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SENATE BILL 5329

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State of Washington

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2011 Regular Session

By Senators Carrell, Zarelli, Stevens, Becker, Baumgartner, Hewitt, King, Swecker, and Holmquist Newbry

Read first time 01/20/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to the creation of the division of special  
2 investigations within the office of the state auditor; and adding new  
3 sections to chapter 43.09 RCW.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply  
6 throughout this section and sections 2 through 9 of this act unless the  
7 context clearly requires otherwise.

8 (1) "Department" means the department of social and health  
9 services.

10 (2) "Director" means the director of the division of special  
11 investigations within the state auditor's office.

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

16 (4) "Division" means the division of special investigations.

17 (5) "Fraud or abuse" means any criminal or administrative  
18 misconduct by staff, contractors, vendors, or recipients in any program

1 or service administered by the department. This does not include  
2 provider fraud as it relates to the department's administration of  
3 funds under Title XIX of the social security act, medicaid.

4 NEW SECTION. **Sec. 2.** There is established in the state auditor's  
5 office a division of special investigations which shall:

6 (1) Conduct and supervise independent and objective investigations  
7 relating to allegations of fraud or abuse in any program or service  
8 administered by the department;

9 (2) Provide leadership and coordination in recommending policies  
10 and procedures designed to detect and prevent fraud and abuse; and

11 (3) Make recommendations to the auditor and the legislature about  
12 vulnerabilities and deficiencies relating to the detection and  
13 prevention of fraud or abuse as may be discovered as a result of  
14 completed investigations conducted or coordinated by the division.

15 NEW SECTION. **Sec. 3.** The director is the head of the division and  
16 is appointed by the auditor solely on the basis of integrity and  
17 demonstrated ability in law enforcement management, public  
18 administration, and conducting investigations. The director reports to  
19 and is under the general supervision of the auditor in all matters  
20 related to fraud and program integrity.

21 NEW SECTION. **Sec. 4.** (1) It is the duty and responsibility of the  
22 director to:

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

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

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

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

1 (d) Keep the auditor and the legislature informed concerning the  
2 detection and prevention of fraud or abuse, and to make recommendations  
3 for improvement of the activities.

4 (2) In carrying out the duties and responsibilities established in  
5 sections 1 through 9 of this act, the director must refer all  
6 investigations in which the director has found substantial evidence  
7 supporting a finding of a violation of federal or state criminal law to  
8 either the appropriate prosecuting authority or the attorney general's  
9 office for possible criminal prosecution.

10 NEW SECTION. **Sec. 5.** (1) The director must submit a report  
11 summarizing the activities of the division to the appropriate  
12 committees of the senate and house of representatives by November 30,  
13 2012, and biennially thereafter. The report shall contain only  
14 disclosable information, including:

15 (a) A description of significant fraud or abuse, and of  
16 vulnerabilities or deficiencies relating to the prevention and  
17 detection of fraud or abuse, discovered as a result of investigations  
18 completed during the reporting period;

19 (b) A description of corrective action taken by the department  
20 regarding fraud and abuse discovered as a result of investigations  
21 conducted by the division of fraud investigation;

22 (c) Recommendations for improving the activities of the division  
23 with respect to the vulnerabilities or deficiencies identified under  
24 (a) of this subsection;

25 (d) An identification of each significant recommendation described  
26 in the previous reports on which corrective action has or has not been  
27 completed; and

28 (e) A summary of matters referred to prosecuting authorities during  
29 the reporting period and the charges filed and convictions entered  
30 during the reporting period that have resulted from referrals by the  
31 division.

32 (2) The director must forward a draft of the report to the  
33 secretary of the department not less than twenty days before the date  
34 the report is to be issued.

35 (3) Within sixty days after the transmission of the report by the  
36 director to the legislature, the auditor must make copies of the report  
37 available to the public on its web site.

