
SENATE BILL 6776

State of Washington

60th Legislature

2008 Regular Session

By Senators Kline, Roach, Fraser, Fairley, and Swecker

Read first time 01/23/08. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to state employee whistleblower protection;
2 amending RCW 42.40.020, 42.40.040, 42.40.050, and 42.40.910; reenacting
3 and amending RCW 49.60.230 and 49.60.250; adding a new section to
4 chapter 42.40 RCW; 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 for exposing wrongdoing
13 in the agencies and political subdivisions where they are employed. As
14 such, it is the intent of the legislature to protect from retaliation
15 those public servants who step forward to inform the people about
16 actions of their government that are contrary to the law or public
17 interest. This act shall be broadly construed.

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

3 As used in this chapter, the terms defined in this section shall
4 have the meanings indicated unless the context clearly requires
5 otherwise.

6 (1) "Abuse of authority" means the use of power and authority in a
7 manner that is arbitrary or capricious, coercive, or demeaning; willful
8 malfeasance; or a willful failure to perform a duty and that failure to
9 perform adversely affects the rights of another person or results in
10 improper personal gain or advantage.

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

12 ~~((+2))~~ (3) "Employee" means any individual employed or holding
13 office in any department or agency of state government or any
14 individual in a position carrying out the responsibilities of any
15 department or agency of state government, excluding volunteers.

16 ~~((+3))~~ (4) "Good faith" means there is a reasonable basis in fact
17 for the belief or communication and the employee has made a reasonable
18 attempt to ascertain the correctness of the belief or communication.
19 "Good faith" is lacking when the employee (~~((knows or reasonably ought~~
20 ~~to know that the report is malicious, false, or frivolous))~~) reports
21 information that is knowingly false or frivolous or with reckless
22 disregard for the truth.

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

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

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

34 (i) Which is ~~((fa))~~ a gross waste of public funds or resources as
35 defined in this section;

36 (ii) Which is in violation of federal or state law or rule, if the
37 violation is not merely technical or of a minimum nature; ~~((ex))~~

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

3 (iv) Which is gross mismanagement;

4 (v) Which is an abuse of authority; or

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

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

25 ~~((+6))~~ (8) "Public official" means the employee's direct or
26 secondary supervisors, other agency managers, and the attorney general.

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

31 ~~((+7))~~ (10) "Use of official authority or influence" includes
32 threatening, taking, directing others to take, recommending,
33 processing, or approving any personnel action such as an appointment,
34 promotion, transfer, assignment including but not limited to duties and
35 office location, reassignment, reinstatement, restoration,
36 reemployment, performance evaluation, determining any material changes
37 in pay, provision of training or benefits, tolerance of a hostile work

1 environment, or any adverse action under chapter 41.06 RCW, reprimand
2 or other disciplinary action.

3 ~~((+8))~~ (11) "Whistleblower" means an employee or an individual
4 with a current application for a position carrying out the
5 responsibilities of the department or agency of state government that
6 the complaint concerns who refuses to violate any federal, state, or
7 local law, or who in good faith reports or is perceived by the employer
8 as reporting or about to report alleged improper governmental action,
9 unless public disclosure is prohibited by statute or executive order,
10 in which case the employee may disclose the information to the auditor,
11 initiating an investigation under RCW 42.40.040. For purposes of the
12 provisions of this chapter and chapter 49.60 RCW relating to reprisals
13 and retaliatory action, the term "whistleblower" also means: (a) An
14 employee who in good faith provides or is perceived by the employer as
15 about to provide information to the auditor, a public official, or
16 both, in connection with an investigation under RCW 42.40.040 and an
17 employee who is believed by the employer about to or to have reported
18 asserted improper governmental action to the auditor, a public
19 official, or both, or to have provided information to the auditor, a
20 public official, or both, in connection with an investigation under RCW
21 42.40.040 but who, in fact, was not about to or has not reported such
22 action or provided such information; or (b) an employee who in good
23 faith identifies rules warranting review or provides information to a
24 public official including the rules review committee, and an employee
25 who is believed by the employer to have identified rules warranting
26 review or provided information to the rules review committee but who,
27 in fact, has not done so.

28 **Sec. 3.** RCW 42.40.040 and 1999 c 361 s 3 are each amended to read
29 as follows:

30 (1)(a) In order to be investigated, an assertion of improper
31 governmental action must be provided to the auditor within one year
32 after the occurrence of the asserted improper governmental action.

33 (b) The auditor has the authority to determine whether to
34 investigate any assertions received. In determining whether to conduct
35 either a preliminary or further investigation, the auditor shall
36 consider factors including, but not limited to: The nature and quality
37 of evidence and the existence of relevant laws and rules; whether the

1 action was isolated or systematic; the history of previous assertions
2 regarding the same subject or subjects or subject matter; whether other
3 avenues are available for addressing the matter; whether the matter has
4 already been investigated or is in litigation; the seriousness or
5 significance of the asserted improper governmental action; and the cost
6 and benefit of the investigation. The auditor has the sole discretion
7 to determine the priority and weight given to these and other relevant
8 factors and to decide whether a matter is to be investigated. The
9 auditor shall document the factors considered and the analysis applied.

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

14 (d) Except as provided under RCW 42.40.910, the auditor also has
15 the authority to investigate, within available resources, reports of
16 improper governmental activities made by whistleblowers to any public
17 official pursuant to RCW 42.40.050. Any public official receiving the
18 report must submit a record of that report to the auditor within
19 fifteen business days of receiving it.

20 (2) Subject to subsection (5)(c) of this section, the identity or
21 identifying characteristics of a whistleblower is confidential at all
22 times unless the whistleblower consents to disclosure by written waiver
23 or by acknowledging his or her identity in a claim against the state
24 for retaliation.

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

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

36 (5)(a) If it appears to the auditor, upon completion of the
37 preliminary investigation, that the matter is so unsubstantiated that

1 no further investigation, prosecution, or administrative action is
2 warranted, the auditor shall so notify the whistleblower.

3 (b) The written notification shall contain a summary of the
4 information received and of the results of the preliminary
5 investigation with regard to each assertion of improper governmental
6 action.

7 (c) Before making such a determination, the auditor shall provide
8 preliminary notification to the employee, summarizing where the
9 allegations are deficient, and provide a reasonable opportunity to
10 reply.

11 In any case to which this section applies, the identity or
12 identifying characteristics of the whistleblower shall be kept
13 confidential unless the auditor determines that the information has
14 been provided other than in good faith, or disclosure of the employee's
15 identity is necessary because of an imminent danger to public health or
16 safety or imminent violation of criminal law. If the auditor makes
17 such a determination, the auditor shall provide reasonable advance
18 notice to the employee.

19 (d) With the agency's consent, the auditor may forward the
20 assertions to an appropriate agency to investigate and report back to
21 the auditor no later than sixty working days after the assertions are
22 received from the auditor. The auditor is entitled to all
23 investigative records resulting from such a referral. All procedural
24 and confidentiality provisions of this chapter apply to investigations
25 conducted under this subsection. The auditor shall document the
26 reasons the assertions were referred.

27 (6) During the preliminary investigation, the auditor shall provide
28 written notification of the nature of the assertions to the subject or
29 subjects of the investigation and the agency head. The notification
30 shall include the relevant facts and laws known at the time and the
31 procedure for the subject or subjects of the investigation and the
32 agency head to respond to the assertions and information obtained
33 during the investigation. This notification does not limit the auditor
34 from considering additional facts or laws which become known during
35 further investigation.

36 ~~((7))~~(a) If it appears to the auditor after completion of the
37 preliminary investigation that further investigation, prosecution, or
38 administrative action is warranted, the auditor shall so notify the

1 whistleblower, the subject or subjects of the investigation, and the
2 agency head and either conduct a further investigation or issue a
3 report under subsection (~~((+10+))~~) (9) of this section.

4 (b) If the preliminary investigation resulted from an anonymous
5 assertion, a decision to conduct further investigation shall be subject
6 to review by a three-person panel convened as necessary by the auditor
7 prior to the commencement of any additional investigation. The panel
8 shall include a state auditor representative knowledgeable of the
9 subject agency operations, a citizen volunteer, and a representative of
10 the attorney general's office. This group shall be briefed on the
11 preliminary investigation and shall recommend whether the auditor
12 should proceed with further investigation.

13 (c) If further investigation is to occur, the auditor shall provide
14 written notification of the nature of the assertions to the subject or
15 subjects of the investigation and the agency head. The notification
16 shall include the relevant facts known at the time and the procedure to
17 be used by the subject or subjects of the investigation and the agency
18 head to respond to the assertions and information obtained during the
19 investigation.

20 (~~((+8+))~~) (7) Within sixty working days after the preliminary
21 investigation period in subsection (3) of this section, the auditor
22 shall complete the investigation and report its findings to the
23 whistleblower unless written justification for the delay is furnished
24 to the whistleblower, agency head, and subject or subjects of the
25 investigation. In all such cases, the report of the auditor's
26 investigation and findings shall be sent to the whistleblower within
27 one year after the information was filed under subsection (3) of this
28 section.

29 (~~((+9+))~~) (8)(a) At any stage of an investigation under this section
30 the auditor may require by subpoena the attendance and testimony of
31 witnesses and the production of documentary or other evidence relating
32 to the investigation at any designated place in the state. The auditor
33 may issue subpoenas, administer oaths, examine witnesses, and receive
34 evidence. In the case of contumacy or failure to obey a subpoena, the
35 superior court for the county in which the person to whom the subpoena
36 is addressed resides or is served may issue an order requiring the
37 person to appear at any designated place to testify or to produce

1 documentary or other evidence. Any failure to obey the order of the
2 court may be punished by the court as a contempt thereof.

3 (b) The auditor may order the taking of depositions at any stage of
4 a proceeding or investigation under this chapter. Depositions shall be
5 taken before an individual designated by the auditor and having the
6 power to administer oaths. Testimony shall be reduced to writing by or
7 under the direction of the individual taking the deposition and shall
8 be subscribed by the deponent.

9 (c) Agencies shall cooperate fully in the investigation and shall
10 take appropriate action to preclude the destruction of any evidence
11 during the course of the investigation.

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

17 ~~((+10+))~~ (9)(a) If the auditor determines there is reasonable cause
18 to believe an employee or public official has engaged in improper
19 governmental action, the auditor shall report, to the extent allowable
20 under existing public disclosure laws, the nature and details of the
21 activity to:

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

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

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

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

31 (b) The auditor has no enforcement power except that in any case in
32 which the auditor submits an investigative report containing reasonable
33 cause determinations to the agency, the agency shall send its plan for
34 resolution to the auditor within fifteen working days of having
35 received the report. The agency is encouraged to consult with the
36 subject or subjects of the investigation in establishing the resolution
37 plan. The auditor may require periodic reports of agency action until
38 all resolution has occurred. If the auditor determines that

1 appropriate action has not been taken, the auditor shall report the
2 determination to the governor and to the legislature and may include
3 this determination in the agency audit under chapter 43.09 RCW.

4 ~~((+11+))~~ (10) Once the auditor concludes that appropriate action
5 has been taken to resolve the matter, the auditor shall so notify the
6 whistleblower, the agency head, and the subject or subjects of the
7 investigation. The auditor shall not make the determination without
8 first reviewing the whistleblower's comments on the adequacy of the
9 report and any corrective action. If the resolution takes more than
10 one year, the auditor shall provide ~~((annual))~~ quarterly notification
11 of its status to the whistleblower, agency head, and subject or
12 subjects of the investigation.

13 ~~((+12+))~~ (11) This section does not limit any authority conferred
14 upon the attorney general or any other agency of government to
15 investigate any matter.

16 NEW SECTION. Sec. 4. A new section is added to chapter 42.40 RCW
17 to read as follows:

18 Governmental employees shall be provided annual notice of their
19 rights under this chapter. Such reminders may be in agency internal
20 newsletters, notices included with paychecks or stubs, e-mail notices
21 sent to all employees, or other such means that are both cost-effective
22 and reach all employees of the government agency, division, or
23 subdivision.

24 Sec. 5. RCW 42.40.050 and 1999 c 283 s 1 are each amended to read
25 as follows:

26 (1)(a) Any person who is a whistleblower, as defined in RCW
27 42.40.020, and who has been subjected to workplace reprisal or
28 retaliatory action is presumed to have established a cause of action
29 for the remedies provided under chapter 49.60 RCW.

30 (b) For the purpose of this section, "reprisal or retaliatory
31 action" means but is not limited to threatening, taking, directing
32 others to take, recommending, processing, or approving any of the
33 following because of conduct protected by this chapter:

34 ~~((+a+))~~ (i) Denial of adequate staff to perform duties;

35 ~~((+b+))~~ (ii) Frequent staff changes;

36 ~~((+c+))~~ (iii) Frequent and undesirable office changes;

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

26 (2) The agency presumed to have taken retaliatory action under
27 subsection (1) of this section may rebut that presumption if it proves
28 by ~~((proving by a preponderance of the))~~ clear and convincing evidence
29 that the agency action or actions were justified by reasons unrelated
30 to the employee's status as a whistleblower would have taken the same
31 action for lawful, independent reasons if the whistleblower had not
32 engaged in protected conduct.

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

1 (4) Nothing in this chapter precludes the availability of any other
2 remedy, nor shall the availability of any other remedy prohibit the
3 exercise of rights under this chapter.

4 **Sec. 6.** RCW 49.60.230 and 1993 c 510 s 21 and 1993 c 69 s 11 are
5 each reenacted and amended to read as follows:

6 (1) Who may file a complaint:

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

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

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

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

28 **Sec. 7.** RCW 49.60.250 and 1993 c 510 s 23 and 1993 c 69 s 14 are
29 each reenacted and amended to read as follows:

30 (1) In case of failure to reach an agreement for the elimination of
31 such unfair practice, and upon the entry of findings to that effect,
32 the entire file, including the complaint and any and all findings made,
33 shall be certified to the chairperson of the commission. The
34 chairperson of the commission shall thereupon request the appointment
35 of an administrative law judge under Title 34 RCW to hear the complaint
36 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 the respondent to transfer at the complainant's
5 request and consent to any other available position for which the
6 complainant is qualified; order restoration of benefits, back pay, and
7 any increases in compensation that would have occurred, with interest;
8 impose a civil penalty upon the retaliator of up to ((three)) five
9 thousand dollars; and issue an order to the state employer to suspend
10 the retaliator for up to thirty days without pay for discipline up to
11 and including termination of the retaliator. At a minimum, the
12 administrative law judge shall require that a letter of reprimand be
13 placed in the retaliator's personnel file. Any order in the nature of
14 a "gag" or nondisclosure order, policy, or agreement that precludes,
15 undermines, obstructs, or otherwise adversely affects conduct, rights,
16 or relief protected by this chapter shall be void ab initio, and no
17 agency shall spend any funds to implement or enforce any such order,
18 policy, or agreement. All penalties recovered shall be paid into the
19 state treasury and credited to the general fund.

20 (a) Upon the whistleblower complainant's request, the
21 administrative law judge shall conduct emergency proceedings and may
22 provide interim relief to prevent or reverse any alleged retaliation if
23 the employee is determined to be a whistleblower, as defined in RCW
24 42.40.020, or has reported the alleged occurrence of improper
25 governmental action to a public official.

26 (b) If the commission has not issued a final decision on the
27 alleged whistleblower retaliation within one hundred eighty days, or
28 within ninety days if the commission denied requested relief in whole
29 or in part, the complainant may seek injunctive or final relief for the
30 complaint by filing an action at law or equity for de novo review of
31 the complaint in superior court, which at the request of either party
32 shall be tried by a jury.

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

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

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

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

11 **Sec. 8.** RCW 42.40.910 and 1999 c 361 s 7 are each amended to read
12 as follows:

13 This act and chapter 361, Laws of 1999 ((does)) do not affect the
14 jurisdiction of the legislative ethics board, the executive ethics
15 board, or the commission on judicial conduct, as set forth in chapter
16 42.52 RCW. The senate, the house of representatives, and the supreme
17 court shall adopt policies regarding the applicability of chapter 42.40
18 RCW to the senate, house of representatives, and judicial branch.

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