

2 **ESSB 5121** - H COMM AMD **ADOPTED 4-16-91**

3 By Committee on State Government

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 42.40.020 and 1989 c 284 s 1 are each amended to read
8 as follows:

9 As used in this chapter, the terms defined in this section shall
10 have the meanings indicated unless the context clearly requires
11 otherwise.

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

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

15 (3)(a) "Improper governmental action" means any action by an
16 employee:

17 (i) Which is undertaken in the performance of the employee's
18 official duties, whether or not the action is within the scope of the
19 employee's employment; and

20 (ii) Which is in violation of any state law or rule, is an abuse of
21 authority, is of substantial and specific danger to the public health
22 or safety, or is a gross waste of public funds.

23 (b) "Improper governmental action" does not include personnel
24 actions including but not limited to employee grievances, complaints,
25 appointments, promotions, transfers, assignments, reassignments,
26 reinstatements, restorations, reemployments, performance evaluations,
27 reductions in pay, dismissals, suspensions, demotions, violations of
28 the state civil service law, alleged labor agreement violations,

1 reprimands, or any action which may be taken under chapter 41.06 or
2 28B.16 RCW, or other disciplinary action except as provided in RCW
3 42.40.030.

4 (4) "Use of official authority or influence" includes taking,
5 directing others to take, recommending, processing, or approving any
6 personnel action such as an appointment, promotion, transfer,
7 assignment, reassignment, reinstatement, restoration, reemployment,
8 performance evaluation, or any adverse action under chapter 41.06 or
9 28B.16 RCW, or other disciplinary action.

10 (5) "Whistleblower" means an employee who in good faith reports
11 alleged improper governmental action to the auditor, initiating an
12 investigation under RCW 42.40.040. For purposes of the provisions of
13 this chapter and chapter 49.60 RCW relating to reprisals and
14 retaliatory action, the term "whistleblower" also means an employee who
15 in good faith provides information to the auditor in connection with an
16 investigation under RCW 42.40.040 and an employee who is believed to
17 have reported alleged improper governmental action to the auditor or to
18 have provided information to the auditor in connection with an
19 investigation under RCW 42.40.040 but who, in fact, has not reported
20 such action or provided such information."

21 **"Sec. 2.** RCW 42.40.040 and 1989 c 284 s 3 are each amended to read
22 as follows:

23 (1) Upon receiving specific information that an employee has
24 engaged in improper governmental action, the auditor shall, within five
25 working days of receipt of the information, mail written
26 acknowledgement to the whistleblower at the address provided. For a
27 period not to exceed thirty days, the auditor shall conduct such
28 preliminary investigation of the matter as the auditor deems
29 appropriate. In conducting the investigation, the identity of the

1 (~~person providing the information which initiated the investigation~~)
2 whistleblower shall be kept confidential.

3 (2) In addition to the authority under subsection (1) of this
4 section, the auditor may, on its own initiative, investigate incidents
5 of improper state governmental action.

6 (3)(a) If it appears to the auditor, upon completion of the
7 preliminary investigation, that the matter is so unsubstantiated that
8 no further investigation, prosecution, or administrative action is
9 warranted, the auditor shall so notify the (~~person, if known, who~~
10 ~~provided the information initiating the investigation~~) whistleblower.

11 (b) The notification shall be by memorandum containing a summary of
12 the information received, a summary of the results of the preliminary
13 investigation with regard to each allegation of improper governmental
14 action, and any determination made by the auditor under (c) of this
15 subsection.

16 (c) In any case to which this section applies, the identity of the
17 (~~person who provided the information initiating the investigation~~)
18 whistleblower shall be kept confidential unless the auditor determines
19 that the information has been provided other than in good faith.

20 (d) If it appears to the auditor that the matter does not meet the
21 definition of an "improper governmental action" under RCW 42.40.020(3),
22 or is other than a gross waste of public funds, the auditor may forward
23 a summary of the allegations to the appropriate agency for
24 investigation and require a response by memorandum containing a summary
25 of the investigation with regard to each allegation and any
26 determination of corrective action taken. The auditor will keep the
27 identity of the (~~person who provided the information initiating the~~
28 ~~investigation~~) whistleblower confidential. Upon receipt of the
29 results of the investigation from the appropriate agency, the auditor

1 will notify the (~~provider~~) whistleblower as prescribed under (a),
2 (b), and (c) of this subsection.

3 (4) If it appears to the auditor after completion of the
4 preliminary investigation that further investigation, prosecution, or
5 administrative action is warranted, the auditor shall so notify the
6 (~~party, if known, who provided the information initiating the~~
7 ~~investigation~~) whistleblower and either conduct further investigations
8 or issue a report under subsection (6) of this section. Within sixty
9 days after the thirty-day period in subsection (1) of this section, the
10 auditor shall complete the investigation and report its findings to the
11 whistleblower unless written justification for the delay is furnished
12 to the whistleblower. In all such cases, the report of the auditor's
13 investigation and findings shall be sent to the whistleblower within
14 one year after the information was filed under subsection (1) of this
15 section.

16 (5)(a) At any stage of an investigation under this section the
17 auditor may require by subpoena the attendance and testimony of
18 witnesses and the production of documentary or other evidence relating
19 to the investigation at any designated place in the state. The auditor
20 may issue subpoenas, administer oaths, examine witnesses, and receive
21 evidence. In the case of contumacy or failure to obey a subpoena, the
22 superior court for the county in which the person to whom the subpoena
23 is addressed resides or is served may issue an order requiring the
24 person to appear at any designated place to testify or to produce
25 documentary or other evidence. Any failure to obey the order of the
26 court may be punished by the court as a contempt thereof.

27 (b) The auditor may order the taking of depositions at any stage of
28 a proceeding or investigation under this chapter. Depositions shall be
29 taken before an individual designated by the auditor and having the
30 power to administer oaths. Testimony shall be reduced to writing by or

1 under the direction of the individual taking the deposition and shall
2 be subscribed by the deponent.

3 (6)(a) If the auditor determines that there is reasonable cause to
4 believe that an employee has engaged in any improper activity, the
5 auditor shall report the nature and details of the activity to:

6 (i) The employee and the head of the employing agency; and

7 (ii) If appropriate, the attorney general or such other authority
8 as the auditor determines appropriate.

9 (b) The auditor has no enforcement power except that in any case in
10 which the auditor submits a report of alleged improper activity to the
11 head of an agency, the attorney general, or any other individual to
12 which a report has been made under this section, the individual shall
13 report to the auditor with respect to any action taken by the
14 individual regarding the activity, the first report being transmitted
15 no later than thirty days after the date of the auditor's report and
16 monthly thereafter until final action is taken. If the auditor
17 determines that appropriate action is not being taken within a
18 reasonable time, the auditor shall report the determination to the
19 governor and to the legislature.

20 (7) This section does not limit any authority conferred upon the
21 attorney general or any other agency of government to investigate any
22 matter."

23 "Sec. 3. RCW 42.40.050 and 1989 c 284 s 4 are each amended to read
24 as follows:

25 ~~((1) Any employee (a) who provides his or her name and specific~~
26 ~~information to the auditor on any matter which is found to warrant~~
27 ~~further investigation or other action, or which is provided by the~~
28 ~~employee in good faith, as determined by the auditor, whether or not~~
29 ~~further action is warranted and (b) who is subjected to any reprisal or~~

1 ~~retaliatory action undertaken during the period beginning on the day~~
2 ~~after the date on which the specific information is received by the~~
3 ~~auditor alleging improper governmental action, may seek judicial review~~
4 ~~of the reprisal or retaliatory action in superior court, whether or not~~
5 ~~there has been an administrative review of the action. In such an~~
6 ~~action, the reviewing court may award reasonable attorney's fees.~~

7 ~~(2) The employee who provided specific information shall notify the~~
8 ~~state auditor in writing if any changes in the employee's work~~
9 ~~situation exist which are related to the employee's having provided~~
10 ~~information. If the auditor has reason to believe that such a change~~
11 ~~in work situation has occurred, the auditor shall investigate and~~
12 ~~report on the matter in accordance with this chapter.~~

13 ~~(3)) Any person who is a whistleblower, as defined in RCW~~
14 ~~42.40.020, and who as a result of being a whistleblower has been~~
15 ~~subjected to workplace reprisal or retaliatory action has the remedies~~
16 ~~provided under chapter 49.60 RCW. For the purpose of this section~~
17 ~~"reprisal or retaliatory action" means but is not limited to:~~

