

- SUBJECT:** Enhanced penalties for misuse of official information by public servants
- COMMITTEE:** General Investigating and Ethics — favorable, without amendment
- VOTE:** 5 ayes — Kuempel, Collier, S. Davis, Larson, C. Turner
- 0 nays
- 2 absent — Hunter, Moody
- WITNESSES:** For — (*Registered, but did not testify:* Tom “Smitty” Smith, Public Citizen, Inc.)
- Against — None
- BACKGROUND:** Penal Code, sec. 39.06 contains two levels of punishment for the offense of misuse of official information. A public servant who violates the section can be convicted of a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). A public servant, including a school principal, who coerces another into suppressing or failing to report information to a law enforcement agency can be convicted of a class C misdemeanor (maximum fine of \$500).
- DIGEST:** HB 1539 would link penalties for misuse of official information to the net pecuniary amount gained by the person committing the offense. The bill would establish that an offense is:
- a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the net pecuniary gain is less than \$100,000;
 - a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the net pecuniary gain is between \$100,000 and \$200,000; or
 - a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the net pecuniary gain is \$200,000 or more.

The bill would take effect September 1, 2015, and would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

HB 1539 appropriately would strengthen punishment for public servants who engage in insider trading or who otherwise use nonpublic information to obtain a benefit or to harm or defraud another.

The highest penalty under current law is a third-degree felony, but the bill would allow serious offenders to be charged with a second-degree or first-degree felony. The higher penalties could serve as a deterrent to public servants who would use their positions of public trust for financial gain. Similar to other punishments for financial crimes, the bill would carry greater potential penalties for offenders who gained more money from their crimes.

Enhancing penalties for misuse of official information is not expected to significantly impact state correctional populations, programs, or workloads. In fiscal 2014, there were 15 people arrested, fewer than 10 placed under felony community supervision, and fewer than 10 admitted to state correctional institution for this offense, according to the Legislative Budget Board's criminal justice impact statement.

**OPPONENTS
SAY:**

Insider trading is a serious crime but does not rise to the level of a first-degree felony. Locking up violent offenders for many years does protect the public, but the same level of protection is not needed for nonviolent offenses. There is a cost to taxpayers to sentencing offenders who engage in financial crimes to years in prison when they could be working and paying restitution to those they harmed.

NOTES:

The Senate companion bill, SB 111 by V. Taylor, was referred to the Senate State Affairs Committee on January 27.