

# SENATE BILL REPORT

## SB 5672

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As Reported By Senate Committee On:  
State & Local Government, February 17, 1999

**Title:** An act relating to retaliatory action against a whistleblower.

**Brief Description:** Retaliating against a whistleblower.

**Sponsors:** Senators Kline, Costa, Prentice, Fraser, Fairley, Shin, Kohl-Welles, Haugen, Hargrove and McAuliffe.

**Brief History:**

**Committee Activity:** State & Local Government: 2/10/99, 2/17/99 [DPS].

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### SENATE COMMITTEE ON STATE & LOCAL GOVERNMENT

**Majority Report:** That Substitute Senate Bill No. 5672 be substituted therefor, and the substitute bill do pass.

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

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

**Background:** Whistleblowers are state employees who in good faith report alleged improper governmental action to the State Auditor. This includes employees who are believed to have reported improper governmental action but who actually have not, and employees who provide information in good faith to the Auditor in connection with a whistleblower investigation. Improper governmental action does not include personnel actions.

When a whistleblower can prove that he or she has been subjected to workplace retaliation as a result of being a whistleblower, then the remedies provided under the statutes governing the Human Rights Commission (HRC) apply. There is a list of 12 actions given as examples of retaliation.

The State Auditor refers cases of alleged retaliation to the HRC for investigation as an unfair practice. The HRC also has responsibility for investigating complaints of unfair practices due to discrimination because of race, creed, color, national origin, sex, marital status, age, or mental or physical disability. These complaints must allege violation of the law in employment, places of public accommodation, credit or insurance transactions.

In seven years, out of 65 whistleblower retaliation complaints, the HRC has found reasonable cause to believe that an unfair practice retaliation has been, or is being committed only once. It is argued that the whistleblower is at a disadvantage in having to prove that the reason why an agency took retaliatory action against him or her is because the person was a whistleblower. The one case where the HRC decided the whistleblower met this burden is

scheduled to be heard before an administrative law judge under the Administrative Procedure Act in 1999.

**Summary of Substitute Bill:** If the whistleblower can prove that a retaliatory action was taken against him or her, then a cause of action for the remedies under the statutes governing the HRC is established. The agency presumed to have taken this retaliation action may rebut that presumption by proving by a preponderance of the evidence that the action was justified for reasons unrelated to the person's status as a whistleblower.

**Substitute Bill Compared to Original Bill:** The substitute bill adds a 13th example of what may constitute reprisal or retaliatory action. That example is unwanted transfer.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This bill is a step forward to provide better protection to the whistleblower, who should be protected against personal harm from his or her selfless, heroic act.

**Testimony Against:** None.

**Testified:** John Sheridan, Government Accountability Project (pro); Lynn McKinnon, WPEA (pro).