

Sec. 17. Section 4, chapter 150, Laws of 1965 and RCW 81.70.030 are each amended to read as follows:

Provisions of this chapter do not apply to:

- (1) Persons operating motor vehicles wholly within the limits of incorporated cities;
- (2) Persons or their lessees, receivers or trustees insofar as they own, control, operate or manage taxicabs, hotel buses or school buses, when operated as such;
- (3) Passenger vehicles carrying passengers on a noncommercial enterprise basis;
- (4) Operators of charter boats operating on waters within or bordering this state; or
- (5) Limousine charter party carriers of passengers under chapter — RCW (sections 1 through 16 of this act).

NEW SECTION. Sec. 18. Sections 1 through 16 of this act shall constitute a new chapter in Title 81 RCW.

Passed the Senate April 20, 1989.

Passed the House April 3, 1989.

Approved by the Governor May 8, 1989.

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CHAPTER 284

[Substitute Senate Bill No. 5173]

STATE AUDITOR—DISCLOSURE OF IMPROPER GOVERNMENTAL ACTIONS—DUTIES

AN ACT Relating to disclosure of improper governmental action; amending RCW 42.40.020, 42.40.030, 42.40.040, 42.40.050, and 42.40.070; and repealing RCW 42.40.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 2, chapter 208, Laws of 1982 and RCW 42.40.020 are each amended to read as follows:

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

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

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

(3) (a) "Improper governmental action" means any action by an employee:

((a)) (i) Which is undertaken in the performance of the employee's official duties, whether or not the action is within the scope of the employee's employment; and

~~((b))~~ (ii) Which is in violation of any state law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.

(b) "Improper governmental action" does not include personnel actions including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the state civil service law, alleged labor agreement violations, reprimands, or any action which may be taken under chapter 41.06 or 28B.16 RCW, or other disciplinary action except as provided in RCW 42.40.030.

(4) "Use of official authority or influence" includes taking, directing others to take, recommending, processing, or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, performance evaluation, or any adverse action under chapter 41.06 or 28B.16 RCW, or other disciplinary action.

Sec. 2. Section 3, chapter 208, Laws of 1982 and RCW 42.40.030 are each amended to read as follows:

(1) An employee shall not directly or indirectly use or attempt to use the employee's official authority or influence for the purpose of intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence any individual for the purpose of interfering with the right of the individual to disclose to the auditor (or representative thereof) information concerning improper governmental action.

~~(2) ((For the purpose of subsection (1) of this section, "use of official authority or influence" includes taking, directing others to take, recommending, processing, or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, performance evaluation, or any adverse action under chapter 41.06 RCW, or other disciplinary action.~~

~~(3))~~ Nothing in this section authorizes an individual to disclose information otherwise prohibited by law.

Sec. 3. Section 4, chapter 208, Laws of 1982 and RCW 42.40.040 are each amended to read as follows:

(1) Upon receiving specific information that an employee has engaged in improper governmental action, the auditor shall, for a period not to exceed thirty days, conduct such preliminary investigation of the matter as the auditor deems appropriate. In conducting the investigation, the identity of the person providing the information which initiated the investigation shall be kept confidential.

(2) In addition to the authority under subsection (1) of this section, the auditor may, on its own initiative, investigate incidents of improper state governmental action.

(3) (a) If it appears to the auditor, upon completion of the preliminary investigation, that the matter is so unsubstantiated that no further investigation, prosecution, or administrative action is warranted, the auditor shall so notify the person, if known, who provided the information initiating the investigation.

(b) The notification shall be by memorandum containing a summary of the information received, a summary of the results of the preliminary investigation with regard to each allegation of improper governmental action, and any determination made by the auditor under (c) of this subsection.

(c) In any case to which this section applies, the identity of the person who provided the information initiating the investigation shall be kept confidential unless the auditor determines that the information has been provided other than in good faith.

(d) If it appears to the auditor that the matter does not meet the definition of an "improper governmental action" under RCW 42.40.020(3), or is other than a gross waste of public funds, the auditor may forward a summary of the allegations to the appropriate agency for investigation and require a response by memorandum containing a summary of the investigation with regard to each allegation and any determination of corrective action taken. The auditor will keep the identity of the person who provided the information initiating the investigation confidential. Upon receipt of the results of the investigation from the appropriate agency, the auditor will notify the provider as prescribed under (a), (b), and (c) of this subsection.

