

SENATE BILL REPORT

SB 5789

As Reported By Senate Committee On:
State & Local Government, March 5, 2001

Title: An act relating to whistleblowers.

Brief Description: Creating a registry of advocates to assist whistleblowers.

Sponsors: Senators Kline, Swecker, Patterson, Oke, Shin, Kohl-Welles, Sheahan, Prentice, Rasmussen, Kastama, Benton, Costa, McCaslin, Finkbeiner, Deccio, Fraser and Winsley.

Brief History:

Committee Activity: State & Local Government: 2/21/01, 3/5/01 [DPS-WM, DNP].

SENATE COMMITTEE ON STATE & LOCAL GOVERNMENT

Majority Report: That Substitute Senate Bill No. 5789 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Patterson, Chair; Fairley, Vice Chair; Gardner, Kline, T. Sheldon and Swecker.

Minority Report: Do not pass.

Signed by Senators Hale, Haugen and Horn.

Staff: Diane Smith (786-7410)

Background: The State Whistleblower Program, operated by the State Auditor's Office, provides protection to the whistleblower who believes his employer has retaliated against him or her. These cases of alleged retaliation are referred to the Human Rights Commission (HRC). HRC acts in the position of a neutral fact finder. If HRC finds that the facts support a claim of retaliation, then HRC brings the case in the name of HRC to an administrative hearing. A conference and conciliation process is part of the overall process conducted by HRC and occurs prior to the administrative hearing.

Unless the whistleblower hires his or her own attorney, no officer is designated to advocate for the whistleblower. The whistleblower's position is that the employer retaliated against the whistleblower. The conference often is attended by the head of the alleged retaliating agency, the agency's Attorney General, the alleged perpetrator of the retaliation and his or her attorney. Given that the whistleblower often appears with only the HRC attorney, who is not the whistleblower's advocate, an appearance of one-sidedness has been noted by whistleblowers.

Summary of Substitute Bill: On January 1, 2002, a rotational registry is established in the Department of Personnel to provide advocates for whistleblowers who allege their state employer has retaliated against them. The advocate must be a lawyer in private practice without conflict of interest with the alleged retaliating agency and trained in mediation or

arbitration. The advocate represents the whistleblower at the HRC up to the point that the case is brought to an administrative hearing in the name of the HRC. The HRC must provide representation at the administrative hearing.

The advocates are available to whistleblowers who meet income eligibility requirements. The advocates are paid \$100 per hour not to exceed \$5,000 and must supply their own office, office supplies and support staff. Reasonable litigation expenses may be included in this compensation.

The civil service laws and the laws concerning the Human Rights Commission are amended to reflect the existence of the advocate program.

The Department of Personnel monitors compliance with the contracts under which the advocates are employed and reports each biennium about the program to the Legislature, HRC and the Governor.

Substitute Bill Compared to Original Bill: The substitute bill eliminates the prohibition against the advocate accepting employment from the whistleblower for representation at the administrative hearing. The advocate is not required to turn over all documents and records to the Human Rights Commission. The advocate may receive reimbursement for reasonable expenses of litigation as part of his or her public compensation. The existence of the advocacy program is referenced in civil service law and the law concerning the Human Rights Commission.

Appropriation: An unspecified amount is appropriated from the general fund for the fiscal years ending June 30, 2002 and 2003.

Fiscal Note: Available.

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

Testimony For: This is a good start. Whistleblowers can feel like they are the ones who didn't do anything wrong; why should they quit? But the costs are excessive and not just in money. There is great stress and consequent adverse health effects on the family. This is an assist to the more lower-paid state employees to defend themselves against reprisal by the state bureaucracy.

Testimony Against: The cost to DOP is indeterminate. In terms of construction, the cost will relate directly to how much the definition of whistleblower is expanded and that is dependent on a different bill. There may be a problem with requiring the advocate to turn over work product to the Human Rights Commission.

Testified: Cindy Bricker (pro); Linda Long, State Auditor's Office (pro w/concerns); Sharon Whitehead, Department of Personnel (pro w/concerns).