



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3768

by Rep. Carol Ammons

SYNOPSIS AS INTRODUCED:

50 ILCS 105/4.1 new
820 ILCS 40/8

from Ch. 48, par. 2008

Amends the Public Officer Prohibited Activities Act. Defines "auditing official", "employee", "improper governmental action", and "retaliation". Provides that it is prohibited for a unit of local government, any agent or representative of a unit of local government, or another employee to retaliate against an employee who (1) reports an improper governmental action, (2) cooperates with an investigation by an auditing official related to a report of improper governmental action, or (3) testifying in a proceeding or prosecution arising out of an improper governmental action if the employee files a report with the auditing official regarding improper governmental action. Provides that the reports are confidential as allowed by law. Provides for procedures for the auditing official to process reports. Provides for remedies available to an employee who has been subject of an improper governmental action. Provides for penalties for retaliation against a report of improper governmental action. Amends the Personnel Record Review Act. Provides that records of disciplinary action must be kept for 10 years rather than 4 years.

LRB100 11330 RLC 21705 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Officer Prohibited Activities Act is
5 amended by adding Section 4.1 as follows:

6 (50 ILCS 105/4.1 new)

7 Sec. 4.1. Retaliation against a whistleblower.

8 (a) It is prohibited for a unit of local government, any
9 agent or representative of a unit of local government, or
10 another employee to retaliate against an employee who:

11 (1) reports an improper governmental action under this
12 Section;

13 (2) cooperates with an investigation by an auditing
14 official related to a report of improper governmental
15 action; or

16 (3) testifying in a proceeding or prosecution arising
17 out of an improper governmental action.

18 (b) To invoke the protections of this Section, an employee
19 shall make a written report of improper governmental action to
20 the appropriate auditing official. An employee who believes he
21 or she has been retaliated against in violation of this Section
22 must submit a written report to the auditing official within 60
23 days of gaining knowledge of the retaliatory action. If the

1 auditing official is the individual doing the improper
2 governmental action, then a report under this subsection may be
3 submitted to any State's Attorney.

4 (c) Each auditing official shall establish written
5 processes and procedures for managing complaints filed under
6 this Section, and each auditing official shall investigate and
7 dispose of reports of improper governmental action in
8 accordance with these processes and procedures. If an auditing
9 official concludes that an improper governmental action has
10 taken place or concludes that the relevant unit of local
11 government, department, agency, or supervisory officials have
12 hindered the auditing official's investigation into the
13 report, the auditing official shall notify in writing the chief
14 executive of the unit of local government and any other
15 individual or entity the auditing official deems necessary in
16 the circumstances.

17 (d) An auditing official may transfer a report of improper
18 governmental action to another auditing official for
19 investigation if an auditing official deems it appropriate,
20 including, but not limited to, the appropriate State's
21 Attorney.

22 (e) To the extent allowed by law, the identity of an
23 employee reporting information about an improper governmental
24 action shall be kept confidential unless the employee waives
25 confidentiality in writing. Auditing officials may take
26 reasonable measures to protect employees whom reasonably

1 believe they may be subject to bodily harm for reporting
2 improper government action.

3 (f) The following remedies are available to employees
4 subjected to adverse actions for reporting improper government
5 action:

6 (1) Restitution. Auditing officials may reinstate,
7 reimburse for loss wages or expenses incurred, promote, or
8 provide some other form of restitution.

9 (2) In instances where an auditing official determines
10 that restitution will not suffice, the auditing official
11 may make their investigation findings available for the
12 purposes of aiding in that employee or the employee's
13 attorney's effort to make the employee whole.

14 (g) A person who engages in prohibited retaliatory action
15 under subsection (a) is subject to the following penalties: a
16 fine of no less than \$500 and no more than \$5000, suspension
17 without pay, demotion, discharge, civil or criminal
18 prosecution, or any combination of these penalties, as
19 appropriate.

20 (h) Every employee shall receive a written summary or a
21 complete copy of this Section upon commencement of employment
22 and at least once each year of employment. At the same time,
23 the employee shall also receive a copy of the written processes
24 and procedures for reporting improper governmental actions
25 from the applicable auditing official.

26 (i) As used in this Section:

1 "Auditing official" means any elected, appointed, or hired
2 individual, by whatever name, in a unit of local government
3 whose duties are similar to, but not limited to, receiving,
4 registering, and investigating complaints and information
5 concerning misconduct, inefficiency, and waste within the unit
6 of local government; investigating the performance of
7 officers, employees, functions, and programs; and promoting
8 economy, efficiency, effectiveness and integrity in the
9 administration of the programs and operations of the
10 municipality. If a unit of local government does not have an
11 "auditing official", the "auditing official" shall be a State's
12 Attorney of the county in which the unit of local government is
13 located within.

14 "Employee" means anyone employed by a unit of local
15 government, whether in a permanent or temporary position,
16 including full-time, part-time, and intermittent workers.
17 "Employee" also includes members of appointed boards or
18 commissions, whether or not paid. "Employee" also includes
19 persons who have been terminated because of any report or
20 complaint submitted under this Section.

21 "Improper governmental action" means any action by a unit
22 of local government employee, an appointed member of a board,
23 commission, or committee, or an elected official of the unit of
24 local government that is undertaken in violation of a federal,
25 State, or local government law or rule; is an abuse of
26 authority; violates the public's trust or expectation of their

1 conduct; is of substantial and specific danger to the public's
2 health or safety; or is a gross waste of public funds. The
3 action need not be within the scope of the employee's, elected
4 official's, board member's, commission member's, or committee
5 member's official duties to be subject to a claim of "improper
6 governmental action". "Improper governmental action" does not
7 include a unit of local government personnel actions,
8 including, but not limited to employee grievances, complaints,
9 appointments, promotions, transfers, assignments,
10 reassignments, reinstatements, restorations, reemployment,
11 performance evaluations, reductions in pay, dismissals,
12 suspensions, demotions, reprimands, or violations of
13 collective bargaining agreements, except to the extent that the
14 action amounts to retaliation.

15 "Retaliate", "retaliation", or "retaliatory action" means
16 any adverse change in an employee's employment status or the
17 terms and conditions of employment that results from an
18 employee's protected activity under this Ordinance.
19 "Retaliatory action" includes, but is not limited to, denial of
20 adequate staff to perform duties; frequent staff changes;
21 frequent and undesirable office changes; refusal to assign
22 meaningful work; unsubstantiated letters of reprimand or
23 unsatisfactory performance evaluations; demotion; reduction in
24 pay; denial of promotion; transfer or reassignment; suspension
25 or dismissal; or other disciplinary action made because of an
26 employee's protected activity under this Section.

1 Section 10. The Personnel Record Review Act is amended by
2 changing Section 8 as follows:

3 (820 ILCS 40/8) (from Ch. 48, par. 2008)

4 Sec. 8. An employer shall review a personnel record before
5 releasing information to a third party and, except when the
6 release is ordered to a party in a legal action or arbitration,
7 delete disciplinary reports, letters of reprimand, or other
8 records of disciplinary action which are more than 10 4 years
9 old.

10 (Source: P.A. 83-1104.)