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HOUSE BILL 3193

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State of Washington

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By Representatives Ormsby, Chandler, Hunt, Kretz, Green, Armstrong, Kessler, Appleton, Hudgins, Dickerson, Kelley, Morrell, Sells, VanDeWege, Wood, Kenney, and Conway

Read first time 01/24/08. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to state employee whistleblower protection;  
2 amending RCW 42.40.020, 42.40.040, 42.40.050, and 42.40.910; reenacting  
3 and amending RCW 49.60.230 and 49.60.250; adding a new section to  
4 chapter 42.40 RCW; creating a new section; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds and declares that  
7 government exists to conduct the people's business, and the people  
8 remaining informed about the actions of government contributes to the  
9 oversight of how the people's business is conducted. The legislature  
10 further finds that many public servants who expose actions of their  
11 government that are contrary to the law or public interest face the  
12 potential loss of their careers and livelihoods for exposing wrongdoing  
13 in the agencies and political subdivisions where they are employed. As  
14 such, it is the intent of the legislature to protect from retaliation  
15 those public servants who step forward to inform the people about  
16 actions of their government that are contrary to the law or public  
17 interest. This act shall be broadly construed.

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

3       As used in this chapter, the terms defined in this section shall  
4 have the meanings indicated unless the context clearly requires  
5 otherwise.

6       (1) "Abuse of authority" means the use of power and authority in a  
7 manner that is arbitrary or capricious, coercive, or demeaning; willful  
8 malfeasance; or a willful failure to perform a duty and that failure to  
9 perform adversely affects the rights of another person or results in  
10 improper personal gain or advantage.

11       (2) "Auditor" means the office of the state auditor.

12       ~~((+2))~~ (3) "Employee" means any individual employed or holding  
13 office in any department or agency of state government or any  
14 individual in a position carrying out the responsibilities of any  
15 department or agency of state government, excluding volunteers.

16       ~~((+3))~~ (4) "Good faith" means there is a reasonable basis in fact  
17 for the belief or communication and the employee has made a reasonable  
18 attempt to ascertain the correctness of the belief or communication.  
19 "Good faith" is lacking when the employee (~~((knows or reasonably ought~~  
20 ~~to know that the report is malicious, false, or frivolous))~~) reports  
21 information that is knowingly false or frivolous or with reckless  
22 disregard for the truth.

23       ~~((+4))~~ (5) "Gross mismanagement" means the arbitrary or capricious  
24 exercise of management responsibilities in a manner grossly deviating  
25 from the standard of care or competence that a reasonable person would  
26 observe in the same situation.

27       (6) "Gross waste of funds" means to spend or use funds or to allow  
28 funds to be used without valuable result in a manner grossly deviating  
29 from the standard of care or competence that a reasonable person would  
30 observe in the same situation.

31       ~~((+5))~~ (7)(a) "Improper governmental action" means any action by  
32 an employee undertaken in the performance of the employee's official  
33 duties:

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

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

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

3 (iv) Which is gross mismanagement;

4 (v) Which is an abuse of authority; or

5 (vi) Which prevents the dissemination of scientific opinion or  
6 alters technical findings without scientifically valid justification,  
7 unless disclosure is prohibited by state law or a common law privilege.  
8 This provision is not meant to preclude the discretion of agency  
9 management to adopt a particular scientific opinion or technical  
10 finding from among differing opinions or findings to the exclusion of  
11 other scientific opinions or technical findings. Nothing in this  
12 provision requires the auditor to contract or consult with external  
13 experts regarding the scientific validity, invalidity, or justification  
14 of a finding or opinion.

15 (b) "Improper governmental action" does not include personnel  
16 actions, for which other remedies exist, including but not limited to  
17 employee grievances, complaints, appointments, promotions, transfers,  
18 assignments, reassignments, reinstatements, restorations,  
19 reemployments, performance evaluations, reductions in pay, dismissals,  
20 suspensions, demotions, violations of the state civil service law,  
21 alleged labor agreement violations, reprimands, claims of  
22 discriminatory treatment, or any action which may be taken under  
23 chapter 41.06 RCW, or other disciplinary action except as provided in  
24 RCW 42.40.030.

