

CERTIFICATION OF ENROLLMENT

SECOND ENGROSSED SUBSTITUTE SENATE BILL 5121

Chapter 118, Laws of 1992

52nd Legislature
1992 Regular Session

WHISTLEBLOWERS--INVESTIGATION OF REPORTS AND PROTECTION FROM
RETALIATION

EFFECTIVE DATE: 6/11/92 - Except Section 8 which becomes effective
on 4/1/92.

Passed by the Senate February 14, 1992
Yeas 44 Nays 0

JOEL PRITCHARD

President of the Senate

Passed by the House March 9, 1992
Yeas 96 Nays 0

JOE KING

**Speaker of the
House of Representatives**

Approved March 31, 1992

BOOTH GARDNER

Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
**SECOND ENGROSSED SUBSTITUTE SENATE
BILL 5121** as passed by the Senate and
the House of Representatives on the
dates hereon set forth.

GORDON A. GOLOB

Secretary

FILED

March 31, 1992 - 12:16 p.m.

**Secretary of State
State of Washington**

SECOND ENGROSSED SUBSTITUTE SENATE BILL 5121

Passed Legislature - 1992 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By Senate Committee on Governmental Operations (originally sponsored by Senators Metcalf, Talmadge, McCaslin, Owen, Thorsness, Vognild, Rinehart, Sellar, L. Smith, Sutherland, Roach, Amondson, Hayner, Rasmussen, Bailey, Moore, Barr, Oke, Wojahn, Nelson, von Reichbauer, Bauer, Gaspard, L. Kreidler, Johnson, Stratton, Skratek and Erwin).

Read first time February 19, 1991.

1 AN ACT Relating to improper governmental action; amending RCW
2 42.40.020, 42.40.040, 42.40.050, 49.60.210, 49.60.250, 43.09.050, and
3 43.88.160; reenacting and amending RCW 43.88.160; prescribing
4 penalties; making an appropriation; providing an effective date; and
5 providing an expiration date.

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

7 **Sec. 1.** RCW 42.40.020 and 1989 c 284 s 1 are each amended to read
8 as follows:

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

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

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

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

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

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

9 (b) "Improper governmental action" does not include personnel
10 actions including but not limited to employee grievances, complaints,
11 appointments, promotions, transfers, assignments, reassignments,
12 reinstatements, restorations, reemployments, performance evaluations,
13 reductions in pay, dismissals, suspensions, demotions, violations of
14 the state civil service law, alleged labor agreement violations,
15 reprimands, or any action which may be taken under chapter 41.06 or
16 28B.16 RCW, or other disciplinary action except as provided in RCW
17 42.40.030.

18 (4) "Use of official authority or influence" includes taking,
19 directing others to take, recommending, processing, or approving any
20 personnel action such as an appointment, promotion, transfer,
21 assignment, reassignment, reinstatement, restoration, reemployment,
22 performance evaluation, or any adverse action under chapter 41.06 or
23 28B.16 RCW, or other disciplinary action.

24 (5) "Whistleblower" means an employee who in good faith reports
25 alleged improper governmental action to the auditor, initiating an
26 investigation under RCW 42.40.040. For purposes of the provisions of
27 this chapter and chapter 49.60 RCW relating to reprisals and
28 retaliatory action, the term "whistleblower" also means an employee who
29 in good faith provides information to the auditor in connection with an
30 investigation under RCW 42.40.040 and an employee who is believed to

1 have reported alleged improper governmental action to the auditor or to
2 have provided information to the auditor in connection with an
3 investigation under RCW 42.40.040 but who, in fact, has not reported
4 such action or provided such information.

5 **Sec. 2.** RCW 42.40.040 and 1989 c 284 s 3 are each amended to read
6 as follows:

7 (1) Upon receiving specific information that an employee has
8 engaged in improper governmental action, the auditor shall, within five
9 working days of receipt of the information, mail written
10 acknowledgement to the whistleblower at the address provided. For a
11 period not to exceed thirty days, the auditor shall conduct such
12 preliminary investigation of the matter as the auditor deems
13 appropriate. In conducting the investigation, the identity of the
14 ~~((person providing the information which initiated the investigation))~~
15 whistleblower shall be kept confidential.

