

2 4SHB 1481 - H AMD 254 NOT CONSIDERED 2-12-96

3 By Representatives Boldt and Stevens

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5 On page 31, after line 28, insert the following:

6 **"PART VII. CHIEF INVESTIGATOR ACT**

7 NEW SECTION. **Sec. 701.** Sections 702 through 713 of this act may
8 be known and cited as the department of social and health services
9 chief investigator act.

10 NEW SECTION. **Sec. 702.** Unless the context clearly requires
11 otherwise, the definitions in this section apply throughout sections
12 703 through 713 of this act.

13 (1) "Disclosable information" means public information that (a) is
14 not exempt from disclosure under chapter 42.17 RCW; (b) does not
15 pertain to an ongoing investigation; and (c) has not previously been
16 disclosed in a public record.

17 (2) "Fraud or abuse" means acts and practices of fraud or abuse in
18 programs administered by the department, including criminal or
19 administrative misconduct by staff, clients, or vendors. This does not
20 include provider fraud as it relates to the department's administration
21 of funds under Title XIX of the social security act, medicaid.

22 (3) "Chief investigator" means the chief investigator of the
23 department.

24 (4) "Office" means the office of the chief investigator of the
25 department.

26 NEW SECTION. **Sec. 703.** (1) There is established in the department
27 an office of chief investigator in order to create an independent unit
28 to:

29 (a) Conduct and supervise investigations relating to allegations of
30 fraud or abuse;

31 (b) Provide leadership and coordination in recommending policies
32 and procedures designed to detect and prevent fraud and abuse; and

1 (c) Provide a method of informing the secretary and the legislature
2 about vulnerabilities and deficiencies relating to the detection and
3 prevention of fraud or abuse as may be discovered as a result of
4 completed investigations conducted or coordinated by the office.

5 (2) The office of chief investigator is designated a criminal
6 justice agency as defined in RCW 10.97.030 and 43.43.705.

7 NEW SECTION. **Sec. 704.** The chief investigator is the head of the
8 office and is appointed by the secretary solely on the basis of
9 integrity and demonstrated ability in law enforcement management,
10 public administration, and investigations. The chief investigator
11 reports to and is under the general supervision of the secretary in all
12 matters related to fraud and program integrity.

13 NEW SECTION. **Sec. 705.** If the chief investigator discovers that
14 improper governmental action, as defined in RCW 42.40.020, has occurred
15 during an investigation with respect to an employee, such as an abuse
16 of authority so as to impede or interfere with an investigation, then
17 the chief investigator may report the improper governmental action to
18 the auditor under chapter 42.40 RCW.

19 NEW SECTION. **Sec. 706.** (1) It is the duty and responsibility of
20 the chief investigator to:

21 (a) Conduct, supervise, and coordinate fraud and abuse
22 investigations and provide policy direction as it relates to program
23 integrity and fraud and abuse;

24 (b) Review proposed legislation and rules relating to the detection
25 and prevention of fraud and abuse in programs administered by the
26 department, and make recommendations for improvement;

27 (c) Recommend policies for and coordinate activities carried out or
28 financed by the department for the purpose of preventing and detecting
29 fraud or abuse;

30 (d) Recommend policies for, and conduct, supervise, and coordinate,
31 relationships between the department and federal, state, and local
32 governmental agencies, and nongovernmental entities, with respect to:

33 (i) Matters relating to the prevention and detection of fraud or abuse
34 in programs and operations administered by the department; or (ii) the
35 identification and prosecution of participants in such fraud or abuse;
36 and

1 (e) Keep the secretary and the legislature informed by means of
2 reports concerning the detection and prevention of fraud or abuse, and
3 to make recommendations for improvement of the activities.

4 (2) In carrying out the duties and responsibilities established in
5 sections 702 through 713 of this act, the chief investigator must refer
6 all investigations in which the chief investigator has found
7 substantial evidence supporting a finding of a violation of federal or
8 state criminal law to the appropriate prosecuting authority for
9 possible criminal prosecution.

10 NEW SECTION. **Sec. 707.** In addition to its other powers and
11 duties, the office of the chief investigator has the power to enforce
12 the penal provisions of sections 702 through 713 of this act, and as it
13 may be amended, the penal laws of the state relating to programs
14 administered by the department. The office of chief investigator has
15 the authority to apply for and execute all warrants and serve process
16 of law issued by the courts in enforcing the provisions of sections 702
17 through 713 of this act. The office of chief investigator has the
18 power to issue and serve subpoenas under RCW 43.20A.110 and 43.20A.605.

