
SENATE BILL 6497

State of Washington 52nd Legislature 1992 Regular Session

By Senators Skratek, Pelz and Williams

Read first time 02/07/92. Referred to Committee on Governmental Operations.

1 AN ACT Relating to whistleblowers who are employed by government
2 contractors or subcontractors; and amending RCW 42.40.020 and
3 42.40.040.

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

5 **Sec. 1.** RCW 42.40.020 and 1989 c 284 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 (a) any individual employed or holding office
12 in any department or agency of state government; (b) any individual
13 employed within the state by a government contractor; (c) any

1 individual employed within the state by a government subcontractor; or
2 a government subcontractor.

3 (3) "Government contractor" means any natural person, corporation,
4 unincorporated association, sole proprietorship, or partnership that
5 has a contract with a governmental entity such as the federal
6 government, the state, a city, county, school district, and special
7 purpose district.

8 (4) "Government subcontractor" means any natural person,
9 corporation, unincorporated association, sole proprietorship, or
10 partnership that has a contract with a government contractor.

11 (5)(a) "Improper governmental action" means any action by an
12 employee:

13 (i) Which is undertaken in the performance of the employee's
14 official duties, whether or not the action is within the scope of the
15 employee's employment; and

16 (ii) Which is in violation of any state law or rule, is an abuse of
17 authority, is of substantial and specific danger to the public health
18 or safety, or is a gross waste of public funds.

19 (b) "Improper governmental action" does not include personnel
20 actions including but not limited to employee grievances, complaints,
21 appointments, promotions, transfers, assignments, reassignments,
22 reinstatements, restorations, reemployments, performance evaluations,
23 reductions in pay, dismissals, suspensions, demotions, violations of
24 the state civil service law, alleged labor agreement violations,
25 reprimands, or any action which may be taken under chapter 41.06 or
26 28B.16 RCW, or other disciplinary action except as provided in RCW
27 42.40.030.

28 ((+4)) (6) "Use of official authority or influence" includes
29 taking, directing others to take, recommending, processing, or
30 approving any personnel action such as an appointment, promotion,

1 transfer, assignment, reassignment, reinstatement, restoration,
2 reemployment, performance evaluation, or any adverse action under
3 chapter 41.06 or 28B.16 RCW, or other disciplinary action.

4 **Sec. 2.** RCW 42.40.040 and 1989 c 284 s 3 are each amended to read
5 as follows:

6 (1) Upon receiving specific information that an employee has
7 engaged in improper governmental action, the auditor shall, for a
8 period not to exceed thirty days, conduct such preliminary
9 investigation of the matter as the auditor deems appropriate. In
10 conducting the investigation, the identity of the person providing the
11 information which initiated the investigation shall be kept
12 confidential.

13 (2) In addition to the authority under subsection (1) of this
14 section, the auditor may, on its own initiative, investigate incidents
15 of improper state governmental action.

16 (3)(a) If it appears to the auditor, upon completion of the
17 preliminary investigation, that the matter is so unsubstantiated that
18 no further investigation, prosecution, or administrative action is
19 warranted, the auditor shall so notify the person, if known, who
20 provided the information initiating the investigation.

21 (b) The notification shall be by memorandum containing a summary of
22 the information received, a summary of the results of the preliminary
23 investigation with regard to each allegation of improper governmental
24 action, and any determination made by the auditor under (c) of this
25 subsection.

26 (c) In any case to which this section applies, the identity of the
27 person who provided the information initiating the investigation shall
28 be kept confidential unless the auditor determines that the information
29 has been provided other than in good faith.

1 (d) If it appears to the auditor that the matter does not meet the
2 definition of an "improper governmental action" under RCW 42.40.020(3),
3 or is other than a gross waste of public funds, the auditor may forward
4 a summary of the allegations to the appropriate agency or to the
5 government contractor or government subcontractor for investigation and
6 require a response by memorandum containing a summary of the
7 investigation with regard to each allegation and any determination of
8 corrective action taken. The auditor will keep the identity of the
9 person who provided the information initiating the investigation
10 confidential. Upon receipt of the results of the investigation from
11 the appropriate agency or government contractor or government
12 subcontractor, the auditor will notify the provider as prescribed under
13 (a), (b), and (c) of this subsection.

14 (4) If it appears to the auditor after completion of the
15 preliminary investigation that further investigation, prosecution, or
16 administrative action is warranted, the auditor shall so notify the
17 party, if known, who provided the information initiating the
18 investigation and either conduct further investigations or issue a
19 report under subsection (6) of this section.

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

1 (b) The auditor may order the taking of depositions at any stage of
2 a proceeding or investigation under this chapter. Depositions shall be
3 taken before an individual designated by the auditor and having the
4 power to administer oaths. Testimony shall be reduced to writing by or
5 under the direction of the individual taking the deposition and shall
6 be subscribed by the deponent.

7 (6)(a) If the auditor determines that there is reasonable cause to
8 believe that an employee has engaged in any improper activity, the
9 auditor shall report the nature and details of the activity to:

10 (i) The employee and the head of the employing agency or government
11 contractor or government subcontractor; and

12 (ii) If appropriate, the attorney general or such other authority
13 as the auditor determines appropriate.

14 (b) The auditor has no enforcement power except that in any case in
15 which the auditor submits a report of alleged improper activity to the
16 head of an agency, the attorney general, or any other individual to
17 which a report has been made under this section, the individual shall
18 report to the auditor with respect to any action taken by the
19 individual regarding the activity, the first report being transmitted
20 no later than thirty days after the date of the auditor's report and
21 monthly thereafter until final action is taken. If the auditor
22 determines that appropriate action is not being taken within a
23 reasonable time, the auditor shall report the determination to the
24 governor and to the legislature.

25 (7) This section does not limit any authority conferred upon the
26 attorney general or any other agency of government to investigate any
27 matter.

28 NEW SECTION. **Sec. 3.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.