18 ~~((a)) (1) Denial of adequate staff to perform duties;~~

19 ~~((b)) (2) Frequent staff changes;~~

20 ~~((c)) (3) Frequent and undesirable office changes;~~

21 ~~((d)) (4) Refusal to assign meaningful work;~~

22 ~~((e)) (5) Unwarranted and unsubstantiated letters of reprimand or~~
23 ~~unsatisfactory performance evaluations;~~

24 ~~((f)) (6) Demotion;~~

25 ~~((g)) (7) Reduction in pay;~~

26 ~~((h)) (8) Denial of promotion;~~

27 ~~((i)) (9) Suspension; ((and~~

28 ~~(j)) (10) Dismissal;~~

29 ~~(11) Denial of employment; and~~

1 (12) A supervisor or superior encouraging coworkers to behave in a
2 hostile manner toward the whistleblower.

3 Nothing in this section prohibits an agency from making any
4 decision exercising its authority to terminate, suspend, or discipline
5 an employee who engages in workplace reprisal or retaliatory action
6 against a whistleblower. However, the agency also shall implement any
7 order under chapter 49.60 RCW (other than an order of suspension if the
8 agency has terminated the retaliator)."

9 **"Sec. 4.** RCW 49.60.210 and 1985 c 185 s 18 are each amended to
10 read as follows:

11 (1) It is an unfair practice for any employer, employment agency,
12 labor union, or other person to discharge, expel, or otherwise
13 discriminate against any person because he or she has opposed any
14 practices forbidden by this chapter, or because he or she has filed a
15 charge, testified, or assisted in any proceeding under this chapter.

16 (2) It is an unfair practice for a government agency or government
17 manager or supervisor to retaliate against a whistleblower as defined
18 in chapter 42.40 RCW."

19 **"Sec. 5.** RCW 49.60.250 and 1989 c 175 s 115 are each amended to
20 read as follows:

21 (1) In case of failure to reach an agreement for the elimination of
22 such unfair practice, and upon the entry of findings to that effect,
23 the entire file, including the complaint and any and all findings made,
24 shall be certified to the chairperson of the commission. The
25 chairperson of the commission shall thereupon request the appointment
26 of an administrative law judge under Title 34 RCW to hear the complaint
27 and shall cause to be issued and served in the name of the commission
28 a written notice, together with a copy of the complaint, as the same

1 may have been amended, requiring the respondent to answer the charges
2 of the complaint at a hearing before the administrative law judge, at
3 a time and place to be specified in such notice.

4 (2) The place of any such hearing may be the office of the
5 commission or another place designated by it. The case in support of
6 the complaint shall be presented at the hearing by counsel for the
7 commission: PROVIDED, That the complainant may retain independent
8 counsel and submit testimony and be fully heard. No member or employee
9 of the commission who previously made the investigation or caused the
10 notice to be issued shall participate in the hearing except as a
11 witness, nor shall the member or employee participate in the
12 deliberations of the administrative law judge in such case. Any
13 endeavors or negotiations for conciliation shall not be received in
14 evidence.

15 (3) The respondent shall file a written answer to the complaint and
16 appear at the hearing in person or otherwise, with or without counsel,
17 and submit testimony and be fully heard. The respondent has the right
18 to cross-examine the complainant.

19 (4) The administrative law judge conducting any hearing may permit
20 reasonable amendment to any complaint or answer. Testimony taken at
21 the hearing shall be under oath and recorded.

22 (5) If, upon all the evidence, the administrative law judge finds
23 that the respondent has engaged in any unfair practice, the
24 administrative law judge shall state findings of fact and shall issue
25 and file with the commission and cause to be served on such respondent
26 an order requiring such respondent to cease and desist from such unfair
27 practice and to take such affirmative action, including, (but not
28 limited to) hiring, reinstatement or upgrading of employees, with or
29 without back pay, an admission or restoration to full membership rights
30 in any respondent organization, or to take such other action as, in the

1 judgment of the administrative law judge, will effectuate the purposes
2 of this chapter, including action that could be ordered by a court,
3 except that damages for humiliation and mental suffering shall not
4 exceed one thousand dollars, and including a requirement for report of
5 the matter on compliance.

