

ESSB 5577 - H AMD 373

By Representative Hunt

ADOPTED 04/15/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that ensuring public
4 trust in government is a priority. The public expects its elected
5 officials and state employees to adhere to the highest ethical
6 standards during their service, and this includes a commitment to full
7 and independent investigations, with proper penalties, in cases where
8 the ethics in public service act is violated.

9 **Sec. 2.** RCW 42.52.410 and 1994 c 154 s 211 are each amended to
10 read as follows:

11 (1) A person may, personally or by his or her attorney, make, sign,
12 and file with the appropriate ethics board a complaint on a form
13 provided by the appropriate ethics board. The complaint shall state
14 the name of the person alleged to have violated this chapter or rules
15 adopted under it and the particulars thereof, and contain such other
16 information as may be required by the appropriate ethics board.

17 (2) If it has reason to believe that any person has been engaged or
18 is engaging in a violation of this chapter or rules adopted under it,
19 an ethics board may issue a complaint.

20 (3)(a) A state employee who files a complaint with the appropriate
21 ethics board shall be afforded the protection afforded to a
22 whistleblower under RCW 42.40.050 and 49.60.210(2), subject to the
23 limitations of RCW 42.40.035 and 42.40.910. An agency, manager, or
24 supervisor may not retaliate against a state employee who, after making
25 a reasonable attempt to ascertain the correctness of the information
26 furnished, files a complaint with the appropriate ethics board.

27 (b) A state employee may not be denied the protections in chapter
28 42.40 RCW even if the ethics board denies an investigation of the
29 complaint.

1 (4) If a determination is made that a reprisal or retaliatory
2 action has been taken against the state employee, the retaliator may be
3 subject to a civil penalty of up to five thousand dollars.

4 **Sec. 3.** RCW 42.52.360 and 2005 c 106 s 5 are each amended to read
5 as follows:

6 (1) The executive ethics board shall enforce this chapter and rules
7 adopted under it with respect to statewide elected officers and all
8 other officers and employees in the executive branch, boards and
9 commissions, and institutions of higher education.

10 (2) The executive ethics board shall enforce this chapter with
11 regard to the activities of university research employees as provided
12 in this subsection.

13 (a) With respect to compliance with RCW 42.52.030, 42.52.110,
14 42.52.130, 42.52.140, and 42.52.150, the administrative process shall
15 be consistent with and adhere to no less than the current standards in
16 regulations of the United States public health service and the office
17 of the secretary of the department of health and human services in
18 Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity
19 in research.

20 (b) With respect to compliance with RCW 42.52.040, 42.52.080, and
21 42.52.120, the administrative process shall include a comprehensive
22 system for the disclosure, review, and approval of outside work
23 activities by university research employees while assuring that such
24 employees are fulfilling their employment obligations to the
25 university.

26 (c) With respect to compliance with RCW 42.52.160, the
27 administrative process shall include a reasonable determination by the
28 university of acceptable private uses having de minimis costs to the
29 university and a method for establishing fair and reasonable
30 reimbursement charges for private uses the costs of which are in excess
31 of de minimis.

32 (3) The executive ethics board shall:

33 (a) Develop educational materials and training;

34 (b) Adopt rules and policies governing the conduct of business by
35 the board, and adopt rules defining working hours for purposes of RCW
36 42.52.180 and where otherwise authorized under chapter 154, Laws of
37 1994;

- 1 (c) Issue advisory opinions;
- 2 (d) Investigate, hear, and determine complaints by any person or on
3 its own motion;
- 4 (e) Impose sanctions including reprimands and monetary penalties;
- 5 (f) Recommend to the appropriate authorities suspension, removal
6 from position, prosecution, or other appropriate remedy; and
- 7 (g) Establish criteria regarding the levels of civil penalties
8 appropriate for violations of this chapter and rules adopted under it.
- 9 (4) The board may:
- 10 (a) Issue subpoenas for the attendance and testimony of witnesses
11 and the production of documentary evidence relating to any matter under
12 examination by the board or involved in any hearing;
- 13 (b) Administer oaths and affirmations;
- 14 (c) Examine witnesses; and
- 15 (d) Receive evidence.
- 16 (5) The board shall not delegate to the board's executive director
17 its authority to issue advisories, advisory letters, or opinions.
- 18 (6) Except as provided in RCW 42.52.220, the executive ethics board
19 may review and approve agency policies as provided for in this chapter.
- 20 ((+6+)) (7) This section does not apply to state officers and state
21 employees of the judicial branch.

