
SUBSTITUTE SENATE BILL 6455

State of Washington

54th Legislature

1996 Regular Session

By Senate Committee on Government Operations (originally sponsored by Senators Heavey, Winsley, Rasmussen, Oke, Franklin, Haugen and Kohl; by request of Governor Lowry and State Auditor)

Read first time 02/02/96.

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 knowing that significant
2 information on the receipt is false;

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 (5) This section does not apply to any controversy involving an
31 amount of less than five hundred dollars in value. For purposes of
32 this subsection, "controversy" means any one or more false claims
33 submitted by the same person in violation of this section.

34 NEW SECTION. **Sec. 4.** CIVIL ACTIONS. (1) The auditor may
35 investigate violations under section 3 of this act. The auditor may
36 contract and consult with public and private independent professional
37 and technical experts as necessary in conducting these investigations.
38 The auditor may refer a matter for investigation to an appropriate

1 state agency, which shall report the result of its investigation to the
2 auditor. If the auditor finds that a person has violated or is
3 violating section 3 of this act, the auditor may refer the matter to
4 the attorney general. Upon review of the investigation, the attorney
5 general may bring a civil action under this chapter.

6 (2) A private person may bring a civil action for violations of
7 section 3 of this act for the person and the state. The complaint
8 shall be filed in camera and shall remain under seal for at least
9 ninety days. Immediately upon filing the complaint, a person bringing
10 such an action shall serve upon the attorney general by registered
11 mail, return receipt requested, a copy of the complaint and written
12 disclosure of substantially all material evidence and information the
13 person possesses. Before the court unseals the complaint under
14 subsection (3) of this section, the action may be voluntarily dismissed
15 by the person bringing the action only if the attorney general gives
16 written consent to the dismissal and its reasons for such consent.

17 (3) The attorney general may elect to intervene on behalf of the
18 state as a matter of right and proceed with the action within ninety
19 days after receipt of both the complaint and material evidence and
20 information. The attorney general may, for good cause shown, request
21 the court to extend the time during which the complaint remains under
22 seal under subsection (2) of this section. Any such motion may be
23 supported by affidavits or other submissions in camera. The complaint
24 shall not be unsealed and served upon the defendant until the court so
25 orders.

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

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

31 (b) Notify the court that the attorney general declines to take
32 action, in which case the person bringing the action has the right to
33 conduct the action.

34 (5) When a person brings an action under this section, no person
35 other than the attorney general on behalf of the state may intervene or
36 bring an action under this chapter based on the facts underlying the
37 pending action. If, during the time the complaint is under seal, the
38 attorney general receives notification of another complaint filed by a
39 different person based on the facts underlying the pending action, the

1 attorney general shall give written notice to the party filing
2 subsequently that an action is already proceeding and a subsequent
3 action may not be brought. The notice shall be filed with the court
4 and shall include a statement that the subsequent filing party may
5 request a hearing, in camera, on the issue of whether the subsequent
6 action is, in fact, based on the same facts underlying the pending
7 action. If no hearing is requested within five days of service of the
8 notice, or the court, after a hearing finds that the subsequent action
9 is based on the same facts underlying the pending action, the court
10 shall dismiss the subsequent complaint and order that the filing fee be
11 refunded.

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

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

21 When any person summoned to appear and give testimony neglects or
22 refuses to do so, or neglects or refuses to answer any question that
23 may be put to him or her touching any matter under examination, or to
24 produce any books or papers required, the person making such
25 examination shall apply to a superior court judge of the proper county
26 to issue a subpoena for the appearance of such person before him or
27 her; and the judge shall order the issuance of a subpoena for the
28 appearance of such person before him or her to give testimony; and if
29 any person so summoned fails to appear, or appearing, refuses to
30 testify, or to produce any books or papers required, he or she shall be
31 subject to like proceedings and penalties for contempt as witnesses in
32 the superior court. Willful false swearing in any such examination is
33 perjury and punishable as such.

34 NEW SECTION. **Sec. 6.** RIGHTS OF PARTIES. (1) If the attorney
35 general proceeds with an action under this chapter, the attorney
36 general has the primary responsibility for prosecuting the action, and
37 is not bound by any act of the person bringing the action. The person

1 bringing the action may continue as a party to the action, subject to
2 the limitations specified in subsection (2) of this section.

3 (2)(a) The attorney general may dismiss the action notwithstanding
4 the objections of the person initiating the action if the person has
5 been notified by the attorney general of the filing of the motion and
6 the court has provided the person with an opportunity for a hearing on
7 the motion.

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

13 (c) Upon a showing by the attorney general that unrestricted
14 participation during the course of the litigation by the person
15 initiating the action would interfere with or unduly delay the attorney
16 general's prosecution of the case or would be repetitious, irrelevant,
17 or for purposes of harassment, the court may, in its discretion, impose
18 limitations on the person's participation, including, but not limited
19 to:

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

21 (ii) Limiting the length of the testimony of the person's
22 witnesses;

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

24 (iv) Otherwise limiting the participation by the person in the
25 litigation.