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

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

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

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

5 (d) If it appears to the auditor that the matter does not meet the
6 definition of an "improper governmental action" under RCW 42.40.020(3),
7 or is other than a gross waste of public funds, the auditor may forward
8 a summary of the allegations to the appropriate agency for
9 investigation and require a response by memorandum (~~containing~~) no
10 later than thirty days after the allegations are received from the
11 auditor. The response shall contain a summary of the investigation
12 with regard to each allegation and any determination of corrective
13 action taken. The auditor will keep the identity of the (~~person who~~
14 ~~provided the information initiating the investigation~~) whistleblower
15 confidential. Upon receipt of the results of the investigation from
16 the appropriate agency, the auditor will notify the (~~provider~~)
17 whistleblower as prescribed under (a), (b), and (c) of this subsection.

18 (4) If it appears to the auditor after completion of the
19 preliminary investigation that further investigation, prosecution, or
20 administrative action is warranted, the auditor shall so notify the
21 (~~party, if known, who provided the information initiating the~~
22 ~~investigation~~) whistleblower and either conduct further investigations
23 or issue a report under subsection (6) of this section. Within sixty
24 days after the thirty-day period in subsection (1) of this section, the
25 auditor shall complete the investigation and report its findings to the
26 whistleblower unless written justification for the delay is furnished
27 to the whistleblower. In all such cases, the report of the auditor's
28 investigation and findings shall be sent to the whistleblower within
29 one year after the information was filed under subsection (1) of this
30 section.

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

12 (b) The auditor may order the taking of depositions at any stage of
13 a proceeding or investigation under this chapter. Depositions shall be
14 taken before an individual designated by the auditor and having the
15 power to administer oaths. Testimony shall be reduced to writing by or
16 under the direction of the individual taking the deposition and shall
17 be subscribed by the deponent.

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

- 21 (i) The employee and the head of the employing agency; and
22 (ii) If appropriate, the attorney general or such other authority
23 as the auditor determines appropriate.

24 (b) The auditor has no enforcement power except that in any case in
25 which the auditor submits a report of alleged improper activity to the
26 head of an agency, the attorney general, or any other individual to
27 which a report has been made under this section, the individual shall
28 report to the auditor with respect to any action taken by the
29 individual regarding the activity, the first report being transmitted
30 no later than thirty days after the date of the auditor's report and

1 monthly thereafter until final action is taken. If the auditor
2 determines that appropriate action is not being taken within a
3 reasonable time, the auditor shall report the determination to the
4 governor and to the legislature.

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

8 **Sec. 3.** RCW 42.40.050 and 1989 c 284 s 4 are each amended to read
9 as follows:

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

21 ~~(2) The employee who provided specific information shall notify the~~
22 ~~state auditor in writing if any changes in the employee's work~~
23 ~~situation exist which are related to the employee's having provided~~
24 ~~information. If the auditor has reason to believe that such a change~~
25 ~~in work situation has occurred, the auditor shall investigate and~~
26 ~~report on the matter in accordance with this chapter.~~

27 ~~(3)) Any person who is a whistleblower, as defined in RCW~~
28 ~~42.40.020, and who as a result of being a whistleblower has been~~
29 ~~subjected to workplace reprisal or retaliatory action has the remedies~~

1 provided under chapter 49.60 RCW. For the purpose of this section

2 "reprisal or retaliatory action" means but is not limited to:

3 ~~((a))~~ (1) Denial of adequate staff to perform duties;

4 ~~((b))~~ (2) Frequent staff changes;

5 ~~((c))~~ (3) Frequent and undesirable office changes;

6 ~~((d))~~ (4) Refusal to assign meaningful work;

7 ~~((e))~~ (5) Unwarranted and unsubstantiated letters of reprimand or
8 unsatisfactory performance evaluations;

9 ~~((f))~~ (6) Demotion;

10 ~~((g))~~ (7) Reduction in pay;

11 ~~((h))~~ (8) Denial of promotion;

12 ~~((i))~~ (9) Suspension; ~~((and~~

13 ~~((j))~~) (10) Dismissal;

14 (11) Denial of employment; and

15 (12) A supervisor or superior encouraging coworkers to behave in a
16 hostile manner toward the whistleblower.

