

CERTIFICATION OF ENROLLMENT

**ENGROSSED SUBSTITUTE SENATE BILL 6776**

Chapter 266, Laws of 2008

60th Legislature  
2008 Regular Session

WHISTLEBLOWER PROTECTION--STATE EMPLOYEES

EFFECTIVE DATE: 06/12/08

Passed by the Senate March 12, 2008  
YEAS 46 NAYS 0

BRAD OWEN

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**President of the Senate**

Passed by the House March 11, 2008  
YEAS 95 NAYS 0

FRANK CHOPP

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**Speaker of the House of Representatives**

Approved March 31, 2008, 11:39 a.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6776** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

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**Secretary**

FILED

April 1, 2008

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 6776**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2008 Regular Session

**State of Washington                      60th Legislature                      2008 Regular Session**

**By** Senate Government Operations & Elections (originally sponsored by Senators Kline, Roach, Fraser, Fairley, and Swecker)

READ FIRST TIME 02/08/08.

1            AN ACT Relating to state employee whistleblower protection;  
2 amending RCW 42.40.020, 42.40.030, 42.40.040, 42.40.070, 42.40.050, and  
3 42.40.910; reenacting and amending RCW 49.60.230 and 49.60.250;  
4 creating new sections; and prescribing penalties.

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

6            NEW SECTION.    **Sec. 1.** The legislature finds and declares that  
7 government exists to conduct the people's business, and the people  
8 remaining informed about the actions of government contributes to the  
9 oversight of how the people's business is conducted. The legislature  
10 further finds that many public servants who expose actions of their  
11 government that are contrary to the law or public interest face the  
12 potential loss of their careers and livelihoods.

13            It is the policy of the legislature that employees should be  
14 encouraged to disclose, to the extent not expressly prohibited by law,  
15 improper governmental actions, and it is the intent of the legislature  
16 to protect the rights of state employees making these disclosures. It  
17 is also the policy of the legislature that employees should be  
18 encouraged to identify rules warranting review or provide information

1 to the rules review committee, and it is the intent of the legislature  
2 to protect the rights of these employees.

3 This act shall be broadly construed in order to effectuate the  
4 purpose of this act.

5 **Sec. 2.** RCW 42.40.020 and 1999 c 361 s 1 are each amended to read  
6 as follows:

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

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

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

13 (3) "Good faith" means the individual providing the information or  
14 report of improper governmental activity has a reasonable basis in fact  
15 for reporting or providing the ((communication)) information. (("Good  
16 faith" is lacking when the employee knows or reasonably ought to know  
17 that the report is malicious, false, or frivolous.)) An individual who  
18 knowingly provides or reports, or who reasonably ought to know he or  
19 she is providing or reporting, malicious, false, or frivolous  
20 information, or information that is provided with reckless disregard  
21 for the truth, or who knowingly omits relevant information is not  
22 acting in good faith.

23 (4) "Gross mismanagement" means the exercise of management  
24 responsibilities in a manner grossly deviating from the standard of  
25 care or competence that a reasonable person would observe in the same  
26 situation.

27 (5) "Gross waste of funds" means to spend or use funds or to allow  
28 funds to be used without valuable result in a manner grossly deviating  
29 from the standard of care or competence that a reasonable person would  
30 observe in the same situation.

31 ((+5)) (6)(a) "Improper governmental action" means any action by  
32 an employee undertaken in the performance of the employee's official  
33 duties:

34 (i) Which is ((fa)) a gross waste of public funds or resources as  
35 defined in this section;

36 (ii) Which is in violation of federal or state law or rule, if the  
37 violation is not merely technical or of a minimum nature; ((ex))

1 (iii) Which is of substantial and specific danger to the public  
2 health or safety;

