2009 SENATE JUDICIARY

SB 2267

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2267

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/3/09

Recorder Job Number: 8467

Committee Clerk Signature

Minutes: **Senator D. Nething, Chairman**

Relating to whistleblower protection for public employees

**Senator Ray Holmberg** – District 17 – Introduces the bill. See written testimony.

Years ago he introduced what became the public employee's bill of rights. There wasn't much action in that area for decades. Last year there was a highly publicized issue dealing with an agency that related to whistleblower and whistleblower protection. His handout indicates a study the Legislative Council did comparing our whistleblower law to other states and some of the options the state has to put a little closure to the law that we have. This bill only makes a minor change.

He points out where the change is and the new language. He also points out another statute 3401.20 which is employer retaliation is prohibited in ND and there is civil action for relief and a penalty. A state employee actually has two options if he or she is aggrieved over a whistle blowing incident they can utilize the section of the law that we are amending today. The bill was drafted to put some clarity in this section.

**Senator Nething** - Asks about the Labor Department, they are required to receive complaints under this bill and they may obtain voluntary compliance through informal advice, negotiations, or conciliation. We don't know whether they do or not.

**Senator Holmberg** – He states you can't say they shall obtain voluntary compliance with this section because sometimes people disagree. In the end the individual may go to court. He was informed yesterday that there might be some court cases dealing in this area.

**Senator Nething** – Ask what problem are we trying to solve.

**Senator Holmberg**- For a public employee who feels that he is being retaliated against because they blew the whistle on some activity and is not sure where to go if they look at the public employee whistle blower protection.

**Senator Nething** – So this defines that.

**Senator Holmberg** – That is all this bill does.

**Todd Anderson** – Director of Risk Management Division of OMB – Officially neutral but supportive of each of the bills. He offers some amendments that could be characterized as housekeeping.

**Senator Nething** – Asks what claiming reprisal mean.

**Anderson** – Provides an administrative remedy.

**Senator Nething** – If you claim a reprisal you do not have to be dismissed.

**Anderson** – Says, correct, any change in the terms and conditions of your employment that you feel are the result of retaliation would be a fair basis for appeal.

**Senator Nething** – Reads from the bill to clear up what the language means. Asks if the **language** extends the appeal process.

**Anderson** – The original language looks like we're broadening it, but it effectively tracks what already exists through administrative code provisions.

Close the hearing on 2267

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2267

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/11/09

Recorder Job Number: 9151

| Committee Clerk Signature | |
|---|---|

Minutes: **Senator Nething, Chairman**

**Committee work**

Relating to whistle blower protection

Committee discusses the amendments. The amendments are technical language corrections except for the first amendment which talks of someone would not have to be dismissed from their job to have a claim. They mention the intent is to strengthen the protection for the employees.

Consider amendments

**Senator Olafson** moves to adopt the amendments

**Senator Schneider** seconds

Verbal vote – all yes

**Senator Nelson** motions do not pass as amended

**Senator Fiebiger** seconds

Vote – 3 yes, 3 no

**Senator Olafson** moves do pass as amended

**Senator Lyson** seconds

Vote - 3 yes, 3 no

**Senator Olafson** moves move without recommendation

**Senator Schneider** seconds

Vote 5-1

**Senator Olafson** will carry

Date: 2/11/09
Roll Call Vote #: 1

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**
**BILL/RESOLUTION NO.** 2260 7

Senate **JUDICIARY** Committee

☐ Check here for Conference Committee

amendment

Legislative Council Amendment Number _____

Action Taken ☒ **Do Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By Sen Olafson Seconded By Sen Schneider

| Senators | Yes | No | Senators | Yes | No |
|---|---|---|---|---|---|
| | | | | | |
| **Sen. Dave Nething – Chairman** | | | **Sen. Tom Fiebiger** | | |
| | | | | | |
| **Sen. Curtis Olafson – V. Chair.** | | | **Sen. Carolyn Nelson** | | |
| | | | | | |
| **Sen. Stanley W. Lyson** | | | **Sen. Mac Schneider** | | |
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Total (Yes) _____ (N) _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal yes

Date: 1/11/09
Roll Call Vote #: 2

2267

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**
**BILL/RESOLUTION NO.**

Senate **JUDICIARY** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ **Do Pass** ☒ **Do Not Pass** ☒ **Amended**

Motion Made By Sen Nelson Seconded By Sen Fiebiger.

| Senators | Yes | No | Senators | Yes | No |
|---|---|---|---|---|---|
| | | | | | |
| **Sen. Dave Nething – Chairman** | | X | **Sen. Tom Fiebiger** | X | |
| | | | | | |
| **Sen. Curtis Olafson – V. Chair.** | | X | **Sen. Carolyn Nelson** | X | |
| | | | | | |
| **Sen. Stanley W. Lyson** | | X | **Sen. Mac Schneider** | X | |
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Total (Yes) 3 (N) 3

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/11/09
Roll Call Vote #: 3

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**
**BILL/RESOLUTION NO.** 2269

Senate **JUDICIARY** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ **Do Pass** ☐ **Do Not Pass** ☒ **Amended**

Motion Made By Olafson Seconded By Lyson

| Senators | Yes | No | Senators | Yes | No |
|---|---|---|---|---|---|
| | | | | | |
| **Sen. Dave Nething – Chairman** | X | | **Sen. Tom Fiebiger** | | X |
| | | | | | |
| **Sen. Curtis Olafson – V. Chair.** | X | | **Sen. Carolyn Nelson** | | X |
| | | | | | |
| **Sen. Stanley W. Lyson** | X | | **Sen. Mac Schneider** | | X |
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Total (Yes) 3 (N) 3

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/11/09
Roll Call Vote #: 4

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**
**BILL/RESOLUTION NO.** 2267

Senate **JUDICIARY** Committee

☐ Check here for Conference Committee

move w/out committee Recommendation

Legislative Council Amendment Number _____

Action Taken ☐ **Do Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By Sen Olafson Seconded By Sen Schneider

| Senators | Yes | No | Senators | Yes | No |
|---|---|---|---|---|---|
| | | | | | |
| **Sen. Dave Nething – Chairman** | X | | **Sen. Tom Fiebiger** | X | |
| | | | | | |
| **Sen. Curtis Olafson – V. Chair.** | X | | **Sen. Carolyn Nelson** | | X |
| | | | | | |
| **Sen. Stanley W. Lyson** | X | | **Sen. Mac Schneider** | X | |
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Total (Yes) 5 (N) 1

Absent _____

Floor Assignment Sen. Olafson

If the vote is on an amendment, briefly indicate intent:

## REPORT OF STANDING COMMITTEE

**SB 2267: Judiciary Committee (Sen. Nething, Chairman)** recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2267 was placed on the Eleventh order on the calendar.

2009 HOUSE JUDICIARY

SB 2267

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2267

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/16/09

Recorder Job Number: 10968

Committee Clerk Signature DPenrose

Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2267.

**Sen. Ray Holmberg:** Sponsor, support. This bill makes a minor change in the whistleblower protection law for the state of North Dakota. If you recall, there were a lot of stories, not so long ago, about whistleblower protection and that there were some problems with the law, dependent upon the individual you talked to. At that time, I was the sponsor of the original state employee act passed in the 1980's, which set up the whole section of the law on the rights of state employees. The section on the whistleblower protection hadn't been touched or looked at since that time. This hadn't been perceived as a problem until last year. The bill itself makes a minor change. There are sections of the law that deal with public employees, there are section is of the law that deal with all employees of the state, and the change of the law that we have here, actually does little more than bringing the section for the state employees into conformity with what is in place for all employees in the state. I have a memo done by Legislative Council this past year, dealing with public employee whistleblower protection – comparison of state laws (attached). There are a number of options contained in this report that the Legislature could take to bring the law into line with more states(?) There are other applicable laws that did not make it, one other principle law did not make it out of (?)

and as you know there are some suggested amendments to SB 2267, one was prepared by Office of Management and Budget, and there was another one that was suggested by the Labor Dept (?). You will hear from someone who knows more about this than I do about the amendments.

**Rep. Delmore:** Can you explain why on page 2, line 4, it says Labor Dept. may attempt, why is that.

**Sen. Ray Holmberg:** It's tough in law to require that the labor department "will obtain voluntary compliance". Because the word "voluntary compliance" means that the other individual has some choice; but we've added the words in there "may attempt". They "shall receive complaints", and they will attempt or "may attempt to obtain voluntary compliance". The Labor Dept. is here and they might have more information on that. You can't really require that someone to strike a voluntary argument.

**Rep. Delmore:** You could say "shall" instead of "may".

**Sen. Ray Holmberg:** You'd have to ask a lawyer.

**Rep. Delmore:** There is nothing in here about damages, reinstatement, back pay, is that in another part of our code.

**Sen. Ray Holmberg:** You'd have to ask the Labor Dept.

**Rep. Zaiser:** Does this bill offer some real protection for whisteblowers; if somebody blows the whistle on an illegal or inappropriate act by a superior, fellow employee, etc. We've had those before. Will this actually protect whisteblowers.

**Sen. Ray Holmberg:** Maybe this goes a little further than what we have now. We had a bill that was quite long in the Senate that did not reach a level of support for its enactment. This was the other option that the Senate took, they passed this out unanimously. Of course, you

can do what you will for the bill, this is what was passed out of the Senate. The other bill was broader and longer.

**Rep. Zaiser:** I believe this was passed because it was weaker than the other bill, it is less specific, and really doesn't provide as clear whistleblower protection, which has been the problem in the past. We've had bills up and been pretty weak and didn't really do anything.

**Sen. Ray Holmberg:** It's hard to evaluate because the problem, even though the current statute has been in effect since the '80's, the perceived problem isn't a real big problem, although it matches 2008, so there was nothing really to face about what should be done because there hadn't been problems before. We've certainly been lax in letting the legislature deal with them, like the WSI issues from a year ago. Did it clear up everything, no. It did clear up the one major inconsistency concerning the public employee bill of rights and the civil section. That is what this bill was intended to do.

**Rep. Wolf:** What was the bill number of the other bill.

**Sen. Ray Holmberg:** SB 2258.

**Rep. Klemin:** What's the reason for the 300 days, on page 2, line 8; 300 days to file a complaint.

**Sen. Ray Holmberg:** I'm not sure if that fits right in with their overflow, or it's exactly the number of days, you can ask them directly.

**Rep. Dahl:** In several sections of the code we clarified different proceedings for classified and non-classified employees; this would be the procedure for all public employees.

**Sen. Ray Holmberg:** Yes.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Laurie Sterioti-Hammeren, Dept. of Human Resource Management Services:** I have brought forward two differing amendments that we need added to the bill (attachments). The

shortest (OMB #2) of the two amendments, really is just a housekeeping change; on page 1, line 23, remove "dismissed under this subsection" and insert "claiming reprisal under this section". On page 1, line 24, remove "state personnel board" and insert "human resource management services division" and again on page 2, lines 2 through 3, remove "state personnel board" and insert "human resource management services division". On the second set (OMB #1) of amendments, we have the first three amendments stated above, plus we added an additional amendment that would enable all employees to be able to use the process. That amendment would be on page 2, line 11, insert "5. All permanent and temporary employees of the state may appeal claims of reprisal under this section in the manner proscribed for classified employees under Chapter 54-44.3. This subsection does not apply to appointed officials, members of state boards and commissions, employees under the jurisdiction of the state board of higher education, and the chief deputy and personal secretary of an elected official, unless the individual is employed in a classified position."

