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HOUSE BILL 2976

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State of Washington                      52nd Legislature                      1992 Regular Session  
By Representatives Haugen, Ferguson, Hine, Anderson, Horn, McLean and Paris

Read first time 02/07/92. Referred to Committee on Local Government.

1            AN ACT Relating to local government whistleblowers; amending RCW  
2 34.05.010 and 43.09.200; adding new sections to chapter 34.12 RCW;  
3 adding a new chapter to Title 42 RCW; prescribing penalties; and  
4 providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.**            It is the policy of the legislature that  
7 local government employees should be encouraged to disclose, to the  
8 extent not expressly prohibited by law, improper governmental actions  
9 of local government officials and employees. The purpose of this  
10 chapter is to protect local government employees who make good-faith  
11 reports to appropriate governmental bodies and to provide remedies for  
12 such individuals who are subjected to retaliation for having made such  
13 reports.

1        NEW SECTION.    **Sec. 2.**        Unless the context clearly requires  
2 otherwise, the definitions in this section apply throughout this  
3 chapter.

4        (1)(a) "Improper governmental action" means any action by a local  
5 government officer or employee:

6        (i) That is undertaken in the performance of the officer's or  
7 employee's official duties, whether or not the action is within the  
8 scope of the employee's employment; and

9        (ii) That is in violation of any federal, state, or local law or  
10 rule, is an abuse of authority, is of substantial and specific danger  
11 to the public health or safety, or is a gross waste of public funds.

12        (b) "Improper governmental action" does not include personnel  
13 actions including but not limited to employee grievances, complaints,  
14 appointments, promotions, transfers, assignments, reassignments,  
15 reinstatements, restorations, reemployments, performance evaluations,  
16 reductions in pay, dismissals, suspensions, demotions, violations of  
17 the local government collective bargaining and civil service laws,  
18 alleged labor agreement violations, reprimands, or any action that may  
19 be taken under chapter 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW  
20 or RCW 54.04.170 and 54.04.180.

21        (2) "Local government" means any governmental entity other than the  
22 state, federal agencies, or an operating system established under  
23 chapter 43.52 RCW. It includes, but is not limited to cities,  
24 counties, school districts, and special purpose districts.

25        (3) "Retaliatory action" means any adverse change in a local  
26 government employee's employment status, or the terms and conditions of  
27 employment, through the use of official authority or influence that  
28 includes taking, directing others to take, recommending, or approving  
29 any personnel action such as an appointment, promotion, transfer,

1 assignment, reassignment, reinstatement, restoration, reemployment,  
2 performance evaluation, or any other disciplinary action.

3 (4) "Emergency" means a circumstance that if not immediately  
4 changed may cause damage to persons or property.

5 NEW SECTION. **Sec. 3.** (1) Every local government employee has  
6 the right to report to the appropriate person or persons information  
7 concerning an alleged improper governmental action.

8 (2) The governing body or chief administrative officer of each  
9 local government shall adopt a policy on the appropriate procedures to  
10 follow for reporting such information and shall provide information to  
11 their employees on the policy. Local governments are encouraged to  
12 consult with their employees on the policy.

13 (3) The policy shall describe the appropriate person or persons  
14 within the local government to whom to report information and a list of  
15 appropriate person or persons outside the local government to whom to  
16 report. The list shall include the county prosecuting attorney.

17 (4) Each local government shall permanently post a summary of the  
18 procedures for reporting information on an alleged improper  
19 governmental action and the procedures for protection against  
20 retaliatory actions described in section 4 of this act in a place where  
21 all employees will have reasonable access to it. A copy of the summary  
22 shall be made available to any employee upon request.

23 (5) A local government may require as part of its policy that,  
24 except in the case of an emergency, before an employee provides  
25 information of an improper governmental action to a public body, the  
26 employee shall submit a written report to the employer. Where a local  
27 government has adopted such a policy under this section, an employee  
28 who fails to make a good faith attempt to follow the policy shall not  
29 receive the protections of this chapter. A reporting employee may

1 request that his or her identity be kept confidential to the extent  
2 possible under the law.

3 NEW SECTION. **Sec. 4.** (1) It is unlawful for any local  
4 government official or employee to take retaliatory action against a  
5 local government employee because the employee provided information in  
6 good faith to a public body that an improper governmental action  
7 occurred.

8 (2) In order to seek relief under this chapter, a local government  
9 employee shall provide a written notice of the charge of retaliatory  
10 action to the governing body of the local government that:

11 (a) Specifies the alleged retaliatory action; and

12 (b) Specifies the relief requested.