19 NEW SECTION. **Sec. 708.** (1) The chief investigator must submit a
20 report summarizing the activities of the office to the appropriate
21 committees of the senate and house of representatives by November 30,
22 1996, and by November 30, 1997, and biennially thereafter. The report
23 shall contain only disclosable information, including:

24 (a) A description of significant fraud or abuse, and of
25 vulnerabilities or deficiencies relating to the prevention and
26 detection of fraud or abuse, discovered as a result of investigations
27 completed during the reporting period;

28 (b) A description of corrective action taken by the department
29 regarding fraud and abuse discovered as a result of investigations
30 conducted by the office of chief investigator;

31 (c) Recommendations for improving the activities of the office with
32 respect to the vulnerabilities or deficiencies identified under (a) of
33 this subsection;

34 (d) An identification of each significant recommendation described
35 in the previous reports on which corrective action has or has not been
36 completed;

1 (e) A summary of matters referred to prosecution authorities during
2 the reporting period and the charges filed and convictions entered
3 during the reporting period that have resulted from referrals by the
4 office; and

5 (f) Any comments the secretary determines to be appropriate.

6 (2) The chief investigator must forward a draft of the report to
7 the secretary not less than twenty days prior to the date that the
8 report is to be issued.

9 (3) Within sixty days after the transmission of the report of the
10 chief investigator to the legislature, the secretary must make copies
11 of the report available to the public upon request and at a reasonable
12 cost.

13 NEW SECTION. **Sec. 709.** (1) In carrying out the provisions of
14 sections 702 through 713 of this act, the chief investigator is
15 authorized to:

16 (a) Request information or assistance as is necessary for carrying
17 out the duties and responsibilities provided by sections 702 through
18 713 of this act from a federal, state, or local governmental agency or
19 unit of a governmental agency;

20 (b) Issue subpoenas for witnesses, documents, information, and
21 other data necessary in the furtherance of an investigation conducted
22 by the office. The subpoenas are enforceable under RCW 34.05.588.
23 Prior to issuing subpoenas to a state agency, the chief investigator
24 must make a reasonable request to the agency for documents and
25 information in possession of the agency;

26 (c) Administer oaths and take testimony, when appropriate in the
27 performance of the duties and responsibilities provided in sections 702
28 through 713 of this act, unless otherwise prohibited by law;

29 (d) To the extent and in the amount as may be provided by
30 appropriation, select, appoint, and employ personnel as may be
31 necessary to carry out the provisions of sections 702 through 713 of
32 this act;

33 (e) To the extent and in the amount as may be provided by
34 appropriation, enter into contracts and other arrangements for audits,
35 studies, analyses, and other services with public agencies and with
36 private persons, and make the payments necessary to carry out the
37 provisions of sections 702 through 713 of this act, subject to

1 compliance with civil service laws, collective bargaining agreements,
2 and other applicable law; and

3 (f) To the extent and in the amount as may be provided by
4 appropriation, purchase or lease facilities, equipment, and supplies
5 necessary to carry out the provisions of sections 702 through 713 of
6 this act.

7 (2) Whenever information or assistance requested under subsection
8 (1)(a) of this section is, in the judgment of the chief investigator,
9 unreasonably refused or not provided, the chief investigator must
10 report the circumstances to the secretary without delay.

11 NEW SECTION. **Sec. 710.** (1) In carrying out the provisions of
12 sections 702 through 713 of this act, the chief investigator is
13 authorized to:

14 (a) Have reasonable access to the secretary or his or her designee
15 when necessary in the performance of the duties and responsibilities
16 provided by sections 702 through 713 of this act;

17 (b) Have prompt access to all individuals, records, electronic
18 data, reports, audits, reviews, documents, and other materials
19 available to the department that relate to operations of the office
20 that is not otherwise prohibited from disclosure to the chief
21 investigator.

22 (2) Whenever information or assistance requested under subsection
23 (1) (a) or (b) of this section is, in the judgment of the chief
24 investigator, unreasonably refused or not provided, the chief
25 investigator must report the circumstances to the secretary without
26 delay.

27 NEW SECTION. **Sec. 711.** (1) The chief investigator may receive and
28 investigate complaints or information from an employee of the
29 department or a citizen concerning the possible existence of an
30 activity constituting a violation of law or rules, or mismanagement,
31 gross waste of funds, abuse of authority, or a substantial and specific
32 danger to the public health and safety.

33 (2) The chief investigator must not, after receipt of a complaint
34 or information from a complainant, disclose the identity of the
35 complainant without the consent of the complainant, unless the chief
36 investigator determines that the disclosure is unavoidable during the
37 course of investigation, except as otherwise provided by state law.

1 (3) An employee who has authority to take, direct others to take,
2 recommend, or approve a personnel action, must not, with respect to the
3 authority, take or threaten to take an action against an employee as a
4 reprisal for making a complaint or disclosing information to the chief
5 investigator, unless the complaint was made with willful disregard for
6 its truth or falsity.

7 NEW SECTION. **Sec. 712.** At any point in which a conflict arises
8 between the chief investigator and the secretary involving the
9 direction, scope, or any other aspect of an investigation of
10 allegations of wrong-doing by a department employee, vendor, or
11 contractor, the governor, the secretary, or the chief investigator may
12 transfer authority to conduct the investigation to the Washington state
13 patrol. The Washington state patrol shall conduct the investigation,
14 and in furtherance thereof is granted all the powers and authority
15 granted the chief investigator under sections 709(1) (a) through (c)
16 and 710 of this act.

