

## Exemptions Criteria Worksheet

1. **Exemption:** RCW 43.33A.025

2. **Session Law:** Laws of 1999, ch. 226

3. **Category:** Employment

4. **Cross-ref.:** RCW 43.43.815(4)

5. **Date Enacted:** 1999

6. **(Text of exemption)** Criminal history record check for conviction records obtained for preemployment evaluations "shall be made available by the investment board only to board employees involved in the selection, hiring, background investigation, or job assignment...Otherwise, the reports, and information contained therein, shall remain confidential and shall not be subject to the disclosure requirements of chapter 42.56 RCW."

7. **Exemption protects:** ☐ Safety ☒ Privacy ☐ Financial ☐ Other (explain):

8. **Purpose (including purpose of accompanying legislation if applicable):**

State law authorizes the State Patrol to release criminal history records to prospective employers for preemployment evaluations. The 1999 statute authorized the State Investment Board to request similar information from the FBI. The 2000 amendment requires the State Investment Board to obtain state and federal criminal history checks for finalists for certain SIB staff positions.

9. **Information covered:** ☐ About gov't function ☒ Collected/held by gov't

☐ Public funds ☐ Public official ☐ Vital gov't Interest ☐ Confidential/private ☐ Other

**Describe:** Conviction records compiled in Washington state and by the Federal Bureau of Investigation.

10. **Stakeholders:**

1. Washington State Investment Board	Contacted: <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
2.	Contacted: <input type="checkbox"/> yes <input type="checkbox"/> no
3.	Contacted: <input type="checkbox"/> yes <input type="checkbox"/> no
4.	Contacted: <input type="checkbox"/> yes <input type="checkbox"/> no

11. **Add'l bill**

**Information:** Floor debate: ☐ yes ☒ no

Bill Reports: ☒ yes ☐ no

12. **Comments (including significant court decisions; related WACs sections, or other).**

**RCW 43.33A.025****Criminal history record checks for board staff finalist candidates.**

(1) Notwithstanding any provision of RCW 43.43.700 through 43.43.815, the state investment board shall require a criminal history record check for conviction records through the Washington state patrol criminal identification system, and through the federal bureau of investigation, for the purpose of conducting preemployment evaluations of each finalist candidate for a board staff position exempt from the provisions of chapter 41.06 RCW, or for any other position in which the employee will have authority for or access to: (a) Funds under the jurisdiction or responsibility of the investment board; or (b) data or security systems of the investment board or designs for such systems. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card, which shall be forwarded by the state patrol to the federal bureau of investigation.

(2) Information received by the investment board pursuant to this section shall be made available by the investment board only to board employees involved in the selection, hiring, background investigation, or job assignment of the person who is the subject of the record check, or to that subject person, and it shall be used only for the purposes of making, supporting, or defending decisions regarding the appointment or hiring of persons for these positions, or securing any necessary bonds or other requirements for such employment. Otherwise, the reports, and information contained therein, shall remain confidential and shall not be subject to the disclosure requirements of chapter 42.56 RCW.

(3) Fees charged by the Washington state patrol, or the federal bureau of investigation, for conducting these investigations and providing these reports shall be paid by the investment board.

[2005 c 274 § 297; 2000 c 188 § 1; 1999 c 226 § 1.]

**Notes:**

**Part headings not law -- Effective date -- 2005 c 274:** See RCW 42.56.901 and 42.56.902.

**RCW 43.43.815**

**Conviction record furnished to employer — Purposes — Notification to subject of record — Fees — Limitations — Injunctive relief, damages, attorneys' fees — Disclaimer of liability — Rules.**

(1) Notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the Washington state patrol shall furnish a conviction record, as defined in RCW 10.97.030, pertaining to any person of whom the Washington state patrol has a record upon the written or electronic request of any employer for the purpose of:

(a) Securing a bond required for any employment;

(b) Conducting preemployment and postemployment evaluations of employees and prospective employees who, in the course of employment, may have access to information affecting national security, trade secrets, confidential or proprietary business information, money, or items of value; or

(c) Assisting an investigation of suspected employee misconduct where such misconduct may also constitute a penal offense under the laws of the United States or any state.

(2) When an employer has received a conviction record under subsection (1) of this section, the employer shall notify the subject of the record of such receipt within thirty days after receipt of the record, or upon completion of an investigation under subsection (1)(c) of this section. The employer shall make the record available for examination by its subject and shall notify the subject of such availability.

