
SUBSTITUTE SENATE BILL 6776

State of Washington

60th Legislature

2008 Regular Session

By Senate Government Operations & Elections (originally sponsored by Senators Kline, Roach, Fraser, Fairley, and Swecker)

READ FIRST TIME 02/08/08.

1 AN ACT Relating to state employee whistleblower protection;
2 amending RCW 42.40.020, 42.40.030, 42.40.040, 42.40.070, 42.40.050, and
3 42.40.910; reenacting and amending RCW 49.60.230 and 49.60.250;
4 creating a new section; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds and declares that
7 government exists to conduct the people's business, and the people
8 remaining informed about the actions of government contributes to the
9 oversight of how the people's business is conducted. The legislature
10 further finds that many public servants who expose actions of their
11 government that are contrary to the law or public interest face the
12 potential loss of their careers and livelihoods.

13 It is the policy of the legislature that employees should be
14 encouraged to disclose, to the extent not expressly prohibited by law,
15 improper governmental actions, and it is the intent of the legislature
16 to protect the rights of state employees making these disclosures. It
17 is also the policy of the legislature that employees should be
18 encouraged to identify rules warranting review or provide information

1 to the rules review committee, and it is the intent of the legislature
2 to protect the rights of these employees.

3 This act shall be broadly construed in order to effectuate the
4 purpose of this act.

5 **Sec. 2.** RCW 42.40.020 and 1999 c 361 s 1 are each amended to read
6 as follows:

7 As used in this chapter, the terms defined in this section shall
8 have the meanings indicated unless the context clearly requires
9 otherwise.

10 (1) "Abuse of authority" means an arbitrary or capricious exercise
11 of, or willful failure to exercise, power that adversely affects the
12 rights of any person or that results in personal gain or advantage to
13 himself, herself, or preferred other persons.

14 (2) "Auditor" means the office of the state auditor.

15 ~~((+2))~~ (3) "Employee" means any individual employed or holding
16 office in any department or agency of state government.

17 ~~((+3))~~ (4) "Good faith" means there is a reasonable basis in fact
18 for the communication. "Good faith" is lacking when the employee knows
19 or reasonably ought to know that the report is malicious, false, or
20 frivolous.

21 ~~((+4))~~ (5) "Gross mismanagement" means the arbitrary or capricious
22 exercise of management responsibilities in a manner grossly deviating
23 from the standard of care or competence that a reasonable person would
24 observe in the same situation.

25 (6) "Gross waste of funds" means to spend or use funds or to allow
26 funds to be used without valuable result in a manner grossly deviating
27 from the standard of care or competence that a reasonable person would
28 observe in the same situation.

29 ~~((+5))~~ (7)(a) "Improper governmental action" means any action by
30 an employee undertaken in the performance of the employee's official
31 duties:

32 (i) Which is ~~((+a))~~ a gross waste of public funds or resources as
33 defined in this section;

34 (ii) Which is in violation of federal or state law or rule, if the
35 violation is not merely technical or of a minimum nature; ~~((+e))~~

36 (iii) Which is of substantial and specific danger to the public
37 health or safety;

1 (iv) Which is gross mismanagement;
2 (v) Which is an abuse of authority; or
3 (vi)(A) Which prevents the dissemination of scientific opinion or
4 alters technical findings without scientifically valid justification,
5 unless disclosure is prohibited by state law or a common law privilege.
6 This provision is not meant to preclude the discretion of agency
7 management to adopt a particular scientific opinion or technical
8 finding from among differing opinions or findings to the exclusion of
9 other scientific opinions or technical findings. Nothing in this
10 provision requires the auditor to contract or consult with external
11 experts regarding the scientific validity, invalidity, or justification
12 of a finding or opinion.

