

# SENATE BILL REPORT

## SHB 2005

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As Reported By Senate Committee On:  
State & Local Government, April 1, 1999

**Title:** An act relating to whistleblowers.

**Brief Description:** Managing the state employee whistleblower program.

**Sponsors:** House Committee on State Government (originally sponsored by Representatives Wolfe, D. Sommers, D. Schmidt, Romero, Carlson, Delvin, Santos, O'Brien, Miloscia, Lovick, Dickerson, Kenney, Ogden, Fisher, Cody, Parlette, Campbell, Lambert, Pennington, Dunshee, Koster, Hankins, Clements, Cairnes, Keiser, Conway and Veloria; by request of State Auditor).

**Brief History:**

**Committee Activity:** State & Local Government: 3/31/99, 4/1/99 [DP].

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### SENATE COMMITTEE ON STATE & LOCAL GOVERNMENT

**Majority Report:** Do pass.

Signed by Senators Patterson, Chair; Gardner, Vice Chair; Hale, Haugen, Horn, Kline and McCaslin.

**Staff:** Diane Smith (786-7410)

**Background:** Legislation was enacted in 1982 establishing a whistleblower protection program for state employees to encourage state employees to report improper governmental actions and to protect the rights of state employees who make such disclosures.

1. Investigation of a complaint. The State Auditor is given the responsibility to investigate complaints of improper governmental action that are made under this program.

The State Auditor must acknowledge a report of improper governmental action within five working days of receipt of the complaint and must conduct a preliminary investigation for a 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 and findings must be sent to the whistleblower within one year after the allegations were made.

If it appears that the allegations do not constitute improper governmental action, the auditor may forward a summary of the allegations to the appropriate agency for investigation. The State Auditor must keep the whistleblower's identity confidential. The agency must respond within 30 days after receipt of the allegations from the auditor.

The agency must make monthly reports to the auditor until final 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 for when final corrective action must be taken.

2. Employee protections from retaliatory actions. Employees who provide information about improper governmental action in good faith are protected from retaliatory action and have remedies available under the Human Rights Commission laws.

3. Administration of program. The State Auditor is given the authority to administer the provisions of the state whistleblower law.

**Summary of Bill:** The state whistleblower law is refined.

1. Which state agencies are subject to the law. The act applies to all state agencies, including the 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 clarified to include actions taken by an employee as part of the employee's official duties that:

- result in mismanagement or gross waste of public funds;
- violate federal or state laws, other than mere technical violations or violations of minimum nature; or
- are of substantial and specific danger to the public health or safety.

3. Whistleblower. It is clarified that the identity of a whistleblower is kept confidential except when the State Auditor determines that the assertion was made in other than good faith.

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

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

5. Investigation of a complaint. The following changes are made to investigations of complaints:

a. *Determination whether to investigate.* The State Auditor may determine whether to investigate any assertions. A variety of factors is 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 or significance of the asserted improper governmental action, and the costs and benefits 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 an agency's consent, the State Auditor may forward the assertion to the appropriate agency to investigate over a period of no more than 60 days after the receipt of the assertion. During the preliminary investigation, the State Auditor provides written notice of the nature of the assertions both to the subject of the investigation and to his or her agency head.

If the preliminary investigation resulted from an anonymous assertion, a three-person review panel must be convened to make recommendations on proceeding to the State Auditor. The panel includes a representative from the State Auditor's office with knowledge of the subject agency operations, a representative of the Office of the Attorney General, and a citizen volunteer.

*c. Further investigation.* Written notice must be provided to the subject of the assertions and his or her agency head if further investigations are to occur. The time by which a further investigation must be completed is expanded from 60 days to 60 working days after the 30-day preliminary investigation period, unless written justification is furnished to the whistleblower, subject of the investigation, and agency head.

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

The subject of the investigation must be interviewed during the further investigation. If it is determined that a reasonable cause exists to believe that improper governmental action has occurred, the subject and agency head are given 15 working days to respond to the assertions prior to issuance of the final report.

*d. Determination of reasonable cause.* If the report contains reasonable cause determinations, the agency must send its plan to resolve the situation to the auditor within 15 working days of having received the report. The State Auditor may require periodic reports of agency action taken until all resolution has occurred.

The determination in the report is sent to the Governor and the determination may be included in the State Auditor's audit of the agency.

Once the State Auditor determines that appropriate action has been taken, the whistleblower, agency head, and subject of the investigation must be notified.

6. Administrative matters. The State Auditor is given specific authority to contract for assistance in carrying out the Whistleblower Act and may enter into agreements with the three state ethics boards to investigate matters within the authority of the auditor or the ethics board.

The costs of administrating the whistleblower program are funded through the auditing services revolving account.

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

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This is the first major amendment of the state employees whistleblower act since it was first enacted. It adds due process protections and common sense adjustments.

**Testimony Against:** None.

**Testified:** Brian Sonntag, Linda Long, State Auditor's Office (pro).