



WYOMING LEGISLATIVE SERVICE OFFICE

Issue Brief

05IB014

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Re: Whistleblower Offices

PURPOSE

Identify what other states have adopted in terms of public whistleblower offices. Discuss possible advantages/disadvantages to the placement of a whistleblower office in different state agencies. Summarize what authority, personnel, and budget may be required to initiate a whistleblower office in the state of Wyoming.

RESULTS IN BRIEF

Other states vary in the arrangement of their whistleblower office, if one exists. At the most fundamental level, many states have the standard statutory anti-retaliation laws. For the majority of states, it appears any questionable governmental action is reported to a person of higher authority within the whistleblower's department. LSO Research staff identified a limited number of states which have separate offices dedicated to issues regarding improper governmental action and whistleblower laws.

W.S. 9-11-101 et seq is the "State Government Fraud Reduction Act," which provides government employees' anti-retaliation protections. Similar to other states, the alleged infraction is reported within the whistleblower's department. The reporter is protected by W.S. 9-11-103 which prevents discrimination or retaliation against the whistleblower. Wyoming currently does not have a separate office dedicated to investigating improper governmental actions.

A whistleblower office could be created within various existing government departments, each having advantages and disadvantages. In contrast,

a separate whistleblower office could also be created. The creation of a separate office may be complicated since it is difficult to ascertain the size of staff and budget required, particularly without knowing the full scope of assigned duties.

BACKGROUND

There appear to be two main charges with respect to whistleblower offices. The first is the receipt of the report of improper governmental action and the investigation regarding the accuracy of the alleged misconduct. Second are the anti-retaliation laws designed to protect the employee reporting the alleged violations, also known as the whistleblower.

Whistleblower offices have a broad range of structures and authorities across states. Many states have statutes that are designed to protect the employee, but do not have a separate office designed to reduce improper governmental actions. The employee reports the suspected improper acts to a superior or division head. (Wyoming falls into this category.)

A few states appear to have whistleblower offices within a department or division in the state government. These offices handle the investigation of improper governmental conduct and report the outcome of the investigation with any recommended actions. The identity of the whistleblower is almost always held confidential, but this does not mean their identity cannot be ascertained by various parties.

Even in cases with separate offices, another agency, such as the Attorney General or a Human

Rights Commission, may address the questions of retaliation against a whistleblower.

OTHER STATES

LSO Research staff identified a few states with entities designed to investigate the possibility of improper governmental action. Three states are detailed below (Washington, Connecticut, and Montana) because each has a detailed whistleblower investigation office that operates differently.

Washington's whistleblower office operates entirely out of the State Auditor's Office, while the Connecticut office operates out of the Auditors of Public Funds for the initial contact and investigation and the Attorney General's Office for more in depth investigation. Montana's Fraud Hotline is operated out of the Legislative Audit Division. California has a program similar to Washington's in the sense that the office is in the state auditor's office and operates in a similar manner. Maine is in the process of implementing a whistleblower office, but the organization of the office is not yet defined. (Note: LSO Research did not complete a detailed review of all states.)

Washington. The Washington Whistleblower Act was enacted in 1982 and amended in 1999. It provides a mechanism for all state employees to report suspected improper governmental action. The whistleblower office is located within the State Auditor's Office, headed by an elected official. If improper governmental action is suspected within the State Auditor's Office, then the Washington Attorney General's Office conducts an investigation.

Under the Washington system, assertions of improper governmental action must be filed in writing with State Auditor's Office. Any current Washington state employee including temporary, classified, and exempt civil service employees, and elected officials, may report suspected improper governmental action. The report of improper governmental action must be provided to the whistleblower office within one year of the occurrence of the alleged action.

According to Washington statute, all whistleblower reports must be filed in good faith, where good faith is defined as "a reasonable basis in fact for the communication. 'Good faith' is lacking when the employee knows or reasonably ought to know the report is malicious, false, or frivolous." The identity of the whistleblower is kept confidential unless the auditor determines the information has been provided other than in good faith.

Once an allegation is filed, the whistleblower receives a written response acknowledging receipt of the report. An investigation will be conducted within 30 days if one is deemed necessary, though, in practice, many investigations require more time. Once the investigation is completed, a final report, which is a public document, is sent to the whistleblower and all involved parties. The report may also include an agency corrective action plan to deal with any substantiated claims. (See Attachment A for a copy of the information provided on the website for the Washington State Employee Whistleblower Act and the relevant Washington statutes.)

Retaliation. Throughout the process, the whistleblower is protected from retaliation and the identity of the whistleblower is kept confidential. Any employee who thinks they have been subjected to a retaliatory action may file a claim with the Washington Human Rights Commission. The Commission will investigate the claim and take appropriate action. Civil penalties for retaliation are: a letter of reprimand placed in the retaliator's personnel file (at minimum) and a fine of up to \$3,000 and suspension for 30 days without pay may be included.

Staff/Budget. Washington's Whistleblower Office consists of four full time staff: a director and three investigators. In a typical year the Office will conduct between 50 and 100 cases of reported improper governmental action. It is possible for them to refer an action out to an agency if it is deemed necessary. The Washington Whistleblower Office has a biennial budget of approximately \$750,000.

Connecticut. Connecticut Statute §§ 4-61dd sets forth the procedures to be followed in any matter involving improper conduct in any state department or agency, quasi-public agency, or in the case of any large state contract. A large state contract consists of a contract between an entity and a state or quasi-public agency having a value of \$5 million or more, except for a contract for the construction, alteration, or repair of any public building or public work. (A copy of Connecticut Statute §§ 4-61dd is included as Attachment B.)

Any person with evidence of improper governmental action may take all evidence to the Connecticut Auditors of Public Accounts, which is under the direction of two state auditors appointed by the Connecticut Legislature. The Auditors of Public Accounts shall review the matter and report the findings to the Connecticut Attorney General. The Connecticut Attorney General shall then investigate the matter and may be assisted by the Auditors of Public Accounts. According to Connecticut Statute, the Attorney General has the power to summon witnesses, require the production of necessary documents, and administer oaths to witnesses, where necessary for their investigation. Upon the conclusion of the investigation, the Attorney General shall, where necessary, report the findings to the Governor, or Chief State's Attorney for action.

Retaliation. According to Connecticut statute, the whistleblower is to remain confidential unless the Auditors of Public Accounts or the Attorney General determines the disclosure is unavoidable during the course of the investigation. There shall be no retaliation against the whistleblower and if such retaliation exists, the employer may notify the Attorney General's Office, who shall investigate the claim. After the investigation, if deemed necessary, the case is brought before the Chief Human Rights Referee who shall conduct a hearing on the issue. If retaliation is found, the referee may award the aggrieved party: reinstatement, back pay and benefits, reasonable attorneys' fees, and other damages. This ruling may be appealed.

Alternatively, any employee making false or malicious charges shall be subject to disciplinary action up to and including dismissal.

Staff/Budget. Connecticut has one full-time staff within the Auditors of Public Accounts, along with four other part-time staff. In addition there are field staff within agencies that have at least some responsibility for whistleblower cases. There is also one full-time staff person within the Attorney General's Office with approximately five other attorneys that work on cases. As a result of this diffuse structure, the total number of employees dedicated to whistleblower activities is hard to pin down because some of the employees may shift responsibilities depending on workload.

There are normally around 80 to 95 cases per year, though this last year the state investigated 159 cases. Connecticut has a relatively large government compared to Wyoming, with approximately 50,000 state employees. The total budget is also difficult to determine since employees are not devoted strictly to the whistleblower office but are shifted as needed.

Montana. Montana administers a Fraud Hotline to report government fraud, waste, and abuse. The fraud hotline allows state employees and the public to report improper governmental actions. The program is located within the Legislative Audit Division, a rough equivalent of Wyoming's Program Evaluation section within the Legislative Service Office.

According to Montana statute, information received is confidential until the time that the legislative auditor or another agency determines the validity of the report and takes action. After the investigation and any subsequent corrective action, information concerning the subject of the complaint, and remedy, if any, is public information unless precluded by law.

Staff/Budget. The Fraud Hotline is operated out of the Montana Legislative Audit Division. No full-time staff is assigned to the hotline; instead each auditor is required to assume the hotline duties for one week. This is essentially the same as one full-time equivalent employee. This activity is most often done in conjunction with their regular duties, and, reportedly, only takes up

a relatively small portion of their week. Last fiscal year the Montana Fraud Hotline received 113 calls, of which around 30 were investigated. (For an analysis of fiscal year 2005 hotline calls, see Attachment C.)

Since the fraud hotline is part of the duties of the Legislative Audit staff, there is no individual budget assigned to the hotline.

WYOMING

W.S. 9-11-101 et seq. is the “State Government Fraud Reduction Act,” which provides government employees’ anti-retaliation protections. The “State Government Fraud Reduction Act” was passed during the 1996 legislative session (’96 Laws, Ch. 123). A similar bill failed in 1990 and 1992, which was titled “Whistle-Blowers’ Protection Act.” (A copy of 1996 HB 115 is included as Attachment D.)

Similar to other states, the alleged infraction is reported within the whistleblower’s department. Any state employee, according to Wyoming statute, may report, in writing, any fraud, waste or gross mismanagement, violation of any law, rule, regulation or code, practice that may endanger an employee, or request to participate in any of the above violations.