26 (d) Upon a showing by the defendant that unrestricted participation
27 during the course of the litigation by the person initiating the action
28 would be for purposes of harassment or would cause the defendant undue
29 burden or unnecessary expense, the court may limit the participation by
30 the person in the litigation.

31 (3) If the attorney general elects not to proceed with the action,
32 the person who initiated the action may conduct the action. If the
33 attorney general or the state auditor so requests, it shall be served,
34 at the requesting agency's expense, with copies of all pleadings and
35 motions filed in the action and copies of all deposition transcripts.
36 If a person proceeds with the action, the court, without limiting the
37 rights of the person initiating the action, may nevertheless permit the
38 attorney general to intervene and take over the action on behalf of the
39 state at a later date upon showing of good cause.

1 (4) Whether or not the attorney general proceeds with the action,
2 upon a showing by the attorney general that certain actions of
3 discovery by the person initiating the action would interfere with an
4 investigation by state government or the prosecution of a criminal or
5 civil matter arising out of the same facts, the court may stay such
6 discovery for a period of not more than ninety days. Such a showing
7 shall be conducted in camera. The court may extend the ninety-day
8 period upon a further showing in camera by the attorney general that
9 the criminal or civil investigation or proceeding has been pursued with
10 reasonable diligence and any proposed discovery in the civil action
11 will interfere with an ongoing criminal or civil investigation or
12 proceeding.

13 (5) The application of one civil remedy under this chapter does not
14 preclude the application of any other remedy, civil or criminal, under
15 this chapter or any other provision of law. Civil remedies under this
16 chapter are supplemental, not mutually exclusive. Any finding of fact
17 or conclusion of law made in such other proceeding that has become
18 final shall be conclusive on all parties to an action under this
19 section. As used in this subsection, the term "final" means not
20 subject to judicial review.

21 NEW SECTION. **Sec. 7. AWARDS.** (1) If the attorney general
22 proceeds with and prevails in an action brought by a person under this
23 chapter, the court shall order the distribution to the person of not
24 more than twenty-five percent of the proceeds recovered under any
25 judgment obtained by the attorney general in an action under section 3
26 of this act or of the proceeds of any settlement of the claim,
27 depending upon the extent to which the person substantially contributed
28 to the prosecution of the action.

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

36 (3) Following any distributions under subsection (1) or (2) of this
37 section, the agency injured by the submission of a false claim shall be
38 awarded an amount not to exceed its compensatory damages. Any

1 remaining proceeds, including civil penalties awarded under section 3
2 of this act, shall be deposited in the citizens' whistleblower account.

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

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

19 NEW SECTION. **Sec. 8. EXPENSES--ATTORNEYS' FEES--COSTS.** (1) If
20 the attorney general prevails in an action under this chapter, the
21 attorney general shall be awarded reasonable attorneys' fees, expenses,
22 and costs.

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

28 (3) If the defendant is the prevailing party, and the court finds
29 that the claim of the person bringing the action was clearly frivolous,
30 clearly vexatious, or brought primarily for purposes of harassment, the
31 court shall award the defendant reasonable attorneys' fees and costs
32 against the person bringing the action.

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

1 NEW SECTION. **Sec. 9.** EXEMPTIONS TO CIVIL ACTIONS. (1) Courts
2 shall not have jurisdiction over an action brought under this chapter
3 against a member of the legislature, a member of the judiciary, or a
4 senior executive branch official if the action is based on evidence or
5 information known to the state government when the action was brought.
6 For purposes of this subsection, "senior executive branch official"
7 means: (a) Elective officers of the state; (b) the chief executive
8 officer of each agency; (c) members of state boards and commissions,
9 whether elected, appointed by the governor or other authority, serve ex
10 officio, or are otherwise chosen; and (d) members of the governing
11 board of each state institution of higher education.

12 (2) Unless the action is prosecuted by the attorney general on
13 behalf of the state, no court may have jurisdiction of an action under
14 section 4 of this act if:

15 (a) The action is based upon allegations or transactions that are
16 the subject of a pending civil action or an administrative proceeding
17 in which the agency involved in the fraudulent claim is already a
18 party;

19 (b) The action is based upon information obtained by public
20 disclosure in a criminal or civil suit, an administrative hearing, a
21 legislative, administrative, state auditor, or state treasurer report,
22 hearing, or investigation, or in the news media, and the person
23 bringing the action did not have direct and independent knowledge of
24 the information on which the allegations are based; or

25 (c) The person bringing the action is an employee or former
26 employee of state government and the action is based, in whole or in
27 part, upon information obtained in the course or scope of the person's
28 regularly assigned responsibilities as an employee or former employee.