25 ~~((+6))~~ (8) "Public official" means the employee's direct or  
26 secondary supervisors, other agency managers, and the attorney general.

27 (9) "Substantial and specific danger" means a risk of serious  
28 injury, illness, peril, or loss, to which the exposure of the public is  
29 a gross deviation from the standard of care or competence which a  
30 reasonable person would observe in the same situation.

31 ~~((+7))~~ (10) "Use of official authority or influence" includes  
32 threatening, taking, directing others to take, recommending,  
33 processing, or approving any personnel action such as an appointment,  
34 promotion, transfer, assignment including but not limited to duties and  
35 office location, reassignment, reinstatement, restoration,  
36 reemployment, performance evaluation, determining any material changes  
37 in pay, provision of training or benefits, tolerance of a hostile work

1 environment, or any adverse action under chapter 41.06 RCW, reprimand  
2 or other disciplinary action.

3 ~~((+8))~~ (11) "Whistleblower" means an employee or an individual  
4 with a current application for a position carrying out the  
5 responsibilities of the department or agency of state government that  
6 the complaint concerns who refuses to violate any federal, state, or  
7 local law, or who in good faith reports or is perceived by the employer  
8 as reporting or about to report alleged improper governmental action,  
9 unless public disclosure is prohibited by statute or executive order,  
10 in which case the employee may disclose the information to the auditor,  
11 initiating an investigation under RCW 42.40.040. For purposes of the  
12 provisions of this chapter and chapter 49.60 RCW relating to reprisals  
13 and retaliatory action, the term "whistleblower" also means: (a) An  
14 employee who in good faith provides or is perceived by the employer as  
15 about to provide information to the auditor, a public official, or  
16 both, in connection with an investigation under RCW 42.40.040 and an  
17 employee who is believed by the employer about to or to have reported  
18 asserted improper governmental action to the auditor, a public  
19 official, or both, or to have provided information to the auditor, a  
20 public official, or both, in connection with an investigation under RCW  
21 42.40.040 but who, in fact, was not about to or has not reported such  
22 action or provided such information; or (b) an employee who in good  
23 faith identifies rules warranting review or provides information to a  
24 public official including the rules review committee, and an employee  
25 who is believed by the employer to have identified rules warranting  
26 review or provided information to the rules review committee but who,  
27 in fact, has not done so.

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

30 (1)(a) In order to be investigated, an assertion of improper  
31 governmental action must be provided to the auditor within one year  
32 after the occurrence of the asserted improper governmental action.

33 (b) The auditor has the authority to determine whether to  
34 investigate any assertions received. In determining whether to conduct  
35 either a preliminary or further investigation, the auditor shall  
36 consider factors including, but not limited to: The nature and quality  
37 of evidence and the existence of relevant laws and rules; whether the

1 action was isolated or systematic; the history of previous assertions  
2 regarding the same subject or subjects or subject matter; whether other  
3 avenues are available for addressing the matter; whether the matter has  
4 already been investigated or is in litigation; the seriousness or  
5 significance of the asserted improper governmental action; and the cost  
6 and benefit of the investigation. The auditor has the sole discretion  
7 to determine the priority and weight given to these and other relevant  
8 factors and to decide whether a matter is to be investigated. The  
9 auditor shall document the factors considered and the analysis applied.

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

14 (d) Except as provided under RCW 42.40.910, the auditor also has  
15 the authority to investigate, within available resources, reports of  
16 improper governmental activities made by whistleblowers to any public  
17 official pursuant to RCW 42.40.050. Any public official receiving the  
18 report must submit a record of that report to the auditor within  
19 fifteen business days of receiving it.