The whistleblower is protected by W.S. 9-11-103 which prevents discrimination or retaliation against the whistleblower. Any employee subjected to retaliation, after using all administrative remedies, may file a civil suit within 90 days of the final administrative decision or within 90 days of the violation, whichever is later. The employee may only be entitled to the reinstatement of his job, back wages, and the reinstatement of their employee benefits. Any employee making false reports is subject to disciplinary action, including dismissal.

A Wyoming whistleblower office could be created within several government departments. The Attorney General’s Office, the Department of Audit, the Governor’s Office, the State Auditor’s Office, and the Legislative Management Audit Program would all be feasible departments for placement. An entirely new Whistleblower Office

could also be created. (For a more detailed explanation of the historical and existing state auditing functions, see Attachment E, LSO Research Staff memo 04RM030, “Recent History of State Auditing Functions.”)

Attorney General. The placement of a whistleblower office within the Attorney General’s office would allow the members of the whistleblower office the power to summon witnesses, require the production of necessary documents, and administer oaths to witnesses, where necessary for their investigation.

A possible disadvantage of placing the whistleblower office in the Attorney General’s Office is there may not be the expertise within the office to deal with some issues raised during the investigation, e.g., financial malfeasance. Another situation could arise where the Attorney General’s Office is required to defend a department or official while also investigating improper governmental actions at the same time. In other words, there could be the potential for a conflict of duties.

Department of Audit. The Department of Audit is currently charged with at least three separate duties: oversight of taxpayer compliance, particularly in the areas of severance and excise taxes, government financial accountability, and banking regulation.

The placement of the whistleblower office within the Department of Audit would seem to coincide with what is done in Connecticut, i.e., placement in the Auditors of Public Accounts. Since the Director of the Department of Audit is not an elected official, this would allow for some independence from the political pressures that could be found within state government.

The one disadvantage may be that the Wyoming Department of Audit’s charge is currently financial in nature. Not all malfeasance would necessarily fall into the financial category, like nepotism or downloading or looking at improper materials from the internet.

Governor’s Office. Placing a whistleblower office under the direct authority of the Governor

would be feasible and may lend to cooperation among all executive branch agencies.

By the nature of an elected office, a possible disadvantage of placement in the Governor's Office could be the willingness of a whistleblower to make a report because of partisan influence, as well as the outcome of any investigation. For example, it could be possible for one elected official to be responsible for the investigation of improper governmental actions of another elected official.

State Auditor's Office. In 1992, the Legislature reorganized the duties of the State Auditor ('92 Laws, Ch. 41). This legislation proclaimed the State Auditor the official "comptroller." The State Auditor is now required to: maintain the state's central fiscal accounts; order all payments into and out of the funds held by the State Treasurer; serve as the state payroll official, maintain the official payroll for all state agencies excluding the University of Wyoming and the Department of Transportation; present a preliminary annual financial report of fiscal affairs to the Governor, President of the Senate, Speaker of the House, and Joint Appropriations Committee; issue and draw warrants for payment or collection; and oversee the voucher system relating to state agencies.

The placement of a whistleblower office within the office of the State Auditor would be similar to what is done in the state of Washington. The function of the whistleblower office may fall most in line with the duties of the State Auditor's Office.

Since the Auditor's Office is an elected office, by the nature of the position, it could allow for political influence, similar to placement within the Governor's Office. Further, the non-financial allegations would likely generate similar difficulties as those arising in the Department of Audit.

LSO Program Evaluation. The Program Evaluation function performs a variety of in-depth studies of program administration, government effectiveness, and efficiency, not financial compliance.

The placement of a whistleblower office within the Legislative Service Office Program Evaluation office could also be possible. One likely advantage would be the Management Audit function would be unaffected by executive branch politics.

Arguments against placement within the LSO Program Evaluation office include the fact that LSO, by definition, is a service organization for the Legislature, not an investigative or prosecutorial agency. Adding such a role could serve to undermine the policy and performance evaluation conducted by the Office. LSO Program Evaluation's focus is on performance evaluation and policy analysis, and not improper conduct, though sometimes that is a result of some findings.

Newly Created Whistleblower Office. Creating a new office solely to handle improper governmental actions and possibly whistleblower protections would also be feasible. However, with the unknown size of the operation, it might be better suited to be placed within another department for a preliminary look at the number of cases that are handled. This option would also not take advantage of existing state structures and state government expertise.

WHISTLEBLOWER OFFICE SIZE

The size of the whistleblower office would be dependent on the workload encountered. It is difficult to predict the amount of possible improper governmental actions that may be reported, as well as activities that need further investigation. Because of this variability, the first step may be to start the office within a department to determine the scope of work the office may conduct. If there were a large workload, i.e., a large number of reported improper governmental actions, then the office could be separated and a new office created specifically for the whistleblower function.

The whistleblower office would need the authority to obtain various documents and financial statements, as well as other possible information. In this regard, authorizing statutes could be based upon the authority granted to the State Auditor's

Office, the Department of Audit, and the Attorney General's Office, supplemented by the statutes identified in Connecticut and Washington.

The budget would be dependent on the size of the staff and the amount of possible governmental violations that need investigating. It might be reasonable to think a Wyoming Whistleblower Office would be somewhat smaller than Washington's with between 50 and 100 cases per year and a \$750,000 biennial budget. Therefore, a staff of two or three and a biennial budget of \$300,000 - \$400,000 may be a reasonable starting point. This figure may be further reduced, if located within an existing agency resulting from the sharing of employees when needed, such as appears to occur in Connecticut and Montana.

If you have any further questions, do not hesitate to contact LSO Research at 777-7881.

ATTACHMENT A

Chapter 42.40 RCW STATE EMPLOYEE WHISTLEBLOWER PROTECTION

RCW SECTIONS

- 42.40.010 Policy.
- 42.40.020 Definitions.
- 42.40.030 Right to disclose improper governmental actions -- Interference prohibited.
- 42.40.035 Duty of correctness -- Penalties for false information.
- 42.40.040 Report of improper governmental action -- Investigations and reports by auditor, agency.
- 42.40.050 Retaliatory action against whistleblower -- Remedies.
- 42.40.070 Summary of chapter available to employees.
- 42.40.080 Contracting for assistance.
- 42.40.090 Administrative costs.
- 42.40.100 Assertions against auditor.
- 42.40.110 Performance audit.
- 42.40.900 Severability -- 1982 c 208.
- 42.40.910 Application of chapter.

RCW 42.40.010 **Policy.**

It is the policy of the legislature that employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions, and it is the intent of the legislature to protect the rights of state employees making these disclosures. It is also the policy of the legislature that employees should be encouraged to identify rules warranting review or provide information to the rules review committee, and it is the intent of the legislature to protect the rights of these employees.

[1995 c 403 § 508; 1982 c 208 § 1.]

NOTES:

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

RCW 42.40.020 **Definitions.**

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

- (1) "Auditor" means the office of the state auditor.
- (2) "Employee" means any individual employed or holding office in any department or agency of state government.
- (3) "Good faith" means a reasonable basis in fact for the communication. "Good faith" is lacking when the employee knows or reasonably ought to know that the report is malicious, false, or frivolous.
- (4) "Gross waste of funds" means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.
- (5)(a) "Improper governmental action" means any action by an employee undertaken in the performance of the employee's official duties:

- (i) Which is [a] gross waste of public funds or resources as defined in this section;
- (ii) Which is in violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature; or
- (iii) Which is of substantial and specific danger to the public health or safety.

(b) "Improper governmental action" does not include personnel actions, for which other remedies exist, including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the state civil service law, alleged labor agreement violations, reprimands, claims of discriminatory treatment, or any action which may be taken under chapter 41.06 RCW, or other disciplinary action except as provided in RCW 42.40.030.

(6) "Substantial and specific danger" means a risk of serious injury, illness, peril, or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.

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

(8) "Whistleblower" means an employee who in good faith reports alleged improper governmental action to the auditor, initiating an investigation under RCW 42.40.040. For purposes of the provisions of this chapter and chapter 49.60 RCW relating to reprisals and retaliatory action, the term "whistleblower" also means: (a) An employee who in good faith provides information to the auditor in connection with an investigation under RCW 42.40.040 and an employee who is believed to have reported asserted improper governmental action to the auditor or to have provided information to the auditor in connection with an investigation under RCW 42.40.040 but who, in fact, has not reported such action or provided such information; or (b) an employee who in good faith identifies rules warranting review or provides information to the rules review committee, and an employee who is believed to have identified rules warranting review or provided information to the rules review committee but who, in fact, has not done so.

[1999 c 361 § 1; 1995 c 403 § 509; 1992 c 118 § 1; 1989 c 284 § 1; 1982 c 208 § 2.]

NOTES:

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

RCW 42.40.030

Right to disclose improper governmental actions -- Interference prohibited.

(1) An employee shall not directly or indirectly use or attempt to use the employee's official authority or influence for the purpose of intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence any individual for the purpose of interfering with the right of the individual to: (a) Disclose to the auditor (or representative thereof) information concerning improper governmental action; or (b) identify rules warranting review or provide information to the rules review committee.

(2) Nothing in this section authorizes an individual to disclose information otherwise prohibited by law.

[1995 c 403 § 510; 1989 c 284 § 2; 1982 c 208 § 3.]

