HOUSE BILL 16-1078

HOUSE SPONSORSHIP

Kagan,

SENATE SPONSORSHIP

(Nothing),

House Committees

Local Government

Senate Committees

A BILL FOR AN ACT

Concerning the Establishment of Whistleblower Protection for Public Employees Not Employed by the State.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

The bill prohibits a county, municipality, or local education provider from imposing any disciplinary action against an employee on account of the employee’s statements to any person about the local government that the employee reasonably believes to show:

- A violation of a state or federal law, a local ordinance or resolution, or a local education provider policy;
A waste or misuse of public funds; Fraud; An abuse of authority; Mismanagement; or A danger to the health or safety of students, employees, or the public.

The bill permits an employee to file a written complaint with the office of administrative courts for referral to an administrative law judge alleging that a local government has imposed disciplinary action that violates this prohibition and seeking injunctive relief and damages. Employees who lose the administrative hearing may file a civil action in district court. The employee protection does not apply if the disclosure was false or made with reckless disregard for the truth or falsity thereof, or if it was of a protected public record or confidential information that was not reasonably necessary to show one or more of the identified circumstances.

Administrative law judges are given jurisdiction to hear, determine, and make findings and awards on all these whistleblower cases. The director of the office of administrative courts is required to establish rules to govern these proceedings and hearings.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add 22-1-130 as follows:

22-1-130. Disclosure - retaliation prohibited - civil action - definitions. (1) AS USED IN THIS SECTION:

(a) "DISCIPLINARY ACTION" MEANS ANY FORM OF DISCIPLINE OR PENALTY, INCLUDING, BUT NOT LIMITED TO, DISMISSAL, DEMOTION, TRANSFER, REASSIGNMENT, SUSPENSION, CORRECTIVE ACTION, REPRIMAND, ADMONISHMENT, UNSATISFACTORY OR BELOW STANDARD PERFORMANCE EVALUATION, REDUCTION IN FORCE, OR WITHHOLDING OF WORK, OR THE THREAT OF ANY SUCH DISCIPLINE OR PENALTY.

(b) "EMPLOYEE" MEANS ANY PERSON EMPLOYED BY A LOCAL EDUCATION PROVIDER.

(c) "LOCAL EDUCATION PROVIDER" MEANS A SCHOOL DISTRICT, A
CHARTER SCHOOL AUTHORIZED BY A SCHOOL DISTRICT PURSUANT TO PART 1 OF ARTICLE 30.5 OF THIS TITLE, A CHARTER SCHOOL AUTHORIZED BY THE STATE CHARTER SCHOOL INSTITUTE PURSUANT TO PART 5 OF ARTICLE 30.5 OF THIS TITLE, OR A BOARD OF COOPERATIVE SERVICES CREATED AND OPERATING PURSUANT TO ARTICLE 5 OF THIS TITLE THAT OPERATES ONE OR MORE PUBLIC SCHOOLS.

(2) (a) A LOCAL EDUCATION PROVIDER SHALL NOT INITIATE OR ADMINISTER ANY DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON ACCOUNT OF THE EMPLOYEE'S STATEMENTS TO ANY PERSON ABOUT THE LOCAL EDUCATION PROVIDER THAT THE EMPLOYEE REASONABLY BELIEVES TO SHOW:

(I) A VIOLATION OF A STATE OR FEDERAL LAW OR A LOCAL EDUCATION PROVIDER POLICY;

(II) A WASTE OR MISUSE OF PUBLIC FUNDS;

(III) FRAUD;

(IV) AN ABUSE OF AUTHORITY;

(V) MISMANAGEMENT; OR

(VI) A DANGER TO THE HEALTH OR SAFETY OF STUDENTS, EMPLOYEES, OR THE PUBLIC.