20 (2) Subject to subsection (5)(c) of this section, the identity or  
21 identifying characteristics of a whistleblower is confidential at all  
22 times unless the whistleblower consents to disclosure by written waiver  
23 or by acknowledging his or her identity in a claim against the state  
24 for retaliation.

25 (3) Upon receiving specific information that an employee has  
26 engaged in improper governmental action, the auditor shall, within five  
27 working days of receipt of the information, mail written  
28 acknowledgement to the whistleblower at the address provided stating  
29 whether a preliminary investigation will be conducted. For a period  
30 not to exceed (~~thirty~~) sixty working days from receipt of the  
31 assertion, the auditor shall conduct such preliminary investigation of  
32 the matter as the auditor deems appropriate.

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

36 (5)(a) If it appears to the auditor, upon completion of the  
37 preliminary investigation, that the matter is so unsubstantiated that

1 no further investigation, prosecution, or administrative action is  
2 warranted, the auditor shall so notify the whistleblower.

3 (b) The written notification shall contain a summary of the  
4 information received and of the results of the preliminary  
5 investigation with regard to each assertion of improper governmental  
6 action.

7 (c) Before making such a determination, the auditor shall provide  
8 preliminary notification to the employee, summarizing where the  
9 allegations are deficient, and provide a reasonable opportunity to  
10 reply.

11 In any case to which this section applies, the identity or  
12 identifying characteristics of the whistleblower shall be kept  
13 confidential unless the auditor determines that the information has  
14 been provided other than in good faith, or disclosure of the employee's  
15 identity is necessary because of an imminent danger to public health or  
16 safety or imminent violation of criminal law. If the auditor makes  
17 such a determination, the auditor shall provide reasonable advance  
18 notice to the employee.

19 (d) With the agency's consent, the auditor may forward the  
20 assertions to an appropriate agency to investigate and report back to  
21 the auditor no later than sixty working days after the assertions are  
22 received from the auditor. The auditor is entitled to all  
23 investigative records resulting from such a referral. All procedural  
24 and confidentiality provisions of this chapter apply to investigations  
25 conducted under this subsection. The auditor shall document the  
26 reasons the assertions were referred.

27 (6) During the preliminary investigation, the auditor shall provide  
28 written notification of the nature of the assertions to the subject or  
29 subjects of the investigation and the agency head. The notification  
30 shall include the relevant facts and laws known at the time and the  
31 procedure for the subject or subjects of the investigation and the  
32 agency head to respond to the assertions and information obtained  
33 during the investigation. This notification does not limit the auditor  
34 from considering additional facts or laws which become known during  
35 further investigation.

36 ((+7))(a) If it appears to the auditor after completion of the  
37 preliminary investigation that further investigation, prosecution, or  
38 administrative action is warranted, the auditor shall so notify the

1 whistleblower, the subject or subjects of the investigation, and the  
2 agency head and either conduct a further investigation or issue a  
3 report under subsection (~~((+10+))~~) (9) of this section.

4 (b) If the preliminary investigation resulted from an anonymous  
5 assertion, a decision to conduct further investigation shall be subject  
6 to review by a three-person panel convened as necessary by the auditor  
7 prior to the commencement of any additional investigation. The panel  
8 shall include a state auditor representative knowledgeable of the  
9 subject agency operations, a citizen volunteer, and a representative of  
10 the attorney general's office. This group shall be briefed on the  
11 preliminary investigation and shall recommend whether the auditor  
12 should proceed with further investigation.

13 (c) If further investigation is to occur, the auditor shall provide  
14 written notification of the nature of the assertions to the subject or  
15 subjects of the investigation and the agency head. The notification  
16 shall include the relevant facts known at the time and the procedure to  
17 be used by the subject or subjects of the investigation and the agency  
18 head to respond to the assertions and information obtained during the  
19 investigation.

