

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Legislative	Mike Fong/5-1675	N/A

Legislation Title: AN ORDINANCE relating to the Whistleblower Protection Code; amending the following sections of the Seattle Municipal Code (SMC): Section 4.20.800 to clarify the legislative purpose, Section 4.20.810 to clarify the rights and responsibilities of employees and the process for reporting, Section 4.20.860 to amend the manner in which allegations of retaliation are reported, investigated and resolved, Section 4.16.070.F adding retaliation to prohibited behavior under the Ethics Code, Section 3.70.010 and Subsection 3.70.100.A redefining the jurisdiction of the Ethics and Elections Commission to include administration of the Whistleblower Protection Code; adding the following new sections to the SMC: Section 4.20.805 containing definitions of terms used in the Whistleblower Protection Code, Section 4.20.870 creating a private cause of action for retaliation against whistleblowers, Section 4.20.875 providing the Ethics and Elections Director investigative tools including subpoena power; repealing the following sections of the SMC: whose content had been replaced by amending or creating other sections, Section 4.20.820 concerning confidentiality provisions, Section 4.20.840 concerning civil penalties, and Section 4.20.850 concerning definitions.

Summary of the Legislation:

The broad purposes of the legislation as proposed by the Seattle Ethics and Elections Commission (SEEC or Commission) are as follows:

- 1) **Strengthens the process and timelines** related to whistleblower and retaliation investigations and adjudication procedures – at times giving the SEEC Director more discretion and injecting more transparency and clarity of actions into the process (including a role for the hearing examiner in retaliation complaints).
 1. Shifts the role of investigations of retaliation claims from the Mayor/Executive Branch to the SEEC Director.
 2. Gives the SEEC Director authority to investigate and pursue retaliation claims in front of the Hearing Examiner, essentially becoming the plaintiff’s attorney.

- 2) **Broadens the definition of protected activity** under the whistleblower code.
 1. Gives employees protection from retaliation if they report improper activity within their departments. Currently protection is only available for retaliation for reports to the SEEC office or other “appropriate auditing official.”
 2. Gives employees protection from retaliation if they have been *perceived* to have blown the whistle and that perception is the cause of the retaliation.

- 3) Strengthens and provides additional guidance on the types of **remedies and penalties** available for addressing retaliation.
 1. Makes retaliation a violation of the City Ethics Code and allows the SEEC to impose fines, if reasonable cause has been found by the Hearing Examiner.
 2. Expands the range of remedies to include those that could be ordered by Superior Court. Currently available remedies include any relief necessary to grant the employee his or her position back and reasonable attorneys' fees, but under this ordinance relief could include remedies like future pay and emotional distress payments (a significant expansion). However, attorneys' fees and emotional distress damages in the administrative process are capped at \$20,000.

- 4) Parallel to the strengthened administrative process, creates an avenue for employees to pursue a **private cause of action** (civil suit in court) if they allege retaliation from being a cooperating employee. This cause of action may only be pursued after the SEEC Executive Director investigates and finds reasonable cause that retaliation has occurred.

Background:

The SEEC last reviewed and recommended changes to the City's Whistleblower code in 1994. Beginning in early 2012, the Commission examined several changes intended to clarify and update the rights and responsibilities of employees, strengthen enforcement and remedies and substantially modify the process of investigations. The policy intent of the Commission was to amend the code in such a way as to improve protections for whistleblowers and create an environment that encourages the reporting of improper governmental activity and enhance the remedies available to those retaliated against for bringing (actual or perceived to have brought) those concerns to light. The Commission voted unanimously on February 6, 2013 to advance legislation to the Council for consideration.

Please check one of the following:

This legislation does not have any financial implications.

(Please skip to "Other Implications" section at the end of the document and answer questions a-h. Earlier sections that are left blank should be deleted. Please delete the instructions provided in parentheses at the end of each question.)

NOTE: Though this legislation does not have direct financial implications through appropriations in this ordinance, the process and procedural changes along with the effort to encourage whistleblower activity and enhance remedies may increase claims of improper governmental activity and/or allegations of retaliation. This may result in additional financial implications in the form of staff and legal resources and the cost of potential financial remedies. Some additional staff time and resources may also be required of SEEC for carrying out trainings for City personnel on the new whistleblower code.

This legislation has financial implications.

(If the legislation has direct fiscal impacts (e.g., appropriations, revenue, positions), fill out the relevant sections below. If the financial implications are indirect or longer-term, describe them in narrative in the "Other Implications" Section. Please delete the instructions provided in parentheses at the end of each title and question.)

Appropriations:

(This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation please provide details in the Appropriation Notes section below. If the appropriation is not supported by revenue/reimbursements, please confirm that there is available fund balance to cover this appropriation in the note section.)

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
TOTAL				

*See budget book to obtain the appropriate Budget Control Level for your department.

Appropriations Notes:

Anticipated Revenue/Reimbursement Resulting from this Legislation:

(This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.)

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
TOTAL				

Revenue/Reimbursement Notes:

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

(This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.)

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
TOTAL							

* 2014 positions and FTE are total 2014 position changes resulting from this legislation, not incremental changes. Therefore, under 2014, please be sure to include any continuing positions from 2013.

Position Notes:

Do positions sunset in the future?

(If yes, identify sunset date)

Spending/Cash Flow:

(This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.)

Fund Name & #	Department	Budget Control Level*	2013 Expenditures	2014 Anticipated Expenditures
TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Spending/Cash Flow Notes:

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

NOTE: Though this legislation does not have direct financial implications through appropriations in this ordinance, the process and procedural changes along with the effort to encourage whistleblower activity and enhance remedies may increase claims of improper governmental activity and/or allegations of retaliation. This may result in additional financial implications in the form of staff and legal resources and the cost of potential financial remedies. Some additional staff time and resources may also be required of SEEC for carrying out trainings for City personnel on the new whistleblower code.

b) What is the financial cost of not implementing the legislation?

Undetermined – but the encouragement of reporting of improper governmental actions could theoretically save the City money on improper expenditures or other violations that have financial implications.

c) Does this legislation affect any departments besides the originating department?

The Whistleblower Code impacts all City employees and departments.

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?

None are identified at this time.

e) Is a public hearing required for this legislation?

No

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No

g) Does this legislation affect a piece of property?

No

h) Other Issues:

List attachments to the fiscal note below: