

2 ESSB 5121 - S AMD

3 By Senators Metcalf and Skratek

4

5 Strike everything after the enacting clause and insert the  
6 following:

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.

15 (3)(a) "Improper governmental action" means any action by an  
16 employee:

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

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

23 (b) "Improper governmental action" does not include personnel  
24 actions including but not limited to employee grievances, complaints,  
25 appointments, promotions, transfers, assignments, reassignments,  
26 reinstatements, restorations, reemployments, performance evaluations,  
27 reductions in pay, dismissals, suspensions, demotions, violations of  
28 the state civil service law, alleged labor agreement violations,

1 reprimands, or any action which may be taken under chapter 41.06 or  
2 28B.16 RCW, or other disciplinary action except as provided in RCW  
3 42.40.030.

4 (4) "Use of official authority or influence" includes taking,  
5 directing others to take, recommending, processing, or approving any  
6 personnel action such as an appointment, promotion, transfer,  
7 assignment, reassignment, reinstatement, restoration, reemployment,  
8 performance evaluation, or any adverse action under chapter 41.06 or  
9 28B.16 RCW, or other disciplinary action.

10 (5) "Whistleblower" means an employee who in good faith reports  
11 alleged improper governmental action to the auditor, initiating an  
12 investigation under RCW 42.40.040. For purposes of the provisions of  
13 this chapter and chapter 49.60 RCW relating to reprisals and  
14 retaliatory action, the term "whistleblower" also means an employee who  
15 in good faith provides information to the auditor in connection with an  
16 investigation under RCW 42.40.040 and an employee who is believed to  
17 have reported alleged improper governmental action to the auditor or to  
18 have provided information to the auditor in connection with an  
19 investigation under RCW 42.40.040 but who, in fact, has not reported  
20 such action or provided such information."

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

23 (1) Upon receiving specific information that an employee has  
24 engaged in improper governmental action, the auditor shall, within five  
25 working days of receipt of the information, mail written  
26 acknowledgement to the whistleblower at the address provided. For a  
27 period not to exceed thirty days, the auditor shall conduct such  
28 preliminary investigation of the matter as the auditor deems  
29 appropriate. In conducting the investigation, the identity of the

1 (~~person providing the information which initiated the investigation~~)  
2 whistleblower shall be kept confidential.

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

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

11 (b) The notification shall be by memorandum containing a summary of  
12 the information received, a summary of the results of the preliminary  
13 investigation with regard to each allegation of improper governmental  
14 action, and any determination made by the auditor under (c) of this  
15 subsection.

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

20 (d) If it appears to the auditor that the matter does not meet the  
21 definition of an "improper governmental action" under RCW 42.40.020(3),  
22 or is other than a gross waste of public funds, the auditor may forward  
23 a summary of the allegations to the appropriate agency for  
24 investigation and require a response by memorandum (~~containing~~) no  
25 later than thirty days after the allegations are received from the  
26 auditor. The response shall contain a summary of the investigation  
27 with regard to each allegation and any determination of corrective  
28 action taken. The auditor will keep the identity of the (~~person who~~  
29 ~~provided the information initiating the investigation~~) whistleblower  
30 confidential. Upon receipt of the results of the investigation from

1 the appropriate agency, the auditor will notify the ((provider))  
2 whistleblower as prescribed under (a), (b), and (c) of this subsection.

3 (4) If it appears to the auditor after completion of the  
4 preliminary investigation that further investigation, prosecution, or  
5 administrative action is warranted, the auditor shall so notify the  
6 ((party, if known, who provided the information initiating the  
7 investigation)) whistleblower and either conduct further investigations  
8 or issue a report under subsection (6) of this section. Within sixty  
9 days after the thirty-day period in subsection (1) of this section, the  
10 auditor shall complete the investigation and report its findings to the  
11 whistleblower unless written justification for the delay is furnished  
12 to the whistleblower. In all such cases, the report of the auditor's  
13 investigation and findings shall be sent to the whistleblower within  
14 one year after the information was filed under subsection (1) of this  
15 section.

