

HOUSE BILL REPORT

SSB 5374

As Passed House:
April 5, 2017

Title: An act relating to state employee whistleblower protection.

Brief Description: Concerning state employee whistleblower protection.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Becker, Bailey, Rivers, Brown, Miloscia, O'Ban, Warnick, Angel, Honeyford, Padden and Braun).

Brief History:

Committee Activity:

State Government, Elections & Information Technology: 3/15/17, 3/21/17 [DP].

Floor Activity:

Passed House: 4/5/17, 97-0.

Brief Summary of Substitute Bill

- Includes state whistleblower protection for reporting on prohibited ex parte communications between a state employee and a presiding officer or judge in a matter involving the employee's agency.
- Eliminates the requirement that reported misconduct must be investigated by the State Auditor in order to trigger whistleblower protection.

HOUSE COMMITTEE ON STATE GOVERNMENT, ELECTIONS & INFORMATION TECHNOLOGY

Majority Report: Do pass. Signed by 9 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Koster, Ranking Minority Member; Volz, Assistant Ranking Minority Member; Appleton, Gregerson, Irwin, Kraft and Pellicciotti.

Staff: Sean Flynn (786-7124).

Background:

Whistleblower Protection Act. The State Employee Whistleblower Protection Act (WPA) encourages state employees to report improper governmental action by providing protections

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

for whistleblowers against retaliation by his or her employer. Any whistleblower who has been subject to workplace reprisal or retaliation for the disclosure of improper actions has a cause of action for relief as an unfair practice, pursuant to the law against discrimination.

The reported improper governmental action must initiate an investigation by the State Auditor or become part of an existing investigation in order for the employee to receive whistleblower protection. The report must be made to the State Auditor, the Attorney General, the Executive Ethics Board, or to the appropriate person within the employee's agency. Whistleblower protection also covers an employee who is perceived by his or her employer to have reported any alleged improper governmental action, even if the employee did not do so.

An improper government action that is subject to whistleblower protection under the WPA includes any action taken within the performance of an employee's official duties which: constitutes gross mismanagement or waste of public funds or resources; violates a state or federal law or rule; substantially and specifically endangers the public health or safety; or prevents the dissemination of scientific opinion or alters technical findings without scientifically valid justification, unless disclosure is prohibited by state or common law privilege.

Improper government action does not include personnel actions where other remedies exist, including: employee grievances and complaints; promotions; transfers; performance evaluations; reductions in pay; dismissals or suspensions; labor agreement disputes; claims of discriminatory treatment; and matters addressed under the state civil service law.

Ex Parte Communications in Administrative Proceedings. In accordance with the Administrative Procedure Act (APA), certain state agency actions are subject to an adjudicative process that requires an opportunity for hearing before a presiding officer for any party with standing to contest the agency action. A presiding officer is designated by law, which may be the head of the agency, an administrative law judge, or other designated person. Presiding officers are subject to disqualification for bias, prejudice, conflict of interest, or other recognized cause.

Generally, a presiding officer may not communicate with any agency employee, or other interested party, on an issue regarding an adjudicatory proceeding unless notice and opportunity to participate have been provided to all parties. Any such prohibited ex parte communication must be reported by the presiding officer and documented in the record of the adjudicatory proceedings. A presiding officer involved in an ex parte communication may be disqualified from the adjudicatory proceeding when necessary to eliminate the effect of such communication. The agency must report any violations of the ex parte communication prohibition to the appropriate disciplinary authority.

Summary of Bill:

The reportable improper governmental action that triggers WPA protection includes reporting an action that violates the prohibition against ex parte communication under the APA, or analogous provisions of law, between an agency employee and a presiding officer or administrative law judge, in regards to cases or matters to which the employee's agency is a

party. Such an improper action may be investigated by the State Auditor even if other avenues are available for addressing ex parte communications.

Any reported improper governmental action that triggers whistleblower protection does not need to initiate an investigation by the State Auditor or become part of an existing investigation in order for the employee to qualify for protection under the WPA.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 7, 2017.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill promotes transparency and accountability by increasing the grounds for protection under the state whistleblower act. Public employees should be empowered to uncover improper activities, including ex parte communications committed in administrative law proceedings. The identity of the reporting employee should not need to be disclosed through an investigation in order to invoke whistleblower protection.

(Opposed) None.

Persons Testifying: Senator Becker, prime sponsor; Scott Nelson, Office of the State Auditor; Matt Zuvich, Washington Federation of State Employees; and Max Nelson, Freedom Foundation.

Persons Signed In To Testify But Not Testifying: None.