

ESSB 6776 - H COMM AMD
By Committee on Appropriations

ADOPTED 03/04/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds and declares that
4 government exists to conduct the people's business, and the people
5 remaining informed about the actions of government contributes to the
6 oversight of how the people's business is conducted. The legislature
7 further finds that many public servants who expose actions of their
8 government that are contrary to the law or public interest face the
9 potential loss of their careers and livelihoods.

10 It is the policy of the legislature that employees should be
11 encouraged to disclose, to the extent not expressly prohibited by law,
12 improper governmental actions, and it is the intent of the legislature
13 to protect the rights of state employees making these disclosures. It
14 is also the policy of the legislature that employees should be
15 encouraged to identify rules warranting review or provide information
16 to the rules review committee, and it is the intent of the legislature
17 to protect the rights of these employees.

18 This act shall be broadly construed in order to effectuate the
19 purpose of this act.

20 **Sec. 2.** RCW 42.40.020 and 1999 c 361 s 1 are each amended to read
21 as follows:

22 As used in this chapter, the terms defined in this section shall
23 have the meanings indicated unless the context clearly requires
24 otherwise.

25 (1) "Auditor" means the office of the state auditor.

26 (2) "Employee" means any individual employed or holding office in
27 any department or agency of state government.

28 (3) "Good faith" means the individual providing the information or
29 report of improper governmental activity has a reasonable basis in fact

1 for reporting or providing the ((communication)) information. (("Good
2 faith" is lacking when the employee knows or reasonably ought to know
3 that the report is malicious, false, or frivolous.)) An individual who
4 knowingly, or reasonably ought to know, provides or reports malicious,
5 false, or frivolous information, or information that is provided with
6 reckless disregard for the truth, or who knowingly omits relevant
7 information is not acting in good faith.

8 (4) "Gross mismanagement" means the exercise of management
9 responsibilities in a manner grossly deviating from the standard of
10 care or competence that a reasonable person would observe in the same
11 situation.

12 (5) "Gross waste of funds" means to spend or use funds or to allow
13 funds to be used without valuable result in a manner grossly deviating
14 from the standard of care or competence that a reasonable person would
15 observe in the same situation.

16 ((+5)) (6)(a) "Improper governmental action" means any action by
17 an employee undertaken in the performance of the employee's official
18 duties:

19 (i) Which is ((fa)) a gross waste of public funds or resources as
20 defined in this section;

21 (ii) Which is in violation of federal or state law or rule, if the
22 violation is not merely technical or of a minimum nature; ((ex))

23 (iii) Which is of substantial and specific danger to the public
24 health or safety;

25 (iv) Which is gross mismanagement; or

26 (v) Which prevents the dissemination of scientific opinion or
27 alters technical findings without scientifically valid justification,
28 unless state law or a common law privilege prohibits disclosure. This
29 provision is not meant to preclude the discretion of agency management
30 to adopt a particular scientific opinion or technical finding from
31 among differing opinions or technical findings to the exclusion of
32 other scientific opinions or technical findings. Nothing in this
33 subsection prevents or impairs a state agency's or public official's
34 ability to manage its public resources or its employees in the
35 performance of their official job duties. This subsection does not
36 apply to de minimis, technical disagreements that are not relevant for
37 otherwise improper governmental activity. Nothing in this provision

1 requires the auditor to contract or consult with external experts
2 regarding the scientific validity, invalidity, or justification of a
3 finding or opinion.

4 (b) "Improper governmental action" does not include personnel
5 actions, for which other remedies exist, including but not limited to
6 employee grievances, complaints, appointments, promotions, transfers,
7 assignments, reassignments, reinstatements, restorations,
8 reemployments, performance evaluations, reductions in pay, dismissals,
9 suspensions, demotions, violations of the state civil service law,
10 alleged labor agreement violations, reprimands, claims of
11 discriminatory treatment, or any action which may be taken under
12 chapter 41.06 RCW, or other disciplinary action except as provided in
13 RCW 42.40.030.

