

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 1145  
Ways and Means

(Delegate Tarlau, *et al.*)

Finance

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Public School Employee Whistleblower Protection Act

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This bill prohibits a public school employer from taking, or refusing to take, any personnel action as reprisal against a public school employee because the employee discloses or threatens to disclose unlawful behavior; provides information or testifies for an investigation of unlawful behavior; or objects to or refuses to participate in unlawful behavior. The protection only applies if (1) the public school employee has a good faith belief that the employer is still engaged in unlawful activity; (2) the employee discloses specified information that the employee believes evidences an abuse of authority, a danger to public health or safety, or a violation of law; and (3) the public school employee has reported the behavior in writing to a supervisor or administrator and afforded the employer a reasonable opportunity to correct the activity. A public school employee must exhaust any administrative remedies before instituting a civil action under the bill.

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Fiscal Summary

**State Effect:** It is assumed that any additional workload for the District Court due to the civil action requirement can be handled with existing budgeted resources.

**Local Effect:** Minimal. Local school system expenditures depend on the extent to which employees prevail in civil actions taken against the local school system under the protections established by the bill after exhausting all administrative remedies; however, it is assumed that overall the fiscal effect can be absorbed within existing budgeted resources. It is assumed that any additional workload for the circuit courts due to the civil action requirement can be handled with existing budgeted resources.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** The bill prohibits an employer from taking or refusing to take any personnel action as reprisal against a public school employee because the employee discloses or threatens to disclose, to a supervisor, an act or policy of the employer that violates a law, rule, or regulation. The bill's provisions apply to an employee who testifies before any public body that is conducting an investigation into an employer's violation of a law, rule, or regulation, or if an employee objects to or refuses to take any action that violates a law, rule, or regulation.

The protection provided by the bill applies if the employee has a reasonable, good faith belief that the employer has, or still is, engaged in an action or policy that is a violation of law, rule, or regulation. Also, the employee must disclose information that the employee reasonably 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. Finally, the employee must report the employer's acts to a supervisor or administrator in writing and provide the employer with a reasonable opportunity to correct the situation.

A public school employee who is subject to a violation of the bill's provisions may bring a civil suit in the county where the alleged violation occurred, where the employee resides, or where the employer maintains principal offices in Maryland. The civil action must be brought within six months after the alleged violation or within six months after the employee first became aware of the alleged violation.

A court is authorized to issue an injunction, reinstate the employee, and remove an adverse personnel record related to a violation. The court may also reinstate full fringe benefits and seniority rights, require compensation for lost wages, benefits, and other remuneration and assess reasonable attorney's fees and litigation expenses against the employer. If the employer prevails, however, the attorney's fees may be assessed against the employee if the court finds that the lawsuit was brought in bad faith and without basis in law or fact.

In any action brought under the bill, it is a defense that a personnel action was based on grounds *other than* the employee's exercise of rights protected by the bill.

**Current Law:** State law affords licensed or certified health care employees and State employees similar whistleblower protections.

### *Health Care Employees*

An employer is prohibited from taking or refusing to take certain actions regarding a health care employee because the employee discloses or threatens to disclose, to a supervisor or

board, an act or policy of the employer that violates a law, rule, or regulation. The provisions apply to an employee who testifies before any public body that is conducting an investigation into an employer's violation of a law, rule, or regulation, or if an employee objects to or refuses to take any action that violates a law, rule, or regulation.

The protection provided by the law applies if the employee has a reasonable, good faith belief that the employer has, or still is, engaged in an action or policy that is a violation of law, rule, or regulation, and poses a substantial, specific public health safety risk. Also, the employee must report the employer's acts to a supervisor or administrator in writing and provide the employer with a reasonable opportunity to correct the situation. In the alternative, if the employer has a corporate compliance plan specifying who to notify in the event of a violation, the employee must comply with the plan.

A health care employee who is subject to a violation of the law's provisions may bring a civil suit in the county where the alleged violation occurred, where the employee resides, or where the employer maintains principal offices in Maryland. The civil action must be brought within one year after the alleged violation or within one year after the employee first became aware of the alleged violation.

A court is authorized to issue an injunction, reinstate the employee, and remove an adverse personnel record related to a violation. The court may also reinstate full fringe benefits, require compensation for lost wages and other income, and assess reasonable attorney's fees and litigation expenses against the employer. If the employer prevails, however, the attorney's fees may be assessed against the employee if the court finds that the lawsuit was brought in bad faith and without basis in law or fact.

In any action brought under the law, it is a defense that a personnel action was based on grounds *other than* the employee's exercise of rights protected by the law.

### *State Personnel*

A manager in State government may not take, or refuse to take, a personnel action as a reprisal against an employee who discloses information about abuse of authority, gross waste, gross mismanagement, information about a substantial and specific danger to public health or safety, or an illegal act. The manager may not take a reprisal action against an employee who seeks to file a complaint, pursue an appeal, or pursue any other legitimate relief from a reprisal action. The prohibition against reprisal does not apply to a disclosure that is specifically prohibited by law unless the disclosure is made exclusively to the Attorney General, an investigation is conducted, and, if required, a confidential report is submitted to the Governor.

**Background:** Whistleblower statutes are intended to protect employees when they find themselves in the position of discovering their employer violating a law or in some way breaching the public trust. Most states have some sort of whistleblower protection in statute. Some states only provide explicit protection of public employees (which may or may not include local public employees) or those working for government contractors. Statutes also vary with respect to whom is protected or on whom the whistle may be blown. Most states limit remedies that an employee may recover to actual damages, such as back pay or fringe benefits. In some cases, however, the employee is given a money award tied to the illegal or unethical activity exposed. In addition to state statutes, there are a number of federal whistleblower provisions which protect employees.

There are at least four states (*i.e.*, California, Illinois, Tennessee, and Washington) with explicit whistleblower protection for public school employees. California also includes language to protect community college employees. Washington’s law is called the “local government whistleblower protection act” and it includes a public school district in its definition of local government.

At least the following 11 local school systems have some level of local whistleblower policies and/or regulations: Anne Arundel, Baltimore, Calvert, Carroll, Frederick, Harford, Montgomery, St. Mary’s, Somerset, Washington, and Wicomico counties. In addition, Baltimore City and Prince George’s County may be in the process of developing and adopting a policy on whistleblower protections. However, in general, these policies provide less protection than that provided under the bill.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Carroll and Montgomery counties; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Department of Legislative Services

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