

HOUSE BILL REPORT

2ESSB 5121

*As Reported By House Committee on:
State Government*

Title: An act relating to improper governmental action.

Brief Description: Protecting whistleblowers.

Sponsor(s): By 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).

Brief History:

Reported by House Committee on:
State Government, February 26, 1992, DP.

**HOUSE COMMITTEE ON
STATE GOVERNMENT**

Majority Report: *Do pass.* Signed by 10 members: Representatives Anderson, Chair; Pruitt, Vice Chair; McLean, Ranking Minority Member; Bowman, Assistant Ranking Minority Member; Chandler; R. Fisher; Grant; Moyer; O'Brien; and Sheldon.

Staff: Linda May (786-7135).

Background: Whistleblower Investigations. The state Whistleblower Program was created in 1982 to encourage state employees to disclose improper governmental actions. Actions which qualify for investigation under the whistleblower provisions are those where there is a violation of any state law or rule, an abuse of authority, a substantial and specific danger to the public health or safety, or a gross waste of public funds. "Improper governmental actions" do not include employee personnel actions or grievances.

Current law does not contain a definition of a whistleblower. Instead, statute refers to "the person providing the information which initiated the investigation" of alleged improper governmental action.

Whistleblower investigations are conducted by the State Auditor's Office. After receiving notification of alleged improper action, the State Auditor's Office has a period not to exceed 30 days to conduct a preliminary investigation. If the auditor determines that no further investigation is warranted, the auditor will supply the whistleblower with a summary of the results of the preliminary investigation and findings. The auditor may choose to forward a summary of the allegations to an agency. The agency must respond with a summary of its investigation into the allegations and of its corrective actions, if any. If the auditor believes that further investigation is warranted, the auditor may conduct further investigation, or may alert the head of the employing agency or the attorney general. In all cases, the identity of the person who provides the information to the State Auditor's Office remains confidential.

Retaliation. In some cases, a person who acted as a whistleblower or who is perceived to be a whistleblower may be subjected to reprisals or retaliatory action. Actions which constitute reprisal or retaliation include denials of adequate staff or frequent staff changes, a refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or poor performance evaluations, demotion, suspension, or dismissal. A whistleblower is to notify the State Auditor's Office in writing of any changes in his or her work situation that are related to the employee's having provided information. If the State Auditor's Office has reason to believe that retaliatory acts may be occurring, the auditor is to investigate and report on the matter.

Also, an employee who provides information to the State Auditor's Office and who is then subjected to any reprisal or retaliatory action may seek judicial review of the retaliatory action in superior court. The court may award reasonable attorneys' fees, though statute does not identify to whom.

Summary of Bill: Whistleblower Investigations. A "whistleblower" is defined as an employee who in good faith reports alleged improper governmental action to the State Auditor's Office. The definition also includes employees who in good faith provide information to the auditor in connection with a whistleblower investigation, and employees who are perceived as having reported improper governmental actions or information connected to a whistleblower investigation.

Formal time lines are incorporated for a whistleblower investigation. The State Auditor's Office will mail written acknowledgement to a whistleblower within five days of

receipt of information. The preliminary investigation period continues to be 30 days or less. The auditor is to complete the investigation and report the findings within 60 days of the completion of the preliminary investigation. If the auditor cannot meet this time limitation, the office must provide the whistleblower with written justification for the delay. In all cases, the findings from the auditor's investigation must be mailed to the whistleblower within one year of the initial filing of information. Responsibility for investigation of alleged improper governmental activity is added in statute to the duties of the State Auditor's Office.

Retaliation. The list of acts which constitute reprisal or retaliatory action is expanded to include 1) denial of employment, and 2) a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower. Retaliation against a whistleblower is added to the definition of an unfair practice in the statutes guiding the Human Rights Commission.

A whistleblower who believes he or she has been subjected to retaliatory action may file a complaint with the Human Rights Commission. The commission will then investigate the complaint as a potential unfair practice. If the commission brings the case before an administrative law judge and it is determined that a person has engaged in retaliatory action, the judge may impose a civil penalty on the retaliator. The maximum civil penalty is \$3,000 and a 30 day suspension without pay. Monetary civil penalties go into the general fund. The minimum penalty is a letter of reprimand to be placed in the retaliator's personnel file. Imposition of a civil penalty by the administrative law judge may be in addition to other remedies available under the Human Rights Commission statutes. New language also clarifies that an agency retains the authority to discipline retaliators itself, in addition to carrying out any orders stemming from review through the Human Rights Commission.

A person who meets the definition of "whistleblower" and who is subjected to reprisals or retaliatory action may continue to seek judicial review in court. The court avenue is provided under the Human Rights Commission statutes with the inclusion of whistleblower retaliation as an unfair practice. The person bringing suit against a retaliator may recover actual damages plus cost of suit, including reasonable attorney fees. The court avenue is removed from the whistleblower section of the RCW.

The bill contains a request for an appropriation of \$15,000 for the Human Rights Commission for whistleblower retaliation cases.

Fiscal Note: Available.

Appropriation: \$15,000 from the general fund.

Effective Date: Ninety days after adjournment of session in which bill is passed, except for Section 8, which takes effect April 1, 1992.

Testimony For: This bill has been evolving over several years. One objective of the bill is to improve efficiency in government. Some governmental systems have been corrupted by improper action and employee retaliation. Existing law is not adequate; there is an imbalance in favor of the retaliator. This bill addresses this concern. The legislation serves as a deterrent against retaliation, and it strengthens the civil service system. It is a bright idea to involve the Human Rights Commission.

Testimony Against: The \$15,000 appropriation to the Human Rights Commission is inadequate to enforce this act. The commission has been the subject of several budget cuts and is operating now at a minimum threshold. The commission has no objection to adding the extra caseload but will need to be compensated for doing so.

Witnesses: Rob Kavanaugh (in favor); and Deborah K. Addleman, Human Rights Commission (with fiscal concerns).