17 Nothing in this section prohibits an agency from making any
18 decision exercising its authority to terminate, suspend, or discipline
19 an employee who engages in workplace reprisal or retaliatory action
20 against a whistleblower. However, the agency also shall implement any
21 order under chapter 49.60 RCW (other than an order of suspension if the
22 agency has terminated the retaliator).

23 **Sec. 4.** RCW 49.60.210 and 1985 c 185 s 18 are each amended to read
24 as follows:

25 (1) It is an unfair practice for any employer, employment agency,
26 labor union, or other person to discharge, expel, or otherwise
27 discriminate against any person because he or she has opposed any
28 practices forbidden by this chapter, or because he or she has filed a
29 charge, testified, or assisted in any proceeding under this chapter.

1 (2) It is an unfair practice for a government agency or government
2 manager or supervisor to retaliate against a whistleblower as defined
3 in chapter 42.40 RCW.

4 **Sec. 5.** RCW 49.60.250 and 1989 c 175 s 115 are each amended to
5 read as follows:

6 (1) In case of failure to reach an agreement for the elimination of
7 such unfair practice, and upon the entry of findings to that effect,
8 the entire file, including the complaint and any and all findings made,
9 shall be certified to the chairperson of the commission. The
10 chairperson of the commission shall thereupon request the appointment
11 of an administrative law judge under Title 34 RCW to hear the complaint
12 and shall cause to be issued and served in the name of the commission
13 a written notice, together with a copy of the complaint, as the same
14 may have been amended, requiring the respondent to answer the charges
15 of the complaint at a hearing before the administrative law judge, at
16 a time and place to be specified in such notice.

17 (2) The place of any such hearing may be the office of the
18 commission or another place designated by it. The case in support of
19 the complaint shall be presented at the hearing by counsel for the
20 commission: PROVIDED, That the complainant may retain independent
21 counsel and submit testimony and be fully heard. No member or employee
22 of the commission who previously made the investigation or caused the
23 notice to be issued shall participate in the hearing except as a
24 witness, nor shall the member or employee participate in the
25 deliberations of the administrative law judge in such case. Any
26 endeavors or negotiations for conciliation shall not be received in
27 evidence.

28 (3) The respondent shall file a written answer to the complaint and
29 appear at the hearing in person or otherwise, with or without counsel,

1 and submit testimony and be fully heard. The respondent has the right
2 to cross-examine the complainant.

3 (4) The administrative law judge conducting any hearing may permit
4 reasonable amendment to any complaint or answer. Testimony taken at
5 the hearing shall be under oath and recorded.

6 (5) If, upon all the evidence, the administrative law judge finds
7 that the respondent has engaged in any unfair practice, the
8 administrative law judge shall state findings of fact and shall issue
9 and file with the commission and cause to be served on such respondent
10 an order requiring such respondent to cease and desist from such unfair
11 practice and to take such affirmative action, including, (but not
12 limited to) hiring, reinstatement or upgrading of employees, with or
13 without back pay, an admission or restoration to full membership rights
14 in any respondent organization, or to take such other action as, in the
15 judgment of the administrative law judge, will effectuate the purposes
16 of this chapter, including action that could be ordered by a court,
17 except that damages for humiliation and mental suffering shall not
18 exceed one thousand dollars, and including a requirement for report of
19 the matter on compliance.