6 (6) If a determination is made that retaliatory action, as defined
7 in RCW 42.40.050, has been taken against a whistleblower, as defined in
8 RCW 42.40.020, the administrative law judge may, in addition to any
9 other remedy, impose a civil penalty upon the retaliator of up to three
10 thousand dollars and issue an order to the state employer to suspend
11 the retaliator for up to thirty days without pay. At a minimum, the
12 administrative law judge shall require that a letter of reprimand be
13 placed in the retaliator's personnel file. All penalties recovered
14 shall be paid into the state treasury and credited to the general fund.

15 (7) The final order of the administrative law judge shall include
16 a notice to the parties of the right to obtain judicial review of the
17 order by appeal in accordance with the provisions of RCW 34.05.510
18 through 34.05.598, and that such appeal must be served and filed within
19 thirty days after the service of the order on the parties.

20 ~~((+7))~~ (8) If, upon all the evidence, the administrative law judge
21 finds that the respondent has not engaged in any alleged unfair
22 practice, the administrative law judge shall state findings of fact and
23 shall similarly issue and file an order dismissing the complaint.

24 ~~((+8))~~ (9) An order dismissing a complaint may include an award of
25 reasonable attorneys' fees in favor of the respondent if the
26 administrative law judge concludes that the complaint was frivolous,
27 unreasonable, or groundless.

28 ~~((+9))~~ (10) The commission shall establish rules of practice to
29 govern, expedite, and effectuate the foregoing procedure."

1 **"Sec. 6.** RCW 43.09.050 and 1979 c 151 s 91 are each amended to
2 read as follows:

3 The auditor shall:

4 (1) Except as otherwise specifically provided by law, audit the
5 accounts of all collectors of the revenue and other holders of public
6 money required by law to pay the same into the treasury;

7 (2) In his or her discretion, inspect the books of any person
8 charged with the receipt, safekeeping, and disbursement of public
9 moneys;

10 (3) Investigate improper governmental activity under chapter 42.40
11 RCW;

12 (4) Inform the attorney general in writing of the necessity for
13 ~~((him))~~ the attorney general to direct prosecutions in the name of the
14 state for all official delinquencies in relation to the assessment,
15 collection, and payment of the revenue, against all persons who, by any
16 means, become possessed of public money or property, and fail to pay
17 over or deliver the same, and against all debtors of the state;

18 ~~((+4))~~ (5) Give information in writing to the legislature,
19 whenever required, upon any subject relating to the financial affairs
20 of the state, or touching any duties of his or her office;

21 ~~((+5))~~ (6) Report to the director of financial management in
22 writing the names of all persons who have received any moneys belonging
23 to the state, and have not accounted therefor;

24 ~~((+6))~~ (7) Authenticate with his or her official seal papers
25 issued from his or her office;

26 ~~((+7))~~ (8) Make his or her official report annually on or before
27 the 31st of December."

28 **"Sec. 7.** RCW 43.88.160 and 1987 c 505 s 36 are each amended to
29 read as follows:

1 This section sets forth the major fiscal duties and
2 responsibilities of officers and agencies of the executive branch. The
3 regulations issued by the governor pursuant to this chapter shall
4 provide for a comprehensive, orderly basis for fiscal management and
5 control, including efficient accounting and reporting therefor, for the
6 executive branch of the state government and may include, in addition,
7 such requirements as will generally promote more efficient public
8 management in the state.

9 (1) Governor; director of financial management. The governor,
10 through the director of financial management, shall devise and
11 supervise a modern and complete accounting system for each agency to
12 the end that all revenues, expenditures, receipts, disbursements,
13 resources and obligations of the state shall be properly and
14 systematically accounted for. The accounting system shall include the
15 development of accurate, timely records and reports of all financial
16 affairs of the state. The system shall also provide for central
17 accounts in the office of financial management at the level of detail
18 deemed necessary by the director to perform central financial
19 management. The director of financial management shall adopt and
20 periodically update an accounting procedures manual. Any agency
21 maintaining its own accounting and reporting system shall comply with
22 the updated accounting procedures manual and the rules of the director
23 adopted under this chapter. An agency may receive a waiver from
24 complying with this requirement if the waiver is approved by the
25 director. Waivers expire at the end of the fiscal biennium for which
26 they are granted. The director shall forward notice of waivers granted
27 to the legislative fiscal committees. The director of financial
28 management may require such financial, statistical, and other reports
29 as the director deems necessary from all agencies covering any period.

