
HOUSE BILL 1692

State of Washington

58th Legislature

2003 Regular Session

By Representatives Sullivan and O'Brien

Read first time 02/04/2003. Referred to Committee on Local Government.

1 AN ACT Relating to local government whistleblower protection;
2 amending RCW 42.41.020 and 42.41.030; and adding a new section to
3 chapter 42.41 RCW.

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

5 **Sec. 1.** RCW 42.41.020 and 1994 c 210 s 1 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

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

10 (2) "Emergency" means a circumstance that if not immediately
11 changed may cause damage to persons or property.

12 (3) "Employee" means any individual employed or holding office in
13 any department or agency of local government.

14 (4) "Good faith" means a reasonable basis in fact for the
15 communication. "Good faith" is lacking when the employee knows or
16 reasonably ought to know that the report is malicious, false, or
17 frivolous.

18 (5) "Gross waste of public funds" means to spend or use funds or to

1 allow funds to be used without valuable result in a manner grossly
2 deviating from the standard of care or competence that a reasonable
3 person would observe in the same situation.

4 (6)(a) "Improper governmental action" means any action by a local
5 government officer or employee:

6 (i) That is undertaken in the performance of the officer's or
7 employee's official duties, whether or not the action is within the
8 scope of the employee's employment; and

9 (ii) That is in violation of any federal, state, or local law or
10 rule, is an abuse of authority, is of substantial and specific danger
11 to the public health or safety, or is a gross waste of public funds.

12 (b) "Improper governmental action" does not include personnel
13 actions including but not limited to employee grievances, complaints,
14 appointments, promotions, transfers, assignments, reassignments,
15 reinstatements, restorations, reemployments, performance evaluations,
16 reductions in pay, dismissals, suspensions, demotions, violations of
17 the local government collective bargaining and civil service laws,
18 alleged labor agreement violations, reprimands, or any action that may
19 be taken under chapter 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW
20 or RCW 54.04.170 and 54.04.180.

21 ~~((+2))~~ (7) "Local government" means any governmental entity other
22 than the state, federal agencies, or an operating system established
23 under chapter 43.52 RCW. It includes, but is not limited to cities,
24 counties, school districts, and special purpose districts.

25 ~~((+3))~~ (8) "Retaliatory action" means: (a) Any adverse change in
26 a local government employee's employment status, or the terms and
27 conditions of employment including denial of adequate staff to perform
28 duties, frequent staff changes, frequent and undesirable office
29 changes, refusal to assign meaningful work, unwarranted and
30 unsubstantiated letters of reprimand or unsatisfactory performance
31 evaluations, demotion, transfer, reassignment, reduction in pay, denial
32 of promotion, suspension, dismissal, or any other disciplinary action;
33 or (b) hostile actions by another employee towards a local government
34 employee that were encouraged by a supervisor or senior manager or
35 official.

36 ~~((+4) "Emergency" means a circumstance that if not immediately~~
37 ~~changed may cause damage to persons or property.)~~

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

5 (10) "Use of official authority or influence" includes taking,
6 directing others to take, recommending, processing, or approving any
7 personnel action such as an appointment, promotion, transfer,
8 assignment, reassignment, reinstatement, restoration, reemployment,
9 performance evaluation, or other disciplinary action.

10 (11) "Whistleblower" means an employee who in good faith reports
11 alleged improper governmental action to the appropriate person or
12 persons listed in the policy adopted pursuant to RCW 42.41.030 or to
13 the county prosecuting attorney and the state auditor if the local
14 government has failed to adopt a policy.

15 **Sec. 2.** RCW 42.41.030 and 1995 c 213 s 1 are each amended to read
16 as follows:

17 (1) Every local government employee has the right to report to the
18 appropriate person or persons information concerning an alleged
19 improper governmental action.

20 (2) The governing body or chief administrative officer of each
21 local government shall adopt a policy on the appropriate procedures to
22 follow for reporting such information and shall provide information to
23 their employees on the policy. Local governments are encouraged to
24 consult with their employees on the policy.

25 (3) The policy shall describe the appropriate person or persons
26 within the local government to whom to report information and a list of
27 appropriate person or persons outside the local government to whom to
28 report. The list shall include the county prosecuting attorney and the
29 state auditor.

30 (4) Each local government shall permanently post a summary of the
31 procedures for reporting information on an alleged improper
32 governmental action and the procedures for protection against
33 retaliatory actions described in RCW 42.41.040 in a place where all
34 employees will have reasonable access to it. A copy of the summary
35 shall be made available to any employee upon request.

36 (5) A local government may require as part of its policy that,
37 except in the case of an emergency, before an employee provides

1 information of an improper governmental action to a person or an entity
2 who is not a public official or a person listed pursuant to subsection
3 (3) of this section, the employee shall submit a written report to the
4 local government. Where a local government has adopted such a policy
5 under this section, an employee who fails to make a good faith attempt
6 to follow the policy shall not receive the protections of this chapter.

7 (6) If a local government has failed to adopt a policy as required
8 by subsection (2) of this section, an employee may report alleged
9 improper government action directly to the county prosecuting attorney
10 (~~(or)~~), who must investigate the allegation. If the prosecuting
11 attorney or an employee of the prosecuting attorney participated in the
12 alleged improper government action, an employee may report the alleged
13 improper government action to the state auditor, who must investigate
14 the allegation. The cost incurred by the state auditor in such
15 investigations shall be paid by the local government through the
16 municipal revolving account authorized in RCW 43.09.282.

17 (7) The employee may request that the state auditor investigate the
18 alleged improper governmental action if, after following the procedures
19 adopted by the local government or reporting the alleged improper
20 governmental action to the county prosecuting attorney, the employee
21 receives no response within sixty days of initiating those procedures
22 or making that report, or believes that the allegation was not
23 investigated with due diligence. The state auditor has discretion to
24 decide whether to investigate the alleged improper governmental action.
25 General dissatisfaction with the outcome or results of the
26 investigation is not sufficient reason for the state auditor to
27 investigate the allegation. If the state auditor does investigate the
28 allegation, he or she may consider the procedures provided in RCW
29 42.40.040 as a guide. The cost incurred by the state auditor in such
30 investigations shall be paid by the local government through the
31 municipal revolving account authorized in RCW 43.09.282.

32 (8) The identity of a reporting employee shall be kept confidential
33 to the extent possible under law, unless the employee authorizes the
34 disclosure of his or her identity in writing.

35 NEW SECTION. Sec. 3. A new section is added to chapter 42.41 RCW
36 to read as follows:

37 An employee must make a reasonable attempt to ascertain the

1 correctness of the information furnished and may be subject to
2 disciplinary actions, including, but not limited to, suspension or
3 termination, for knowingly furnishing false information as determined
4 by the employee's appointing authority.

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