

HOUSE OF REPRESENTATIVES

Olympia, Washington

Bil Analysis

Bil No. HB 2005

Managing the state employee whistleblower program.

Brief title

Hearing Date 2/24/99

Reps Wolfe, Sommers, D., and Schmid,
Sponsor (s)

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State Government Committee
Phone 786-7127

BACKGROUND:

Legislation enacted in 1982 establishing whistleblower protection program for state employees encourages state employees to report improper governmental actions and protect their rights if state employees make such disclosures.

Improper governmental actions are defined as any act by an employee undertaken in the performance of the employee's official duties which violates state law or rules, is an abuse of authority, is substantial and specific danger to the public health or safety, or is a gross waste of public funds. A number of personnel actions are specifically excluded from the definition of improper governmental action.

1. Investigation of a complaint.

The state auditor gives the responsibility to investigate complaints of improper governmental actions that are made under this program. The laws do not give the auditor discretion to determine whether the allegations are sufficient to conduct an investigation, determine whether the matter has already been sufficiently investigated by other authorities, or whether the matter should be investigated as part of an audit.

The auditor must acknowledge reports of improper governmental actions within five working days of receipt of the complaint. The auditor must conduct a preliminary investigation period not to exceed 30 days. A further investigation period of 60 days is provided that may be extended. The report of the auditor's investigation findings is sent to the whistleblower one year after the allegations were made. There is no requirement for the auditor to notify the subject of the investigation after the investigation occurs beyond this one-year period. The statute does not expressly state that the whistleblower's identity must be maintained if the matter is referred to another authority following the auditor's investigation.

If it appears that the allegations constitute improper governmental actions, the auditor may forward

summary of the allegations appropriate for investigation. The auditor must keep the whistleblower's identity confidential. The agency must respond within 30 days after receipt of the allegation from the auditor. It is not clear that the procedural and confidentiality provisions apply when the information is sent to another entity.

When the auditor submits a report of alleged improper governmental action to an agency, the agency must report to the auditor within 30 days any action taken in response to the report and must make monthly reports to the auditor until action is taken. The auditor must report to the Governor and the Legislature if the auditor determines that corrective action is not being taken within a reasonable amount of time, but there is no specific time limit in statute when final corrective action must be taken.

2. Employee protection from retaliatory actions.

Employees provide information about improper governmental action in good faith are protected from retaliatory actions and have remedies available under the Human Rights Commission laws, which include cease and desist orders, civil penalties imposed up to \$3000 and an order to suspend the person who retaliates up to 30 days with pay. Damages for humiliation and mental suffering may not exceed \$10,000. In addition, retaliatory employees may be otherwise disciplined, fined, or suspended.

3. Administrative program.

The auditor is given the authority to administer the provisions of the state whistleblower law, but is not specifically authorized to contract for any assistance that may be necessary. In addition, the law is silent on how the costs of administering the law should be funded.

SUMMARY :

The state whistleblower law is rewritten.

1. Which state agencies are subject to the law.

The act applies to all state agencies including legislative and judicial branches of state government. Complaints about the state auditor or an employee of that office may be filed with the attorney general who acts in the place of the state auditor in such instances.

2. Improper conduct.

The definition of improper governmental action is altered to include actions taken by an employee as part of the employee's official duties that :

- o Result in mismanagement or gross waste of public funds ;
- o Violate federal or state laws, the than mere technical violations of minimum nature;
- o Is of substantial and specific danger to the public health or safety.

Mismanagement is defined as exercising executive functions in a manner that grossly deviates from the standard of care or competence that a reasonable person would observe in the same situation. Substantial and specific danger is defined as a risk of serious injury, loss, or loss of life, which the exposure of the public is a gross deviation from the standard of care or competence that a reasonable person would observe in the same situation.

3. Whistleblower.

It is clarified that the identity of a whistleblower kept confidential except when the state auditor determines that the assertion was made in the good faith.

An employee who makes a whistleblower complaint must make a reasonable attempt to ascertain whether the information furnished is correct and may be subject to disciplinary action, including suspension, or termination, knowingly supply false information determined by the appointing authority.

The definition of a whistleblower is expanded to include an individual who is isolated from the whistleblower.

4. Timeliness.

A whistleblower complaint must be made within one year after the occurrence of the asserted improper conduct.

5. Investigative complaint.

The following changes are made to investigations of complaints:

a. Determination to investigate.

The state auditor may determine whether to investigate an assertion based on a variety of factors listed for the state auditor to consider in making this determination, including whether the action was isolated or systematic, the history of previous assertions regarding the same subject or subject matter, the degree of significance of the asserted improper governmental action, and the cost and benefit of the investigation.

b. Preliminary investigation.

The preliminary investigation by the state auditor is expanded from a maximum of 30 days to 30 working days after the receipt of the assertion. However, with agency consent, the state auditor may forward the assertion to the appropriate agency for investigation over a period of more than 60 days after the receipt of the assertion.

During the preliminary investigation, the state auditor provides information of the nature of the assertions to both the subject of the investigation and his or her agency head.

If the preliminary investigation results from an anonymous assertion and a four-person panel is convened to make recommendations, the state auditor may proceed with the audit. The panel must include

representative of one of the three boards (2) the state auditor with knowledge of the subject agency operation (3) the whistleblower program administrator and (4) the attorney general's office.

c. Further investigation.

Written notices be provided to the subject of the assertion and his/her agency head for further investigation to occur. The time by which a further investigation be completed expand from 60 days to 60 working days after the 30-day preliminary investigation period. A written justification furnished to the whistleblower by the subject of the investigation and agency head.

Agencies are required to cooperate fully with the investigation and take appropriate steps to preclude destruction of any evidence during the course of the investigation.

The subject of the investigation be interviewed by the further investigation. It is determined that a reasonable cause exists to believe that an improper governmental act has occurred. The subject agency head are given 5 working days to respond to the assertion. A notice is issued in the final report.

d. Determination of reasonable cause.

If the report contains a reasonable determination the agency must send to the laborer to resolve the situation to the auditor within 15 working days having received the report. The state auditor may require periodic reports of agency action taken until the resolution has occurred.

The determination in the report is sent to the Governor and the determination be included in the state auditor's audit of the agency.

Once the state auditor determines that appropriate action has been taken by the whistleblower agency head, and subject of the investigation be notified.

It is clarified that the agency may make a decision to terminate, suspend, or discipline an employer for reasons related to the employee's status as a whistleblower.

6. Administrative matters.

The state auditor give special authority to contract assistance in carrying out the whistleblower and may enter into agreements with the three state boards to investigate with the authority of the auditor or the board.

The costs of administering the whistleblower program be funded through the audit services revolving account.

The Office of Financial Management be required to contract for performance audit of the state employee whistleblower program.

FISCANOTE: Not requested.

EFFECTIVE DATE: Ninety days after adjournment session which bill passed.