(3) The Washington state patrol shall charge fees for disseminating records pursuant to this section which will cover, as nearly as practicable, the direct and indirect costs to the Washington state patrol of disseminating such records.

(4) Information disseminated pursuant to this section or RCW 43.43.760 shall be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated and shall be used only as necessary for those purposes enumerated in subsection (1) of this section.

(5) Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this section, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court finds that the defendant is violating or has violated any of the provisions of this section, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in the action is entitled to recover from the defendant the amount of the actual damages, if any, sustained by him if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal. Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of chapter 10.97 RCW.

(6) Neither the section, its employees, nor any other agency or employee of the state is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information pursuant to this section or RCW 43.43.760.

(7) The Washington state patrol may adopt rules and forms to implement this section and to provide for security and privacy of information disseminated pursuant hereto, giving first priority to the criminal justice requirements of chapter 43.43 RCW. Such rules may include requirements for users, audits of users, and other procedures to prevent use of criminal history record information inconsistent with this section.

(8) Nothing in this section shall authorize an employer to make an inquiry not otherwise authorized by law, or be construed to affect the policy of the state declared in RCW 9.96A.010, encouraging the employment of ex-offenders.

[1995 c 169 § 1; 1982 c 202 § 1.]

(6) Beginning with fiscal year 2005, and each fiscal year thereafter, all state agencies that have surplus real property available for sale, trade, lease, or reuse by other government entities shall provide information on those properties, including geographic location and general descriptive information, to the office no later than sixty days after the end of the fiscal year.

**NEW SECTION. Sec. 4.** The advisory committee is established to advise and assist the office in:

(1) Developing methods and data base systems that facilitate the collection and coordination of environmental project information.

(2) Examining state financial assistance programs that provide funding for environmental protection, enhancement, restoration, and mitigation. The advisory committee shall identify opportunities for improved coordination that would make it easier and more efficient for agencies and organizations seeking funding to: Locate the programs, apply for funding, seek and receive technical assistance, provide required financial reports, provide compliance and environmental monitoring information, and provide project related information such as site location.

(3) Investigating opportunities for improved coordination of financial assistance programs for environmental projects while complying with the statutory purpose and policy objective of these programs. Areas for possible improved coordination may include: Program information dissemination; application deadlines; state-wide, regional, and local priorities for environmental protection, enhancement, restoration, and mitigation; application forms and required application information; technical assistance; environmental reporting and monitoring; and project related data.

(4) Making recommendations on the role that other state agencies, federal, tribal, and local governments, nongovernmental organizations, and the general public can play in providing information that would result in increased coordination of environmental protection, restoration, enhancement, and mitigation activities. The advisory committee shall solicit comments from agencies and organizations that are eligible for state financial assistance programs and solicit comments from federal, tribal, and local organizations that provide financial assistance for environmental projects.

**NEW SECTION. Sec. 5.** Nothing in this chapter shall be interpreted in any manner by a state, federal, or local governmental agency to require any additional permitting review or approval process or compliance procedure from any nongovernmental entity or individual person.

**NEW SECTION. Sec. 6.** Sections 1 through 5 of this act constitute a new chapter in Title 43 RCW.

**NEW SECTION. Sec. 7.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1999, in

the state transportation budget or the omnibus appropriations act, this act is null and void.

Passed the House March 16, 1999.

Passed the Senate April 16, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

## CHAPTER 226

House Bill 1420

### STATE INVESTMENT BOARD—CRIMINAL HISTORY CHECKS

AN ACT Relating to criminal history record checks of prospective appointees and employees of the state investment board; and adding a new section to chapter 43, 33A RCW.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION. Sec. 1.** A new section is added to chapter 43, 33A RCW to read as follows:

(1) Notwithstanding any provision of RCW 43.43.700 through 43.43.815, the state investment board may require a criminal history record check for conviction records through the Washington state patrol criminal identification system, and through the federal bureau of investigation, for the purpose of conducting preemployment evaluations of prospective new appointees or employees for a board staff position exempt from the provisions of chapter 41.06 RCW, or any other position in which the employee will have authority for or access to funds under the jurisdiction or responsibility of the investment board, or to data security systems of the investment board or designs for such systems. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card, which shall be forwarded by the state patrol to the federal bureau of investigation.

