

FINAL BILL REPORT

SSB 5374

C 44 L 17
Synopsis as Enacted

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).

Senate Committee on Law & Justice

House Committee on State Government, Elections & Information Technology

Background: The state Whistleblower Protection Program was established to encourage state employees to report suspected improper governmental action and provide protection to employees who do so. The law makes retaliation against employees who make a report unlawful and authorizes remedies should retaliation occur. The State Auditor's Office is responsible for investigating and reporting assertions of improper governmental conduct.

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

- is in violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature;
- is a gross waste of public funds or resources;
- is of substantial and specific danger to the public health or safety;
- is gross mismanagement; or
- prevents dissemination of scientific opinion or alters technical findings.

Currently, agencies designate a presiding officer to hear and decide an adjudicative proceeding. The presiding officer may be the agency's head, an agency employee designated and trained as a hearing officer, or an administrative law judge who is not the agency's employee. These adjudicative proceedings are governed by the Administrative Procedures Act (APA).

Under the APA, ex-parte communications are generally prohibited with limited exceptions. An ex-parte communication is any direct or indirect communication regarding any issue in the appeal, between the presiding officer and any persons employed by the agency, or between the presiding officer and any person who has an interest in the outcome of the proceeding, without notice and opportunity for all parties to participate. A prohibited ex-parte communication must be disclosed and placed on the record with any responses, and also identifying the persons involved in the communication. A presiding officer receiving a

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prohibited ex-parte communication must allow any party to rebut the communication. A presiding officer who receives a prohibited ex-parte communication may be disqualified and the communication may be sealed. Disciplinary action may be required and sanctions may include a default judgment in the appeal.

Summary: Improper governmental action includes ex-parte communication in a pending matter in which the agency is a party between an agency employee and a presiding officer, hearings officer, or administrative law judge that violates the APA or other similar provisions of law. The availability of other avenues for addressing the ex-parte communication does not bar an investigation by the Auditor. The confidentiality of an employee who reports improper governmental conduct to the Auditor or other public official is protected regardless of whether an investigation is initiated.

Votes on Final Passage:

Senate	49	0
House	97	0

Effective: July 23, 2017