

**FINAL BILL REPORT**

**2ESSB 5121**

**C 118 L 92**

**SYNOPSIS AS ENACTED**

**Brief Description:** Protecting whistleblowers.

**SPONSORS:** Senate Committee on Governmental Operations (originally sponsored by Senators Metcalf, Talmadge, McCaslin, Owen, Thorsness, Vognild, Rinehart, Sellar, L. Smith, Sutherland, Roach, Amondson, Hayner, Rasmussen, Bailey, Moore, Barr, Oke, Wojahn, Nelson, von Reichbauer, Bauer, Gaspard, L. Kreidler, Johnson, Stratton, Skratek and Erwin)

**SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS**

**HOUSE COMMITTEE ON STATE GOVERNMENT**

**HOUSE COMMITTEE ON APPROPRIATIONS**

**BACKGROUND:**

The whistleblower program for state employees was originally enacted in 1982. The investigation of whistleblower complaints and retaliatory acts against whistleblowers was assigned to the State Auditor. In recent years, several bills have been introduced in attempts to resolve perceived problems with the process. Senate Resolution 1990-8752 directed the Committee on Governmental Operations to conduct a study of the program, and make recommendations for possible clarification or improvement. Among the issues which were identified during the study were:

- (1) Current terminology is confusing as to the distinction between a whistleblower and a retaliator. It is also unclear whether the program applies to a whistleblower who seeks reemployment with the state, or to persons who provide information in a whistleblower investigation.
- (2) The time period in which the State Auditor must acknowledge receipt of the complaint, complete the whistleblower investigation, and provide a final report is not specified. Similarly, there is no time limit by which an agency must respond when the Auditor refers a complaint which does not meet the whistleblower criteria.
- (3) If a whistleblower files a civil suit for retaliation, the court may award reasonable attorneys' fees, but not other costs incurred in the action. In addition, if a supervisor or manager is sued, defense by the state and award of attorney fees or costs are not authorized if the supervisor prevails.

- (4) Concern was expressed that some agency other than the State Auditor might have more of the specialized skills needed for discovering subtle acts of retaliation.
- (5) The activities defined as retaliation do not specifically include denial of reemployment for a whistleblower or creation of a hostile atmosphere by a whistleblower's superiors.
- (6) The current statute does not authorize any sanctions or penalties against a retaliator.
- (7) The whistleblower program is not explicitly specified among the enumerated powers or duties of the State Auditor.

**SUMMARY:**

"Whistleblower" is defined as a state employee who in good faith reports an alleged improper governmental action to the State Auditor. The term includes an employee who provides information to the State Auditor and one who is believed to be a whistleblower or who has provided information in an investigation.

Within five working days of receiving whistleblower information, the State Auditor must acknowledge receipt in writing. The State Auditor must complete investigation of the complaint within 90 days, unless written justification for the delay is furnished to the whistleblower. In any case, the State Auditor's report must be sent to the whistleblower within one year of the initial filing of the complaint. If the Auditor forwards a complaint to an agency that does not meet the whistleblower criteria, the agency must investigate the action and report back no later than 30 days after receipt.

If a whistleblower who is subject to alleged retaliation files a civil action, the reviewing court may award costs as well as reasonable fees to the prevailing party. The provisions relating to civil actions against the state are specifically incorporated.

In cases of perceived retaliation, the whistleblower must file a complaint with the Human Rights Commission. The commission must investigate and act upon the complaint under its normal powers. The Human Rights Commission is given exclusive jurisdiction over retaliation cases for whistleblowers.

"Denial of employment" is added to the list of activities defined as "reprisal or retaliatory action," as is encouragement by a supervisor to the whistleblower's colleagues to behave in a hostile manner.

Retaliation by a state employer is added to the list of unfair practices within the powers of the Human Rights Commission. If the administrative law judge determines that retaliatory action has been taken against a whistleblower, the commission

may fine the retaliator up to \$3,000 and issue an order to the appointing authority to suspend the retaliator for up to 30 days. Monetary penalties are credited to the general fund. At a minimum, the commission must require that a letter of reprimand be placed in the retaliator's personnel file.

Whistleblower investigations are added to the enumerated powers of the State Auditor.

**Appropriation:** \$15,000 from the general fund to the Human Rights Commission for implementing its new powers to investigate whistleblower retaliations.

**VOTES ON FINAL PASSAGE:**

Senate	44	0	
House	97	0	(House amended)
Senate			(Senate refused to concur)
House	96	0	(House receded)

**EFFECTIVE:** April 1, 1992 (Section 8)  
June 11, 1992