16 (5)(a) At any stage of an investigation under this section the  
17 auditor may require by subpoena the attendance and testimony of  
18 witnesses and the production of documentary or other evidence relating  
19 to the investigation at any designated place in the state. The auditor  
20 may issue subpoenas, administer oaths, examine witnesses, and receive  
21 evidence. In the case of contumacy or failure to obey a subpoena, the  
22 superior court for the county in which the person to whom the subpoena  
23 is addressed resides or is served may issue an order requiring the  
24 person to appear at any designated place to testify or to produce  
25 documentary or other evidence. Any failure to obey the order of the  
26 court may be punished by the court as a contempt thereof.

27 (b) The auditor may order the taking of depositions at any stage of  
28 a proceeding or investigation under this chapter. Depositions shall be  
29 taken before an individual designated by the auditor and having the  
30 power to administer oaths. Testimony shall be reduced to writing by or

1 under the direction of the individual taking the deposition and shall  
2 be subscribed by the deponent.

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

6 (i) The employee and the head of the employing agency; and

7 (ii) If appropriate, the attorney general or such other authority  
8 as the auditor determines appropriate.

9 (b) The auditor has no enforcement power except that in any case in  
10 which the auditor submits a report of alleged improper activity to the  
11 head of an agency, the attorney general, or any other individual to  
12 which a report has been made under this section, the individual shall  
13 report to the auditor with respect to any action taken by the  
14 individual regarding the activity, the first report being transmitted  
15 no later than thirty days after the date of the auditor's report and  
16 monthly thereafter until final action is taken. If the auditor  
17 determines that appropriate action is not being taken within a  
18 reasonable time, the auditor shall report the determination to the  
19 governor and to the legislature.

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

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

25 ~~((1) Any employee (a) who provides his or her name and specific~~  
26 ~~information to the auditor on any matter which is found to warrant~~  
27 ~~further investigation or other action, or which is provided by the~~  
28 ~~employee in good faith, as determined by the auditor, whether or not~~  
29 ~~further action is warranted and (b) who is subjected to any reprisal or~~

1 ~~retaliatory action undertaken during the period beginning on the day~~  
2 ~~after the date on which the specific information is received by the~~  
3 ~~auditor alleging improper governmental action, may seek judicial review~~  
4 ~~of the reprisal or retaliatory action in superior court, whether or not~~  
5 ~~there has been an administrative review of the action. In such an~~  
6 ~~action, the reviewing court may award reasonable attorney's fees.~~

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

13       ~~(3)) Any person who is a whistleblower, as defined in RCW~~  
14 ~~42.40.020, and who as a result of being a whistleblower has been~~  
15 ~~subjected to workplace reprisal or retaliatory action has the remedies~~  
16 ~~provided under chapter 49.60 RCW. For the purpose of this section~~  
17 ~~"reprisal or retaliatory action" means but is not limited to:~~

- 18       ~~((a))~~ (1) Denial of adequate staff to perform duties;
- 19       ~~((b))~~ (2) Frequent staff changes;
- 20       ~~((c))~~ (3) Frequent and undesirable office changes;
- 21       ~~((d))~~ (4) Refusal to assign meaningful work;
- 22       ~~((e))~~ (5) Unwarranted and unsubstantiated letters of reprimand or  
23 ~~unsatisfactory performance evaluations;~~
- 24       ~~((f))~~ (6) Demotion;
- 25       ~~((g))~~ (7) Reduction in pay;
- 26       ~~((h))~~ (8) Denial of promotion;
- 27       ~~((i))~~ (9) Suspension; ((and  
28       ~~((j))~~ (10) Dismissal;
- 29       (11) Denial of employment; and

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

3       Nothing in this section prohibits an agency from making any  
4 decision exercising its authority to terminate, suspend, or discipline  
5 an employee who engages in workplace reprisal or retaliatory action  
6 against a whistleblower. However, the agency also shall implement any  
7 order under chapter 49.60 RCW (other than an order of suspension if the  
8 agency has terminated the retaliator)."

