

# SENATE BILL REPORT

## SB 5406

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As Reported By Senate Committee On:  
Government Operations & Elections, February 26, 2007

**Title:** An act relating to state employee whistle-blower protection.

**Brief Description:** Revising state employee whistleblower protection definitions.

**Sponsors:** Senators Kline, Fairley and Fraser.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/06/07, 2/26/07 [DPS].

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 5406 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; Benton, Kline, Pridemore and Swecker.

**Staff:** Sharon Swanson (786-7447)

**Background:** The state whistle-blower protection program was established to encourage state employees to disclose improper governmental action and to provide protection to employees who report improper action.

Any whistle-blower who has been subject to retaliation has a cause of action for remedies provided under the law against discrimination, including injunctive relief, actual damages, and reasonable attorney fees.

A "whistle-blower" is defined as any state employee who in good faith reports alleged improper governmental action to the auditor, initiating an investigation.

Currently, improper governmental action is defined as any action by an employee undertaken in the performance of the employee's official duties which is a gross waste of public funds, is in violation of federal or state law or rule, or which is of substantial and specific danger to the public health or safety.

**Summary of Bill:** Definitions for abuse of authority and gross mismanagement are added to the Whistle-Blower Protection Act.

The existing definition of improper governmental action is amended to include any action by an employee:

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- which is gross mismanagement;
- which is an abuse of authority; and
- which impedes the communication of scientific opinion or alters technical findings without scientifically valid justification.

The definition of whistle-blower is amended to include an employee who refuses to obey an order that he or she believes in good faith would require him or her to violate the law.

Public body is defined as the employee's supervisor, law enforcement, the Attorney General, legislative and executive branches of government, a court of law, and other governmental authorities.

Any person who has reported the alleged occurrence of improper governmental action to a public body is presumed to have established a cause of action.

**EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Government Operations & Elections):** The following definitions were amended: (1) good faith means there is a reasonable basis in fact for the belief or communication and the employee has made a reasonable attempt to ascertain the correctness of the belief or communication; (2) improper governmental action includes any action which prevents the dissemination of scientific opinion or alters technical findings without scientifically valid justification; (3) language is added to clarify that the state auditor has authority to investigate all whistleblower complaints, including those made to a public body; and (4) a public body who receives a whistleblower report must submit a record of that report to the auditor within five business days of receiving it.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill will strengthen a weak provision in state law. A state employee should never worry that being truthful will put their job at risk. The bill will provide greater transparency in government and will protect state employees. It takes a great deal of courage for a person to blow the whistle and risk your career. We must ensure that our legislators and the public hear the truth. The least we can do is protect the people who are willing to come forward and blow the whistle.

OTHER: The office of the Auditor receives complaints under the current law. The bill does not make it clear that the auditor retains investigative authority over complaints made by a whistle-blower. Good faith refusal is not defined in the bill. Without a definition or some type of justification state employees can simply refuse, based on their own beliefs, to follow direction. Under the current draft of the bill, these employees would qualify as a whistle blower and be subject to protection. There is no definition for impeding communication. The bill needs some additional work.

**Persons Testifying:** PRO: Sue Gunn, Public Employees for Environmental Responsibility; Tom Clark, Former State Employee; Pete Kmet, Washington Federation of State Employees; Edwin Bricker, citizen.

OTHER: Rene Tomissen, Office of the Attorney General.