13 (3) The charge shall be delivered to the local government no later  
14 than thirty days after the occurrence of the alleged retaliatory  
15 action. The local government has thirty days to respond to the charge  
16 of retaliatory action and request for relief.

17 (4) Upon receipt of either the response of the local government or  
18 after the last day upon which the local government could respond, the  
19 local government employee may request a hearing to establish that a  
20 retaliatory action occurred and to obtain appropriate relief as defined  
21 in this section. The request for a hearing shall be delivered to the  
22 local government within fifteen days of delivery of the response from  
23 the local government, or within fifteen days of the last day on which  
24 the local government could respond.

25 (5) Within five days of receipt of the request for hearing, the  
26 local government shall apply to the state office of administrative  
27 hearings for an adjudicative proceeding before an administrative law  
28 judge. Except as otherwise provided in this section, the proceedings  
29 shall comply with RCW 34.05.410 through 34.05.598.

1       (6) The employee, as the initiating party, must prove his or her  
2 claim by a preponderance of the evidence. The administrative law judge  
3 shall issue a final decision consisting of findings of fact,  
4 conclusions of law, and judgment no later than forty-five days after  
5 the date the request for hearing was delivered to the local government.  
6 The administrative law judge may grant specific extensions of time  
7 beyond this period of time for rendering a decision at the request of  
8 either party upon a showing of good cause, or upon his or her own  
9 motion.

10       (7) Relief that may be granted by the administrative law judge  
11 consists of reinstatement, with or without back pay, and such  
12 injunctive relief as may be found to be necessary in order to return  
13 the employee to the position he or she held before the retaliatory  
14 action and to prevent any recurrence of retaliatory action. The  
15 administrative law judge may award costs and reasonable attorneys' fees  
16 to the prevailing party.

17       (8) If a determination is made that retaliatory action has been  
18 taken against the employee, the administrative law judge may, in  
19 addition to any other remedy, impose a civil penalty personally upon  
20 the retaliator of up to three thousand dollars payable by each person  
21 found to have retaliated against the employee and recommend to the  
22 local government that any person found to have retaliated against the  
23 employee be suspended with or without pay or dismissed. All penalties  
24 recovered shall be paid to the local government administrative hearings  
25 account created in section 7 of this act.

26       (9) The final decision of the administrative law judge is subject  
27 to judicial review under the arbitrary and capricious standard. Relief  
28 ordered by the administrative law judge may be enforced by petition to  
29 superior court.

1        NEW SECTION.    **Sec. 5.**        This chapter shall not be construed to  
2 permit disclosures that would diminish the rights of any person to the  
3 continued protection of confidentiality of communications where statute  
4 or common law provides such protection.

5        NEW SECTION.    **Sec. 6.**        Any local government that has adopted or  
6 adopts a program for reporting alleged improper governmental actions  
7 and adjudicating retaliation resulting from such reporting shall be  
8 exempt from this chapter if the program meets the intent of this  
9 chapter.

10       NEW SECTION.    **Sec. 7.**        The local government administrative  
11 hearings account is created in the custody of the state treasurer. All  
12 receipts from penalties in section 4 of this act and the surcharge in  
13 RCW 43.09.200(2) shall be deposited into the account. Expenditures  
14 from the account may be used only for administrative hearings under  
15 this chapter. Only the chief administrative law judge or his or her  
16 designee may authorize expenditures from the account. The account is  
17 subject to allotment procedures under chapter 43.88 RCW, but no  
18 appropriation is required for expenditures.

19       NEW SECTION.    **Sec. 8.**        A new section is added to chapter 34.12 RCW  
20 to read as follows:

21        When requested by a local government, the chief administrative law  
22 judge shall assign an administrative law judge to conduct proceedings  
23 under chapter 42.-- RCW (sections 1 through 7 of this act).

24       NEW SECTION.    **Sec. 9.**        A new section is added to chapter 34.12 RCW  
25 to read as follows:

1 Costs for the services of the office of administrative hearings for  
2 the initial twenty-four hours of services on a hearing under chapter  
3 42.-- RCW (sections 1 through 7 of this act) shall be billed to the  
4 local government administrative hearings account. Costs for services  
5 beyond the initial twenty-four hours of services shall be charged to  
6 the parties by the administrative law judge, the proportion to be borne  
7 by each party at the discretion of the administrative law judge.