20 (6) If a determination is made that retaliatory action, as defined
21 in RCW 42.40.050, has been taken against a whistleblower, as defined in
22 RCW 42.40.020, the administrative law judge may, in addition to any
23 other remedy, impose a civil penalty upon the retaliator of up to three
24 thousand dollars and issue an order to the state employer to suspend
25 the retaliator for up to thirty days without pay. At a minimum, the
26 administrative law judge shall require that a letter of reprimand be
27 placed in the retaliator's personnel file. All penalties recovered
28 shall be paid into the state treasury and credited to the general fund.

29 (7) The final order of the administrative law judge shall include
30 a notice to the parties of the right to obtain judicial review of the

1 order by appeal in accordance with the provisions of RCW 34.05.510
2 through 34.05.598, and that such appeal must be served and filed within
3 thirty days after the service of the order on the parties.

4 ~~((+7))~~ (8) If, upon all the evidence, the administrative law judge
5 finds that the respondent has not engaged in any alleged unfair
6 practice, the administrative law judge shall state findings of fact and
7 shall similarly issue and file an order dismissing the complaint.

8 ~~((+8))~~ (9) An order dismissing a complaint may include an award of
9 reasonable attorneys' fees in favor of the respondent if the
10 administrative law judge concludes that the complaint was frivolous,
11 unreasonable, or groundless.

12 ~~((+9))~~ (10) The commission shall establish rules of practice to
13 govern, expedite, and effectuate the foregoing procedure.

14 **Sec. 6.** RCW 43.09.050 and 1979 c 151 s 91 are each amended to read
15 as follows:

16 The auditor shall:

17 (1) Except as otherwise specifically provided by law, audit the
18 accounts of all collectors of the revenue and other holders of public
19 money required by law to pay the same into the treasury;

20 (2) In his or her discretion, inspect the books of any person
21 charged with the receipt, safekeeping, and disbursement of public
22 moneys;

23 (3) Investigate improper governmental activity under chapter 42.40
24 RCW;

25 (4) Inform the attorney general in writing of the necessity for
26 ~~((him))~~ the attorney general to direct prosecutions in the name of the
27 state for all official delinquencies in relation to the assessment,
28 collection, and payment of the revenue, against all persons who, by any

1 means, become possessed of public money or property, and fail to pay
2 over or deliver the same, and against all debtors of the state;

3 ~~((4))~~ (5) Give information in writing to the legislature,
4 whenever required, upon any subject relating to the financial affairs
5 of the state, or touching any duties of his or her office;

6 ~~((5))~~ (6) Report to the director of financial management in
7 writing the names of all persons who have received any moneys belonging
8 to the state, and have not accounted therefor;

9 ~~((6))~~ (7) Authenticate with his or her official seal papers
10 issued from his or her office;

11 ~~((7))~~ (8) Make his or her official report annually on or before
12 the 31st of December.

13 **Sec. 7.** RCW 43.88.160 and 1987 c 505 s 36 and 1987 c 436 s 1 are
14 each reenacted and amended to read as follows:

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

23 (1) Governor; director of financial management. The governor,
24 through the director of financial management, shall devise and
25 supervise a modern and complete accounting system for each agency to
26 the end that all revenues, expenditures, receipts, disbursements,
27 resources and obligations of the state shall be properly and
28 systematically accounted for. The accounting system shall include the
29 development of accurate, timely records and reports of all financial

1 affairs of the state. The system shall also provide for central
2 accounts in the office of financial management at the level of detail
3 deemed necessary by the director to perform central financial
4 management. The director of financial management shall adopt and
5 periodically update an accounting procedures manual. Any agency
6 maintaining its own accounting and reporting system shall comply with
7 the updated accounting procedures manual and the rules of the director
8 adopted under this chapter. An agency may receive a waiver from
9 complying with this requirement if the waiver is approved by the
10 director. Waivers expire at the end of the fiscal biennium for which
11 they are granted. The director shall forward notice of waivers granted
12 to the legislative fiscal committees. The director of financial
13 management may require such financial, statistical, and other reports
14 as the director deems necessary from all agencies covering any period.

