

**Government of the District of Columbia
Office of the Chief Financial Officer**



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: November 18, 2009

SUBJECT: Fiscal Impact Statement – “Whistleblower Protection Amendment Act of 2009”

REFERENCE: Bill 18-223 – Committee Print shared with the OCFO on October 19, 2009

Conclusion

Funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the proposed legislation. The proposed legislation would have no negative impact on the budget and financial plan.

Background

The proposed legislation would improve District employee whistleblower protections by amending the Comprehensive Merit Personnel Act of 1978¹ (“CMPA”) to:

- Expand the definition of “protected disclosure” to include duty speech and prior disclosures without restriction;
- Prohibit the practice of retaliatory investigations when an employee comes forward with a whistleblower complaint;

¹ Effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*)

- Allow a protected informant to bring a civil action and an administrative claim against the District or any District employee that was involved in retaliation;
- Permit the District to stop salary payments and increase the maximum penalty that may be assessed for District employees who retaliate; and
- Extend the time allowed to file a civil action to 3 years after a violation occurs.

In addition, the proposed legislation would add a new subsection to CMPA giving the Mayor the authority to provide a monetary reward to a whistleblower whose protected disclosure leads to the recovery or prevention of loss of public funds. If the District is able to recover or prevent the loss of more than \$100,000 in public funds based on their protected disclosure, the whistleblower may be eligible for a reward between \$5,000 and \$50,000, at the discretion of the Mayor.

The proposed legislation would also amend the Employees of District Contractors and Instrumentality Whistleblower Protection Act of 1998² to prohibit retaliation by any District employee against contractors who make protected disclosures and extend the time allowed to file a civil action to 3 years after a violation occurs.

Finally, the proposed legislation would amend the Procurement Practices Act of 1985³ to increase the amount of the reward to a *qui tam*⁴ whistleblower from 20% to 25%.

The structure of the financial incentive for employees who come forward with protected disclosures is unique among government whistleblower regulations and some uncertainty exists about how a reward will affect employee behavior. If successful, the incentive could reduce fraud and waste and ultimate result in savings for the District.

Financial Plan Impact

Funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the proposed legislation. The whistleblower reward will be based on the recovery or prevention of loss of public funds over \$100,000 and the reward will be given out on a case by case basis at the discretion of the Mayor. Federal and the District's anti-deficiency rules prevent the District Government from obligating funds without sufficient resources. As such, any award pledged under the proposed legislation must be accounted for in a budget and financial plan.

² Effective October 7, 1998 (D.C. Law 12-160; D.C. Official Code § 2-223.01 *et seq.*)

³ Effective February 21, 1986 (D.C. Law. 6-85, D.C. Official Code § 2-308.15(f)(1))

⁴ A private individual with knowledge of fraud who brings a civil suit on behalf of themselves and government and can receive part of the penalty recovered.