

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 81

(Chair, Finance Committee)(By Request - Departmental -  
Budget and Management)

Finance

Appropriations

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**State Personnel - Maryland Whistleblower Law - Confidentiality of Information  
Obtained During Investigations of Complaints**

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This departmental bill requires confidential treatment of information obtained in the course of the investigation of an alleged violation of the Maryland Whistleblower Law. The bill applies retroactively to any investigation of a complaint that was initiated or completed before the bill's October 1, 2009 effective date.

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**Fiscal Summary**

**State Effect:** None. The change is procedural/technical in nature and does not directly affect government finances.

**Local Effect:** None.

**Small Business Effect:** The Department of Budget and Management (DBM) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

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**Analysis**

**Current Law:** The Maryland Whistleblower Law protects State Executive Branch employees who "blow the whistle" by disclosing information believed to evidence abuse of authority, gross mismanagement or waste of money, a substantial and specific danger to public health or safety, and/or a violation of the law.

The Whistleblower Law prohibits reprisal against an employee who, after making a disclosure, seeks a remedy provided by any law or policy. A complaint under this statute must be brought within six months after the complainant first knew of, or reasonably should have known of, the violation of the whistleblower protection. The Secretary of Budget and Management, or a designee thereof, is required to conduct an investigation and determine whether a violation occurred within 60 days. After reviewing a final decision under the Whistleblower Law, the court may award costs of litigation and reasonable attorney's fees to a prevailing complainant.

An employee is entitled to remedial action if a violation occurred; such action may include:

- mandating the removal of any related detrimental information from the complainant's State personnel records;
- requiring the supervisor to reinstate the complainant in his/her prior position of employment;
- awarding back pay lost by the employee due to the violation;
- granting leave or seniority; and
- requiring that disciplinary action be taken against the person responsible for the violation.

No provision exists to require that information gathered during such an investigation be treated as confidential.

**Background:** The bill establishes the same assurance of confidentiality that exists for investigations conducted under the State's Equal Employment Opportunity Program.

DBM administers investigations pertaining to the Maryland Whistleblower Law and the Equal Employment Opportunity Program. DBM advises that explicit recognition of confidentiality in Maryland Whistleblower Law cases would make employees more likely to cooperate because they would be confident that disclosure of information to an investigator would not lead to retaliation.

Twenty-two states and the District of Columbia have laws for whistleblowers to alert the government to potential fraud by entities working with the government.

**State Fiscal Effect:** DBM, the Maryland Department of Transportation, and the University System of Maryland each advise that this legislation does not affect agency

revenues or expenditures. The Maryland Department of Transportation advises that the bill codifies current practice at the agency.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Budget and Management, Maryland Department of Transportation, University System of Maryland, Department of Legislative Services

**Fiscal Note History:** First Reader - January 20, 2009  
ncs/rhh

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: State Personnel – Maryland Whistleblower Law – Confidentiality of Information Obtained During Investigations of Complaints

BILL NUMBER: SB 81

PREPARED BY: Rebecca Burner (Department of Budget and Management)

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.