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;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment. Capital letters indicate new material to be added to existing statute. Dashes through the words indicate deletions from existing statute.
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 DIRECT OR INDIRECT 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) "DISCLOSURE OF INFORMATION" MEANS THE WRITTEN PROVISION OF EVIDENCE TO ANY PERSON, OR THE TESTIMONY BEFORE ANY COMMITTEE OF THE GENERAL ASSEMBLY, REGARDING ANY ACTION,
POLICY, REGULATION, PRACTICE, OR PROCEDURE, INCLUDING, BUT NOT
LIMITED TO, THE WASTE OF PUBLIC FUNDS, ABUSE OF AUTHORITY, OR
MISMANAGEMENT OF ANY LOCAL EDUCATION PROVIDER.

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

(d) "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.

(e) "SUPERVISOR" MEANS ANY PERSON WHO SUPERVISES OR IS
RESPONSIBLE FOR THE WORK OF ONE OR MORE EMPLOYEES.

(2) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, NO
APPOINTING AUTHORITY OR SUPERVISOR SHALL INITIATE OR ADMINISTER
ANY DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON ACCOUNT OF THE
EMPLOYEE'S DISCLOSURE OF INFORMATION. THIS SECTION SHALL NOT
APPLY TO:

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

(b) AN EMPLOYEE WHO DISCLOSES INFORMATION FROM PUBLIC
RECORDS THAT ARE CLOSED TO PUBLIC INSPECTION PURSUANT TO SECTION
24-72-204; OR

(c) AN EMPLOYEE WHO DISCLOSES INFORMATION THAT IS
CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW.
(3) It shall be the obligation of an employee who wishes to disclose information under the protection of this section to make a good faith effort to provide to his or her supervisor or appointing authority or a board member of the local education provider the information to be disclosed prior to the time of its disclosure.

(4) 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. The employee must serve the local education provider in accordance with the Colorado rules of civil procedure. Prior to the time that an answer is due, the local education provider may file a written notice rejecting the administrative law judge’s jurisdiction, and, in which case, the judge shall dismiss the complaint without prejudice. Hearings are conducted consistent with the provisions of section 24-4-105, C.R.S., unless the director of the office of administrative courts establishes different rules that apply. The final decision of the administrative law judge is subject to judicial review by the court of appeals in the same manner as an agency action that is appealed in accordance with section 24-4-106 (11), C.R.S.

(5) An employee who did not file a written complaint with the office of administrative courts or who filed a written complaint but the local education provider rejected the jurisdiction may bring a civil action in the appropriate district
COURT OF THE STATE ALLEGING A VIOLATION OF THIS SECTION,

(6) If the employee prevails, the employee may recover damages, together with court costs, and the court or administrative law judge may order such other relief as the court or administrative law judge 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 may 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

COUNTY EMPLOYEE

PROTECTION

30-10-1101. Disclosure - retaliation prohibited - civil action - definitions. (1) As used in this section:

(a) "DISCIPLINARY ACTION" means any direct or indirect 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
OR THE THREAT OF ANY SUCH DISCIPLINE OR PENALTY.

(b) "DISCLOSURE OF INFORMATION" MEANS THE WRITTEN PROVISION OF EVIDENCE TO ANY PERSON, OR THE TESTIMONY BEFORE ANY COMMITTEE OF THE GENERAL ASSEMBLY, REGARDING ANY ACTION, POLICY, REGULATION, PRACTICE, OR PROCEDURE, INCLUDING, BUT NOT LIMITED TO, THE WASTE OF PUBLIC FUNDS, ABUSE OF AUTHORITY, OR MISMANAGEMENT OF ANY COUNTY.

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

(d) "SUPERVISOR" MEANS ANY PERSON WHO SUPERVISES OR IS RESPONSIBLE FOR THE WORK OF ONE OR MORE EMPLOYEES.