(b) THE PROHIBITION SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (2) DOES NOT APPLY TO:

(I) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT HE OR SHE KNOWS TO BE FALSE OR WHO DISCLOSES INFORMATION WITH RECKLESS DISREGARD FOR THE TRUTH OR FALSITY THEREOF;

(II) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS FROM A PUBLIC RECORD CLOSED TO PUBLIC INSPECTION PURSUANT TO SECTION 24-72-204, C.R.S., OR THAT IS OTHERWISE CONFIDENTIAL UNDER STATE
LAW, IF THE EMPLOYEE'S DISCLOSURE IS NOT REASONABLY NECESSARY TO
SHOW ONE OR MORE OF THE CIRCUMSTANCES IDENTIFIED IN PARAGRAPH
(a) OF THIS SUBSECTION (2); OR

(III) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS
CONFIDENTIAL UNDER ANY PROVISION OF FEDERAL LAW.

(3) WITHIN NINETY DAYS AFTER THE EMPLOYEE KNEW OR SHOULD
HAVE KNOWN OF A DISCIPLINARY ACTION, AN EMPLOYEE MAY FILE A
WRITTEN COMPLAINT WITH THE OFFICE OF ADMINISTRATIVE COURTS IN THE
DEPARTMENT OF PERSONNEL FOR REFERRAL TO AN ADMINISTRATIVE LAW
JUDGE ALLEGING A VIOLATION OF THIS SECTION AND SEEKING INJUNCTIVE
RELIEF AND DAMAGES. WITHIN TEN DAYS AFTER RECEIVING THE
COMPLAINT, THE OFFICE SHALL SEND A COPY OF THE COMPLAINT TO THE
LOCAL EDUCATION PROVIDER AND SHALL PROVIDE WRITTEN NOTICE TO
THE LOCAL EDUCATION PROVIDER AND THE EMPLOYEE THAT STATES THE
COMPLAINT HAS BEEN DOCKETED, DESCRIBES THE PROCESS FOR
REVIEWING THE COMPLAINT, AND IDENTIFIES THE HEARING DATE.

(4) IF AN ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE
EMPLOYER DID NOT VIOLATE SUBSECTION (2) OF THIS SECTION, AN
EMPLOYEE MAY BRING A CIVIL ACTION IN THE DISTRICT COURT ALLEGING
THE SAME VIOLATION AND SEEKING INJUNCTIVE RELIEF AND DAMAGES.

(5) AN ADMINISTRATIVE LAW JUDGE OR DISTRICT COURT JUDGE
MAY AWARD AN EMPLOYEE WHO PREVAILS IN ACTION BROUGHT UNDER
THIS SECTION DAMAGES, INJUNCTIVE RELIEF, ADMINISTRATIVE OR COURT
COSTS, ATTORNEY FEES, AND SUCH OTHER RELIEF AS HE OR SHE DEEMS
APPROPRIATE.

SECTION 2. In Colorado Revised Statutes, 24-30-1003, add (6)
as follows:
24-30-1003. Administrative law judges - appointment - qualifications - standards of conduct. (6) ADMINISTRATIVE LAW
JUDGES IN THE OFFICE OF ADMINISTRATIVE COURTS HAVE JURISDICTION TO
HEAR, DETERMINE, AND MAKE FINDINGS AND AWARDS ON ALL CASES
REFERRED TO THEM IN ACCORDANCE WITH SECTION 22-1-130 (3),
30-10-1101 (3), OR 31-4-601 (3), C.R.S. THE DIRECTOR OF THE OFFICE OF
ADMINISTRATIVE COURTS SHALL ESTABLISH RULES TO GOVERN THESE
PROCEEDINGS AND HEARINGS.