17 NEW SECTION. **Sec. 713.** (1) The chief investigator may be
18 contracted by other state agencies to conduct investigations into
19 allegations of fraud and abuse in those agencies. The requesting
20 agency must reimburse the office of chief investigator for the cost of
21 the investigation.

22 (2) The chief investigator must provide the requesting agency a
23 report of findings and may also file the findings with the appropriate
24 prosecuting attorney.

25 NEW SECTION. **Sec. 714.** (1) All powers, duties, and functions of
26 the office of special investigation pertaining to the investigation of
27 fraud and abuse and other duties set out under sections 702 through 713
28 of this act are transferred to the office of the chief investigator of
29 the department of social and health services.

30 (2)(a) All reports, documents, surveys, books, records, files,
31 papers, or written material in the possession of the office of special
32 investigation pertaining to the powers, functions, and duties
33 transferred shall be delivered to the custody of the office of the
34 chief investigator of the department of social and health services.
35 All cabinets, furniture, office equipment, motor vehicles, and other
36 tangible property employed by the office of special investigation in

1 carrying out the powers, functions, and duties transferred shall be
2 made available to the office of the chief investigator of the
3 department of social and health services. All funds, credits, or other
4 assets held in connection with the powers, functions, and duties
5 transferred shall be assigned to the office of the chief investigator
6 of the department of social and health services.

7 (b) Any appropriations made to the office of special investigation
8 for carrying out the powers, functions, and duties transferred shall,
9 on the effective date of this section, be transferred and credited to
10 the office of the chief investigator of the department of social and
11 health services.

12 (c) Whenever any question arises as to the transfer of any
13 personnel, funds, books, documents, records, papers, files, equipment,
14 or other tangible property used or held in the exercise of the powers
15 and the performance of the duties and functions transferred, the
16 director of financial management shall make a determination as to the
17 proper allocation and certify the same to the state agencies concerned.

18 (3) All employees of the office of special investigation engaged in
19 performing the powers, functions, and duties transferred are
20 transferred to the jurisdiction of the office of the chief investigator
21 of the department of social and health services. All employees
22 classified under chapter 41.06 RCW, the state civil service law, are
23 assigned to the office of the chief investigator of the department of
24 social and health services to perform their usual duties upon the same
25 terms as formerly, without any loss of rights, subject to any action
26 that may be appropriate thereafter in accordance with the laws and
27 rules governing state civil service.

28 (4) All rules and all pending business before the office of special
29 investigation pertaining to the powers, functions, and duties
30 transferred shall be continued and acted upon by the office of the
31 chief investigator of the department of social and health services.
32 All existing contracts and obligations shall remain in full force and
33 shall be performed by the office of the chief investigator of the
34 department of social and health services.

35 (5) The transfer of the powers, duties, functions, and personnel of
36 the office of special investigation shall not affect the validity of
37 any act performed before the effective date of this section.

38 (6) If apportionments of budgeted funds are required because of the
39 transfers directed by this section, the director of financial

1 management shall certify the apportionments to the agencies affected,
2 the state auditor, and the state treasurer. Each of these shall make
3 the appropriate transfer and adjustments in funds and appropriation
4 accounts and equipment records in accordance with the certification.

5 (7) Nothing contained in this section may be construed to alter any
6 existing collective bargaining unit or the provisions of any existing
7 collective bargaining agreement until the agreement has expired or
8 until the bargaining unit has been modified by action of the personnel
9 board as provided by law.

10 NEW SECTION. **Sec. 715.** Sections 702 through 713 of this act are
11 each added to chapter 43.20A RCW.

12 **Sec. 716.** RCW 41.06.076 and 1993 c 281 s 22 are each amended to
13 read as follows:

14 In addition to the exemptions set forth in RCW 41.06.070, the
15 provisions of this chapter (~~shall~~) do not apply in the department of
16 social and health services to the secretary; the secretary's executive
17 assistant, if any; not to exceed six assistant secretaries, thirteen
18 division directors, six regional directors; one confidential secretary
19 for each of the above-named officers; not to exceed six bureau chiefs;
20 the chief investigator; and all superintendents of institutions of
21 which the average daily population equals or exceeds one hundred
22 residents(~~(:—PROVIDED, That)~~). However, each (~~such~~) confidential
23 secretary must meet the minimum qualifications for the class of
24 secretary II as determined by the Washington personnel resources board.

25 NEW SECTION. **Sec. 717.** Sections 701 through 716 of this act take
26 effect July 1, 1996."

27 **4SHB 1481** - H AMD
28 By Representative Boldt

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30 On page 1, line 6 of the title, after "74.08.080," strike "and
31 74.08.340" and insert "74.08.340, and 41.06.076"

32 On page 1, line 10 of the title, after "44.28 RCW;" insert "adding
33 new sections to chapter 43.20A RCW;"

1 On page 1, line 12 of the title, after "c 165 s 1;" insert
2 "providing an effective date;"

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