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HOUSE BILL 2890

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State of Washington

54th Legislature

1996 Regular Session

By Representatives Rust, Scott, Wolfe, Valle, Conway and Chopp; by request of Governor Lowry and State Auditor

Read first time 01/24/96. Referred to Committee on Government Operations.

1 AN ACT Relating to the citizen whistleblower act; amending RCW  
2 42.17.310 and 43.88.160; adding a new chapter to Title 42 RCW; creating  
3 a new section; prescribing penalties; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** PURPOSE. The purpose of this chapter is to  
6 encourage individuals with knowledge of false claims against state  
7 government to provide that information to the state and bring civil  
8 actions against violators without fear of reprisal or retaliatory  
9 action. This chapter is intended to deter persons from knowingly  
10 causing or assisting in causing state government to pay claims that are  
11 false and to provide remedies for obtaining treble damages and civil  
12 penalties for state government.

13 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly  
14 requires otherwise, the definitions in this section apply throughout  
15 this chapter.

16 (1) "Agency" means any official, officer, commission, board,  
17 authority, council, committee, or department of the executive branch of  
18 state government.

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

2 (3) "Claim" includes any request or demand, under a contract or  
3 otherwise, for money, property, or services, that is made to any  
4 employee, officer, or agent of an agency, or to any contractor,  
5 grantee, or other recipient if the agency provides any portion of the  
6 money or property requested or demanded, or if the agency will  
7 reimburse the contractor, grantee, or other recipient for any portion  
8 of the money or property requested or demanded.

9 (4) "Knowing" or "knowingly" means, with respect to information,  
10 that a person: (a) Has actual knowledge of the information; (b) acts in  
11 deliberate ignorance of the truth or falsity of the information; or (c)  
12 acts in reckless disregard of the truth or falsity of the information.  
13 No proof of specific intent to defraud is required. Innocent mistake  
14 is a defense to an action under this chapter.

15 (5) "State government" means the government of the state or any  
16 department, division, bureau, office, institution, commission, board,  
17 authority, agency, or other instrumentality of the state and does not  
18 include any local governmental entity.

19 NEW SECTION. **Sec. 3. FALSE CLAIMS--LIABILITY.** (1) A person is  
20 liable to the state for a civil penalty of not less than five thousand  
21 dollars and not more than ten thousand dollars and for treble the  
22 amount of damages the agency sustains because of the act or omission of  
23 that person if the person:

24 (a) Knowingly presents or causes to be presented to an officer or  
25 employee of an agency a false claim for payment or approval;

26 (b) Knowingly makes, uses, or causes to be made or used a false  
27 record or statement to get a false or fraudulent claim paid or approved  
28 by an agency;

29 (c) Conspires to submit a false claim to an agency or to deceive an  
30 agency for the purpose of getting a false or fraudulent claim allowed  
31 or paid;

32 (d) Has possession, custody, or control of property or money used  
33 or to be used by an agency and, intending to deceive the agency or  
34 knowingly conceal the property, delivers or causes to be delivered less  
35 property than the amount for which the person receives a certificate or  
36 receipt;

37 (e) Is authorized to make or deliver a document certifying receipt  
38 of property used or to be used by an agency and, intending to deceive

1 the agency, makes or delivers the receipt without knowing that the  
2 information on the receipt is true;

3 (f) Knowingly buys or receives, as a pledge of an obligation or a  
4 debt, public property from an officer or employee of an agency who may  
5 not sell or pledge the property lawfully; or

6 (g) Knowingly makes, uses, or causes to be made or used a false  
7 record or statement to conceal, avoid, or decrease an obligation to pay  
8 or transmit money or property to an agency.

9 (2) The court may reduce the treble damages authorized under  
10 subsection (1) of this section if the court finds one or more of the  
11 following specific extenuating circumstances:

12 (a) The person committing the violation furnished officials of the  
13 agency responsible for investigating false claims violations with all  
14 information known to the person about the violation within thirty days  
15 after the date on which the person first obtained the information;

16 (b) The person fully cooperated with any official investigation of  
17 the violation;

18 (c) At the time the person furnished the agency with the  
19 information about the violation, no criminal prosecution, civil action,  
20 or administrative action had commenced under this section with respect  
21 to the violation, and the person did not have actual knowledge of the  
22 existence of an investigation into the violation.

23 (3) If the court reduces the treble damages as provided in  
24 subsection (2) of this section, the court shall award no less than two  
25 times the amount of damages sustained by the agency because of the act  
26 of the person.

27 (4) If treble damages are reduced as provided in subsection (2) of  
28 this section, the court shall set forth in a written order its findings  
29 and basis for reducing the treble damages award.

30 NEW SECTION. **Sec. 4.** CIVIL ACTIONS. (1) The auditor may  
31 investigate violations under section 3 of this act. If the auditor  
32 finds that a person has violated or is violating section 3 of this act,  
33 the auditor may refer the matter to the attorney general. Upon review  
34 of the investigation, the attorney general may bring a civil action  
35 under this chapter.