SECTION 3. In Colorado Revised Statutes, add part 11 to article
10 of title 30 as follows:

PART 11
WHISTLEBLOWER PROTECTION

30-10-1101. Disclosure - retaliation prohibited - civil action - definitions. (1) AS USED IN THIS SECTION:

(a) "DISCIPLINARY ACTION" MEANS ANY FORM OF DISCIPLINE OR
PENALTY, INCLUDING, BUT NOT LIMITED TO, DISMISSAL, DEMOTION,
TRANSFER, REASSIGNMENT, SUSPENSION, CORRECTIVE ACTION,
REPRIMAND, ADMONISHMENT, UNSATISFACTORY OR BELOW STANDARD
PERFORMANCE EVALUATION, REDUCTION IN FORCE, OR WITHHOLDING OF
WORK, OR THE THREAT OF ANY SUCH DISCIPLINE OR PENALTY.

(b) "EMPLOYEE" MEANS ANY PERSON EMPLOYED BY A COUNTY.

(2) (a) A COUNTY SHALL NOT INITIATE OR ADMINISTER ANY
DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON ACCOUNT OF THE
EMPLOYEE’S STATEMENTS TO ANY PERSON ABOUT THE COUNTY THAT THE
EMPLOYEE REASONABLY BELIEVES TO SHOW:

(I) A VIOLATION OF A STATE OR FEDERAL LAW OR A LOCAL
ORDINANCE OR RESOLUTION;
(II) A waste or misuse of public funds;
(III) Fraud;
(IV) An abuse of authority;
(V) Mismanagement; or
(VI) A danger to the health or safety of employees or the public.

(b) The prohibition set forth in paragraph (a) of this subsection (2) does not apply to:

(I) An employee who discloses information that he or she knows to be false or who discloses information with reckless disregard for the truth or falsity thereof;

(II) An employee who discloses information that is from a public record closed to public inspection pursuant to section 24-72-204, C.R.S., or that is otherwise confidential under state law, if the employee's disclosure is not reasonably necessary to show one or more of the circumstances identified in paragraph (a) of this subsection (2); or

(III) An employee who discloses information that is confidential under any provision of federal law.

(3) Within ninety days after the employee knew or should have known of a disciplinary action, an employee may file a written complaint with the office of administrative courts in the department of personnel for referral to an administrative law judge alleging a violation of this section and seeking injunctive relief and damages. Within ten days after receiving the complaint, the office shall send a copy of the complaint to the county and shall provide written notice to the county and the
EMPLOYEE THAT STATES THE COMPLAINT HAS BEEN DOCKETED, DESCRIBES THE PROCESS FOR REVIEWING THE COMPLAINT, AND IDENTIFIES THE HEARING DATE.

(4) IF AN ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE EMPLOYER DID NOT VIOLATE SUBSECTION (2) OF THIS SECTION, AN EMPLOYEE MAY BRING A CIVIL ACTION IN THE DISTRICT COURT ALLEGING THE SAME VIOLATION AND SEEKING INJUNCTIVE RELIEF AND DAMAGES.

(5) AN ADMINISTRATIVE LAW JUDGE OR DISTRICT COURT JUDGE MAY AWARD AN EMPLOYEE WHO PREVAILS IN ACTION BROUGHT UNDER THIS SECTION DAMAGES, INJUNCTIVE RELIEF, ADMINISTRATIVE OR COURT COSTS, ATTORNEY FEES, AND SUCH OTHER RELIEF AS HE OR SHE DEEMS APPROPRIATE.

SECTION 4. In Colorado Revised Statutes, add part 6 to article 4 of title 31 as follows:

PART 6

WHISTLEBLOWER PROTECTION

31-4-601. Disclosure - retaliation prohibited - civil action - definitions. (1) AS USED IN THIS SECTION:

(a) "DISCIPLINARY ACTION" MEANS ANY FORM OF DISCIPLINE OR PENALTY, INCLUDING, BUT NOT LIMITED TO, DISMISSAL, DEMOTION, TRANSFER, REASSIGNMENT, SUSPENSION, CORRECTIVE ACTION, REPRIMAND, ADMONISHMENT, UNSATISFACTORY OR BELOW STANDARD PERFORMANCE EVALUATION, REDUCTION IN FORCE, OR WITHHOLDING OF WORK, OR THE THREAT OF ANY SUCH DISCIPLINE OR PENALTY.