14 ~~((+6+))~~ (7) "Public official" means the attorney general's designee
15 or designees; an appropriate number of individuals designated to
16 receive whistleblower reports by the head of each agency; or the
17 executive ethics board.

18 (8) "Substantial and specific danger" means a risk of serious
19 injury, illness, peril, or loss, to which the exposure of the public is
20 a gross deviation from the standard of care or competence which a
21 reasonable person would observe in the same situation.

22 ~~((+7+))~~ (9) "Use of official authority or influence" includes
23 threatening, taking, directing others to take, recommending,
24 processing, or approving any personnel action such as an appointment,
25 promotion, transfer, assignment including but not limited to duties and
26 office location, reassignment, reinstatement, restoration,
27 reemployment, performance evaluation, determining any material changes
28 in pay, provision of training or benefits, tolerance of a hostile work
29 environment, or any adverse action under chapter 41.06 RCW, or other
30 disciplinary action.

31 ~~((+8+))~~ (10)(a) "Whistleblower" means:

32 (i) An employee who in good faith reports alleged improper
33 governmental action to the auditor or other public official, as defined
34 in subsection (7) of this section, initiating an investigation by the
35 auditor under RCW 42.40.040; or

36 (ii) An employee who is perceived by the employer as reporting,
37 whether they did or not, alleged improper governmental action to the

1 auditor or other public official, as defined in subsection (7) of this
2 section, initiating an investigation by the auditor under RCW
3 42.40.040.

4 (b) For purposes of the provisions of this chapter and chapter
5 49.60 RCW relating to reprisals and retaliatory action, the term
6 "whistleblower" also means:

7 ~~((a))~~ (i) An employee who in good faith provides information to
8 the auditor or other public official, as defined in subsection (7) of
9 this section, in connection with an investigation under RCW 42.40.040
10 and an employee who is believed to have reported asserted improper
11 governmental action to the auditor or other public official, as defined
12 in subsection (7) of this section, or to have provided information to
13 the auditor or other public official, as defined in subsection (7) of
14 this section, in connection with an investigation under RCW 42.40.040
15 but who, in fact, has not reported such action or provided such
16 information; or

17 ~~((b))~~ (ii) An employee who in good faith identifies rules
18 warranting review or provides information to the rules review
19 committee, and an employee who is believed to have identified rules
20 warranting review or provided information to the rules review committee
21 but who, in fact, has not done so.

22 **Sec. 3.** RCW 42.40.030 and 1995 c 403 s 510 are each amended to
23 read as follows:

24 (1) An employee shall not directly or indirectly use or attempt to
25 use the employee's official authority or influence for the purpose of
26 intimidating, threatening, coercing, commanding, influencing, or
27 attempting to intimidate, threaten, coerce, command, or influence any
28 individual for the purpose of interfering with the right of the
29 individual to: (a) Disclose to the auditor (or representative thereof)
30 or other public official, as defined in RCW 42.40.020, information
31 concerning improper governmental action; or (b) identify rules
32 warranting review or provide information to the rules review committee.

33 (2) Nothing in this section authorizes an individual to disclose
34 information otherwise prohibited by law, except to the extent that
35 information is necessary to substantiate the whistleblower complaint,
36 in which case information may be disclosed to the auditor or public
37 official, as defined in RCW 42.40.020, by the whistleblower for the

1 limited purpose of providing information related to the complaint. Any
2 information provided to the auditor or public official under the
3 authority of this subsection may not be further disclosed.