13 (B) In determining whether an allegation under (a)(vi)(A) of this
14 subsection is improper governmental action, consideration shall be
15 given to the intent of the subsection to maintain a full and accurate
16 public record for scientific research, but with the understanding that
17 nothing in this subsection prevents or impairs a state agency's or
18 public official's ability to manage its public resources. Subsection
19 (7)(a)(vi)(A) of this section does not apply to de minimis, technical
20 disagreements that are not relevant for otherwise improper governmental
21 activity.

22 (b) "Improper governmental action" does not include personnel
23 actions, for which other remedies exist, including but not limited to
24 employee grievances, complaints, appointments, promotions, transfers,
25 assignments, reassignments, reinstatements, restorations,
26 reemployments, performance evaluations, reductions in pay, dismissals,
27 suspensions, demotions, violations of the state civil service law,
28 alleged labor agreement violations, reprimands, claims of
29 discriminatory treatment, or any action which may be taken under
30 chapter 41.06 RCW, or other disciplinary action except as provided in
31 RCW 42.40.030.

32 ~~((+6+))~~ (8) "Public official" means the employee's direct or
33 secondary supervisors, other agency managers, and the attorney general.

34 (9) "Substantial and specific danger" means a risk of serious
35 injury, illness, peril, or loss, to which the exposure of the public is
36 a gross deviation from the standard of care or competence which a
37 reasonable person would observe in the same situation.

1 (~~(7)~~) (10) "Use of official authority or influence" includes
2 threatening, taking, directing others to take, recommending,
3 processing, or approving any personnel action such as an appointment,
4 promotion, transfer, assignment including but not limited to duties and
5 office location, reassignment, reinstatement, restoration,
6 reemployment, performance evaluation, determining any material changes
7 in pay, provision of training or benefits, tolerance of a hostile work
8 environment, or any adverse action under chapter 41.06 RCW, reprimand
9 or other disciplinary action.

10 (~~(8)~~) (11) "Whistleblower" means an employee who in good faith
11 reports, or is perceived by the employer as reporting or about to
12 report, alleged improper governmental action to the auditor or other
13 public official, initiating an investigation under RCW 42.40.040. For
14 purposes of the provisions of this chapter and chapter 49.60 RCW
15 relating to reprisals and retaliatory action, the term "whistleblower"
16 also means: (a) An employee who in good faith provides information to
17 the auditor or other public official in connection with an
18 investigation under RCW 42.40.040 and an employee who is believed to
19 have reported asserted improper governmental action to the auditor or
20 other public official, or to have provided information to the auditor
21 or other public official in connection with an investigation under RCW
22 42.40.040 but who, in fact, has not reported such action or provided
23 such information; or (b) an employee who in good faith identifies rules
24 warranting review or provides information to the rules review
25 committee, and an employee who is believed to have identified rules
26 warranting review or provided information to the rules review committee
27 but who, in fact, has not done so.

28 **Sec. 3.** RCW 42.40.030 and 1995 c 403 s 510 are each amended to
29 read as follows:

30 (1) An employee shall not directly or indirectly use or attempt to
31 use the employee's official authority or influence for the purpose of
32 intimidating, threatening, coercing, commanding, influencing, or
33 attempting to intimidate, threaten, coerce, command, or influence any
34 individual for the purpose of interfering with the right of the
35 individual to: (a) Disclose to the auditor (or representative thereof)
36 or other public official information concerning improper governmental

1 action; or (b) identify rules warranting review or provide information
2 to the rules review committee.

3 (2) Nothing in this section authorizes an individual to disclose
4 information otherwise prohibited by law, except to the extent that
5 information is necessary to substantiate the whistleblower complaint,
6 in which case information may be disclosed to the auditor or public
7 official by the whistleblower for the limited purpose of providing
8 information related to the complaint. Any information provided to the
9 auditor or public official under the authority of this subsection may
10 not be further disclosed.