1        NEW SECTION.    **Sec. 6.**    (1) In carrying out the provisions of  
2 sections 1 through 9 of this act, the director is authorized to:

3        (a) Have prompt access to all individuals, records, electronic  
4 data, reports, audits, reviews, documents, and other materials  
5 available to the department that relate to investigations of the  
6 division that are not otherwise prohibited from disclosure to the  
7 director;

8        (b) Request information or assistance as is necessary for carrying  
9 out the duties and responsibilities provided by sections 1 through 9 of  
10 this act from a federal, state, or local governmental agency or unit of  
11 a governmental agency;

12        (c) Issue subpoenas for witnesses, documents, information, and  
13 other data necessary in the furtherance of an investigation conducted  
14 by the division. The subpoenas are enforceable under RCW 34.05.588.  
15 Prior to issuing subpoenas to a state agency, the director must first  
16 make a reasonable request to the agency for documents and information  
17 in possession of the agency;

18        (d) Administer oaths and take testimony, when appropriate in the  
19 performance of the duties and responsibilities provided in sections 1  
20 through 9 of this act, unless otherwise prohibited by law;

21        (e) To the extent and in the amount as may be provided by  
22 appropriation, enter into contracts and other arrangements for audits,  
23 studies, analyses, and other services with public or private agencies,  
24 and make the payments necessary to carry out the provisions of sections  
25 1 through 9 of this act, subject to compliance with civil service laws,  
26 collective bargaining agreements, and other applicable law.

27        (2) The state auditor is authorized to:

28        (a) To the extent and in the amount as may be provided by  
29 appropriation, select, appoint, and employ personnel as may be  
30 necessary to carry out the provisions of sections 1 through 9 of this  
31 act;

32        (b) To the extent and in the amount as may be provided by  
33 appropriation, purchase or lease facilities, equipment, and supplies  
34 necessary to carry out the provisions of sections 1 through 9 of this  
35 act;

36        (c) Delegate to the director any function of the state auditor  
37 under chapter 42.40 RCW.

1 (3) Whenever information or assistance requested under subsection  
2 (1)(a) of this section is, in the judgment of the director,  
3 unreasonably refused or not provided, the director must report the  
4 circumstances to the auditor without delay.

5 NEW SECTION. **Sec. 7.** (1) In addition to the authority granted in  
6 RCW 43.09.165, the state auditor and the director may apply for and  
7 obtain a superior court order approving and authorizing a subpoena in  
8 advance of its issuance. The application may be made in the county  
9 where the subpoenaed person resides or is found, or the county where  
10 the subpoenaed records or documents are located, or in Thurston county.  
11 The application must: (a) State that an order is sought pursuant to  
12 this subsection; (b) adequately specify the records, documents, or  
13 testimony; and (c) declare under oath that an investigation is being  
14 conducted for a lawfully authorized purpose related to an investigation  
15 within the state auditor's authority and that the subpoenaed documents  
16 or testimony are reasonably related to an investigation within the  
17 state auditor's authority.

18 (2) Where the application under this section is made to the  
19 satisfaction of the court, the court must issue an order approving the  
20 subpoena. An order under this section constitutes authority of law for  
21 the state auditor to subpoena the records or testimony.

22 (3) The state auditor and the director may seek approval and a  
23 court may issue an order under this section without prior notice to any  
24 person, including the person to whom the subpoena is directed and the  
25 person who is the subject of an investigation.

26 NEW SECTION. **Sec. 8.** (1) The director may receive and investigate  
27 complaints or information from an employee of the department or a  
28 citizen concerning the possible existence of an activity constituting  
29 fraud and abuse.

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

35 (3) An employee who has authority to take, direct others to take,  
36 recommend, or approve a personnel action, must not, with respect to the

1 authority, take or threaten to take an action against an employee as a  
2 reprisal for making a complaint or disclosing information to the  
3 director, unless the complaint was made with willful disregard for its  
4 truth or falsity.

5 NEW SECTION. **Sec. 9.** (1) The director may enter into contracts or  
6 interagency agreements with other state agencies to conduct  
7 investigations into allegations of fraud and abuse in those agencies.  
8 The requesting agency must reimburse the division of special  
9 investigations for the cost of the investigation.