36 (2) A private person may bring a civil action for violations of  
37 section 3 of this act for the person and the state. The complaint  
38 shall be filed in camera and shall remain under seal for at least

1 ninety days. Immediately upon filing the complaint, a person bringing  
2 such an action shall serve upon the attorney general by registered  
3 mail, return receipt requested, a copy of the complaint and written  
4 disclosure of substantially all material evidence and information the  
5 person possesses. Before the court unseals the complaint under  
6 subsection (4) of this section, the action may be voluntarily dismissed  
7 by the person bringing the action only if the attorney general gives  
8 written consent to the dismissal and its reasons for such consent.

9 (3) The attorney general may elect to intervene and proceed with  
10 the action on behalf of the state within ninety days after receipt of  
11 both the complaint and material evidence and information. The attorney  
12 general may, for good cause shown, request the court to extend the time  
13 during which the complaint remains under seal under subsection (2) of  
14 this section. Any such motion may be supported by affidavits or other  
15 submissions in camera. The complaint shall not be served upon the  
16 defendant until the court so orders.

17 (4) Before the expiration of the ninety-day period or any  
18 extensions under subsection (3) of this section, the attorney general  
19 shall:

20 (a) Proceed with the action, in which case the action is conducted  
21 by the attorney general on behalf of the state; or

22 (b) Notify the court that the attorney general declines to take  
23 action, in which case the person bringing the action has the right to  
24 conduct the action.

25 (5) When a person brings an action under this section, no person  
26 other than the attorney general on behalf of the state may intervene or  
27 bring an action under this chapter based on the facts underlying the  
28 pending action.

29 (6) Any action under this section shall be filed in Thurston county  
30 superior court and conducted pursuant to the Washington rules of civil  
31 procedure.

32 NEW SECTION. **Sec. 5.** SUBPOENAS AND COMPULSORY PROCESS. The state  
33 auditor, his or her employees, and every person legally appointed to  
34 perform such service, may issue subpoenas and compulsory process and  
35 direct the service thereof by any constable or sheriff, compel the  
36 attendance of witnesses and the production of books and papers before  
37 him or her at any designated time and place, and administer oaths.

1       When any person summoned to appear and give testimony neglects or  
2 refuses to do so, or neglects or refuses to answer any question that  
3 may be put to him or her touching any matter under examination, or to  
4 produce any books or papers required, the person making such  
5 examination shall apply to a superior court judge of the proper county  
6 to issue a subpoena for the appearance of such person before him or  
7 her; and the judge shall order the issuance of a subpoena for the  
8 appearance of such person before him or her to give testimony; and if  
9 any person so summoned fails to appear, or appearing, refuses to  
10 testify, or to produce any books or papers required, he or she shall be  
11 subject to like proceedings and penalties for contempt as witnesses in  
12 the superior court. Willful false swearing in any such examination is  
13 perjury and punishable as such.

14       NEW SECTION.   **Sec. 6.**   RIGHTS OF PARTIES.   (1) If the attorney  
15 general proceeds with an action under this chapter, the attorney  
16 general has the primary responsibility for prosecuting the action, and  
17 is not bound by any act of the person bringing the action. The person  
18 bringing the action may continue as a party to the action, subject to  
19 the limitations specified in subsection (2) of this section.

20       (2)(a) The attorney general may dismiss the action notwithstanding  
21 the objections of the person initiating the action if the person has  
22 been notified by the attorney general of the filing of the motion and  
23 the court has provided the person with an opportunity for a hearing on  
24 the motion.

25       (b) This chapter shall not be construed to limit the authority of  
26 the attorney general or the plaintiff to compromise a claim brought in  
27 a complaint filed under this chapter if the court determines, after a  
28 hearing, that the proposed settlement is fair, adequate, and reasonable  
29 under all the circumstances.

30       (c) Upon a showing by the attorney general that unrestricted  
31 participation during the course of the litigation by the person  
32 initiating the action would interfere with or unduly delay the attorney  
33 general's prosecution of the case or would be repetitious, irrelevant,  
34 or for purposes of harassment, the court may, in its discretion, impose  
35 limitations on the person's participation, including, but not limited  
36 to:

37       (i) Limiting the number of witnesses the person may call;

1 (ii) Limiting the length of the testimony of the person's  
2 witnesses;

3 (iii) Limiting the person's cross-examination of witnesses; or

4 (iv) Otherwise limiting the participation by the person in the  
5 litigation.

6 (d) Upon a showing by the defendant that unrestricted participation  
7 during the course of the litigation by the person initiating the action  
8 would be for purposes of harassment or would cause the defendant undue  
9 burden or unnecessary expense, the court may limit the participation by  
10 the person in the litigation.

11 (3) If the attorney general elects not to proceed with the action,  
12 the person who initiated the action may conduct the action. If the  
13 attorney general or the state auditor so requests, it shall be served,  
14 at the requesting agency's expense, with copies of all pleadings and  
15 motions filed in the action and copies of all deposition transcripts.  
16 If a person proceeds with the action, the court, without limiting the  
17 rights of the person initiating the action, may nevertheless permit the  
18 attorney general to intervene and take over the action on behalf of the  
19 state at a later date upon showing of good cause.