(2) Information received by the investment board pursuant to this section shall be made available by the investment board only to board employees involved in the selection, hiring, background investigation, or job assignment of the person who is the subject of the record check, or to that subject person, and it shall be used only for the purposes of making, supporting, or defending decisions regarding the appointment or hiring of persons for these positions, or securing any necessary bonds or other requirements for such employment. Otherwise, the reports, and information contained therein, shall remain confidential and shall not be subject to the disclosure requirements of chapter 42.17 RCW.

(3) Fees charged by the Washington state patrol, or the federal bureau of investigation, for conducting these investigations and providing these reports shall be paid by the investment board.

# HOUSE BILL REPORT

## HB 1420

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### As Passed Legislature

**Title:** An act relating to criminal history record checks of prospective appointees and employees of the state investment board.

**Brief Description:** Providing a procedure for the state investment board to check the criminal history of prospective appointees and employees.

**Sponsors:** Representatives H. Sommers, Huff, Benson, Hatfield, McIntire and Wolfe; by request of State Investment Board.

**Brief History:**

**Committee Activity:**

Financial Institutions & Insurance: 2/2/99, 2/11/99  
[DP].

**Floor Activity:**

Passed House: 3/8/99, 97-0.  
Passed Senate: 4/8/99, 47-0.  
Passed Legislature.

Brief Summary of Bill
<p>The Washington State Investment Board is given authority to obtain an Federal Bureau of Investigation criminal background check on potential employees.</p>

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### HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** Do pass. Signed by 12 members: Representatives Benson, Republican Co-Chair; Hatfield, Democratic Co-Chair; Bush, Republican Vice Chair; McIntire, Democratic Vice Chair; Barlean; Cairnes; DeBolt; Keiser; Quall; Santos; Sullivan and Talcott.

**Staff:** Charlie Gavigan (786-7340).

**Background:**

The Legislature created the Washington State Investment Board in 1981 to administer public trust and retirement

funds. There are 14 members that serve on the board: one active member of the Public Employees Retirement System, one active member of the Law Enforcement Officers and Firefighters Retirement System, one active member of the Teachers Retirement System, the State Treasurer, a member of the state House of Representatives, a member of the state Senate, a representative of retired state employees, the director of the Department of Labor and Industries, the director of the Department of Retirement Systems, and five nonvoting members appointed by the State Investment Board with experience in making investments.

Washington law requires that the Washington State Investment Board establish investment policies and procedures that are designed to maximize return at a prudent level of risk. The Washington State Investment Board manages 27 funds which total approximately \$49 billion.

Like other state agencies, the Washington State Investment Board can request a background check from the Washington State Patrol on applicants for certain employment positions.

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**Summary of Bill:**

In addition to a criminal background check through the Washington State Patrol, the Washington State Investment Board may require a criminal history record check through the Federal Bureau of Investigation for candidates of certain positions of authority. The use of this information is limited and is exempt from public disclosure.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** When the Washington State Investment Board currently hires persons with authority for funds, or access to funds or data security systems, only Washington State Patrol criminal background checks are allowed. Often the Washington State Investment Board has out-of-state applicants for investment officer or controller positions. Last year, the Washington State Investment Board had finalists for positions from Kansas and Florida; the use of Federal Bureau of Investigation sources to check for criminal records would have been helpful.

**Testimony Against:** None.

**Testified:** James Parker, Washington State Investment Board.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

**Sec. 9.** RCW 43.43.278 and 1999 c 74 s 4 are each amended to read as follows:

By July 1, 2000, the department of retirement systems shall adopt rules that allow a member to select ~~(--in lieu of benefits under RCW 43.43.270--)~~ an actuarially equivalent retirement option that pays the member a reduced retirement allowance and upon death shall be continued throughout the life of a lawful surviving spouse. The continuing allowance to the lawful surviving spouse shall be subject to the yearly increase provided by RCW 43.43.260(5) in lieu of the annual increase provided in RCW 43.43.272. The allowance to the lawful surviving spouse under this section, and the allowance for an eligible child or children under RCW 43.43.270, shall not be subject to the limit for combined benefits under RCW 43.43.270.