11 **Sec. 4.** RCW 42.40.040 and 1999 c 361 s 3 are each amended to read
12 as follows:

13 (1)(a) In order to be investigated, an assertion of improper
14 governmental action must be provided to the auditor or other public
15 official within one year after the occurrence of the asserted improper
16 governmental action. The public official receiving an assertion of
17 improper governmental action must report the assertion to the auditor
18 within fifteen calendar days of receipt of the assertion. The auditor
19 retains sole authority to investigate an assertion of improper
20 governmental action including those made to a public official. A
21 failure of the public official to report the assertion to the auditor
22 within fifteen days does not impair the rights of the whistleblower.

23 (b) Except as provided under RCW 42.40.910 for legislative and
24 judicial branches of government, the auditor has the authority to
25 determine whether to investigate any assertions received. In
26 determining whether to conduct either a preliminary or further
27 investigation, the auditor shall consider factors including, but not
28 limited to: The nature and quality of evidence and the existence of
29 relevant laws and rules; whether the action was isolated or systematic;
30 the history of previous assertions regarding the same subject or
31 subjects or subject matter; whether other avenues are available for
32 addressing the matter; whether the matter has already been investigated
33 or is in litigation; the seriousness or significance of the asserted
34 improper governmental action; and the cost and benefit of the
35 investigation. The auditor has the sole discretion to determine the
36 priority and weight given to these and other relevant factors and to

1 decide whether a matter is to be investigated. The auditor shall
2 document the factors considered and the analysis applied.

3 (c) The auditor also has the authority to investigate assertions of
4 improper governmental actions as part of an audit conducted under
5 chapter 43.09 RCW. The auditor shall document the reasons for handling
6 the matter as part of such an audit.

7 (d) Except as provided under RCW 42.40.910, the auditor also has
8 the authority to investigate, within available resources, reports of
9 improper governmental activities made by whistleblowers to any public
10 official pursuant to RCW 42.40.050.

11 (2) Subject to subsection (5)(c) of this section, the identity or
12 identifying characteristics of a whistleblower is confidential at all
13 times unless the whistleblower consents to disclosure by written waiver
14 or by acknowledging his or her identity in a claim against the state
15 for retaliation. In addition, the identity of any person who in good
16 faith provides information in an investigation under this section is
17 confidential at all times, unless the person consents to disclosure by
18 written waiver or by acknowledging his or her identity as a witness who
19 provides information in an investigation.

20 (3) Upon receiving specific information that an employee has
21 engaged in improper governmental action, the auditor shall, within
22 ~~((five))~~ fifteen working days of receipt of the information, mail
23 written acknowledgement to the whistleblower at the address provided
24 stating whether a preliminary investigation will be conducted. For a
25 period not to exceed ~~((thirty))~~ sixty working days from receipt of the
26 assertion, the auditor shall conduct such preliminary investigation of
27 the matter as the auditor deems appropriate.

28 (4) In addition to the authority under subsection (3) of this
29 section, the auditor may, on its own initiative, investigate incidents
30 of improper state governmental action.

31 (5)(a) If it appears to the auditor, upon completion of the
32 preliminary investigation, that the matter is so unsubstantiated that
33 no further investigation, prosecution, or administrative action is
34 warranted, the auditor shall so notify the whistleblower summarizing
35 where the allegations are deficient, and provide a reasonable
36 opportunity to reply. Such notification may be by electronic means.

37 (b) The written notification shall contain a summary of the

1 information received and of the results of the preliminary
2 investigation with regard to each assertion of improper governmental
3 action.

4 (c) In any case to which this section applies, the identity or
5 identifying characteristics of the whistleblower shall be kept
6 confidential unless the auditor determines that the information has
7 been provided other than in good faith. If the auditor makes such a
8 determination, the auditor shall provide reasonable advance notice to
9 the employee.

10 (d) With the agency's consent, the auditor may forward the
11 assertions to an appropriate agency to investigate and report back to
12 the auditor no later than sixty working days after the assertions are
13 received from the auditor. The auditor is entitled to all
14 investigative records resulting from such a referral. All procedural
15 and confidentiality provisions of this chapter apply to investigations
16 conducted under this subsection. The auditor shall document the
17 reasons the assertions were referred.

