



**House  
Legislative  
Analysis  
Section**

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**CIVIL SERVICE PROTECTION**

House Bill 5321 as introduced  
First Analysis (1-30-92)

Sponsor: Rep. Joseph Young, Jr.  
Committee: Labor

***THE APPARENT PROBLEM:***

The Whistleblowers' Protection Act, Public Act 469 of 1980, prohibits employers from taking retaliatory actions against employees who report violations of laws or regulations. While the act defines the term "employer" to include the state and its political subdivisions, as well as private employers, the act does not protect all employees. Members of the state classified civil service are not protected by the act, because under the state constitution, the Civil Service Commission regulates all conditions of employment in the classified service (Article XI, Section 5). This arrangement is underscored by Article IV, Section 48 of the constitution, which says that "the legislature may enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service." A 1980 attorney general opinion (No. 5736) affirmed that the act, as well as companion amendments that were made to the law governing the conduct of public officers and employees, cannot be construed to apply to classified state employees.

Unfortunately, the need for whistleblower protection appears to exist within the state classified civil service just as it does in other areas of the public sector and in the private sector. Anecdotal evidence suggests that civil service employees who report violations and oversights, or who attempt to do so, are sometimes subjected to various forms of retribution, including transfer, trumped-up disciplinary actions, unjustifiably poor evaluations, ostracism, and disproportionately heavy workloads. While the nature of whistleblower problems makes it difficult to document the severity of the problem in the state classified civil service, it seems clear to many that protection of state classified whistleblowers would be a sound public policy. The Department of Civil Service has begun the process of reviewing whether stronger protections for state classified employees are needed, and is expected to approve new guidelines for civil service workers sometime this spring. Due to constitutional language that apparently prevents the legislature from acting alone on the matter, legislation has

been introduced--House Joint Resolution V, which is currently before the Senate Government Operations Committee--to amend the constitution to require the Civil Service Commission to provide that state classified whistleblowers are granted protections from various reprisals. However, to remove any doubt about how the act treats such workers, some believe statutory changes are needed, too.

***THE CONTENT OF THE BILL:***

The bill would amend the Whistleblowers' Protection Act to include state civil service employees within its provisions.

MCL 15.361

***FISCAL IMPLICATIONS:***

The House Fiscal Agency says the bill would not affect state budget expenditures. (1-29-92)

***ARGUMENTS:***

***For:***

Civil service whistleblowers can identify government waste and wrongdoing, and to protect such employees against retributive actions from supervisors is sound public policy; however, such protection is lacking. The Civil Service Commission has the sole authority to provide such protection, but existing civil service rules apparently are inadequate to prevent retaliatory actions. Although the assertion that existing rules are inadequate would carry more weight if abuses could be more fully documented, sufficient anecdotal evidence exists to suggest that civil service employees who have attempted to report errors or omissions have suffered for doing so and have good reason to wish to preserve their anonymity. In any event, there is no good reason not to more firmly establish whistleblower protection for the state classified civil

House Bill 5321 (1-30-92)

service. By eliminating language from the act that denies protection to civil service employees, the bill would clarify that these workers, too, would not have to fear retaliatory actions after reporting violations or other improper actions by management.

***Response:***

The bill may be unconstitutional as Article IV, Section 48 of the constitution specifically prohibits the legislature from resolving disputes concerning state classified employees. Further, this constitutional barrier was affirmed in an attorney general opinion issued in 1980. If additional protections are to be granted beyond those already provided by Civil Service Commission rules, the constitution will have to be amended first. By tie-barring the bill to House Joint Resolution V, the legislature could ensure that before any statutory changes were made, an amendment to the constitution would have to be approved by the voters.

***Against:***

There are already adequate safeguards in existing civil service rules and merit principles, especially in Merit Principle 5, which says that employees "should be protected from reprisal for the lawful disclosure of the violation of law, rules or regulation or mismanagement or abuse of authority." It is not clear whether additional protection is needed: when accusers remain anonymous, it is difficult to be certain whether reported incidents of retaliation for whistleblowing are actually incidents of unhappy employees failing to take responsibility for their own shortcomings. However, the Department of Civil Service is in the process of drafting language that specifically encourages employees to report violations and bars reprisals against them. Stronger and more explicit protections probably will be approved by the civil service commission this spring, thus obviating the need for the bill.

***Response:***

Complaints from state classified employees who have experienced retribution after reporting violations and oversights, despite the existence of civil service rules that are supposed to prevent this, suggest that stronger protections are needed. By including civil service employees under the act's protections, the bill would ensure that these workers have the same rights in the workplace that are granted to other public and private employees.

***POSITIONS:***

The Michigan Association of Governmental Employees supports the bill. (1-29-91)

The Michigan State Employees Association supports the bill. (1-29-92)

The Michigan State AFL-CIO supports the bill. (1-29-92)

The Michigan Department of Civil Service is not opposed to the bill. (1-29-92)