3 (iv) Which is gross mismanagement; or

4 (v) Which prevents the dissemination of scientific opinion or  
5 alters technical findings without scientifically valid justification,  
6 unless state law or a common law privilege prohibits disclosure. This  
7 provision is not meant to preclude the discretion of agency management  
8 to adopt a particular scientific opinion or technical finding from  
9 among differing opinions or technical findings to the exclusion of  
10 other scientific opinions or technical findings. Nothing in this  
11 subsection prevents or impairs a state agency's or public official's  
12 ability to manage its public resources or its employees in the  
13 performance of their official job duties. This subsection does not  
14 apply to de minimis, technical disagreements that are not relevant for  
15 otherwise improper governmental activity. Nothing in this provision  
16 requires the auditor to contract or consult with external experts  
17 regarding the scientific validity, invalidity, or justification of a  
18 finding or opinion.

19 (b) "Improper governmental action" does not include personnel  
20 actions, for which other remedies exist, including but not limited to  
21 employee grievances, complaints, appointments, promotions, transfers,  
22 assignments, reassignments, reinstatements, restorations,  
23 reemployments, performance evaluations, reductions in pay, dismissals,  
24 suspensions, demotions, violations of the state civil service law,  
25 alleged labor agreement violations, reprimands, claims of  
26 discriminatory treatment, or any action which may be taken under  
27 chapter 41.06 RCW, or other disciplinary action except as provided in  
28 RCW 42.40.030.

29 ~~((+6+))~~ (7) "Public official" means the attorney general's designee  
30 or designees; the director, or equivalent thereof in the agency where  
31 the employee works; an appropriate number of individuals designated to  
32 receive whistleblower reports by the head of each agency; or the  
33 executive ethics board.

34 (8) "Substantial and specific danger" means a risk of serious  
35 injury, illness, peril, or loss, to which the exposure of the public is  
36 a gross deviation from the standard of care or competence which a  
37 reasonable person would observe in the same situation.

1        ~~((7))~~ (9) "Use of official authority or influence" includes  
2 threatening, taking, directing others to take, recommending,  
3 processing, or approving any personnel action such as an appointment,  
4 promotion, transfer, assignment including but not limited to duties and  
5 office location, reassignment, reinstatement, restoration,  
6 reemployment, performance evaluation, determining any material changes  
7 in pay, provision of training or benefits, tolerance of a hostile work  
8 environment, or any adverse action under chapter 41.06 RCW, or other  
9 disciplinary action.

10        ~~((8))~~ (10)(a) "Whistleblower" means:

11        (i) An employee who in good faith reports alleged improper  
12 governmental action to the auditor or other public official, as defined  
13 in subsection (7) of this section, initiating an investigation by the  
14 auditor under RCW 42.40.040; or

15        (ii) An employee who is perceived by the employer as reporting,  
16 whether they did or not, alleged improper governmental action to the  
17 auditor or other public official, as defined in subsection (7) of this  
18 section, initiating an investigation by the auditor under RCW  
19 42.40.040.

20        (b) For purposes of the provisions of this chapter and chapter  
21 49.60 RCW relating to reprisals and retaliatory action, the term  
22 "whistleblower" also means:

23        ~~((a))~~ (i) An employee who in good faith provides information to  
24 the auditor or other public official, as defined in subsection (7) of  
25 this section, in connection with an investigation under RCW 42.40.040  
26 and an employee who is believed to have reported asserted improper  
27 governmental action to the auditor or other public official, as defined  
28 in subsection (7) of this section, or to have provided information to  
29 the auditor or other public official, as defined in subsection (7) of  
30 this section, in connection with an investigation under RCW 42.40.040  
31 but who, in fact, has not reported such action or provided such  
32 information; or

33        ~~((b))~~ (ii) An employee who in good faith identifies rules  
34 warranting review or provides information to the rules review  
35 committee, and an employee who is believed to have identified rules  
36 warranting review or provided information to the rules review committee  
37 but who, in fact, has not done so.