20 (~~((+8+))~~) (7) Within sixty working days after the preliminary  
21 investigation period in subsection (3) of this section, the auditor  
22 shall complete the investigation and report its findings to the  
23 whistleblower unless written justification for the delay is furnished  
24 to the whistleblower, agency head, and subject or subjects of the  
25 investigation. In all such cases, the report of the auditor's  
26 investigation and findings shall be sent to the whistleblower within  
27 one year after the information was filed under subsection (3) of this  
28 section.

29 (~~((+9+))~~) (8)(a) At any stage of an investigation under this section  
30 the auditor may require by subpoena the attendance and testimony of  
31 witnesses and the production of documentary or other evidence relating  
32 to the investigation at any designated place in the state. The auditor  
33 may issue subpoenas, administer oaths, examine witnesses, and receive  
34 evidence. In the case of contumacy or failure to obey a subpoena, the  
35 superior court for the county in which the person to whom the subpoena  
36 is addressed resides or is served may issue an order requiring the  
37 person to appear at any designated place to testify or to produce

1 documentary or other evidence. Any failure to obey the order of the  
2 court may be punished by the court as a contempt thereof.

3 (b) The auditor may order the taking of depositions at any stage of  
4 a proceeding or investigation under this chapter. Depositions shall be  
5 taken before an individual designated by the auditor and having the  
6 power to administer oaths. Testimony shall be reduced to writing by or  
7 under the direction of the individual taking the deposition and shall  
8 be subscribed by the deponent.

9 (c) Agencies shall cooperate fully in the investigation and shall  
10 take appropriate action to preclude the destruction of any evidence  
11 during the course of the investigation.

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

17 ~~((+10+))~~ (9)(a) If the auditor determines there is reasonable cause  
18 to believe an employee or public official has engaged in improper  
19 governmental action, the auditor shall report, to the extent allowable  
20 under existing public disclosure laws, the nature and details of the  
21 activity to:

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

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

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

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

31 (b) The auditor has no enforcement power except that in any case in  
32 which the auditor submits an investigative report containing reasonable  
33 cause determinations to the agency, the agency shall send its plan for  
34 resolution to the auditor within fifteen working days of having  
35 received the report. The agency is encouraged to consult with the  
36 subject or subjects of the investigation in establishing the resolution  
37 plan. The auditor may require periodic reports of agency action until  
38 all resolution has occurred. If the auditor determines that



1 appropriate action has not been taken, the auditor shall report the  
2 determination to the governor and to the legislature and may include  
3 this determination in the agency audit under chapter 43.09 RCW.

4 ~~((+11+))~~ (10) Once the auditor concludes that appropriate action  
5 has been taken to resolve the matter, the auditor shall so notify the  
6 whistleblower, the agency head, and the subject or subjects of the  
7 investigation. The auditor shall not make the determination without  
8 first reviewing the whistleblower's comments on the adequacy of the  
9 report and any corrective action. If the resolution takes more than  
10 one year, the auditor shall provide ~~((annual))~~ quarterly notification  
11 of its status to the whistleblower, agency head, and subject or  
12 subjects of the investigation.

13 ~~((+12+))~~ (11) This section does not limit any authority conferred  
14 upon the attorney general or any other agency of government to  
15 investigate any matter.

16 NEW SECTION. Sec. 4. A new section is added to chapter 42.40 RCW  
17 to read as follows:

18 Governmental employees shall be provided annual notice of their  
19 rights under this chapter. Such reminders may be in agency internal  
20 newsletters, notices included with paychecks or stubs, e-mail notices  
21 sent to all employees, or other such means that are both cost-effective  
22 and reach all employees of the government agency, division, or  
23 subdivision.

24 Sec. 5. RCW 42.40.050 and 1999 c 283 s 1 are each amended to read  
25 as follows:

26 (1)(a) Any person who is a whistleblower, as defined in RCW  
27 42.40.020, and who has been subjected to workplace reprisal or  
28 retaliatory action is presumed to have established a cause of action  
29 for the remedies provided under chapter 49.60 RCW.