**Rep. Klemin:** Which is which.

**Laurie Sterioti-Hammeren:** The shorter amendment is housekeeping, and the longer amendment includes the verbiage that would enable all employees to be able to use the process, not just classified employees.

**Chairman DeKrey:** Would an unclassified employee still be able to be fired at the whim of the supervisor.

**Laurie Sterioti-Hammeren:** If they are at-will, yes.

**Chairman DeKrey:** At will?

**Laurie Sterioti-Hammeren:** If they are not classified, yes. There isn't any change on that.

**Rep. Delmore:** Why don't we have a code in this section; states vary in doing that but what is allowed (?) as far as remedies. When I look at the old code, it talks about class B misdemeanor (?)

**Laurie Sterioti-Hammeren:** I don't know.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2267

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/17/09

Recorder Job Number: 11101, 11137, 11140

Committee Clerk Signature D Penrose

Minutes:

**Chairman DeKrey:** We will take a look at SB 2267.

**Rep. Griffin:** Explained amendment 90851.0102. This is a hog-house amendment but it does keep the same provisions basically that are in the bill. It would have basically two extra provisions. On page 1, subsection 3, if an employee reported a violation, then the name of the employee would not be disclosed to the public of the reporting. On page 2, it does take out the list in subsection a through f and changes that to an employer may not discharge, discipline, intimidate, penalize, discriminate against, threaten any of these prohibited actions against, or otherwise retaliate against an employee regarding the employee's compensation or benefits, conditions, location, terms, duties, or privileges of employment because... Subsection 3 repeats that you can't disclose the employee's name. Subsection 4 just states that an employee, which they can under current law, can bring a civil action, but one change would be that the court would be able to reinstate the employee. The biggest change would be starting in subsection b, stating that the Dept. of Labor shall take complaints, and in the current form of the bill, the Dept. of Labor could try to obtain voluntary compliance, but the major addition would be that the Dept. of labor would also be able to reinstate the employee. The reason it's so large is because it has to go through option 1 and if it isn't active, it establishes the criteria,

attempts to resolve the dispute, and then subsection 2 is after an administrative decision (?). I move the amendment.

**Rep. Delmore:** Second.

**Rep. Dahl:** At what point could the Dept. of Labor reinstate the employee.

**Rep. Griffin:** An employee, and this wouldn't apply to an Executive branch employee, if you looked at the top of 4, subsection 2. If an employee brought the complaint to the Dept. of Labor, and they have to ask for an administrative decision from the Dept. of Labor. The Dept. of Labor would investigate the employee's complaint and then after the investigation, it would reach a decision. Part of that decision could be reinstatement of the employee.

**Rep. Dahl:** In section 2, subsection 1, but it says that an employer may be discharge, discipline, etc.... how does that really change what was in code right above it. It appears to me that it has the same things that were there before.

**Rep. Griffin:** I think it just condenses it. I don't think it makes any difference in the intent.

**Rep. Klemin:** I got the impression there was another bill that was defeated in the Senate. Is this that other bill.

**Rep. Griffin:** It is a portion of that other bill.

**Rep. Klemin:** Essentially the Senate killed another bill on that and passed this one, which is apparently less comprehensive. What you're doing is really amending this bill to put in the parts of that other Senate bill that was stricken from the original bill.

**Rep. Griffin:** This is only half of that other bill. I think part of the reason that the other bill failed is because it was Tracy Potter and Sen. Holmberg. Sen. Holmberg still won, even though, during Sen. Holmberg's testimony he said that he voted for Sen. Potter's bill, and he seemed to think that, it almost sounded like he would like it to go a little further than what his bill did.

**Rep. Zaiser:** That is what I was going to say, that Sen. Holmberg actually supported Sen. Potter's bill when I talked to him. Sen. Holmberg, I guess, thought that something should be added.

**Rep. Klemin:** Where in our statutes do state employees have collective bargaining agreements.

**Rep. Griffin:** I'm not sure.

**Rep. Klemin:** Because in a number of places here, you referred to state employees' collective bargaining agreements.

**Rep. Griffin:** It doesn't say that they have to have a collective bargaining unit, but if they do...

**Rep. Klemin:** That's my question, is there any place in state law now where state employees have collective bargaining agreements with the state.

**Rep. Griffin:** I'm not aware of any.

**Rep. Klemin:** So why even mention collective bargaining units.

**Rep. Griffin:** I suppose we could remove it and that would be fine.

**Rep. Koppelman:** I was not here for the hearing, but as I look at the original bill and amendments, there are a couple of concerns. One major change is that this applies to both private and public employees. I think if we were to have had a hearing on that and talked about private employees, that we would have had a pretty full room in terms of employers around the state and so on. Also, the idea of making the name of the employee confidential, and if it does apply to private employers, I am concerned with that. We create kind of an unlevel playing field where obviously if you have a whistleblower situation, if the employee can hide behind anonymity, I assume Mr. McDonald and others who are concerned with open meetings and records would have something to say about that as well. Obviously the

employer then, particularly if there are legal charges or something, that would become public, so you have an unlevel playing field there as well.

**Rep. Wolf:** I assume that this chapter covers private and public employees. For example, as a teacher, I have collective bargaining. Would the collective bargaining protect me.

**Rep. Klemin:** If you were a state employee, the part I was talking about concerning collective bargaining comes on page 4, at the top (a), the executive branch state employee whose collective bargaining agreement... there aren't any such groups.

**Rep. Wolf:** I'm looking at page 3, subsection 3b, in that section of the code, I'm not familiar with it, does this section of the code just deal with state employees or all employees in general; this could affect both private and public.

**Rep. Griffin:** I didn't have any intention to have this apply to private employees. I think to change it to just apply to public employees would be in the very first thing, page 1, line 1, in the third sentence remove the words "private and". Then it would apply only to public employees.

**Chairman DeKrey:** Let's come back this afternoon and take a look at this again.

**Rep. Klemin:** The wording "may not be disclosed to the public" that's actually not the words you use on open records requirements, it's usually either "confidential" or "exempt" or something like that.

**Chairman DeKrey:** We will recess until after the floor session.

**(Reopened later in the afternoon)**

**Chairman DeKrey:** We will take a look at SB 2267.

**Rep. Griffin:** I withdraw my motion.

**Rep. Delmore:** I withdraw my second.

**Ch. DeKrey:** Recess.

**(Reopened after recess.)**

**Chairman DeKrey:** We will take a look at SB 2267.

**Rep. Griffin:** Before we discuss the amendments, there was a change on page 1, line 3, remove "private and"; and in section 2 that the name would be kept confidential, that was pulled out. Those were the only three changes from the previous amendment.

**Rep. Zaiser:** Why was the name being kept confidential taken out of the bill.

**Rep. Griffin:** Because the committee thought we would take that up in conference committee.

**Rep. Dahl:** This bill still allows the Dept. of Labor, Labor Commissioner, to reinstate somebody in their job.

**Rep. Griffin:** Yes it does, except for Executive branch employees. That provision doesn't apply to executive employees.

**Rep. Dahl:** If somebody were from the Tax Commissioner's office, would they be considered a public employee or an executive employee.

**Rep. Griffin:** Executive. I move the amendments, 90851.0102.

**Rep. Delmore:** Second.

**Rep. Klemin:** What are any of these prohibited actions on page 1 and 2. What are they referring to?

**Rep. Griffin:** I believe it is referring to the threatening to "discharge, discipline, intimidate, penalize, discriminate". If we are going to have a workable statute in the century code, right now our existing code are not effective; because you're really left with two recourses: civil suit or hope that the state's attorney prosecutes on your behalf. Well the state's attorney's office varies in what they can get into that area. They don't want to take on a state agency especially in more borderline cases. Also, there is no attorney fee provision under our current statute, so even getting legal counsel for some of these issues is difficult. I don't think this is a major change, but it does allow the person to go to the Dept. of Labor, so they can at least get the

issue looked at and if we think with the way our laws are, it is important to say that. I think we should actually have it in there to protect the court.

**Rep. Klemin:** In the existing law, in section 6, the employee may suffer a penalty or a threat of a penalty because the employee exercised rights under this statute. Is that not what you've got here about the threats.

**Rep. Griffin:** Where in statute are you talking about.

**Rep. Klemin:** Chapter 34-11.1-06.

**Rep. Koppelman:** Sounds like it is almost broader in current statute, and this would limit it to the itemized issues, wouldn't it.

**Rep. Klemin:** It could. So how is it different, isn't it the same thing.

**Rep. Griffin:** I do think that section does say some of the same things, but I think if you look at 34-11.1-05.

**Rep. Klemin:** Which is in the supplement.

**Rep. Griffin:** It also goes through a number of things that you can't do.

**Rep. Klemin:** Those are prohibited acts. So if you do all of this, then shouldn't section 10 be repealed.

**Rep. Griffin:** I think it could be repealed, but I don't think it would be necessary. I don't think the extra language will be contrary to the law.

**Rep. Klemin:** How about prohibited acts in section 5. The main substantive change that was made was that the employee can bring a civil action for injunctive relief for damages. Is that right.

**Rep. Griffin:** An employee can bring an action right now. I don't think they can bring it to be reinstated, but they definitely can bring a civil action.

**Rep. Klemin:** For injunctive relief.

**Rep. Griffin:** No, the injunctive relief would be reinstated (?).

**Rep. Klemin:** This particular statute, chapter 11.1, an employee is any person employed or under contract providing services for the State, county, city or other political subdivision where compensation is paid. So, in the remedies that you are proposing here would file all over the state, county, city, whatever.

**Rep. Griffin:** Just what the chapter currently gives.

**Rep. Klemin:** But now it provides some very extensive remedies for a person who is hurt.

**Rep. Griffin:** The main two being that the Labor, you have to file a claim with the Labor Commissioner and if they find some sort of wrongdoing, they can reinstate you and the other major change is that it will allow for a court case after a hearing.

**Rep. Dahl:** You said earlier, that somebody working in the Tax Dept. would probably be considered an executive branch state employee.

**Rep. Griffin:** That would be my guess.

**Rep. Dahl:** If that is the case, do we have a problem with the Labor Commissioner who is appointed by the Governor, reinstating an employee of an office which is constitutionally separate from the Governor. Is that a problem. It says on page 4, subsection b, if an executive branch state employee files a complaint, it says the Dept. shall establish whether they need assistance. Then under subsection (b)(2), if the employee seeks an administrative decision, the Dept of Labor has the right to issue a decision and then they may order the reinstatement of the employee.

**Rep. Griffin:** But I believe that if you read at the beginning of subsection b, it says "except as provided under subdivision a", and you go to subsection a, and it says "executive branch state employees" and then go to #2, "may not file a complaint under this subsection seeking an administrative decision".

**Rep. Dahl:** Then why would it say in subsection b, that specific type of employee. That really doesn't make sense to me.

**Rep. Griffin:** It says in (a) that an executive state employee or public employee rights provide a process through which recourse for conduct prohibited by subsection 1. If there is already a process in place you may not file a complaint or administrative decision. Otherwise an executive branch state employee can't file a complaint.