1       **Sec. 3.** RCW 42.40.030 and 1995 c 403 s 510 are each amended to  
2 read as follows:

3       (1) An employee shall not directly or indirectly use or attempt to  
4 use the employee's official authority or influence for the purpose of  
5 intimidating, threatening, coercing, commanding, influencing, or  
6 attempting to intimidate, threaten, coerce, command, or influence any  
7 individual for the purpose of interfering with the right of the  
8 individual to: (a) Disclose to the auditor (or representative thereof)  
9 or other public official, as defined in RCW 42.40.020, information  
10 concerning improper governmental action; or (b) identify rules  
11 warranting review or provide information to the rules review committee.

12       (2) Nothing in this section authorizes an individual to disclose  
13 information otherwise prohibited by law, except to the extent that  
14 information is necessary to substantiate the whistleblower complaint,  
15 in which case information may be disclosed to the auditor or public  
16 official, as defined in RCW 42.40.020, by the whistleblower for the  
17 limited purpose of providing information related to the complaint. Any  
18 information provided to the auditor or public official under the  
19 authority of this subsection may not be further disclosed.

20       **Sec. 4.** RCW 42.40.040 and 1999 c 361 s 3 are each amended to read  
21 as follows:

22       (1)(a) In order to be investigated, an assertion of improper  
23 governmental action must be provided to the auditor or other public  
24 official within one year after the occurrence of the asserted improper  
25 governmental action. The public official, as defined in RCW 42.40.020,  
26 receiving an assertion of improper governmental action must report the  
27 assertion to the auditor within fifteen calendar days of receipt of the  
28 assertion. The auditor retains sole authority to investigate an  
29 assertion of improper governmental action including those made to a  
30 public official. A failure of the public official to report the  
31 assertion to the auditor within fifteen days does not impair the rights  
32 of the whistleblower.

33       (b) Except as provided under RCW 42.40.910 for legislative and  
34 judicial branches of government, the auditor has the authority to  
35 determine whether to investigate any assertions received. In  
36 determining whether to conduct either a preliminary or further  
37 investigation, the auditor shall consider factors including, but not

1 limited to: The nature and quality of evidence and the existence of  
2 relevant laws and rules; whether the action was isolated or systematic;  
3 the history of previous assertions regarding the same subject or  
4 subjects or subject matter; whether other avenues are available for  
5 addressing the matter; whether the matter has already been investigated  
6 or is in litigation; the seriousness or significance of the asserted  
7 improper governmental action; and the cost and benefit of the  
8 investigation. The auditor has the sole discretion to determine the  
9 priority and weight given to these and other relevant factors and to  
10 decide whether a matter is to be investigated. The auditor shall  
11 document the factors considered and the analysis applied.

12 (c) The auditor also has the authority to investigate assertions of  
13 improper governmental actions as part of an audit conducted under  
14 chapter 43.09 RCW. The auditor shall document the reasons for handling  
15 the matter as part of such an audit.

16 (2) Subject to subsection (5)(c) of this section, the identity or  
17 identifying characteristics of a whistleblower is confidential at all  
18 times unless the whistleblower consents to disclosure by written waiver  
19 or by acknowledging his or her identity in a claim against the state  
20 for retaliation. In addition, the identity or identifying  
21 characteristics of any person who in good faith provides information in  
22 an investigation under this section is confidential at all times,  
23 unless the person consents to disclosure by written waiver or by  
24 acknowledging his or her identity as a witness who provides information  
25 in an investigation.

26 (3) Upon receiving specific information that an employee has  
27 engaged in improper governmental action, the auditor shall, within  
28 ((five)) fifteen working days of receipt of the information, mail  
29 written acknowledgement to the whistleblower at the address provided  
30 stating whether a preliminary investigation will be conducted. For a  
31 period not to exceed ((thirty)) sixty working days from receipt of the  
32 assertion, the auditor shall conduct such preliminary investigation of  
33 the matter as the auditor deems appropriate.

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

37 (5)(a) If it appears to the auditor, upon completion of the  
38 preliminary investigation, that the matter is so unsubstantiated that

1 no further investigation, prosecution, or administrative action is  
2 warranted, the auditor shall so notify the whistleblower summarizing  
3 where the allegations are deficient, and provide a reasonable  
4 opportunity to reply. Such notification may be by electronic means.