29 NEW SECTION. **Sec. 10.** PROTECTION FROM RETALIATION. (1) Any
30 person who is discharged, demoted, suspended, threatened, harassed, or
31 in any other manner retaliated against because of lawful acts done by
32 the person on behalf of himself, herself, or others in furtherance of
33 an action under this chapter, including any preliminary investigation,
34 shall have a cause of action against the retaliating party for any
35 damages incurred as a result of the retaliation. The attorney general
36 may bring an action on behalf of a person acting lawfully under this
37 section.

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

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

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

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

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

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

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

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

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

34 (c) Information required of any taxpayer in connection with the
35 assessment or collection of any tax if the disclosure of the
36 information to other persons would (i) be prohibited to such persons by

1 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result
2 in unfair competitive disadvantage to the taxpayer.

3 (d) Specific intelligence information and specific investigative
4 records compiled by investigative, law enforcement, and penology
5 agencies, and state agencies vested with the responsibility to
6 discipline members of any profession, the nondisclosure of which is
7 essential to effective law enforcement or for the protection of any
8 person's right to privacy.

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

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

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

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

31 (i) Preliminary drafts, notes, recommendations, and intra-agency
32 memorandums in which opinions are expressed or policies formulated or
33 recommended except that a specific record shall not be exempt when
34 publicly cited by an agency in connection with any agency action.

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

1 (k) Records, maps, or other information identifying the location of
2 archaeological sites in order to avoid the looting or depredation of
3 such sites.

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

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

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

16 (o) Financial and commercial information and records supplied by
17 private persons pertaining to export services provided pursuant to
18 chapter 43.163 RCW and chapter 53.31 RCW.

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

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

24 (r) Financial and commercial information and records supplied by
25 businesses or individuals during application for loans or program
26 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
27 or during application for economic development loans or program
28 services provided by any local agency.

29 (s) Membership lists or lists of members or owners of interests of
30 units in timeshare projects, subdivisions, camping resorts,
31 condominiums, land developments, or common-interest communities
32 affiliated with such projects, regulated by the department of
33 licensing, in the files or possession of the department.

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

37 (u) The residential addresses and residential telephone numbers of
38 employees or volunteers of a public agency which are held by the agency

1 in personnel records, employment or volunteer rosters, or mailing lists
2 of employees or volunteers.

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

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

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

25 (y) Information obtained by the board of pharmacy or the department
26 of health and its representatives as provided in RCW 69.41.044,
27 69.41.280, and 18.64.420.

28 (z) Financial information, business plans, examination reports, and
29 any information produced or obtained in evaluating or examining a
30 business and industrial development corporation organized or seeking
31 certification under chapter 31.24 RCW.

32 (aa) Financial and commercial information supplied to the state
33 investment board by any person when the information relates to the
34 investment of public trust or retirement funds and when disclosure
35 would result in loss to such funds or in private loss to the providers
36 of this information.

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

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

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

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

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

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

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

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

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

35 (3) Inspection or copying of any specific records exempt under the
36 provisions of this section may be permitted if the superior court in
37 the county in which the record is maintained finds, after a hearing
38 with notice thereof to every person in interest and the agency, that

1 the exemption of such records is clearly unnecessary to protect any
2 individual's right of privacy or any vital governmental function.

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

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

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

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

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

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

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

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

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

36 (b) Make surveys and analyses of agencies with the object of
37 determining better methods and increased effectiveness in the use of
38 manpower and materials; and the director shall authorize expenditures

1 for employee training to the end that the state may benefit from
2 training facilities made available to state employees;

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

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

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

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

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

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

30 (5) The treasurer shall:

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

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

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

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

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

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

39 (6) The state auditor shall:

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

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

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

36 (d) Be empowered to take exception to specific expenditures that
37 have been incurred by any agency or to take exception to other
38 practices related in any way to the agency's financial transactions and
39 to cause such exceptions to be made a matter of public record,

1 including disclosure to the agency concerned and to the director of
2 financial management. It shall be the duty of the director of
3 financial management to cause corrective action to be taken promptly,
4 such action to include, as appropriate, the withholding of funds as
5 provided in RCW 43.88.110.

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

7 (f) Investigate improper governmental activity under chapter 42.40
8 RCW.

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

11 (7) The legislative budget committee may:

12 (a) Make post audits of the financial transactions of any agency
13 and management surveys and program reviews as provided for in RCW
14 44.28.085 as well as performance audits and program evaluations. To
15 this end the committee may in its discretion examine the books,
16 accounts, and other records of any agency, official, or employee.

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

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

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

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

30 NEW SECTION. Sec. 16. SHORT TITLE. This chapter may be known and
31 cited as the citizen whistleblower act.

32 NEW SECTION. Sec. 17. CONSTRUCTION. This chapter shall be
33 liberally construed to effectuate its remedial and deterrent purposes.

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

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

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

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

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