

SB 5777 - S AMD 615  
By Senator Becker

PULLED 02/17/2016

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 42.40.010 and 1995 c 403 s 508 are each amended to  
4 read as follows:

5 It is the policy of the legislature that employees should be  
6 encouraged to disclose, to the extent not expressly prohibited by  
7 law, improper governmental actions, and it is the intent of the  
8 legislature to protect the rights of state employees making these  
9 disclosures, regardless of whether an investigation is initiated  
10 under RCW 42.40.040. It is also the policy of the legislature that  
11 employees should be encouraged to identify rules warranting review or  
12 provide information to the rules review committee, and it is the  
13 intent of the legislature to protect the rights of these employees.

14 Sec. 2. RCW 42.40.020 and 2008 c 266 s 2 are each amended to  
15 read as follows:

16 As used in this chapter, the terms defined in this section shall  
17 have the meanings indicated unless the context clearly requires  
18 otherwise.

19 (1) "Auditor" means the office of the state auditor.

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

22 (3) "Good faith" means the individual providing the information  
23 or report of improper governmental activity has a reasonable basis in  
24 fact for reporting or providing the information. An individual who  
25 knowingly provides or reports, or who reasonably ought to know he or  
26 she is providing or reporting, malicious, false, or frivolous  
27 information, or information that is provided with reckless disregard  
28 for the truth, or who knowingly omits relevant information is not  
29 acting in good faith.

30 (4) "Gross mismanagement" means the exercise of management  
31 responsibilities in a manner grossly deviating from the standard of

1 care or competence that a reasonable person would observe in the same  
2 situation.

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

7 (6)(a) "Improper governmental action" means any action by an  
8 employee undertaken in the performance of the employee's official  
9 duties:

10 (i) Which is a gross waste of public funds or resources as  
11 defined in this section;

12 (ii) Which is in violation of federal or state law or rule, if  
13 the violation is not merely technical or of a minimum nature;

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

16 (iv) Which is gross mismanagement; (~~or~~)

17 (v) Which prevents the dissemination of scientific opinion or  
18 alters technical findings without scientifically valid justification,  
19 unless state law or a common law privilege prohibits disclosure. This  
20 provision is not meant to preclude the discretion of agency  
21 management to adopt a particular scientific opinion or technical  
22 finding from among differing opinions or technical findings to the  
23 exclusion of other scientific opinions or technical findings. Nothing  
24 in this subsection prevents or impairs a state agency's or public  
25 official's ability to manage its public resources or its employees in  
26 the performance of their official job duties. This subsection does  
27 not apply to de minimis, technical disagreements that are not  
28 relevant for otherwise improper governmental activity. Nothing in  
29 this provision requires the auditor to contract or consult with  
30 external experts regarding the scientific validity, invalidity, or  
31 justification of a finding or opinion; or

32 (vi) Which violates the administrative procedure act or analogous  
33 provisions of law that prohibit ex parte communication regarding  
34 cases or matters pending in which an agency is party between the  
35 agency's employee and a presiding officer, hearing officer, or an  
36 administrative law judge. The availability of other avenues for  
37 addressing ex parte communication by agency employees does not bar an  
38 investigation by the auditor.

39 (b) "Improper governmental action" does not include personnel  
40 actions, for which other remedies exist, including but not limited to

1 employee grievances, complaints, appointments, promotions, transfers,  
2 assignments, reassignments, reinstatements, restorations,  
3 reemployments, performance evaluations, reductions in pay,  
4 dismissals, suspensions, demotions, violations of the state civil  
5 service law, alleged labor agreement violations, reprimands, claims  
6 of discriminatory treatment, or any action which may be taken under  
7 chapter 41.06 RCW, or other disciplinary action except as provided in  
8 RCW 42.40.030.

9 (7) "Public official" means the attorney general's designee or  
10 designees; the director, or equivalent thereof in the agency where  
11 the employee works; an appropriate number of individuals designated  
12 to receive whistleblower reports by the head of each agency; or the  
13 executive ethics board.

14 (8) "Substantial and specific danger" means a risk of serious  
15 injury, illness, peril, or loss, to which the exposure of the public  
16 is a gross deviation from the standard of care or competence which a  
17 reasonable person would observe in the same situation.

18 (9) "Use of official authority or influence" includes  
19 threatening, taking, directing others to take, recommending,  
20 processing, or approving any personnel action such as an appointment,  
21 promotion, transfer, assignment including but not limited to duties  
22 and office location, reassignment, reinstatement, restoration,  
23 reemployment, performance evaluation, determining any material  
24 changes in pay, provision of training or benefits, tolerance of a  
25 hostile work environment, or any adverse action under chapter 41.06  
26 RCW, or other disciplinary action.

27 (10)(a) "Whistleblower" means:

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

32 (ii) An employee who is perceived by the employer as reporting,  
33 whether they did or not, alleged improper governmental action to the  
34 auditor or other public official, as defined in subsection (7) of  
35 this section(~~, initiating an investigation by the auditor under RCW~~  
36 ~~42.40.040~~)).

37 (b) For purposes of the provisions of this chapter and chapter  
38 49.60 RCW relating to reprisals and retaliatory action, the term  
39 "whistleblower" also means:

1 (i) An employee who in good faith provides information to the  
2 auditor or other public official, as defined in subsection (7) of  
3 this section(~~(, in connection with an investigation under RCW~~  
4 ~~42.40.040)~~) and an employee who is believed to have reported asserted  
5 improper governmental action to the auditor or other public official,  
6 as defined in subsection (7) of this section, or to have provided  
7 information to the auditor or other public official, as defined in  
8 subsection (7) of this section(~~(, in connection with an investigation~~  
9 ~~under RCW 42.40.040)~~) but who, in fact, has not reported such action  
10 or provided such information; or

11 (ii) An employee who in good faith identifies rules warranting  
12 review or provides information to the rules review committee, and an  
13 employee who is believed to have identified rules warranting review  
14 or provided information to the rules review committee but who, in  
15 fact, has not done so."

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16 On page 1, line 1 of the title, after "protection;" strike the  
17 remainder of the title and insert "and amending RCW 42.40.010 and  
18 42.40.020."

EFFECT: Clarifies that an employee may be considered a  
whistleblower regardless of whether an investigation is initiated.

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