4 **Sec. 4.** RCW 42.40.040 and 1999 c 361 s 3 are each amended to read
5 as follows:

6 (1)(a) In order to be investigated, an assertion of improper
7 governmental action must be provided to the auditor or other public
8 official within one year after the occurrence of the asserted improper
9 governmental action. The public official, as defined in RCW 42.40.020,
10 receiving an assertion of improper governmental action must report the
11 assertion to the auditor within fifteen calendar days of receipt of the
12 assertion. The auditor retains sole authority to investigate an
13 assertion of improper governmental action including those made to a
14 public official. A failure of the public official to report the
15 assertion to the auditor within fifteen days does not impair the rights
16 of the whistleblower.

17 (b) Except as provided under RCW 42.40.910 for legislative and
18 judicial branches of government, the auditor has the authority to
19 determine whether to investigate any assertions received. In
20 determining whether to conduct either a preliminary or further
21 investigation, the auditor shall consider factors including, but not
22 limited to: The nature and quality of evidence and the existence of
23 relevant laws and rules; whether the action was isolated or systematic;
24 the history of previous assertions regarding the same subject or
25 subjects or subject matter; whether other avenues are available for
26 addressing the matter; whether the matter has already been investigated
27 or is in litigation; the seriousness or significance of the asserted
28 improper governmental action; and the cost and benefit of the
29 investigation. The auditor has the sole discretion to determine the
30 priority and weight given to these and other relevant factors and to
31 decide whether a matter is to be investigated. The auditor shall
32 document the factors considered and the analysis applied.

33 (c) The auditor also has the authority to investigate assertions of
34 improper governmental actions as part of an audit conducted under
35 chapter 43.09 RCW. The auditor shall document the reasons for handling
36 the matter as part of such an audit.

1 (2) Subject to subsection (5)(c) of this section, the identity or
2 identifying characteristics of a whistleblower is confidential at all
3 times unless the whistleblower consents to disclosure by written waiver
4 or by acknowledging his or her identity in a claim against the state
5 for retaliation. In addition, the identity or identifying
6 characteristics of any person who in good faith provides information in
7 an investigation under this section is confidential at all times,
8 unless the person consents to disclosure by written waiver or by
9 acknowledging his or her identity as a witness who provides information
10 in an investigation.

11 (3) Upon receiving specific information that an employee has
12 engaged in improper governmental action, the auditor shall, within
13 ((five)) fifteen working days of receipt of the information, mail
14 written acknowledgement to the whistleblower at the address provided
15 stating whether a preliminary investigation will be conducted. For a
16 period not to exceed ((thirty)) sixty working days from receipt of the
17 assertion, the auditor shall conduct such preliminary investigation of
18 the matter as the auditor deems appropriate.

19 (4) In addition to the authority under subsection (3) of this
20 section, the auditor may, on its own initiative, investigate incidents
21 of improper state governmental action.

22 (5)(a) If it appears to the auditor, upon completion of the
23 preliminary investigation, that the matter is so unsubstantiated that
24 no further investigation, prosecution, or administrative action is
25 warranted, the auditor shall so notify the whistleblower summarizing
26 where the allegations are deficient, and provide a reasonable
27 opportunity to reply. Such notification may be by electronic means.

28 (b) The written notification shall contain a summary of the
29 information received and of the results of the preliminary
30 investigation with regard to each assertion of improper governmental
31 action.

32 (c) In any case to which this section applies, the identity or
33 identifying characteristics of the whistleblower shall be kept
34 confidential unless the auditor determines that the information has
35 been provided other than in good faith. If the auditor makes such a
36 determination, the auditor shall provide reasonable advance notice to
37 the employee.

1 (d) With the agency's consent, the auditor may forward the
2 assertions to an appropriate agency to investigate and report back to
3 the auditor no later than sixty working days after the assertions are
4 received from the auditor. The auditor is entitled to all
5 investigative records resulting from such a referral. All procedural
6 and confidentiality provisions of this chapter apply to investigations
7 conducted under this subsection. The auditor shall document the
8 reasons the assertions were referred.

