

HOUSE BILL REPORT

SHB 2005

As Amended by the Senate

Title: An act relating to whistleblowers.

Brief Description: Managing the state employee whistleblower program.

Sponsors: By House Committee on State Government (Originally sponsored by Representatives Wolfe, D. Sommers, D. Schmidt, Romero, Carlson, Delvin, Santos, O'Brien, Miloscia, Lovick, Dickerson, Kenney, Ogden, Fisher, Cody, Parlette, Campbell, Lambert, Pennington, Dunshee, Koster, Hankins, Clements, Cairnes, Keiser, Conway and Veloria; by request of State Auditor).

Brief History:

Committee Activity:

State Government: 2/24/99, 3/2/99 [DPS];
Appropriations: 3/5/99, 3/6/99 [DPS(SG)].

Floor Activity:

Passed House: 3/15/99, 95-0.
Senate Amended.
Passed Senate: 4/16/99, 46-0.
House (House refused to concur)
Senate (Senate receded)
Senate Amended.
Passed Senate: 4/23/99, 45-0.

Brief Summary of Substitute Bill

· A variety of changes are made to the state whistleblower law.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives McMorris, Republican Co-Chair; Romero, Democratic Co-Chair; Campbell, Republican Vice Chair; Miloscia, Democratic Vice Chair; Dunshee; Haigh; Lambert and D. Schmidt.

Staff: Steve Lundin (786-7127).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on State Government be substituted therefor and the substitute bill do pass. Signed by 31 members: Representatives Huff, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Alexander, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Barlean; Benson; Boldt; Carlson; Clements; Cody; Crouse; Gombosky; Grant; Kagi; Keiser; Kenney; Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Regala; Rockefeller; Ruderman; Sullivan; Tokuda and Wensman.

Staff: Beth Redfield (786-7130).

Background:

Legislation was enacted in 1982 establishing a whistleblower protection program for state employees, to encourage state employees to report improper governmental actions and to protect the rights of state employees who make such disclosures.

1. Investigation of a complaint.

The State Auditor is given the responsibility to investigate complaints of improper governmental action that are made under this program.

The State Auditor must acknowledge a report of improper governmental action within five working days of receipt of the complaint and must conduct a preliminary investigation for a period not to exceed 30 days. A further investigation period of 60 days is provided, that may 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.

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 State Auditor must keep the whistleblower's identity confidential. The agency must respond within 30 days after receipt of the allegations from the auditor.

The agency must make monthly reports to the auditor 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.

2. Employee protections from retaliatory actions.

Employees who provide information about improper governmental action in good faith are protected from retaliatory action and have remedies available under the Human Rights Commission laws.

3. Administration of program.

The State Auditor is given the authority to administer the provisions of the state whistleblower law.

Summary of Bill:

The state whistleblower law is rewritten.

1. Which state agencies are subject to the law.

The act applies to all state agencies, including the legislative and judicial branches of state government. Complaints about the State Auditor, or an employee of that office, may be filed with the attorney general who acts in the place of the State Auditor in such instances.

2. Improper conduct.

The definition of improper governmental action is altered to include actions taken by an employee as part of the employee's official duties that:

- result in mismanagement or gross waste of public funds;
- violate federal or state laws, other than mere technical violations or violations of minimum nature; or
- are of substantial and specific danger to the public health or safety.

3. Whistleblower.

It is clarified that the identity of a whistleblower is kept confidential except when the State Auditor determines that the assertion was made in other than good faith.

An employee who makes a whistleblower complaint must make a reasonable attempt to ascertain whether the information that is furnished is correct and may be subject to disciplinary actions, including suspension, or termination, for knowingly supplying false information, as determined by the appointing authority.

4. Timeliness.

A whistleblower complaint must be made within one year after the occurrence of the asserted improper conduct.

5. Investigation of a complaint.

The following changes are made to investigations of complaints:

a. *Determination whether to investigate.*

The State Auditor may determine whether to investigate any assertions. A variety of factors are listed for the State Auditor to consider in making this determination, including, whether the action was isolated or systematic, the history of previous assertions regarding the same subject or subject matter, the degree or significance of the asserted improper governmental action, and the costs and benefits of the investigation.

b. *Preliminary investigation.*

The preliminary investigation by the State Auditor is expanded from a maximum of 30 days to 30 working days after the receipt of the assertion. However, with an agency's consent, the State Auditor may forward the assertion to the appropriate agency to investigate over a period of no more than 60 days after the receipt of the assertion.