NOTES:

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

RCW 42.40.035**Duty of correctness -- Penalties for false information.**

An employee must make a reasonable attempt to ascertain the correctness of the information furnished and may be subject to disciplinary actions, including, but not limited to, suspension or termination, for knowingly furnishing false information as determined by the employee's appointing authority.

[1999 c 361 § 2.]

RCW 42.40.040**Report of improper governmental action -- Investigations and reports by auditor, agency.**

(1)(a) In order to be investigated, an assertion of improper governmental action must be provided to the auditor within one year after the occurrence of the asserted improper governmental action.

(b) The auditor has the authority to determine whether to investigate any assertions received. In determining whether to conduct either a preliminary or further investigation, the auditor shall consider factors including, but not limited to: The nature and quality of evidence and the existence of relevant laws and rules; whether the action was isolated or systematic; the history of previous assertions regarding the same subject or subjects or subject matter; whether other avenues are available for addressing the matter; whether the matter has already been investigated or is in litigation; the seriousness or significance of the asserted improper governmental action; and the cost and benefit of the investigation. The auditor has the sole discretion to determine the priority and weight given to these and other relevant factors and to decide whether a matter is to be investigated. The auditor shall document the factors considered and the analysis applied.

(c) The auditor also has the authority to investigate assertions of improper governmental actions as part of an audit conducted under chapter 43.09 RCW. The auditor shall document the reasons for handling the matter as part of such an audit.

(2) Subject to subsection (5)(c) of this section, the identity of a whistleblower is confidential at all times unless the whistleblower consents to disclosure by written waiver or by acknowledging his or her identity in a claim against the state for retaliation.

(3) Upon receiving specific information that an employee has engaged in improper governmental action, the auditor shall, within five working days of receipt of the information, mail written acknowledgement to the whistleblower at the address provided stating whether a preliminary investigation will be conducted. For a period not to exceed thirty working days from receipt of the assertion, the auditor shall conduct such preliminary investigation of the matter as the auditor deems appropriate.

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

(5)(a) If it appears to the auditor, upon completion of the preliminary investigation, that the matter is so unsubstantiated that no further investigation, prosecution, or administrative action is warranted, the auditor shall so notify the whistleblower.

(b) The written notification shall contain a summary of the information received and of the results of the preliminary investigation with regard to each assertion of improper governmental action.

(c) In any case to which this section applies, the identity of the whistleblower shall be kept confidential unless the auditor determines that the information has been provided other than in good faith.

(d) With the agency's consent, the auditor may forward the assertions to an appropriate agency to investigate and report back to the auditor no later than sixty working days after the assertions are received from the auditor. The auditor is entitled to all investigative records resulting from such a referral. All procedural and confidentiality provisions of this chapter apply to investigations conducted under this subsection. The auditor shall document the reasons the assertions were referred.

(6) During the preliminary investigation, the auditor shall provide written notification of the nature of the assertions to the subject or subjects of the investigation and the agency head. The notification shall include the relevant facts and laws known at the time and the procedure for the subject or subjects of the investigation and the agency head to respond to the assertions and information obtained during the investigation. This notification does not limit the auditor from

considering additional facts or laws which become known during further investigation.

(7)(a) If it appears to the auditor after completion of the preliminary investigation that further investigation, prosecution, or administrative action is warranted, the auditor shall so notify the whistleblower, the subject or subjects of the investigation, and the agency head and either conduct a further investigation or issue a report under subsection (10) of this section.

(b) If the preliminary investigation resulted from an anonymous assertion, a decision to conduct further investigation shall be subject to review by a three-person panel convened as necessary by the auditor prior to the commencement of any additional investigation. The panel shall include a state auditor representative knowledgeable of the subject agency operations, a citizen volunteer, and a representative of the attorney general's office. This group shall be briefed on the preliminary investigation and shall recommend whether the auditor should proceed with further investigation.

(c) If further investigation is to occur, the auditor shall provide written notification of the nature of the assertions to the subject or subjects of the investigation and the agency head. The notification shall include the relevant facts known at the time and the procedure to be used by the subject or subjects of the investigation and the agency head to respond to the assertions and information obtained during the investigation.

(8) Within sixty working days after the preliminary investigation period in subsection (3) of this section, the auditor shall complete the investigation and report its findings to the whistleblower unless written justification for the delay is furnished to the whistleblower, agency head, and subject or subjects of the investigation. In all such cases, the report of the auditor's investigation and findings shall be sent to the whistleblower within one year after the information was filed under subsection (3) of this section.

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

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

(c) Agencies shall cooperate fully in the investigation and shall take appropriate action to preclude the destruction of any evidence during the course of the investigation.

(d) During the investigation the auditor shall interview each subject of the investigation. If it is determined there is reasonable cause to believe improper governmental action has occurred, the subject or subjects and the agency head shall be given fifteen working days to respond to the assertions prior to the issuance of the final report.

(10)(a) If the auditor determines there is reasonable cause to believe an employee has engaged in improper governmental action, the auditor shall report the nature and details of the activity to:

- (i) The subject or subjects of the investigation and the head of the employing agency; and
- (ii) If appropriate, the attorney general or such other authority as the auditor determines appropriate.

(b) The auditor has no enforcement power except that in any case in which the auditor submits an investigative report containing reasonable cause determinations to the agency, the agency shall send its plan for resolution to the auditor within fifteen working days of having received the report. The agency is encouraged to consult with the subject or subjects of the investigation in establishing the resolution plan. The auditor may require periodic reports of agency action until all resolution has occurred. If the auditor determines that appropriate action has not been taken, the auditor shall report the determination to the governor and to the legislature and may include this determination in the agency audit under chapter 43.09 RCW.

(11) Once the auditor concludes that appropriate action has been taken to resolve the matter, the auditor shall so notify the whistleblower, the agency head, and the subject or subjects of the investigation. If the resolution takes more than one year, the auditor shall provide annual notification of its status to the whistleblower, agency head, and subject or subjects of the investigation.

(12) This section does not limit any authority conferred upon the attorney general or any other agency of government

to investigate any matter.

[1999 c 361 § 3; 1992 c 118 § 2; 1989 c 284 § 3; 1982 c 208 § 4.]

RCW 42.40.050

Retaliatory action against whistleblower -- Remedies.

(1) Any person who is a whistleblower, as defined in RCW 42.40.020, and who has been subjected to workplace reprisal or retaliatory action is presumed to have established a cause of action for the remedies provided under chapter 49.60 RCW. For the purpose of this section "reprisal or retaliatory action" means but is not limited to any of the following:

- (a) Denial of adequate staff to perform duties;
- (b) Frequent staff changes;
- (c) Frequent and undesirable office changes;
- (d) Refusal to assign meaningful work;
- (e) Unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;
- (f) Demotion;
- (g) Reduction in pay;
- (h) Denial of promotion;
- (i) Suspension;
- (j) Dismissal;
- (k) Denial of employment;
- (l) A supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower; and
- (m) A change in the physical location of the employee's workplace or a change in the basic nature of the employee's job, if either are in opposition to the employee's expressed wish.

(2) The agency presumed to have taken retaliatory action under subsection (1) of this section may rebut that presumption by proving by a preponderance of the evidence that the agency action or actions were justified by reasons unrelated to the employee's status as a whistleblower.

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

[1999 c 283 § 1; 1992 c 118 § 3; 1989 c 284 § 4; 1982 c 208 § 5.]

RCW 42.40.070

Summary of chapter available to employees.

A written summary of this chapter and procedures for reporting improper governmental actions established by the auditor's office shall be made available by each department or agency of state government to each employee upon entering public employment. Employees shall be notified by each department or agency of state government each year of the procedures and protections under this chapter.

[1989 c 284 § 5; 1982 c 208 § 7.]

RCW 42.40.080
Contracting for assistance.

The auditor has the authority to contract for any assistance necessary to carry out the provisions of this chapter.

[1999 c 361 § 4.]

RCW 42.40.090
Administrative costs.

The cost of administering this chapter is funded through the auditing services revolving account created in RCW 43.09.410.

[1999 c 361 § 5.]

RCW 42.40.100
Assertions against auditor.

A whistleblower wishing to provide information under this chapter regarding asserted improper governmental action against the state auditor or an employee of that office shall provide the information to the attorney general who shall act in place of the auditor in investigating and reporting the matter.

[1999 c 361 § 6.]

RCW 42.40.110
Performance audit.

The office of financial management shall contract for a performance audit of the state employee whistleblower program on a cycle to be determined by the office of financial management. The audit shall be done in accordance with generally accepted government auditing standards beginning with the fiscal year ending June 30, 2001. The audit shall determine at a minimum: Whether the program is acquiring, protecting, and using its resources such as personnel, property, and space economically and efficiently; the causes of inefficiencies or uneconomical practices; and whether the program has complied with laws and rules on matters of economy and efficiency. The audit shall also at a minimum determine the extent to which the desired results or benefits established by the legislature are being achieved, the effectiveness of the program, and whether the auditor has complied with significant laws and rules applicable to the program.

The cost of the audit is a cost of operating the program and shall be funded by the auditing services revolving account created by RCW 43.09.410.

[1999 c 361 § 8.]

RCW 42.40.900
Severability -- 1982 c 208.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1982 c 208 § 14.]

RCW 42.40.910
Application of chapter.

Chapter 361, Laws of 1999 does not affect the jurisdiction of the legislative ethics board, the executive ethics board, or the commission on judicial conduct, as set forth in chapter 42.52 RCW. The senate, the house of representatives, and

the supreme court shall adopt policies regarding the applicability of chapter 42.40 RCW to the senate, house of representatives, and judicial branch.