5 (b) The written notification shall contain a summary of the  
6 information received and of the results of the preliminary  
7 investigation with regard to each assertion of improper governmental  
8 action.

9 (c) In any case to which this section applies, the identity or  
10 identifying characteristics of the whistleblower shall be kept  
11 confidential unless the auditor determines that the information has  
12 been provided other than in good faith. If the auditor makes such a  
13 determination, the auditor shall provide reasonable advance notice to  
14 the employee.

15 (d) With the agency's consent, the auditor may forward the  
16 assertions to an appropriate agency to investigate and report back to  
17 the auditor no later than sixty working days after the assertions are  
18 received from the auditor. The auditor is entitled to all  
19 investigative records resulting from such a referral. All procedural  
20 and confidentiality provisions of this chapter apply to investigations  
21 conducted under this subsection. The auditor shall document the  
22 reasons the assertions were referred.

23 (6) During the preliminary investigation, the auditor shall provide  
24 written notification of the nature of the assertions to the subject or  
25 subjects of the investigation and the agency head. The notification  
26 shall include the relevant facts and laws known at the time and the  
27 procedure for the subject or subjects of the investigation and the  
28 agency head to respond to the assertions and information obtained  
29 during the investigation. This notification does not limit the auditor  
30 from considering additional facts or laws which become known during  
31 further investigation.

32 ~~((7))~~(a) If it appears to the auditor after completion of the  
33 preliminary investigation that further investigation, prosecution, or  
34 administrative action is warranted, the auditor shall so notify the  
35 whistleblower, the subject or subjects of the investigation, and the  
36 agency head and either conduct a further investigation or issue a  
37 report under subsection ~~((10))~~ (9) of this section.



1 (b) If the preliminary investigation resulted from an anonymous  
2 assertion, a decision to conduct further investigation shall be subject  
3 to review by a three-person panel convened as necessary by the auditor  
4 prior to the commencement of any additional investigation. The panel  
5 shall include a state auditor representative knowledgeable of the  
6 subject agency operations, a citizen volunteer, and a representative of  
7 the attorney general's office. This group shall be briefed on the  
8 preliminary investigation and shall recommend whether the auditor  
9 should proceed with further investigation.

10 (c) If further investigation is to occur, the auditor shall provide  
11 written notification of the nature of the assertions to the subject or  
12 subjects of the investigation and the agency head. The notification  
13 shall include the relevant facts known at the time and the procedure to  
14 be used by the subject or subjects of the investigation and the agency  
15 head to respond to the assertions and information obtained during the  
16 investigation.

17 ~~((+8))~~ (7) Within sixty working days after the preliminary  
18 investigation period in subsection (3) of this section, the auditor  
19 shall complete the investigation and report its findings to the  
20 whistleblower unless written justification for the delay is furnished  
21 to the whistleblower, agency head, and subject or subjects of the  
22 investigation. In all such cases, the report of the auditor's  
23 investigation and findings shall be sent to the whistleblower within  
24 one year after the information was filed under subsection (3) of this  
25 section.

26 ~~((+9))~~ (8)(a) At any stage of an investigation under this section  
27 the auditor may require by subpoena the attendance and testimony of  
28 witnesses and the production of documentary or other evidence relating  
29 to the investigation at any designated place in the state. The auditor  
30 may issue subpoenas, administer oaths, examine witnesses, and receive  
31 evidence. In the case of contumacy or failure to obey a subpoena, the  
32 superior court for the county in which the person to whom the subpoena  
33 is addressed resides or is served may issue an order requiring the  
34 person to appear at any designated place to testify or to produce  
35 documentary or other evidence. Any failure to obey the order of the  
36 court may be punished by the court as a contempt thereof.