10 (2) The director must provide the requesting agency a report of  
11 findings and may also file the findings with the appropriate  
12 prosecuting attorney or the attorney general's office.

13 NEW SECTION. **Sec. 10.** (1) All powers, duties, and functions of  
14 the department of social and health services division of fraud  
15 investigation pertaining to the investigation of fraud and abuse and  
16 other duties set out under sections 1 through 9 of this act are  
17 transferred to the division of special investigations of the state  
18 auditor's office. All references to the division of fraud  
19 investigation in the department of social and health services in the  
20 revised code of Washington shall be construed to mean the director or  
21 the division of special investigations in the state auditor's office.

22 (2)(a) All reports, documents, surveys, books, records, files,  
23 papers, and written material in the possession of the department of  
24 social and health services division of fraud investigations pertaining  
25 to the powers, functions, and duties transferred in sections 1 through  
26 9 of this act shall be delivered to the custody of the division of  
27 special investigations of the state auditor's office.

28 (b) Any appropriations made to the department of social and health  
29 services division of fraud investigation for carrying out the powers,  
30 functions, and duties transferred shall, on the effective date of this  
31 section, be transferred and credited to the division of special  
32 investigations of the state auditor's office.

33 (c) All cabinets, furniture, office equipment, motor vehicles, and  
34 other tangible property employed by the division of fraud  
35 investigations within the department of social and health services in  
36 carrying out the powers, functions, and duties transferred shall be

1 made available to the division of special investigations of the state  
2 auditor's office. All funds, credits, or other assets held in  
3 connection with the powers, functions, and duties transferred shall be  
4 assigned to the division of special investigations of the state  
5 auditor's office.

6 (d) Whenever any question arises as to the transfer of any  
7 personnel, funds, books, documents, records, papers, files, equipment,  
8 or other tangible property used or held in the exercise of the powers  
9 and the performance of the duties and functions transferred, the  
10 director of financial management shall make a determination as to the  
11 proper allocation and certify the same to the state agencies concerned.

12 (3) All rules and all pending business before the department of  
13 social and health services division of fraud investigation pertaining  
14 to the powers, functions, and duties transferred shall be continued and  
15 acted upon by the division of special investigations of the state  
16 auditor's office. All existing contracts and obligations shall remain  
17 in full force and shall be performed by the division of special  
18 investigations of the state auditor's office.

19 (4) The transfer of the powers, duties, and functions of the  
20 department of social and health services division of fraud  
21 investigation shall not affect the validity of any act performed before  
22 the effective date of this section.

23 (5)(a) Any appropriations made to the department of social and  
24 health services for the division of fraud investigation for carrying  
25 out the powers, functions, and duties transferred in this act shall, on  
26 the effective date of this section, be transferred and credited to the  
27 state auditor's office.

28 (b) Any appropriations made to the department of social and health  
29 services for carrying out the powers, functions, and duties transferred  
30 shall, on the effective date of this section, be transferred to the  
31 state auditor's office through an interagency agreement.

32 (6)(a) All employees of the division of fraud investigation within  
33 the department of social and health services engaged in performing the  
34 powers, functions, and duties transferred in this act are transferred  
35 to the jurisdiction of the division of special investigations in the  
36 state auditor's office. All employees classified under chapter 41.06  
37 RCW are assigned to the division of special investigations to perform

1 their usual duties upon the same terms as formerly, without any loss of  
2 rights, subject to any action that may be appropriate thereafter in  
3 accordance with the laws and rules governing state civil service.

4 (b) Nothing in this section may be construed to alter any existing  
5 collective bargaining unit or the provisions of any existing collective  
6 bargaining agreement until the agreement has expired or until the  
7 bargaining unit has been modified by action of the public employment  
8 relations commission as provided by law.

9 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act are each  
10 added to chapter 43.09 RCW.

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