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**SECOND SUBSTITUTE HOUSE BILL 1005**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Moeller, Wylie, Reykdal, Appleton, Ryu, Morrell, McCoy, Sequist, Moscoso, Hudgins, Ormsby, and Pollet)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to the public disclosure commission concerning  
2 responsibilities and funding; amending RCW 42.52.360, 42.52.380,  
3 42.52.390, 42.52.400, 42.52.410, 42.52.420, 42.52.425, 42.52.430,  
4 42.52.440, 42.52.450, 42.52.460, 42.52.470, 42.52.480, 42.52.490,  
5 42.52.500, 42.52.510, 42.52.530, 42.52.540, 42.52.550, 42.17A.100,  
6 42.17A.705, and 42.40.020; reenacting and amending RCW 42.52.010 and  
7 9.95.003; adding new sections to chapter 42.17A RCW; creating new  
8 sections; repealing RCW 42.52.340 and 42.52.350; providing effective  
9 dates; and declaring an emergency.

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

11 NEW SECTION. **Sec. 1.** The legislature intends to restructure  
12 ethics functions under the public disclosure commission in order to  
13 unify processes and functions and cut costs. The legislature also  
14 finds that the public is entitled to complete disclosure regarding the  
15 influence of money in politics. Therefore, the legislature intends to  
16 increase disclosure by requiring electronic filing by lobbyists.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 42.17A RCW  
18 to read as follows:

1 (1) All agencies required to report under RCW 42.17A.635 must file  
2 all reports required by this chapter electronically over the internet  
3 as provided by the commission under RCW 42.17A.055.

4 (2) No later than January 1, 2014, all lobbyists and lobbyists'  
5 employers required to file reports under RCW 42.17A.600, 42.17A.615,  
6 42.17A.625, or 42.17A.630 must file all reports required by this  
7 chapter electronically over the internet as provided by the commission  
8 under RCW 42.17A.055.

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 42.17A RCW  
10 to read as follows:

11 (1) The following persons and individuals must pay an annual fee to  
12 the commission:

13 (a) Every political committee and candidate must pay a fee of two  
14 hundred dollars to the commission each calendar year that the political  
15 committee or candidate is required to report under RCW 42.17A.205,  
16 42.17A.210, 42.17A.220, 42.17A.225, 42.17A.235, or 42.17A.250;

17 (b) Every lobbyist whose total reportable accrued compensation for  
18 lobbying, whether from or on behalf of one or more lobbyists'  
19 employers, was ten thousand dollars or more for the previous calendar  
20 year must pay a fee of two hundred dollars to the commission each  
21 calendar year that it is required to report under RCW 42.17A.600,  
22 42.17A.615, 42.17A.630, or 42.17A.640;

23 (c) Every lobbyist employer whose total reportable accrued expenses  
24 and payments for lobbying, including those through or on behalf of one  
25 or more lobbyists, was ten thousand dollars or more for the previous  
26 calendar year, must pay a fee of two hundred dollars to the commission  
27 each calendar year that it is required to report under RCW 42.17A.600,  
28 42.17A.615, 42.17A.630, or 42.17A.640;

29 (d) Every government entity that employs more than fifty full-time  
30 equivalent employees must pay a fee of one hundred fifty dollars each  
31 calendar year that it is required to report under RCW 42.17A.635(5);  
32 and

33 (e) Every elected official that receives a salary for duties  
34 performed related to that office in excess of ten thousand dollars and  
35 is required to report under RCW 42.17A.700 must pay a fee of two  
36 hundred dollars to the commission for each calendar year he or she is  
37 an elected official and is required to report.

1 (2) No person or individual may be required to pay more than one  
2 fee in a calendar year under this section. Any person may appeal a fee  
3 to the commission if more than one fee under this section is imposed on  
4 the person in a calendar year.

5 (3) The commission shall adopt rules and procedures to implement  
6 this section.

7 (4) The legislature shall have the authority to adjust fees  
8 commensurate to the amount appropriate to support the functions of this  
9 program.

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 42.17A RCW  
11 to read as follows:

12 (1) The public disclosure electronic filing account is created in  
13 the custody of the state treasurer. All receipts from fees paid under  
14 section 3 of this act must be deposited into the account. Expenditures  
15 from the account may be used only for costs incurred as a result of the  
16 design, development, implementation, and maintenance of:

17 (a) Computer hardware and software or other applications to  
18 accommodate electronic filing of the reports required by this chapter;  
19 and

20 (b) A database and query system compatible with current  
21 architecture, technology, and operating systems that result in readily  
22 available data to the public for review and analysis.

23 (2) Only the executive director of the public disclosure  
24 commission, or the executive director's designee, may authorize  
25 expenditures from the account. The account is subject to allotment  
26 procedures under chapter 43.88 RCW, but an appropriation is not  
27 required for expenditures.

28 **Sec. 5.** RCW 42.52.010 and 2011 c 60 s 28 are each reenacted and  
29 amended to read as follows:

30 Unless the context clearly requires otherwise, the definitions in  
31 this section apply throughout this chapter.

32 (1) "Agency" means any state board, commission, bureau, committee,  
33 department, institution, division, or tribunal in the legislative,  
34 executive, or judicial branch of state government. "Agency" includes  
35 all elective offices, the state legislature, those institutions of

1 higher education created and supported by the state government, and  
2 those courts that are parts of state government.

3 (2) "Assist" means to act, or offer or agree to act, in such a way  
4 as to help, aid, advise, furnish information to, or otherwise provide  
5 assistance to another person, believing that the action is of help,  
6 aid, advice, or assistance to the person and with intent so to assist  
7 such person.

8 (3) "Beneficial interest" has the meaning ascribed to it under the  
9 Washington case law. However, an ownership interest in a mutual fund  
10 or similar investment pooling fund in which the owner has no management  
11 powers does not constitute a beneficial interest in the entities in  
12 which the fund or pool invests.

13 (4) "Commission" means the commission on judicial conduct or the  
14 public disclosure commission.

15 (5) "Compensation" means anything of economic value, however  
16 designated, that is paid, loaned, granted, or transferred, or to be  
17 paid, loaned, granted, or transferred for, or in consideration of,  
18 personal services to any person.