1 The director of financial management is responsible for quarterly
2 reporting of primary budget drivers such as applicable workloads,
3 caseload estimates, and appropriate unit cost data. These reports
4 shall be transmitted to the legislative fiscal committees or by
5 electronic means to the legislative evaluation and accountability
6 program committee. Quarterly reports shall include actual monthly data
7 and the variance between actual and estimated data to date. The
8 reports shall also include estimates of these items for the remainder
9 of the budget period.

10 In addition, the director of financial management, as agent of the
11 governor, shall:

12 (a) Make surveys and analyses of agencies with the object of
13 determining better methods and increased effectiveness in the use of
14 manpower and materials; and the director shall authorize expenditures
15 for employee training to the end that the state may benefit from
16 training facilities made available to state employees;

17 (b) Report to the governor with regard to duplication of effort or
18 lack of coordination among agencies;

19 (c) Review any pay and classification plans, and changes
20 thereunder, developed by any agency for their fiscal impact: PROVIDED,
21 That none of the provisions of this subsection shall affect merit
22 systems of personnel management now existing or hereafter established
23 by statute relating to the fixing of qualifications requirements for
24 recruitment, appointment, or promotion of employees of any agency. The
25 director shall advise and confer with agencies including appropriate
26 standing committees of the legislature as may be designated by the
27 speaker of the house and the president of the senate regarding the
28 fiscal impact of such plans and may amend or alter said plans, except
29 that for the following agencies no amendment or alteration of said

1 plans may be made without the approval of the agency concerned:

2 Agencies headed by elective officials;

3 (d) Fix the number and classes of positions or authorized man years
4 of employment for each agency and during the fiscal period amend the
5 determinations previously fixed by the director except that the
6 director shall not be empowered to fix said number or said classes for
7 the following: Agencies headed by elective officials;

8 (e) Provide for transfers and repayments between the budget
9 stabilization account and the general fund as directed by appropriation
10 and RCW 43.88.525 through 43.88.540;

11 (f) Promulgate regulations to effectuate provisions contained in
12 (~~subsections~~) (a) through (e) (~~hereof~~) of this subsection.

13 (2) The treasurer shall:

14 (a) Receive, keep and disburse all public funds of the state not
15 expressly required by law to be received, kept and disbursed by some
16 other persons: PROVIDED, That this subsection shall not apply to those
17 public funds of the institutions of higher learning which are not
18 subject to appropriation;

19 (b) Disburse public funds under the treasurer's supervision or
20 custody by warrant or check;

21 (c) Keep a correct and current account of all moneys received and
22 disbursed by the treasurer, classified by fund or account;

23 (d) Perform such other duties as may be required by law or by
24 regulations issued pursuant to this law.

25 It shall be unlawful for the treasurer to issue any warrant or
26 check for public funds in the treasury except upon forms duly
27 prescribed by the director of financial management. Said forms shall
28 provide for authentication and certification by the agency head or the
29 agency head's designee that the services have been rendered or the
30 materials have been furnished; or, in the case of loans or grants, that

1 the loans or grants are authorized by law; or, in the case of payments
2 for periodic maintenance services to be performed on state owned
3 equipment, that a written contract for such periodic maintenance
4 services is currently in effect and copies thereof are on file with the
5 office of financial management; and the treasurer shall not be liable
6 under the treasurer's surety bond for erroneous or improper payments so
7 made: PROVIDED, That when services are lawfully paid for in advance of
8 full performance by any private individual or business entity other
9 than as provided for by RCW 42.24.035, such individual or entity other
10 than central stores rendering such services shall make a cash deposit
11 or furnish surety bond coverage to the state as shall be fixed in an
12 amount by law, or if not fixed by law, then in such amounts as shall be
13 fixed by the director of the department of general administration but
14 in no case shall such required cash deposit or surety bond be less than
15 an amount which will fully indemnify the state against any and all
16 losses on account of breach of promise to fully perform such services:
17 AND PROVIDED FURTHER, That no payments shall be made in advance for any
18 equipment maintenance services to be performed more than three months
19 after such payment. Any such bond so furnished shall be conditioned
20 that the person, firm or corporation receiving the advance payment will
21 apply it toward performance of the contract. The responsibility for
22 recovery of erroneous or improper payments made under this section
23 shall lie with the agency head or the agency head's designee in
24 accordance with regulations issued pursuant to this chapter. Nothing
25 in this section shall be construed to permit a public body to advance
26 funds to a private service provider pursuant to a grant or loan before
27 services have been rendered or material furnished.