(2) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, NO APPOINTING AUTHORITY OR SUPERVISOR SHALL INITIATE OR ADMINISTER ANY DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON ACCOUNT OF THE EMPLOYEE’S DISCLOSURE OF INFORMATION. THIS SECTION SHALL NOT APPLY TO:

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

(b) AN EMPLOYEE WHO DISCLOSES INFORMATION FROM PUBLIC RECORDS THAT ARE CLOSED TO PUBLIC INSPECTION PURSUANT TO SECTION 24-72-204; OR

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

(3) IT SHALL BE THE OBLIGATION OF AN EMPLOYEE WHO WISHES TO DISCLOSE INFORMATION UNDER THE PROTECTION OF THIS SECTION TO MAKE A GOOD FAITH EFFORT TO PROVIDE TO HIS OR HER SUPERVISOR OR APPOINTING AUTHORITY OR A COUNTY COMMISSIONER THE INFORMATION
TO BE DISCLOSED PRIOR TO THE TIME OF ITS DISCLOSURE.

(4) 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. The employee must serve the county in accordance with the Colorado rules of civil procedure. Prior to the time that an answer is due, the county may file a written notice rejecting the administrative law judge's jurisdiction, and, in which case, the judge shall dismiss the complaint without prejudice. Hearings are conducted consistent with the provisions of section 24-4-105, C.R.S., unless the director of the office of administrative courts establishes different rules that apply. The final decision of the administrative law judge is subject to judicial review by the court of appeals in the same manner as an agency action that is appealed in accordance with section 24-4-106 (11), C.R.S.

(5) An employee who did not file a written complaint with the office of administrative courts or who filed a written complaint but the county rejected the jurisdiction may bring a civil action in the appropriate district court of the state alleging a violation of this section.

(6) If the employee prevails, the employee may recover damages, together with court costs, and the court or administrative law judge may order such other relief as the court or administrative law judge deems appropriate.

SECTION 3. In Colorado Revised Statutes, add part 6 to article
4 of title 31 as follows:

PART 6

MUNICIPAL EMPLOYEE

PROTECTION

31-4-601. Disclosure - retaliation prohibited - civil action - definitions. (1) As used in this section:

(a) "Disciplinary action" means any direct or indirect 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) "Disclosure of information" means the written provision of evidence to any person, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure, including, but not limited to, the waste of public funds, abuse of authority, or mismanagement of any municipality.

(c) "Employee" means any person employed by a municipality.

(d) "Supervisor" means any person who supervises or is responsible for the work of one or more employees.

(2) Except as provided in subsection (3) of this section, no appointing authority or supervisor shall initiate or administer any disciplinary action against an employee on account of the employee's disclosure of information. This section shall not apply to:
(a) An employee who discloses information that he or she knows to be false or who discloses information with disregard for the truth or falsity thereof;

(b) An employee who discloses information from public records that are closed to public inspection pursuant to section 24-72-204; or

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

(3) It shall be the obligation of an employee who wishes to disclose information under the protection of this section to make a good faith effort to provide to his or her supervisor or appointing authority or a member of the municipality’s governing body the information to be disclosed prior to the time of its disclosure.

(4) 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. The employee must serve the municipality in accordance with the Colorado rules of civil procedure. Prior to the time that an answer is due, the municipality may file a written notice rejecting the administrative law judge’s jurisdiction, and, in which case, the judge shall dismiss the complaint without prejudice. Hearings are conducted consistent with the provisions of section 24-4-105, C.R.S., unless the director of the office of administrative courts establishes different rules that apply. The final decision of the
ADMINISTRATIVE LAW JUDGE IS SUBJECT TO JUDICIAL REVIEW BY THE COURT OF APPEALS IN THE SAME MANNER AS AN AGENCY ACTION THAT IS APPEALED IN ACCORDANCE WITH SECTION 24-4-106 (11), C.R.S.

(5) AN EMPLOYEE WHO DID NOT FILE A WRITTEN COMPLAINT WITH THE OFFICE OF ADMINISTRATIVE COURTS OR WHO FILED A WRITTEN COMPLAINT BUT THE MUNICIPALITY REJECTED THE JURISDICTION MAY BRING A CIVIL ACTION IN THE APPROPRIATE DISTRICT COURT OF THE STATE ALLEGING A VIOLATION OF THIS SECTION.

(6) IF THE EMPLOYEE PREVAILS, THE EMPLOYEE MAY RECOVER DAMAGES, TOGETHER WITH COURT COSTS, AND THE COURT OR ADMINISTRATIVE LAW JUDGE MAY ORDER SUCH OTHER RELIEF AS THE COURT OR ADMINISTRATIVE LAW JUDGE DEEMS APPROPRIATE.

SECTION 4. 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 the disclosure of information on or after the applicable effective date of this act.