19 ((+5)) (6) "Confidential information" means (a) specific  
20 information, rather than generalized knowledge, that is not available  
21 to the general public on request or (b) information made confidential  
22 by law.

23 ((+6)) (7) "Contract" or "grant" means an agreement between two or  
24 more persons that creates an obligation to do or not to do a particular  
25 thing. "Contract" or "grant" includes, but is not limited to, an  
26 employment contract, a lease, a license, a purchase agreement, or a  
27 sales agreement.

28 ((+7)) (8) "Ethics board(~~(s)~~)" means (~~(the commission on judicial~~  
29 ~~conduct,)~~) the legislative ethics board(~~(, and the executive ethics~~  
30 ~~board)~~).

31 ((+8)) (9) "Family" has the same meaning as "immediate family" in  
32 RCW 42.17A.005.

33 ((+9)) (10) "Gift" means anything of economic value for which no  
34 consideration is given. "Gift" does not include:

35 (a) Items from family members or friends where it is clear beyond  
36 a reasonable doubt that the gift was not made as part of any design to  
37 gain or maintain influence in the agency of which the recipient is an  
38 officer or employee;

1 (b) Items related to the outside business of the recipient that are  
2 customary and not related to the recipient's performance of official  
3 duties;

4 (c) Items exchanged among officials and employees or a social event  
5 hosted or sponsored by a state officer or state employee for coworkers;

6 (d) Payments by a governmental or nongovernmental entity of  
7 reasonable expenses incurred in connection with a speech, presentation,  
8 appearance, or trade mission made in an official capacity. As used in  
9 this subsection, "reasonable expenses" are limited to travel, lodging,  
10 and subsistence expenses incurred the day before through the day after  
11 the event;

12 (e) Items a state officer or state employee is authorized by law to  
13 accept;

14 (f) Payment of enrollment and course fees and reasonable travel  
15 expenses attributable to attending seminars and educational programs  
16 sponsored by a bona fide governmental or nonprofit professional,  
17 educational, trade, or charitable association or institution. As used  
18 in this subsection, "reasonable expenses" are limited to travel,  
19 lodging, and subsistence expenses incurred the day before through the  
20 day after the event;

21 (g) Items returned by the recipient to the donor within thirty days  
22 of receipt or donated to a charitable organization within thirty days  
23 of receipt;

24 (h) Campaign contributions reported under chapter 42.17A RCW;

25 (i) Discounts available to an individual as a member of an employee  
26 group, occupation, or similar broad-based group; and

27 (j) Awards, prizes, scholarships, or other items provided in  
28 recognition of academic or scientific achievement.

29 ~~((+10+))~~ (11) "Head of agency" means the chief executive officer of  
30 an agency. In the case of an agency headed by a commission, board,  
31 committee, or other body consisting of more than one natural person,  
32 agency head means the person or board authorized to appoint agency  
33 employees and regulate their conduct.

34 ~~((+11+))~~ (12) "Honorarium" means money or thing of value offered to  
35 a state officer or state employee for a speech, appearance, article, or  
36 similar item or activity in connection with the state officer's or  
37 state employee's official role.

1        ~~((12))~~ (13) "Official duty" means those duties within the  
2 specific scope of employment of the state officer or state employee as  
3 defined by the officer's or employee's agency or by statute or the  
4 state Constitution.

5        ~~((13))~~ (14) "Participate" means to participate in state action or  
6 a proceeding personally and substantially as a state officer or state  
7 employee, through approval, disapproval, decision, recommendation, the  
8 rendering of advice, investigation, or otherwise but does not include  
9 preparation, consideration, or enactment of legislation or the  
10 performance of legislative duties.

11        ~~((14))~~ (15) "Person" means any individual, partnership,  
12 association, corporation, firm, institution, or other entity, whether  
13 or not operated for profit.

14        ~~((15))~~ (16) "Regulatory agency" means any state board,  
15 commission, department, or officer, except those in the legislative or  
16 judicial branches, authorized by law to conduct adjudicative  
17 proceedings, issue permits or licenses, or to control or affect  
18 interests of identified persons.

19        ~~((16))~~ (17) "Responsibility" in connection with a transaction  
20 involving the state, means the direct administrative or operating  
21 authority, whether intermediate or final, and either exercisable alone  
22 or through subordinates, effectively to approve, disapprove, or  
23 otherwise direct state action in respect of such transaction.

24        ~~((17))~~ (18) "State action" means any action on the part of an  
25 agency, including, but not limited to:

26        (a) A decision, determination, finding, ruling, or order; and

27        (b) A grant, payment, award, license, contract, transaction,  
28 sanction, or approval, or the denial thereof, or failure to act with  
29 respect to a decision, determination, finding, ruling, or order.

30        ~~((18))~~ (19) "State employee" means an individual who is employed  
31 by an agency in any branch of state government. For purposes of this  
32 chapter, employees of the superior courts are not state officers or  
33 state employees.

34        ~~((19))~~ (20) "State officer" means every person holding a position  
35 of public trust in or under an executive, legislative, or judicial  
36 office of the state. "State officer" includes judges of the superior  
37 court, judges of the court of appeals, justices of the supreme court,  
38 members of the legislature together with the secretary of the senate

1 and the chief clerk of the house of representatives, holders of  
2 elective offices in the executive branch of state government, chief  
3 executive officers of state agencies, members of boards, commissions,  
4 or committees with authority over one or more state agencies or  
5 institutions, and employees of the state who are engaged in  
6 supervisory, policy-making, or policy-enforcing work. For the purposes  
7 of this chapter, "state officer" also includes any person exercising or  
8 undertaking to exercise the powers or functions of a state officer.

9 ~~((+20))~~ (21) "Thing of economic value," in addition to its  
10 ordinary meaning, includes:

11 (a) A loan, property interest, interest in a contract or other  
12 chose in action, and employment or another arrangement involving a  
13 right to compensation;

14 (b) An option, irrespective of the conditions to the exercise of  
15 the option; and

16 (c) A promise or undertaking for the present or future delivery or  
17 procurement.