9 (6) During the preliminary investigation, the auditor shall provide
10 written notification of the nature of the assertions to the subject or
11 subjects of the investigation and the agency head. The notification
12 shall include the relevant facts and laws known at the time and the
13 procedure for the subject or subjects of the investigation and the
14 agency head to respond to the assertions and information obtained
15 during the investigation. This notification does not limit the auditor
16 from considering additional facts or laws which become known during
17 further investigation.

18 ~~((7))~~(a) If it appears to the auditor after completion of the
19 preliminary investigation that further investigation, prosecution, or
20 administrative action is warranted, the auditor shall so notify the
21 whistleblower, the subject or subjects of the investigation, and the
22 agency head and either conduct a further investigation or issue a
23 report under subsection ~~((10))~~ (9) of this section.

24 (b) If the preliminary investigation resulted from an anonymous
25 assertion, a decision to conduct further investigation shall be subject
26 to review by a three-person panel convened as necessary by the auditor
27 prior to the commencement of any additional investigation. The panel
28 shall include a state auditor representative knowledgeable of the
29 subject agency operations, a citizen volunteer, and a representative of
30 the attorney general's office. This group shall be briefed on the
31 preliminary investigation and shall recommend whether the auditor
32 should proceed with further investigation.

33 (c) If further investigation is to occur, the auditor shall provide
34 written notification of the nature of the assertions to the subject or
35 subjects of the investigation and the agency head. The notification
36 shall include the relevant facts known at the time and the procedure to
37 be used by the subject or subjects of the investigation and the agency

1 head to respond to the assertions and information obtained during the
2 investigation.

3 ~~((+8+))~~ (7) Within sixty working days after the preliminary
4 investigation period in subsection (3) of this section, the auditor
5 shall complete the investigation and report its findings to the
6 whistleblower unless written justification for the delay is furnished
7 to the whistleblower, agency head, and subject or subjects of the
8 investigation. In all such cases, the report of the auditor's
9 investigation and findings shall be sent to the whistleblower within
10 one year after the information was filed under subsection (3) of this
11 section.

12 ~~((+9+))~~ (8)(a) At any stage of an investigation under this section
13 the auditor may require by subpoena the attendance and testimony of
14 witnesses and the production of documentary or other evidence relating
15 to the investigation at any designated place in the state. The auditor
16 may issue subpoenas, administer oaths, examine witnesses, and receive
17 evidence. In the case of contumacy or failure to obey a subpoena, the
18 superior court for the county in which the person to whom the subpoena
19 is addressed resides or is served may issue an order requiring the
20 person to appear at any designated place to testify or to produce
21 documentary or other evidence. Any failure to obey the order of the
22 court may be punished by the court as a contempt thereof.

23 (b) The auditor may order the taking of depositions at any stage of
24 a proceeding or investigation under this chapter. Depositions shall be
25 taken before an individual designated by the auditor and having the
26 power to administer oaths. Testimony shall be reduced to writing by or
27 under the direction of the individual taking the deposition and shall
28 be subscribed by the deponent.

29 (c) Agencies shall cooperate fully in the investigation and shall
30 take appropriate action to preclude the destruction of any evidence
31 during the course of the investigation.

32 (d) During the investigation the auditor shall interview each
33 subject of the investigation. If it is determined there is reasonable
34 cause to believe improper governmental action has occurred, the subject
35 or subjects and the agency head shall be given fifteen working days to
36 respond to the assertions prior to the issuance of the final report.

37 ~~((+10+))~~ (9)(a) If the auditor determines there is reasonable cause

1 to believe an employee has engaged in improper governmental action, the
2 auditor shall report, to the extent allowable under existing public
3 disclosure laws, the nature and details of the activity to:

4 (i) The subject or subjects of the investigation and the head of
5 the employing agency; (~~and~~)

6 (ii) If appropriate, the attorney general or such other authority
7 as the auditor determines appropriate;

8 (iii) Electronically to the governor, secretary of the senate, and
9 chief clerk of the house of representatives; and

10 (iv) Except for information whose release is specifically
11 prohibited by statute or executive order, the public through the public
12 file of whistleblower reports maintained by the auditor.

