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5 Strike everything after the enacting clause and insert the  
6 following:

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

15 "NEW SECTION. Sec. 2. Unless the context clearly requires  
16 otherwise, the definitions in this section apply throughout this  
17 chapter.

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

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

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

26 (b) "Improper governmental action" does not include personnel  
27 actions including but not limited to employee grievances, complaints,

1 appointments, promotions, transfers, assignments, reassignments,  
2 reinstatements, restorations, reemployments, performance evaluations,  
3 reductions in pay, dismissals, suspensions, demotions, violations of  
4 the local government collective bargaining and civil service laws,  
5 alleged labor agreement violations, reprimands, or any action that may  
6 be taken under chapter 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW  
7 or RCW 54.04.170 and 54.04.180.

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

12 (3) "Retaliatory action" means any adverse change in a local  
13 government employee's employment status, or the terms and conditions of  
14 employment including denial of adequate staff to perform duties,  
15 frequent staff changes, frequent and undesirable office changes,  
16 refusal to assign meaningful work, unwarranted and unsubstantiated  
17 letters of reprimand or unsatisfactory performance evaluations,  
18 demotion, transfer, reassignment, reduction in pay, denial of  
19 promotion, suspension, dismissal, or any other disciplinary action.

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

22 "NEW SECTION. Sec. 3. (1) Every local government employee has  
23 the right to report to the appropriate person or persons information  
24 concerning an alleged improper governmental action.

25 (2) The governing body or chief administrative officer of each  
26 local government shall adopt a policy on the appropriate procedures to  
27 follow for reporting such information and shall provide information to  
28 their employees on the policy. Local governments are encouraged to  
29 consult with their employees on the policy.

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

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

11 (5) A local government may require as part of its policy that,  
12 except in the case of an emergency, before an employee provides  
13 information of an improper governmental action to a person or an entity  
14 who is not a public official or a person listed pursuant to subsection  
15 (3) of this section, the employee shall submit a written report to the  
16 local government. Where a local government has adopted such a policy  
17 under this section, an employee who fails to make a good faith attempt  
18 to follow the policy shall not receive the protections of this chapter.  
19 The identity of a reporting employee shall be kept confidential to the  
20 extent possible under law, unless the employee authorizes the  
21 disclosure of his or her identity in writing."

22 "NEW SECTION. **Sec. 4.** (1) It is unlawful for any local  
23 government official or employee to take retaliatory action against a  
24 local government employee because the employee provided information in  
25 good faith in accordance with the provisions of this chapter that an  
26 improper governmental action occurred.

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

1 (a) Specifies the alleged retaliatory action; and

2 (b) Specifies the relief requested.

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

7 (4) Upon receipt of either the response of the local government or  
8 after the last day upon which the local government could respond, the  
9 local government employee may request a hearing to establish that a  
10 retaliatory action occurred and to obtain appropriate relief as defined  
11 in this section. The request for a hearing shall be delivered to the  
12 local government within fifteen days of delivery of the response from  
13 the local government, or within fifteen days of the last day on which  
14 the local government could respond.

15 (5) Within five working days of receipt of the request for hearing,  
16 the local government shall apply to the state office of administrative  
17 hearings for an adjudicative proceeding before an administrative law  
18 judge. Except as otherwise provided in this section, the proceedings  
19 shall comply with RCW 34.05.410 through 34.05.598.

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

29 (7) Relief that may be granted by the administrative law judge  
30 consists of reinstatement, with or without back pay, and such

1 injunctive relief as may be found to be necessary in order to return  
2 the employee to the position he or she held before the retaliatory  
3 action and to prevent any recurrence of retaliatory action. The  
4 administrative law judge may award costs and reasonable attorneys' fees  
5 to the prevailing party.

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

15 (9) The final decision of the administrative law judge is subject  
16 to judicial review under the arbitrary and capricious standard. Relief  
17 ordered by the administrative law judge may be enforced by petition to  
18 superior court."

19 "NEW SECTION. **Sec. 5.** This chapter shall not be construed to  
20 permit disclosures that would diminish the rights of any person to the  
21 continued protection of confidentiality of communications where statute  
22 or common law provides such protection."

23 "NEW SECTION. **Sec. 6.** Any local government that has adopted or  
24 adopts a program for reporting alleged improper governmental actions  
25 and adjudicating retaliation resulting from such reporting shall be  
26 exempt from this chapter if the program meets the intent of this  
27 chapter."

1           "NEW SECTION.   **Sec. 7.**       The local government administrative  
2 hearings account is created in the custody of the state treasurer. All  
3 receipts from penalties in section 4 of this act and the surcharges  
4 under section 11 of this act shall be deposited into the account.  
5 Expenditures from the account may be used only for administrative  
6 hearings under this chapter. Only the chief administrative law judge  
7 or his or her designee may authorize expenditures from the account.  
8 The account is subject to allotment procedures under chapter 43.88 RCW,  
9 but no appropriation is required for expenditures."

10           "NEW SECTION.   **Sec. 8.**   A new section is added to chapter 34.12 RCW  
11 to read as follows:

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

15           "NEW SECTION.   **Sec. 9.**   A new section is added to chapter 34.12 RCW  
16 to read as follows:

17           Costs for the services of the office of administrative hearings for  
18 the initial twenty-four hours of services on a hearing under chapter  
19 42.-- RCW (sections 1 through 7 of this act) shall be billed to the  
20 local government administrative hearings account. Costs for services  
21 beyond the initial twenty-four hours of services shall be allocated to  
22 the parties by the administrative law judge, the proportion to be borne  
23 by each party at the discretion of the administrative law judge. The  
24 charges for these costs shall be billed to the affected local  
25 government that shall recover payment from any other party specified by  
26 the administrative law judge."