18 ~~((+21))~~ (22)(a) "Transaction involving the state" means a  
19 proceeding, application, submission, request for a ruling or other  
20 determination, contract, claim, case, or other similar matter that the  
21 state officer, state employee, or former state officer or state  
22 employee in question believes, or has reason to believe:

23 (i) Is, or will be, the subject of state action; or

24 (ii) Is one to which the state is or will be a party; or

25 (iii) Is one in which the state has a direct and substantial  
26 proprietary interest.

27 (b) "Transaction involving the state" does not include the  
28 following: Preparation, consideration, or enactment of legislation,  
29 including appropriation of moneys in a budget, or the performance of  
30 legislative duties by an officer or employee; or a claim, case,  
31 lawsuit, or similar matter if the officer or employee did not  
32 participate in the underlying transaction involving the state that is  
33 the basis for the claim, case, or lawsuit.

34 ~~((+22))~~ (23) "University" includes "state universities" and  
35 "regional universities" as defined in RCW 28B.10.016 and also includes  
36 any research or technology institute affiliated with a university,  
37 including without limitation, the Spokane intercollegiate research and  
38 technology institute and the Washington technology center.

1           (~~(23)~~) (24) "University research employee" means a state officer  
2 or state employee employed by a university, but only to the extent the  
3 state officer or state employee is engaged in research, technology  
4 transfer, approved consulting activities related to research and  
5 technology transfer, or other incidental activities.

6           **Sec. 6.** RCW 42.52.360 and 2005 c 106 s 5 are each amended to read  
7 as follows:

8           (1) The (~~(executive ethics board)~~) public disclosure commission  
9 shall enforce this chapter and rules adopted under it with respect to  
10 statewide elected officers and all other officers and employees in the  
11 executive branch, boards and commissions, and institutions of higher  
12 education(~~(-~~

13           ~~(2) The executive ethics board shall enforce this chapter~~) with  
14 regard to the activities of university research employees as provided  
15 in this (~~(subsection)~~) section.

16           (2)(a) With respect to compliance with RCW 42.52.030, 42.52.110,  
17 42.52.130, 42.52.140, and 42.52.150, the administrative process shall  
18 be consistent with and adhere to no less than the current standards in  
19 regulations of the United States public health service and the office  
20 of the secretary of the department of health and human services in  
21 Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity  
22 in research.

23           (b) With respect to compliance with RCW 42.52.040, 42.52.080, and  
24 42.52.120, the administrative process shall include a comprehensive  
25 system for the disclosure, review, and approval of outside work  
26 activities by university research employees while assuring that such  
27 employees are fulfilling their employment obligations to the  
28 university.

29           (c) With respect to compliance with RCW 42.52.160, the  
30 administrative process shall include a reasonable determination by the  
31 university of acceptable private uses having de minimis costs to the  
32 university and a method for establishing fair and reasonable  
33 reimbursement charges for private uses the costs of which are in excess  
34 of de minimis.

35           (~~(3) The executive ethics board shall:~~

36           ~~(a) Develop educational materials and training;~~



1 ~~(b) Adopt rules and policies governing the conduct of business by~~  
2 ~~the board, and adopt rules defining working hours for purposes of RCW~~  
3 ~~42.52.180 and where otherwise authorized under chapter 154, Laws of~~  
4 ~~1994;~~

5 ~~(c) Issue advisory opinions;~~

6 ~~(d) Investigate, hear, and determine complaints by any person or on~~  
7 ~~its own motion;~~

8 ~~(e) Impose sanctions including reprimands and monetary penalties;~~

9 ~~(f) Recommend to the appropriate authorities suspension, removal~~  
10 ~~from position, prosecution, or other appropriate remedy; and~~

11 ~~(g) Establish criteria regarding the levels of civil penalties~~  
12 ~~appropriate for violations of this chapter and rules adopted under it.~~

13 ~~(4) The board may:~~

14 ~~(a) Issue subpoenas for the attendance and testimony of witnesses~~  
15 ~~and the production of documentary evidence relating to any matter under~~  
16 ~~examination by the board or involved in any hearing;~~

17 ~~(b) Administer oaths and affirmations;~~

18 ~~(c) Examine witnesses; and~~

19 ~~(d) Receive evidence.~~

20 ~~(5) Except as provided in RCW 42.52.220, the executive ethics board~~  
21 ~~may review and approve agency policies as provided for in this chapter.~~

22 ~~(6) This section does not apply to state officers and state~~  
23 ~~employees of the judicial branch.))~~

24 **Sec. 7.** RCW 42.52.380 and 2011 c 60 s 32 are each amended to read  
25 as follows:

26 (1) ~~((No member of the executive ethics board may (a) hold or~~  
27 ~~campaign for partisan elective office other than the position of~~  
28 ~~precinct committeeperson, or any full-time nonpartisan office; (b) be~~  
29 ~~an officer of any political party or political committee as defined in~~  
30 ~~chapter 42.17A RCW other than the position of precinct committeeperson;~~  
31 ~~(c) permit his or her name to be used, or make contributions, in~~  
32 ~~support of or in opposition to any state candidate or state ballot~~  
33 ~~measure; or (d) lobby or control, direct, or assist a lobbyist except~~  
34 ~~that such member may appear before any committee of the legislature on~~  
35 ~~matters pertaining to this chapter.~~

36 ~~(2))~~ No citizen member of the legislative ethics board may (a)  
37 hold or campaign for partisan elective office other than the position

1 of precinct committeeperson, or any full-time nonpartisan office; (b)  
2 be an officer of any political party or political committee as defined  
3 in chapter 42.17A RCW, other than the position of precinct  
4 committeeperson; (c) permit his or her name to be used, or make  
5 contributions, in support of or in opposition to any legislative  
6 candidate, any legislative caucus campaign committee that supports or  
7 opposes legislative candidates, or any political action committee that  
8 supports or opposes legislative candidates; or (d) engage in lobbying  
9 in the legislative branch under circumstances not exempt, under RCW  
10 42.17A.610, from lobbyist registration and reporting.

11 ~~((3))~~ (2) No citizen member of the legislative ethics board may  
12 hold or campaign for a seat in the state house of representatives or  
13 the state senate within two years of serving on the board if the  
14 citizen member opposes an incumbent who has been the respondent in a  
15 complaint before the board.

