

Legislative Analysis



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Senate Joint Resolution G as reported from House committee

Sponsor: Sen. Tom Barrett

House Committee: Oversight

Senate Committee: Oversight

Complete to 9-28-21

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: Senate Joint Resolution G would amend the state constitution to prohibit a state department or agency or a member or office of the Senate or House of Representatives from taking disciplinary action against certain state employees for communicating with certain individuals in the legislative branch of state government.

FISCAL IMPACT: Senate Joint Resolution G would have no fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

Michigan's Whistleblower Protection Act protects employees from being fired or harassed by their employers if they report a violation or suspected violation of a state, local, or federal law and also protects them from reprisals if they participate in hearings, investigations, legislative inquiries, or court actions. However, the act's definition of "employee" specifically excludes a person who is employed by the classified state civil service. For more than a decade, a provision granting similar protection to classified civil servants was included as boilerplate in budget bills. However, beginning with the 2019-20 fiscal year, the language was removed by the executive branch as being unenforceable.

Concern has been expressed that, without protection from retribution for a civil servant who reaches out to a member of the legislature or who testifies at a legislative hearing, communication will be stifled. Such communication might reveal not only wrongdoing on the part of a state department or agency but also ineffective policies or procedures that could benefit from legislative action.

THE CONTENT OF THE RESOLUTION:

Senate Joint Resolution G would add section 9 to Article XI (Public Officers and Employment) of the state constitution to provide that, notwithstanding any other provision of the constitution and except as described below, a state department or agency cannot take disciplinary action against an employee of the department or agency who is in the classified state civil service for communicating with a member of the Senate or House of Representatives or the staff of a Senate or House member.

Additionally, a member or office of the Senate or House of Representatives could not take disciplinary action against a nonpartisan employee of the Senate or House of Representatives because the employee communicated with a member of the Senate or House of Representatives or the member's staff.

The proposed prohibitions would not apply under either of the following circumstances:

- The communication was prohibited by law and the person or entity taking disciplinary action was exercising its authority as provided by law.
- The employee knowingly made a false statement in his or her communication.

To become part of the constitution, a joint resolution must be adopted by a two-thirds vote in each house of the legislature and approved by the voters at the next general election. (A general election is an election held in November of an even-numbered year.)

HOUSE COMMITTEE ACTION:

The House Oversight committee reported the Senate-passed version of Senate Joint Resolution G without amendment.

BACKGROUND INFORMATION:

Senate Joint Resolution G is similar to Senate Bill 686 of the 2019-20 legislative session, which was passed by both chambers and enrolled, but was vetoed by the governor.¹

ARGUMENTS:

For:

Proponents argue that the constitutional amendment would fix a hole in current law by providing protection to civil service workers and nonpartisan legislative staff when bringing a concern to a legislator or engaging in advocacy or offering an opinion on policy or procedures with legislative staff.

As an example, a number of years ago a state employee reported to a legislator that college students who were being fully supported by parents were still able to qualify to receive food stamps under the eligibility criteria in place at the time and that the practice was crowding out lower income individuals and families. The legislature revised the language of the law so that food stamps would continue to go to those whom the program was intended to serve—those most in need. Without protections in place, civil service workers may be reluctant to bring up similar issues in the future, let alone outright violations of law.

Employees could still face disciplinary action or be subject to criminal penalties if the communication with legislators or legislative staff included information prohibited under state statute from disclosure to unauthorized persons.

For:

A concern was raised that SB 686 of the 2019-20 legislative session appeared overly broad and vague as to the type of communication it would protect from disciplinary measures and that it could be seen as giving broad protection even to a worker making a false claim against his or her employer or fellow employees. Senate Resolution G, by comparison, addresses the issue by specifying that the prohibitions against disciplinary actions by employers would not apply

¹ <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-0686-4B31D9F4.pdf>

to an employee who knowingly made a false statement in his or her communication with a legislator or legislative staff.

Against:

Critics argue that a constitutional amendment is not needed, since section 2-10 of the Civil Service Commission Rules already prohibits reprisals against state workers who report, or are known by their appointing authority to have indicated an intent to report, a violation or suspected violation of a federal, state, or local law or a rule or regulation of the Civil Service Commission. In vetoing Senate Bill 686 of the 2019-20 legislative session,² the governor argued, among other things, that codifying language that previously had been in boilerplate in budget bills, as SB 686 proposed (and SJR G proposes) to do, would violate the constitutional separation of powers and section 5 of Article VI of the state constitution, which provides for the duties of the Civil Service Commission. While those questions of constitutionality may not apply if Senate Joint Resolution G becomes part of the constitution, for some the issues of Civil Service Commission autonomy and whether these changes are needed at all would remain.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

² https://content.govdelivery.com/attachments/MIEOG/2020/07/08/file_attachments/1491087/SB%20686%20Veto%20Letter.pdf