

HOUSE BILL REPORT

SSB 6321

*As Passed House - Amended
March 4, 1992*

Title: An act relating to local government whistleblowers.

Brief Description: Regulating local government whistleblower programs.

Sponsor(s): Senate Committee on Governmental Operations
(originally sponsored by Senators Skratek, Metcalf, Gaspard and von Reichbauer).

Brief History:

Reported by House Committee on:
Local Government, February 28, 1992, DPA;
Passed House, March 4, 1992, 95-0.

**HOUSE COMMITTEE ON
LOCAL GOVERNMENT**

Majority Report: *Do pass as amended.* Signed by 15 members: Representatives Haugen, Chair; Cooper, Vice Chair; Ferguson, Ranking Minority Member; Mitchell, Assistant Ranking Minority Member; Bray; Edmondson; Franklin; Horn; Nealey; Nelson; Rayburn; Roland; Wood; Wynne; and Zellinsky.

Staff: Bill Lynch (786-7092).

Background: The Legislature enacted a state whistleblower program in 1982 to encourage state employees to disclose improper governmental actions. Local government employees do not have any similar procedure established for reporting wrongdoing within their agencies. When local government employees attempt to report wrongdoing within their agency, there is no specific protection provided from retaliatory actions from their superiors. There are also no procedures established for adjudicating claims of retaliatory action.

Summary of Bill: A procedure is established for local government employees to report improper governmental actions and receive protection against retaliation from their superiors.

Local governments must adopt a policy and procedures to follow for reporting improper governmental action. The policy must describe the appropriate person or persons

within the local government, and outside the local government, to whom to report the information. The county prosecuting attorney must be included on the list of people to whom to report.

Local governments must provide information to their employees about the whistleblower procedures. A summary of the procedures must be permanently posted in a place where all employees will have reasonable access to it. A copy of the summary must be made available to any employee who requests a copy.

A local government can require its employees to submit a report in writing before providing information of an improper governmental action to a person or an entity who is not a public official or one of the people designated to receive such reports, except in the case of an emergency. An employee who fails to make a good faith attempt to follow any such requirement is not entitled to protection against retaliation.

The identity of an employee that reports improper governmental activity must be kept confidential to the extent possible under law unless the employee authorizes the disclosure of his or her identity in writing.

"Retaliatory action" is defined as any adverse change in a local government employee's employment status, or the terms and conditions of employment, including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action.

Retaliation against employees who report improper governmental actions in good faith in accordance with the provisions of the whistleblower law is prohibited.

If a local government employee believes that he or she has been subject to retaliation, the employee must provide a written notice of the charge of retaliatory action to the governing body of the local government. The notice must specify the alleged retaliatory action and the relief requested. The notice must be delivered to the local government no later than 30 days after the occurrence of the retaliatory action.

The local government has 30 days to respond to the notice of retaliatory action. After the receipt of the local

government's response, or the last day upon which the local government could respond, the local government employee may request a hearing to establish that retaliation occurred and to obtain relief. The request for a hearing must be made within 15 days of the delivery of the local government's response or within 15 days of the last day on which the local government could respond.

The local government must apply to the state Office of Administrative Hearings for an adjudicative proceeding within five working days after receiving the employee's request for a hearing. An administrative law judge must conduct the hearing and render a final decision within 45 days of assignment, unless the time is extended at the request of a party or on the judge's own motion. An employee must prove his or her claim of retaliatory action by a preponderance of the evidence.

The administrative law judge may order the employee to be reinstated, the payment of back pay, and such injunctive relief as may be found necessary. The administrative law judge may also award costs and reasonable attorneys' fees to the prevailing party. If a determination is made that retaliatory action has occurred, a civil penalty may be imposed personally upon the retaliator up to \$3,000. The final decision by an administrative law judge is subject to judicial review under the arbitrary and capricious standard. Relief may be enforced by a petition to superior court.

A local government administrative hearings account is created. All fines against retaliators, as well as a 10 cent surcharge on each audit hour charged by the state auditor, is deposited into the account. The 10 cent surcharge is imposed from July 1, 1992, until June 30, 1995. After June 30, 1995, the state auditor sets the amount of the surcharge. The account is used to fund the first 24-hours of services on a hearing conducted by the state Office of Administrative Hearings. Costs beyond the initial 24-hours are allocated to the parties at the discretion of the administrative law judge. The additional costs are paid to the Office of Administrative Hearings by the local government, with any portion allocated to the complaining employee to be collected by the local government.

Local governments that have established their own internal procedures that meet the intent of this legislation are exempted from its provisions, including the 10 cent surcharge on each audit hour charged by the state auditor.

Fiscal Note: Requested February 26, 1992.

Effective Date: July 1, 1992, for the surcharge on audits conducted by the state auditor. January 1, 1993 for the remainder of the bill.

Testimony For: Procedures should be established to protect local government employees who report improper government activity.

Testimony Against: None.

Witnesses: Senator Sylvia Skratek, prime sponsor; Dave Rogers, Washington Public Ports Association; Cheryl Lupken, citizen; Linda Sheler, state auditors office; and Kathleen Collins, Association of Washington Cities.