37 (b) The auditor may order the taking of depositions at any stage of  
38 a proceeding or investigation under this chapter. Depositions shall be

1 taken before an individual designated by the auditor and having the  
2 power to administer oaths. Testimony shall be reduced to writing by or  
3 under the direction of the individual taking the deposition and shall  
4 be subscribed by the deponent.

5 (c) Agencies shall cooperate fully in the investigation and shall  
6 take appropriate action to preclude the destruction of any evidence  
7 during the course of the investigation.

8 (d) During the investigation the auditor shall interview each  
9 subject of the investigation. If it is determined there is reasonable  
10 cause to believe improper governmental action has occurred, the subject  
11 or subjects and the agency head shall be given fifteen working days to  
12 respond to the assertions prior to the issuance of the final report.

13 ~~((+10+))~~ (9)(a) If the auditor determines there is reasonable cause  
14 to believe an employee has engaged in improper governmental action, the  
15 auditor shall report, to the extent allowable under existing public  
16 disclosure laws, the nature and details of the activity to:

17 (i) The subject or subjects of the investigation and the head of  
18 the employing agency; ~~((and))~~

19 (ii) If appropriate, the attorney general or such other authority  
20 as the auditor determines appropriate;

21 (iii) Electronically to the governor, secretary of the senate, and  
22 chief clerk of the house of representatives; and

23 (iv) Except for information whose release is specifically  
24 prohibited by statute or executive order, the public through the public  
25 file of whistleblower reports maintained by the auditor.

26 (b) The auditor has no enforcement power except that in any case in  
27 which the auditor submits an investigative report containing reasonable  
28 cause determinations to the agency, the agency shall send its plan for  
29 resolution to the auditor within fifteen working days of having  
30 received the report. The agency is encouraged to consult with the  
31 subject or subjects of the investigation in establishing the resolution  
32 plan. The auditor may require periodic reports of agency action until  
33 all resolution has occurred. If the auditor determines that  
34 appropriate action has not been taken, the auditor shall report the  
35 determination to the governor and to the legislature and may include  
36 this determination in the agency audit under chapter 43.09 RCW.

37 ~~((+11+))~~ (10) Once the auditor concludes that appropriate action  
38 has been taken to resolve the matter, the auditor shall so notify the

1 whistleblower, the agency head, and the subject or subjects of the  
2 investigation. If the resolution takes more than one year, the auditor  
3 shall provide annual notification of its status to the whistleblower,  
4 agency head, and subject or subjects of the investigation.

5 ~~((12))~~ (11) Failure to cooperate with such audit or  
6 investigation, or retaliation against anyone who assists the auditor by  
7 engaging in activity protected by this chapter shall be reported as a  
8 separate finding with recommendations for corrective action in the  
9 associated report whenever it occurs.

10 (12) This section does not limit any authority conferred upon the  
11 attorney general or any other agency of government to investigate any  
12 matter.

13 **Sec. 5.** RCW 42.40.070 and 1989 c 284 s 5 are each amended to read  
14 as follows:

15 A written summary of this chapter and procedures for reporting  
16 improper governmental actions established by the auditor's office shall  
17 be made available by each department or agency of state government to  
18 each employee upon entering public employment. Such notices may be in  
19 agency internal newsletters, included with paychecks or stubs, sent via  
20 electronic mail to all employees, or sent by other means that are  
21 cost-effective and reach all employees of the government level,  
22 division, or subdivision. Employees shall be notified by each  
23 department or agency of state government each year of the procedures  
24 and protections under this chapter. The annual notices shall include  
25 a list of public officials, as defined in RCW 42.40.020, authorized to  
26 receive whistleblower reports. The list of public officials authorized  
27 to receive whistleblower reports shall also be prominently displayed in  
28 all agency offices.

29 **Sec. 6.** RCW 42.40.050 and 1999 c 283 s 1 are each amended to read  
30 as follows:

31 (1)(a) Any person who is a whistleblower, as defined in RCW  
32 42.40.020, and who has been subjected to workplace reprisal or  
33 retaliatory action is presumed to have established a cause of action  
34 for the remedies provided under chapter 49.60 RCW.