**Rep. Zaiser:** I think that redundancy doesn't make a bill bad. There is redundancy throughout the entire code. It is more expensive in terms of the whistleblower. Right now we have an ineffective whistleblower bill, and I think this bill is very modest when you compare this to Minnesota.

**Rep. Klemin:** On page 3, #2, is this language that they're going to know. We were asked by OMB to change the state personnel board to human resource management services division. That was one of the amendments that they wanted made.

**Rep. Griffin:** If this amendment passes, we can further amend it to change that language.

**Rep. Klemin:** Wouldn't it make sense to just add it here to the amendment now.

**Rep. Griffin:** That's fine.

**Rep. Delmore:** I concur.

**Chairman DeKrey:** We will take a roll call vote on the Griffin amendment.

**5 YES 8 NO 0 ABSENT MOTION FAILED MINORITY REPORT REQUESTED**

**Rep. Klemin:** I move the OMB #1 amendment.

**Rep. Boehning:** Second.

**Chairman DeKrey:** Voice vote, motion carried. We now have the bill before us as amended. What are the committee's wishes.

**Rep. Dahl:** I move a Do Pass as amended.

**Rep. Kingsbury:** Second.

**6 YES 7 NO 0 ABSENT** **DO PASS MOTION FAILED**

**Rep. Boehning:** I move a Do Not Pass motion.

**Chairman DeKrey:** Died for lack of a second to the motion.

**Rep. Dahl:** I move a Do Pass as amended with the OMB #1 amendment.

**Rep. Kretschmar:** Second.

**8 YES 5 NO 0 ABSENT** **DO PASS AS AMENDED** **CARRIER: Rep. Dahl**

Prepared by the Legislative Council staff for
Representative Griffin
March 17, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2267

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 34-01-20 and 34-11.1-04 of the North Dakota Century Code, relating to whistleblower protection for ~~private and~~ public employees; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 34-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**34-01-20. Employer retaliation prohibited - Department of labor assistance - Civil action for relief - Penalty.**

1. An employer may not discharge, discipline, ~~threaten discrimination~~ intimidate, ~~or~~ penalize, discriminate against, threaten any of these prohibited actions against, or otherwise retaliate against an employee regarding the employee's compensation or benefits, conditions, location, terms, duties, or privileges of employment because:

   a. The employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of federal, state, or local law, ordinance, regulation, or rule to an employer, a governmental body, or a law enforcement official.

   b. The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry.

   c. The employee refuses an employer's order to perform an action that the employee believes violates local, state, or federal law, ordinance, rule, or regulation. The employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.

2. An employer who willfully violates this section is guilty of an infraction.

3. An employee asserting a violation of this section may bring a civil action for injunctive relief or actual damages, or both, within one hundred eighty days after the alleged violation, completion of proceedings under subsection 4, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later.

   a. If the court determines that a violation has or is occurring under this section, the court may order~~, as the court deems appropriate,~~ reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. In any action under this section, the court may award reasonable attorney's fees to the prevailing party as part of the costs of litigation.

b. An employee whose collective bargaining agreement, employment contract, or public employee rights provides a process through which recourse for conduct prohibited by subsection 1 is available must exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.

4. The department of labor shall receive complaints of violations of this section and may attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. In order to receive assistance from the department of labor, a person claiming to be aggrieved by a violation of this section shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. An employee is not prohibited from filing, or required to file, a complaint with the department of labor under this subsection before proceeding under other provisions of this section.

**SECTION 2. AMENDMENT.** Section 34-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**34-11.1-04. ~~Violations for misuse reported by employee - Reprisals~~ Employer retaliation prohibited - Furnishing false information - Department of labor assistance - Civil action for relief.**

1. ~~An employee may, without fear of reprisal, report in writing to the employee's respective agency head, a state's attorney, the attorney general, or an employee organization the existence of:~~

   a. ~~A job-related violation of local, state, or federal law, rule, regulation, or ordinance.~~

   b. ~~The job-related misuse of public resources.~~

2. ~~For having made a report under subsection 1, no employee will:~~

   a. ~~Be dismissed from employment.~~

   b. ~~Have salary increases or employment-related benefits withheld.~~

   c. ~~Be transferred or reassigned.~~

   d. ~~Be denied a promotion that the employee otherwise would have received.~~

   e. ~~Be demoted.~~

   f. ~~Be discriminated against in any term or condition of employment.~~

3. An employer may not discharge, discipline, intimidate, penalize, discriminate against, threaten any of these prohibited actions against, or otherwise retaliate against an employee regarding the employee's compensation or benefits, conditions, location, terms, duties, or privileges of employment because:

   a. The employee, or a person acting on behalf of an employee, reports to the employer, employee organization, the attorney general, the state auditor, the labor commissioner, or a law enforcement official:

(1) A violation or suspected violation of federal, state, or local law, ordinance, regulation, or rule; or

(2) A job-related misuse of public resources.

b. The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry.

c. The employee refuses an employer's order to perform an action the employee believes violates local, state, or federal law, ordinance, rule, or regulation. The employee must have an objective basis in fact for this belief and shall inform the employer that the order is being refused for that reason.

2. An employee who intentionally furnishes false information is subject to disciplinary action, including suspension or dismissal as determined by the employee's appointing authority or designee. An employee dismissed under this subsection may appeal first to the state personnel board and then to the district court in the manner prescribed by chapter 28-32, or to other appropriate offices and then to district court if the employee is not under the jurisdiction of the state personnel board.

3. An employee asserting a violation of subsection 1 may bring a civil action for injunctive relief or actual damages, or both, within one hundred eighty days after the alleged violation, completion of proceedings under subsection 4, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later.

a. If the court determines that a violation has or is occurring under subsection 1, the court may order reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. In any action under this section, the court may award reasonable attorney's fees to the prevailing party as part of the costs of litigation.

b. An employee whose collective bargaining agreement, employment contract, or public employee rights provide a process through which recourse for conduct prohibited by subsection 1 is available shall exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.

4. The department of labor shall receive complaints of violations of subsection 1. In order to receive assistance from the department of labor under this subsection, an employee claiming to be aggrieved by a violation of subsection 1 shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. Except as provided under this section, an employee is not prohibited from filing, or is not required to file, a complaint with the department of labor under this subsection before proceeding with any other legal remedy available.

a. An executive branch state employee whose collective bargaining agreement, employment contract, or public employee rights provides

a process through which recourse for conduct prohibited by subsection 1 is available:

(1) May file a complaint with the department of labor for assistance in obtaining voluntary assistance under subdivision c; and

(2) May not file a complaint under this subsection seeking an administrative decision.

b. Except as provided under subdivision a, if an executive branch state employee files a complaint of violation of subsection 1 with the department of labor, upon receipt of the complaint, the department of labor shall establish whether the employee seeks assistance in obtaining voluntary assistance or whether the employee seeks an administrative decision.

(1) If the employee seeks voluntary assistance, the department of labor shall review the complaint to determine whether the complaint may be substantiated. If the department determines the complaint may be substantiated, the department shall attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. A department of labor determination under this paragraph is not an appealable order.

(2) If the employee seeks an administrative decision, the department of labor shall review the complaint and shall issue an administrative decision. The department of labor decision may order reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. Additionally, the decision may award reasonable attorney's fees to the prevailing party. A party may appeal the decision in the manner prescribed by chapter 28-32. If an employee seeks an administrative decision under this paragraph, the employee may not bring a separate civil action for injunctive relief or actual damages.

c. If an employee not covered under subdivision b files a complaint of violation of subsection 1 with the department of labor, the department shall review the complaint to determine whether the complaint may be substantiated. If the department determines the complaint may be substantiated, the department shall attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. A department of labor determination under this subdivision is not an appealable order."

Renumber accordingly

Adopted by the Judiciary Committee -
Minority Report
March 17, 2009

YR
3/18/09
1064

PROPOSED AMENDMENTS TO SENATE BILL NO. 2267

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 34-01-20 and 34-11.1-04 of the North Dakota Century Code, relating to whistleblower protection for employees; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 34-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**34-01-20. Employer retaliation prohibited - Department of labor assistance - Civil action for relief - Penalty.**

1. An employer may not discharge, discipline, ~~threaten discrimination~~ intimidate, ~~or~~ penalize, discriminate against, threaten any of these prohibited actions against, or otherwise retaliate against an employee regarding the employee's compensation or benefits, conditions, location, terms, duties, or privileges of employment because:

   a. The employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of federal, state, or local law, ordinance, regulation, or rule to an employer, a governmental body, or a law enforcement official.

   b. The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry.

   c. The employee refuses an employer's order to perform an action that the employee believes violates local, state, or federal law, ordinance, rule, or regulation. The employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.

2. An employer who willfully violates this section is guilty of an infraction.

3. An employee asserting a violation of this section may bring a civil action for injunctive relief or actual damages, or both, within one hundred eighty days after the alleged violation, completion of proceedings under subsection 4, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later.

   a. If the court determines that a violation has or is occurring under this section, the court may order~~, as the court deems appropriate,~~ reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. In any action under this section, the court may award reasonable attorney's fees to the prevailing party as part of the costs of litigation.

b. An employee whose collective bargaining agreement, employment contract, or public employee rights provides a process through which recourse for conduct prohibited by subsection 1 is available must exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.

4. The department of labor shall receive complaints of violations of this section and may attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. In order to receive assistance from the department of labor, a person claiming to be aggrieved by a violation of this section shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. An employee is not prohibited from filing, or required to file, a complaint with the department of labor under this subsection before proceeding under other provisions of this section.

**SECTION 2. AMENDMENT.** Section 34-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**34-11.1-04. ~~Violations for misuse reported by employee - Reprisals~~ Employer retaliation prohibited - Furnishing false information - Department of labor assistance - Civil action for relief.**

1. ~~An employee may, without fear of reprisal, report in writing to the employee's respective agency head, a state's attorney, the attorney general, or an employee organization the existence of:~~

   a. ~~A job-related violation of local, state, or federal law, rule, regulation, or ordinance.~~

   b. ~~The job-related misuse of public resources.~~

2. ~~For having made a report under subsection 1, no employee will:~~

   a. ~~Be dismissed from employment.~~

   b. ~~Have salary increases or employment-related benefits withheld.~~

   c. ~~Be transferred or reassigned.~~

   d. ~~Be denied a promotion that the employee otherwise would have received.~~

   e. ~~Be demoted.~~

   f. ~~Be discriminated against in any term or condition of employment.~~

3. An employer may not discharge, discipline, intimidate, penalize, discriminate against, threaten any of these prohibited actions against, or otherwise retaliate against an employee regarding the employee's compensation or benefits, conditions, location, terms, duties, or privileges of employment because:

   a. The employee, or a person acting on behalf of an employee, reports to the employer, employee organization, the attorney general, the state auditor, the labor commissioner, or a law enforcement official:

(1) A violation or suspected violation of federal, state, or local law, ordinance, regulation, or rule; or

(2) A job-related misuse of public resources.

b. The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry.

c. The employee refuses an employer's order to perform an action the employee believes violates local, state, or federal law, ordinance, rule, or regulation. The employee must have an objective basis in fact for this belief and shall inform the employer that the order is being refused for that reason.

