

RCW 42.40.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

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

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

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

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

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

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

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

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

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

(iv) Which is gross mismanagement;

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

(vi) Which violates the administrative procedure act or analogous provisions of law that prohibit ex parte communication regarding cases or matters pending in which an agency is party between the agency's employee and a presiding officer, hearing officer, or an administrative law judge. The availability of other avenues for addressing ex parte communication by agency employees does not bar an investigation by the auditor.

(b) "Improper governmental action" does not include personnel actions, for which other remedies exist, including but not limited to employee grievances, complaints, appointments, promotions, transfers,

assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the state civil service law, alleged labor agreement violations, reprimands, claims of discriminatory treatment, or any action which may be taken under chapter 41.06 RCW, or other disciplinary action except as provided in RCW 42.40.030.

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

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

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

(10)(a) "Whistleblower" means:

(i) An employee who in good faith reports alleged improper governmental action to the auditor or other public official, as defined in subsection (7) of this section; or

(ii) An employee who is perceived by the employer as reporting, whether they did or not, alleged improper governmental action to the auditor or other public official, as defined in subsection (7) of this section.

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

(i) An employee who in good faith provides information to the auditor or other public official, as defined in subsection (7) of this section, and an employee who is believed to have reported asserted improper governmental action to the auditor or other public official, as defined in subsection (7) of this section, or to have provided information to the auditor or other public official, as defined in subsection (7) of this section, but who, in fact, has not reported such action or provided such information; or

(ii) An employee who in good faith identifies rules warranting review or provides information to the rules review committee, and an employee who is believed to have identified rules warranting review or provided information to the rules review committee but who, in fact, has not done so. [2017 c 44 § 2; 2008 c 266 § 2; 1999 c 361 § 1; 1995 c 403 § 509; 1992 c 118 § 1; 1989 c 284 § 1; 1982 c 208 § 2.]

Findings—Intent—2008 c 266: "The legislature finds and declares that government exists to conduct the people's business, and the people remaining informed about the actions of government contributes to the oversight of how the people's business is conducted. The legislature further finds that many public servants who expose actions

of their government that are contrary to the law or public interest face the potential loss of their careers and livelihoods.

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

This act shall be broadly construed in order to effectuate the purpose of this act." [2008 c 266 § 1.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.