

State of
Washington
House of
Representatives

GENERAL GOVERNMENT
APPROPRIATIONS & OVERSIGHT
VICE CHAIR
LABOR & WORKFORCE
DEVELOPMENT
STATE GOVERNMENT &
TRIBAL AFFAIRS



June 20, 2012

Governor Christine Gregoire
P.O. Box 40002
Olympia, WA 98504-0002

Dear Governor Gregoire,

I would like to express my extreme dismay regarding the memorandum sent by Marty Brown, Director of the Office of Financial Management (OFM), on May 21st (see attached). A careful review of state law and the Brown Memorandum have exposed serious problems with the legality of the memorandum.

Mr. Brown's memorandum purports to authorize all state agencies to ignore the law that requires them to conduct independent assessments of their quality management systems. The letter claimed that the law could be ignored "due to lack of available funds." This blatantly disregards RCW 43.17.390, which *requires* all agencies to apply for an independent assessment of the effectiveness of their management systems with no mention of a "lack of funding" loophole.

No one and no state agency is above the law. This improper directive exceeds the authority granted to the executive branch and governor in the Washington State Constitution and is contrary to both the spirit and the letter of RCW 43.17.390. The directive by Mr. Brown raises serious concerns.

First, the legal requirement for each state agency to conduct the independent assessment is mandatory, not optional. The operative word in RCW 43.17.390 is "shall," not "may".

Secondly, the requirement to audit state agencies was the subject of recent legislative discussion on the last day of the session. The Legislature, in accepting my House floor amendment to the supplemental operating budget (3ESHB 2127), voted in a strong bipartisan manner not to suspend the audits, as your administration had sought.

Given that your administration recognized during the budget discussions that a change in the law was needed to suspend the audit requirements, what has changed since the supplemental budget was enacted that suddenly authorizes your staff to suspend the law now?

In fact, nothing has changed, and speaking broadly the state Attorney General has already determined that the governor does not have the legal authority to override duly passed legislation. In AGO 1991 No. 21, the Attorney General explained that the "Governor cannot by an executive order, create an operative effect that conflicts with a statute enacted by the Legislature." Yet this is exactly what the letter attempts to do—it attempts to tell all agencies that they may disregard a clear legal requirement that was established by the Legislature and reaffirmed in the new supplemental budget.



What kind of example is set, ethically and legally, for the citizens of our state, if an agency director, a state legislator, or a governor, for that matter, can publicly disregard state law at his or her discretion?

Will your administration's actions to suspend performance audits for state agencies restore trust in government or sink it to even lower levels than we're seeing now?

Finally, I must say it is ironic that the administration is using funding concerns as a reason to suspend audits.

The fact is that performance audits and quality management actually saves tax dollars and allows government to be run more efficiently. To suspend these critical processes is counterproductive and a direct slap at taxpayers.

Senator Kastama and myself have requested an Attorney General Opinion (AGO) dealing with this subject. (See attached)

Again, I am gravely concerned about what I perceive as a clear breach of the law. The citizens we serve together are demanding accountability and trust from their elected officials and public servants. Accomplishing the performance audits specified in state law is not just a legal requirement; it is an ethical and moral requirement as well.

Please listen to the people we serve and do the right thing. I would be happy to discuss this memo at your convenience.

Respectfully,



Representative Mark Miloscia
30th Legislative District

Attachments

Cc: Marty Brown, Director of OFM
Marty Loesch, Governor Gregoire's Chief of Staff
Jim Justin
Statewide Elected officials
Speaker Frank Chopp
Representative Richard DeBolt
Rep. Pat Sullivan
Representative Ross Hunter
Representative Gary Alexander
Senator Lisa Brown
Senator Mike Hewitt
Senator Ed Murray
Senator Jim Kastama
Cathy Maynard, Speaker's Attorney