2. An employee who intentionally furnishes false information is subject to disciplinary action, including suspension or dismissal as determined by the employee's appointing authority or designee. An employee dismissed under this subsection may appeal first to the ~~state personnel board~~ human resource management services division and then to the district court in the manner prescribed by chapter 28-32, or to other appropriate offices and then to district court if the employee is not under the jurisdiction of the ~~state personnel board~~ human resource management services division.

3. An employee asserting a violation of subsection 1 may bring a civil action for injunctive relief or actual damages, or both, within one hundred eighty days after the alleged violation, completion of proceedings under subsection 4, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later.

a. If the court determines that a violation has or is occurring under subsection 1, the court may order reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. In any action under this section, the court may award reasonable attorney's fees to the prevailing party as part of the costs of litigation.

b. An employee whose collective bargaining agreement, employment contract, or public employee rights provide a process through which recourse for conduct prohibited by subsection 1 is available shall exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.

4. The department of labor shall receive complaints of violations of subsection 1. In order to receive assistance from the department of labor under this subsection, an employee claiming to be aggrieved by a violation of subsection 1 shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. Except as provided under this section, an employee is not prohibited from filing, or is not required to file, a complaint with the department of labor under this subsection before proceeding with any other legal remedy available.

a. An executive branch state employee whose collective bargaining agreement, employment contract, or public employee rights provides

a process through which recourse for conduct prohibited by subsection 1 is available:

(1) May file a complaint with the department of labor for assistance in obtaining voluntary assistance under subdivision c; and

(2) May not file a complaint under this subsection seeking an administrative decision.

b. Except as provided under subdivision a, if an executive branch state employee files a complaint of violation of subsection 1 with the department of labor, upon receipt of the complaint, the department of labor shall establish whether the employee seeks assistance in obtaining voluntary assistance or whether the employee seeks an administrative decision.

(1) If the employee seeks voluntary assistance, the department of labor shall review the complaint to determine whether the complaint may be substantiated. If the department determines the complaint may be substantiated, the department shall attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. A department of labor determination under this paragraph is not an appealable order.

(2) If the employee seeks an administrative decision, the department of labor shall review the complaint and shall issue an administrative decision. The department of labor decision may order reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. Additionally, the decision may award reasonable attorney's fees to the prevailing party. A party may appeal the decision in the manner prescribed by chapter 28-32. If an employee seeks an administrative decision under this paragraph, the employee may not bring a separate civil action for injunctive relief or actual damages.

c. If an employee not covered under subdivision b files a complaint of violation of subsection 1 with the department of labor, the department shall review the complaint to determine whether the complaint may be substantiated. If the department determines the complaint may be substantiated, the department shall attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. A department of labor determination under this subdivision is not an appealable order."

Renumber accordingly

Date: 3/17/09

Roll Call Vote #: 1

## 2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2267

# HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee LC Amendment # 90851.0102

Action: ☐ DP ☐ DP / As Amended ☐ & Rerefer to Approp.
☐ DNP ☐ DNP / As Amended

Motion Made By Rep. Griffin Seconded By Rep. Delmore

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Ch. DeKrey | | ✓ | Rep. Delmore | ✓ | |
| Rep. Klemin | | ✓ | Rep. Griffin | ✓ | |
| Rep. Boehning | | ✓ | Rep. Vig | ✓ | |
| Rep. Dahl | | ✓ | Rep. Wolf | ✓ | |
| Rep. Hatlestad | | ✓ | Rep. Zaiser | ✓ | |
| Rep. Kingsbury | | ✓ | | | |
| Rep. Koppelman | | ✓ | | | |
| Rep. Kretschmar | | ✓ | | | |
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Total (Yes) 5 (No) 8 (Absent) 0

Floor Carrier: _____

☐ Vote is amendment, briefly indicate intent:

Roll Call Vote on Griffin Amendment
Motion Failed

## REPORT OF STANDING COMMITTEE (MINORITY)

**SB 2267: Judiciary (Rep. D. DeKrey, Chairman)** A **MINORITY** of your committee (Reps. Delmore, Griffin, Zaiser) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS.**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 34-01-20 and 34-11.1-04 of the North Dakota Century Code, relating to whistleblower protection for employees; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 34-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**34-01-20. Employer retaliation prohibited - Department of labor assistance - Civil action for relief - Penalty.**

1. An employer may not discharge, discipline, ~~threaten discrimination~~ intimidate, ~~or~~ penalize, discriminate against, threaten any of these prohibited actions against, or otherwise retaliate against an employee regarding the employee's compensation or benefits, conditions, location, terms, duties, or privileges of employment because:

   a. The employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of federal, state, or local law, ordinance, regulation, or rule to an employer, a governmental body, or a law enforcement official.

   b. The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry.

   c. The employee refuses an employer's order to perform an action that the employee believes violates local, state, or federal law, ordinance, rule, or regulation. The employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.

2. An employer who willfully violates this section is guilty of an infraction.

3. An employee asserting a violation of this section may bring a civil action for injunctive relief or actual damages, or both, within one hundred eighty days after the alleged violation, completion of proceedings under subsection 4, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later.

   a. If the court determines that a violation has or is occurring under this section, the court may order~~, as the court deems appropriate,~~ reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. In any action under this section, the court may award reasonable attorney's fees to the prevailing party as part of the costs of litigation.

b. An employee whose collective bargaining agreement, employment contract, or public employee rights provides a process through which recourse for conduct prohibited by subsection 1 is available must exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.

4. The department of labor shall receive complaints of violations of this section and may attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. In order to receive assistance from the department of labor, a person claiming to be aggrieved by a violation of this section shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. An employee is not prohibited from filing, or required to file, a complaint with the department of labor under this subsection before proceeding under other provisions of this section.

**SECTION 2. AMENDMENT.** Section 34-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**34-11.1-04. ~~Violations for misuse reported by employee - Reprisals~~ Employer retaliation prohibited - Furnishing false information - Department of labor assistance - Civil action for relief.**

1. ~~An employee may, without fear of reprisal, report in writing to the employee's respective agency head, a state's attorney, the attorney general, or an employee organization the existence of:~~

   a. ~~A job related violation of local, state, or federal law, rule, regulation, or ordinance.~~

   b. ~~The job related misuse of public resources.~~

2. ~~For having made a report under subsection 1, no employee will:~~

   a. ~~Be dismissed from employment.~~

   b. ~~Have salary increases or employment related benefits withheld.~~

   c. ~~Be transferred or reassigned.~~

   d. ~~Be denied a promotion that the employee otherwise would have received.~~

   e. ~~Be demoted.~~

   f. ~~Be discriminated against in any term or condition of employment.~~

3. An employer may not discharge, discipline, intimidate, penalize, discriminate against, threaten any of these prohibited actions against, or otherwise retaliate against an employee regarding the employee's compensation or benefits, conditions, location, terms, duties, or privileges of employment because:

a. The employee, or a person acting on behalf of an employee, reports to the employer, employee organization, the attorney general, the state auditor, the labor commissioner, or a law enforcement official:

(1) A violation or suspected violation of federal, state, or local law, ordinance, regulation, or rule; or

(2) A job-related misuse of public resources.

b. The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry.

c. The employee refuses an employer's order to perform an action the employee believes violates local, state, or federal law, ordinance, rule, or regulation. The employee must have an objective basis in fact for this belief and shall inform the employer that the order is being refused for that reason.

2. An employee who intentionally furnishes false information is subject to disciplinary action, including suspension or dismissal as determined by the employee's appointing authority or designee. An employee dismissed under this subsection may appeal first to the ~~state personnel board~~ human resource management services division and then to the district court in the manner prescribed by chapter 28-32, or to other appropriate offices and then to district court if the employee is not under the jurisdiction of the ~~state personnel board~~ human resource management services division.

3. An employee asserting a violation of subsection 1 may bring a civil action for injunctive relief or actual damages, or both, within one hundred eighty days after the alleged violation, completion of proceedings under subsection 4, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later.

a. If the court determines that a violation has or is occurring under subsection 1, the court may order reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. In any action under this section, the court may award reasonable attorney's fees to the prevailing party as part of the costs of litigation.

b. An employee whose collective bargaining agreement, employment contract, or public employee rights provide a process through which recourse for conduct prohibited by subsection 1 is available shall exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.

4. The department of labor shall receive complaints of violations of subsection 1. In order to receive assistance from the department of labor under this subsection, an employee claiming to be aggrieved by a violation of subsection 1 shall file a complaint with the department within three

hundred days after the alleged act of wrongdoing. Except as provided under this section, an employee is not prohibited from filing, or is not required to file, a complaint with the department of labor under this subsection before proceeding with any other legal remedy available.

a. An executive branch state employee whose collective bargaining agreement, employment contract, or public employee rights provides a process through which recourse for conduct prohibited by subsection 1 is available:

(1) May file a complaint with the department of labor for assistance in obtaining voluntary assistance under subdivision c; and

(2) May not file a complaint under this subsection seeking an administrative decision.

b. Except as provided under subdivision a, if an executive branch state employee files a complaint of violation of subsection 1 with the department of labor, upon receipt of the complaint, the department of labor shall establish whether the employee seeks assistance in obtaining voluntary assistance or whether the employee seeks an administrative decision.

(1) If the employee seeks voluntary assistance, the department of labor shall review the complaint to determine whether the complaint may be substantiated. If the department determines the complaint may be substantiated, the department shall attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. A department of labor determination under this paragraph is not an appealable order.

(2) If the employee seeks an administrative decision, the department of labor shall review the complaint and shall issue an administrative decision. The department of labor decision may order reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. Additionally, the decision may award reasonable attorney's fees to the prevailing party. A party may appeal the decision in the manner prescribed by chapter 28-32. If an employee seeks an administrative decision under this paragraph, the employee may not bring a separate civil action for injunctive relief or actual damages.

c. If an employee not covered under subdivision b files a complaint of violation of subsection 1 with the department of labor, the department shall review the complaint to determine whether the complaint may be substantiated. If the department determines the complaint may be substantiated, the department shall attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. A department of labor determination under this subdivision is not an appealable order."

Renumber accordingly

The reports of the majority and the minority were placed on the Seventh order of business on the calendar for the succeeding legislative day.

Adopted by the Judiciary Committee -
Majority Report
March 17, 2009

VR
3/18/09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2267

Page 1, line 23, overstrike "dismissed under this subsection" and insert immediately thereafter "claiming reprisal under this section"

Page 1, line 24, overstrike "state personnel board" and insert immediately thereafter "human resource management services division"

Page 2, line 2, overstrike "state personnel"

Page 2, line 3, overstrike "board" and insert immediately thereafter "human resource management services division"

Page 2, after line 11, insert:

"5. All permanent and temporary employees of the state may appeal claims of reprisal under this section in the manner prescribed for classified employees under chapter 54-44.3. This subsection does not apply to appointed officials, members of state boards and commissions, employees under the jurisdiction of the state board of higher education, and the chief deputy and personal secretary of an elected official, unless the individual is employed in a classified position."