15 The director of financial management is responsible for quarterly
16 reporting of primary budget drivers such as applicable workloads,
17 caseload estimates, and appropriate unit cost data. These reports
18 shall be transmitted to the legislative fiscal committees or by
19 electronic means to the legislative evaluation and accountability
20 program committee. Quarterly reports shall include actual monthly data
21 and the variance between actual and estimated data to date. The
22 reports shall also include estimates of these items for the remainder
23 of the budget period.

24 In addition, the director of financial management, as agent of the
25 governor, shall:

26 (a) Make surveys and analyses of agencies with the object of
27 determining better methods and increased effectiveness in the use of
28 manpower and materials; and the director shall authorize expenditures
29 for employee training to the end that the state may benefit from
30 training facilities made available to state employees;

1 (b) Report to the governor with regard to duplication of effort or
2 lack of coordination among agencies;

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

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

21 (e) Provide for transfers and repayments between the budget
22 stabilization account and the general fund as directed by appropriation
23 and RCW 43.88.525 through 43.88.540;

24 (f) Promulgate regulations to effectuate provisions contained in
25 (~~subsections~~) (a) through (e) (~~hereof~~) of this subsection.

26 (2) The treasurer shall:

27 (a) Receive, keep and disburse all public funds of the state not
28 expressly required by law to be received, kept and disbursed by some
29 other persons: PROVIDED, That this subsection shall not apply to those

1 public funds of the institutions of higher learning which are not
2 subject to appropriation;

3 (b) Disburse public funds under the treasurer's supervision or
4 custody by warrant or check;

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

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

9 It shall be unlawful for the treasurer to issue any warrant or
10 check for public funds in the treasury except upon forms duly
11 prescribed by the director of financial management. Said forms shall
12 provide for authentication and certification by the agency head or the
13 agency head's designee that the services have been rendered or the
14 materials have been furnished; or, in the case of loans or grants, that
15 the loans or grants are authorized by law; or, in the case of payments
16 for periodic maintenance services to be performed on state owned
17 equipment, that a written contract for such periodic maintenance
18 services is currently in effect and copies thereof are on file with the
19 office of financial management; and the treasurer shall not be liable
20 under the treasurer's surety bond for erroneous or improper payments so
21 made: PROVIDED, That when services are lawfully paid for in advance of
22 full performance by any private individual or business entity other
23 than as provided for by RCW 42.24.035, such individual or entity other
24 than central stores rendering such services shall make a cash deposit
25 or furnish surety bond coverage to the state as shall be fixed in an
26 amount by law, or if not fixed by law, then in such amounts as shall be
27 fixed by the director of the department of general administration but
28 in no case shall such required cash deposit or surety bond be less than
29 an amount which will fully indemnify the state against any and all
30 losses on account of breach of promise to fully perform such services:

1 AND PROVIDED FURTHER, That no payments shall be made in advance for any
2 equipment maintenance services to be performed more than three months
3 after such payment. Any such bond so furnished shall be conditioned
4 that the person, firm or corporation receiving the advance payment will
5 apply it toward performance of the contract. The responsibility for
6 recovery of erroneous or improper payments made under this section
7 shall lie with the agency head or the agency head's designee in
8 accordance with regulations issued pursuant to this chapter. Nothing
9 in this section shall be construed to permit a public body to advance
10 funds to a private service provider pursuant to a grant or loan before
11 services have been rendered or material furnished.

12 (3) The state auditor shall:

13 (a) Report to the legislature the results of current post audits
14 that have been made of the financial transactions of each agency; to
15 this end the auditor may, in the auditor's discretion, examine the
16 books and accounts of any agency, official or employee charged with the
17 receipt, custody or safekeeping of public funds. The current post
18 audit of each agency may include a section on recommendations to the
19 legislature as provided in (c) of this subsection (~~((3)(c) of this~~
20 ~~section))~~).