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

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

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

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

21       (1) In case of failure to reach an agreement for the elimination of  
22 such unfair practice, and upon the entry of findings to that effect,  
23 the entire file, including the complaint and any and all findings made,  
24 shall be certified to the chairperson of the commission. The  
25 chairperson of the commission shall thereupon request the appointment  
26 of an administrative law judge under Title 34 RCW to hear the complaint  
27 and shall cause to be issued and served in the name of the commission  
28 a written notice, together with a copy of the complaint, as the same

1 may have been amended, requiring the respondent to answer the charges  
2 of the complaint at a hearing before the administrative law judge, at  
3 a time and place to be specified in such notice.

4 (2) The place of any such hearing may be the office of the  
5 commission or another place designated by it. The case in support of  
6 the complaint shall be presented at the hearing by counsel for the  
7 commission: PROVIDED, That the complainant may retain independent  
8 counsel and submit testimony and be fully heard. No member or employee  
9 of the commission who previously made the investigation or caused the  
10 notice to be issued shall participate in the hearing except as a  
11 witness, nor shall the member or employee participate in the  
12 deliberations of the administrative law judge in such case. Any  
13 endeavors or negotiations for conciliation shall not be received in  
14 evidence.

15 (3) The respondent shall file a written answer to the complaint and  
16 appear at the hearing in person or otherwise, with or without counsel,  
17 and submit testimony and be fully heard. The respondent has the right  
18 to cross-examine the complainant.

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

22 (5) If, upon all the evidence, the administrative law judge finds  
23 that the respondent has engaged in any unfair practice, the  
24 administrative law judge shall state findings of fact and shall issue  
25 and file with the commission and cause to be served on such respondent  
26 an order requiring such respondent to cease and desist from such unfair  
27 practice and to take such affirmative action, including, (but not  
28 limited to) hiring, reinstatement or upgrading of employees, with or  
29 without back pay, an admission or restoration to full membership rights  
30 in any respondent organization, or to take such other action as, in the



1 judgment of the administrative law judge, will effectuate the purposes  
2 of this chapter, including action that could be ordered by a court,  
3 except that damages for humiliation and mental suffering shall not  
4 exceed one thousand dollars, and including a requirement for report of  
5 the matter on compliance.

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

15 (7) The final order of the administrative law judge shall include  
16 a notice to the parties of the right to obtain judicial review of the  
17 order by appeal in accordance with the provisions of RCW 34.05.510  
18 through 34.05.598, and that such appeal must be served and filed within  
19 thirty days after the service of the order on the parties.

20 ~~((+7))~~ (8) If, upon all the evidence, the administrative law judge  
21 finds that the respondent has not engaged in any alleged unfair  
22 practice, the administrative law judge shall state findings of fact and  
23 shall similarly issue and file an order dismissing the complaint.

24 ~~((+8))~~ (9) An order dismissing a complaint may include an award of  
25 reasonable attorneys' fees in favor of the respondent if the  
26 administrative law judge concludes that the complaint was frivolous,  
27 unreasonable, or groundless.

28 ~~((+9))~~ (10) The commission shall establish rules of practice to  
29 govern, expedite, and effectuate the foregoing procedure."

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

3       The auditor shall:

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

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

10       (3) Investigate improper governmental activity under chapter 42.40  
11 RCW;

12       (4) Inform the attorney general in writing of the necessity for  
13 ~~((him))~~ the attorney general to direct prosecutions in the name of the  
14 state for all official delinquencies in relation to the assessment,  
15 collection, and payment of the revenue, against all persons who, by any  
16 means, become possessed of public money or property, and fail to pay  
17 over or deliver the same, and against all debtors of the state;

18       ~~((4))~~ (5) Give information in writing to the legislature,  
19 whenever required, upon any subject relating to the financial affairs  
20 of the state, or touching any duties of his or her office;

21       ~~((5))~~ (6) Report to the director of financial management in  
22 writing the names of all persons who have received any moneys belonging  
23 to the state, and have not accounted therefor;

24       ~~((6))~~ (7) Authenticate with his or her official seal papers  
25 issued from his or her office;

26       ~~((7))~~ (8) Make his or her official report annually on or before  
27 the 31st of December."