20 (4) Whether or not the attorney general proceeds with the action,  
21 upon a showing by the attorney general that certain actions of  
22 discovery by the person initiating the action would interfere with an  
23 investigation by state government or the prosecution of a criminal or  
24 civil matter arising out of the same facts, the court may stay such  
25 discovery for a period of not more than ninety days. Such a showing  
26 shall be conducted in camera. The court may extend the ninety-day  
27 period upon a further showing in camera by the attorney general that  
28 the criminal or civil investigation or proceeding has been pursued with  
29 reasonable diligence and any proposed discovery in the civil action  
30 will interfere with an ongoing criminal or civil investigation or  
31 proceeding.

32 (5) The application of one civil remedy under this chapter does not  
33 preclude the application of any other remedy, civil or criminal, under  
34 this chapter or any other provision of law. Civil remedies under this  
35 chapter are supplemental, not mutually exclusive. Any finding of fact  
36 or conclusion of law made in such other proceeding that has become  
37 final shall be conclusive on all parties to an action under this  
38 section. As used in this subsection, the term "final" means not  
39 subject to judicial review.

1 (6) The auditor or the attorney general may intervene on its own  
2 behalf as a matter of right.

3 NEW SECTION. **Sec. 7.** AWARDS. (1) If the attorney general  
4 proceeds with and prevails in an action brought by a person under this  
5 chapter, except as provided in subsection (2) of this section, the  
6 court shall order the distribution to the person of at least fifteen  
7 percent but not more than twenty-five percent of the proceeds recovered  
8 under any judgment obtained by the attorney general in an action under  
9 section 3 of this act or of the proceeds of any settlement of the  
10 claim, depending upon the extent to which the person substantially  
11 contributed to the prosecution of the action.

12 (2) If the attorney general proceeds with an action that the court  
13 finds to be based primarily on disclosures of specific information  
14 other than that provided by the person bringing the action relating to  
15 allegations or transactions in a criminal, civil, or administrative  
16 hearing; a legislative, administrative, or state auditor report,  
17 hearing, audit, or investigation; or from the news media, the court may  
18 award such sums as it considers appropriate, but in no case more than  
19 ten percent of the proceeds recovered under a judgment or received in  
20 settlement of a claim under this chapter, taking into account the  
21 significance of the information and the role of the person bringing the  
22 action in advancing the case to litigation.

23 (3) If the attorney general does not proceed with an action under  
24 this section, the person bringing the action or settling the claim  
25 shall receive an amount that the court decides is reasonable for  
26 collecting the civil penalty and damages. The amount shall be not less  
27 than twenty-five percent and not more than thirty percent of the  
28 proceeds recovered under a judgment rendered in an action under this  
29 chapter or in settlement of a claim under this chapter.

30 (4) Following any distributions under subsection (1), (2), or (3)  
31 of this section, the agency injured by the submission of a false claim  
32 shall be awarded an amount not to exceed its compensatory damages. Any  
33 remaining proceeds, including civil penalties awarded under section 3  
34 of this act, shall be deposited in the citizens' whistleblower account.

35 (5) Any payment under this section to the person bringing the  
36 action shall be paid only out of the proceeds recovered from the  
37 defendant.

1 (6) Whether or not the attorney general proceeds with the action,  
2 if the court finds that the action was brought by a person who planned  
3 and initiated the violation of section 3 of this act upon which the  
4 action was brought, the court may, to the extent the court considers  
5 appropriate, reduce the share of the proceeds of the action that the  
6 person would otherwise receive under this section, taking into account  
7 the role of the person in advancing the case to litigation and any  
8 relevant circumstances pertaining to the violation. If the person  
9 bringing the action is convicted of criminal conduct arising from his  
10 or her role in the violation of section 3 of this act, the person shall  
11 be dismissed from the civil action and shall not receive any share of  
12 the proceeds of the action. Such dismissal does not prejudice the  
13 right of the attorney general to continue the action.

14 NEW SECTION. **Sec. 8.** EXPENSES--ATTORNEYS' FEES--COSTS. (1) If  
15 the attorney general initiates an action under this chapter or assumes  
16 control of an action brought by a person under this chapter, the  
17 attorney general shall be awarded its reasonable attorneys' fees,  
18 expenses, and costs.

19 (2) If the court awards the person bringing the action proceeds  
20 under this chapter, the person shall also be awarded an amount for  
21 reasonable attorneys' fees and costs. Payment for reasonable  
22 attorneys' fees and costs shall be made in addition to the recovered  
23 proceeds before the distribution of any award.

24 (3) If the attorney general does not proceed with an action under  
25 this chapter and the defendant is the prevailing party, and the court  
26 finds that the claim of the person bringing the action was clearly  
27 frivolous, clearly vexatious, or brought primarily for purposes of  
28 harassment, the court shall award the defendant reasonable attorneys'  
29 fees and costs against the person bringing the action.