13 (b) The auditor has no enforcement power except that in any case in
14 which the auditor submits an investigative report containing reasonable
15 cause determinations to the agency, the agency shall send its plan for
16 resolution to the auditor within fifteen working days of having
17 received the report. The agency is encouraged to consult with the
18 subject or subjects of the investigation in establishing the resolution
19 plan. The auditor may require periodic reports of agency action until
20 all resolution has occurred. If the auditor determines that
21 appropriate action has not been taken, the auditor shall report the
22 determination to the governor and to the legislature and may include
23 this determination in the agency audit under chapter 43.09 RCW.

24 (~~(11)~~) (10) Once the auditor concludes that appropriate action
25 has been taken to resolve the matter, the auditor shall so notify the
26 whistleblower, the agency head, and the subject or subjects of the
27 investigation. If the resolution takes more than one year, the auditor
28 shall provide annual notification of its status to the whistleblower,
29 agency head, and subject or subjects of the investigation.

30 (~~(12)~~) (11) Failure to cooperate with such audit or
31 investigation, or retaliation against anyone who assists the auditor by
32 engaging in activity protected by this chapter shall be reported as a
33 separate finding with recommendations for corrective action in the
34 associated report whenever it occurs.

35 (12) This section does not limit any authority conferred upon the
36 attorney general or any other agency of government to investigate any
37 matter.

1 **Sec. 5.** RCW 42.40.070 and 1989 c 284 s 5 are each amended to read
2 as follows:

3 A written summary of this chapter and procedures for reporting
4 improper governmental actions established by the auditor's office shall
5 be made available by each department or agency of state government to
6 each employee upon entering public employment. Such notices may be in
7 agency internal newsletters, included with paychecks or stubs, sent via
8 electronic mail to all employees, or sent by other means that are
9 cost-effective and reach all employees of the government level,
10 division, or subdivision. Employees shall be notified by each
11 department or agency of state government each year of the procedures
12 and protections under this chapter. The annual notices shall include
13 a list of public officials, as defined in RCW 42.40.020, authorized to
14 receive whistleblower reports. The list of public officials authorized
15 to receive whistleblower reports shall also be prominently displayed in
16 all agency offices.

17 **Sec. 6.** RCW 42.40.050 and 1999 c 283 s 1 are each amended to read
18 as follows:

19 (1)(a) Any person who is a whistleblower, as defined in RCW
20 42.40.020, and who has been subjected to workplace reprisal or
21 retaliatory action is presumed to have established a cause of action
22 for the remedies provided under chapter 49.60 RCW.

23 (b) For the purpose of this section, "reprisal or retaliatory
24 action" means, but is not limited to, any of the following:

- 25 ((+a)) (i) Denial of adequate staff to perform duties;
- 26 ((+b)) (ii) Frequent staff changes;
- 27 ((+c)) (iii) Frequent and undesirable office changes;
- 28 ((+d)) (iv) Refusal to assign meaningful work;
- 29 ((+e)) (v) Unwarranted and unsubstantiated letters of reprimand or
30 unsatisfactory performance evaluations;
- 31 ((+f)) (vi) Demotion;
- 32 ((+g)) (vii) Reduction in pay;
- 33 ((+h)) (viii) Denial of promotion;
- 34 ((+i)) (ix) Suspension;
- 35 ((+j)) (x) Dismissal;
- 36 ((+k)) (xi) Denial of employment;

1 ~~((1))~~ (xii) A supervisor or superior behaving in or encouraging
2 coworkers to behave in a hostile manner toward the whistleblower; ~~((and~~
3 ~~(m))~~ (xiii) A change in the physical location of the employee's
4 workplace or a change in the basic nature of the employee's job, if
5 either are in opposition to the employee's expressed wish;

6 (xiv) Issuance of or attempt to enforce any nondisclosure policy or
7 agreement in a manner inconsistent with prior practice; or

8 (xv) Any other action that is inconsistent compared to actions
9 taken before the employee engaged in conduct protected by this chapter,
10 or compared to other employees who have not engaged in conduct
11 protected by this chapter.