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

1 This section sets forth the major fiscal duties and  
2 responsibilities of officers and agencies of the executive branch. The  
3 regulations issued by the governor pursuant to this chapter shall  
4 provide for a comprehensive, orderly basis for fiscal management and  
5 control, including efficient accounting and reporting therefor, for the  
6 executive branch of the state government and may include, in addition,  
7 such requirements as will generally promote more efficient public  
8 management in the state.

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

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

10       In addition, the director of financial management, as agent of the  
11 governor, shall:

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

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

19       (c) Review any pay and classification plans, and changes  
20 thereunder, developed by any agency for their fiscal impact: PROVIDED,  
21 That none of the provisions of this subsection shall affect merit  
22 systems of personnel management now existing or hereafter established  
23 by statute relating to the fixing of qualifications requirements for  
24 recruitment, appointment, or promotion of employees of any agency. The  
25 director shall advise and confer with agencies including appropriate  
26 standing committees of the legislature as may be designated by the  
27 speaker of the house and the president of the senate regarding the  
28 fiscal impact of such plans and may amend or alter said plans, except  
29 that for the following agencies no amendment or alteration of said

1 plans may be made without the approval of the agency concerned:

2 Agencies headed by elective officials;

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

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

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

13 (2) The treasurer shall:

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

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

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

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

25 It shall be unlawful for the treasurer to issue any warrant or  
26 check for public funds in the treasury except upon forms duly  
27 prescribed by the director of financial management. Said forms shall  
28 provide for authentication and certification by the agency head or the  
29 agency head's designee that the services have been rendered or the  
30 materials have been furnished; or, in the case of loans or grants, that

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

28 (3) The state auditor shall:

29 (a) Report to the legislature the results of current post audits  
30 that have been made of the financial transactions of each agency; to

1 this end the auditor may, in the auditor's discretion, examine the  
2 books and accounts of any agency, official or employee charged with the  
3 receipt, custody or safekeeping of public funds. The current post  
4 audit of each agency may include a section on recommendations to the  
5 legislature as provided in (c) of this subsection (~~((3)(c) of this~~  
6 ~~section))~~).

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

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

13 Determinations as to whether agencies, in making expenditures,  
14 complied with the laws of this state: PROVIDED, That nothing in this  
15 act shall be construed to grant the state auditor the right to perform  
16 performance audits. A performance audit for the purpose of this act  
17 shall be the examination of the effectiveness of the administration,  
18 its efficiency and its adequacy in terms of the programs of departments  
19 or agencies as previously approved by the legislature. The authority  
20 and responsibility to conduct such an examination shall be vested in  
21 the legislative budget committee as prescribed in RCW 44.28.085 as now  
22 or hereafter amended.

23 (d) Be empowered to take exception to specific expenditures that  
24 have been incurred by any agency or to take exception to other  
25 practices related in any way to the agency's financial transactions and  
26 to cause such exceptions to be made a matter of public record,  
27 including disclosure to the agency concerned and to the director of  
28 financial management. It shall be the duty of the director of  
29 financial management to cause corrective action to be taken promptly,

1 such action to include, as appropriate, the withholding of funds as  
2 provided in RCW 43.88.110.

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

4 (f) Investigate improper governmental activity under chapter 42.40  
5 RCW.

6 (4) The legislative budget committee may:

7 (a) Make post audits of the financial transactions of any agency  
8 and management surveys and program reviews as provided for in RCW  
9 44.28.085 as now or hereafter amended. To this end the committee may  
10 in its discretion examine the books, accounts, and other records of any  
11 agency, official, or employee.

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

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

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

21 (ii) Such plans as it deems expedient for the support of the  
22 state's credit, for lessening expenditures, for promoting frugality and  
23 economy in agency affairs and generally for an improved level of fiscal  
24 management."