8 **Sec. 10.** RCW 34.05.010 and 1989 c 175 s 1 are each amended to read  
9 as follows:

10 The definitions set forth in this section shall apply throughout  
11 this chapter, unless the context clearly requires otherwise.

12 (1) "Adjudicative proceeding" means a proceeding before an agency  
13 in which an opportunity for hearing before that agency is required by  
14 statute or constitutional right before or after the entry of an order  
15 by the agency. Adjudicative proceedings also include all cases of  
16 licensing and rate making in which an application for a license or rate  
17 change is denied except as limited by RCW 66.08.150, or a license is  
18 revoked, suspended, or modified, or in which the granting of an  
19 application is contested by a person having standing to contest under  
20 the law.

21 (2) "Agency" means any state board, commission, department,  
22 institution of higher education, or officer, authorized by law to make  
23 rules or to conduct adjudicative proceedings, except those in the  
24 legislative or judicial branches, the governor, or the attorney general  
25 except to the extent otherwise required by law and any local  
26 governmental entity that may request the appointment of an  
27 administrative law judge under chapter 42.--- RCW (sections 1 through  
28 7 of this act).

1       (3) "Agency action" means licensing, the implementation or  
2 enforcement of a statute, the adoption or application of an agency rule  
3 or order, the imposition of sanctions, or the granting or withholding  
4 of benefits.

5       Agency action does not include an agency decision regarding (a)  
6 contracting or procurement of goods, services, public works, and the  
7 purchase, lease, or acquisition by any other means, including eminent  
8 domain, of real estate, as well as all activities necessarily related  
9 to those functions, or (b) determinations as to the sufficiency of a  
10 showing of interest filed in support of a representation petition, or  
11 mediation or conciliation of labor disputes or arbitration of labor  
12 disputes under a collective bargaining law or similar statute, or (c)  
13 any sale, lease, contract, or other proprietary decision in the  
14 management of public lands or real property interests, or (d) the  
15 granting of a license, franchise, or permission for the use of  
16 trademarks, symbols, and similar property owned or controlled by the  
17 agency.

18       (4) "Agency head" means the individual or body of individuals in  
19 whom the ultimate legal authority of the agency is vested by any  
20 provision of law. If the agency head is a body of individuals, a  
21 majority of those individuals constitutes the agency head.

22       (5) "Entry" of an order means the signing of the order by all  
23 persons who are to sign the order, as an official act indicating that  
24 the order is to be effective.

25       (6) "Filing" of a document that is required to be filed with an  
26 agency means delivery of the document to a place designated by the  
27 agency by rule for receipt of official documents, or in the absence of  
28 such designation, at the office of the agency head.

29       (7) "Institutions of higher education" are the University of  
30 Washington, Washington State University, Central Washington University,



1 Eastern Washington University, Western Washington University, The  
2 Evergreen State College, the various community colleges, and the  
3 governing boards of each of the above, and the various colleges,  
4 divisions, departments, or offices authorized by the governing board of  
5 the institution involved to act for the institution, all of which are  
6 sometimes referred to in this chapter as "institutions."

7 (8) "Interpretive statement" means a written expression of the  
8 opinion of an agency, entitled an interpretive statement by the agency  
9 head or its designee, as to the meaning of a statute or other provision  
10 of law, of a court decision, or of an agency order.

11 (9) (a) "License" means a franchise, permit, certification,  
12 approval, registration, charter, or similar form of authorization  
13 required by law, but does not include (i) a license required solely for  
14 revenue purposes, or (ii) a certification of an exclusive bargaining  
15 representative, or similar status, under a collective bargaining law or  
16 similar statute, or (iii) a license, franchise, or permission for use  
17 of trademarks, symbols, and similar property owned or controlled by the  
18 agency.

19 (b) "Licensing" includes the agency process respecting the  
20 issuance, denial, revocation, suspension, or modification of a license.

21 (10) (a) "Order," without further qualification, means a written  
22 statement of particular applicability that finally determines the legal  
23 rights, duties, privileges, immunities, or other legal interests of a  
24 specific person or persons.

25 (b) "Order of adoption" means the official written statement by  
26 which an agency adopts, amends, or repeals a rule.

27 (11) "Party to agency proceedings," or "party" in a context so  
28 indicating, means:

29 (a) A person to whom the agency action is specifically directed; or

1 (b) A person named as a party to the agency proceeding or allowed  
2 to intervene or participate as a party in the agency proceeding.