12 (2) The agency presumed to have taken retaliatory action under
13 subsection (1) of this section may rebut that presumption by proving by
14 a preponderance of the evidence that there have been a series of
15 documented personnel problems or a single, egregious event, or that the
16 agency action or actions were justified by reasons unrelated to the
17 employee's status as a whistleblower and that improper motive was not
18 a substantial factor.

19 (3) Nothing in this section prohibits an agency from making any
20 decision exercising its authority to terminate, suspend, or discipline
21 an employee who engages in workplace reprisal or retaliatory action
22 against a whistleblower. However, the agency also shall implement any
23 order under chapter 49.60 RCW (other than an order of suspension if the
24 agency has terminated the retaliator).

25 **Sec. 7.** RCW 49.60.230 and 1993 c 510 s 21 and 1993 c 69 s 11 are
26 each reenacted and amended to read as follows:

27 (1) Who may file a complaint:

28 (a) Any person claiming to be aggrieved by an alleged unfair
29 practice may, personally or by his or her attorney, make, sign, and
30 file with the commission a complaint in writing under oath or by
31 declaration. The complaint shall state the name of the person alleged
32 to have committed the unfair practice and the particulars thereof, and
33 contain such other information as may be required by the commission.

34 (b) Whenever it has reason to believe that any person has been
35 engaged or is engaging in an unfair practice, the commission may issue
36 a complaint.

1 (c) Any employer or principal whose employees, or agents, or any of
2 them, refuse or threaten to refuse to comply with the provisions of
3 this chapter may file with the commission a written complaint under
4 oath or by declaration asking for assistance by conciliation or other
5 remedial action.

6 (2) Any complaint filed pursuant to this section must be so filed
7 within six months after the alleged act of discrimination except that
8 complaints alleging an unfair practice in a real estate transaction
9 pursuant to RCW 49.60.222 through 49.60.225 must be so filed within one
10 year after the alleged unfair practice in a real estate transaction has
11 occurred or terminated and a complaint alleging whistleblower
12 retaliation must be filed within two years.

13 **Sec. 8.** RCW 49.60.250 and 1993 c 510 s 23 and 1993 c 69 s 14 are
14 each reenacted and amended to read as follows:

15 (1) In case of failure to reach an agreement for the elimination of
16 such unfair practice, and upon the entry of findings to that effect,
17 the entire file, including the complaint and any and all findings made,
18 shall be certified to the chairperson of the commission. The
19 chairperson of the commission shall thereupon request the appointment
20 of an administrative law judge under Title 34 RCW to hear the complaint
21 and shall cause to be issued and served in the name of the commission
22 a written notice, together with a copy of the complaint, as the same
23 may have been amended, requiring the respondent to answer the charges
24 of the complaint at a hearing before the administrative law judge, at
25 a time and place to be specified in such notice.

26 (2) The place of any such hearing may be the office of the
27 commission or another place designated by it. The case in support of
28 the complaint shall be presented at the hearing by counsel for the
29 commission: PROVIDED, That the complainant may retain independent
30 counsel and submit testimony and be fully heard. No member or employee
31 of the commission who previously made the investigation or caused the
32 notice to be issued shall participate in the hearing except as a
33 witness, nor shall the member or employee participate in the
34 deliberations of the administrative law judge in such case. Any
35 endeavors or negotiations for conciliation shall not be received in
36 evidence.

1 (3) The respondent shall file a written answer to the complaint and
2 appear at the hearing in person or otherwise, with or without counsel,
3 and submit testimony and be fully heard. The respondent has the right
4 to cross-examine the complainant.