Renumber accordingly

Date: 3/17/09

Roll Call Vote #: 2

## 2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

## BILL/RESOLUTION NO. 2267

# HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee LC Amendment # w/OMB# 1 Amendment

Action: ☐ DP ☑ DP / As Amended ☐ & Rerefer to Approp.
☐ DNP ☐ DNP / As Amended

Motion Made By Rep. Dahl Seconded By Rep. Kingsbury

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Ch. DeKrey | | ✓ | Rep. Delmore | | ✓ |
| Rep. Klemin | ✓ | | Rep. Griffin | | ✓ |
| Rep. Boehning | | ✓ | Rep. Vig | | ✓ |
| Rep. Dahl | ✓ | | Rep. Wolf | | ✓ |
| Rep. Hatlestad | ✓ | | Rep. Zaiser | | ✓ |
| Rep. Kingsbury | ✓ | | | | |
| Rep. Koppelman | ✓ | | | | |
| Rep. Kretschmar | ✓ | | | | |
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Total (Yes) 6 (No) 7 (Absent) 0

Floor Carrier: _____

☐ Vote is amendment, briefly indicate intent:

Motion failed.

Date: 3/17/09

Roll Call Vote #: 3

## 2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2267

# HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee LC Amendment # OMB #1 Amendment

Action: ☐ DP ☑ DP / As Amended ☐ & Rerefer to Approp.
☐ DNP ☐ DNP / As Amended

Motion Made By Rep. Dahl Seconded By Rep. Kretchmar

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Ch. DeKrey | | ✓ | Rep. Delmore | | ✓ |
| Rep. Klemin | ✓ | | Rep. Griffin | | ✓ |
| Rep. Boehning | | ✓ | Rep. Vig | ✓ | |
| Rep. Dahl | ✓ | | Rep. Wolf | ✓ | |
| Rep. Hatlestad | ✓ | | Rep. Zaiser | | ✓ |
| Rep. Kingsbury | ✓ | | | | |
| Rep. Koppelman | ✓ | | | | |
| Rep. Kretschmar | ✓ | | | | |
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Total (Yes) 8 (No) 5 (Absent) 0

Floor Carrier: Rep. Dahl

☐ Vote is amendment, briefly indicate intent:

## REPORT OF STANDING COMMITTEE (MAJORITY)

**SB 2267: Judiciary (Rep. D. DeKrey, Chairman)** A **MAJORITY** of your committee (Reps. Dahl, Kingsbury, Klemin, Koppelman, Kretschmar, Hatlestad) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS.**

Page 1, line 23, overstrike "dismissed under this subsection" and insert immediately thereafter "claiming reprisal under this section"

Page 1, line 24, overstrike "state personnel board" and insert immediately thereafter "human resource management services division"

Page 2, line 2, overstrike "state personnel"

Page 2, line 3, overstrike "board" and insert immediately thereafter "human resource management services division"

Page 2, after line 11, insert:

"5. All permanent and temporary employees of the state may appeal claims of reprisal under this section in the manner prescribed for classified employees under chapter 54-44.3. This subsection does not apply to appointed officials, members of state boards and commissions, employees under the jurisdiction of the state board of higher education, and the chief deputy and personal secretary of an elected official, unless the individual is employed in a classified position."

Renumber accordingly

2009 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2267

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2267

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 4/20/09

Recorder Job Number: 11961

Committee Clerk Signature

Minutes:

| | |
|---|---|
| **Senator Olafson, Chairman** | **Representative Dahl** |
| **Senator Nething** | **Representative Boehning** |
| **Senator Nelson** | **Representative Wolf** |

Senator Olafson relates that Senator Nelson would not be there, they appointed Senator O'Connell but he had a conflicting meeting. Senator Olafson said they would hear the explanation on what was done with the bill and probably meet again when all can be there. He then asks Rep. Dahl to explain the amendment put on the bill. She says there was a minority report submitted that the House rejected. She said basically what they have now is what the Senate approved, which is involving the Labor Commissioner but nothing binding on anyone, just an invitation to attempt to settle any disputes. She continues explaining that HRS came in with an amendment that makes clear the process by which employees claiming reprisal can follow. Senator Olafson asks her to tell them where the division exists in the HRS. Rep. Dahl responds she believes it is a division of OMB, they deal with the classified employees. There is a section of code already set out for how a classified employee would follow this process, it then points out who it doesn't include in this. Senator Nething said he

thinks this has explained what occurred. Senator Olafson adjourned the meeting till further notice.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2267

Senate Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 4/22/09

Recorder Job Number: 12096

Committee Clerk Signature

Minutes:

| | |
|---|---|
| **Senator Olafson, Chairman** | **Representative Dahl** |
| **Senator Nething** | **Representative Boehning** |
| **Senator Schneider** | **Representative Wolf** |

Senator Olafson opens the 2nd meeting for the conference committee on SB2267. He asks Laurie Sterioti Hammeren, SPHR Director, and give information on the majority report. She said she would cover the amendments, basically what they did was change the language from State Personnel Board in section 3 to Human Resource Management Services. She says the State Personnel Board does not typically hear these types of grievances any longer. From the Human Resource Management Services it is given to the Office of Administrative Hearings and an Administrative Law Judge hears the appeal. She states the only types of appeals left for the State Personnel Board are classification and pay grade appeals, for all other employment kind of appeals the Office of Administrative Hearings does those. They think that is the appropriate recourse to be consistent. Currently the appeal would be limited to classified workers but the intent in section 5 is to open that up to whether they are classified workers or not. They then would not need to go to District Court which would be more costly to

the State and the person since we have a State wide appeal mechanism, it makes sense that all employees would be allowed the opportunity to go this route. She said they may need to add language so they are not in conflict with those entities that are already accepted under the definition. She does question the number of days an employee has to go to the state wide appeal system. Representative Dahl asks her if she is suggesting limiting the number of days to 150 days or would that be problematic. Lisa Fair McEvers – Commissioner of Labor comes up to the podium to answer questions. She says it is her recollection that this chapter includes folks other than state employees. She said in the definition an employee includes folks outside the state system. It might make more sense to limit state employees to the smaller time frame or limit the folks who can come to the Labor Dept. to those who do not have the recourse to go through HRMS for their process. Rep. Wolf asks Fair-McEvers if she objected to section 4 when the bill was in the Senate. Fair-McEvers replied that she did not object at that time and is not objecting now. She said she only testified briefly and didn't think it would have a fiscal impact on her dept. She said she is neutral but she does see that it will affect more than just state employees. She tells of where the 300 days came from. She explains it is consistent with the 300 days that is allowed in 34120, that is the general whistleblower bill. That is another chapter that can be used by private industry or by state or political subdivisions. Senator Schneider asks what the harm is in reducing the 300 day period or just leaving it as it is. Fair-McEvers said it gives state employees a second bite at the apple, for others it might not be resolved. Senator Nething asks what the connection of the 300 days and the amendment is. Sterioti-Hammeren responds that previously classified workers could go to the State Personnel Board and they are just changing that to HRMS, but section five addresses any employee whether classified or not except for those now identified to be able to appeal equally. Rep. Dahl points out that subsection four is voluntary with no real teeth so she is

unsure how helpful that it is. She wonders if it is just dragging out the process in cases when there is no way to resolve it. Senator Nething asks Rep. Dahl if we should leave that section alone or change it . Rep. Dahl responds she thinks it should be changed. Senator Olafson recommends they appoint a sub-committee of two to work on an amendment with workable language. He appoints Senator Schneider and Rep. Dahl to work with Sterioti Hammeren and Fair-McEvers on amendment that works for everyone.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2267

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 4/23/09

Recorder Job Number: 12156

Committee Clerk Signature

Minutes:

| | |
|---|---|
| **Senator Olafson, Chairman** | **Representative Dahl** |
| **Senator Nething** | **Representative Boehning** |
| **Senator Schneider** | **Representative Wolf** |

Senator Olafson reconvenes the conference committee on SB2267 for the 3rd meeting.

He asks Rep. Dahl for a report from the sub-committee. Rep. Dahl presents an amendment that she and Senator Schneider had drafted. She said they met with the Labor Commissioner and Laurie Sterioti-Hammeren from HRMS. She said there was a lot of overlap in two whistleblower statutes. She said it was very unclear. They kept the technical part of the bill keeping HRMS but also to look at the two parallel statutes to see if there is a way to streamline them and make clear who falls under which statute. She mentions that because this is so late in the process to craft something thoughtful and that provides an appropriate road map for the Labor Commissioner is beyond what they can do right now. Senator Nething move the House recede from House amendments and amend as follows, Rep. Boehning seconded.

Roll call vote- 6 yes, 0 no.

Senator Schneider will carry.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2267

Senate Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 4/27/09

Recorder Job Number: 12295

Committee Clerk Signature

Minutes:

| | |
|---|---|
| **Senator Olafson, Chairman** | **Representative Dahl** |
| **Senator Nething** | **Representative Boehing** |
| **Senator Schneider** | **Representative Wolf** |

Senator Olafson asks Senator Schneider to give a brief overview of the amendment.

Senator Nething suggests they first take action to reconsider and he moves they reconsider the action by which the House receded from its amendments and further amended. Senator Schneider seconded. Verbal vote, all yes, motion carried.

Senator Schneider said he had good conversation with Commissioner McEvers and asked if she would answer some questions. Lisa Fair-McEvers, Commissioner of Labor. She said she was contacted late Friday afternoon by Laurie Sterioti-Hammeren and Todd Anderson about reinserting some language before the bill goes to the Senate floor. She said Mr. Anderson thought it would be helpful if somehow subsection five could be revived. It would give some employees somewhere to claim their grievance. There could some folks helped even before the study went into place. She said there were some inconsistencies with the definitions section of this chapter. By working on this they believe now more state employees will have a

place to file a grievance with the whistleblower that they can all go to HMS whether they are classified or not. They left out two exceptions, employees under the State Board of Higher Education which is already in sub-section 5 and the Judicial Branch of Government. She said what they are saying is allow all permanent and temporary employees to be able to file a whistleblower. Representative Dahl asks the Commissioner if the way this is written an unclassified employee would still have a way to appeal, they would just have to do it in a process that is afforded to a classified employee, minus those exceptions. The Commissioner replies, yes that is what is trying to be accomplished here. Rep. Dahl asks her if the 300 days should be taken out as they did on one of the amendments that had been drafted. The Commissioner said she doesn't want to say there is a better way, her issue with the 300 days is there could be instances where someone has gone through the process, the process is over and it is passed and then they'll come to the Dept. of Labor who accepts the complaint and when they contact the employer the employer doesn't want to participate because they have already been through the process. She doesn't see any harm in leaving it in. She thought maybe adding the language, the completion of any admistrative process, so they know there is an end to it. Senator Nething wonders if the study won't help us resolve some of these things. Rep. Dahl said she was thinking that if we take out section four because it is unclear. Senator Schneider asks the Labor Commissioner if section 4 is taken out could she still mediate for both sides prior to going through HRMS and OHA. She responds she wouldn't have any authority to receive a complaint under 3411.1 without that subsection, but does have authority under 3401.20. Under that section classified employees have to have exhausted their administrative remedies. Senator Olafson said it seems to him the compromise between what Senator Nething has suggested and what Rep. Dahl has suggested is the same suggestion from the Commissioner. The committee discusses several different ways to change the

language and whether they should take out the 300 days or leave it in. Senator Nething agrees with the 300 days. It is decided to leave in the 300 days and leave in section 4. Representative Wolf said her take on the whole thing is there is no harm in leaving section 4 in the bill with Senator Schneider's amendments. She said it is unsure if it will cover it if it's not in the bill. She said if it's redundant it can be taken out next session. It will be there if it is needed and then study this mess in the interim. Senator Schneider agrees that is the safest action.