16 **Sec. 8.** RCW 42.52.390 and 1994 c 154 s 209 are each amended to  
17 read as follows:

18 Except as otherwise provided by law, the ethics board~~((s))~~, public  
19 disclosure commission, and the commission on judicial conduct may hold  
20 hearings, subpoena witnesses, compel their attendance, administer  
21 oaths, take the testimony of a person under oath, and in connection  
22 therewith, to require the production for examination of any books or  
23 papers relating to any matter under investigation or in question before  
24 the ethics board or commissions. The ethics board and commissions may  
25 make rules as to the issuance of subpoenas by individual members, as to  
26 service of complaints, decisions, orders, recommendations, and other  
27 process or papers of the ethics board or commissions.

28 **Sec. 9.** RCW 42.52.400 and 1994 c 154 s 210 are each amended to  
29 read as follows:

30 In case of refusal to obey a subpoena issued to a person, the  
31 superior court of a county within the jurisdiction of which the  
32 investigation, proceeding, or hearing under this chapter is carried on  
33 or within the jurisdiction of which the person refusing to obey is  
34 found or resides or transacts business, upon application by the ethics  
35 board or appropriate ~~((ethics—board))~~ commission shall have  
36 jurisdiction to issue to the person an order requiring the person to

1 appear before the ethics board or (~~its member~~) appropriate commission  
2 to produce evidence if so ordered, or to give testimony touching the  
3 matter under investigation or in question. Failure to obey such order  
4 of the court may be punished by the court as contempt.

5 **Sec. 10.** RCW 42.52.410 and 1994 c 154 s 211 are each amended to  
6 read as follows:

7 (1) A person may, personally or by his or her attorney, make, sign,  
8 and file with the ethics board or appropriate (~~ethics board~~)  
9 commission a complaint on a form provided by the ethics board or  
10 appropriate (~~ethics board~~) commission. The complaint shall state the  
11 name of the person alleged to have violated this chapter or rules  
12 adopted under it and the particulars thereof, and contain such other  
13 information as may be required by the ethics board or appropriate  
14 (~~ethics board~~) commission.

15 (2) If it has reason to believe that any person has been engaged or  
16 is engaging in a violation of this chapter or rules adopted under it,  
17 (~~an~~) the ethics board or appropriate commission may issue a  
18 complaint.

19 **Sec. 11.** RCW 42.52.420 and 2000 c 211 s 1 are each amended to read  
20 as follows:

21 (1) After the filing of any complaint, except as provided in RCW  
22 42.52.450, the staff of the ethics board or appropriate (~~ethics~~  
23 ~~board~~) commission shall investigate the complaint. The investigation  
24 shall be limited to the allegations contained in the complaint.

25 (2) The results of the investigation shall be reduced to writing  
26 and the staff shall either make a determination that the complaint  
27 should be dismissed pursuant to RCW 42.52.425, or recommend to the  
28 ethics board or appropriate commission that there is or that there is  
29 not reasonable cause to believe that a violation of this chapter or  
30 rules adopted under it has been or is being committed.

31 (3) The ethics board's or commission's determination on reasonable  
32 cause shall be provided to the complainant and to the person named in  
33 such complaint.

34 **Sec. 12.** RCW 42.52.425 and 2005 c 116 s 1 are each amended to read  
35 as follows:

1 (1) Based on the investigation conducted under RCW 42.52.420 or  
2 42.52.450, and subject to rules issued by the ethics board and each  
3 (~~board~~) commission, the ethics board or commission or the staff of  
4 the ethics board or appropriate (~~ethics board~~) commission may issue  
5 an order of dismissal based on any of the following findings:

6 (a) Any violation that may have occurred is not within the  
7 jurisdiction of the ethics board or commission;

8 (b) The complaint is obviously unfounded or frivolous; or

9 (c) Any violation that may have occurred does not constitute a  
10 material violation because it was inadvertent and minor, or has been  
11 cured, and, after consideration of all of the circumstances, further  
12 proceedings would not serve the purposes of this chapter.

13 (2) Written notice of the determination under subsection (1) of  
14 this section shall be provided to the complainant, respondent, and the  
15 ethics board commission. The written notice to the complainant shall  
16 include a statement of the complainant's right to appeal to the ethics  
17 board commission under subsection (3) of this section if the dismissal  
18 order was issued by staff.

19 (3) In the event that a complaint is dismissed by staff under this  
20 section, the complainant may request that the ethics board or  
21 commission review the action. Following review, the ethics board or  
22 commission shall:

23 (a) Affirm the staff dismissal of the complaint;

24 (b) Direct the staff to conduct further investigation; or

25 (c) Issue a determination that there is reasonable cause to believe  
26 that a violation has been or is being committed.

27 (4) The ethics board's or commission's decision under subsection  
28 (3) of this section shall be reduced to writing and provided to the  
29 complainant and the respondent.

30 **Sec. 13.** RCW 42.52.430 and 1994 c 154 s 213 are each amended to  
31 read as follows:

32 (1) If the ethics board or commission determines there is  
33 reasonable cause under RCW 42.52.420 that a violation of this chapter  
34 or rules adopted under it occurred, a public hearing on the merits of  
35 the complaint shall be held.

36 (2) The ethics board or commission shall designate the location of

1 the hearing. The case in support of the complaint shall be presented  
2 at the hearing by staff of the ethics board or commission.

3 (3) The respondent shall file a written answer to the complaint and  
4 appear at the hearing in person or otherwise, with or without counsel,  
5 and submit testimony and be fully heard. The respondent has the right  
6 to cross-examine witnesses.

7 (4) Testimony taken at the hearing shall be under oath and  
8 recorded.

9 (5) If, based upon a preponderance of the evidence, the ethics  
10 board or commission finds that the respondent has violated this chapter  
11 or rules adopted under it, the board or commission shall file an order  
12 stating findings of fact and enforcement action as authorized under  
13 this chapter.

14 (6) If, upon all the evidence, the ethics board or commission finds  
15 that the respondent has not engaged in an alleged violation of this  
16 chapter or rules adopted under it, the ethics board or commission shall  
17 state findings of fact and shall similarly issue and file an order  
18 dismissing the complaint.

