
SENATE BILL 6455

State of Washington

54th Legislature

1996 Regular Session

By Senators Heavey, Winsley, Rasmussen, Oke, Franklin, Haugen and Kohl;
by request of Governor Lowry and State Auditor

Read first time 01/15/96. 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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