(b) "EMPLOYEE" MEANS ANY PERSON EMPLOYED BY A MUNICIPALITY.

(2) (a) A MUNICIPALITY SHALL NOT INITIATE OR ADMINISTER ANY
DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON ACCOUNT OF THE EMPLOYEE’S STATEMENTS TO ANY PERSON ABOUT THE MUNICIPALITY THAT THE EMPLOYEE REASONABLY BELIEVES TO SHOW:

(I) A VIOLATION OF A STATE OR FEDERAL LAW OR A LOCAL ORDINANCE OR RESOLUTION;

(II) A WASTE OR MISUSE OF PUBLIC FUNDS;

(III) FRAUD;

(IV) AN ABUSE OF AUTHORITY;

(V) MISMANAGEMENT; OR

(VI) A DANGER TO THE HEALTH OR SAFETY OF EMPLOYEES OR THE PUBLIC.

(b) THE PROHIBITION SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (2) DOES NOT APPLY TO:

(I) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT HE OR SHE KNOWS TO BE FALSE OR WHO DISCLOSES INFORMATION WITH RECKLESS DISREGARD FOR THE TRUTH OR FALSITY THEREOF;

(II) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS FROM A PUBLIC RECORD CLOSED TO PUBLIC INSPECTION PURSUANT TO SECTION 24-72-204, C.R.S., OR THAT IS OTHERWISE CONFIDENTIAL UNDER STATE LAW, IF THE EMPLOYEE’S DISCLOSURE IS NOT REASONABLY NECESSARY TO SHOW ONE OR MORE OF THE CIRCUMSTANCES IDENTIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (2); OR

(III) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS CONFIDENTIAL UNDER ANY PROVISION OF FEDERAL LAW.

(3) WITHIN NINETY DAYS AFTER THE EMPLOYEE KNEW OR SHOULD HAVE KNOWN OF A DISCIPLINARY ACTION, AN EMPLOYEE MAY FILE A WRITTEN COMPLAINT WITH THE OFFICE OF ADMINISTRATIVE COURTS IN THE
DEPARTMENT OF PERSONNEL FOR REFERRAL TO AN ADMINISTRATIVE LAW JUDGE ALLEGING A VIOLATION OF THIS SECTION AND SEEKING INJUNCTIVE RELIEF AND DAMAGES. WITHIN TEN DAYS AFTER RECEIVING THE COMPLAINT, THE OFFICE SHALL SEND A COPY OF THE COMPLAINT TO THE MUNICIPALITY AND SHALL PROVIDE WRITTEN NOTICE TO THE MUNICIPALITY AND THE EMPLOYEE THAT STATES THE COMPLAINT HAS BEEN DOCKETED, DESCRIBES THE PROCESS FOR REVIEWING THE COMPLAINT, AND IDENTIFIES THE HEARING DATE.

(4) IF AN ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE EMPLOYER DID NOT VIOLATE SUBSECTION (2) OF THIS SECTION, AN EMPLOYEE MAY BRING A CIVIL ACTION IN THE DISTRICT COURT ALLEGING THE SAME VIOLATION AND SEEKING INJUNCTIVE RELIEF AND DAMAGES.

(5) AN ADMINISTRATIVE LAW JUDGE OR DISTRICT COURT JUDGE MAY AWARD AN EMPLOYEE WHO PREVAILS IN ACTION BROUGHT UNDER THIS SECTION DAMAGES, INJUNCTIVE RELIEF, ADMINISTRATIVE OR COURT COSTS, ATTORNEY FEES, AND SUCH OTHER RELIEF AS HE OR SHE DEEMS APPROPRIATE.

SECTION 5. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.
(2) This act applies to information disclosed on or after the applicable effective date of this act.