3 (12) "Party to judicial review or civil enforcement proceedings,"  
4 or "party" in a context so indicating, means:

5 (a) A person who files a petition for a judicial review or civil  
6 enforcement proceeding; or

7 (b) A person named as a party in a judicial review or civil  
8 enforcement proceeding, or allowed to participate as a party in a  
9 judicial review or civil enforcement proceeding.

10 (13) "Person" means any individual, partnership, corporation,  
11 association, governmental subdivision or unit thereof, or public or  
12 private organization or entity of any character, and includes another  
13 agency.

14 (14) "Policy statement" means a written description of the current  
15 approach of an agency, entitled a policy statement by the agency head  
16 or its designee, to implementation of a statute or other provision of  
17 law, of a court decision, or of an agency order, including where  
18 appropriate the agency's current practice, procedure, or method of  
19 action based upon that approach.

20 (15) "Rule" means any agency order, directive, or regulation of  
21 general applicability (a) the violation of which subjects a person to  
22 a penalty or administrative sanction; (b) which establishes, alters, or  
23 revokes any procedure, practice, or requirement relating to agency  
24 hearings; (c) which establishes, alters, or revokes any qualification  
25 or requirement relating to the enjoyment of benefits or privileges  
26 conferred by law; (d) which establishes, alters, or revokes any  
27 qualifications or standards for the issuance, suspension, or revocation  
28 of licenses to pursue any commercial activity, trade, or profession; or  
29 (e) which establishes, alters, or revokes any mandatory standards for  
30 any product or material which must be met before distribution or sale.

1 The term includes the amendment or repeal of a prior rule, but does not  
2 include (i) statements concerning only the internal management of an  
3 agency and not affecting private rights or procedures available to the  
4 public, (ii) declaratory rulings issued pursuant to RCW (~~34.05.230~~)  
5 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists,  
6 and pedestrians established by the secretary of transportation or his  
7 designee where notice of such restrictions is given by official traffic  
8 control devices, or (iv) rules of institutions of higher education  
9 involving standards of admission, academic advancement, academic  
10 credit, graduation and the granting of degrees, employment  
11 relationships, or fiscal processes.

12 (16) "Rules review committee" or "committee" means the joint  
13 administrative rules review committee created pursuant to RCW 34.05.610  
14 for the purpose of selectively reviewing existing and proposed rules of  
15 state agencies.

16 (17) "Rule making" means the process for formulation and adoption  
17 of a rule.

18 (18) "Service," except as otherwise provided in this chapter, means  
19 posting in the United States mail, properly addressed, postage prepaid,  
20 or personal service. Service by mail is complete upon deposit in the  
21 United States mail. Agencies may, by rule, authorize service by  
22 electronic telefacsimile transmission, where copies are mailed  
23 simultaneously, or by commercial parcel delivery company.

24 **Sec. 11.** RCW 43.09.200 and 1965 c 8 s 43.09.200 are each amended  
25 to read as follows:

26 (1)(a) The state auditor, through such division, shall formulate,  
27 prescribe, and install a system of accounting and reporting, which  
28 shall be uniform for every public institution, and every public office,  
29 and every public account of the same class.

1       **(b)** The system shall exhibit true accounts and detailed statements  
2 of funds collected, received, and expended for account of the public  
3 for any purpose whatever, and by all public officers, employees, or  
4 other persons.

5       **(c)** The accounts shall show the receipt, use, and disposition of  
6 all public property, and the income, if any, derived therefrom; all  
7 sources of public income, and the amounts due and received from each  
8 source; all receipts, vouchers, and other documents kept, or required  
9 to be kept, necessary to isolate and prove the validity of every  
10 transaction; all statements and reports made or required to be made,  
11 for the internal administration of the office to which they pertain;  
12 and all reports published or required to be published, for the  
13 information of the people regarding any and all details of the  
14 financial administration of public affairs.

15       **(2)** For all local governments except those notifying the state  
16 auditor that they are exempt under section 6 of this act, there shall  
17 be a surcharge of five cents per audit hour charged under this section.  
18 The moneys collected as a surcharge shall be deposited in the local  
19 government administrative hearings account created in section 7 of this  
20 act.

21       **NEW SECTION. Sec. 12.** Sections 1 through 7 of this act shall  
22 constitute a new chapter in Title 42 RCW.

23       **NEW SECTION. Sec. 13.** This act shall take effect January 1,  
24 1993.

25       **NEW SECTION. Sec. 14.** If any provision of this act or its  
26 application to any person or circumstance is held invalid, the  
27 remainder of the act or the application of the provision to other

1 persons or circumstances is not affected.