[1999 c 361 § 7.]

**State Auditor's Office
Summary of Provisions and Protections
Chapter 42.40 RCW
The State Employee Whistleblower Act**

I. WHAT IS THE WHISTLEBLOWER PROGRAM

The Whistleblower Act, enacted by the Washington State Legislature in 1982 and amended in 1999, provides an avenue for state employees to report suspected improper governmental action.
Chapter 42.40 RCW.

The Legislative intent is to encourage state employees to report improper governmental action(s). The law makes retaliation against whistleblowers unlawful and authorizes remedies should it occur. The State Auditor's Office investigates and reports on complaints of improper governmental action and the Human Rights Commission has sole responsibility for investigating asserted retaliatory actions.

Q: Why is such a program important?

Because this office is dedicated to ensuring accountability for public funds, we see the whistleblower program as one more method of achieving this goal. Public employees have an obligation to ensure that government in general, and their departments in particular, prevent improper governmental action. The Whistleblower Program holds state employees accountable for their actions.

II. WHAT IS IMPROPER GOVERNMENTAL ACTION

Improper governmental action, **RCW 42.40.020(5)(a)**, is defined as any action by an employee undertaken in the performance of the employee's official duties which:

- Is a gross waste of public funds or resources.
- Is in violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature.
- Is of substantial and specific danger to the public health or safety.

Q. Is there a specific timeframe in which to report improper governmental actions?

RCW 42.40.040(1)(a). For an improper governmental action to be investigated it must be provided to the auditor within one year after the occurrence of the action.

Q: Can the State Auditor investigate improper governmental action(s) involving personnel issues?

No. **RCW 42.40.020(5)(b)**. The Whistleblower Act specifically excludes personnel actions, for which other remedies exist, from investigation by this office. These types of actions include, but are not limited to, employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of state civil service laws, labor agreement violations, reprimands or other disciplinary actions. While the Auditor's Office cannot investigate these types of actions, there are other avenues for addressing them.

Q: Which government agencies or other organizations can assist in addressing personnel issues?

The following government agencies and labor organizations may assist state employees in dealing with personnel issues:

Agency	Issues
Washington State Personnel Appeals Board Olympia (360) 586-1481 http://www.pab.wa.gov	Disciplinary actions. Layoffs. Violations of merit system rules. Violations of state civil service laws.
Washington State Human Rights Commission Olympia 1-800-223-3247 Eastern Wash 1-800-662-2755 Seattle 1-800-729-4960 TTY 1-800-300-7572 http://www.hum.wa.gov	Discrimination because of race, creed, color, national origin, sex, marital status, age or disability. Sexual harassment. Whistleblower workplace reprisal or retaliatory action.
Public Employment Relations Commission Olympia (360) 753-3444 http://www.perc.wa.gov	Unfair labor practices. Interference with rights to form or join employee labor organizations and rights to bargain collectively.
Washington Federation of State Employees Olympia (360) 352-7603	See grievance procedures in your union bargaining agreement.
Washington Public Employees Association Olympia (360) 943-1121	See grievance procedures in your union bargaining agreement.

Q: What are some examples of whistleblower complaints where there has been reasonable cause to believe that improper governmental action has occurred?

- A professor at a state college used the state computer to view over 71,000 graphic images and movies that contained adult-oriented material. The employee, in addition, used state resources for an outside business. The employee resigned from the agency. The Executive Ethics Board assessed a civil penalty to the employee in the amount of \$20,000; \$5,000 suspended and \$4,000 as restitution to employee’s agency for investigative costs. **WB No. 02-065.**
- An employee used state resources, computer, e-mail, SCAN, and Internet for personal use. The employee made 241 personal long distance telephone calls using the state SCAN system at a cost to the state of \$114.46. The agency issued a disciplinary letter to the employee and reduced the employee’s salary by 5% for three months. **WB No. 02-062.**
- Two employees accessed and disclosed confidential information during a foster care investigation. Agency terminated one employee and is taking disciplinary action against the second employee. Confidential information that was accessed by the employees has been electronically locked so only designated individuals have the ability to access the information. **WB 03-032.**

Q: What about suggestions on how agencies could be saving money? Should they be filed under the Whistleblower Program?

No. Cost saving ideas should be submitted to the Employee Suggestion Program, which is administered by the Productivity Board within the Secretary of State’s Office, (360) 704-5203. Cost saving ideas can result in monetary awards.

III. WHO CAN FILE A WHISTLEBLOWER COMPLAINT

Any current Washington **state employee** may report a suspected improper governmental action through the Whistleblower Program. This includes temporary employees, classified and exempt civil service employees and elected officials. **RCW 42.40.020(2) and (8).**

Q: Can local government employees file whistleblower complaints with the State Auditor's Office?

Under certain circumstances a whistleblower can report improper governmental action(s) involving local government to the State Auditor's Office. The Local Government Whistleblower Act, Chapter 42.41 RCW, requires each local government to have a policy in place that establishes an appropriate person to receive and investigate reports of improper governmental action. If the local government has failed to follow state law by not establishing a whistleblower policy, the whistleblower can submit a report to the county prosecutor's office. If the local government hasn't established a policy, and if an employee of the county prosecutor's office is named as the subject of the improper governmental action(s), then the whistleblower may file a report with the State Auditor's Office ([RCW 42.41.030\(6\)](#)).

Q: Can employees of contractors with the state file a whistleblower disclosure?

No. Contractors and their employees are not covered by the State Employee Whistleblower Act. However, employees of contractors may report concerns about the handling of public funds to the State Auditor, [Constituent Referral](#). These concerns can be addressed as part of the Office's audit process.

Q: Can whistleblower complaints be filed regarding only employees in the whistleblower's own agency?

No. A state employee may file a whistleblower complaint relating to the employee's own agency or another state agency.

Q: What precludes an employee from making a frivolous or false disclosure of improper governmental action?

Whistleblowers must file complaints in good faith. [RCW 42.40.020\(3\)](#) defines good faith as a reasonable basis in fact for the communication. Good faith is lacking when the employee knows or reasonably ought to know that the report is malicious, false or frivolous. [RCW 42.40.040\(5\)\(c\)](#) states that the identity of the whistleblower shall be kept confidential unless the auditor determines that the information has been provided other than in good faith.

IV. HOW TO FILE A WHISTLEBLOWER COMPLAINT

Improper governmental action(s) must be filed in writing with the State Auditor's Office. They can be reported using the Whistleblower Reporting Form, attached to this summary, or in a separate letter. In either case, the report should include:

- A detailed description of the improper governmental action(s).
- The name of the employee(s) involved.
- The agency, division, and location where the action(s) occurred.
- Date(s) of the improper governmental action must be provided to the State Auditor within one year after the occurrence of the action.
- Details that may be important for our investigation -- witnesses, documents and evidence.
- If you know it, the specific law or regulation that has been violated.
- Your name, home address and phone number. (optional)

Each improper governmental action should be noted separately and supported with as much specific information as possible. Proving allegations can often be difficult. Supplying detailed information contributes to a thorough and efficient investigation. The Whistleblower Reporting Form is designed to help you supply the needed information. Please use a separate Whistleblower Reporting Form for each improper governmental action. [Whistleblower Reporting Form](#)

Avoid generalizations such as "Bob is always wasting public resources." Providing specific details about how and when "Bob" is wasting public resources will help focus the investigation, e.g., "Bob used his state computer to keep accounting records for his home business during working hours."

This has been going on for a year."

Under state law, anyone who conducts a state employee whistleblower investigation must keep the whistleblower's name confidential. In addition, the law provides remedies for individuals subjected to retaliation as a result of their whistleblower activities and penalties for those who retaliate.

Send your Whistleblower Reporting Form or letter to:

State Auditor's Office
Attention: ED
PO Box 40021
Olympia, WA 98504-0021

If you wish to file a complaint of improper governmental action concerning the State Auditor's Office, you may do so with the State Attorney General's Office: **RCW 42.40.100**

Evelyn Fielding
Assistant Attorney General
State Attorney General's Office
PO Box 40108
Olympia, WA 98504-0108
(360) 586-9667

Please mark any whistleblower correspondence "Confidential".

Q: Can a supervisor prohibit an employee from filing a report of improper governmental action with the State Auditor?

No. **RCW 42.40.030** specifically prohibits direct or indirect interference with the filing of a whistleblower complaint. It applies to all state employees. This statute also prohibits attempts at interfering with an employee providing information to the investigator during an investigation.

Q: Does a whistleblower have to sign his or her name?

Complaints of improper governmental action may be filed anonymously. Anonymous complaints will be reviewed by a panel after the preliminary investigation is completed and it is determined that a full investigation is warranted. The panel includes a state auditor representative knowledgeable of the subject agency operation, a citizen volunteer and a representative of the Attorney General's Office.

Including your name and number enables us to contact you to gather information that may be necessary for a thorough investigation. In many investigations this can be important. This also allows you to be kept informed throughout the investigation. Under state law, anyone who conducts a state employee whistleblower investigation must keep the whistleblower's name confidential.

Q: What do I do after filing a whistleblower complaint?

We recommend that whistleblowers not discuss the complaints with others, including family, friends and co-workers. Discussion of your whistleblower disclosure may jeopardize your confidentiality and could hamper the investigation.