28 (3) The state auditor shall:

29 (a) Report to the legislature the results of current post audits
30 that have been made of the financial transactions of each agency; to

1 this end the auditor may, in the auditor's discretion, examine the
2 books and accounts of any agency, official or employee charged with the
3 receipt, custody or safekeeping of public funds. The current post
4 audit of each agency may include a section on recommendations to the
5 legislature as provided in (c) of this subsection (~~((3)(c) of this~~
6 ~~section))~~).

7 (b) Give information to the legislature, whenever required, upon
8 any subject relating to the financial affairs of the state.

9 (c) Make the auditor's official report on or before the thirty-
10 first of December which precedes the meeting of the legislature. The
11 report shall be for the last complete fiscal period and shall include
12 at least the following:

13 Determinations as to whether agencies, in making expenditures,
14 complied with the laws of this state: PROVIDED, That nothing in this
15 act shall be construed to grant the state auditor the right to perform
16 performance audits. A performance audit for the purpose of this act
17 shall be the examination of the effectiveness of the administration,
18 its efficiency and its adequacy in terms of the programs of departments
19 or agencies as previously approved by the legislature. The authority
20 and responsibility to conduct such an examination shall be vested in
21 the legislative budget committee as prescribed in RCW 44.28.085 as now
22 or hereafter amended.

23 (d) Be empowered to take exception to specific expenditures that
24 have been incurred by any agency or to take exception to other
25 practices related in any way to the agency's financial transactions and
26 to cause such exceptions to be made a matter of public record,
27 including disclosure to the agency concerned and to the director of
28 financial management. It shall be the duty of the director of
29 financial management to cause corrective action to be taken promptly,

1 such action to include, as appropriate, the withholding of funds as
2 provided in RCW 43.88.110.

3 (e) Promptly report any irregularities to the attorney general.

4 (f) Investigate improper governmental activity under chapter 42.40
5 RCW.

6 (4) The legislative budget committee may:

7 (a) Make post audits of the financial transactions of any agency
8 and management surveys and program reviews as provided for in RCW
9 44.28.085 as now or hereafter amended. To this end the committee may
10 in its discretion examine the books, accounts, and other records of any
11 agency, official, or employee.

12 (b) Give information to the legislature or any legislative
13 committee whenever required upon any subject relating to the
14 performance and management of state agencies.

15 (c) Make a report to the legislature which shall include at least
16 the following:

17 (i) Determinations as to the extent to which agencies in making
18 expenditures have complied with the will of the legislature and in this
19 connection, may take exception to specific expenditures or financial
20 practices of any agencies; and

21 (ii) Such plans as it deems expedient for the support of the
22 state's credit, for lessening expenditures, for promoting frugality and
23 economy in agency affairs and generally for an improved level of fiscal
24 management."

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

27 (1) Each local government is encouraged to adopt a whistleblower
28 program so that its employees can disclose improper governmental
29 actions without fear of retaliation. Each local government and its

1 employees also shall be subject to the provisions of this chapter as if
2 the local government were a state agency and its employees state
3 employees. However, the auditor may decline to investigate a report of
4 improper governmental action from a local government employee if the
5 local government has a whistleblower program that has been approved
6 under subsection (2) of this section and if the local government has
7 agreed to conduct an investigation of the report. For purposes of
8 applying the provisions of this chapter to a local government and its
9 employees, the reference to a "state law or rule" in RCW
10 42.40.020(3)(a)(ii) also shall include local government laws or rules;
11 and the term "improper governmental action" in RCW 42.40.020(3)(b) also
12 does not include actions covered by a local government civil service
13 system, personnel system, or collective bargaining system or law. A
14 local government employee who is a whistleblower as a result of this
15 subsection is also a whistleblower under chapter 49.60 RCW.