5 (4) The administrative law judge conducting any hearing may permit
6 reasonable amendment to any complaint or answer. Testimony taken at
7 the hearing shall be under oath and recorded.

8 (5) If, upon all the evidence, the administrative law judge finds
9 that the respondent has engaged in any unfair practice, the
10 administrative law judge shall state findings of fact and shall issue
11 and file with the commission and cause to be served on such respondent
12 an order requiring such respondent to cease and desist from such unfair
13 practice and to take such affirmative action, including, (but not
14 limited to) hiring, reinstatement or upgrading of employees, with or
15 without back pay, an admission or restoration to full membership rights
16 in any respondent organization, or to take such other action as, in the
17 judgment of the administrative law judge, will effectuate the purposes
18 of this chapter, including action that could be ordered by a court,
19 except that damages for humiliation and mental suffering shall not
20 exceed (~~ten~~) twenty thousand dollars, and including a requirement for
21 report of the matter on compliance. Relief available for violations of
22 RCW 49.60.222 through 49.60.224 shall be limited to the relief
23 specified in RCW 49.60.225.

24 (6) If a determination is made that retaliatory action, as defined
25 in RCW 42.40.050, has been taken against a whistleblower, as defined in
26 RCW 42.40.020, the administrative law judge may, in addition to any
27 other remedy, require restoration of benefits, back pay, and any
28 increases in compensation that would have occurred, with interest;
29 impose a civil penalty upon the retaliator of up to (~~three~~) five
30 thousand dollars; and issue an order to the state employer to suspend
31 the retaliator for up to thirty days without pay. At a minimum, the
32 administrative law judge shall require that a letter of reprimand be
33 placed in the retaliator's personnel file. No agency shall issue any
34 nondisclosure order or policy, execute any nondisclosure agreement, or
35 spend any funds requiring information that is public under the public
36 records act, chapter 42.56 RCW, be kept confidential; except that
37 nothing in this section shall affect any state or federal law requiring

1 information be kept confidential. All penalties recovered shall be
2 paid into the state treasury and credited to the general fund.

3 (7) The final order of the administrative law judge shall include
4 a notice to the parties of the right to obtain judicial review of the
5 order by appeal in accordance with the provisions of RCW 34.05.510
6 through 34.05.598, and that such appeal must be served and filed within
7 thirty days after the service of the order on the parties.

8 (8) If, upon all the evidence, the administrative law judge finds
9 that the respondent has not engaged in any alleged unfair practice, the
10 administrative law judge shall state findings of fact and shall
11 similarly issue and file an order dismissing the complaint.

12 (9) An order dismissing a complaint may include an award of
13 reasonable attorneys' fees in favor of the respondent if the
14 administrative law judge concludes that the complaint was frivolous,
15 unreasonable, or groundless.

16 (10) The commission shall establish rules of practice to govern,
17 expedite, and effectuate the foregoing procedure.

18 (11) Instead of filing with the commission, a complainant may
19 pursue arbitration conducted by the American arbitration association or
20 another arbitrator mutually agreed by the parties, with the cost of
21 arbitration shared equally by the complainant and the respondent.

22 **Sec. 9.** RCW 42.40.910 and 1999 c 361 s 7 are each amended to read
23 as follows:

24 This act and chapter 361, Laws of 1999 ((does)) do not affect the
25 jurisdiction of the legislative ethics board, the executive ethics
26 board, or the commission on judicial conduct, as set forth in chapter
27 42.52 RCW. The senate, the house of representatives, and the supreme
28 court shall adopt policies regarding the applicability of chapter 42.40
29 RCW to the senate, house of representatives, and judicial branch.

30 NEW SECTION. **Sec. 10.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 11.** If specific funding for the purposes of

1 this act, referencing this act by bill or chapter number, is not
2 provided by June 30, 2008, in the omnibus appropriations act, this act
3 is null and void."

4 Correct the title.

--- END ---