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

23 (c) Make the auditor's official report on or before the thirty-
24 first of December which precedes the meeting of the legislature. The
25 report shall be for the last complete fiscal period and shall include
26 at least the following:

27 Determinations as to whether agencies, in making expenditures,
28 complied with the laws of this state: PROVIDED, That nothing in this
29 act shall be construed to grant the state auditor the right to perform
30 performance audits. A performance audit for the purpose of this act

1 shall be the examination of the effectiveness of the administration,
2 its efficiency and its adequacy in terms of the programs of departments
3 or agencies as previously approved by the legislature. The authority
4 and responsibility to conduct such an examination shall be vested in
5 the legislative budget committee as prescribed in RCW 44.28.085 as now
6 or hereafter amended.

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

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

17 (f) Investigate improper governmental activity under chapter 42.40
18 RCW.

19 (4) The legislative budget committee may:

20 (a) Make post audits of the financial transactions of any agency
21 and management surveys and program reviews as provided for in RCW
22 44.28.085 as now or hereafter amended. To this end the committee may
23 in its discretion examine the books, accounts, and other records of any
24 agency, official, or employee.

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

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

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

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

9 **Sec. 8.** RCW 43.88.160 and 1991 c 358 s 4 are each amended to read
10 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

1 periodically update an accounting procedures manual. Any agency
2 maintaining its own accounting and reporting system shall comply with
3 the updated accounting procedures manual and the rules of the director
4 adopted under this chapter. An agency may receive a waiver from
5 complying with this requirement if the waiver is approved by the
6 director. Waivers expire at the end of the fiscal biennium for which
7 they are granted. The director shall forward notice of waivers granted
8 to the appropriate legislative fiscal committees. The director of
9 financial management may require such financial, statistical, and other
10 reports as the director deems necessary from all agencies covering any
11 period.

12 (2) The director of financial management is responsible for
13 quarterly reporting of primary operating budget drivers such as
14 applicable workloads, caseload estimates, and appropriate unit cost
15 data. These reports shall be transmitted to the legislative fiscal
16 committees or by electronic means to the legislative evaluation and
17 accountability program committee. Quarterly reports shall include
18 actual monthly data and the variance between actual and estimated data
19 to date. The reports shall also include estimates of these items for
20 the remainder of the budget period.

21 (3) The director of financial management shall report at least
22 annually to the appropriate legislative committees regarding the status
23 of all appropriated capital projects, including transportation
24 projects, showing significant cost overruns or underruns. If funds are
25 shifted from one project to another, the office of financial management
26 shall also reflect this in the annual variance report. Once a project
27 is complete, the report shall provide a final summary showing estimated
28 start and completion dates of each project phase compared to actual
29 dates, estimated costs of each project phase compared to actual costs,

1 and whether or not there are any outstanding liabilities or unsettled
2 claims at the time of completion.

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

5 (a) Make surveys and analyses of agencies with the object of
6 determining better methods and increased effectiveness in the use of
7 manpower and materials; and the director shall authorize expenditures
8 for employee training to the end that the state may benefit from
9 training facilities made available to state employees;

10 (b) Report to the governor with regard to duplication of effort or
11 lack of coordination among agencies;

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

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

1 (e) Provide for transfers and repayments between the budget
2 stabilization account and the general fund as directed by appropriation
3 and RCW 43.88.525 through 43.88.540;

4 (f) Promulgate regulations to effectuate provisions contained in
5 (~~subsections~~) (a) through (e) (~~hereof~~) of this subsection.

6 (5) The treasurer shall:

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

12 (b) Disburse public funds under the treasurer's supervision or
13 custody by warrant or check;

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

16 (d) Perform such other duties as may be required by law or by
17 regulations issued pursuant to this law.

