

Department of Legislative Services

Maryland General Assembly

2020 Session

FISCAL AND POLICY NOTE

Third Reader - Revised

House Bill 1075

(Delegate Ivey, *et al.*)

Ways and Means

Education, Health, and Environmental Affairs

Public School Employees - Whistleblower Protection - Civil Actions

This bill repeals the prerequisite that a public school employee who is engaging in whistleblowing, as specified, exhaust any administrative remedies before instituting a civil action. However, under the bill, a public school employee who is subject to a personnel action due to whistleblowing must notify the local superintendent of schools in writing of the employee's intention to institute a civil action. In addition, the bill establishes an administrative complaint and remediation process for public school employees engaged in whistleblowing who have been subject to personnel action. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: It is assumed that any additional workload for the District Court can be handled with existing budgeted resources

Local Effect: Local school systems can establish the administrative complaint and remediation process using existing resources. Local school system legal expenditures may increase due to additional whistleblower claims being filed in court prior to individuals exhausting 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 can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: Any public school employee who is subject to a personnel action in violation of the law due to specified whistleblowing may file an administrative complaint with a public school employer. A public school employer must provide an administrative remedial process for a public school employee who files an administrative complaint as specified and complete the administrative remedial process within 30 days.

Current Law: Under the Public School Whistleblower Protection Act (Chapter 730 of 2017), a public school employer is prohibited 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 provided 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 whistleblower 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 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 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.

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 that additionally protect employees.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Baltimore City Public Schools; Montgomery County Public Schools; Department of Legislative Services

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