

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6321

Chapter 44, Laws of 1992

52nd Legislature
1992 Regular Session

LOCAL GOVERNMENT WHISTLEBLOWER PROTECTION

EFFECTIVE DATE: 6/11/92 - Except Sections 1 through 10 which become effective on 1/1/93; and Section 11 becomes effective on 7/1/92.

Passed by the Senate March 8, 1992
Yeas 47 Nays 0

JOEL PRITCHARD

President of the Senate

Passed by the House March 4, 1992
Yeas 95 Nays 0

JOE KING

**Speaker of the
House of Representatives**

Approved March 26, 1992

BOOTH GARDNER

Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6321** as passed by the Senate and the House of Representatives on the dates hereon set forth.

GORDON A. GOLOB

Secretary

FILED

March 26, 1992 - 11:32 a.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6321

AS AMENDED BY THE HOUSE

Passed Legislature - 1992 Regular Session

State of Washington 52nd Legislature 1992 Regular Session

**By Senate Committee on Governmental Operations (originally sponsored by
Senators Skratek, Metcalf, Gaspard and von Reichbauer)**

Read first time 02/07/92.

1 AN ACT Relating to local government whistleblowers; amending RCW
2 34.05.010; adding new sections to chapter 34.12 RCW; adding a new
3 section to chapter 43.09 RCW; adding a new chapter to Title 42 RCW;
4 prescribing penalties; and providing effective dates.

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

6 NEW SECTION. **Sec. 1.** It is the policy of the legislature that
7 local government employees should be encouraged to disclose, to the
8 extent not expressly prohibited by law, improper governmental actions
9 of local government officials and employees. The purpose of this
10 chapter is to protect local government employees who make good-faith
11 reports to appropriate governmental bodies and to provide remedies for
12 such individuals who are subjected to retaliation for having made such
13 reports.

1 NEW SECTION. **Sec. 2.** Unless the context clearly requires
2 otherwise, the definitions in this section apply throughout this
3 chapter.

4 (1)(a) "Improper governmental action" means any action by a local
5 government officer or employee:

6 (i) That is undertaken in the performance of the officer's or
7 employee's official duties, whether or not the action is within the
8 scope of the employee's employment; and

9 (ii) That is in violation of any federal, state, or local law or
10 rule, is an abuse of authority, is of substantial and specific danger
11 to the public health or safety, or is a gross waste of public funds.

12 (b) "Improper governmental action" does not include personnel
13 actions including but not limited to employee grievances, complaints,
14 appointments, promotions, transfers, assignments, reassignments,
15 reinstatements, restorations, reemployments, performance evaluations,
16 reductions in pay, dismissals, suspensions, demotions, violations of
17 the local government collective bargaining and civil service laws,
18 alleged labor agreement violations, reprimands, or any action that may
19 be taken under chapter 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW
20 or RCW 54.04.170 and 54.04.180.

21 (2) "Local government" means any governmental entity other than the
22 state, federal agencies, or an operating system established under
23 chapter 43.52 RCW. It includes, but is not limited to cities,
24 counties, school districts, and special purpose districts.

25 (3) "Retaliatory action" means any adverse change in a local
26 government employee's employment status, or the terms and conditions of
27 employment including denial of adequate staff to perform duties,
28 frequent staff changes, frequent and undesirable office changes,
29 refusal to assign meaningful work, unwarranted and unsubstantiated
30 letters of reprimand or unsatisfactory performance evaluations,

1 demotion, transfer, reassignment, reduction in pay, denial of
2 promotion, suspension, dismissal, or any other disciplinary action.

3 (4) "Emergency" means a circumstance that if not immediately
4 changed may cause damage to persons or property.

5 NEW SECTION. **Sec. 3.** (1) Every local government employee has
6 the right to report to the appropriate person or persons information
7 concerning an alleged improper governmental action.

8 (2) The governing body or chief administrative officer of each
9 local government shall adopt a policy on the appropriate procedures to
10 follow for reporting such information and shall provide information to
11 their employees on the policy. Local governments are encouraged to
12 consult with their employees on the policy.

13 (3) The policy shall describe the appropriate person or persons
14 within the local government to whom to report information and a list of
15 appropriate person or persons outside the local government to whom to
16 report. The list shall include the county prosecuting attorney.

17 (4) Each local government shall permanently post a summary of the
18 procedures for reporting information on an alleged improper
19 governmental action and the procedures for protection against
20 retaliatory actions described in section 4 of this act in a place where
21 all employees will have reasonable access to it. A copy of the summary
22 shall be made available to any employee upon request.

23 (5) A local government may require as part of its policy that,
24 except in the case of an emergency, before an employee provides
25 information of an improper governmental action to a person or an entity
26 who is not a public official or a person listed pursuant to subsection
27 (3) of this section, the employee shall submit a written report to the
28 local government. Where a local government has adopted such a policy
29 under this section, an employee who fails to make a good faith attempt

1 to follow the policy shall not receive the protections of this chapter.
2 The identity of a reporting employee shall be kept confidential to the
3 extent possible under law, unless the employee authorizes the
4 disclosure of his or her identity in writing.

5 NEW SECTION. **Sec. 4.** (1) It is unlawful for any local
6 government official or employee to take retaliatory action against a
7 local government employee because the employee provided information in
8 good faith in accordance with the provisions of this chapter that an
9 improper governmental action occurred.

10 (2) In order to seek relief under this chapter, a local government
11 employee shall provide a written notice of the charge of retaliatory
12 action to the governing body of the local government that:

13 (a) Specifies the alleged retaliatory action; and

14 (b) Specifies the relief requested.

15 (3) The charge shall be delivered to the local government no later
16 than thirty days after the occurrence of the alleged retaliatory
17 action. The local government has thirty days to respond to the charge
18 of retaliatory action and request for relief.

19 (4) Upon receipt of either the response of the local government or
20 after the last day upon which the local government could respond, the
21 local government employee may request a hearing to establish that a
22 retaliatory action occurred and to obtain appropriate relief as defined
23 in this section. The request for a hearing shall be delivered to the
24 local government within fifteen days of delivery of the response from
25 the local government, or within fifteen days of the last day on which
26 the local government could respond.

27 (5) Within five working days of receipt of the request for hearing,
28 the local government shall apply to the state office of administrative
29 hearings for an adjudicative proceeding before an administrative law

1 judge. Except as otherwise provided in this section, the proceedings
2 shall comply with RCW 34.05.410 through 34.05.598.

3 (6) The employee, as the initiating party, must prove his or her
4 claim by a preponderance of the evidence. The administrative law judge
5 shall issue a final decision consisting of findings of fact,
6 conclusions of law, and judgment no later than forty-five days after
7 the date the request for hearing was delivered to the local government.
8 The administrative law judge may grant specific extensions of time
9 beyond this period of time for rendering a decision at the request of
10 either party upon a showing of good cause, or upon his or her own
11 motion.

12 (7) Relief that may be granted by the administrative law judge
13 consists of reinstatement, with or without back pay, and such
14 injunctive relief as may be found to be necessary in order to return
15 the employee to the position he or she held before the retaliatory
16 action and to prevent any recurrence of retaliatory action. The
17 administrative law judge may award costs and reasonable attorneys' fees
18 to the prevailing party.

19 (8) If a determination is made that retaliatory action has been
20 taken against the employee, the administrative law judge may, in
21 addition to any other remedy, impose a civil penalty personally upon
22 the retaliator of up to three thousand dollars payable by each person
23 found to have retaliated against the employee and recommend to the
24 local government that any person found to have retaliated against the
25 employee be suspended with or without pay or dismissed. All penalties
26 recovered shall be paid to the local government administrative hearings
27 account created in section 7 of this act.

28 (9) The final decision of the administrative law judge is subject
29 to judicial review under the arbitrary and capricious standard. Relief

1 ordered by the administrative law judge may be enforced by petition to
2 superior court.

3 NEW SECTION. **Sec. 5.** This chapter shall not be construed to
4 permit disclosures that would diminish the rights of any person to the
5 continued protection of confidentiality of communications where statute
6 or common law provides such protection.

7 NEW SECTION. **Sec. 6.** Any local government that has adopted or
8 adopts a program for reporting alleged improper governmental actions
9 and adjudicating retaliation resulting from such reporting shall be
10 exempt from this chapter if the program meets the intent of this
11 chapter.

12 NEW SECTION. **Sec. 7.** The local government administrative
13 hearings account is created in the custody of the state treasurer. All
14 receipts from penalties in section 4 of this act and the surcharges
15 under section 11 of this act shall be deposited into the account.
16 Expenditures from the account may be used only for administrative
17 hearings under this chapter. Only the chief administrative law judge
18 or his or her designee may authorize expenditures from the account.
19 The account is subject to allotment procedures under chapter 43.88 RCW,
20 but no appropriation is required for expenditures.