V. RIGHTS AND RESPONSIBILITIES UNDER THE WHISTLEBLOWER PROGRAM

Under the Act, the whistleblower, the subject of the complaint, the agency head and the State Auditor's Office have rights and obligations. They are:

State Auditor's Office: The State Auditor has a right to receive and investigate complaints of improper governmental action. The Office analyzes and investigates improper governmental action (s) independently and objectively through interviews and by reviewing relevant documents. We maintain the confidentiality of the whistleblower and witnesses who provide information during the course of the investigation. The Office dedicates adequate resources to investigate improper governmental action(s) within the time frames spelled out in the law. Also within those time frames, the Office communicates the nature of the improper governmental action(s) and how they are being investigated with the subject of the action(s), the whistleblower and the agency head or designee. The Office documents each stage of the investigation in our working papers. The Office bases its reports on the conclusions in those working papers, and reports the results of investigations in a clear and understandable fashion. The Office refers cases to the Executive Ethics Board when we find reasonable cause to believe that **RCW 42.52** has been violated. The Office follows up on corrective action until the agency has taken appropriate action to resolve the matter. If the agency fails to take appropriate action, the Auditor shall report the determination to the Governor and the Legislature and may include this determination in the agency audit.

Whistleblower: The whistleblower must file the complaint in good faith. Good faith is defined as a reasonable basis in fact for the report. Good faith is lacking when the employee knows or reasonably ought to know that the report is malicious, false or frivolous. Therefore, whistleblowers must make a reasonable attempt to determine the correctness of the information they furnish our Office. The whistleblower (if named) will be notified that we have received the complaint and will be updated on the status of the case during the preliminary investigation (30 working days) and during the full investigation (60 working days), if one is conducted. The whistleblower has a right to confidentiality and remedies from retaliation. The whistleblower, agency head and the subject or subjects are notified at least annually of the status of corrective action until the State Auditor concludes that appropriate action has been taken by the agency.

Subject of complaint: Within the preliminary investigation (30 working days), the subject has the right to be notified of the nature of the complaint, relevant facts known at the time and our intended course of action. Each subject shall be interviewed during the investigation, if appropriate. The same rights apply during the full investigation (60 working days), if one is conducted. If we find reasonable cause to believe there has been improper governmental action, the subject may respond within 15 working days to the draft report. The subject's response, or portions of it, may be included with the final report, if appropriate.

Agency director (or designee): Within the preliminary investigation (30 working days), the agency director or designee has the right to be notified of the nature of the complaint, relevant facts known at the time and our intended course of action. The agency director or designee must cooperate with the investigator and must preserve evidence in the case. The director or designee has the right to provide information relevant to the investigation. The same rights apply during a full investigation (60 working days), if one is conducted. If we find reasonable cause to believe there has been improper governmental action, the agency director or designee will be given 15 working days to respond to the draft report. The agency response and plan for resolution, or portions thereof, will be included in the final report. The agency director or designee is responsible for taking corrective action when we find reasonable cause to believe improper governmental action has occurred.

VI. RETALIATION

The law requires that whistleblower identities be kept confidential. It makes retaliation unlawful and provides remedies for retaliation. Reports of asserted retaliation are filed with the Washington State Human Rights Commission. The Commission will investigate the claim and take appropriate action. Civil penalties for retaliation may include a fine of up to \$3,000 and suspension for 30 days without pay. At a minimum, a letter of reprimand is placed in the retaliator's personnel file.

For more information see Remedies for Whistleblowers. **RCW 42.40.050**

Q: Who has retaliation remedies under the Whistleblower Program?

Any employee who in good faith reports alleged improper governmental action to the Auditor

initiating an investigation under [RCW 42.40.040](#) or any state employee who provides information during a whistleblower investigation is provided the same remedies as the whistleblower filing the disclosure with the State Auditor. The law also provides remedies to any employee who others believe filed a whistleblower report or provided information, but actually didn't. Retaliation remedies do not apply if an investigation is not initiated by the State Auditor's Office.

Q: What happens if a whistleblower believes he or she is being subjected to workplace reprisal or retaliation?

The Whistleblower Program provides remedies for retaliation. If you feel you are being retaliated against as a result of filing a disclosure, providing information during an investigation, or are believed to have filed a whistleblower report or provided information, you may file a claim with the State Human Rights Commission. You also may wish to contact a private attorney for legal advice. A retaliatory action is any adverse change that affects your employment. Retaliation can take many forms, such as frequent job changes, office changes, unwarranted letters of reprimand or unsatisfactory performance evaluations. <http://www.hum.wa.gov>.

VII. INVESTIGATION PROCESS

Whistleblower investigations are conducted independently and objectively. The State Auditor is authorized to determine whether to investigate any improper government action(s), [RCW 42.40.040 \(1\)\(b\)](#), that is received.

It is the goal of the State Auditor's Office to treat all parties to the investigation, the state agency, the whistleblower and the subject, respectfully and fairly. Further, it is the goal of the State Auditor's Office to conduct all whistleblower investigations as timely as possible. On average, we try to have whistleblower reports issued to the public within 90 working days and must have them completed within one year of receipt of the complaint.

The identity of the whistleblower is confidential throughout the investigative process whether State Auditor's Office investigators or others perform the investigation. Further, confidentiality is maintained even after the final report is issued. All working papers and final reports are redacted in responding to all public record requests to maintain that confidentiality. However, filing a tort claim, lawsuit or a complaint with the Human Rights Commission may waive whistleblower confidentiality.

Q: How does the whistleblower process work?

A whistleblower investigation involves a five-step process. [RCW 42.40.040](#).

Intake (5 Working Days)

- Analyze and evaluate the improper governmental action(s).
- Acknowledge in writing to whistleblower receipt of the disclosure, the results of our intake analysis and any planned course of action, including whether a preliminary investigation will be conducted.

Preliminary Investigation (30 Working Days From Receipt of Complaint)

- Provide written notification, within 30 working days, of the nature of the improper governmental action(s) to the agency head, subject and whistleblower.
- Interview agency head or designee, whistleblower and subject.
- Determine who will conduct the preliminary investigation, which can include any one or more of the following:
 - State Auditor's Office investigators.
 - State agency investigators, which may include subject's agency, regulatory agencies, enforcement agencies, etc.

- Contracted resources.
- Agencies must give consent to a referral and agree to abide by all provisions of the Whistleblower Act.
- Document reasons for making any referrals.
- Complete preliminary investigation field work.
- Have three-person panel screen preliminary investigation of anonymous complaint if a decision is reached that a full investigation should be pursued
- If no further investigation is warranted, exit with agency director, subject and whistleblower, providing an opportunity for review and input to the scope, methodology and conclusions.
- If further investigation is to occur, provide written notification to the whistleblower, subject and agency head on or before 30 working days from receipt of the complaint.

Full Investigation (90 Working Days from Receipt of Complaint)

- Establish deadlines, working to complete investigation within 90 working days.
- Provide written justification to the whistleblower, agency head and subject for any investigation that needs to extend beyond 90 working days.
- Evaluate whether sufficient evidence supports reasonable cause that improper governmental action has occurred or not.
- Draft report and request for corrective action, if needed.

Draft/Final Report and Plan of Resolution (if reasonable cause is determined)

- Exit with agency director, subject and whistleblower, providing an opportunity for review and input to the scope, methodology and conclusions.
- Provide the subject and agency head 15 working days to respond to the draft report prior to the issuance of the final report.
- Agency to submit Plan of Resolution.
- Issue final whistleblower report, incorporating responses and plan of resolution, if needed, from the agency director and subject.
- Post whistleblower report on State Auditor's Office home page.

Final Report (if no reasonable cause is found)

- Exit with agency director, subject and whistleblower.
- Issue final whistleblower report.
- Post whistleblower report on State Auditor's Office home page.

Q: Who receives the results of a whistleblower report? Are they made available to the public?

Unless the complaint was filed anonymously, the whistleblower receives a copy of the final report. Subject(s) named in the complaint and agency officials also receive copies. The final report is a public record and is available to anyone who requests it. When appropriate, we distribute reports to agencies charged with enforcement. These agencies may include county prosecutors, the state Attorney General's Office, the state Executive Ethics Board, the state Legislative Ethics Board, the state Office of Financial Management and others. The final reports are available on our home page <http://www.sao.wa.gov>.

Q: Do any other agencies participate in the investigations?

If the improper governmental action(s) is criminal in nature, we may ask the Washington State Patrol to conduct the investigation. Other agencies may be asked for assistance depending on the action

(s) reported. For example, we request assistance from the State Archivist in cases involving public records. Any agency taking part in a whistleblower investigation is required to abide by confidentiality and documentation requirements

Q: If I have a question about the Whistleblower Program or a particular situation, how can I get technical assistance?

Between 8:00 a.m. and 5:00 p.m. Monday through Friday you can call the State Auditor's Office and receive technical assistance.