30 (4) State government, the affected agency, and the attorney general  
31 shall not incur any liability for any expenses, attorneys' fees, or  
32 other costs incurred by any person in bringing or defending an action  
33 under this chapter.

34 NEW SECTION. **Sec. 9.** EXEMPTIONS TO CIVIL ACTIONS. (1) Courts  
35 shall not have jurisdiction over an action brought under this chapter  
36 against a member of the legislature, a member of the judiciary, or a  
37 senior executive branch official if the action is based on evidence or



1 information known to the state government when the action was brought.  
2 For purposes of this subsection, "senior executive branch official"  
3 means any person employed in the executive branch of government holding  
4 a position in the Washington management service or other exempt  
5 employee.

6 (2) In no event may a person bring an action under section 4 of  
7 this act based upon allegations or transactions that are the subject of  
8 a civil action or an administrative proceeding in which the agency is  
9 already a party.

10 (3) Courts shall not have jurisdiction over an action brought under  
11 this chapter based upon the public disclosure of allegations or  
12 transactions in a criminal, civil, or administrative hearing; in a  
13 legislative, administrative, state auditor, or state treasurer report,  
14 hearing, audit, or investigation; or from the news media, unless the  
15 action is brought by the attorney general or unless the person bringing  
16 the action is an original source of the information. For purposes of  
17 this subsection, the term "original source" means an individual who has  
18 direct and independent knowledge of the information on which the  
19 allegations are based and has voluntarily provided the information to  
20 the attorney general before filing an action under this chapter based  
21 on the information.

22 (4) Courts shall not have jurisdiction over an action where the  
23 person bringing the action under section 4 of this act is an employee  
24 or former employee of state government and the action is based, in  
25 whole or in part, upon information obtained in the course or scope of  
26 the employee's or former employee's regularly assigned  
27 responsibilities.

28 (5) Courts shall not have jurisdiction over an action where the  
29 person bringing the action under section 4 of this act obtained the  
30 information from an employee or former employee of state government who  
31 was not acting in the course or scope of the employee's or former  
32 employee's regularly assigned responsibilities.

33 NEW SECTION. **Sec. 10.** PROTECTION FOR EMPLOYEES. (1) Any person  
34 who is discharged, demoted, suspended, threatened, harassed, or in any  
35 other manner discriminated against because of lawful acts done by the  
36 person on behalf of the person or others in furtherance of an action  
37 under this chapter, including investigation for initiation of,  
38 testimony for, or assistance in an action filed or to be filed under

1 this chapter has a private cause of action against the discriminating  
2 party. The attorney general may bring an action on behalf of a person  
3 acting lawfully under this chapter.

4 NEW SECTION. **Sec. 11.** LIMITATION OF ACTIONS. A civil false claim  
5 action by a private person under this chapter may not be brought:

6 (1) More than five years after the date on which the violation of  
7 section 3 of this act was committed; or

8 (2) More than two years after the date when facts material to the  
9 right of action are known or reasonably should have been known by the  
10 state official charged with responsibility to act in the circumstances,  
11 but in no event more than seven years after the date on which the  
12 violation is committed, whichever occurs last.

13 NEW SECTION. **Sec. 12.** BURDEN OF PROOF. In any false claim action  
14 brought under this chapter, the state or the plaintiff shall prove all  
15 essential elements of the cause of action, including damages, by a  
16 preponderance of the evidence.

17 NEW SECTION. **Sec. 13.** CITIZENS' WHISTLEBLOWER ACCOUNT. The  
18 citizens' whistleblower account is created in the state treasury. All  
19 money received under this chapter shall be deposited into the account.  
20 Moneys in the account may be spent only after appropriation.  
21 Expenditures from the account may be used only for administrative costs  
22 of the auditor's office and the office of the attorney general under  
23 this chapter. The office of the state auditor shall advise the state  
24 treasurer of the amount of funds in excess of the cash requirements  
25 appropriated plus six months' operating allowance as calculated by the  
26 office of the state auditor. A transfer to the general fund on or  
27 before June 30th of each year shall be made of the excess funds by the  
28 state treasurer's office.

29 **Sec. 14.** RCW 42.17.310 and 1995 c 267 s 6 are each amended to read  
30 as follows:

31 (1) The following are exempt from public inspection and copying:

32 (a) Personal information in any files maintained for students in  
33 public schools, patients or clients of public institutions or public  
34 health agencies, or welfare recipients.

1 (b) Personal information in files maintained for employees,  
2 appointees, or elected officials of any public agency to the extent  
3 that disclosure would violate their right to privacy.

4 (c) Information required of any taxpayer in connection with the  
5 assessment or collection of any tax if the disclosure of the  
6 information to other persons would (i) be prohibited to such persons by  
7 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result  
8 in unfair competitive disadvantage to the taxpayer.

9 (d) Specific intelligence information and specific investigative  
10 records compiled by investigative, law enforcement, and penology  
11 agencies, and state agencies vested with the responsibility to  
12 discipline members of any profession, the nondisclosure of which is  
13 essential to effective law enforcement or for the protection of any  
14 person's right to privacy.

