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SENATE BILL 5121

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State of Washington

52nd Legislature

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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 January 21, 1991. Referred to Committee on Governmental Operations.

1 AN ACT Relating to improper governmental action; amending RCW  
2 42.40.020, 42.40.040, 42.40.050, 49.60.180, 49.60.225, 43.09.050, and  
3 43.88.160; prescribing penalties; and making an appropriation.

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

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

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

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

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

13 (3) (a) "Improper governmental action" means any action by an  
14 employee:

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

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

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

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

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

1 information to the auditor in connection with an investigation under  
2 RCW 42.40.040.

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

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

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

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

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

27 (c) In any case to which this section applies, the identity of the  
28 ~~((person who provided the information initiating the investigation))~~

1 whistleblower shall be kept confidential unless the auditor determines  
2 that the information has been provided other than in good faith.

3 (d) If it appears to the auditor that the matter does not meet the  
4 definition of an "improper governmental action" under RCW 42.40.020(3),  
5 or is other than a gross waste of public funds, the auditor may forward  
6 a summary of the allegations to the appropriate agency for  
7 investigation and require a response by memorandum containing a summary  
8 of the investigation with regard to each allegation and any  
9 determination of corrective action taken. The auditor will keep the  
10 identity of the (~~person who provided the information initiating the~~  
11 ~~investigation~~) whistleblower confidential. Upon receipt of the  
12 results of the investigation from the appropriate agency, the auditor  
13 will notify the (~~provider~~) whistleblower as prescribed under (a),  
14 (b), and (c) of this subsection.

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

28 (5) (a) At any stage of an investigation under this section the  
29 auditor may require by subpoena the attendance and testimony of  
30 witnesses and the production of documentary or other evidence relating

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

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

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

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

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

21 (b) The auditor has no enforcement power except that in any case in  
22 which the auditor submits a report of alleged improper activity to the  
23 head of an agency, the attorney general, or any other individual to  
24 which a report has been made under this section, the individual shall  
25 report to the auditor with respect to any action taken by the  
26 individual regarding the activity, the first report being transmitted  
27 no later than thirty days after the date of the auditor's report and  
28 monthly thereafter until final action is taken. If the auditor  
29 determines that appropriate action is not being taken within a

1 reasonable time, the auditor shall report the determination to the  
2 governor and to the legislature.

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

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

8 (1) Any ~~((employee))~~ whistleblower (a) who provides his or her name  
9 and specific information to the auditor on any matter which is found to  
10 warrant further investigation or other action, or which is provided by  
11 the ~~((employee))~~ whistleblower in good faith, as determined by the  
12 auditor, whether or not further action is warranted and (b) who is  
13 subjected to any reprisal or retaliatory action ~~((undertaken during the~~  
14 ~~period beginning on the day after the date on which the specific~~  
15 ~~information is received by the auditor alleging improper governmental~~  
16 ~~action,))~~ may seek judicial review of the reprisal or retaliatory  
17 action in superior court, whether or not there has been an  
18 administrative review of the action. In such ~~((an))~~ action, the  
19 reviewing court may award costs and reasonable ((attorney's))  
20 attorneys' fees to the prevailing party. The provisions of RCW  
21 4.92.060 through 4.92.075 shall apply to judicial proceedings and  
22 proceedings before the human rights commission under this chapter.

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

1 changes in the whistleblower's state employment situation resulting  
2 from having provided information to the auditor under this chapter or  
3 from a belief that the whistleblower provided such information. If the  
4 human rights commission has reason to believe that such a change in the  
5 whistleblower's state employment situation has occurred, the human  
6 rights commission shall investigate and pass upon the matter in  
7 accordance with chapter 49.60 RCW. The auditor shall provide a record  
8 of its investigation under RCW 42.40.040 to the human rights  
9 commission. The human rights commission shall have exclusive  
10 administrative jurisdiction over complaints alleging reprisal or  
11 retaliatory action under this chapter and any fine, order, or other  
12 action issued by the human rights commission shall not be subject to  
13 consideration, review, or alteration by any other state agency or  
14 board.

15 (3) For the purpose of this section "reprisal or retaliatory  
16 action" means but is not limited to:

17 (a) Denial of adequate staff to perform duties;

18 (b) Frequent staff changes;

19 (c) Frequent and undesirable office changes;

20 (d) Refusal to assign meaningful work;

21 (e) Unwarranted and unsubstantiated letters of reprimand or  
22 unsatisfactory performance evaluations;

23 (f) Demotion;

24 (g) Reduction in pay;

25 (h) Denial of promotion;

26 (i) Suspension; ((and))

27 (j) Dismissal;

28 (k) Denial of employment; and

29 (l) A supervisor or superior encouraging colleagues to behave in a  
30 hostile manner toward the whistleblower.

1       **Sec. 4.** RCW 49.60.180 and 1985 c 185 s 16 are each amended to read  
2 as follows:

3       (1) It is an unfair practice for any employer:

4       ~~((1))~~ (a) To refuse to hire any person because of age, sex,  
5 marital status, race, creed, color, national origin, or the presence of  
6 any sensory, mental, or physical handicap, unless based upon a bona  
7 fide occupational qualification: PROVIDED, That the prohibition  
8 against discrimination because of such handicap shall not apply if the  
9 particular disability prevents the proper performance of the particular  
10 worker involved.