19 (7) If the ethics board or commission makes a determination that  
20 there is not reasonable cause to believe that a violation has been or  
21 is being committed or has made a finding under subsection (6) of this  
22 section, the attorney general shall represent the officer or employee  
23 in any action subsequently commenced based on the alleged facts in the  
24 complaint.

25 **Sec. 14.** RCW 42.52.440 and 1994 c 154 s 214 are each amended to  
26 read as follows:

27 Except as otherwise provided by law, reconsideration or judicial  
28 review of an ethics board's or a commission's order that a violation of  
29 this chapter or rules adopted under it has occurred shall be governed  
30 by the provisions of chapter 34.05 RCW applicable to review of  
31 adjudicative proceedings.

32 **Sec. 15.** RCW 42.52.450 and 2005 c 116 s 2 are each amended to read  
33 as follows:

34 (1) If a complaint alleges a violation of RCW 42.52.180 by a  
35 legislator or statewide elected official other than the attorney

1 general, the attorney general shall, if requested by the ethics board  
2 or appropriate (~~ethics board~~) commission, conduct the investigation  
3 under RCW 42.52.420 and recommend action.

4 (2) If a complaint alleges a violation of RCW 42.52.180 by the  
5 attorney general, the state auditor shall conduct the investigation  
6 under RCW 42.52.420 and recommend action to the (~~appropriate~~) ethics  
7 board or public disclosure commission.

8 **Sec. 16.** RCW 42.52.460 and 1994 c 154 s 216 are each amended to  
9 read as follows:

10 Any person who has notified the ethics board or appropriate  
11 (~~ethics board~~) commission and the attorney general in writing that  
12 there is reason to believe that RCW 42.52.180 is being or has been  
13 violated may, in the name of the state, bring a citizen action for any  
14 of the actions authorized under this chapter. A citizen action may be  
15 brought only if the ethics board, the appropriate (~~ethics board~~)  
16 commission, or the attorney general (~~have~~) has failed to commence an  
17 action under this chapter within forty-five days after notice from the  
18 person, the person has thereafter notified the ethics board or  
19 appropriate (~~ethics board~~) commission and the attorney general that  
20 the person will commence a citizen's action within ten days upon their  
21 failure to commence an action, and the ethics board or appropriate  
22 (~~ethics board~~) commission and the attorney general have in fact  
23 failed to bring an action within ten days of receipt of the second  
24 notice.

25 If the person who brings the citizen's action prevails, the  
26 judgment awarded shall escheat to the state, but the person shall be  
27 entitled to be reimbursed by the state of Washington for costs and  
28 attorneys' fees incurred. If a citizen's action that the court finds  
29 was brought without reasonable cause is dismissed, the court may order  
30 the person commencing the action to pay all costs of trial and  
31 reasonable attorneys' fees incurred by the defendant.

32 Upon commencement of a citizen action under this section, at the  
33 request of a state officer or state employee who is a defendant, the  
34 office of the attorney general shall represent the defendant if the  
35 attorney general finds that the defendant's conduct complied with this  
36 chapter and was within the scope of employment.

1       **Sec. 17.** RCW 42.52.470 and 1994 c 154 s 217 are each amended to  
2 read as follows:

3       As (~~appropriate, an ethics board~~) applicable, the ethics board or  
4 appropriate commission may refer a complaint:

5       (1) To an agency for initial investigation and proposed resolution  
6 which shall be referred back to the ethics board or appropriate  
7 (~~ethics board~~) commission for action; or

8       (2) To the attorney general's office or prosecutor for appropriate  
9 action.

10       **Sec. 18.** RCW 42.52.480 and 1994 c 154 s 218 are each amended to  
11 read as follows:

12       (1) Except as otherwise provided by law, (~~an~~) the ethics board,  
13 the public disclosure commission, or the commission on judicial conduct  
14 may order payment of the following amounts if it finds a violation of  
15 this chapter or rules adopted under it after a hearing under RCW  
16 42.52.370 or other applicable law:

17       (a) Any damages sustained by the state that are caused by the  
18 conduct constituting the violation;

19       (b) From each such person, a civil penalty of up to five thousand  
20 dollars per violation or three times the economic value of any thing  
21 received or sought in violation of this chapter or rules adopted under  
22 it, whichever is greater; and

23       (c) Costs, including reasonable investigative costs, which shall be  
24 included as part of the limit under (b) of this subsection. The costs  
25 may not exceed the penalty imposed. The payment owed on the penalty  
26 shall be reduced by the amount of the costs paid.

27       (2) Damages under this section may be enforced in the same manner  
28 as a judgment in a civil case.

29       **Sec. 19.** RCW 42.52.490 and 1994 c 154 s 219 are each amended to  
30 read as follows:

31       (1) Upon a written determination by the attorney general that the  
32 action of (~~an~~) the ethics board or a commission was clearly erroneous  
33 or if requested by (~~an~~) the ethics board or a commission, the  
34 attorney general may bring a civil action in the superior court of the  
35 county in which the violation is alleged to have occurred against a  
36 state officer, state employee, former state officer, former state

1 employee, or other person who has violated or knowingly assisted  
2 another person in violating any of the provisions of this chapter or  
3 the rules adopted under it. In such action the attorney general may  
4 recover the following amounts on behalf of the state of Washington:

5 (a) Any damages sustained by the state that are caused by the  
6 conduct constituting the violation;

7 (b) From each such person, a civil penalty of up to five thousand  
8 dollars per violation or three times the economic value of any thing  
9 received or sought in violation of this chapter or the rules adopted  
10 under it, whichever is greater; and

11 (c) Costs, including reasonable investigative costs, which shall be  
12 included as part of the limit under (b) of this subsection. The costs  
13 may not exceed the penalty imposed. The payment owed on the penalty  
14 shall be reduced by the amount of the costs paid.

15 (2) In any civil action brought by the attorney general upon the  
16 basis that the attorney general has determined that the ethics board's  
17 or the commission's action was clearly erroneous, the court shall not  
18 proceed with the action unless the attorney general has first shown,  
19 and the court has found, that the action of the ethics board or the  
20 commission was clearly erroneous.