15 (e) Information revealing the identity of persons who are witnesses  
16 to or victims of crime or who file complaints with investigative, law  
17 enforcement, or penology agencies, other than the public disclosure  
18 commission, if disclosure would endanger any person's life, physical  
19 safety, or property. If at the time a complaint is filed the  
20 complainant, victim or witness indicates a desire for disclosure or  
21 nondisclosure, such desire shall govern. However, all complaints filed  
22 with the public disclosure commission about any elected official or  
23 candidate for public office must be made in writing and signed by the  
24 complainant under oath.

25 (f) Test questions, scoring keys, and other examination data used  
26 to administer a license, employment, or academic examination.

27 (g) Except as provided by chapter 8.26 RCW, the contents of real  
28 estate appraisals, made for or by any agency relative to the  
29 acquisition or sale of property, until the project or prospective sale  
30 is abandoned or until such time as all of the property has been  
31 acquired or the property to which the sale appraisal relates is sold,  
32 but in no event shall disclosure be denied for more than three years  
33 after the appraisal.

34 (h) Valuable formulae, designs, drawings, and research data  
35 obtained by any agency within five years of the request for disclosure  
36 when disclosure would produce private gain and public loss.

37 (i) Preliminary drafts, notes, recommendations, and intra-agency  
38 memorandums in which opinions are expressed or policies formulated or

1 recommended except that a specific record shall not be exempt when  
2 publicly cited by an agency in connection with any agency action.

3 (j) Records which are relevant to a controversy to which an agency  
4 is a party but which records would not be available to another party  
5 under the rules of pretrial discovery for causes pending in the  
6 superior courts.

7 (k) Records, maps, or other information identifying the location of  
8 archaeological sites in order to avoid the looting or depredation of  
9 such sites.

10 (l) Any library record, the primary purpose of which is to maintain  
11 control of library materials, or to gain access to information, which  
12 discloses or could be used to disclose the identity of a library user.

13 (m) Financial information supplied by or on behalf of a person,  
14 firm, or corporation for the purpose of qualifying to submit a bid or  
15 proposal for (i) a ferry system construction or repair contract as  
16 required by RCW 47.60.680 through 47.60.750 or (ii) highway  
17 construction or improvement as required by RCW 47.28.070.

18 (n) Railroad company contracts filed prior to July 28, 1991, with  
19 the utilities and transportation commission under RCW 81.34.070, except  
20 that the summaries of the contracts are open to public inspection and  
21 copying as otherwise provided by this chapter.

22 (o) Financial and commercial information and records supplied by  
23 private persons pertaining to export services provided pursuant to  
24 chapter 43.163 RCW and chapter 53.31 RCW.

25 (p) Financial disclosures filed by private vocational schools under  
26 chapter 28C.10 RCW.

27 (q) Records filed with the utilities and transportation commission  
28 or attorney general under RCW 80.04.095 that a court has determined are  
29 confidential under RCW 80.04.095.

30 (r) Financial and commercial information and records supplied by  
31 businesses or individuals during application for loans or program  
32 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
33 or during application for economic development loans or program  
34 services provided by any local agency.

35 (s) Membership lists or lists of members or owners of interests of  
36 units in timeshare projects, subdivisions, camping resorts,  
37 condominiums, land developments, or common-interest communities  
38 affiliated with such projects, regulated by the department of  
39 licensing, in the files or possession of the department.

1 (t) All applications for public employment, including the names of  
2 applicants, resumes, and other related materials submitted with respect  
3 to an applicant.

4 (u) The residential addresses and residential telephone numbers of  
5 employees or volunteers of a public agency which are held by the agency  
6 in personnel records, employment or volunteer rosters, or mailing lists  
7 of employees or volunteers.

8 (v) The residential addresses and residential telephone numbers of  
9 the customers of a public utility contained in the records or lists  
10 held by the public utility of which they are customers.

11 (w)(i) The federal social security number of individuals governed  
12 under chapter 18.130 RCW maintained in the files of the department of  
13 health, except this exemption does not apply to requests made directly  
14 to the department from federal, state, and local agencies of  
15 government, and national and state licensing, credentialing,  
16 investigatory, disciplinary, and examination organizations; (ii) the  
17 current residential address and current residential telephone number of  
18 a health care provider governed under chapter 18.130 RCW maintained in  
19 the files of the department, if the provider requests that this  
20 information be withheld from public inspection and copying, and  
21 provides to the department an accurate alternate or business address  
22 and business telephone number. On or after January 1, 1995, the  
23 current residential address and residential telephone number of a  
24 health care provider governed under RCW 18.130.140 maintained in the  
25 files of the department shall automatically be withheld from public  
26 inspection and copying if the provider has provided the department with  
27 an accurate alternative or business address and telephone number.

28 (x) Information obtained by the board of pharmacy as provided in  
29 RCW 69.45.090.

