

HOUSE BILL REPORT

HB 1995

As Reported By House Committee On:
Government Administration

Title: An act relating to whistleblowers.

Brief Description: Modifying the state employee whistleblower protection act.

Sponsors: Representatives D. Sommers, D. Schmidt, Backlund, Clements, Appelwick, Dunshee, Buck, Scott, Dyer, Cooper, Conway, Cody, Cole, L. Thomas, Romero, Regala, Chopp, Doumit, Alexander, Cooke, Poulsen, Kessler, Blalock and Costa; by request of State Auditor.

Brief History:

Committee Activity:

Government Administration: 3/4/97 [DPS].

HOUSE COMMITTEE ON GOVERNMENT ADMINISTRATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives D. Schmidt, Chairman; D. Sommers, Vice Chairman; Scott, Ranking Minority Member; Gardner, Assistant Ranking Minority Member; Doumit; Dunn; Dunshee; Murray; Reams; Smith; L. Thomas; Wensman and Wolfe.

Staff: Bill Lynch (786-7092).

Background: In 1982 the Legislature enacted a whistleblower protection program for state employees in order to encourage state employees to report improper governmental actions. Employees who provide information about improper governmental action in good faith are protected from retaliatory action. The state auditor (auditor) was given the responsibility under this legislation to investigate complaints of improper governmental action.

Improper governmental action is defined as any action by an employee undertaken in the performance of the employee's official duties which violates state law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds. A number of personnel actions are specifically excluded from the definition of improper governmental action. It has been suggested that these definitions need additional clarification.

There are no time limits in which an allegation of improper governmental activity must be made to the auditor in order to be investigated. The laws also do not give the auditor discretion to determine whether the allegations have sufficient merit to conduct an investigation, or to determine whether the matter has already been sufficiently investigated by another authority or should be investigated as part of an audit.

The auditor must acknowledge a report of improper governmental action within five working days of receipt of the complaint. The auditor must conduct a preliminary investigation for a period not to exceed 30 days. It is suggested that these time limits should be extended. The report of the auditor's investigation and findings must be sent to the whistleblower within one year after the allegations were made. There is no requirement for the auditor to notify the subjects of the investigation if further investigation is going to occur beyond this one-year time period. The statutes do not expressly state that the whistleblower's confidentiality must be maintained if the matter is referred to another authority following the auditor's investigation.

If it appears that the allegations do not constitute improper governmental action, the auditor may forward a summary of the allegations to the appropriate agency for investigation. The auditor must keep the whistleblower's identity confidential. The agency must respond within 30 days after receipt of the allegations from the auditor. It is not clear that the procedural and confidentiality provisions apply when the information is sent to another entity.

When the auditor submits a report of alleged improper governmental action to an agency, the agency must report to the auditor within 30 days of receipt of any action taken regarding the activity and must report to the auditor monthly until final action is taken. The auditor must report to the Governor and the Legislature if the auditor determines that corrective action is not being taken within a reasonable amount of time, but there is no specific time limit in statute for when final corrective action must be taken.

The auditor is given the authority to administer the provisions of the state whistleblower law, but is not specifically authorized to contract out for any assistance that may be necessary. In addition, the law is silent on how the costs of administering the chapter should be funded.

Summary of Substitute Bill: Improper governmental action is redefined to include action which results in substantial abuse, misuse, destruction, waste, or loss of public funds or public resources; violates any federal or state law or rule; or which is of substantial and specific danger to the public health or safety. Definitions are added to specify what constitutes abuse, misuse, and waste. Improper governmental action does not include personnel actions for which other remedies exist, including claims of discriminatory treatment.

An allegation of improper governmental action must be made to the auditor within one year after the identification of the improper action, but no later than three years after its occurrence in order to be investigated. The person making the allegation must provide his or her name. The auditor must adopt policies and procedures which strictly limit access within the office to the identity of whistleblowers. Anonymous complaints may not be investigated. The auditor has the discretion to review allegations received from whistleblowers to determine if they have sufficient merit and specificity to warrant investigation, or whether they have already been sufficiently investigated by another authority, or whether they should be investigated as part of an audit.

The amount of time by which the auditor must send an acknowledgment to a person reporting improper governmental action is increased from five days to 15 days from the date of receipt. The amount of time for the auditor to conduct a preliminary investigation is increased from 30 to 60 days. The auditor must provide written notice to the subject of an investigation of the nature of the assertions if the investigation will extend beyond one year. If after the auditor's investigation the matter is referred to another authority, the receiving authority must maintain the whistleblower's confidentiality.

The auditor must notify the employee and the agency head of the alleged improper activity after completion of the preliminary investigation. The auditor must interview the employee who allegedly engaged in the improper activity and allow the employee to examine, confirm, or refute documentation related to the complaint before the final report is issued. The agency must take reasonable steps to protect evidence.

If an agency receives a summary of allegations from the auditor which do not constitute improper governmental activity, the amount of time for an agency to complete an investigation and report back to the auditor is increased from 30 to 60 days. All procedural and confidentiality provisions of the state whistleblower law apply to the investigations conducted by the agency.

When the auditor sends a report of alleged improper governmental activity to an agency, the agency must send its plan for corrective action to the auditor within 30 days of receipt. The auditor may require periodic reports of corrective action until all corrective action is completed. Corrective action must be completed within six months after the date of the auditor's report. The agency must consider the recovery of the costs of investigating the improper governmental action in taking corrective action.

The auditor may contract for any assistance necessary to carry out the provisions of the state whistleblower law. The cost of administering the state whistleblower law is funded from the audit services revolving fund. Other technical changes are made.

Substitute Bill Compared to Original Bill: The time limit for investigating complaints is modified. The auditor may not investigate anonymous complaints. The auditor must adopt policies and procedures which strictly limit access within the office to the identity of whistleblowers. Procedures are added to require the employee who allegedly committed the wrongdoing to have an opportunity to respond to the allegations before the final report is issued by the auditor.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: This legislation was developed after studying the federal model and the law in other states. This addresses some of the gaps in current law and will allow better closure of cases. The auditor is doing a good job in this area.

Testimony Against: (original) The bill could be improved by adjusting the time limit for when complaints must be made.

Testified: (Pro) Representative Duane Sommers, prime sponsor; Linda Sheler, Office of State Auditor; and Ike Ikerd, Washington Public Employees Association.

(With concerns) Sherry Bockwinkel, CLEAN.