21 **Sec. 20.** RCW 42.52.500 and 1994 c 154 s 220 are each amended to  
22 read as follows:

23 If ((~~an~~)) the ethics board or a commission finds that there is  
24 reasonable cause to believe that a violation has occurred, the ethics  
25 board or a commission shall consider the possibility of the alleged  
26 violator having to pay a total amount of penalty and costs of more than  
27 five hundred dollars. Based on such consideration, the ethics board or  
28 a commission may give the person who is the subject of the complaint  
29 the option to have an administrative law judge conduct the hearing and  
30 rule on procedural and evidentiary matters. The ethics board or a  
31 commission may also, on its own initiative, provide for retaining an  
32 administrative law judge. ((~~An~~)) The ethics board or a commission may  
33 not require total payment of more than five hundred dollars in penalty  
34 and costs in any case where an administrative law judge is not used and  
35 the ethics board or the commission did not give such option to the  
36 person who is the subject of the complaint.



1           **Sec. 21.** RCW 42.52.510 and 1994 c 154 s 221 are each amended to  
2 read as follows:

3           (1) The attorney general may, on request of the governor or the  
4 appropriate agency, and in addition to other available rights of  
5 rescission, bring an action in the superior court of Thurston county to  
6 cancel or rescind state action taken by a state officer or state  
7 employee, without liability to the state of Washington, contractual or  
8 otherwise, if the governor (~~(or)~~), ethics board, or the appropriate  
9 commission has reason to believe that: (a) A violation of this chapter  
10 or rules adopted under it has substantially influenced the state  
11 action, and (b) the interest of the state requires the cancellation or  
12 rescission. The governor may suspend state action pending the  
13 determination of the merits of the controversy under this section. The  
14 court may permit persons affected by the governor's actions to post an  
15 adequate bond pending such resolution to ensure compliance by the  
16 defendant with the final judgment, decree, or other order of the court.

17           (2) This section does not limit other available remedies.

18           **Sec. 22.** RCW 42.52.530 and 1994 c 154 s 223 are each amended to  
19 read as follows:

20           In addition to other authority under this chapter, the attorney  
21 general may investigate persons not under the jurisdiction of (~~(an)~~)  
22 the ethics board or a commission whom the attorney general has reason  
23 to believe were involved in transactions in violation of this chapter  
24 or rules adopted under it.

25           **Sec. 23.** RCW 42.52.540 and 1994 c 154 s 224 are each amended to  
26 read as follows:

27           Any action taken under this chapter must be commenced within five  
28 years from the date of the violation. However, if it is shown that the  
29 violation was not discovered because of concealment by the person  
30 charged, then the action must be commenced within two years from the  
31 date the violation was discovered or reasonably should have been  
32 discovered: (1) By any person with direct or indirect supervisory  
33 responsibilities over the person who allegedly committed the violation;  
34 or (2) if no person has direct or indirect supervisory authority over  
35 the person who committed the violation, by the ethics board or  
36 appropriate (~~(ethics board)~~) commission.

1       **Sec. 24.** RCW 42.52.550 and 1994 c 154 s 227 are each amended to  
2 read as follows:

3       The citizen members of the legislative ethics board (~~and the~~  
4 ~~members of the executive ethics board~~) shall be compensated as  
5 provided in RCW 43.03.250 and reimbursed for travel expenses as  
6 provided in RCW 43.03.050 and 43.03.060. Legislator members of the  
7 legislative ethics board shall be reimbursed as provided in RCW  
8 44.04.120.

9       **Sec. 25.** RCW 9.95.003 and 2011 1st sp.s. c 40 s 15 and 2011 c 336  
10 s 336 are each reenacted and amended to read as follows:

11       (1) The board is created within the department. The board shall  
12 consist of a chair and four other members, each of whom shall be  
13 appointed by the governor with the consent of the senate. Each member  
14 shall hold office for a term of five years, and until his or her  
15 successor is appointed and qualified. The terms shall expire on April  
16 15th of the expiration year. Vacancies in the membership of the board  
17 shall be filled by appointment by the governor with the consent of the  
18 senate. In the event of the inability of any member to act, the  
19 governor shall appoint some competent person to act in his or her stead  
20 during the continuance of such inability. The members shall not be  
21 removable during their respective terms except for cause determined by  
22 the superior court of Thurston county. The governor in appointing the  
23 members shall designate one of them to serve as chair at the governor's  
24 pleasure. The appointed chair shall serve as a fully participating  
25 board member.

26       (2) The department shall provide administrative and staff support  
27 for the board. The secretary may employ a senior administrative  
28 officer and such other personnel as may be necessary to assist the  
29 board in carrying out its duties.

30       (3) The members of the board and staff assigned to the board shall  
31 not engage in any other business or profession or hold any other public  
32 office without the prior approval of the (~~executive ethics board~~)  
33 public disclosure commission indicating compliance with RCW 42.52.020,  
34 42.52.030, 42.52.040, and 42.52.120; nor shall they, at the time of  
35 appointment or employment or during their incumbency, serve as the  
36 representative of any political party on an executive committee or  
37 other governing body thereof, or as an executive officer or employee of

1 any political committee or association. The members of the board shall  
2 each severally receive salaries fixed by the governor in accordance  
3 with the provisions of RCW 43.03.040, and in addition shall receive  
4 travel expenses incurred in the discharge of their official duties in  
5 accordance with RCW 43.03.050 and 43.03.060.

6 **Sec. 26.** RCW 42.17A.100 and 2010 c 204 s 301 are each amended to  
7 read as follows:

8 (1) The public disclosure commission is established. The  
9 commission shall be composed of (~~five~~) seven members appointed by the  
10 governor, with the consent of the senate. All appointees shall be  
11 persons of the highest integrity and qualifications. No more than  
12 (~~three~~) four members shall have an identification with the same  
13 political party.

14 (2)(a) Except as provided in (b) of this subsection, the term of  
15 each member shall be five years. No member is eligible for appointment  
16 to more than one full term. Any member may be removed by the governor,  
17 but only upon grounds of neglect of duty or misconduct in office.

18 (b) In order to stagger terms, the initial terms of the two members  
19 appointed as a result of chapter . . . , Laws of 2013 (this act) shall  
20 be two years and five years.

