employee, who following such a disclosure, seeks a remedy provided under applicable laws. Agents acting on behalf of one of these individuals are not specifically prohibited from doing so.

Statute allows a complainant to appeal to the Office of Administrative Hearings (OAH), whose decision is the final administrative decision. A party may petition for judicial review to a circuit court, and in turn to the Court of Special Appeals.

The State and its officers, employees, agents, or representatives are prohibited from engaging in any unfair labor practice. These include, among other things, discriminating in hiring, tenure, or any term or condition of employment to encourage or discourage membership in an employee organization as well as interfering with, restraining, or coercing employees in the exercise of their rights under the State's Collective Bargaining Law.

Except as otherwise provided by State or federal law, a State employee may freely participate in any political activity or express any political opinion and may not be required to provide any political service. A State employee may not engage in political activity while on the job during working hours, or advocate the overthrow of the government by violent or unconstitutional means. Generally, during any stage of a State employee's complaint, grievance, or other administrative or legal action that concerns State employment, the employee may not be subjected to coercion, discrimination, interference, reprisal, or restraint initiated on behalf of the employer solely as a result of the employee's pursuit of the grievance, complaint, or action.

Background: According to the *Statewide Equal Employment Opportunity Report*, there were four whistleblower complaints investigated by the Statewide EEO Office in fiscal 2006, five complaints investigated in fiscal 2005, and four complaints investigated in fiscal 2004.

State Fiscal Effect: The bill would likely increase the number of whistleblower complaints annually. The extent to which the number of complaints would increase is unclear, but both DBM and the Attorney General's Office advise that the increase could be significant. Given the limited number of whistleblower complaints in recent years, even if the caseload were to increase 1,000%, there would be 40 to 50 whistleblower complaints annually.

Effect on the Department of Budget and Management

Assuming a significant increase in the number of annual whistleblower complaints, DBM advises it would need to hire two equal employment opportunity (EEO) officers and one office secretary. These individuals would also have the responsibility of ensuring that all employees receive a copy of relevant whistleblower regulations. The Department of Legislative Services (DLS) observes that, while there could be a significant increase in the number of whistleblower cases annually, the increased volume should not be enough

to require three new positions. Therefore, DLS advises that DBM would only need one additional position, an EEO Officer, to handle the increase in the number of complaints. If the caseload increases to the extent that even more personnel are necessary, additional staff could be requested through the annual budget process.

DBM advises that printing the regulations would cost around \$50,000 each year. It is assumed that the regulations would be distributed in the same manner as State employee paychecks, and thus postage costs would not be incurred.

Accordingly, general fund expenditures could increase by an estimated \$98,533 in fiscal 2008, which accounts for the bill's October 1, 2007 effective date. The estimate includes a salary, fringe benefits, one-time start-up costs, ongoing operating expenses, and printing costs.

Positions	1
Salaries and Fringe Benefits	\$43,785
Start-up and Ongoing Operating Expenses	4,748
Printing Costs	<u>50,000</u>
FY 2008 General Fund Expenditures	\$98,533

Future year expenditures reflect a full salary with 4.5% annual increases and 3% employee turnover; and 1% annual increases in ongoing operating expenses and printing costs.

Other Effects

The Attorney General's Office advises that the bill would significantly impact its operations. By expanding the scope of the Whistleblower Law, the number of complaints would likely increase, which in turn could lead to more criminal prosecutions of State officials and employees. Without any actual experience under the bill, however, it is assumed that any impact on the Attorney General's Office could be handled within existing resources and personnel. If the caseload increases to the extent that additional personnel are necessary, staff could be requested through the annual budget process.

It is unknown how many times criminal charges would be brought against State employees for violating the Whistleblower Law. The District Court advises that it is uncertain of the impact the bill would have on its caseload from criminal prosecutions resulting from the bill, but it anticipates that the impact would not be significant. State general fund revenues could minimally increase as a result of the bill's penalty provision.

The bill could increase the number of appeals to OAH and in turn to the circuit courts and Court of Special Appeals. The impact would depend on the number of cases appealed annually, which cannot be reliably quantified at this time. Without any actual experience under the bill, however, it is assumed that any impact on OAH and the courts could be handled within existing resources and personnel.

Agencies with independent personnel systems, such as the Maryland Department of Transportation or an institution of higher education, may need to revise policies and procedures. It is assumed that any such operational impact would be handled within existing resources.

Additional Comments: DBM advises that allowing a person to share a whistleblower complaint after 30 days of filing may create confidentiality issues regarding the parties involved and the EEO process.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Maryland Department of Transportation, University System of Maryland, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Office of the Attorney General, Department of Legislative Services

Fiscal Note History: First Reader - March 15, 2007
mam/ljm

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