35 (b) For the purpose of this section, "reprisal or retaliatory  
36 action" means, but is not limited to, any of the following:

- 1        ~~((a))~~ (i) Denial of adequate staff to perform duties;
- 2        ~~((b))~~ (ii) Frequent staff changes;
- 3        ~~((c))~~ (iii) Frequent and undesirable office changes;
- 4        ~~((d))~~ (iv) Refusal to assign meaningful work;
- 5        ~~((e))~~ (v) Unwarranted and unsubstantiated letters of reprimand or
- 6        unsatisfactory performance evaluations;
- 7        ~~((f))~~ (vi) Demotion;
- 8        ~~((g))~~ (vii) Reduction in pay;
- 9        ~~((h))~~ (viii) Denial of promotion;
- 10       ~~((i))~~ (ix) Suspension;
- 11       ~~((j))~~ (x) Dismissal;
- 12       ~~((k))~~ (xi) Denial of employment;
- 13       ~~((l))~~ (xii) A supervisor or superior behaving in or encouraging
- 14       coworkers to behave in a hostile manner toward the whistleblower; ~~((and~~
- 15       ~~((m))~~ (xiii) A change in the physical location of the employee's
- 16       workplace or a change in the basic nature of the employee's job, if
- 17       either are in opposition to the employee's expressed wish;
- 18       (xiv) Issuance of or attempt to enforce any nondisclosure policy or
- 19       agreement in a manner inconsistent with prior practice; or
- 20       (xv) Any other action that is inconsistent compared to actions
- 21       taken before the employee engaged in conduct protected by this chapter,
- 22       or compared to other employees who have not engaged in conduct
- 23       protected by this chapter.

24       (2) The agency presumed to have taken retaliatory action under

25       subsection (1) of this section may rebut that presumption by proving by

26       a preponderance of the evidence that there have been a series of

27       documented personnel problems or a single, egregious event, or that the

28       agency action or actions were justified by reasons unrelated to the

29       employee's status as a whistleblower and that improper motive was not

30       a substantial factor.

31       (3) Nothing in this section prohibits an agency from making any

32       decision exercising its authority to terminate, suspend, or discipline

33       an employee who engages in workplace reprisal or retaliatory action

34       against a whistleblower. However, the agency also shall implement any

35       order under chapter 49.60 RCW (other than an order of suspension if the

36       agency has terminated the retaliator).

1           **Sec. 7.** RCW 49.60.230 and 1993 c 510 s 21 and 1993 c 69 s 11 are  
2 each reenacted and amended to read as follows:

3           (1) Who may file a complaint:

4           (a) Any person claiming to be aggrieved by an alleged unfair  
5 practice may, personally or by his or her attorney, make, sign, and  
6 file with the commission a complaint in writing under oath or by  
7 declaration. The complaint shall state the name of the person alleged  
8 to have committed the unfair practice and the particulars thereof, and  
9 contain such other information as may be required by the commission.

10           (b) Whenever it has reason to believe that any person has been  
11 engaged or is engaging in an unfair practice, the commission may issue  
12 a complaint.

13           (c) Any employer or principal whose employees, or agents, or any of  
14 them, refuse or threaten to refuse to comply with the provisions of  
15 this chapter may file with the commission a written complaint under  
16 oath or by declaration asking for assistance by conciliation or other  
17 remedial action.

18           (2) Any complaint filed pursuant to this section must be so filed  
19 within six months after the alleged act of discrimination except that  
20 complaints alleging an unfair practice in a real estate transaction  
21 pursuant to RCW 49.60.222 through 49.60.225 must be so filed within one  
22 year after the alleged unfair practice in a real estate transaction has  
23 occurred or terminated and a complaint alleging whistleblower  
24 retaliation must be filed within two years.