**NEW SECTION. Sec. 10.** Section 6 of this act takes effect September 1, 2000.

Passed the House March 7, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

## CHAPTER 187

[Engrossed Second Substitute House Bill 2109]

TRIBAL HOUSING—TAX EXEMPTION

AN ACT Relating to authorizing tax, levy, and execution exemptions for properties of Indian housing authorities designated for low-income housing program uses; amending RCW 35.82.210; creating a new section, and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION. Sec. 1.** Affordable and accessible housing is of great concern and importance to the legislature and the people of this state. The legislature recognizes the important role housing authorities serve in creating and maintaining housing for low-income persons and senior citizens. The legislature finds that tribal housing authorities should be afforded the same exemptions from

tax as all other housing authorities and extends the exemption from state and local tax to tribal housing authorities.

**Sec. 2.** RCW 35.82.210 and 1965 c 7 s 35.82.210 are each amended to read as follows:

(1) The property of an authority is declared to be public property used for essential public and governmental purposes and such property and an authority shall be exempt from all taxes and special assessments of the city, the county, the state or any political subdivision thereof: PROVIDED, HOWEVER, That in lieu of such taxes an authority may agree to make payments to the city or the county or any such political subdivision for improvements, services and facilities furnished by such city, county or political subdivision for the benefit of a housing project, but in no event shall such payments exceed the amount last levied as the annual tax of such city, county or political subdivision upon the property included in said project prior to the time of its acquisition by the authority.

(2) For the sole purpose of the exemption from tax under this section:

(a) "Authority," in addition to the meaning in RCW 35.82.020, also means tribal housing authorities and intertribal housing authorities.

(b) "Intertribal housing authority" means a housing authority created by a consortium of tribal governments to operate and administer housing programs for persons of low income or senior citizens for and on behalf of such tribes.

(c) "Tribal government" means the governing body of a federally recognized Indian tribe.

(d) "Tribal housing authority" means the tribal government or an agency or branch of the tribal government that operates and administers housing programs for persons of low income or senior citizens.

**NEW SECTION. Sec. 3.** This act takes effect July 1, 2000.

Passed the House February 11, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

## CHAPTER 188

[House Bill 2660]

STATE INVESTMENT BOARD—CRIMINAL HISTORY RECORD CHECK

AN ACT Relating to criminal history record checks of finalist candidates for certain staff positions of the state investment board; and amending RCW 43.33A.025.

Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 43.33A.025 and 1999 c 226 s 1 are each amended to read as follows:

(1) Notwithstanding any provision of RCW 43.43.700 through 43.43.815, the state investment board ~~((they))~~ shall require a criminal history record check for conviction records through the Washington state patrol criminal identification



system, and through the federal bureau of investigation, for the purpose of conducting preemployment evaluations of (~~prospective new appointees or employees~~) each finalist candidate for a board staff position exempt from the provisions of chapter 41.06 RCW, or for any other position in which the employee will have authority for or access to: (a) Funds under the jurisdiction or responsibility of the investment board(s); or (b) data or security systems of the investment board or designs for such systems. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card, which shall be forwarded by the state patrol to the federal bureau of investigation.

(2) Information received by the investment board pursuant to this section shall be made available by the investment board only to board employees involved in the selection, hiring, background investigation, or job assignment of the person who is the subject of the record check, or to that subject person, and it shall be used only for the purposes of making, supporting, or defending decisions regarding the appointment or hiring of persons for these positions, or securing any necessary bonds or other requirements for such employment. Otherwise, the reports, and information contained therein, shall remain confidential and shall not be subject to the disclosure requirements of chapter 42.17 RCW.

(3) Fees charged by the Washington state patrol, or the federal bureau of investigation, for conducting these investigations and providing these reports shall be paid by the investment board.

Passed the House February 8, 2000.

Passed the Senate February 29, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.