11       ~~((2))~~ (b) To discharge or bar any person from employment because  
12 of age, sex, marital status, race, creed, color, national origin, or  
13 the presence of any sensory, mental, or physical handicap.

14       ~~((3))~~ (c) To discriminate against any person in compensation or  
15 in other terms or conditions of employment because of age, sex, marital  
16 status, race, creed, color, national origin, or the presence of any  
17 sensory, mental, or physical handicap: PROVIDED, That it shall not be  
18 an unfair practice for an employer to segregate washrooms or locker  
19 facilities on the basis of sex, or to base other terms and conditions  
20 of employment on the sex of employees where the commission by  
21 regulation or ruling in a particular instance has found the employment  
22 practice to be appropriate for the practical realization of equality of  
23 opportunity between the sexes.

24       ~~((4))~~ (d) To print, or circulate, or cause to be printed or  
25 circulated any statement, advertisement, or publication, or to use any  
26 form of application for employment, or to make any inquiry in  
27 connection with prospective employment, which expresses any limitation,  
28 specification, or discrimination as to age, sex, marital status, race,  
29 creed, color, national origin, or the presence of any sensory, mental,  
30 or physical handicap, or any intent to make any such limitation,

1 specification, or discrimination, unless based upon a bona fide  
2 occupational qualification: PROVIDED, Nothing contained herein shall  
3 prohibit advertising in a foreign language.

4 (2) It is an unfair practice for a state employer to retaliate  
5 against a whistleblower as defined in RCW 42.40.020.

6 **Sec. 5.** RCW 49.60.225 and 1985 c 185 s 19 are each amended to read  
7 as follows:

8 (1) When a determination has been made under RCW 49.60.250 that an  
9 unfair practice involving real property has been committed, the  
10 commission may, in addition to other relief authorized by RCW  
11 49.60.250, award the complainant up to one thousand dollars for loss of  
12 the right secured by RCW 49.60.010, 49.60.030, 49.60.040, and 49.60.222  
13 through 49.60.226, as now or hereafter amended, to be free from  
14 discrimination in real property transactions because of sex, marital  
15 status, race, creed, color, national origin, or the presence of any  
16 sensory, mental, or physical handicap. Enforcement of the order and  
17 appeal therefrom by the complainant or respondent shall be made as  
18 provided in RCW 49.60.260 and 49.60.270.

19 (2) If a determination is made under RCW 49.60.250 that retaliatory  
20 action has been taken against a whistleblower as defined in RCW  
21 42.40.020, the commission may, in addition to any other remedies, fine  
22 the retaliator up to three thousand dollars and issue an order to the  
23 appointing authority to suspend the retaliator for up to thirty days  
24 without pay. At a minimum, the commission shall require that a letter  
25 of reprimand be placed in the retaliator's personnel file.

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

28 The auditor shall:

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

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

7 (3) Investigate improper governmental activity under chapter 42.40  
8 RCW;

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

15 ~~((+4))~~ (5) Give information in writing to the legislature,  
16 whenever required, upon any subject relating to the financial affairs  
17 of the state, or touching any duties of his or her office;

18 ~~((+5))~~ (6) Report to the director of financial management in  
19 writing the names of all persons who have received any moneys belonging  
20 to the state, and have not accounted therefor;

21 ~~((+6))~~ (7) Authenticate with his or her official seal papers  
22 issued from his or her office;

23 ~~((+7))~~ (8) Make his or her official report annually on or before  
24 the 31st of December.

25 **Sec. 7.** RCW 43.88.160 and 1987 c 505 s 36 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 legislative fiscal committees. The director of financial  
25 management may require such financial, statistical, and other reports  
26 as the director deems necessary from all agencies covering any period.

27 The director of financial management is responsible for quarterly  
28 reporting of primary budget drivers such as applicable workloads,  
29 caseload estimates, and appropriate unit cost data. These reports  
30 shall be transmitted to the legislative fiscal committees or by

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

6 In addition, the director of financial management, as agent of the  
7 governor, shall:

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

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

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

28 (d) Fix the number and classes of positions or authorized man years  
29 of employment for each agency and during the fiscal period amend the  
30 determinations previously fixed by the director except that the

1 director shall not be empowered to fix said number or said classes for  
2 the following: Agencies headed by elective officials;

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

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

8 (2) The treasurer shall:

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

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

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

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

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

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

23 (3) The state auditor shall:

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

1 legislature as provided in (c) of this subsection (~~((3)(c) of this~~  
2 ~~section))~~).

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

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

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

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

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

29 (f) Investigate improper governmental activity under chapter 42.40  
30 RCW.

1 (4) The legislative budget committee may:

2 (a) Make post audits of the financial transactions of any agency  
3 and management surveys and program reviews as provided for in RCW  
4 44.28.085 as now or hereafter amended. To this end the committee may  
5 in its discretion examine the books, accounts, and other records of any  
6 agency, official, or employee.

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

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

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

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

20 NEW SECTION. **Sec. 8.** The sum of twenty 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.