21 NEW SECTION. **Sec. 8.** A new section is added to chapter 34.12 RCW
22 to read as follows:

23 When requested by a local government, the chief administrative law
24 judge shall assign an administrative law judge to conduct proceedings
25 under chapter 42.-- RCW (sections 1 through 7 of this act).

1 NEW SECTION. **Sec. 9.** A new section is added to chapter 34.12 RCW
2 to read as follows:

3 Costs for the services of the office of administrative hearings for
4 the initial twenty-four hours of services on a hearing under chapter
5 42.-- RCW (sections 1 through 7 of this act) shall be billed to the
6 local government administrative hearings account. Costs for services
7 beyond the initial twenty-four hours of services shall be allocated to
8 the parties by the administrative law judge, the proportion to be borne
9 by each party at the discretion of the administrative law judge. The
10 charges for these costs shall be billed to the affected local
11 government that shall recover payment from any other party specified by
12 the administrative law judge.

13 **Sec. 10.** RCW 34.05.010 and 1989 c 175 s 1 are each amended to read
14 as follows:

15 The definitions set forth in this section shall apply throughout
16 this chapter, unless the context clearly requires otherwise.

17 (1) "Adjudicative proceeding" means a proceeding before an agency
18 in which an opportunity for hearing before that agency is required by
19 statute or constitutional right before or after the entry of an order
20 by the agency. Adjudicative proceedings also include all cases of
21 licensing and rate making in which an application for a license or rate
22 change is denied except as limited by RCW 66.08.150, or a license is
23 revoked, suspended, or modified, or in which the granting of an
24 application is contested by a person having standing to contest under
25 the law.

26 (2) "Agency" means any state board, commission, department,
27 institution of higher education, or officer, authorized by law to make
28 rules or to conduct adjudicative proceedings, except those in the
29 legislative or judicial branches, the governor, or the attorney general

1 except to the extent otherwise required by law and any local
2 governmental entity that may request the appointment of an
3 administrative law judge under chapter 42.-- RCW (sections 1 through 7
4 of this act).

5 (3) "Agency action" means licensing, the implementation or
6 enforcement of a statute, the adoption or application of an agency rule
7 or order, the imposition of sanctions, or the granting or withholding
8 of benefits.

9 Agency action does not include an agency decision regarding (a)
10 contracting or procurement of goods, services, public works, and the
11 purchase, lease, or acquisition by any other means, including eminent
12 domain, of real estate, as well as all activities necessarily related
13 to those functions, or (b) determinations as to the sufficiency of a
14 showing of interest filed in support of a representation petition, or
15 mediation or conciliation of labor disputes or arbitration of labor
16 disputes under a collective bargaining law or similar statute, or (c)
17 any sale, lease, contract, or other proprietary decision in the
18 management of public lands or real property interests, or (d) the
19 granting of a license, franchise, or permission for the use of
20 trademarks, symbols, and similar property owned or controlled by the
21 agency.

22 (4) "Agency head" means the individual or body of individuals in
23 whom the ultimate legal authority of the agency is vested by any
24 provision of law. If the agency head is a body of individuals, a
25 majority of those individuals constitutes the agency head.

26 (5) "Entry" of an order means the signing of the order by all
27 persons who are to sign the order, as an official act indicating that
28 the order is to be effective.

29 (6) "Filing" of a document that is required to be filed with an
30 agency means delivery of the document to a place designated by the

1 agency by rule for receipt of official documents, or in the absence of
2 such designation, at the office of the agency head.

3 (7) "Institutions of higher education" are the University of
4 Washington, Washington State University, Central Washington University,
5 Eastern Washington University, Western Washington University, The
6 Evergreen State College, the various community colleges, and the
7 governing boards of each of the above, and the various colleges,
8 divisions, departments, or offices authorized by the governing board of
9 the institution involved to act for the institution, all of which are
10 sometimes referred to in this chapter as "institutions."

11 (8) "Interpretive statement" means a written expression of the
12 opinion of an agency, entitled an interpretive statement by the agency
13 head or its designee, as to the meaning of a statute or other provision
14 of law, of a court decision, or of an agency order.

15 (9) (a) "License" means a franchise, permit, certification,
16 approval, registration, charter, or similar form of authorization
17 required by law, but does not include (i) a license required solely for
18 revenue purposes, or (ii) a certification of an exclusive bargaining
19 representative, or similar status, under a collective bargaining law or
20 similar statute, or (iii) a license, franchise, or permission for use
21 of trademarks, symbols, and similar property owned or controlled by the
22 agency.

23 (b) "Licensing" includes the agency process respecting the
24 issuance, denial, revocation, suspension, or modification of a license.

25 (10) (a) "Order," without further qualification, means a written
26 statement of particular applicability that finally determines the legal
27 rights, duties, privileges, immunities, or other legal interests of a
28 specific person or persons.

29 (b) "Order of adoption" means the official written statement by
30 which an agency adopts, amends, or repeals a rule.

1 (11) "Party to agency proceedings," or "party" in a context so
2 indicating, means:

3 (a) A person to whom the agency action is specifically directed; or

4 (b) A person named as a party to the agency proceeding or allowed
5 to intervene or participate as a party in the agency proceeding.

6 (12) "Party to judicial review or civil enforcement proceedings,"
7 or "party" in a context so indicating, means:

8 (a) A person who files a petition for a judicial review or civil
9 enforcement proceeding; or

10 (b) A person named as a party in a judicial review or civil
11 enforcement proceeding, or allowed to participate as a party in a
12 judicial review or civil enforcement proceeding.

13 (13) "Person" means any individual, partnership, corporation,
14 association, governmental subdivision or unit thereof, or public or
15 private organization or entity of any character, and includes another
16 agency.

17 (14) "Policy statement" means a written description of the current
18 approach of an agency, entitled a policy statement by the agency head
19 or its designee, to implementation of a statute or other provision of
20 law, of a court decision, or of an agency order, including where
21 appropriate the agency's current practice, procedure, or method of
22 action based upon that approach.

23 (15) "Rule" means any agency order, directive, or regulation of
24 general applicability (a) the violation of which subjects a person to
25 a penalty or administrative sanction; (b) which establishes, alters, or
26 revokes any procedure, practice, or requirement relating to agency
27 hearings; (c) which establishes, alters, or revokes any qualification
28 or requirement relating to the enjoyment of benefits or privileges
29 conferred by law; (d) which establishes, alters, or revokes any
30 qualifications or standards for the issuance, suspension, or revocation

1 of licenses to pursue any commercial activity, trade, or profession; or
2 (e) which establishes, alters, or revokes any mandatory standards for
3 any product or material which must be met before distribution or sale.
4 The term includes the amendment or repeal of a prior rule, but does not
5 include (i) statements concerning only the internal management of an
6 agency and not affecting private rights or procedures available to the
7 public, (ii) declaratory rulings issued pursuant to RCW ((34.05.230))
8 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists,
9 and pedestrians established by the secretary of transportation or his
10 designee where notice of such restrictions is given by official traffic
11 control devices, or (iv) rules of institutions of higher education
12 involving standards of admission, academic advancement, academic
13 credit, graduation and the granting of degrees, employment
14 relationships, or fiscal processes.

15 (16) "Rules review committee" or "committee" means the joint
16 administrative rules review committee created pursuant to RCW 34.05.610
17 for the purpose of selectively reviewing existing and proposed rules of
18 state agencies.

19 (17) "Rule making" means the process for formulation and adoption
20 of a rule.

21 (18) "Service," except as otherwise provided in this chapter, means
22 posting in the United States mail, properly addressed, postage prepaid,
23 or personal service. Service by mail is complete upon deposit in the
24 United States mail. Agencies may, by rule, authorize service by
25 electronic telefacsimile transmission, where copies are mailed
26 simultaneously, or by commercial parcel delivery company.

27 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.09 RCW
28 to read as follows:

1 (1) From July 1, 1992, to June 30, 1995, the state auditor shall
2 charge an entity subject to an audit an additional ten cents per hour
3 billed under RCW 43.09.270 and 43.09.280, to be deposited in the local
4 government administrative hearing account.

5 (2) After June 30, 1995, the state auditor shall base the amount to
6 be collected and deposited into the local government administrative
7 hearing account on the funds remaining in the account on June 30, 1995,
8 and the anticipated caseload for the future.

9 (3) The state auditor may exempt a local government that complies
10 with section 6 of this act from a charge added under subsection (1) or
11 (2) of this section.

12 NEW SECTION. **Sec. 12.** Sections 1 through 7 of this act shall
13 constitute a new chapter in Title 42 RCW.

14 NEW SECTION. **Sec. 13.** Sections 1 through 10 of this act shall
15 take effect January 1, 1993. Section 11 of this act shall take effect
16 July 1, 1992.

17 NEW SECTION. **Sec. 14.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

Passed the Senate March 8, 1992.

Passed the House March 4, 1992.

Approved by the Governor March 26, 1992.

Filed in Office of Secretary of State March 26, 1992.