During the preliminary investigation, the State Auditor provides written notice of the nature of the assertions to both the subject of the investigation and his or her agency head.

If the preliminary investigation resulted from an anonymous assertion, a three-person review panel must be convened to make recommendations on proceeding to the State Auditor. The panel includes a representative from the State Auditor's office with knowledge of the subject agency operations, a representative of the Office of the Attorney General, and a citizen volunteer.

c. *Further investigation.*

Written notice must be provided to the subject of the assertions and his or her agency head if further investigations are to occur. The time by which a further investigation must be completed is expanded from 60 days to 60 working days after the 30-day preliminary investigation period, unless written justification is furnished to the whistleblower, subject of the investigation, and agency head.

Agencies are required to cooperate fully with the investigation and take appropriate actions to preclude destruction of any evidence during the course of the investigation.

The subject of the investigation must be interviewed during the further investigation. If it is determined that a reasonable cause exists to believe that improper governmental action has occurred, the subject and agency head are given 15 working days to respond to the assertions prior to issuance of the final report.

d. *Determination of reasonable cause.*

If the report contains reasonable cause determinations, the agency must send its plan to resolve the situation to the auditor within 15 working days of having received the report. The State Auditor may require periodic reports of agency action taken until all resolution has occurred.

The determination in the report is sent to the Governor and the determination may be included in the State Auditor's audit of the agency.

Once the State Auditor determines that appropriate action has been taken, the whistleblower, agency head, and subject of the investigation must be notified.

6. Administrative matters.

The State Auditor is given specific authority to contract for assistance in carrying out the Whistleblower Act and may enter into agreements with the three state ethics boards to investigate matters within the authority of the auditor or the ethics board.

The costs of administrating the whistleblower program is funded through the auditing services revolving account.

The Office of Financial Management is required to contract for a performance audit of the state employee whistleblower program.

EFFECT OF SENATE AMENDMENT(S): 1) The application of the state whistleblower law to the judicial and legislative branches of state government is possibly altered. New language is removed expressly applying whistleblower provisions to the judicial and legislative branches of state government. Rather than retaining the ambiguity in existing law whether the whistleblower provisions apply to the judicial and legislative branches of state government, language is added expressly limiting the application of the whistleblower provisions to the judicial and legislative branches of state government only to the extent the Senate, House of Representatives, and Supreme Court adopt policies making these provisions applicable to themselves.

2) Mismanagement is no longer included in the definition of "improper governmental action" about which a whistleblower complaint may be made.

3) The section describing retaliatory actions is removed that added coercion of a person not to disclose improper conduct to the State Auditor as an example of retaliatory action.

4) Rather than expressly authorizing the State Auditor and the three state ethics boards to enter into agreements to refer matters to each other, it is stated in the Whistleblower law that does not affect the jurisdiction of the three state ethics boards.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (State Government) This bill has been perfected over several years. I had concerns over earlier drafts, but support this draft. The process is made more efficient. A performance audit is required. Many clarifications are made. This makes the process more fair. There never will be adequate protections against retaliation. No case law exists on the whistleblower law. This bill is ok but could go further.

(Appropriations) (Substitute bill) This bill is the result of three years of bipartisan work. It makes a number of improvements. It provides for upfront investigations which eliminate frivolous complaints, establishes a statute of limitations, and creates protections for all involved. The bill will save taxpayers millions of dollars and there is a cost/benefit analysis required by the bill, to ensure the taxpayers of these savings.

Testimony Against: (State Government) None.

(Appropriations) None.

Testified: (State Government) Representative Wolf, prime sponsor; Representative D. Sommers, secondary sponsor; and Brian Sonntag and Linda Long, Washington State Auditor's Office.

(State Government) (Neutral) Helen Stanwell, citizen; and Denise Livingston, citizen.

(Appropriations) Rep. Cathy Wolfe, prime sponsor; and Linda Long, State Auditor's Office.