30 (y) Information obtained by the board of pharmacy or the department  
31 of health and its representatives as provided in RCW 69.41.044,  
32 69.41.280, and 18.64.420.

33 (z) Financial information, business plans, examination reports, and  
34 any information produced or obtained in evaluating or examining a  
35 business and industrial development corporation organized or seeking  
36 certification under chapter 31.24 RCW.

37 (aa) Financial and commercial information supplied to the state  
38 investment board by any person when the information relates to the  
39 investment of public trust or retirement funds and when disclosure

1 would result in loss to such funds or in private loss to the providers  
2 of this information.

3 (bb) Financial and valuable trade information under RCW 51.36.120.

4 (cc) Client records maintained by an agency that is a domestic  
5 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape  
6 crisis center as defined in RCW 70.125.030.

7 (dd) Information that identifies a person who, while an agency  
8 employee: (i) Seeks advice, under an informal process established by  
9 the employing agency, in order to ascertain his or her rights in  
10 connection with a possible unfair practice under chapter 49.60 RCW  
11 against the person; and (ii) requests his or her identity or any  
12 identifying information not be disclosed.

13 (ee) Investigative records compiled by an employing agency  
14 conducting a current investigation of a possible unfair practice under  
15 chapter 49.60 RCW or of a possible violation of other federal, state,  
16 or local laws prohibiting discrimination in employment.

17 (ff) Business related information protected from public inspection  
18 and copying under RCW 15.86.110.

19 (gg) Financial, commercial, operations, and technical and research  
20 information and data submitted to or obtained by the clean Washington  
21 center in applications for, or delivery of, program services under  
22 chapter 70.95H RCW.

23 (hh) Information and documents created specifically for, and  
24 collected and maintained by a quality improvement committee pursuant to  
25 RCW 43.70.510, regardless of which agency is in possession of the  
26 information and documents.

27 (ii) Information and working documents obtained or prepared as part  
28 of a complaint or investigation under chapter 42.-- RCW (sections 1  
29 through 13, 16, and 17 of this act).

30 (2) Except for information described in subsection (1)(c)(i) of  
31 this section and confidential income data exempted from public  
32 inspection pursuant to RCW 84.40.020, the exemptions of this section  
33 are inapplicable to the extent that information, the disclosure of  
34 which would violate personal privacy or vital governmental interests,  
35 can be deleted from the specific records sought. No exemption may be  
36 construed to permit the nondisclosure of statistical information not  
37 descriptive of any readily identifiable person or persons.

38 (3) Inspection or copying of any specific records exempt under the  
39 provisions of this section may be permitted if the superior court in

1 the county in which the record is maintained finds, after a hearing  
2 with notice thereof to every person in interest and the agency, that  
3 the exemption of such records is clearly unnecessary to protect any  
4 individual's right of privacy or any vital governmental function.

5 (4) Agency responses refusing, in whole or in part, inspection of  
6 any public record shall include a statement of the specific exemption  
7 authorizing the withholding of the record (or part) and a brief  
8 explanation of how the exemption applies to the record withheld.

9 **Sec. 15.** RCW 43.88.160 and 1994 c 184 s 11 are each amended to  
10 read as follows:

11 This section sets forth the major fiscal duties and  
12 responsibilities of officers and agencies of the executive branch. The  
13 regulations issued by the governor pursuant to this chapter shall  
14 provide for a comprehensive, orderly basis for fiscal management and  
15 control, including efficient accounting and reporting therefor, for the  
16 executive branch of the state government and may include, in addition,  
17 such requirements as will generally promote more efficient public  
18 management in the state.

19 (1) Governor; director of financial management. The governor,  
20 through the director of financial management, shall devise and  
21 supervise a modern and complete accounting system for each agency to  
22 the end that all revenues, expenditures, receipts, disbursements,  
23 resources, and obligations of the state shall be properly and  
24 systematically accounted for. The accounting system shall include the  
25 development of accurate, timely records and reports of all financial  
26 affairs of the state. The system shall also provide for central  
27 accounts in the office of financial management at the level of detail  
28 deemed necessary by the director to perform central financial  
29 management. The director of financial management shall adopt and  
30 periodically update an accounting procedures manual. Any agency  
31 maintaining its own accounting and reporting system shall comply with  
32 the updated accounting procedures manual and the rules of the director  
33 adopted under this chapter. An agency may receive a waiver from  
34 complying with this requirement if the waiver is approved by the  
35 director. Waivers expire at the end of the fiscal biennium for which  
36 they are granted. The director shall forward notice of waivers granted  
37 to the appropriate legislative fiscal committees. The director of  
38 financial management may require such financial, statistical, and other

1 reports as the director deems necessary from all agencies covering any  
2 period.

3 (2) The director of financial management is responsible for  
4 quarterly reporting of primary operating budget drivers such as  
5 applicable workloads, caseload estimates, and appropriate unit cost  
6 data. These reports shall be transmitted to the legislative fiscal  
7 committees or by electronic means to the legislative evaluation and  
8 accountability program committee. Quarterly reports shall include  
9 actual monthly data and the variance between actual and estimated data  
10 to date. The reports shall also include estimates of these items for  
11 the remainder of the budget period.