(4) If it appears to the auditor after completion of the preliminary investigation that further investigation, prosecution, or administrative action is warranted, the auditor shall so notify the party, if known, who provided the information initiating the investigation and either conduct further investigations or issue a report under subsection (6) of this section.

(5) (a) At any stage of an investigation under this section the auditor may require by subpoena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the investigation at any designated place in the state. The auditor may issue subpoenas, administer oaths, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpoena, the superior court for the county in which the person to whom the subpoena is addressed resides or is served may issue an order requiring the person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The auditor may order the taking of depositions at any stage of a proceeding or investigation under this chapter. Depositions shall be taken

before an individual designated by the auditor and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

(6) (a) If the auditor determines that there is reasonable cause to believe that an employee has engaged in any improper activity, the auditor shall report the nature and details of the activity to:

(i) The employee and the head of the employing agency; and

(ii) If appropriate, the attorney general or such other authority as the auditor determines appropriate.

(b) The auditor has no enforcement power except that in any case in which the auditor submits a report of alleged improper activity to the head of an agency, the attorney general, or any other individual to which a report has been made under this section, the individual shall report to the auditor with respect to any action taken by the individual regarding the activity, the first report being transmitted no later than thirty days after the date of the auditor's report and monthly thereafter until final action is taken. If the auditor determines that appropriate action is not being taken within a reasonable time, the auditor shall report the determination to the governor and to the legislature.

(7) This section does not limit any authority conferred upon the attorney general or any other agency of government to investigate any matter.

Sec. 4. Section 5, chapter 208, Laws of 1982 and RCW 42.40.050 are each amended to read as follows:

(1) Any employee (a) who provides his or her name and specific information to the auditor on any matter which is found to warrant further investigation or other action, or which is provided by the employee in good faith, as determined by the auditor, whether or not further action is warranted and (b) who is subjected to any reprisal or retaliatory action undertaken during the period beginning on the day after the date on which the specific information is ((provided to the auditor and ending on the date which is two years after the auditor's report on the matter,)) received by the auditor alleging improper governmental action, may seek judicial review of the reprisal or retaliatory action in superior court, whether or not there has been an administrative review of the action. In such an action, the reviewing court may award reasonable attorney's fees.

(2) ~~((The auditor shall, by rule, establish a program which provides that, during the two-year period after a report to the auditor under this chapter, the auditor will contact the employee who provided specific information involved on at least a quarterly basis for purposes of determining))~~ The employee who provided specific information shall notify the state auditor in writing if any changes in the employee's work situation exist which are related to the employee's having provided information. If the auditor has reason to believe that such a change in work situation has occurred, the

auditor shall investigate and report on the matter in accordance with this chapter.

(3) For the purpose of this section "reprisal or retaliatory action" means but is not limited to:

- (a) Denial of adequate staff to perform duties;
- (b) Frequent staff changes;
- (c) Frequent and undesirable office changes;
- (d) Refusal to assign meaningful work;
- (e) Unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;
- (f) Demotion;
- (g) Reduction in pay;
- (h) Denial of promotion;
- (i) Suspension; and
- (j) Dismissal.

Sec. 5. Section 7, chapter 208, Laws of 1982 and RCW 42.40.070 are each amended to read as follows:

A written summary of this chapter and procedures for reporting improper governmental actions established by the auditor's office shall be made available by each department or agency of state government to each employee upon entering public employment. Employees shall be notified by each department or agency of state government each year of the procedures and protections under this chapter.

NEW SECTION. Sec. 6. Section 6, chapter 208, Laws of 1982 and RCW 42.40.060 are each repealed.

Passed the Senate April 17, 1989.

Passed the House April 10, 1989.

Approved by the Governor May 8, 1989.

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CHAPTER 285

[House Bill No. 2142]

CITIES AND TOWNS—PAYMENT OF LITIGATION EXPENSES TO PARTIES PREVAILING IN ACTIONS AGAINST

AN ACT Relating to litigation expenses for actions against cities; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Any city or town that has had a judgment entered against it in any court may, at the discretion of the city or town legislative authority, reimburse a prevailing party or parties for attorneys' fees and related costs, not to exceed twenty-five thousand dollars.