

SSB 5577 - S AMD 94

By Senators Carrell, Darneille

NOT ADOPTED UPON RECONSIDERATION 03/07/2013

1 On page 10, line 35, after "if the" strike "auditor" and insert
2 "ethics board"

3 On page 13, line 33, after "if the" strike "auditor" and insert
4 "ethics board"

5 On page 14, after line 28, insert the following:

6 "**Sec. 14.** RCW 42.40.020 and 2008 c 266 s 2 are each amended to
7 read as follows:

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

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

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

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

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

26 (5) "Gross waste of funds" means to spend or use funds or to allow
27 funds to be used without valuable result in a manner grossly deviating

1 from the standard of care or competence that a reasonable person would
2 observe in the same situation.

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

6 (i) Which is a gross waste of public funds or resources as defined
7 in this section;

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

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

12 (iv) Which is gross mismanagement; or

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

28 (b) "Improper governmental action" does not include personnel
29 actions, for which other remedies exist, including but not limited to
30 employee grievances, complaints, appointments, promotions, transfers,
31 assignments, reassignments, reinstatements, restorations,
32 reemployments, performance evaluations, reductions in pay, dismissals,
33 suspensions, demotions, violations of the state civil service law,
34 alleged labor agreement violations, reprimands, claims of
35 discriminatory treatment, or any action which may be taken under
36 chapter 41.06 RCW, or other disciplinary action except as provided in
37 RCW 42.40.030.

1 (7) "Public official" means the attorney general's designee or
2 designees; the director, or equivalent thereof in the agency where the
3 employee works; an appropriate number of individuals designated to
4 receive whistleblower reports by the head of each agency; or the
5 executive ethics board.

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

10 (9) "Use of official authority or influence" includes threatening,
11 taking, directing others to take, recommending, processing, or
12 approving any personnel action such as an appointment, promotion,
13 transfer, assignment including but not limited to duties and office
14 location, reassignment, reinstatement, restoration, reemployment,
15 performance evaluation, determining any material changes in pay,
16 provision of training or benefits, tolerance of a hostile work
17 environment, or any adverse action under chapter 41.06 RCW, or other
18 disciplinary action.

19 (10)(a) "Whistleblower" means:

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

24 (ii) An employee who is perceived by the employer as reporting,
25 whether they did or not, alleged improper governmental action to the
26 auditor or other public official, as defined in subsection (7) of this
27 section, initiating an investigation by the auditor under RCW
28 42.40.040.

29 (b) For purposes of the provisions of this chapter and chapter
30 49.60 RCW relating to reprisals and retaliatory action, the term
31 "whistleblower" also means:

32 (i) An employee who in good faith provides information to the
33 auditor or other public official, as defined in subsection (7) of this
34 section, in connection with an investigation under RCW 42.40.040 and an
35 employee who is believed to have reported asserted improper
36 governmental action to the auditor or other public official, as defined
37 in subsection (7) of this section, or to have provided information to
38 the auditor or other public official, as defined in subsection (7) of

1 this section, in connection with an investigation under RCW 42.40.040
2 but who, in fact, has not reported such action or provided such
3 information; ((or))

4 (ii) An employee who in good faith identifies rules warranting
5 review or provides information to the rules review committee, and an
6 employee who is believed to have identified rules warranting review or
7 provided information to the rules review committee but who, in fact,
8 has not done so; or

9 (iii) Any person who is a state employee and who files an ethics
10 complaint as defined in chapter 42.52 RCW."

11 Renumber the remaining section consecutively and correct any
12 internal references accordingly.

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13 On page 1, line 3 of the title, after "42.52.420," strike "and
14 42.52.460" and insert "42.52.460, and 42.40.020"

EFFECT: This amendment makes technical changes related to
securing whistleblower protection for state employees who make ethics
complaints.

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