

**HOUSE BILL No. 2160**

By Committee on Local Government

Requested by Representative Barth

1-30

1 AN ACT concerning municipalities; enacting the Kansas municipal  
2 employee whistleblower act; establishing legal protections for certain  
3 municipal employees who report or disclose unlawful or dangerous  
4 conduct; ***providing an administrative appeal process for***  
5 ***municipalities.***  
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. (a) This section shall be known and may be cited as the  
9 Kansas municipal employee whistleblower act.

10 (b) As used in this section:

11 (1) "Auditing agency" means:

12 (A) The legislative post auditor;

13 (B) any employee of the division of post audit;

14 (C) any firm performing audit services pursuant to a contract with the  
15 post auditor;

16 (D) any state agency or federal agency or authority performing  
17 auditing or other oversight activities under authority of any provision of  
18 law authorizing such activities; or

19 (E) the inspector general established under K.S.A. 75-7427, and  
20 amendments thereto.

21 (2) "Disciplinary action" means any dismissal, demotion, transfer,  
22 reassignment, suspension, reprimand, warning of possible dismissal or  
23 withholding of work.

24 (3) **"Malfeasance" means unlawful conduct committed by any**  
25 **member of the governing body of a municipality or any officer or**  
26 **other employee thereof.**

27 (4) **"Misappropriation" means the unauthorized or unlawful**  
28 **expenditure or transfer of moneys held by a municipality.**

29 (5) "Municipality" means any county, city or unified school district or  
30 any office, department, division, board, commission, bureau, agency or  
31 unit thereof.

32 (c) No supervisor or appointing authority of any municipality shall  
33 prohibit any of the following or take any disciplinary action against an

1 employee of such municipality because such employee:

2 (1) Discussed the operations of the municipality or other matters of  
3 public concern, including matters relating to the public health, safety and  
4 welfare either specifically or generally, with any member of the legislature  
5 or any auditing agency;

6 (2) reported a violation of state or federal law, municipal resolution or  
7 ordinance or any rules and regulations adopted pursuant such law,  
8 resolution or ordinance to any person, agency or organization;

9 (3) failed to give notice to the supervisor or appointing authority prior  
10 to making any report described in paragraph (2); **or**

11 (4) disclosed malfeasance or other misappropriation of moneys held  
12 by such municipality to any person, agency or organization; ~~or~~

13 ~~(5) disclosed a substantial and specific danger to public health or~~  
14 ~~safety to any person, agency or organization.~~

15 (d) This section shall not be construed to:

16 (1) Prohibit a supervisor or appointing authority from requiring that  
17 an employee inform the supervisor or appointing authority regarding  
18 legislative or auditing agency requests for information submitted to such  
19 municipality or the substance of testimony made, or to be made, by the  
20 employee to legislators or the auditing agency on behalf of such  
21 municipality;

22 (2) permit an employee to leave the employee's assigned work areas  
23 during normal work hours without following applicable rules and  
24 regulations and policies pertaining to employee leave unless the employee  
25 is requested by a legislator or legislative committee to appear before a  
26 legislative committee or by an auditing agency to appear at a meeting with  
27 officials of the auditing agency;

28 (3) authorize an employee to represent the employee's personal  
29 opinions as the opinions of such municipality; or

30 (4) prohibit disciplinary action of an employee who discloses  
31 information that:

32 (A) The employee knows to be false or that the employee discloses  
33 with reckless disregard for the truth or falsity of such information ***or due***  
34 ***to a corrupt motive rather than a good faith concern for a wrongful***  
35 ***activity;***

36 (B) the employee knows to be exempt from required disclosure under  
37 the open records act; or

38 (C) is confidential or privileged under state or federal law or court  
39 rule.

40 (e) ***(1)*** Any officer or employee of a municipality who alleges that  
41 disciplinary action has been taken against such officer or employee in  
42 violation of this section may bring an action in a court of competent  
43 jurisdiction within 90 days after the occurrence of the alleged violation

1 seeking damages and any other equitable relief the court deems necessary.  
2 The court may award the prevailing party in the action all or a portion of  
3 the costs of the action, including reasonable attorney fees and witness fees.

4 ***(2) In any municipality that creates an administrative process to***  
5 ***adjudicate disciplinary actions against employees of the municipality,***  
6 ***any officer or employee of the municipality who is eligible to appeal***  
7 ***disciplinary actions to such adjudicative body may appeal to such body***  
8 ***whenever such officer or employee alleges that disciplinary action was***  
9 ***taken against such officer or employee in violation of this act. The***  
10 ***appeal shall be filed within 90 days after the alleged disciplinary action.***  
11 ***If such body finds that the disciplinary action taken was unreasonable,***  
12 ***such body shall modify or reverse the auditing agency's action and order***  
13 ***such relief for the employee as such body considers appropriate. Any***  
14 ***party may appeal a decision of such governing body under the Kansas***  
15 ***judicial review act, K.S.A. 77-601 et seq., and amendments thereto.***

16 (f) Each municipality shall prominently post a copy of this act in  
17 locations where it can reasonably be expected to come to the attention of  
18 all employees of such municipality.

19 ***(g) Nothing in this act shall be construed to negate or supersede***  
20 ***any provision of law providing protection against liability to a legislator***  
21 ***for any act or failure to act, impose any liability against a legislator for***  
22 ***any act or failure to act or create a duty upon a legislator to take any***  
23 ***action based on any information that may be shared with a legislator by***  
24 ***a municipal employee or any other person.***

25 Sec. 2. This act shall take effect and be in force from and after its  
26 publication in the statute book.