16 (2) Any local government may submit its whistleblower program to
17 the state auditor and request the auditor to approve the program. The
18 state auditor shall approve any local government program that the
19 auditor finds accomplishes the purposes of the provisions of the state
20 whistleblower program. In considering whether or not to approve a
21 local government whistleblower program, the state auditor shall take
22 into consideration the degree to which local government whistleblower
23 complaints will be investigated and the amount of protection offered to
24 local government whistleblowers against retaliatory actions.

25 (3) Any person who is a whistleblower under an approved local
26 government whistleblower program also is a whistleblower under RCW
27 42.40.020 for purposes of the application of chapter 49.60 RCW."

28 "NEW SECTION. Sec. 9. (1) Sections 8 and 11 of this act shall
29 become effective on July 1, 1992.

1 (2) Prior to July 1, 1992, the state auditor shall establish and
2 consult with a committee to develop model whistleblower programs that
3 meet the intent and requirements of this act and that conform to the
4 structure and procedures of the different types and sizes of affected
5 local governments. The committee will include but not be limited to
6 representatives from cities, counties, school districts, special
7 purpose districts, and at least two employee organizations which
8 represent local government employees. The state auditor shall also
9 consult with the state human rights commission with respect to the
10 development of the model programs.

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

15 "NEW SECTION. Sec. 10. A new section is added to chapter 42.40
16 RCW to read as follows:

17 (1) No local government or local government official or supervisory
18 employee may take any retaliatory action against an employee of the
19 local government as a result of the employee's good faith report of
20 improper governmental action by the local government or by any of its
21 officials or employees. Any person who is retaliated against in
22 violation of this section has a right of action for damages against the
23 offending local government, official, or employee. In any such action,
24 the court also may require the defendants to cease and desist from such
25 retaliatory action, and to take such affirmative action as the court
26 believes appropriate, including but not limited to reinstatement or
27 upgrading of the employment position. For purposes of this section,
28 the following definitions apply: (a) "Good faith report" means a good
29 faith report to a governmental official or employee who the reporting

1 employee believes possesses authority to investigate the matter
2 reported; (b) "improper governmental action" has the meaning prescribed
3 under RCW 42.40.020(3) except that the reference to "state law or rule"
4 in RCW 42.40.020(3)(a)(ii) also includes local government laws or rules
5 and that "improper governmental action" does not include any action
6 taken under a local government civil service system, personnel system,
7 or collective bargaining system or law; and (c) "retaliatory action"
8 has the meaning prescribed under RCW 42.40.050 for "reprisal or
9 retaliatory action."

10 (2) This section expires on July 1, 1992. However, any right of
11 action authorized under this section and arising before July 1, 1992,
12 shall not be affected or impaired by the expiration of this section,
13 regardless of whether a complaint is filed before, on, or after July 1,
14 1992."

15 "NEW SECTION. Sec. 11. A new section is added to chapter 43.09
16 RCW to read as follows:

17 The expense of approving local government whistleblower programs
18 and investigating improper local governmental activity as provided in
19 chapter 42.40 RCW shall be borne by each entity submitting a program
20 for approval or subject to such investigation. Procedures established
21 by the division of municipal corporations concerning the municipal
22 revolving fund shall be made applicable to these investigations and
23 their expenses."

24 "NEW SECTION. Sec. 12. The sum of twenty thousand dollars, or
25 as much thereof as may be necessary, is appropriated for the biennium
26 ending June 30, 1993, from the general fund to the human rights
27 commission for the purposes of this act."

1 **ESSB 5121** - H COMM AMD
2 By Committee on State Government

3
4 On page 1, line 1 of the title, after "action;" strike the
5 remainder of the title and insert "amending RCW 42.40.020, 42.40.040,
6 42.40.050, 49.60.210, 49.60.250, 43.09.050, and 43.88.160; adding new
7 sections to chapter 42.40 RCW; adding a new section to chapter 43.09
8 RCW; prescribing penalties; making an appropriation; and providing an
9 effective date."