22 **Sec. 4.** RCW 42.52.420 and 2000 c 211 s 1 are each amended to read
23 as follows:

24 (1) After the filing of any complaint, except as provided in RCW
25 42.52.450, the staff of the appropriate ethics board shall investigate
26 the complaint.

27 (~~The investigation shall be limited to the allegations contained~~
28 ~~in the complaint.~~) The ethics board may request the assistance of the
29 office of the attorney general or a contract investigator in conducting
30 its investigation.

31 (2) The results of the investigation shall be reduced to writing
32 and the staff shall either make a determination that the complaint
33 should be dismissed pursuant to RCW 42.52.425, or recommend to the
34 board that there is or that there is not reasonable cause to believe
35 that a violation of this chapter or rules adopted under it has been or
36 is being committed.

1 (3) The board's determination on reasonable cause shall be provided
2 to the complainant and to the person named in such complaint.

3 (4) The identity of a person filing a complaint under RCW
4 42.52.410(1) is exempt from public disclosure, as provided in RCW
5 42.56.240.

6 **Sec. 5.** RCW 42.52.460 and 1994 c 154 s 216 are each amended to
7 read as follows:

8 Any person who has notified the appropriate ethics board and the
9 attorney general in writing that there is reason to believe that RCW
10 42.52.180 is being or has been violated may, in the name of the state,
11 bring a citizen action for any of the actions authorized under this
12 chapter. A citizen action may be brought only if the appropriate
13 ethics board or the attorney general have failed to commence an action
14 under this chapter within forty-five days after notice from the person,
15 the person has thereafter notified the appropriate ethics board and the
16 attorney general that the person will commence a citizen's action
17 within ten days upon their failure to commence an action, and the
18 appropriate ethics board and the attorney general have in fact failed
19 to bring an action within ten days of receipt of the second notice. An
20 action is deemed to have been commenced when the appropriate ethics
21 board or the board's executive director accepts a complaint for filing
22 and initiates a preliminary investigation.

23 If the person who brings the citizen's action prevails, the
24 judgment awarded shall escheat to the state, but the person shall be
25 entitled to be reimbursed by the state of Washington for costs and
26 attorneys' fees incurred. If a citizen's action that the court finds
27 was brought without reasonable cause is dismissed, the court may order
28 the person commencing the action to pay all costs of trial and
29 reasonable attorneys' fees incurred by the defendant.

30 Upon commencement of a citizen action under this section, at the
31 request of a state officer or state employee who is a defendant, the
32 office of the attorney general shall represent the defendant if the
33 attorney general finds that the defendant's conduct complied with this
34 chapter and was within the scope of employment.

35 NEW SECTION. **Sec. 6.** A new section is added to chapter 42.52 RCW
36 to read as follows:

1 (1) Each executive branch agency shall designate an ethics advisor
2 or advisors to assist the agency's employees in understanding their
3 obligations under the ethics in public service act. Agencies shall
4 inform the executive ethics board of their designated advisors. As
5 funding permits and as determined by the executive ethics board and the
6 agency head, the advisors shall receive regular ethics training.

7 (2) Executive branch officers and employees are encouraged to
8 attend ethics training offered by the executive ethics board at least
9 once every thirty-six months.

