
SENATE BILL 5374

State of Washington

65th Legislature

2017 Regular Session

By Senators Becker, Bailey, Rivers, Brown, Miloscia, O'Ban, Warnick, Angel, Honeyford, Padden, and Braun

Read first time 01/20/17. Referred to Committee on Law & Justice.

1 AN ACT Relating to state employee whistleblower protection; and
2 amending RCW 42.40.020.

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

4 **Sec. 1.** RCW 42.40.020 and 2008 c 266 s 2 are each amended to
5 read as follows:

6 As used in this chapter, the terms defined in this section shall
7 have the meanings indicated unless the context clearly requires
8 otherwise.

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

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

12 (3) "Good faith" means the individual providing the information
13 or report of improper governmental activity has a reasonable basis in
14 fact for reporting or providing the information. An individual who
15 knowingly provides or reports, or who reasonably ought to know he or
16 she is providing or reporting, malicious, false, or frivolous
17 information, or information that is provided with reckless disregard
18 for the truth, or who knowingly omits relevant information is not
19 acting in good faith.

20 (4) "Gross mismanagement" means the exercise of management
21 responsibilities in a manner grossly deviating from the standard of

1 care or competence that a reasonable person would observe in the same
2 situation.

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

7 (6)(a) "Improper governmental action" means any action by an
8 employee undertaken in the performance of the employee's official
9 duties:

10 (i) Which is a gross waste of public funds or resources as
11 defined in this section;

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

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

16 (iv) Which is gross mismanagement; (~~or~~)

17 (v) Which prevents the dissemination of scientific opinion or
18 alters technical findings without scientifically valid justification,
19 unless state law or a common law privilege prohibits disclosure. This
20 provision is not meant to preclude the discretion of agency
21 management to adopt a particular scientific opinion or technical
22 finding from among differing opinions or technical findings to the
23 exclusion of other scientific opinions or technical findings. Nothing
24 in this subsection prevents or impairs a state agency's or public
25 official's ability to manage its public resources or its employees in
26 the performance of their official job duties. This subsection does
27 not apply to de minimis, technical disagreements that are not
28 relevant for otherwise improper governmental activity. Nothing in
29 this provision requires the auditor to contract or consult with
30 external experts regarding the scientific validity, invalidity, or
31 justification of a finding or opinion; or

32 (vi) Which violates the administrative procedure act or analogous
33 provisions of law that prohibit ex parte communication regarding
34 cases or matters pending in which an agency is party between the
35 agency's employee and a presiding officer, hearing officer, or an
36 administrative law judge. The availability of other avenues for
37 addressing ex parte communication by agency employees does not bar an
38 investigation by the auditor.

39 (b) "Improper governmental action" does not include personnel
40 actions, for which other remedies exist, including but not limited to

1 employee grievances, complaints, appointments, promotions, transfers,
2 assignments, reassignments, reinstatements, restorations,
3 reemployments, performance evaluations, reductions in pay,
4 dismissals, suspensions, demotions, violations of the state civil
5 service law, alleged labor agreement violations, reprimands, claims
6 of discriminatory treatment, or any action which may be taken under
7 chapter 41.06 RCW, or other disciplinary action except as provided in
8 RCW 42.40.030.

9 (7) "Public official" means the attorney general's designee or
10 designees; the director, or equivalent thereof in the agency where
11 the employee works; an appropriate number of individuals designated
12 to receive whistleblower reports by the head of each agency; or the
13 executive ethics board.

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

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

27 (10)(a) "Whistleblower" means:

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

32 (ii) An employee who is perceived by the employer as reporting,
33 whether they did or not, alleged improper governmental action to the
34 auditor or other public official, as defined in subsection (7) of
35 this section, initiating an investigation by the auditor under RCW
36 42.40.040.

37 (b) For purposes of the provisions of this chapter and chapter
38 49.60 RCW relating to reprisals and retaliatory action, the term
39 "whistleblower" also means:

1 (i) An employee who in good faith provides information to the
2 auditor or other public official, as defined in subsection (7) of
3 this section, in connection with an investigation under RCW 42.40.040
4 and an employee who is believed to have reported asserted improper
5 governmental action to the auditor or other public official, as
6 defined in subsection (7) of this section, or to have provided
7 information to the auditor or other public official, as defined in
8 subsection (7) of this section, in connection with an investigation
9 under RCW 42.40.040 but who, in fact, has not reported such action or
10 provided such information; or

11 (ii) An employee who in good faith identifies rules warranting
12 review or provides information to the rules review committee, and an
13 employee who is believed to have identified rules warranting review
14 or provided information to the rules review committee but who, in
15 fact, has not done so.

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