## CHAPTER 189

[Substitute House Bill 2441]

### SUNSET REVIEW

AN ACT Relating to government accountability through the state sunset review process; amending RCW 43.131.020, 43.131.030, 43.131.040, 43.131.090, 43.131.100, 43.131.130, 43.131.150, and 43.131.900; adding new sections to chapter 43.131 RCW; repealing RCW 43.131.050, 43.131.060, 43.131.070, and 43.131.080; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 43.131.020 and 1977 ex.s. c 289 s 2 are each amended to read as follows:

The state legislature finds that state (~~agencies~~) entities may fail to deliver services as effectively and efficiently as is expected by the general public and as originally contemplated by the legislature. It further finds that state government actions have produced a substantial increase in numbers of (~~agencies~~) entities, growth of programs, and proliferation of rules (~~and regulations~~), and that the entire process has evolved without sufficient legislative and executive oversight,

regulatory accountability, or a system of checks and balances. The legislature further finds that by establishing a system for the termination, continuation, or modification of state (~~agencies~~) entities, coupled with a system of scheduled review of such (~~agencies~~) entities, it will be in a better position to: Evaluate the need for the continued existence of existing and future state (~~agencies~~) entities; assess the effectiveness and performance of agencies, boards, commissions, and programs; and ensure public accountability. The legislature recognizes that the executive branch shares in this duty and responsibility to assure that state government operates in an efficient, orderly, and responsive manner.

**Sec. 2.** RCW 43.131.030 and 1983 1st ex.s. c 27 s 1 are each amended to read as follows:

As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise.

(1) ("~~Committees of reference~~") means the standing legislative committees designated by the senate and house of representatives to consider termination, modification, or reestablishment of state agencies pursuant to this chapter; ("~~Entity~~") includes every state office, department, board, commission, unit or subunit, and agency of the state, and where provided by law, programs and activities involving less than the full responsibility of a state agency. "~~Entity~~" also includes any part of the Revised Code of Washington scheduled for repeal, expiration, or program termination.

(2) "~~Person~~" includes every natural person, firm, partnership, corporation, association, or organization.

((3) "~~Regulatory entity~~" means any board, commission, agency, division, or other unit or subunit of state government which licenses or regulates one or more professions, occupations, industries, businesses, or other endeavors in the state of Washington.

((4) "~~State agency~~" includes every state office, department, board, commission, regulatory entity and agency of the state, and where provided by law, programs and activities involving less than the full responsibility of a state agency.))

**Sec. 3.** RCW 43.131.040 and 1983 1st ex.s. c 27 s 2 are each amended to read as follows:

Any state (~~agency~~) entity scheduled for termination by the processes provided in this chapter may be reestablished by the legislature for a specified period of time or indefinitely. The legislature may again review the state (~~agency~~) entity in a manner consistent with the provisions of this chapter and reestablish, modify, or consolidate such state (~~agency~~) entity or allow it to be terminated.

**NEW SECTION. Sec. 4.** A new section is added to chapter 43.131 RCW to read as follows:

The joint legislative audit and review committee shall conduct a program and fiscal review of any entity scheduled for termination under this chapter. This program and fiscal review shall be completed and a preliminary report prepared

# SENATE BILL REPORT

## HB 2660

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As Reported By Senate Committee On:  
Commerce, Trade, Housing & Financial Institutions, February 17, 2000

**Title:** An act relating to criminal history record checks of finalist candidates for certain staff positions of the state investment board.

**Brief Description:** Changing record checks for the state investment board.

**Sponsors:** Representatives Huff, H. Sommers, Hatfield and Benson; by request of State Investment Board.

**Brief History:**

**Committee Activity:** Commerce, Trade, Housing & Financial Institutions: 2/17/2000 [DP].

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### SENATE COMMITTEE ON COMMERCE, TRADE, HOUSING & FINANCIAL INSTITUTIONS

**Majority Report:** Do pass.

Signed by Senators Prentice, Chair; Gardner, Hale, Heavey, Rasmussen, T. Sheldon and Winsley.

**Staff:** Susan Jones (786-7784)

**Background:** As a result of 1999 legislation, the State Investment Board is allowed to conduct both state and national criminal history record checks on certain prospective employees who may have authority for or access to State Investment Board funds, data systems, or security systems. However, the Federal Bureau of Investigation will only conduct national criminal history background checks for state agencies if these checks are mandatory under state law. Because the State Investment Board checks are allowable but not mandatory, the FBI will not conduct the checks.

**Summary of Bill:** Criminal history background checks are mandatory for each finalist candidate for State Investment Board exempt board staff positions and other positions with authority for or access to State Investment Board funds, data systems or security systems.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This is the same bill as SB 6161. The FBI wanted the language "shall" instead of "may" for the background checks.

**Testimony Against:** None.

**Testified:** Scott Huntley, State Investment Board (pro).