

1 **ESSB 5121** - H COMM AMD TO STATE GOVERNMENT COMM AMDS (H2786.1)
2 **ADOPTED AS AMENDED BY 548 AND 487 4-15-91**
3 By Committee on Appropriations

4 On page 16, after line 24 of the amendments, strike all
5 material through the remainder of the amendments and insert the
6 following:

7 "**NEW SECTION.** **Sec. 8.** A new section is added to chapter
8 42.40 RCW to read as follows:

9 (1) Each local government is encouraged to adopt a
10 whistleblower program so that its employees can disclose improper
11 governmental actions without fear of retaliation. Each local
12 government and its employees also shall be subject to the
13 provisions of this chapter as if the local government were a state
14 agency and its employees state employees. However, the auditor may
15 decline to investigate a report of improper governmental action
16 from a local government employee if the local government has a
17 whistleblower program that has been approved under subsection (2)
18 of this section and if the local government has agreed to conduct
19 an investigation of the report. For purposes of applying the
20 provisions of this chapter to a local government and its employees,
21 the reference to a "state law or rule" in RCW 42.40.020(3)(a)(ii)
22 also shall include local government laws or rules; and the term
23 "improper governmental action" in RCW 42.40.020(3)(b) also does not
24 include actions covered by a local government civil service system,

1 personnel system, or collective bargaining system or law. A local
2 government employee who is a whistleblower as a result of this
3 subsection is also a whistleblower under chapter 49.60 RCW.

4 (2) Any local government may submit its whistleblower program
5 to the state auditor and request the auditor to approve the
6 program. The state auditor shall approve any local government
7 program that the auditor finds accomplishes the purposes of the
8 provisions of the state whistleblower program. In considering
9 whether or not to approve a local government whistleblower program,
10 the state auditor shall take into consideration the degree to which
11 local government whistleblower complaints will be investigated and
12 the amount of protection offered to local government whistleblowers
13 against retaliatory actions.

14 (3) Any person who is a whistleblower under an approved local
15 government whistleblower program also is a whistleblower under RCW
16 42.40.020 for purposes of the application of chapter 49.60 RCW.

17 **NEW SECTION. Sec. 9.** (1) Sections 8 and 11 of this act shall
18 become effective on July 1, 1992.

19 (2) Prior to July 1, 1992, the state auditor shall establish
20 and consult with a nine-member committee of officials or their
21 representatives from cities, counties, school districts, and
22 special purpose districts to develop model whistleblower programs
23 that meet the intent and requirements of this act and that conform
24 to the structure and procedures of the different types and sizes of
25 affected local governments. The state auditor shall also consult

1 with the state human rights commission with respect to the
2 development of the model programs.

3 (3) The committee established in subsection (2) of this
4 section and the state auditor may make recommendations to the
5 legislature by December 1, 1991, on amendments to this act that are
6 necessary to develop workable local government programs.

7 **NEW SECTION. Sec. 10.** A new section is added to chapter
8 42.40 RCW to read as follows:

9 (1) No local government or local government official or
10 supervisory employee may take any retaliatory action against an
11 employee of the local government as a result of the employee's good
12 faith report of improper governmental action by the local
13 government or by any of its officials or employees. Any person who
14 is retaliated against in violation of this section has a right of
15 action for damages against the offending local government, official
16 or employee. In any such action, the court also may require the
17 defendants to cease and desist from such retaliatory action, and to
18 take such affirmative action as the court believes appropriate,
19 including but not limited to reinstatement or upgrading of the
20 employment position. For purposes of this section, the following
21 definitions apply: (a) "Good faith report" means a good faith
22 report to a governmental official or employee who the reporting
23 employee believes possesses authority to investigate the matter
24 reported; (b) "Improper governmental action" has the meaning
25 prescribed under RCW 42.40.020(3) except that the reference to

1 "state law or rule" in subsection (3)(a)(ii) also includes local
2 government laws or rules and that "improper governmental action"
3 does not include any action taken under a local government civil
4 service system, personnel system, or collective bargaining system
5 or law; and (c) "Retaliatory action" has the meaning prescribed
6 under RCW 42.40.050 for "reprisal or retaliatory action."

7 (2) This section expires on July 1, 1992.

8 **NEW SECTION. Sec. 11.** A new section is added to chapter
9 43.09 RCW to read as follows:

10 The expense of approving local government whistleblower
11 programs and investigating improper local governmental activity as
12 provided in chapter 42.40 RCW shall be borne by each entity
13 submitting a program for approval or subject to such investigation.
14 Procedures established by the division of municipal corporations
15 concerning the municipal revolving fund shall be made applicable to
16 these investigations and their expenses.

17 **NEW SECTION. Sec. 12.** The sum of twenty thousand dollars, or
18 as much thereof as may be necessary, is appropriated for the
19 biennium ending June 30, 1993, from the general fund to the human
20 rights commission for the purposes of this act.

21 **ESSB 5121** - H COMM AMD
22 By Committee on State Government

23 On page 1, line 1 of the title, after "action;" strike the
24 remainder of the title and insert "amending RCW 42.40.020,

1 42.40.040, 42.40.050, 49.60.210, 49.60.250, 43.09.050, and
2 43.88.160; adding new sections to chapter 42.40 RCW; adding a new
3 section to chapter 43.09 RCW; creating a new section; prescribing
4 penalties; and making an appropriation."

EFFECT: (1) Effective July 1, 1992, local government employees may participate in the state whistleblower program and obtain relief for retaliation under the Human Rights Act. (2) Effective July 1, 1992, a local government whistleblower may file a report of improper governmental activity with the State Auditor, but the Auditor may decline to investigate if the local government has its own whistleblower program that has been approved by the Auditor and if the local government has agreed to investigate. (3) Before July 1, 1992, a local government whistleblower who is a retaliation victim is authorized to bring an action in superior court to obtain relief. (4) Provides for the creation of a committee of local government officials that will work with the State Auditor to establish model local government whistleblower programs. (5) Allows the State Auditor to bill local governments for the cost of reviewing and approving local government whistleblower programs.