30 (b) For the purpose of this section, "reprisal or retaliatory  
31 action" means but is not limited to threatening, taking, directing  
32 others to take, recommending, processing, or approving any of the  
33 following because of conduct protected by this chapter:

34 ~~((+a+))~~ (i) Denial of adequate staff to perform duties;

35 ~~((+b+))~~ (ii) Frequent staff changes;

36 ~~((+c+))~~ (iii) Frequent and undesirable office changes;

- 1       ~~((d))~~ (iv) Refusal to assign meaningful work;
- 2       ~~((e))~~ (v) Unwarranted and unsubstantiated letters of reprimand or  
3       unsatisfactory performance evaluations;
- 4       ~~((f))~~ (vi) Demotion;
- 5       ~~((g))~~ (vii) Reduction in pay or benefits;
- 6       ~~((h))~~ (viii) Denial of promotion;
- 7       ~~((i))~~ (ix) Suspension;
- 8       ~~((j))~~ (x) Dismissal;
- 9       ~~((k))~~ (xi) Denial of employment;
- 10       ~~((l))~~ (xii) A supervisor or superior creating a hostile work  
11 environment or encouraging coworkers to behave in a hostile manner  
12 toward the whistleblower; ~~((and~~  
13 ~~((m))~~ (xiii) Transfer, reassignment, or a change in the physical  
14 location of the employee's workplace or a change in the  
15 responsibilities or basic nature of the employee's job, if either are  
16 in opposition to the employee's expressed wish;  
17       (xiv) Removal from a pending assignment;
- 18       (xv) Denial of training;
- 19       (xvi) Issuance of or attempt to enforce any nondisclosure policy,  
20 form, or agreement in a manner that is inconsistent with prior  
21 practice; or
- 22       (xvii) Any other action that is inconsistent compared to actions  
23 taken before the employee engaged in conduct protected by this chapter,  
24 or compared to other employees who have not engaged in conduct  
25 protected by this chapter.

26       (2) The agency presumed to have taken retaliatory action under  
27 subsection (1) of this section may rebut that presumption if it proves  
28 by ~~((proving by a preponderance of the))~~ clear and convincing evidence  
29 that the agency action or actions were justified by reasons unrelated  
30 to the employee's status as a whistleblower would have taken the same  
31 action for lawful, independent reasons if the whistleblower had not  
32 engaged in protected conduct.

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

1       (4) Nothing in this chapter precludes the availability of any other  
2 remedy, nor shall the availability of any other remedy prohibit the  
3 exercise of rights under this chapter.

4       **Sec. 6.** RCW 49.60.230 and 1993 c 510 s 21 and 1993 c 69 s 11 are  
5 each reenacted and amended to read as follows:

6       (1) Who may file a complaint:

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

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

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

21       (2) Any complaint filed pursuant to this section must be so filed  
22 within six months after the alleged act of discrimination except that  
23 complaints alleging an unfair practice in a real estate transaction  
24 pursuant to RCW 49.60.222 through 49.60.225 must be so filed within one  
25 year after the alleged unfair practice in a real estate transaction has  
26 occurred or terminated and a complaint alleging whistleblower  
27 retaliation must be filed within two years of the alleged retaliation.

28       **Sec. 7.** RCW 49.60.250 and 1993 c 510 s 23 and 1993 c 69 s 14 are  
29 each reenacted and amended to read as follows:

30       (1) In case of failure to reach an agreement for the elimination of  
31 such unfair practice, and upon the entry of findings to that effect,  
32 the entire file, including the complaint and any and all findings made,  
33 shall be certified to the chairperson of the commission. The  
34 chairperson of the commission shall thereupon request the appointment  
35 of an administrative law judge under Title 34 RCW to hear the complaint  
36 and shall cause to be issued and served in the name of the commission

1 a written notice, together with a copy of the complaint, as the same  
2 may have been amended, requiring the respondent to answer the charges  
3 of the complaint at a hearing before the administrative law judge, at  
4 a time and place to be specified in such notice.