Rep. Dahl motions the House from its amendments and adopt the amendments, 0108, and further amend.

Senator Schneider seconded

Discussion

Senator Schneider reads through the amendment language

Senator Olafson asks if administrative process or administrative hearing is the right language. Senator Schneider said he doesn't see this being used a lot. He says if there is ever an issue that calls for a study, this is it.

Roll call vote, 6 yes, 0 no, motion carries

Senator Schneider will carry

90851.0105
Title. 6400

Prepared by the Legislative Council staff for
Representative Dahl
April 22, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2267

That the House recede from its amendments as printed on page 975 of the Senate Journal and page 1011 of the House Journal and that Senate Bill No. 2267 be amended as follows:

Page 1, line 2, after "employees" insert "; and to provide for a legislative council study"

Page 1, line 23, overstrike "dismissed under this subsection" and insert immediately thereafter "claiming reprisal under this section"

Page 1, line 24, overstrike "state personnel board" and insert immediately thereafter "human resource management services division"

Page 2, line 2, overstrike "state personnel"

Page 2, line 3, overstrike "board" and insert immediately thereafter "human resource management services division"

Page 2, replace lines 4 through 11 with:

"**SECTION 2. LEGISLATIVE COUNCIL STUDY - WHISTLEBLOWER LAWS.** During the 2009-10 interim, the legislative council shall consider studying the state's whistleblower protection laws, including whether the laws adequately address the public policy issues related to whistleblower protection. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

Date: 4/20/09
4/23/09 - cont'd

Roll Call Vote #: 1

**2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO. SB2267** as (re) engrossed

Senate Judiciary Committee

☒ Check here for **Conference Committee**

Action Taken
- ☐ SENATE accede to House Amendments
- ☐ SENATE accede to House Amendments and further amend
- ☐ HOUSE recede from House Amendments
- ☒ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) 975 --_____

- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

Motion Made By Sen. Nething Seconded By Rep. Boehning

| Senators | Attend 1 | 2nd | 4/23 | Yes | No | | Representatives | Attend | 2nd | | Yes | No |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Senator Olafson -Chair | X | X | X | X | | | Rep. Dahl | X | X | X | X | |
| Senator Nethng | X | X | X | X | | | Rep. Boehning | X | X | X | X | |
| ~~Senator Nelson~~ | A | | | | | | Rep. Wolf | X | X | X | X | |
| Senator Schneider | | X | X | X | | | | | | | | |

Vote Count 6 Yes 0 No _____ Absent

**Senate Carrier** Sen. Schneider **House Carrier** _____

LC NO._____ of amendment

LC NO._____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

## REPORT OF CONFERENCE COMMITTEE

**SB 2267:** Your conference committee (Sens. Olafson, Nething, Schneider and Reps. Dahl, Boehning, Wolf) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 975, adopt amendments as follows, and place SB 2267 on the Seventh order:

That the House recede from its amendments as printed on page 975 of the Senate Journal and page 1011 of the House Journal and that Senate Bill No. 2267 be amended as follows:

Page 1, line 2, after "employees" insert "; and to provide for a legislative council study"

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Page 2, line 3, overstrike "board" and insert immediately thereafter "human resource management services division"

Page 2, replace lines 4 through 11 with:

"**SECTION 2. LEGISLATIVE COUNCIL STUDY - WHISTLEBLOWER LAWS.** During the 2009-10 interim, the legislative council shall consider studying the state's whistleblower protection laws, including whether the laws adequately address the public policy issues related to whistleblower protection. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

SB 2267 was placed on the Seventh order of business on the calendar.

90851.0108
Title. 6500

Prepared by the Legislative Council staff for
Senator Schneider
April 27, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2267

That the House recede from its amendments as printed on page 975 of the Senate Journal and page 1011 of the House Journal and that Senate Bill No. 2267 be amended as follows:

Page 1, line 2, after "employees" insert "; and to provide for a legislative council study"

Page 1, line 23, overstrike "dismissed under this subsection" and insert immediately thereafter "claiming reprisal under this section"

Page 1, line 24, overstrike "state personnel board" and insert immediately thereafter "human resource management services division"

Page 2, line 2, overstrike "state personnel"

Page 2, line 3, overstrike "board" and insert immediately thereafter "human resource management services division"

Page 2, after line 11, insert:

"5. An employee of the state may appeal a claim of reprisal under this section in the manner prescribed for a classified employee under chapter 54-44.3. This subsection does not apply to an employee under the jurisdiction of the state board of higher education or the judicial branch of government.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - WHISTLEBLOWER LAWS.** During the 2009-10 interim, the legislative council shall consider studying the state's whistleblower protection laws, including whether the laws adequately address the public policy issues related to whistleblower protection. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

Date: 4-27-09

Roll Call Vote #: _____

**2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO. SB** as (re) engrossed

Senate Judiciary Committee

☒ Check here for **Conference Committee**

Action Taken
- ☐ SENATE accede to House Amendments
- ☐ SENATE accede to House Amendments and further amend
- ☐ HOUSE recede from House Amendments
- ☒ HOUSE recede from House amendments and amend as follows 0158

Senate/House Amendments on SJ/HJ pages(s) _____--_____

- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

Motion Made By Rep Dahl Seconded By Sen Schneider

| Senators | 4/27 | | | Yes | No | | Representatives | 4/27 | | | Yes | No |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Senator Olafson - Chair | X | | | X | | | Rep. Dahl | X | | | X | |
| Senator Nething | X | | | X | | | Rep. Boehning | X | | | X | |
| Senator Schneider | X | | | X | | | Rep. Wolf | X | | | X | |
| | | | | | | | | | | | | |

Vote Count 6 Yes 0 No _____ Absent

**Senate Carrier** Sen Schneider **House Carrier** _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

## REPORT OF CONFERENCE COMMITTEE

**SB 2267:** Your conference committee (Sens. Olafson, Nething, Schneider and Reps. Dahl, Boehning, Wolf) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 975, adopt amendments as follows, and place SB 2267 on the Seventh order:

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Page 2, line 3, overstrike "board" and insert immediately thereafter "human resource management services division"

Page 2, after line 11, insert:

"5. An employee of the state may appeal a claim of reprisal under this section in the manner prescribed for a classified employee under chapter 54-44.3. This subsection does not apply to an employee under the jurisdiction of the state board of higher education or the judicial branch of government.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - WHISTLEBLOWER LAWS.** During the 2009-10 interim, the legislative council shall consider studying the state's whistleblower protection laws, including whether the laws adequately address the public policy issues related to whistleblower protection. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

SB 2267 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2267

Attachment 2
2267

PROPOSED AMENDMENTS TO SENATE BILL NO. 2267

Page 1, line 23, overstrike "dismissed under this subsection" and insert immediately thereafter "claiming reprisal under this section"

Page 1, line 24, overstrike "state personnel board" and insert immediately thereafter "human resource management services division"

Page 2, lines 2 through 3, overstrike "state personnel board" and insert immediately thereafter "human resource management services division"

Renumber accordingly

99187 SB-2267

Prepared by the North Dakota Legislative Council staff for Senator Holmberg
January 2008

# PUBLIC EMPLOYEE WHISTLEBLOWER PROTECTION - COMPARISON OF STATE LAWS

## INTRODUCTION

This memorandum reviews North Dakota's whistleblower protection laws for public employees, compares North Dakota's protection to that of neighboring states, and reviews the protection of states that give heightened protection.

*Black's Law Dictionary* defines a whistleblower act as "A federal or state law protecting employees from retaliation for disclosing employer illegality, such as during an investigation by a regulatory agency." This memorandum does not address federal whistleblower laws.

North Dakota is an at-will employment state, which in general means an employer may discharge an employee for no reason, a good reason, or a bad reason but not for an illegal reason. The whistleblower protection laws in North Dakota provide an exception to at-will employment by providing an "illegal reason" to discharge an employee.

## NORTH DAKOTA LAW

The North Dakota Century Code (NDCC) provides whistleblower protection for public employees through two statutory provisions. Section 34-01-20 provides whistleblower protection for public and private sector employees and Section 34-11.1-04 provides whistleblower protection for public employees.

### All Employees - North Dakota Century Code Section 34-01-20

**Protection**

North Dakota Century Code Section 34-01-20 provides:

**34-01-20. Employer retaliation prohibited - Civil action for relief - Penalty.**

1. An employer may not discharge, discipline, threaten discrimination, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because:
   a. The employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of federal, state, or local law, ordinance, regulation, or rule to an employer, a governmental body, or a law enforcement official.
   b. The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry.
   c. The employee refuses an employer's order to perform an action that the employee believes violates local, state, or federal law, ordinance, rule, or regulation. The employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.
2. An employer who willfully violates this section is guilty of an infraction.
3. An employee asserting a violation of this section may bring a civil action for injunctive relief or actual damages, or both, within one hundred eighty days after the alleged violation, completion of proceedings under subsection 4, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later. If the court determines that a violation has or is occurring under this section, the court may order, as the court deems appropriate, reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. In any action under this section, the court may award reasonable attorney's fees to the prevailing party as part of the costs of litigation. An employee whose collective bargaining agreement, employment contract, or public employee rights provides a process through which recourse for conduct prohibited by subsection 1 is available must exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.
4. The department of labor shall receive complaints of violations of this section and may attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. In order to receive assistance from the department of labor, a person claiming to be aggrieved by a violation of this section shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. An employee is not prohibited from filing, or required to file, a complaint with the department of labor

under this subsection before proceeding under other provisions of this section.

The whistleblower protections of NDCC Section 34-01-20 apply to the following three protected actions:

1. A report of a violation of law as follows:
   a. A report must be made by the employee or by a person acting on behalf of the employee;
   b. The report must be made in good faith;
   c. The law does not specify the format of the report, such as written or verbal;
   d. The report must state a violation or suspected violation of a federal, state, or local law, ordinance, regulation, or rule; and
   e. The report must be provided to:
      (1) The employer;
      (2) A governmental body; or
      (3) A law enforcement official.
2. A request by a public body or official that the employee participate in:
   a. An investigation;
   b. A hearing; or
   c. An inquiry.
3. A refusal by the employee to perform an illegal act as follows:
   a. The employer orders the employee to perform an act;
   b. The employee believes the ordered act violates local, state, or federal law, ordinance, rule, or regulation;
   c. The employee has an objective basis in fact for the belief the act violates the law; and
   d. The employee informs the employer the reason for refusal is the belief the act violates a law.

The retaliation protection elements of this whistleblower law are an employer may not discharge, discipline, threaten discrimination, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because of the employee's protected actions under this law.

The state assistance provisions of this whistleblower law are:

1. An employer may file a complaint with the Department of Labor;
2. The complaint must be filed with the department within 300 days of the alleged act of wrongdoing;
3. Upon receipt of a complaint, the Department of Labor may attempt to obtain voluntary compliance through:
   a. Informal advice;
   b. Negotiation; or
   c. Conciliation; and
4. Failure to file a report with the Department of Labor does not prevent the employee from proceeding with a civil action.