- Jim Brittain, Director of Operations (360) 902-0372
- Sandra Miller, Investigator (360) 902-0378
- LaRene Barlin, Investigator (360) 902-2213

Washington State Auditor's Office
 State Employee Whistleblower Program
 PO Box 40021
 Attention: ED
 Olympia WA 98504-0021

WHISTLEBLOWER REPORTING FORM

PLEASE READ BEFORE PROCEEDING:

Under state law, the State Auditor's Office may not investigate personnel actions for which other remedies exist, including grievances, appointments, promotions, reprimands, suspensions, dismissals, harassment, alleged discrimination and other related actions. If your concern is related to a personnel action, you may find material on other options at: [About the Program](#)

Auditor's Office Only Date Received	Auditor's Office Only WB Case No.
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Name of Person Filing the Complaint Form:

Name	Agency	Date
Home or mailing address	Division	Day phone
	Address	Night phone
	Current position	Best time and number to call

Subject(s):

Please file a **separate** form for each state employee or officer alleged to have engaged in improper governmental action.

Name	Agency	Division
Position	Location	Phone

Subject's supervisor(s):

Name	Position	Location
Name	Position	Location

Have you reported this information to another agency? () Yes () No

If so, which one(s)?

If you have disclosed the information reported here, what is the current status of the matter?

Information Concerning Each Improper Governmental Action:

RCW 42.40.040(1)(a) – In order to be investigated the improper governmental action must be provided to State Auditor within one year after the occurrence of the action.

How do you know about the information you are disclosing here:

- Personal or direct knowledge
- Others have told me about the situation
- Other (please explain)

Which type(s) of improper governmental action(s) are involved? Please check all that apply. If you know the particular law or regulation that has been violated, please provide it.

- Violation of state law or regulation. RCW _____
WAC _____
- Substantial and specific danger to the public health or safety.
- Gross waste of public funds.

Please describe the improper governmental action in detail. If you need more space, please attach a separate piece of paper. **Improper governmental action cannot be personnel related.**

When did the event(s) take place? Please include date, time, and frequency, if applicable.
Where did the event(s) occur?
Are there other witnesses? If so, what are their names, positions, agencies, divisions and relationship to improper governmental action(s)?
Is there evidence that can be examined or documentation which can be reviewed? Can you personally provide any of that information?
If you need assistance, please call Jim Brittain, Director of Operations at (360) 902-0372; Sandra Miller, Investigator at (360) 902-0378; or LaRene Barlin, Investigator at (360) 902-2213.

(Revised 02/26/04)

ATTACHMENT B

Sec. 4-61dd. Whistleblowing. Disclosure of information to Auditors of Public Accounts. Investigation by Attorney General. Proceedings re alleged retaliatory personnel actions. Report to General Assembly. Large state contractors. (a) Any person having knowledge of any matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency or any quasi-public agency, as defined in section 1-120, or any person having knowledge of any matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, may transmit all facts and information in his possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. Upon receiving such a report, the Attorney General shall make such investigation as he deems proper. At the request of the Attorney General or on their own initiative, the auditors shall assist in the investigation. The Attorney General shall have power to summon witnesses, require the production of any necessary books, papers or other documents and administer oaths to witnesses, where necessary, for the purpose of investigation. Upon the conclusion of his investigation, the Attorney General shall where necessary, report his findings to the Governor, or in matters involving criminal activity, to the Chief State's Attorney. The Auditors of Public Accounts and the Attorney General shall not, after receipt of any information from a person under the provisions of this section, disclose the identity of such person without his consent unless the Auditors of Public Accounts or the Attorney General determines that such disclosure is unavoidable during the course of the investigation.

(b) (1) No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor in retaliation for such employee's disclosure of information to the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section.

(2) If a state or quasi-public agency employee or an employee of a large state contractor alleges that a personnel action has been threatened or taken in retaliation for such employee's disclosure of information to the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section, the employee may notify the Attorney General, who shall investigate pursuant to subsection (a) of this section. After the conclusion of such investigation, the Attorney General, the employee or the employee's attorney may file a complaint concerning such personnel action with the Chief Human Rights Referee designated under section 46a-57. The Chief Human Rights Referee shall assign the complaint to a human rights referee appointed under said section 46a-57, who shall conduct a hearing and issue a decision concerning whether the officer or employee taking or threatening to take the personnel action violated any provision of this section. If the human rights referee finds such a violation, the referee may award the aggrieved employee reinstatement to the employee's former position, back pay and reestablishment of any employee benefits to which the employee would otherwise have been eligible if such violation had not occurred, reasonable attorneys' fees, and any other damages. For the purposes of this subsection, such human rights referee shall act as an independent hearing officer. The decision of a human rights referee under this subsection may be appealed by any person who was a party at such hearing, in accordance with the provisions of section 4-183.

(3) The Chief Human Rights Referee shall adopt regulations, in accordance with the provisions of chapter 54, establishing the procedure for filing complaints and noticing and conducting hearings under subdivision (2) of this subsection.

(4) As an alternative to the provisions of subdivisions (2) and (3) of this subsection (A) a state or quasi-public agency employee who alleges that a personnel action has been threatened or taken may file

an appeal within thirty days of knowledge of the specific incident giving rise to such claim with the Employees' Review Board under section 5-202, or, in the case of a state or quasi-public agency employee covered by a collective bargaining contract, in accordance with the procedure provided by such contract, or (B) an employee of a large state contractor alleging that such action has been threatened or taken may, after exhausting all available administrative remedies, bring a civil action in accordance with the provisions of subsection (c) of section 31-51m.

(5) In any proceeding under subdivision (2), (3) or (4) of this subsection concerning a personnel action taken or threatened against any state or quasi-public agency employee or any employee of a large state contractor, which personnel action occurs within one year after the employee first transmits facts and information concerning a matter under subsection (a) of this section to the Auditors of Public Accounts or the Attorney General, there shall be a rebuttable presumption that the personnel action is in retaliation for the action taken by the employee under subsection (a) of this section.

(c) Any employee of a state or quasi-public agency or large state contractor, who is found to have knowingly and maliciously made false charges under subsection (a) of this section, shall be subject to disciplinary action by his appointing authority up to and including dismissal. In the case of a state or quasi-public agency employee, such action shall be subject to appeal to the Employees' Review Board in accordance with section 5-202, or in the case of state or quasi-public agency employees included in collective bargaining contracts, the procedure provided by such contracts.

(d) On or before September first, annually, the Auditors of Public Accounts shall submit to the clerk of each house of the General Assembly a report indicating the number of matters for which facts and information were transmitted to the auditors pursuant to this section during the preceding state fiscal year and the disposition of each such matter.

(e) Each contract between a state or quasi-public agency and a large state contractor shall provide that, if an officer, employee or appointing authority of a large state contractor takes or threatens to take any personnel action against any employee of the contractor in retaliation for such employee's disclosure of information to the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section, the contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of the contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The executive head of the state or quasi-public agency may request the Attorney General to bring a civil action in the superior court for the judicial district of Hartford to seek imposition and recovery of such civil penalty.

(f) Each large state contractor shall post a notice of the provisions of this section relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the contractor.

(g) As used in this section:

(1) "Large state contract" means a contract between an entity and a state or quasi-public agency, having a value of five million dollars or more, except for a contract for the construction, alteration or repair of any public building or public work; and

(2) "Large state contractor" means an entity that has entered into a large state contract with a state or quasi-public agency.

(P.A. 79-599, S. 1, 2; P.A. 83-232; P.A. 85-559, S. 5; P.A. 87-442, S. 1, 8; P.A. 89-81, S. 3; P.A. 97-55; P.A. 98-191, S. 1, 2; P.A. 02-91, S. 1; P.A. 04-58, S. 1, 2.)

History: P.A. 83-232 amended Subsec. (a) to authorize a former state employee or state employee bargaining representative to disclose information and to require the attorney general to report to the complainant his findings and any actions taken, amended Subsec. (b) to prohibit retaliatory action by "any state officer or employee" and to provide that an employee may file an appeal if retaliatory action is threatened or taken, and added Subsec. (c) re sanctions for an employee who makes false charges; P.A. 85-559 required that state employees report to inspector general rather than to attorney general and that findings be reported in accordance with Sec. 2-104(b) rather than to governor or chief state's attorney as was previously the case; P.A. 87-442, in Subsec. (a), substituted "person" for "state employee, former state employee or state employee bargaining representative acting on behalf of any state employee or former state employee or on his own behalf", authorized any such person to transmit facts and information to auditors of public accounts, instead of to inspector general, required auditors to review matter and report to attorney general, required attorney general to make investigation and auditors to assist at his request, required attorney general, instead of inspector general, to report findings to governor or chief state's attorney, instead of to complainant, and applied provisions re nondisclosure of identity of person to auditors and attorney general instead of to inspector general and limited applicability of such provisions to receipt of information under this section, instead of this section or Subsec. (b) of Sec. 1-19 and, in Subsec. (b), substituted "auditors of public accounts or attorney general" for "inspector general" and limited applicability of provisions of Subsec. to disclosure of information under provisions of this section instead of this section and Subsec. (b) of Sec. 1-19; P.A. 89-81 added Subsec. (d) requiring annual report by auditors to general assembly on matters transmitted to them under this section; P.A. 97-55 applied section to quasi-public agencies; P.A. 98-191 applied section to large state contractors, effective July 1, 1998 (Revisor's note: P.A. 88-230, 90-98, 93-142 and 95-220 authorized substitution of "judicial district of Hartford" for "judicial district of Hartford-New Britain" in public and special acts of the 1998 session of the General Assembly, effective September 1, 1998); P.A. 02-91 substantially revised Subsec. (b) procedures re alleged retaliatory personnel actions by designating existing provisions as Subdivs. (1) and (4), adding Subdivs. (2) and (3) re investigation by Attorney General and complaints to Chief Human Rights Referee, adding provision in Subdiv. (4) re existing procedure for employee appeals and civil actions as alternative to provisions of Subdivs. (2) and (3), adding Subdiv. (5) providing, in proceedings under Subdivs. (2), (3) and (4), for a rebuttable presumption that certain personnel actions are retaliatory and making conforming and technical changes, and made technical change in Subsec. (e), effective June 3, 2002; P.A. 04-58 made technical changes in Subsecs. (a) and (c).