5 (2) The place of any such hearing may be the office of the  
6 commission or another place designated by it. The case in support of  
7 the complaint shall be presented at the hearing by counsel for the  
8 commission: PROVIDED, That the complainant may retain independent  
9 counsel and submit testimony and be fully heard. No member or employee  
10 of the commission who previously made the investigation or caused the  
11 notice to be issued shall participate in the hearing except as a  
12 witness, nor shall the member or employee participate in the  
13 deliberations of the administrative law judge in such case. Any  
14 endeavors or negotiations for conciliation shall not be received in  
15 evidence.

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

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

23 (5) If, upon all the evidence, the administrative law judge finds  
24 that the respondent has engaged in any unfair practice, the  
25 administrative law judge shall state findings of fact and shall issue  
26 and file with the commission and cause to be served on such respondent  
27 an order requiring such respondent to cease and desist from such unfair  
28 practice and to take such affirmative action, including, (but not  
29 limited to) hiring, reinstatement or upgrading of employees, with or  
30 without back pay, an admission or restoration to full membership rights  
31 in any respondent organization, or to take such other action as, in the  
32 judgment of the administrative law judge, will effectuate the purposes  
33 of this chapter, including action that could be ordered by a court,  
34 except that damages for humiliation and mental suffering shall not  
35 exceed (~~ten~~) twenty thousand dollars, and including a requirement for  
36 report of the matter on compliance. Relief available for violations of  
37 RCW 49.60.222 through 49.60.224 shall be limited to the relief  
38 specified in RCW 49.60.225.

1 (6) If a determination is made that retaliatory action, as defined  
2 in RCW 42.40.050, has been taken against a whistleblower, as defined in  
3 RCW 42.40.020, the administrative law judge may, in addition to any  
4 other remedy, require the respondent to transfer at the complainant's  
5 request and consent to any other available position for which the  
6 complainant is qualified; order restoration of benefits, back pay, and  
7 any increases in compensation that would have occurred, with interest;  
8 impose a civil penalty upon the retaliator of up to ((three)) five  
9 thousand dollars; and issue an order to the state employer to suspend  
10 the retaliator for up to thirty days without pay for discipline up to  
11 and including termination of the retaliator. At a minimum, the  
12 administrative law judge shall require that a letter of reprimand be  
13 placed in the retaliator's personnel file. Any order in the nature of  
14 a "gag" or nondisclosure order, policy, or agreement that precludes,  
15 undermines, obstructs, or otherwise adversely affects conduct, rights,  
16 or relief protected by this chapter shall be void ab initio, and no  
17 agency shall spend any funds to implement or enforce any such order,  
18 policy, or agreement. All penalties recovered shall be paid into the  
19 state treasury and credited to the general fund.

20 (a) Upon the whistleblower complainant's request, the  
21 administrative law judge shall conduct emergency proceedings and may  
22 provide interim relief to prevent or reverse any alleged retaliation if  
23 the employee is determined to be a whistleblower, as defined in RCW  
24 42.40.020, or has reported the alleged occurrence of improper  
25 governmental action to a public official.

26 (b) If the commission has not issued a final decision on the  
27 alleged whistleblower retaliation within one hundred eighty days, or  
28 within ninety days if the commission denied requested relief in whole  
29 or in part, the complainant may seek injunctive or final relief for the  
30 complaint by filing an action at law or equity for de novo review of  
31 the complaint in superior court, which at the request of either party  
32 shall be tried by a jury.

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

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

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

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

11 **Sec. 8.** RCW 42.40.910 and 1999 c 361 s 7 are each amended to read  
12 as follows:

13 This act and chapter 361, Laws of 1999 ((does)) do not affect the  
14 jurisdiction of the legislative ethics board, the executive ethics  
15 board, or the commission on judicial conduct, as set forth in chapter  
16 42.52 RCW. The senate, the house of representatives, and the supreme  
17 court shall adopt policies regarding the applicability of chapter 42.40  
18 RCW to the senate, house of representatives, and judicial branch.

--- END ---