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

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

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

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

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

26       Agency action does not include an agency decision regarding (a)  
27 contracting or procurement of goods, services, public works, and the  
28 purchase, lease, or acquisition by any other means, including eminent  
29 domain, of real estate, as well as all activities necessarily related  
30 to those functions, or (b) determinations as to the sufficiency of a

1 showing of interest filed in support of a representation petition, or  
2 mediation or conciliation of labor disputes or arbitration of labor  
3 disputes under a collective bargaining law or similar statute, or (c)  
4 any sale, lease, contract, or other proprietary decision in the  
5 management of public lands or real property interests, or (d) the  
6 granting of a license, franchise, or permission for the use of  
7 trademarks, symbols, and similar property owned or controlled by the  
8 agency.

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

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

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

20 (7) "Institutions of higher education" are the University of  
21 Washington, Washington State University, Central Washington University,  
22 Eastern Washington University, Western Washington University, The  
23 Evergreen State College, the various community colleges, and the  
24 governing boards of each of the above, and the various colleges,  
25 divisions, departments, or offices authorized by the governing board of  
26 the institution involved to act for the institution, all of which are  
27 sometimes referred to in this chapter as "institutions."

28 (8) "Interpretive statement" means a written expression of the  
29 opinion of an agency, entitled an interpretive statement by the agency



1 head or its designee, as to the meaning of a statute or other provision  
2 of law, of a court decision, or of an agency order.

3 (9) (a) "License" means a franchise, permit, certification,  
4 approval, registration, charter, or similar form of authorization  
5 required by law, but does not include (i) a license required solely for  
6 revenue purposes, or (ii) a certification of an exclusive bargaining  
7 representative, or similar status, under a collective bargaining law or  
8 similar statute, or (iii) a license, franchise, or permission for use  
9 of trademarks, symbols, and similar property owned or controlled by the  
10 agency.

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

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

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

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

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

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

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

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

28 (b) A person named as a party in a judicial review or civil  
29 enforcement proceeding, or allowed to participate as a party in a  
30 judicial review or civil enforcement proceeding.

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

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

11 (15) "Rule" means any agency order, directive, or regulation of  
12 general applicability (a) the violation of which subjects a person to  
13 a penalty or administrative sanction; (b) which establishes, alters, or  
14 revokes any procedure, practice, or requirement relating to agency  
15 hearings; (c) which establishes, alters, or revokes any qualification  
16 or requirement relating to the enjoyment of benefits or privileges  
17 conferred by law; (d) which establishes, alters, or revokes any  
18 qualifications or standards for the issuance, suspension, or revocation  
19 of licenses to pursue any commercial activity, trade, or profession; or  
20 (e) which establishes, alters, or revokes any mandatory standards for  
21 any product or material which must be met before distribution or sale.  
22 The term includes the amendment or repeal of a prior rule, but does not  
23 include (i) statements concerning only the internal management of an  
24 agency and not affecting private rights or procedures available to the  
25 public, (ii) declaratory rulings issued pursuant to RCW ((~~34.05.230~~))  
26 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists,  
27 and pedestrians established by the secretary of transportation or his  
28 designee where notice of such restrictions is given by official traffic  
29 control devices, or (iv) rules of institutions of higher education  
30 involving standards of admission, academic advancement, academic

1 credit, graduation and the granting of degrees, employment  
2 relationships, or fiscal processes.

3 (16) "Rules review committee" or "committee" means the joint  
4 administrative rules review committee created pursuant to RCW 34.05.610  
5 for the purpose of selectively reviewing existing and proposed rules of  
6 state agencies.

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

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

15 "NEW SECTION. Sec. 11. A new section is added to chapter 43.09  
16 RCW to read as follows:

17 (1) From July 1, 1992, to June 30, 1995, the state auditor shall  
18 charge an entity subject to an audit an additional ten cents per hour  
19 billed under RCW 43.09.270 and 43.09.280, to be deposited in the local  
20 government administrative hearing account.

21 (2) After June 30, 1995, the state auditor shall base the amount to  
22 be collected and deposited into the local government administrative  
23 hearing account on the funds remaining in the account on June 30, 1995,  
24 and the anticipated caseload for the future.

25 (3) The state auditor may exempt a local government that complies  
26 with section 6 of this act from a charge added under subsection (1) or  
27 (2) of this section."

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

3        "NEW SECTION.   **Sec. 13.**       Sections 1 through 10 of this act shall  
4   take effect January 1, 1993.  Section 11 of this act shall take effect  
5   July 1, 1992."

6        "NEW SECTION.   **Sec. 14.**       If any provision of this act or its  
7   application to any person or circumstance is held invalid, the  
8   remainder of the act or the application of the provision to other  
9   persons or circumstances is not affected."

10   **SSB 6321** - H COMM AMD  
11        By Committee on Local Government

12  
13        On page 1, line 1 of the title, after "whistleblowers;" strike the  
14   remainder of the title and insert "amending RCW 34.05.010; adding new  
15   sections to chapter 34.12 RCW; adding a new section to chapter 43.09  
16   RCW; adding a new chapter to Title 42 RCW; prescribing penalties; and  
17   providing effective dates."