

COMMUNICATION WITH A LEGISLATOR

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Senate Bill 686 as enrolled
Vetoed by the Governor
Sponsor: Sen. Tom Barrett
1st House Committee: Oversight
2nd House Committee: Ways and Means
Senate Committee: Oversight
Complete to 7-22-20

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

BRIEF SUMMARY: Senate Bill 686 would create a new act 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. The bill was passed by both the Senate and House of Representatives and ordered enrolled but was vetoed by the governor on July 8, 2020.

FISCAL IMPACT: The bill would have no fiscal impact on state or local 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 state classified 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 could 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 BILL:

Under the bill, a department or agency of the state could not take disciplinary action against an employee of the department or agency in the state classified civil service because the employee communicated 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 staff of a Senate or House member.

The bill would not apply if the communication was prohibited by law and the person or entity taking disciplinary action was exercising its authority as provided by law.

ARGUMENTS:

For:

The bill 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.

Response:

The bill is not needed as section 2-10 of the Civil Service Commission Rules 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 any rule or regulation of the Civil Service Commission. As stated in the governor's veto message,¹ to codify language that previously had been in boilerplate in budget bills, as SB 686 proposes to do, would violate the constitutional separation of powers and section 5 of Article 6 of the state constitution, which provides for the duties of the Civil Service Commission.

Against:

A concern was raised that the bill appears overly broad and vague as to the type of communication it would protect from disciplinary measures. The bill could go beyond ensuring that civil service workers and legislative staff are not prevented from exercising a free speech right or talking over concerns with legislative staff, and could be seen as giving broad protection even to a worker making a false claim against his or her employer or fellow employees.

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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.

¹https://content.govdelivery.com/attachments/MIEOG/2020/07/08/file_attachments/1491087/SB%20686%20Veto%20Letter.pdf