25           **Sec. 8.** RCW 49.60.250 and 1993 c 510 s 23 and 1993 c 69 s 14 are  
26 each reenacted and amended to read as follows:

27           (1) In case of failure to reach an agreement for the elimination of  
28 such unfair practice, and upon the entry of findings to that effect,  
29 the entire file, including the complaint and any and all findings made,  
30 shall be certified to the chairperson of the commission. The  
31 chairperson of the commission shall thereupon request the appointment  
32 of an administrative law judge under Title 34 RCW to hear the complaint  
33 and shall cause to be issued and served in the name of the commission  
34 a written notice, together with a copy of the complaint, as the same  
35 may have been amended, requiring the respondent to answer the charges  
36 of the complaint at a hearing before the administrative law judge, at  
37 a time and place to be specified in such notice.

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

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

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

19           (5) If, upon all the evidence, the administrative law judge finds  
20 that the respondent has engaged in any unfair practice, the  
21 administrative law judge shall state findings of fact and shall issue  
22 and file with the commission and cause to be served on such respondent  
23 an order requiring such respondent to cease and desist from such unfair  
24 practice and to take such affirmative action, including, (but not  
25 limited to) hiring, reinstatement or upgrading of employees, with or  
26 without back pay, an admission or restoration to full membership rights  
27 in any respondent organization, or to take such other action as, in the  
28 judgment of the administrative law judge, will effectuate the purposes  
29 of this chapter, including action that could be ordered by a court,  
30 except that damages for humiliation and mental suffering shall not  
31 exceed (~~ten~~) twenty thousand dollars, and including a requirement for  
32 report of the matter on compliance. Relief available for violations of  
33 RCW 49.60.222 through 49.60.224 shall be limited to the relief  
34 specified in RCW 49.60.225.

35           (6) If a determination is made that retaliatory action, as defined  
36 in RCW 42.40.050, has been taken against a whistleblower, as defined in  
37 RCW 42.40.020, the administrative law judge may, in addition to any  
38 other remedy, require restoration of benefits, back pay, and any

1 increases in compensation that would have occurred, with interest;  
2 impose a civil penalty upon the retaliator of up to ((three)) five  
3 thousand dollars; and issue an order to the state employer to suspend  
4 the retaliator for up to thirty days without pay. At a minimum, the  
5 administrative law judge shall require that a letter of reprimand be  
6 placed in the retaliator's personnel file. No agency shall issue any  
7 nondisclosure order or policy, execute any nondisclosure agreement, or  
8 spend any funds requiring information that is public under the public  
9 records act, chapter 42.56 RCW, be kept confidential; except that  
10 nothing in this section shall affect any state or federal law requiring  
11 information be kept confidential. All penalties recovered shall be  
12 paid into the state treasury and credited to the general fund.

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

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

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

26 (10) The commission shall establish rules of practice to govern,  
27 expedite, and effectuate the foregoing procedure.

28 (11) Instead of filing with the commission, a complainant may  
29 pursue arbitration conducted by the American arbitration association or  
30 another arbitrator mutually agreed by the parties, with the cost of  
31 arbitration shared equally by the complainant and the respondent.

32 **Sec. 9.** RCW 42.40.910 and 1999 c 361 s 7 are each amended to read  
33 as follows:

34 This act and chapter 361, Laws of 1999 ((does)) do not affect the  
35 jurisdiction of the legislative ethics board, the executive ethics  
36 board, or the commission on judicial conduct, as set forth in chapter

1 42.52 RCW. The senate, the house of representatives, and the supreme  
2 court shall adopt policies regarding the applicability of chapter 42.40  
3 RCW to the senate, house of representatives, and judicial branch.

4 NEW SECTION. **Sec. 10.** If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 11.** If specific funding for the purposes of  
9 this act, referencing this act by bill or chapter number, is not  
10 provided by June 30, 2008, in the omnibus appropriations act, this act  
11 is null and void.

Passed by the Senate March 12, 2008.

Passed by the House March 11, 2008.

Approved by the Governor March 31, 2008.

Filed in Office of Secretary of State April 1, 2008.