Plain language reading of section includes "sheriffs" and "deputy sheriffs" among those who could be investigated because of legislature's use of the words "state department or agency" within the statute. 47 CS 447. Requirement that Attorney General forward information to Chief State's Attorney if warranted does not make section a criminal statute. Id. Power granted to Attorney General under section is not an impermissible intrusion upon powers granted to another department of government. Id.

ATTACHMENT C

Legislative Audit Division Hotline Calls for Fiscal Year 2005

The following list summarizes the hotline calls received by the Legislative Audit Division during fiscal year 2005. There were a total of 113 calls taken.

Level 1 Calls (employees, agencies, contractors)	18
Level 2 Calls (persons/entity receiving services)	12
Level 3 Calls (general information)	86

The agencies addressed in the Level 1 and 2 calls were:

Department of Public Health & Human Services	7
Department of Labor And Industry	4
Department of Transportation	5
Department of Fish, Wildlife & Parks	3
Department of Revenue	2
Commissioner of Higher Education	1
Department of Administration	1
Department of Corrections	1
Department of Justice	1
Department of Military Affairs	1
Flathead Valley Community College	1
Judiciary	1
Legislative Branch	1
Montana State University	1

The alleged offenses were:

Improper Use of Equipment/Supplies/Resources	8
Improper Procedures Used by State Agency	6
Welfare/Workers Compensation/Food Stamps	5
Personal Business During Work Hours	4
Local Governments	3
Not Paying Proper Tax	2
Misuse of State Equipment	1
Conflict of Interest	1

Subsequent actions were:

Agency Investigated and Took Personnel Action	7
Referred to Agency for Action Against Member of Public	6
Closed Because of No Specific Information	6
Agency Investigated and Unfounded	5
Referred to Agency for Local Government Review	2
Pending Investigation by Agency	2
Placed in Agency File For Follow-up	1
Agency Took Action by Changing Practices	1

ATTACHMENT D

1996

STATE OF WYOMING

96LSO-0046

HOUSE BILL NO. HB0115

State Government Fraud Reduction Act.

Sponsored by: Representative(s) MASSIE, BOSWELL, BURNS,
LUTHI, MORROW and PARADY and Senator(s)
PHILLIPS

A BILL

for

1 AN ACT relating to state government waste, fraud and
2 employment practices; establishing a State Government Fraud
3 Reduction Act; providing definitions; protecting state
4 employees reporting waste or fraud; specifying initial
5 reporting requirements; providing for a civil action against
6 violating state employers; requiring state employers to
7 notify employees of the act; providing a sunset date; and
8 providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 9-10-101 through 9-10-104 are created
13 to read:

14

15

CHAPTER 10

16

STATE GOVERNMENT FRAUD REDUCTION

1

2 9-10-101. Short title. This chapter may be cited as
3 the "State Government Fraud Reduction Act."

4

5 9-10-102. Definitions; applicability.

6

7 (a) As used in this chapter:

8

9 (i) "Employee" means any person who works an
10 average of twenty (20) hours or more per week during any six
11 (6) month period and who is employed by the state performing
12 a service for wages or other remuneration, excluding an
13 independent contractor;

14

15 (ii) "Political subdivision" means a county,
16 municipal or special district governing body or any
17 combination thereof, school district or municipal
18 corporation or a board, department, commission, council,
19 agency or any member or employee thereof;

20

21 (iii) "State" means the state of Wyoming and any
22 authority, board, commission, department, division or
23 separate operating agency of the executive, legislative or
24 judicial branch of the state of Wyoming, excluding its
25 political subdivisions.

1

2

9-10-103. Discrimination against certain employees prohibited; civil action against employer.

3

4

5

6

7

8

9

(a) No state employer may discharge, discipline or retaliate against an employee by unreasonably altering the terms, location or conditions of employment because the employee acting in good faith and within the scope of duties of employment:

10

11

12

13

14

15

(i) Reports in writing to the employer what the employee has reasonable cause to believe is a demonstration of fraud, waste or gross mismanagement in state government office;

16

17

18

19

(ii) Reports in writing to the employer what the employee has reasonable cause to believe is a violation of a law, regulation, code or rule adopted under the laws of this state or the United States;

20

21

22

23

24

(iii) Reports in writing to the employer what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual;

25

1 (iv) Participates or is requested to participate
2 in any investigation, hearing or inquiry held concerning an
3 issue subject to reporting under this subsection; or
4

5 (v) Has refused to carry out a directive which is
6 beyond the scope, terms and conditions of his employment
7 that would expose the employee or any individual to a
8 condition likely to result in serious injury or death, after
9 having sought and been unable to obtain a correction of the
10 dangerous condition from the employer.
11

12 (b) Subsection (a) of this section does not apply to
13 an employee who has reported or caused to be reported a
14 violation or unsafe condition or practice, unless the
15 employee has first brought the alleged violation, condition
16 or practice to the attention of a person having supervisory
17 authority over the employee and has allowed the state
18 employer a reasonable opportunity to correct that violation,
19 condition or practice. Prior notice to a person having
20 supervisory authority is not required if the employee
21 reasonably believes that the report may not result in prompt
22 correction of the violation, condition or practice. In such
23 cases, the employee shall report the violation, condition or
24 practice to the chief executive officer of the state entity
25 with which he is employed.

1

2 (c) Any employee who is discharged, disciplined or
3 otherwise penalized by a state employer in violation of this
4 section may after exhausting all available administrative
5 remedies, bring a civil action within ninety (90) days after
6 the date of the final administrative determination or within
7 ninety (90) days after the violation, whichever is later, in
8 the district court for the judicial district in which the
9 violation is alleged to have occurred or where the state
10 employer has its principal office. An employee's recovery
11 from any action under this section shall be limited to
12 reinstatement of his previous job, payment of back wages and
13 re-establishment of employee benefits to which he would have
14 otherwise been entitled if the violation had not occurred.
15 In addition, the court may allow the prevailing party his
16 costs together with reasonable attorney's fees to be taxed
17 by the court. Any employee found to have knowingly made a
18 false report shall be subject to disciplinary action by his
19 employer up to and including dismissal.

20

21 (d) A state employer shall ensure that its employees
22 are aware of their rights under this chapter.

23

24 **9-10-104. Effective period.** W.S. 9-10-101 through
25 9-10-103 are not effective after July 1, 1999.

1

2

Section 2. This act is effective July 1, 1996.

3

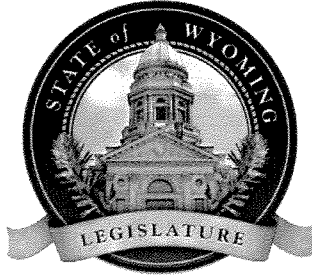
4

(END)

FISCAL NOTE

No fiscal or personnel impact.

ATTACHMENT E



WYOMING LEGISLATIVE SERVICE OFFICE

Research Memo

04 RM 030

Date: September 9, 2004

Author: LSO Research Staff

Re: Recent History of State Auditing Functions

PURPOSE

Describe the former role and duties of the Wyoming State Examiner, explain the rationale resulting in the elimination of this appointed position, and summarize the current roles of the Wyoming Department of Audit and other state auditing functions.

RESULTS IN BRIEF

The office of the Wyoming State Examiner was dissolved in 1990 with a constitutional amendment that abolished the Office of the State Examiner and reassigned the duties of the State Examiner and the State Examiner's Office to the State Department of Audit and the Director of the State Department of Audit. Along with the elimination of the Wyoming State Examiner, the office of the Wyoming State Auditor was also reorganized in 1992.

The creation of the Department of Audit and the reorganization of the duties relating to the State Auditor's Office distinctly defined the duties of each entity in order to separate the oversight of money being spent among and by state agencies/departments, and, money being properly collected by the state from severance taxes, mineral royalties, sales taxes, and use taxes. The Department of Audit is singularly charged with financial oversight and "after-the-fact" auditing of state government and political subdivisions.

STATE EXAMINER

Prior to 1990, the State Examiner was authorized according to Article 4, Section 14 of the

Wyoming Constitution and further sanctioned in W.S. 9-1-501 through 9-1-512. According to prior statute, the Governor appointed the Wyoming State Examiner for a term of four years. Under W.S. 9-1-507(a) and (b), the State Examiner was required to: supervise the books, financial accounts, and financial records of all state agencies, institutions, counties, school districts, and municipalities; visit each state institution or agency once a year; examine the books and accounts of state institutions, agencies, districts, and entities not receiving loans or grants from the state farm board; and examine the books of incorporated cities and towns with a population of less than four-thousand (4,000) inhabitants. However, in lieu of conducting an annual examination institutions, agencies, districts, or entities that did not receive a loan or grant from the state farm loan board, and, cities and towns with a population under four thousand, the State Examiner reserved the right to accept an annual audit or audit report rendered by an independent, certified, public accountant per W.S. 9-1-507(b).