18 It shall be unlawful for the treasurer to issue any warrant or
19 check for public funds in the treasury except upon forms duly
20 prescribed by the director of financial management. Said forms shall
21 provide for authentication and certification by the agency head or the
22 agency head's designee that the services have been rendered or the
23 materials have been furnished; or, in the case of loans or grants, that
24 the loans or grants are authorized by law; or, in the case of payments
25 for periodic maintenance services to be performed on state owned
26 equipment, that a written contract for such periodic maintenance
27 services is currently in effect and copies thereof are on file with the
28 office of financial management; and the treasurer shall not be liable
29 under the treasurer's surety bond for erroneous or improper payments so
30 made: PROVIDED, That when services are lawfully paid for in advance of

1 full performance by any private individual or business entity other
2 than as provided for by RCW 42.24.035, such individual or entity other
3 than central stores rendering such services shall make a cash deposit
4 or furnish surety bond coverage to the state as shall be fixed in an
5 amount by law, or if not fixed by law, then in such amounts as shall be
6 fixed by the director of the department of general administration but
7 in no case shall such required cash deposit or surety bond be less than
8 an amount which will fully indemnify the state against any and all
9 losses on account of breach of promise to fully perform such services:
10 AND PROVIDED FURTHER, That no payments shall be made in advance for any
11 equipment maintenance services to be performed more than three months
12 after such payment. Any such bond so furnished shall be conditioned
13 that the person, firm or corporation receiving the advance payment will
14 apply it toward performance of the contract. The responsibility for
15 recovery of erroneous or improper payments made under this section
16 shall lie with the agency head or the agency head's designee in
17 accordance with regulations issued pursuant to this chapter. Nothing
18 in this section shall be construed to permit a public body to advance
19 funds to a private service provider pursuant to a grant or loan before
20 services have been rendered or material furnished.

21 (6) The state auditor shall:

22 (a) Report to the legislature the results of current post audits
23 that have been made of the financial transactions of each agency; to
24 this end the auditor may, in the auditor's discretion, examine the
25 books and accounts of any agency, official or employee charged with the
26 receipt, custody or safekeeping of public funds. The current post
27 audit of each agency may include a section on recommendations to the
28 legislature as provided in (c) of this subsection.

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

1 (c) Make the auditor's official report on or before the thirty-
2 first of December which precedes the meeting of the legislature. The
3 report shall be for the last complete fiscal period and shall include
4 at least the following:

5 Determinations as to whether agencies, in making expenditures,
6 complied with the laws of this state: PROVIDED, That nothing in this
7 section may be construed to grant the state auditor the right to
8 perform performance audits. A performance audit for the purpose of
9 this section is the examination of the effectiveness of the
10 administration, its efficiency, and its adequacy in terms of the
11 programs of departments or agencies as previously approved by the
12 legislature. The authority and responsibility to conduct such an
13 examination shall be vested in the legislative budget committee as
14 prescribed in RCW 44.28.085.

15 (d) Be empowered to take exception to specific expenditures that
16 have been incurred by any agency or to take exception to other
17 practices related in any way to the agency's financial transactions and
18 to cause such exceptions to be made a matter of public record,
19 including disclosure to the agency concerned and to the director of
20 financial management. It shall be the duty of the director of
21 financial management to cause corrective action to be taken promptly,
22 such action to include, as appropriate, the withholding of funds as
23 provided in RCW 43.88.110.

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

25 (f) Investigate improper governmental activity under chapter 42.40
26 RCW.

27 (7) The legislative budget committee may:

28 (a) Make post audits of the financial transactions of any agency
29 and management surveys and program reviews as provided for in RCW
30 44.28.085. To this end the committee may in its discretion examine the

1 books, accounts, and other records of any agency, official, or
2 employee.

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

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

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

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

16 NEW SECTION. **Sec. 9.** Section 7 of this act shall expire April
17 1, 1992.

18 NEW SECTION. **Sec. 10.** Section 8 of this act shall take effect
19 April 1, 1992.

20 NEW SECTION. **Sec. 11.** The sum of fifteen thousand dollars, or
21 as much thereof as may be necessary, is appropriated for the biennium
22 ending June 30, 1993, from the general fund to the human rights
23 commission for the purposes of this act.

Passed the Senate February 14, 1992.
Passed the House March 9, 1992.
Approved by the Governor March 31, 1992.
Filed in Office of Secretary of State March 31, 1992.