

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1043

Bill Subtitle: TO AMEND ARKANSAS LAW TO PERMIT A REWARD TO A STATE EMPLOYEE WHEN A REPORT UNDER THE ARKANSAS WHISTLE-BLOWER ACT RESULTS IN A SAVINGS OF STATE FUNDS.

Basic Change :

Rep. Bell and Sen. J. Woods

Current law prohibits a public employer from taking adverse action against a public employee (a whistle-blower) who communicates (reports) in good faith a violation of state or local law or regulations, or a waste of public funds, property, or manpower to an appropriate authority. "Appropriate authority" is defined under current law as a state, county, or municipal government department, agency, or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, investigator, auditor, representative or supervisory employee of the body, agency, or organization. The Department of Finance and Administration would be considered an appropriate authority under the law.

HB1043 authorizes a reward to a whistle-blower if a savings of state funds results from the communication to the employer. The bill requires the appropriate authority to report the matter to the Performance Evaluation and Expenditure Review Subcommittee of the Legislative Council (or the Review/PEER Subcommittee of the Joint Budget Committee if the General Assembly is in session). If a whistle-blower believes that his or her report has resulted in a savings of state funds and the matter was not reported by the appropriate authority, the whistle-blower may present a written request to the Subcommittee that the matter be reviewed. After a review of the report or request, the Subcommittee is authorized to recommend to the Joint Budget Committee that the whistle-blower receive a reward in an amount equal to 10% of the amount of state funds saved during the first fiscal year the changes prompted by the report were implemented. If a reward is thereafter appropriated to a state employer for the benefit of the whistle-blower, it shall be paid "from the funds available to the state employer." The bill does not specify from which funds the reward will be made. Although the bill authorizes the recommendation from the Subcommittee to the Joint Budget Committee and the subsequent appropriation, the bill does not require either the Subcommittee or the Joint Budget Committee to take such action.

Revenue Impact :

Impossible to determine.

Resources Required :

None

Time Required :

Adequate time provided.

Procedural Changes :

None

Other Comments :

None

Legal Analysis :

Article 4, Section 2 of the Arkansas Constitution provides the basis for the separation of powers doctrine. Under this doctrine, no branch of government may exercise any power belonging to another

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branch of government. Decisions of the Arkansas Supreme Court clearly provide that the legislative branch has the power and responsibility to proclaim the law while the executive branch has the power and responsibility to enforce the law as enacted. HB1043 would proclaim the law with regard to whistleblower situations as authorized by the Arkansas Constitution. HB1043 would also empower various legislative committees with the authority to enforce the law with regard to whistleblowers including empowering those committees with the authority to determine the amount of savings to the state from the whistleblower's actions and recommending that the state employee receive a reward in an amount as determined by those legislative committees. These actions by the legislative committees are in violation of the separation of powers doctrine of the Arkansas Constitution in that those actions go beyond the proclamation of the law and undertake the enforcement of the law, as proclaimed.