W.S. 9-1-511(a) and (b) required that the State Examiner prepare and file a report for each examination of public offices and institutions conducted, and, provide copies of these reports to the Governor, the Legislature, and the Department of Administration and Fiscal Control. The State Examiner was also required to file a copy of the reports concerning state agencies and institutions with the Secretary of State, and, respective county offices, school districts, and municipal offices.

REORGANIZATION

In December of 1988, the Joint Legislative-Executive Efficiency Study Committee published a study concerning the function of the State Examiner's Office and issues of governmental accountability. The report stated:

At this time, nine agencies with approximately 80 auditors are attempting to fulfill various auditing requirements. In addition to the State's effort to fulfill these auditing requirements Certified Public Accountants are also auditing local governments, school and special districts, as well as some state agencies.

With this massive disjointed audit effort, there exists an overt possibility the initial objectives of auditing may not be realized. Essentially stated: although the audits are being performed, the chances of assuring the public its funds are collected/managed judiciously, or operational and legal compliances are being met, are limited (177).

The report further explained that the State of Wyoming had suffered significant losses due to fraudulent spending and uncollected severance taxes, mineral royalties, sales taxes, use taxes, gas taxes, cigarette taxes, and commercial vehicle taxes.

In order to minimize these losses the Committee recommended a restructuring of the State Examiner's Office. The proposed "Examiner General's Office" would be independent of all state and local agencies, and, would oversee all aspects of auditing relating to the collection of tax based revenue on behalf of the State of Wyoming.

During the 1989 Legislative Session, the Legislature created the Department of Audit ('89 Laws, Ch. 210), passed the Government Reorganization Act of 1989 ('89 Laws, Ch. 13), and proposed a constitutional amendment to delete the requirement for a State Examiner ('89 Laws, SER 5). The Reorganization Act stated that the entire executive branch of the state government would be reorganized into twelve

principal departments. (The offices of Governor, Secretary of State, State Treasurer, State Auditor, Attorney General, and Superintendent of Public Instruction were exempt.) According to the Act, these newly reorganized departments were to be operational no later than July 1, 1992.

The Department of Audit was created in 1989 as an agency "under construction," and the Governor, Secretary of State, and State Treasurer appointed the director of the department for a six-year term with the consent of the Senate, in contrast with the prior Governor-appointed State Examiner. This change, according to the Director of the Department of Audit, enhanced the independence of the state's primary audit function.

According to the enacting legislation, the new "Department of Audit" was to consist of the State Examiner and all staff employed within the State Examiner's Office and certain staff from the Department of Revenue and Taxation and the State Auditor's Office. This legislation authorized the Department of Audit to conduct audits for the collection of federal and state mineral royalties, collect taxes imposed under Title 39 of the Wyoming Statutes, and exercise the same authority with respect to audits that the State Auditor and Department of Revenue and Taxation did previously. In sum, the authority to conduct audits relating to federal mineral royalties shifted from the State Auditor to the Department of Audit when departmental operations commenced on July 1, 1989.

In 1990, the Legislature approved Senate File 115 ('90 Laws, Ch. 48), which transferred the duties of the State Examiner to the Department of Audit so that the Department could review the function and position of the State Examiner and report its findings and recommended changes to the Legislature. On November 6, 1990, electors passed Constitutional Amendment No. 1, which deleted the constitutional requirement for a State Examiner and amended Article 4, Section 14 to read as follows:

Examination of accounts. The legislature shall provide by law for examination of the accounts of state treasurer, supreme court

clerks, district court clerks, and all county treasurers, and treasurers of such other public institutions as the legislature may prescribe.

In 1991, the Legislature thoroughly organized the Department of Audit ('91 Laws, Ch. 240). In this legislative action, W.S. 9-1-501, 9-1-502, and 9-1-505 relating to the State Examiner were repealed. The director of the State Department of Audit and his staff, like the former State Examiner, were now responsible for: supervising the books, financial accounts, and financial records of all state agencies and institutions, counties, school districts, and municipalities; establishing a uniform accounting procedure for monies received and distributed by the justice courts, justices of the peace, county courts, and judges of county courts; adopting and filing a seal; issuing subpoenas; administering oaths; auditing, examining, or reviewing prepared reports for state offices and institutions; filing reports with the Secretary of State; coordinating the auditing of state taxes, state royalties, federal royalties, and other revenue matters; and conducting audits at the request of any state agency.

STATE AUDITOR

In 1992, the Legislature reorganized the duties of the State Auditor ('92 Laws, Ch. 41). This legislation proclaimed the State Auditor the official "comptroller." The State Auditor is now required to: maintain the state's central fiscal accounts; order all payments into and out of the funds held by the State Treasurer; serve as the state payroll official, maintain the official payroll for all state agencies excluding the University of Wyoming and the Department of Transportation; present a preliminary annual financial report of fiscal affairs to the Governor, President of the Senate, Speaker of the House, and Joint Appropriations Committee; issue and draw warrants for payment or collection; and oversee the voucher system relating to state agencies. In sum, the State Auditor generally approves payments before they have been made, while the Department of Audit is responsible for reviewing transactions after they have occurred.

PROGRAM EVALUATION

The "audit" function housed within the Legislative Service Office (LSO) has also been revised substantially since the inception of LSO in 1971. From 1971 through 1978, the auditing function within LSO was geared toward financial audits of executive branch agencies. In May 1978, Management Council consciously chose to focus on performance/program auditing. In addition, in the mid 1980s LSO also briefly performed "sunset" audits to assist in determining whether certain executive branch programs should continue. Today, the Program Evaluation function performs a variety of in-depth studies of program administration, government effectiveness, and efficiency, not financial compliance.

DEPARTMENT OF AUDIT

The Department of Audit is currently charged with at least three separate duties: oversight of taxpayer compliance, particularly in the areas of severance and excise taxes, government financial accountability, and banking regulation. Importantly, W.S. 9-1-507 outlines the auditing functions of the Department of Audit, broadly related to public funds.

State Entities. All state institutions, agencies, entities, and incorporated cities and towns must file with the Department of Audit. At the highest level, the Department of Audit is responsible for the state's Comprehensive Annual Financial Report (CAFR). In practice, the Department contracts with an outside, certified public accounting (CPA) firm to conduct this financial review.

The level of financial oversight of political subdivisions is contingent upon the size of the entity, with the largest required by statute to submit an audit performed by a CPA and the smallest merely required to submit a statement of revenues, expenses, and ending cash balance. Immediately after reorganization, the Department of Audit regularly audited communities directly, using public employees dispersed throughout the state. However, according to the Department of Audit, a reduction in force (RIF) of ten employees eliminated this public oversight activity and

replaced these state audits with audits conducted by private CPAs.

Currently, the Department of Audit receives, and reviews a sample of, audits of political subdivisions performed by private CPAs. Historically, there was a full-time state employee that was dedicated to the review of all private audits of political subdivisions. However, the Legislature changed this requirement. Finally, based upon discussions with the Department of Audit, there does appear to be an opportunity for enhanced public audits of smaller political subdivisions that currently are not required to submit full audits. The Department of Audit reportedly does not have the resources to independently audit all of these entities at this time.

In addition to the private audits, each county, city, town, special district, and joint powers board must annually report to the Department of Audit all revenues received and expenditures made. The Department, by rule, has required political subdivisions to report using standard federal Census Bureau forms to avoid duplication of effort. These forms also allow states to add individualized data requests to the base federal request. Summaries of the data are then prepared and disseminated by the Department of Audit. By observation, questions of consistency, comparability, and interpretation may remain.

Performance Evaluations. The Department of Audit is also authorized to conduct performance measure reviews based on standards developed in W.S. 28-1-115(a)(ii)(A). As part of the state's strategic planning process, the Department of Audit is charged with verifying and validating agency performance measures. As a matter of practice, the Department is the repository for agency strategic plans. In the past, measures have regularly not been "auditable." There are also recent efforts to significantly condense the material contained in these reports.

School Finance Audits. As recently as 2002, the Department of Audit assumed the role of school finance audits, initially (and temporarily) housed within LSO. This charge includes:

- Conducting periodic audits of every school district in the State of Wyoming (at least one audit per district every three years)
- Conducting management studies, program evaluations, and performance audits on school districts
- Conducting compliance, effectiveness, and efficiency audits of the State Department of Education
- Reporting all findings and recommendations from studies and audits of school districts to the State Department of Education

Taxpayer Audits. Beyond these audits of public entities, the Department of Audit currently has two divisions that conduct financial audits of excise taxes, mineral royalties, severance taxes and ad valorem taxes. The excise tax audit function also oversees appropriate payment of taxes and fees administered by the Secretary of State and Department of Transportation. Public employees, not private CPAs, conduct these audits, regularly at the location of the taxpayer. As indicated previously, this responsibility was formerly housed with the State Auditor and the Department of Revenue.

CONCLUSION

Based on the arguments presented in the 1989 efficiency study and the aforementioned legislative efforts to eliminate the State Examiner, create the Department of Audit, and reorganize the State Auditor's Office, it is evident that the issue of state accountability was a priority. After the reorganization, the roles of the State Auditor's Office and the Department of Audit are distinguishable since the State Auditor strictly oversees the money spent among and by state agencies while the Department of Audit focuses on ensuring that the State of Wyoming is receiving the proper returns from taxes and oversight of "after-the-fact" auditing. In carrying out its missions, the Department relies heavily on private CPAs for its financial accountability function.