25 "**Sec. 8.** RCW 43.88.160 and 1991 c 358 s 4 are each amended to read  
26 as follows:

27 This section sets forth the major fiscal duties and  
28 responsibilities of officers and agencies of the executive branch. The  
29 regulations issued by the governor pursuant to this chapter shall



1 provide for a comprehensive, orderly basis for fiscal management and  
2 control, including efficient accounting and reporting therefor, for the  
3 executive branch of the state government and may include, in addition,  
4 such requirements as will generally promote more efficient public  
5 management in the state.

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

28 (2) The director of financial management is responsible for  
29 quarterly reporting of primary operating budget drivers such as  
30 applicable workloads, caseload estimates, and appropriate unit cost

1 data. These reports shall be transmitted to the legislative fiscal  
2 committees or by electronic means to the legislative evaluation and  
3 accountability program committee. Quarterly reports shall include  
4 actual monthly data and the variance between actual and estimated data  
5 to date. The reports shall also include estimates of these items for  
6 the remainder of the budget period.

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

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

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

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

27 (c) Review any pay and classification plans, and changes  
28 thereunder, developed by any agency for their fiscal impact: PROVIDED,  
29 That none of the provisions of this subsection shall affect merit  
30 systems of personnel management now existing or hereafter established

1 by statute relating to the fixing of qualifications requirements for  
2 recruitment, appointment, or promotion of employees of any agency. The  
3 director shall advise and confer with agencies including appropriate  
4 standing committees of the legislature as may be designated by the  
5 speaker of the house and the president of the senate regarding the  
6 fiscal impact of such plans and may amend or alter said plans, except  
7 that for the following agencies no amendment or alteration of said  
8 plans may be made without the approval of the agency concerned:  
9 Agencies headed by elective officials;

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

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

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

20 (5) The treasurer shall:

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

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

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

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

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

1 shall lie with the agency head or the agency head's designee in  
2 accordance with regulations issued pursuant to this chapter. Nothing  
3 in this section shall be construed to permit a public body to advance  
4 funds to a private service provider pursuant to a grant or loan before  
5 services have been rendered or material furnished.

6 (6) The state auditor shall:

7 (a) Report to the legislature the results of current post audits  
8 that have been made of the financial transactions of each agency; to  
9 this end the auditor may, in the auditor's discretion, examine the  
10 books and accounts of any agency, official or employee charged with the  
11 receipt, custody or safekeeping of public funds. The current post  
12 audit of each agency may include a section on recommendations to the  
13 legislature as provided in (c) of 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 at least the following:

20 Determinations as to whether agencies, in making expenditures,  
21 complied with the laws of this state: PROVIDED, That nothing in this  
22 section may be construed to grant the state auditor the right to  
23 perform performance audits. A performance audit for the purpose of  
24 this section is the examination of the effectiveness of the  
25 administration, its efficiency, and its adequacy in terms of the  
26 programs of departments or agencies as previously approved by the  
27 legislature. The authority and responsibility to conduct such an  
28 examination shall be vested in the legislative budget committee as  
29 prescribed in RCW 44.28.085.

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 (7) The legislative budget committee may:

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

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

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

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

28 (ii) Such plans as it deems expedient for the support of the  
29 state's credit, for lessening expenditures, for promoting frugality and

1 economy in agency affairs and generally for an improved level of fiscal  
2 management."

3       "NEW SECTION.   **Sec. 9.**       Section 7 of this act shall expire April  
4 1, 1992."

5       "NEW SECTION.   **Sec. 10.**      Section 8 of this act shall take effect  
6 April 1, 1992."

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

11 **ESSB 5121** - S AMD  
12       By Senator

13  
14       On page 1, line 1 of the title, after "action;" strike the  
15 remainder of the title and insert "amending RCW 42.40.020, 42.40.040,  
16 42.40.050, 49.60.210, 49.60.250, 43.09.050, and 43.88.160; reenacting  
17 and amending RCW 43.88.160; prescribing penalties; making an  
18 appropriation; providing an effective date; and providing an expiration  
19 date."