18 (6) During the preliminary investigation, the auditor shall provide
19 written notification of the nature of the assertions to the subject or
20 subjects of the investigation and the agency head. The notification
21 shall include the relevant facts and laws known at the time and the
22 procedure for the subject or subjects of the investigation and the
23 agency head to respond to the assertions and information obtained
24 during the investigation. This notification does not limit the auditor
25 from considering additional facts or laws which become known during
26 further investigation.

27 ~~((+7))~~(a) If it appears to the auditor after completion of the
28 preliminary investigation that further investigation, prosecution, or
29 administrative action is warranted, the auditor shall so notify the
30 whistleblower, the subject or subjects of the investigation, and the
31 agency head and either conduct a further investigation or issue a
32 report under subsection ~~((+10))~~ (9) of this section.

33 (b) If the preliminary investigation resulted from an anonymous
34 assertion, a decision to conduct further investigation shall be subject
35 to review by a three-person panel convened as necessary by the auditor
36 prior to the commencement of any additional investigation. The panel
37 shall include a state auditor representative knowledgeable of the
38 subject agency operations, a citizen volunteer, and a representative of

1 the attorney general's office. This group shall be briefed on the
2 preliminary investigation and shall recommend whether the auditor
3 should proceed with further investigation.

4 (c) If further investigation is to occur, the auditor shall provide
5 written notification of the nature of the assertions to the subject or
6 subjects of the investigation and the agency head. The notification
7 shall include the relevant facts known at the time and the procedure to
8 be used by the subject or subjects of the investigation and the agency
9 head to respond to the assertions and information obtained during the
10 investigation.

11 ~~((+8))~~ (7) Within sixty working days after the preliminary
12 investigation period in subsection (3) of this section, the auditor
13 shall complete the investigation and report its findings to the
14 whistleblower unless written justification for the delay is furnished
15 to the whistleblower, agency head, and subject or subjects of the
16 investigation. In all such cases, the report of the auditor's
17 investigation and findings shall be sent to the whistleblower within
18 one year after the information was filed under subsection (3) of this
19 section.

20 ~~((+9))~~ (8)(a) At any stage of an investigation under this section
21 the auditor may require by subpoena the attendance and testimony of
22 witnesses and the production of documentary or other evidence relating
23 to the investigation at any designated place in the state. The auditor
24 may issue subpoenas, administer oaths, examine witnesses, and receive
25 evidence. In the case of contumacy or failure to obey a subpoena, the
26 superior court for the county in which the person to whom the subpoena
27 is addressed resides or is served may issue an order requiring the
28 person to appear at any designated place to testify or to produce
29 documentary or other evidence. Any failure to obey the order of the
30 court may be punished by the court as a contempt thereof.

31 (b) The auditor may order the taking of depositions at any stage of
32 a proceeding or investigation under this chapter. Depositions shall be
33 taken before an individual designated by the auditor and having the
34 power to administer oaths. Testimony shall be reduced to writing by or
35 under the direction of the individual taking the deposition and shall
36 be subscribed by the deponent.

37 (c) Agencies shall cooperate fully in the investigation and shall

1 take appropriate action to preclude the destruction of any evidence
2 during the course of the investigation.

3 (d) During the investigation the auditor shall interview each
4 subject of the investigation. If it is determined there is reasonable
5 cause to believe improper governmental action has occurred, the subject
6 or subjects and the agency head shall be given fifteen working days to
7 respond to the assertions prior to the issuance of the final report.

8 ~~((+10+))~~ (9)(a) If the auditor determines there is reasonable cause
9 to believe an employee has engaged in improper governmental action, the
10 auditor shall report, to the extent allowable under existing public
11 disclosure laws, the nature and details of the activity to:

12 (i) The subject or subjects of the investigation and the head of
13 the employing agency; ~~((and))~~

14 (ii) If appropriate, the attorney general or such other authority
15 as the auditor determines appropriate;

16 (iii) Electronically to the governor, secretary of the senate, and
17 chief clerk of the house of representatives; and

18 (iv) Except for information whose release is specifically
19 prohibited by statute or executive order, the public through the public
20 file of whistleblower reports maintained by the auditor.

21 (b) The auditor has no enforcement power except that in any case in
22 which the auditor submits an investigative report containing reasonable
23 cause determinations to the agency, the agency shall send its plan for
24 resolution to the auditor within fifteen working days of having
25 received the report. The agency is encouraged to consult with the
26 subject or subjects of the investigation in establishing the resolution
27 plan. The auditor may require periodic reports of agency action until
28 all resolution has occurred. If the auditor determines that
29 appropriate action has not been taken, the auditor shall report the
30 determination to the governor and to the legislature and may include
31 this determination in the agency audit under chapter 43.09 RCW.

32 ~~((+11+))~~ (10) Once the auditor concludes that appropriate action
33 has been taken to resolve the matter, the auditor shall so notify the
34 whistleblower, the agency head, and the subject or subjects of the
35 investigation. If the resolution takes more than one year, the auditor
36 shall provide annual notification of its status to the whistleblower,
37 agency head, and subject or subjects of the investigation.

1 ~~((12))~~ (11) Failure to cooperate with such audit or
2 investigation, or retaliation against anyone who assists the auditor by
3 engaging in activity protected by this chapter shall be reported as a
4 separate finding with recommendations for corrective action in the
5 associated report whenever it occurs.

6 (12) This section does not limit any authority conferred upon the
7 attorney general or any other agency of government to investigate any
8 matter.

9 **Sec. 5.** RCW 42.40.070 and 1989 c 284 s 5 are each amended to read
10 as follows:

11 A written summary of this chapter and procedures for reporting
12 improper governmental actions established by the auditor's office shall
13 be made available by each department or agency of state government to
14 each employee upon entering public employment. Such notices may be in
15 agency internal newsletters, included with paychecks or stubs, sent via
16 electronic mail to all employees, or sent by other means that are
17 cost-effective and reach all employees of the government level,
18 division, or subdivision. Employees shall be notified by each
19 department or agency of state government each year of the procedures
20 and protections under this chapter.

21 **Sec. 6.** RCW 42.40.050 and 1999 c 283 s 1 are each amended to read
22 as follows:

23 (1)(a) Any person who is a whistleblower, as defined in RCW
24 42.40.020, and who has been subjected to workplace reprisal or
25 retaliatory action is presumed to have established a cause of action
26 for the remedies provided under chapter 49.60 RCW.

27 (b) For the purpose of this section, "reprisal or retaliatory
28 action" means but is not limited to threatening, taking, directing
29 others to take, recommending, processing, or approving any of the
30 following:

- 31 ~~((a))~~ (i) Denial of adequate staff to perform duties;
32 ~~((b))~~ (ii) Frequent staff changes;
33 ~~((c))~~ (iii) Frequent and undesirable office changes;
34 ~~((d))~~ (iv) Refusal to assign meaningful work;
35 ~~((e))~~ (v) Unwarranted and unsubstantiated letters of reprimand or
36 unsatisfactory performance evaluations;

- 1 ~~((f))~~ (vi) Demotion;
2 ~~((g))~~ (vii) Reduction in pay or benefits;
3 ~~((h))~~ (viii) Denial of promotion;
4 ~~((i))~~ (ix) Suspension;
5 ~~((j))~~ (x) Dismissal;
6 ~~((k))~~ (xi) Denial of employment;
7 ~~((l))~~ (xii) A supervisor or superior creating a hostile work
8 environment or encouraging coworkers to behave in a hostile manner
9 toward the whistleblower; ~~((and~~
10 ~~((m))~~ (xiii) A change in the physical location of the employee's
11 workplace or a change in the basic nature of the employee's job, if
12 either are in opposition to the employee's expressed wish;
13 (xiv) Removal from a previously approved assignment;
14 (xv) Denial of previously approved training;
15 (xvi) Issuance of or attempt to enforce any nondisclosure policy,
16 form, or agreement in a manner that is inconsistent with prior
17 practice; or
18 (xvii) Any other action that is inconsistent compared to actions
19 taken before the employee engaged in conduct protected by this chapter,
20 or compared to other employees who have not engaged in conduct
21 protected by this chapter.

22 (2) The agency presumed to have taken retaliatory action under
23 subsection (1) of this section may rebut that presumption by proving by
24 ~~((a preponderance of the))~~ clear and convincing evidence that the
25 agency action or actions were justified by reasons unrelated to the
26 employee's status as a whistleblower and by showing that improper
27 motive was not a substantial factor.

28 (3) Nothing in this section prohibits an agency from making any
29 decision exercising its authority to terminate, suspend, or discipline
30 an employee who engages in workplace reprisal or retaliatory action
31 against a whistleblower. However, the agency also shall implement any
32 order under chapter 49.60 RCW (other than an order of suspension if the
33 agency has terminated the retaliator).

34 **Sec. 7.** RCW 49.60.230 and 1993 c 510 s 21 and 1993 c 69 s 11 are
35 each reenacted and amended to read as follows:

36 (1) Who may file a complaint:

1 (a) Any person claiming to be aggrieved by an alleged unfair
2 practice may, personally or by his or her attorney, make, sign, and
3 file with the commission a complaint in writing under oath or by
4 declaration. The complaint shall state the name of the person alleged
5 to have committed the unfair practice and the particulars thereof, and
6 contain such other information as may be required by the commission.

7 (b) Whenever it has reason to believe that any person has been
8 engaged or is engaging in an unfair practice, the commission may issue
9 a complaint.

10 (c) Any employer or principal whose employees, or agents, or any of
11 them, refuse or threaten to refuse to comply with the provisions of
12 this chapter may file with the commission a written complaint under
13 oath or by declaration asking for assistance by conciliation or other
14 remedial action.

15 (2) Any complaint filed pursuant to this section must be so filed
16 within six months after the alleged act of discrimination except that
17 complaints alleging an unfair practice in a real estate transaction
18 pursuant to RCW 49.60.222 through 49.60.225 must be so filed within one
19 year after the alleged unfair practice in a real estate transaction has
20 occurred or terminated and a complaint alleging whistleblower
21 retaliation must be filed within two years.

22 (3) On or before the third Monday in January of each year, the
23 commission shall report to the governor and the legislature the number
24 of retaliation reports it has received in the past year, the number of
25 such reports that were substantiated, and the number of such cases
26 still under consideration as well as how long each unresolved case has
27 been under consideration. This information shall also be posted for
28 public review on the agency web site.

29 **Sec. 8.** RCW 49.60.250 and 1993 c 510 s 23 and 1993 c 69 s 14 are
30 each reenacted and amended to read as follows:

31 (1) In case of failure to reach an agreement for the elimination of
32 such unfair practice, and upon the entry of findings to that effect,
33 the entire file, including the complaint and any and all findings made,
34 shall be certified to the chairperson of the commission. The
35 chairperson of the commission shall thereupon request the appointment
36 of an administrative law judge under Title 34 RCW to hear the complaint
37 and shall cause to be issued and served in the name of the commission

1 a written notice, together with a copy of the complaint, as the same
2 may have been amended, requiring the respondent to answer the charges
3 of the complaint at a hearing before the administrative law judge, at
4 a time and place to be specified in such notice.

5 (2) The place of any such hearing may be the office of the
6 commission or another place designated by it. The case in support of
7 the complaint shall be presented at the hearing by counsel for the
8 commission: PROVIDED, That the complainant may retain independent
9 counsel and submit testimony and be fully heard. No member or employee
10 of the commission who previously made the investigation or caused the
11 notice to be issued shall participate in the hearing except as a
12 witness, nor shall the member or employee participate in the
13 deliberations of the administrative law judge in such case. Any
14 endeavors or negotiations for conciliation shall not be received in
15 evidence.

16 (3) The respondent shall file a written answer to the complaint and
17 appear at the hearing in person or otherwise, with or without counsel,
18 and submit testimony and be fully heard. The respondent has the right
19 to cross-examine the complainant.

20 (4) The administrative law judge conducting any hearing may permit
21 reasonable amendment to any complaint or answer. Testimony taken at
22 the hearing shall be under oath and recorded.

23 (5) If, upon all the evidence, the administrative law judge finds
24 that the respondent has engaged in any unfair practice, the
25 administrative law judge shall state findings of fact and shall issue
26 and file with the commission and cause to be served on such respondent
27 an order requiring such respondent to cease and desist from such unfair
28 practice and to take such affirmative action, including, (but not
29 limited to) hiring, reinstatement or upgrading of employees, with or
30 without back pay, an admission or restoration to full membership rights
31 in any respondent organization, or to take such other action as, in the
32 judgment of the administrative law judge, will effectuate the purposes
33 of this chapter, including action that could be ordered by a court,
34 except that damages for humiliation and mental suffering shall not
35 exceed (~~ten~~) twenty thousand dollars, and including a requirement for
36 report of the matter on compliance. Relief available for violations of
37 RCW 49.60.222 through 49.60.224 shall be limited to the relief
38 specified in RCW 49.60.225.

1 (6) If a determination is made that retaliatory action, as defined
2 in RCW 42.40.050, has been taken against a whistleblower, as defined in
3 RCW 42.40.020, the administrative law judge may, in addition to any
4 other remedy, require restoration of benefits, back pay, and any
5 increases in compensation that would have occurred, with interest;
6 impose a civil penalty upon the retaliator of up to ((three)) five
7 thousand dollars; and issue an order to the state employer to suspend
8 the retaliator for up to thirty days without pay. At a minimum, the
9 administrative law judge shall require that a letter of reprimand be
10 placed in the retaliator's personnel file. A nondisclosure order,
11 policy, or agreement that precludes, undermines, obstructs, or
12 otherwise adversely affects conduct, rights, or relief protected by
13 this chapter shall be void from its inception, and no agency shall
14 spend any funds to implement or enforce any such order, policy, or
15 agreement. All penalties recovered shall be paid into the state
16 treasury and credited to the general fund.

17 (7) The final order of the administrative law judge shall include
18 a notice to the parties of the right to obtain judicial review of the
19 order by appeal in accordance with the provisions of RCW 34.05.510
20 through 34.05.598, and that such appeal must be served and filed within
21 thirty days after the service of the order on the parties.

22 (8) If, upon all the evidence, the administrative law judge finds
23 that the respondent has not engaged in any alleged unfair practice, the
24 administrative law judge shall state findings of fact and shall
25 similarly issue and file an order dismissing the complaint.

26 (9) An order dismissing a complaint may include an award of
27 reasonable attorneys' fees in favor of the respondent if the
28 administrative law judge concludes that the complaint was frivolous,
29 unreasonable, or groundless.

30 (10) The commission shall establish rules of practice to govern,
31 expedite, and effectuate the foregoing procedure.

32 (11) Instead of filing with the commission, a complainant may
33 pursue arbitration conducted by the American arbitration association or
34 another arbitrator mutually agreed by the parties, with the cost of
35 arbitration shared equally by the complainant and the respondent.

36 **Sec. 9.** RCW 42.40.910 and 1999 c 361 s 7 are each amended to read
37 as follows:

1 This act and chapter 361, Laws of 1999 (~~does~~) do not affect the
2 jurisdiction of the legislative ethics board, the executive ethics
3 board, or the commission on judicial conduct, as set forth in chapter
4 42.52 RCW. The senate, the house of representatives, and the supreme
5 court shall adopt policies regarding the applicability of chapter 42.40
6 RCW to the senate, house of representatives, and judicial branch.

--- END ---