12 (3) The director of financial management shall report at least  
13 annually to the appropriate legislative committees regarding the status  
14 of all appropriated capital projects, including transportation  
15 projects, showing significant cost overruns or underruns. If funds are  
16 shifted from one project to another, the office of financial management  
17 shall also reflect this in the annual variance report. Once a project  
18 is complete, the report shall provide a final summary showing estimated  
19 start and completion dates of each project phase compared to actual  
20 dates, estimated costs of each project phase compared to actual costs,  
21 and whether or not there are any outstanding liabilities or unsettled  
22 claims at the time of completion.

23 (4) In addition, the director of financial management, as agent of  
24 the governor, shall:

25 (a) Develop and maintain a system of internal controls and internal  
26 audits comprising methods and procedures to be adopted by each agency  
27 that will safeguard its assets, check the accuracy and reliability of  
28 its accounting data, promote operational efficiency, and encourage  
29 adherence to prescribed managerial policies for accounting and  
30 financial controls. The system developed by the director shall include  
31 criteria for determining the scope and comprehensiveness of internal  
32 controls required by classes of agencies, depending on the level of  
33 resources at risk.

34 Each agency head or authorized designee shall be assigned the  
35 responsibility and authority for establishing and maintaining internal  
36 audits following the standards of internal auditing of the institute of  
37 internal auditors;

38 (b) Make surveys and analyses of agencies with the object of  
39 determining better methods and increased effectiveness in the use of



1 manpower and materials; and the director shall authorize expenditures  
2 for employee training to the end that the state may benefit from  
3 training facilities made available to state employees;

4 (c) Establish policies for allowing the contracting of child care  
5 services;

6 (d) Report to the governor with regard to duplication of effort or  
7 lack of coordination among agencies;

8 (e) Review any pay and classification plans, and changes  
9 thereunder, developed by any agency for their fiscal impact: PROVIDED,  
10 That none of the provisions of this subsection shall affect merit  
11 systems of personnel management now existing or hereafter established  
12 by statute relating to the fixing of qualifications requirements for  
13 recruitment, appointment, or promotion of employees of any agency. The  
14 director shall advise and confer with agencies including appropriate  
15 standing committees of the legislature as may be designated by the  
16 speaker of the house and the president of the senate regarding the  
17 fiscal impact of such plans and may amend or alter said plans, except  
18 that for the following agencies no amendment or alteration of said  
19 plans may be made without the approval of the agency concerned:  
20 Agencies headed by elective officials;

21 (f) Fix the number and classes of positions or authorized man years  
22 of employment for each agency and during the fiscal period amend the  
23 determinations previously fixed by the director except that the  
24 director shall not be empowered to fix said number or said classes for  
25 the following: Agencies headed by elective officials;

26 (g) Provide for transfers and repayments between the budget  
27 stabilization account and the general fund as directed by appropriation  
28 and RCW 43.88.525 through 43.88.540;

29 (h) Adopt rules to effectuate provisions contained in (a) through  
30 (g) of this subsection.

31 (5) The treasurer shall:

32 (a) Receive, keep, and disburse all public funds of the state not  
33 expressly required by law to be received, kept, and disbursed by some  
34 other persons: PROVIDED, That this subsection shall not apply to those  
35 public funds of the institutions of higher learning which are not  
36 subject to appropriation;

37 (b) Receive, disburse, or transfer public funds under the  
38 treasurer's supervision or custody;

1 (c) Keep a correct and current account of all moneys received and  
2 disbursed by the treasurer, classified by fund or account;

3 (d) Coordinate agencies' acceptance and use of credit cards and  
4 other payment methods, if the agencies have received authorization  
5 under RCW 43.41.180;

6 (e) Perform such other duties as may be required by law or by  
7 regulations issued pursuant to this law.

8 It shall be unlawful for the treasurer to disburse public funds in  
9 the treasury except upon forms or by alternative means duly prescribed  
10 by the director of financial management. These forms or alternative  
11 means shall provide for authentication and certification by the agency  
12 head or the agency head's designee that the services have been rendered  
13 or the materials have been furnished; or, in the case of loans or  
14 grants, that the loans or grants are authorized by law; or, in the case  
15 of payments for periodic maintenance services to be performed on state  
16 owned equipment, that a written contract for such periodic maintenance  
17 services is currently in effect and copies thereof are on file with the  
18 office of financial management; and the treasurer shall not be liable  
19 under the treasurer's surety bond for erroneous or improper payments so  
20 made. When services are lawfully paid for in advance of full  
21 performance by any private individual or business entity other than as  
22 provided for by RCW 42.24.035, such individual or entity other than  
23 central stores rendering such services shall make a cash deposit or  
24 furnish surety bond coverage to the state as shall be fixed in an  
25 amount by law, or if not fixed by law, then in such amounts as shall be  
26 fixed by the director of the department of general administration but  
27 in no case shall such required cash deposit or surety bond be less than  
28 an amount which will fully indemnify the state against any and all  
29 losses on account of breach of promise to fully perform such services.  
30 No payments shall be made in advance for any equipment maintenance  
31 services to be performed more than three months after such payment.  
32 Any such bond so furnished shall be conditioned that the person, firm  
33 or corporation receiving the advance payment will apply it toward  
34 performance of the contract. The responsibility for recovery of  
35 erroneous or improper payments made under this section shall lie with  
36 the agency head or the agency head's designee in accordance with  
37 regulations issued pursuant to this chapter. Nothing in this section  
38 shall be construed to permit a public body to advance funds to a

1 private service provider pursuant to a grant or loan before services  
2 have been rendered or material furnished.