21 (3) During his or her tenure, a member of the commission is  
22 prohibited from engaging in any of the following activities, either  
23 within or outside the state of Washington:

24 (a) Holding or campaigning for elective office;

25 (b) Serving as an officer of any political party or political  
26 committee;

27 (c) Permitting his or her name to be used in support of or in  
28 opposition to a candidate or proposition;

29 (d) Soliciting (~~or making~~) contributions to a candidate or (~~in~~  
30 support of or in opposition to any candidate or)) to a proposition.  
31 Commission members may make contributions to a candidate or to a  
32 proposition but must report such contributions to the commission at the  
33 time the contribution is made. Contributions made by commission  
34 members under this subsection must be posted on the commission's web  
35 site;

36 (e) Participating in any way in any election campaign; or

1 (f) Lobbying, employing, or assisting a lobbyist, except that a  
2 member or the staff of the commission may lobby to the limited extent  
3 permitted by RCW 42.17A.635 on matters directly affecting this chapter.

4 (4) A vacancy on the commission shall be filled within thirty days  
5 of the vacancy by the governor, with the consent of the senate, and the  
6 appointee shall serve for the remaining term of his or her predecessor.  
7 A vacancy shall not impair the powers of the remaining members to  
8 exercise all of the powers of the commission.

9 (5) (~~Three~~) Four members of the commission shall constitute a  
10 quorum. The commission shall elect its own chair and adopt its own  
11 rules of procedure in the manner provided in chapter 34.05 RCW.

12 (6) Members shall be compensated in accordance with RCW 43.03.250  
13 and shall be reimbursed for travel expenses incurred while engaged in  
14 the business of the commission as provided in RCW 43.03.050 and  
15 43.03.060. The compensation provided pursuant to this section shall  
16 not be considered salary for purposes of the provisions of any  
17 retirement system created under the laws of this state.

18 **Sec. 27.** RCW 42.17A.705 and 2012 c 229 s 582 are each amended to  
19 read as follows:

20 For the purposes of RCW 42.17A.700, "executive state officer"  
21 includes:

22 (1) The chief administrative law judge, the director of  
23 agriculture, the director of the department of services for the blind,  
24 the chief information officer of the office of chief information  
25 officer, the director of the state system of community and technical  
26 colleges, the director of commerce, the director of the consolidated  
27 technology services agency, the secretary of corrections, the director  
28 of early learning, the director of ecology, the commissioner of  
29 employment security, the chair of the energy facility site evaluation  
30 council, the director of enterprise services, the secretary of the  
31 state finance committee, the director of financial management, the  
32 director of fish and wildlife, the executive secretary of the forest  
33 practices appeals board, the director of the gambling commission, the  
34 secretary of health, the administrator of the Washington state health  
35 care authority, the executive secretary of the health care facilities  
36 authority, the executive secretary of the higher education facilities  
37 authority, the executive secretary of the horse racing commission, the

1 human resources director, the executive secretary of the human rights  
2 commission, the executive secretary of the indeterminate sentence  
3 review board, the executive director of the state investment board, the  
4 director of labor and industries, the director of licensing, the  
5 director of the lottery commission, the director of the office of  
6 minority and women's business enterprises, the director of parks and  
7 recreation, the executive director of the public disclosure commission,  
8 the executive director of the Puget Sound partnership, the director of  
9 the recreation and conservation office, the director of retirement  
10 systems, the director of revenue, the secretary of social and health  
11 services, the chief of the Washington state patrol, the executive  
12 secretary of the board of tax appeals, the secretary of transportation,  
13 the secretary of the utilities and transportation commission, the  
14 director of veterans affairs, the president of each of the regional and  
15 state universities and the president of The Evergreen State College,  
16 and each district and each campus president of each state community  
17 college;

18 (2) Each professional staff member of the office of the governor;

19 (3) Each professional staff member of the legislature; and

20 (4) Central Washington University board of trustees, the boards of  
21 trustees of each community college and each technical college, each  
22 member of the state board for community and technical colleges, state  
23 convention and trade center board of directors, Eastern Washington  
24 University board of trustees, Washington economic development finance  
25 authority, Washington energy northwest executive board, The Evergreen  
26 State College board of trustees, (~~executive ethics board,~~) fish and  
27 wildlife commission, forest practices appeals board, forest practices  
28 board, gambling commission, Washington health care facilities  
29 authority, student achievement council, higher education facilities  
30 authority, horse racing commission, state housing finance commission,  
31 human rights commission, indeterminate sentence review board, board of  
32 industrial insurance appeals, state investment board, commission on  
33 judicial conduct, legislative ethics board, life sciences discovery  
34 fund authority board of trustees, liquor control board, lottery  
35 commission, Pacific Northwest electric power and conservation planning  
36 council, parks and recreation commission, Washington personnel  
37 resources board, board of pilotage commissioners, pollution control  
38 hearings board, public disclosure commission, public employees'

1 benefits board, recreation and conservation funding board, salmon  
2 recovery funding board, shorelines hearings board, board of tax  
3 appeals, transportation commission, University of Washington board of  
4 regents, utilities and transportation commission, Washington State  
5 University board of regents, and Western Washington University board of  
6 trustees.

7 **Sec. 28.** RCW 42.40.020 and 2008 c 266 s 2 are each amended to read  
8 as follows:

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

12 (1) "Auditor" means the office of the state auditor.

13 (2) "Employee" means any individual employed or holding office in  
14 any department or agency of state government.

15 (3) "Good faith" means the individual providing the information or  
16 report of improper governmental activity has a reasonable basis in fact  
17 for reporting or providing the information. An individual who  
18 knowingly provides or reports, or who reasonably ought to know he or  
19 she is providing or reporting, malicious, false, or frivolous  
20 information, or information that is provided with reckless disregard  
21 for the truth, or who knowingly omits relevant information is not  
22 acting in good faith.

23 (4) "Gross mismanagement" means the exercise of management  
24 responsibilities in a manner grossly deviating from the standard of  
25 care or competence that a reasonable person would observe in the same  
26 situation.

27 (5) "Gross waste of funds" means to spend or use funds or to allow  
28 funds to be used without valuable result in a manner grossly deviating  
29 from the standard of care or competence that a reasonable person would  
30 observe in the same situation.

31 (6)(a) "Improper governmental action" means any action by an  
32 employee undertaken in the performance of the employee's official  
33 duties:

34 (i) Which is a gross waste of public funds or resources as defined  
35 in this section;

36 (ii) Which is in violation of federal or state law or rule, if the  
37 violation is not merely technical or of a minimum nature;

1 (iii) Which is of substantial and specific danger to the public  
2 health or safety;

3 (iv) Which is gross mismanagement; or

4 (v) Which prevents the dissemination of scientific opinion or  
5 alters technical findings without scientifically valid justification,  
6 unless state law or a common law privilege prohibits disclosure. This  
7 provision is not meant to preclude the discretion of agency management  
8 to adopt a particular scientific opinion or technical finding from  
9 among differing opinions or technical findings to the exclusion of  
10 other scientific opinions or technical findings. Nothing in this  
11 subsection prevents or impairs a state agency's or public official's  
12 ability to manage its public resources or its employees in the  
13 performance of their official job duties. This subsection does not  
14 apply to de minimis, technical disagreements that are not relevant for  
15 otherwise improper governmental activity. Nothing in this provision  
16 requires the auditor to contract or consult with external experts  
17 regarding the scientific validity, invalidity, or justification of a  
18 finding or opinion.

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

29 (7) "Public official" means the attorney general's designee or  
30 designees; the director, or equivalent thereof in the agency where the  
31 employee works; an appropriate number of individuals designated to  
32 receive whistleblower reports by the head of each agency; or the  
33 (~~executive ethics board~~) public disclosure commission.

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

1 (9) "Use of official authority or influence" includes threatening,  
2 taking, directing others to take, recommending, processing, or  
3 approving any personnel action such as an appointment, promotion,  
4 transfer, assignment including but not limited to duties and office  
5 location, reassignment, reinstatement, restoration, reemployment,  
6 performance evaluation, determining any material changes in pay,  
7 provision of training or benefits, tolerance of a hostile work  
8 environment, or any adverse action under chapter 41.06 RCW, or other  
9 disciplinary action.

10 (10)(a) "Whistleblower" means:

11 (i) An employee who in good faith reports alleged improper  
12 governmental action to the auditor or other public official, as defined  
13 in subsection (7) of this section, initiating an investigation by the  
14 auditor under RCW 42.40.040; or

15 (ii) An employee who is perceived by the employer as reporting,  
16 whether they did or not, alleged improper governmental action to the  
17 auditor or other public official, as defined in subsection (7) of this  
18 section, initiating an investigation by the auditor under RCW  
19 42.40.040.

20 (b) For purposes of the provisions of this chapter and chapter  
21 49.60 RCW relating to reprisals and retaliatory action, the term  
22 "whistleblower" also means:

23 (i) An employee who in good faith provides information to the  
24 auditor or other public official, as defined in subsection (7) of this  
25 section, in connection with an investigation under RCW 42.40.040 and an  
26 employee who is believed to have reported asserted improper  
27 governmental action to the auditor or other public official, as defined  
28 in subsection (7) of this section, or to have provided information to  
29 the auditor or other public official, as defined in subsection (7) of  
30 this section, in connection with an investigation under RCW 42.40.040  
31 but who, in fact, has not reported such action or provided such  
32 information; or

33 (ii) An employee who in good faith identifies rules warranting  
34 review or provides information to the rules review committee, and an  
35 employee who is believed to have identified rules warranting review or  
36 provided information to the rules review committee but who, in fact,  
37 has not done so.



1        NEW SECTION.    **Sec. 29.**    (1) The executive ethics board is hereby  
2 abolished and its powers, duties, and functions are hereby transferred  
3 to the public disclosure commission. All references to the executive  
4 ethics board in the Revised Code of Washington shall be construed to  
5 mean the public disclosure commission.

6        (2)(a) On the effective date of this section, any complaints or  
7 other matters under investigation or consideration by the executive  
8 ethics board under this chapter shall be transferred to the public  
9 disclosure commission. All reports, documents, surveys, books,  
10 records, files, papers, or written material in the possession of the  
11 executive ethics board shall be delivered to the custody of the public  
12 disclosure commission. All cabinets, furniture, office equipment,  
13 motor vehicles, and other tangible property employed by the executive  
14 ethics board shall be made available to the public disclosure  
15 commission. All funds, credits, or other assets held by the executive  
16 ethics board shall be assigned to the public disclosure commission.

17        (b) Any appropriations made to the executive ethics board shall, on  
18 the effective date of this section, be transferred and credited to the  
19 public disclosure commission.

20        (c) If any question arises as to the transfer of any funds, books,  
21 documents, records, papers, files, equipment, or other tangible  
22 property used or held in the exercise of the powers and the performance  
23 of the duties and functions transferred, the director of financial  
24 management shall make a determination as to the proper allocation and  
25 certify the same to the state agencies concerned.

26        (3) All rules and all pending business before the executive ethics  
27 board shall be continued and acted upon by the public disclosure  
28 commission. All existing contracts and obligations shall remain in  
29 full force and shall be performed by the public disclosure commission.

30        (4) The transfer of the powers, duties, and functions of the  
31 executive ethics board shall not affect the validity of any act  
32 performed before the effective date of this section. Staff to the  
33 executive ethics board are hereby considered staff to the public  
34 disclosure commission.

35        (5) If apportionments of budgeted funds are required because of the  
36 transfers directed by this section, the director of financial  
37 management shall certify the apportionments to the agencies affected,

1 the state auditor, and the state treasurer. Each of these shall make  
2 the appropriate transfer and adjustments in funds and appropriation  
3 accounts and equipment records in accordance with the certification.

4 NEW SECTION. **Sec. 30.** The following acts or parts of acts are  
5 each repealed:

- 6 (1) RCW 42.52.340 (Transfer of jurisdiction) and 1994 c 154 s 204;  
7 and  
8 (2) RCW 42.52.350 (Executive ethics board) and 1994 c 154 s 205.

9 NEW SECTION. **Sec. 31.** Sections 2 through 4 of this act take  
10 effect January 1, 2014.

11 NEW SECTION. **Sec. 32.** Sections 1 and 5 through 30 of this act are  
12 necessary for the immediate preservation of the public peace, health,  
13 or safety, or support of the state government and its existing public  
14 institutions, and take effect July 1, 2013.

--- END ---