

# SENATE BILL REPORT

## SB 5777

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As Passed Senate, March 5, 2015

**Title:** An act relating to state employee whistleblower protection.

**Brief Description:** Concerning state employee whistleblower protection.

**Sponsors:** Senators Becker, Rivers, O'Ban, Hewitt, Dammeier, Litzow, Schoesler, Dandel, Padden, Angel, Baumgartner, King, Bailey, Warnick, Honeyford, Hill, Parlette, Fain, Braun, Sheldon, Brown, Ericksen and Benton.

**Brief History:**

**Committee Activity:** Government Operations & Security: 2/16/15, 2/17/15 [DP].  
Passed Senate: 3/05/15, 48-0.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & SECURITY

**Majority Report:** Do pass.

Signed by Senators Roach, Chair; Pearson, Vice Chair; Liias, Ranking Minority Member; Habib and McCoy.

**Staff:** Karen Epps (786-7424)

**Background:** The Whistleblower Act was established to encourage state employees to disclose improper governmental action and to provide protection to employees who report improper action. Whistleblower protection applies to a person who reports alleged improper governmental action in a good faith report to the State Auditor, or a public official, including the Attorney General, the director of the employee's agency, an individual designated to receive whistleblower complaints at the agency where the employee works, or the Executive Ethics Board. Any whistleblower who has been subject to retaliation has a cause of action for remedies provided under the law against discrimination, including injunctive relief, actual damages, and reasonable attorney fees.

A whistleblower is defined as an employee who in good faith reports or who is perceived by the employer as reporting alleged improper governmental action to the auditor or other public official, initiating an investigation by the auditor. Whistleblower also means an employee who:

- in good faith provides information to the auditor or other public official, in connection with a whistleblower investigation;

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- is believed to have reported asserted improper governmental action to the auditor or other public official or to have provided information to the auditor or other public official in connection with a whistleblower investigation but who, in fact, has not reported such action or provided such information; or
- in good faith identifies rules warranting review or provides information to the rules review committee, and an employee who is believed to have identified rules warranting review or provided information to the rules review committee but who, in fact, has not done so.

Improper governmental action includes any action by an employee undertaken in the performance of the employee's official duties which:

- is a gross waste of public funds or resources as defined in this section;
- is in violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature;
- is of substantial and specific danger to the public health or safety;
- is gross mismanagement; or
- prevents the dissemination of scientific opinion or alters technical findings without scientifically valid justification, unless state law or a common law privilege prohibit disclosure.

Improper governmental action does not include personnel actions, for which other remedies exist, such as employee grievances, complaints, reassignments, reductions in pay, dismissals, violations of the state civil service law, alleged labor agreement violations, or claims of discriminatory treatment.

**Summary of Bill:** Improper governmental action includes any action by an employee undertaken in the performance of the employee's official duties that violates the Administrative Procedure Act or other law that prohibits ex parte communications regarding cases or matters pending in which an agency is party between the agency's employee and a presiding officer, hearing officer, or an administrative law judge. The availability of other avenues for addressing ex parte communication does not bar an investigation by the auditor.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: Last year, there was an alleged ex parte communication and whistleblower protection was not afforded in that situation. Whistleblower protection is needed so people will come forward. This bill is a way for an employee to come forward without the threat of losing their job to share what is happening. It is important to hear the good and the bad to make sure that government is doing what is supposed to be doing. Employees should be able to come forward and have protections. This bill will bring back a sense of fairness.

**Persons Testifying:** PRO: Senator Becker, prime sponsor; Bob Battles, Assn. of WA Business.