10 **Sec. 7.** RCW 42.56.240 and 2012 c 88 s 1 are each amended to read
11 as follows:

12 The following investigative, law enforcement, and crime victim
13 information is exempt from public inspection and copying under this
14 chapter:

15 (1) Specific intelligence information and specific investigative
16 records compiled by investigative, law enforcement, and penology
17 agencies, and state agencies vested with the responsibility to
18 discipline members of any profession, the nondisclosure of which is
19 essential to effective law enforcement or for the protection of any
20 person's right to privacy;

21 (2) Information revealing the identity of persons who are witnesses
22 to or victims of crime or who file complaints with investigative, law
23 enforcement, or penology agencies, other than the commission, if
24 disclosure would endanger any person's life, physical safety, or
25 property. If at the time a complaint is filed the complainant, victim,
26 or witness indicates a desire for disclosure or nondisclosure, such
27 desire shall govern. However, all complaints filed with the commission
28 about any elected official or candidate for public office must be made
29 in writing and signed by the complainant under oath;

30 (3) Any records of investigative reports prepared by any state,
31 county, municipal, or other law enforcement agency pertaining to sex
32 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
33 defined in RCW 71.09.020, which have been transferred to the Washington
34 association of sheriffs and police chiefs for permanent electronic
35 retention and retrieval pursuant to RCW 40.14.070(2)(b);

36 (4) License applications under RCW 9.41.070; copies of license

1 applications or information on the applications may be released to law
2 enforcement or corrections agencies;

3 (5) Information revealing the identity of child victims of sexual
4 assault who are under age eighteen. Identifying information means the
5 child victim's name, address, location, photograph, and in cases in
6 which the child victim is a relative or stepchild of the alleged
7 perpetrator, identification of the relationship between the child and
8 the alleged perpetrator;

9 (6) The statewide gang database referenced in RCW 43.43.762;

10 (7) Data from the electronic sales tracking system established in
11 RCW 69.43.165;

12 (8) Information submitted to the statewide unified sex offender
13 notification and registration program under RCW 36.28A.040(6) by a
14 person for the purpose of receiving notification regarding a registered
15 sex offender, including the person's name, residential address, and e-
16 mail address; (~~and~~)

17 (9) Personally identifying information collected by law enforcement
18 agencies pursuant to local security alarm system programs and vacation
19 crime watch programs. Nothing in this subsection shall be interpreted
20 so as to prohibit the legal owner of a residence or business from
21 accessing information regarding his or her residence or business; and

22 (10) The identity of a state employee or officer who has in good
23 faith filed a complaint with an ethics board, as provided in RCW
24 42.52.410, or who has in good faith reported improper governmental
25 action, as defined in RCW 42.40.020, to the auditor or other public
26 official, as defined in RCW 42.40.020."

27 Correct the title.

EFFECT: The striking amendment makes the following changes to the underlying engrossed substitute senate bill:

Provides that a state employee who files a complaint with the appropriate ethics board is afforded state employee whistleblower protection, as long as the employee has fulfilled the requirement in the whistleblower statute of having made a reasonable attempt to ascertain the correctness of information furnished.

Prohibits the executive ethics board from delegating to its

executive director its authority to issue advisories, advisory letters, or opinions.

Retains the civil penalty of up to \$5,000 for a person who has taken retaliatory action against a whistleblower, but removes the provisions establishing disciplinary consequences of a letter of reprimand and 30-day suspension.

Provides that the executive ethics board may request the assistance of the Office of the Attorney General or a contract investigator in conducting its investigation of a complaint involving any employee, rather than limiting such assistance to investigations involving exempt employees.

Exempts from disclosure under the Public Records Act the identity of a state employee or officer who has reported improper governmental action pursuant to the whistleblower statute or in a complaint to an ethics board.

Removes Public Records Act exemptions for other investigative records and documents related to the complaint.

Limits to the executive branch the requirement that an ethics advisor be designated for each agency, and eliminates the mandatory ethics training requirement for all state officers and employees.

Removes the provision authorizing the executive ethics board to delegate its complaint-issuing authority to the executive director.

Removes the provision establishing that knowing acquiescence in an ethics violation is itself a violation of the ethics law.

Removes definitions of "ethics" and "university".

Removes a new definition of "intentionally concealing a record" that expressly included failing to provide a record within the time frame established by the agency.

Restores the option of a hearing by an administrative law judge where a person may be subject to a penalty and costs of \$500 or more.

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