3 (6) The state auditor shall:

4 (a) Report to the legislature the results of current post audits  
5 that have been made of the financial transactions of each agency; to  
6 this end the auditor may, in the auditor's discretion, examine the  
7 books and accounts of any agency, official or employee charged with the  
8 receipt, custody or safekeeping of public funds. Where feasible in  
9 conducting examinations, the auditor shall utilize data and findings  
10 from the internal control system prescribed by the office of financial  
11 management. The current post audit of each agency may include a  
12 section on recommendations to the legislature as provided in (c) of  
13 this subsection.

14 (b) Give information to the legislature, whenever required, upon  
15 any subject relating to the financial affairs of the state.

16 (c) Make the auditor's official report on or before the thirty-  
17 first of December which precedes the meeting of the legislature. The  
18 report shall be for the last complete fiscal period and shall include  
19 determinations as to whether agencies, in making expenditures, complied  
20 with the laws of this state. The state auditor is authorized to  
21 perform or participate in performance verifications only as expressly  
22 authorized by the legislature in the omnibus biennial appropriations  
23 acts. The state auditor, upon completing an audit for legal and  
24 financial compliance under chapter 43.09 RCW or a performance  
25 verification, may report to the legislative budget committee or other  
26 appropriate committees of the legislature, in a manner prescribed by  
27 the legislative budget committee, on facts relating to the management  
28 or performance of governmental programs where such facts are discovered  
29 incidental to the legal and financial audit or performance  
30 verification. The auditor may make such a report to a legislative  
31 committee only if the auditor has determined that the agency has been  
32 given an opportunity and has failed to resolve the management or  
33 performance issues raised by the auditor. If the auditor makes a  
34 report to a legislative committee, the agency may submit to the  
35 committee a response to the report. This subsection (6) shall not be  
36 construed to authorize the auditor to allocate other than de minimis  
37 resources to performance audits except as expressly authorized in the  
38 appropriations acts.

1 (d) Be empowered to take exception to specific expenditures that  
2 have been incurred by any agency or to take exception to other  
3 practices related in any way to the agency's financial transactions and  
4 to cause such exceptions to be made a matter of public record,  
5 including disclosure to the agency concerned and to the director of  
6 financial management. It shall be the duty of the director of  
7 financial management to cause corrective action to be taken promptly,  
8 such action to include, as appropriate, the withholding of funds as  
9 provided in RCW 43.88.110.

10 (e) Promptly report any irregularities to the attorney general.

11 (f) Investigate improper governmental activity under chapter 42.40  
12 RCW.

13 (g) Investigate violations under chapter 42.-- RCW (sections 1  
14 through 13, 16, and 17 of this act).

15 (7) The legislative budget committee may:

16 (a) Make post audits of the financial transactions of any agency  
17 and management surveys and program reviews as provided for in RCW  
18 44.28.085 as well as performance audits and program evaluations. To  
19 this end the committee may in its discretion examine the books,  
20 accounts, and other records of any agency, official, or employee.

21 (b) Give information to the legislature or any legislative  
22 committee whenever required upon any subject relating to the  
23 performance and management of state agencies.

24 (c) Make a report to the legislature which shall include at least  
25 the following:

26 (i) Determinations as to the extent to which agencies in making  
27 expenditures have complied with the will of the legislature and in this  
28 connection, may take exception to specific expenditures or financial  
29 practices of any agencies; and

30 (ii) Such plans as it deems expedient for the support of the  
31 state's credit, for lessening expenditures, for promoting frugality and  
32 economy in agency affairs and generally for an improved level of fiscal  
33 management.

34 NEW SECTION. **Sec. 16.** SHORT TITLE. This chapter may be known and  
35 cited as the citizen whistleblower act.

36 NEW SECTION. **Sec. 17.** CONSTRUCTION. This chapter shall be  
37 liberally construed to effectuate its remedial and deterrent purposes.

1        NEW SECTION.    **Sec. 18.**    CAPTIONS NOT LAW.    Captions used in this  
2 act do not constitute any part of the law.

3        NEW SECTION.    **Sec. 19.**    Sections 1 through 13, 16, and 17 of this  
4 act constitute a new chapter in Title 42 RCW.

5        NEW SECTION.    **Sec. 20.**    If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9        NEW SECTION.    **Sec. 21.**    This act shall take effect January 1, 1997.

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