**Penalties**

North Dakota Century Code Section 34-01-20 provides a violation of the section is an infraction. Under Section 12.1-32-01(7), an infraction allows for the imposition of a maximum fine of $500. Additionally, if a person convicted of an infraction were convicted of an infraction within one year before commission of the current infraction, the current infraction may be sentenced as though convicted of a Class B misdemeanor. Section 34-01-20 provides a willful level of culpability for this criminal offense. Section 12.1-02-02(1)(e) provides willful means the conduct was engaged intentionally, knowingly, or recklessly.

In addition to the criminal penalty, NDCC Section 34-01-20 specifies an employee may bring a civil action for injunctive relief, actual damages, or both. In order to bring a civil action under this section, an employee must bring the action within 180 days of the later of:

1. The alleged act of wrongdoing;
2. Completion of proceedings by the Department of Labor; or
3. Completion of any grievance procedure available to the employee under the employee's:
   a. Collective bargaining agreement;
   b. Employment contract; or
   c. Any public employee statute, rule, or policy.

If a court determines a violation of this whistleblower law has occurred or is occurring, the court may order any one or more of the following:

1. Reinstatement of the employee.
2. Backpay for no more than two years after the violation. Interim earnings or amounts earnable with reasonable diligence shall reduce backpay otherwise allowable.
3. Reinstatement of fringe benefits.
4. Temporary or permanent injunctive relief.
5. Reasonable attorney's fees for the prevailing party.

If an employee's collective bargaining agreement, employment contract, or public employee rights provide a process through which recourse for prohibited conduct is available, the employee shall exercise that process to completion before bringing a civil action. If the process provides for judicial review by statutory appeal, civil action under this section is not available.

## Public Employees - North Dakota Century Code Section 34-11.1-04

**Protection**

North Dakota Century Code Section 34-11.1-04 provides:

**34-11.1-04. Violations for misuse reported by employee - Reprisals prohibited - Furnishing false information.**

1. An employee may, without fear of reprisal, report in writing to the employee's

respective agency head, a state's attorney, the attorney general, or an employee organization the existence of:
   a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.
   b. The job-related misuse of public resources.
2. For having made a report under subsection 1, no employee will:
   a. Be dismissed from employment.
   b. Have salary increases or employment-related benefits withheld.
   c. Be transferred or reassigned.
   d. Be denied a promotion that the employee otherwise would have received.
   e. Be demoted.
   f. Be discriminated against in any term or condition of employment.
3. An employee who intentionally furnishes false information is subject to disciplinary action, including suspension or dismissal as determined by the employee's appointing authority or designee. An employee dismissed under this subsection may appeal first to the state personnel board and then to the district court in the manner prescribed by chapter 28-32, or to other appropriate offices and then to district court if the employee is not under the jurisdiction of the state personnel board.

The reporting elements of this whistleblower law are:

1. Application to employees, as defined under NDCC Section 34-11.1-04(3) to mean employees providing services for the state, county, city, or other political subdivision, except the term does not include individuals elected to public office in the state or in a political subdivision, members of the Legislative Council staff, individuals holding an appointive statutory office, one deputy or principal assistant for each elected official or appointive statutory official, one secretary for each elected or appointive statutory official, and all members of the Governor's staff;
2. An employee is authorized to make a report under this section but this section does not create a duty for the employee to report;
3. A report must be made by the employee;
4. A report must be made in writing;
5. A report must be made to:
   a. The employee's agency head;
   b. A state's attorney;
   c. The attorney general; or
   d. An employee organization; and
6. A report must relate to the existence of:
   a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance; or
   b. A job-related misuse of public resources.

The retaliation protection elements of this whistleblower law are:

1. An employee may make a report without fear of reprisal; and
2. If an employee makes a report, the employee may not:
   a. Be dismissed from employment;
   b. Have salary increases or employment-related benefits withheld;
   c. Be transferred or reassigned;
   d. Be denied a promotion the employee would have otherwise received;
   e. Be demoted; or
   f. Be discriminated against in any term or condition of employment.

The limitation on retaliation protection of this whistleblower law is that if an employee intentionally furnishes false information, the employee may be subject to disciplinary action. If an employee is dismissed for intentionally furnishing false information, an employee under the jurisdiction of the State Personnel Board may bring an administrative appeal with the State Personnel Board and an employee who is not under the jurisdiction of the State Personnel Board may bring an appeal with an appropriate office. An appeal from a decision of the State Personnel Board or other appropriate office may be appealed to the district court.

**Additional Protections**

In addition to the protections of NDCC Section 34-11.1-04, Section 34-11.1-05 provides an employer may not "[r]estrict or attempt to restrict after-working-hour statements, pronouncements, or other activities of any agency employee not otherwise prohibited by law which pertains to matters of public concern, if the employee does not purport to speak or act in an official capacity." Section 34-11.1-06 provides an employee may not suffer a penalty or the threat of a penalty because of exercising the employee's rights provided under Chapter 34-11.1.

**Penalties**

North Dakota Century Code Section 34-11.1-08 provides a violation of Chapter 34-11.1 is a Class B misdemeanor. Under Section 12.1-32-01(6), a Class B misdemeanor allows for the imposition of a maximum penalty of 30 days' imprisonment, a fine of $1,000, or both. Section 34-11.1-08 does not provide a level of culpability for this criminal offense.

Although NDCC Section 34-11.1-04 does not specifically create a cause of action for a civil action, Section 34-11.1-07 specifically states the chapter does not limit any other legal rights or remedies.

## LAWS OF OTHER STATES

Most states offer some type of whistleblower protection for public employees. Some states address public employee protection separately from private employee protection and some states address both public and private employee protection together.

### Neighboring States

**Minnesota**

Minnesota law provides whistleblower protection through Minnesota Statutes Section 181.932. This law applies to both private and public employees and is very similar to NDCC Section 34-01-20, which also applies to both private and public employees.

Differences between Minnesota's law and NDCC Section 34-01-20 include:

1. Minnesota law protects the act of an employee reporting a situation in which the quality of health care services provided by a health care provider violates a standard established by federal or state law or a professionally recognized national clinical or ethical standard and potentially places the public at risk of harm.
2. If a report is made to a governmental body or law enforcement official, Minnesota law provides the name of the employee is private data and may not be disclosed to the public.

**Montana**

Montana Code provides whistleblower protection under Sections 39-02-901 et seq. Section 39-02-904 provides whistleblower protection to private and public employees. The law is brief, providing a "discharge is wrongful only if: (a) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy . . .". Section 39-02-911 provides an employee shall exhaust written internal procedures before pursuing civil remedies.

**South Dakota**

South Dakota law provides whistleblower protection for state executive branch employees through South Dakota Codified Laws Section 3-6A-52, which states:

> **3-6A-52. Grievance for retaliation against whistle blower.** An employee may file a grievance with the Career Service Commission if the employee believes that there has been retaliation because of reporting a violation of state law through the chain of command of the employee's department or to the attorney general's office or because the employee has filed a suggestion pursuant to this section.

Section 3-6A-38 provides the procedure through which an employee may file a grievance with the Career Service Commission, which is a five-member commission appointed by the Governor. A final action or decision of the commission may be appealed in accordance with South Dakota's administrative procedures law.

### Selected States

Although most states provide whistleblower protection for public employees, the protection ranges over a broad spectrum. The National Conference of State Legislatures has created a brief summary of each of the state's whistleblower protection laws. A copy of a table of the summary is attached as an appendix. In reviewing the public employee whistleblower protection laws of each state, the following states appear to provide comprehensive protection.

**Maryland**

Maryland law provides whistleblower protection for executive branch state employees through Maryland Code SPP Sections 5-301 et seq. Maryland's law provides a state employer may not retaliate against an employee who discloses information that the employee believes evidences an abuse of authority, gross mismanagement, or gross waste of money; a substantial and specific danger to public health or safety; or a violation of law. The law provides:

- A procedure through which a state employee who believes he or she has been improperly retaliated against by an executive branch agency can report to the Secretary of the Department of Budget and Management.
- A procedure through which the Secretary is directed to investigate reports of retaliation, including taking remedial actions.
- A procedure through which a state employee may appeal the decision of the Secretary to the Office of Administrative Hearings.

**Nebraska**

Nebraska law provides whistleblower protection for state employees through the State Government Effectiveness Act, which is codified at Nebraska Revised Statutes Sections 81-2701 through 81-2711. Section 81-2702 states:

> The primary purpose of the State Government Effectiveness Act is to encourage public officials and employees to disclose information concerning possible violations of law and fiscal waste or mismanagement in to encourage public officials and employees to disclose information concerning possible violations of law and fiscal waste or mismanagement in state government to elected state officials or the Public Counsel and to prohibit reprisals for such disclosures by state employees.
>
> The Legislature finds and declares that it is in the vital interest of the people of this state that their government operate in accordance with the law and without fraud, waste, or mismanagement. If this interest is to be protected, public officials and employees must work in a climate where conscientious service is encouraged and disclosures of illegalities or

improprieties may be made without reprisal or fear of reprisal.

Nebraska's law provides for:

- A detailed process through which a state employee may make a report to the Public Counsel of violation of a law, gross mismanagement or gross waste of funds, or substantial and specific danger to public health or safety.
- Directs the Public Counsel to consider whether to investigate a report of wrongdoing and provides a detailed process for the investigation.
- Provides the Public Counsel shall receive any allegation of improper reprisal against an employee who makes a report of wrongdoing and shall investigate such allegations.
- Provides for a hearing process for employees whom the Public Counsel determines have been improperly retaliated against.

Nebraska's whistleblower protection law relies heavily on the Office of the Public Counsel, which is also known as the State Ombudsman's Office. The Office of the Public Counsel is an independent complaint-handling office for the use of citizens who have complaints about the actions of administrative agencies of state government. North Dakota does not have an agency that provides this service.

**South Carolina**

South Carolina law provides whistleblower protection for state employees under South Carolina Code of Laws Chapter 8-27. Section 8-27-20(B) provides:

> If the employee's report results in saving of any public money from the abuses described in this chapter, twenty-five percent of the estimated net savings resulting from the first year of implementation of the employee's report, but not more than two thousand dollars, must be rewarded to the employee by the public body as determined by the State Budget and Control Board.

**Wisconsin**

Wisconsin law provides whistleblower protection for state employees under Wisconsin Statutes Section 230.80 et seq. Wisconsin's law provides:

- A detailed process through which a state employee may make a report of violation of a state or federal law, mismanagement or abuse of authority in state or local government, substantial waste of public funds, or danger to public health and safety.
- A detailed procedure through which a governmental entity is directed to process the reported information.
- A detailed process through which a state employee may report retaliation, including an administrative investigation and administrative enforcement.

Additionally, Wisconsin law allows a state employee to bring a civil action to address retaliation.

## CONCLUSION

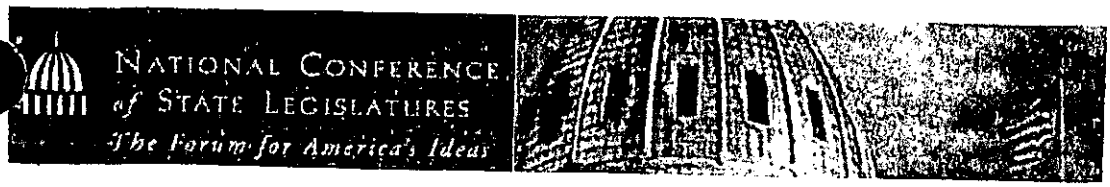
In reviewing the public employee whistleblower protection laws of North Dakota and other states, the basic protection offered through the laws is a prohibition against retaliating against a public employee who makes a report of an alleged wrongdoing of the employer.

From this basic level, some states provide additional protection. For example, some states:

- Provide for a criminal penalty for retaliating against a whistleblower.
- Provide a civil penalty for retaliating against a whistleblower. The states vary on the types of civil remedies allowed.
- Provide a civil fine for retaliating against a whistleblower.
- Provide for a state agency to investigate alleged retaliation against a whistleblower. The power of the investigating agency varies from state to state, with some states providing for voluntary compliance and other states providing for remedial measures.

In addition to providing protection to a public employee who makes a report of an alleged wrongdoing of the employer, some states' whistleblower laws address the issue of investigating the alleged wrongdoing. This element of investigating the alleged wrongdoing is less related to providing protection for the whistleblower and more related to ensuring government is being run legally and efficiently.

ATTACH:1




**State Whistleblower Laws**

*]Although legislatures in all fifty states have enacted whistleblower protection statutes, the measure and scope of state laws vary reatly. Most state statutes focus on protection against employer retaliation and provide a cause of action and remedies for /histleblowers who experience job-related retaliation as a consequence of their revelations.

here are also important points of divergence within the anti-retaliation provisions, including the type of whistleblower protected, the ubject of protected whistleblowing, the requirements for filing a grievance and appeal, and the remedies provided to the employee uffering retaliation.

'ost states offer general whistleblower protection to public employees, while fewer than half offer the same protection to all workers. tates which have enacted whistleblower protection laws for private sector employees are even fewer. Many state statutes protect histleblowers whose disclosures involve mismanagement, waste or abuse of authority.

| tate | Citation | Coverage | Statute of Limitations | Remedies |
|---|---|---|---|---|
| labama | §36-26A-3, §36-25-24 | State employees, Public employees | Two years | Back wages, front wages and/or compensatory damages |
| laska | §39.90.100 | Public employees | Unspecified | Compensatory and punitive damages, civil fines |
| zona | §38-532 | Public employees | Unspecified | Reinstatement, back pay, general and special damages, litigation costs, attorneys' fees |
| rkansas | §21-1-601 | Public employees | 180 days | Reinstatement, lost wages, fringe benefits, retirement service credit, court costs and attorney's fees |
| lifornia | Govt. Code §8547, Labor Code §1102.7 | State employees, Public employees, | 12 months, Unspecified | Civil fine, punitive damages and attorney's fees |
| lorado | §24-50.5 | State employees | 30 days | Unspecified damages, court costs |
| nnecticut | §31-51m | Public and private employees | 90 days | Reinstatement, back pay and lost benefits |
| laware | Tit. 29, §5115 | Public employees | 90 days | Injunctive relief and/or actual damages |
| rida | §112.3187 | Public employees | 60 days | Reinstatement, back pay, benefits, costs and attorney's fees |
| orgia | §49-15-5, §45-1-4 | Public employees | Unspecified | Unspecified |
| wali | §378-61 | Public employees | 90 days | Reinstatement, back pay |

| | | | | |
|---|---|---|---|---|
| | | | | plus fringe benefits, litigation costs and attorney's fees |
| daho | §6-21 | Public employees | 180 days | Reinstatement, lost wages, fringe benefits and seniority rights, litigation costs and attorney's fees, civil fine |
| linois | 20 ILCS 415/19c.1 | Public employees | Unspecified | Unspecified |
| diana | §4-15-10-4 §22-5-3-3 | State employees | Unspecified | Unspecified |
| wa | §70A.29 | State employees | Unspecified | Reinstatement, with or without back pay, attorney fees and costs |
| ansas | §75-2973 | State employees | Unspecified | Unspecified |
| entucky | §61.102 | Employees | 90 days | Unspecified |
| uisiana | RS 46:440.3, 23:967 | Employees | Unspecified | Compensatory damages, back pay, benefits, reinstatement, reasonable attorney fees, and court costs |
| aine | Tit. 26, §831-838 | Public and private employees | Unspecified | Unspecified |
| ryland | §5-301-308 | Employees and state employees | 6 months | Reinstatement, back pay and/or disciplinary action |
| assachusetts | §149-185 | Employees | Unspecified | Reinstatement of position and fringe benefits, three times lost wages, costs and attorneys' fees |
| chigan | §15.361-369 | Employees | 90 days | Unspecified damages, attorneys' fees |
| nnesota | §181.931 | Public and private employees | Unspecified | Unspecified damages, attorneys' fees |
| ssissippi | §25-971 | Employees | Unspecified | Reinstatement, back pay, benefits, costs and attorney's fees |
| ssouri | §105.055 | Public employees | 30 days (appeal) | Damages, cost of litigation and attorney's fees |
| ntana | §39-31-401 | Public employees | 6 months | Unspecified |
| braska | §48-1008, §48-1114 | Private employees | Unspecified | Reinstatement or promotion, unpaid minimum wages or unpaid overtime compensation |
| vada | §618-445, NRS §357.240 | Employees | 30 days (appeal) | Reinstatement, reimbursement for lost wages and work benefits |

| | | | | |
|---|---|---|---|---|
| lew Hampshire | §275-E | Public and private employees | Unspecified | Reinstatement, back pay, fringe benefits and seniority rights, injunctive relief |
| lew Jersey | §34:19-3 | Public and private employees | One year (civil action) | Reinstatement, back pay, fringe benefits and seniority rights, attorneys' fees and/or punitive damages |
| ew Mexico | §13-2304 | Unspecified | Unspecified | Unspecified |
| ew York | Labor Law §740, Civil Service Law §75(b) | Public and private employees | One year (civil action) | Reinstatement, back pay, benefits, costs and attorney's fees |
| orth Carolina | §95-240, §126-84 | Employees, Public employees | 180 days | Reinstatement, back pay, benefits, costs and attorney's fees |
| orth Dakota | §34-1-20 | Employees | 180 days | Reinstatement, back pay, fringe benefits, injunctive relief |
| hio | §4113.52 | Employees | 180 days (appeal) | Reinstatement, back pay, fringe benefits and seniority rights, litigation costs, attorneys' fees |
| lahoma | Tit. 74 §840-2.5 | State employees | 60 days (appeal) | Unspecified |
| egon | §659A.200 | Public employees | Unspecified | Unspecified |
| nnsylvania | §1421-1428 | Employees | 180 days | Unspecified |
| ode Island | §28-50 | Employees | Unspecified | Reinstatement, back wages, fringe benefits and seniority rights, actual damages, litigation costs and/or attorneys' fees |
| uth Carolina | §27-10 | Public employee | Unspecified | Reinstatement, lost wages, actual damages, and attorneys' fees |
| uth Dakota | §3-6A-52 | Public employee | Unspecified | Unspecified |
| nnessee | §8-50-603, §50-1-304 | Public employee | Unspecified | Damages and attorneys' fees |
| xas | Labor Code §554 | Public employee | 90 days | Reinstatement, lost wages, fringe benefits and seniority rights, actual damages, court costs and/or injunctive relief |
| h | §67-21-1 | Public employees | 180 days | Reinstatement, back pay, |

| | | | | |
|---|---|---|---|---|
| | | | | actual damages, court costs and attorneys' fees |
| Vermont | Tit. 21 §502 | Health care employees | Unspecified | Reinstatement, lost wages, fringe benefits, actual damages, court costs, attorneys' fees and/or injunctive relief |
| Virginia | §40.1-51.2:2 | Employees | 60 days (appeal) | Reinstatement with back pay plus interest |
| Washington | §42.40, §49.60.210 | State employees, Employees | Unspecified | Unspecified |
| West Virginia | §6C-1-3 | State employees | 180 days | Reinstatement, lost wages, fringe benefits, actual damages, court costs, attorneys' fees and/or injunctive relief |
| Wisconsin | §230.80 | State employees | 60 days (appeal) | Reinstatement with or without back pay, transfer and/or attorneys' fees |
| Wyoming | §27-11-109(e) | Employees | Unspecified | Unspecified |

[1] The summary was based on several articles from journals and law reviews. For example, see Elletta Sangrey Callahan "The State Of State Whistleblower Protection" in *American Business Law Journal*, Fall 2000.



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Klemin - OMB #1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2267

Page 1, line 23, overstrike "dismissed under this subsection" and insert immediately thereafter "claiming reprisal under this section"

Page 1, line 24, overstrike "state personnel board" and insert immediately thereafter "human resource management services division"

Page 2, lines 2 through 3, overstrike "state personnel board" and insert immediately thereafter "human resource management services division"

Page 2, line 11, after the period insert:

"5. All permanent and temporary employees of the state may appeal claims of reprisal under this section in the manner proscribed for classified employees under Chapter 54-44.3. This subsection does not apply to appointed officials, members of state boards and commissions, employees under the jurisdiction of the state board of higher education, and the chief deputy and personal secretary of an elected official, unless the individual is employed in a classified position."

Renumber accordingly

OMB #2

Prepared by the Office of Management and Budget

# PROPOSED AMENDMENTS TO SENATE BILL NO. 2267

Page 1, line 23, overstrike "dismissed under this subsection" and insert immediately thereafter "claiming reprisal under this section"

Add to griffin

Page 1, line 24, overstrike "state personnel board" and insert immediately thereafter "human resource management services division"

Page 2, lines 2 through 3, overstrike "state personnel board" and insert immediately thereafter "human resource management services division"

Renumber accordingly

Attachment 1

# CHAPTER 34-11.1
## PUBLIC EMPLOYEES RELATIONS ACT

**34-11.1-01. Definitions.** In this chapter unless the context otherwise requires:

1. "Agency" means any department, institution, board, or other similar body of state government, or any political subdivision within the state.

2. "Appointing authority" means the individuals in any agency who have authority to fill job vacancies.

3. "Employee" means any person, whether employed, appointed, or under contract, providing services for the state, county, city, or other political subdivision, for which compensation is paid. "Employee" also includes a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision. "Employee" does not include:

   a. A person elected to public office in the state or in a

      political subdivision.

   b. A member of the legislative council staff.

   c. A person holding an appointive statutory office.

   d. One deputy or principal assistant for each elected official or appointive statutory official.

   e. One secretary for each elected or appointive statutory official.

   f. All members of the governor's staff.

4. "Organization" means any organized group of individuals working together for the common good of public employees and government.

**34-11.1-02. Political activities.** Except when on duty or acting in an official capacity and except as otherwise provided by state or federal law, no employee may be prohibited from engaging in political activity or be denied the right to refrain from engaging in such activity.

**34-11.1-03. Membership in organizations.** No employee may be denied the right to be a member of an organization of employees or be intimidated or coerced in a decision to communicate or affiliate with an organization. Public employees have the right to request payroll deduction of dues for membership in an organization of employees.

**34-11.1-04. Violations for misuse reported by employee - Reprisals prohibited - Furnishing false information.**

1. An employee may, without fear of reprisal, report in writing to the employee's respective agency head, a state's attorney, the attorney general, or an employee organization the existence of:

   a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.

   b. The job-related misuse of public resources.

2. For having made a report under subsection 1, no employee will: