

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6776

60th Legislature
2008 Regular Session

Passed by the Senate March 12, 2008
YEAS 46 NAYS 0

President of the Senate

Passed by the House March 11, 2008
YEAS 95 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6776** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6776

AS AMENDED BY THE HOUSE

Passed Legislature - 2008 Regular Session

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 new sections; 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) "Auditor" means the office of the state auditor.

11 (2) "Employee" means any individual employed or holding office in
12 any department or agency of state government.

13 (3) "Good faith" means the individual providing the information or
14 report of improper governmental activity has a reasonable basis in fact
15 for reporting or providing the ((communication)) information. (("Good
16 faith" is lacking when the employee knows or reasonably ought to know
17 that the report is malicious, false, or frivolous.)) An individual who
18 knowingly provides or reports, or who reasonably ought to know he or
19 she is providing or reporting, malicious, false, or frivolous
20 information, or information that is provided with reckless disregard
21 for the truth, or who knowingly omits relevant information is not
22 acting in good faith.

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

27 (5) "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)) (6)(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; or

4 (v) Which prevents the dissemination of scientific opinion or
5 alters technical findings without scientifically valid justification,
6 unless state law or a common law privilege prohibits disclosure. This
7 provision is not meant to preclude the discretion of agency management
8 to adopt a particular scientific opinion or technical finding from
9 among differing opinions or technical findings to the exclusion of
10 other scientific opinions or technical findings. Nothing in this
11 subsection prevents or impairs a state agency's or public official's
12 ability to manage its public resources or its employees in the
13 performance of their official job duties. This subsection does not
14 apply to de minimis, technical disagreements that are not relevant for
15 otherwise improper governmental activity. Nothing in this provision
16 requires the auditor to contract or consult with external experts
17 regarding the scientific validity, invalidity, or justification of a
18 finding or opinion.

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

29 ~~((+6+))~~ (7) "Public official" means the attorney general's designee
30 or designees; the director, or equivalent thereof in the agency where
31 the employee works; an appropriate number of individuals designated to
32 receive whistleblower reports by the head of each agency; or the
33 executive ethics board.

34 (8) "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))~~ (9) "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, or other
9 disciplinary action.

10 ~~((8))~~ (10)(a) "Whistleblower" means:

11 (i) An employee who in good faith reports alleged improper
12 governmental action to the auditor or other public official, as defined
13 in subsection (7) of this section, initiating an investigation by the
14 auditor under RCW 42.40.040; or

15 (ii) An employee who is perceived by the employer as reporting,
16 whether they did or not, alleged improper governmental action to the
17 auditor or other public official, as defined in subsection (7) of this
18 section, initiating an investigation by the auditor under RCW
19 42.40.040.

20 (b) For purposes of the provisions of this chapter and chapter
21 49.60 RCW relating to reprisals and retaliatory action, the term
22 "whistleblower" also means:

23 ~~((a))~~ (i) An employee who in good faith provides information to
24 the auditor or other public official, as defined in subsection (7) of
25 this section, in connection with an investigation under RCW 42.40.040
26 and an employee who is believed to have reported asserted improper
27 governmental action to the auditor or other public official, as defined
28 in subsection (7) of this section, or to have provided information to
29 the auditor or other public official, as defined in subsection (7) of
30 this section, in connection with an investigation under RCW 42.40.040
31 but who, in fact, has not reported such action or provided such
32 information; or

33 ~~((b))~~ (ii) An employee who in good faith identifies rules
34 warranting review or provides information to the rules review
35 committee, and an employee who is believed to have identified rules
36 warranting review or provided information to the rules review committee
37 but who, in fact, has not done so.

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

3 (1) An employee shall not directly or indirectly use or attempt to
4 use the employee's official authority or influence for the purpose of
5 intimidating, threatening, coercing, commanding, influencing, or
6 attempting to intimidate, threaten, coerce, command, or influence any
7 individual for the purpose of interfering with the right of the
8 individual to: (a) Disclose to the auditor (or representative thereof)
9 or other public official, as defined in RCW 42.40.020, information
10 concerning improper governmental action; or (b) identify rules
11 warranting review or provide information to the rules review committee.

12 (2) Nothing in this section authorizes an individual to disclose
13 information otherwise prohibited by law, except to the extent that
14 information is necessary to substantiate the whistleblower complaint,
15 in which case information may be disclosed to the auditor or public
16 official, as defined in RCW 42.40.020, by the whistleblower for the
17 limited purpose of providing information related to the complaint. Any
18 information provided to the auditor or public official under the
19 authority of this subsection may not be further disclosed.

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

22 (1)(a) In order to be investigated, an assertion of improper
23 governmental action must be provided to the auditor or other public
24 official within one year after the occurrence of the asserted improper
25 governmental action. The public official, as defined in RCW 42.40.020,
26 receiving an assertion of improper governmental action must report the
27 assertion to the auditor within fifteen calendar days of receipt of the
28 assertion. The auditor retains sole authority to investigate an
29 assertion of improper governmental action including those made to a
30 public official. A failure of the public official to report the
31 assertion to the auditor within fifteen days does not impair the rights
32 of the whistleblower.

33 (b) Except as provided under RCW 42.40.910 for legislative and
34 judicial branches of government, the auditor has the authority to
35 determine whether to investigate any assertions received. In
36 determining whether to conduct either a preliminary or further
37 investigation, the auditor shall consider factors including, but not

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

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

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

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

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

37 (5)(a) If it appears to the auditor, upon completion of the
38 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 summarizing
3 where the allegations are deficient, and provide a reasonable
4 opportunity to reply. Such notification may be by electronic means.

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

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

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

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

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

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

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

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

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

37 (b) The auditor may order the taking of depositions at any stage of
38 a proceeding or investigation under this chapter. Depositions shall be

1 taken before an individual designated by the auditor and having the
2 power to administer oaths. Testimony shall be reduced to writing by or
3 under the direction of the individual taking the deposition and shall
4 be subscribed by the deponent.

5 (c) Agencies shall cooperate fully in the investigation and shall
6 take appropriate action to preclude the destruction of any evidence
7 during the course of the investigation.

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

13 ~~((+10+))~~ (9)(a) If the auditor determines there is reasonable cause
14 to believe an employee has engaged in improper governmental action, the
15 auditor shall report, to the extent allowable under existing public
16 disclosure laws, the nature and details of the activity to:

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

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

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

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

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

37 ~~((+11+))~~ (10) Once the auditor concludes that appropriate action
38 has been taken to resolve the matter, the auditor shall so notify the

1 whistleblower, the agency head, and the subject or subjects of the
2 investigation. If the resolution takes more than one year, the auditor
3 shall provide annual notification of its status to the whistleblower,
4 agency head, and subject or subjects of the investigation.

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

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

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

15 A written summary of this chapter and procedures for reporting
16 improper governmental actions established by the auditor's office shall
17 be made available by each department or agency of state government to
18 each employee upon entering public employment. Such notices may be in
19 agency internal newsletters, included with paychecks or stubs, sent via
20 electronic mail to all employees, or sent by other means that are
21 cost-effective and reach all employees of the government level,
22 division, or subdivision. Employees shall be notified by each
23 department or agency of state government each year of the procedures
24 and protections under this chapter. The annual notices shall include
25 a list of public officials, as defined in RCW 42.40.020, authorized to
26 receive whistleblower reports. The list of public officials authorized
27 to receive whistleblower reports shall also be prominently displayed in
28 all agency offices.

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

31 (1)(a) Any person who is a whistleblower, as defined in RCW
32 42.40.020, and who has been subjected to workplace reprisal or
33 retaliatory action is presumed to have established a cause of action
34 for the remedies provided under chapter 49.60 RCW.

35 (b) For the purpose of this section, "reprisal or retaliatory
36 action" means, but is not limited to, any of the following:

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

24 (2) The agency presumed to have taken retaliatory action under

25 subsection (1) of this section may rebut that presumption by proving by

26 a preponderance of the evidence that there have been a series of

27 documented personnel problems or a single, egregious event, or that the

28 agency action or actions were justified by reasons unrelated to the

29 employee's status as a whistleblower and that improper motive was not

30 a substantial factor.

31 (3) Nothing in this section prohibits an agency from making any

32 decision exercising its authority to terminate, suspend, or discipline

33 an employee who engages in workplace reprisal or retaliatory action

34 against a whistleblower. However, the agency also shall implement any

35 order under chapter 49.60 RCW (other than an order of suspension if the

36 agency has terminated the retaliator).

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

3 (1) Who may file a complaint:

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

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

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

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

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

27 (1) In case of failure to reach an agreement for the elimination of
28 such unfair practice, and upon the entry of findings to that effect,
29 the entire file, including the complaint and any and all findings made,
30 shall be certified to the chairperson of the commission. The
31 chairperson of the commission shall thereupon request the appointment
32 of an administrative law judge under Title 34 RCW to hear the complaint
33 and shall cause to be issued and served in the name of the commission
34 a written notice, together with a copy of the complaint, as the same
35 may have been amended, requiring the respondent to answer the charges
36 of the complaint at a hearing before the administrative law judge, at
37 a time and place to be specified in such notice.

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

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

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

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

35 (6) If a determination is made that retaliatory action, as defined
36 in RCW 42.40.050, has been taken against a whistleblower, as defined in
37 RCW 42.40.020, the administrative law judge may, in addition to any
38 other remedy, require restoration of benefits, back pay, and any

1 increases in compensation that would have occurred, with interest;
2 impose a civil penalty upon the retaliator of up to ((three)) five
3 thousand dollars; and issue an order to the state employer to suspend
4 the retaliator for up to thirty days without pay. At a minimum, the
5 administrative law judge shall require that a letter of reprimand be
6 placed in the retaliator's personnel file. No agency shall issue any
7 nondisclosure order or policy, execute any nondisclosure agreement, or
8 spend any funds requiring information that is public under the public
9 records act, chapter 42.56 RCW, be kept confidential; except that
10 nothing in this section shall affect any state or federal law requiring
11 information be kept confidential. All penalties recovered shall be
12 paid into the state treasury and credited to the general fund.

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

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

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

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

28 ((11)) Instead of filing with the commission, a complainant may
29 pursue arbitration conducted by the American arbitration association or
30 another arbitrator mutually agreed by the parties, with the cost of
31 arbitration shared equally by the complainant and the respondent.

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

34 This act and chapter 361, Laws of 1999 ((does)) do not affect the
35 jurisdiction of the legislative ethics board, the executive ethics
36 board, or the commission on judicial conduct, as set forth in chapter

1 42.52 RCW. The senate, the house of representatives, and the supreme
2 court shall adopt policies regarding the applicability of chapter 42.40
3 RCW to the senate, house of representatives, and judicial branch.

4 NEW SECTION. **Sec. 10.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
9 this act, referencing this act by bill or chapter number, is not
10 provided by June 30, 2008, in the omnibus appropriations act, this act
11 is null and void.

--- END ---