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**SUBSTITUTE HOUSE BILL 1005**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** House Government Operations & Elections (originally sponsored by Representatives Moeller, Wylie, Reykdal, Appleton, Ryu, Morrell, McCoy, Seaquist, Moscoso, Hudgins, Ormsby, and Pollet)

READ FIRST TIME 02/14/13.

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

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

14 (a) Computer hardware and software or other applications to  
15 accommodate electronic filing of the reports required by this chapter;  
16 and

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

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

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

27 Unless the context clearly requires otherwise, the definitions in  
28 this section apply throughout this chapter.

29 (1) "Agency" means any state board, commission, bureau, committee,  
30 department, institution, division, or tribunal in the legislative,  
31 executive, or judicial branch of state government. "Agency" includes  
32 all elective offices, the state legislature, those institutions of  
33 higher education created and supported by the state government, and  
34 those courts that are parts of state government.

35 (2) "Assist" means to act, or offer or agree to act, in such a way  
36 as to help, aid, advise, furnish information to, or otherwise provide

1 assistance to another person, believing that the action is of help,  
2 aid, advice, or assistance to the person and with intent so to assist  
3 such person.

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

9 (4) "Commission" means the commission on judicial conduct or the  
10 public disclosure commission.

11 (5) "Compensation" means anything of economic value, however  
12 designated, that is paid, loaned, granted, or transferred, or to be  
13 paid, loaned, granted, or transferred for, or in consideration of,  
14 personal services to any person.

15 ((+5)) (6) "Confidential information" means (a) specific  
16 information, rather than generalized knowledge, that is not available  
17 to the general public on request or (b) information made confidential  
18 by law.

19 ((+6)) (7) "Contract" or "grant" means an agreement between two or  
20 more persons that creates an obligation to do or not to do a particular  
21 thing. "Contract" or "grant" includes, but is not limited to, an  
22 employment contract, a lease, a license, a purchase agreement, or a  
23 sales agreement.

24 ((+7)) (8) "Ethics board(~~s~~)" means (~~(the commission on judicial~~  
25 ~~conduct,)~~) the legislative ethics board(~~(, and the executive ethics~~  
26 ~~board))~~).

27 ((+8)) (9) "Family" has the same meaning as "immediate family" in  
28 RCW 42.17A.005.

29 ((+9)) (10) "Gift" means anything of economic value for which no  
30 consideration is given. "Gift" does not include:

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

35 (b) Items related to the outside business of the recipient that are  
36 customary and not related to the recipient's performance of official  
37 duties;

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

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

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

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

18 (g) Items returned by the recipient to the donor within thirty days  
19 of receipt or donated to a charitable organization within thirty days  
20 of receipt;

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

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

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

26 ~~((+10+))~~ (11) "Head of agency" means the chief executive officer of  
27 an agency. In the case of an agency headed by a commission, board,  
28 committee, or other body consisting of more than one natural person,  
29 agency head means the person or board authorized to appoint agency  
30 employees and regulate their conduct.

31 ~~((+11+))~~ (12) "Honorarium" means money or thing of value offered to  
32 a state officer or state employee for a speech, appearance, article, or  
33 similar item or activity in connection with the state officer's or  
34 state employee's official role.

35 ~~((+12+))~~ (13) "Official duty" means those duties within the  
36 specific scope of employment of the state officer or state employee as  
37 defined by the officer's or employee's agency or by statute or the  
38 state Constitution.

1        ~~((13))~~ (14) "Participate" means to participate in state action or  
2 a proceeding personally and substantially as a state officer or state  
3 employee, through approval, disapproval, decision, recommendation, the  
4 rendering of advice, investigation, or otherwise but does not include  
5 preparation, consideration, or enactment of legislation or the  
6 performance of legislative duties.

7        ~~((14))~~ (15) "Person" means any individual, partnership,  
8 association, corporation, firm, institution, or other entity, whether  
9 or not operated for profit.

10       ~~((15))~~ (16) "Regulatory agency" means any state board,  
11 commission, department, or officer, except those in the legislative or  
12 judicial branches, authorized by law to conduct adjudicative  
13 proceedings, issue permits or licenses, or to control or affect  
14 interests of identified persons.

15       ~~((16))~~ (17) "Responsibility" in connection with a transaction  
16 involving the state, means the direct administrative or operating  
17 authority, whether intermediate or final, and either exercisable alone  
18 or through subordinates, effectively to approve, disapprove, or  
19 otherwise direct state action in respect of such transaction.

20       ~~((17))~~ (18) "State action" means any action on the part of an  
21 agency, including, but not limited to:

- 22        (a) A decision, determination, finding, ruling, or order; and
- 23        (b) A grant, payment, award, license, contract, transaction,  
24 sanction, or approval, or the denial thereof, or failure to act with  
25 respect to a decision, determination, finding, ruling, or order.

26       ~~((18))~~ (19) "State employee" means an individual who is employed  
27 by an agency in any branch of state government. For purposes of this  
28 chapter, employees of the superior courts are not state officers or  
29 state employees.

30       ~~((19))~~ (20) "State officer" means every person holding a position  
31 of public trust in or under an executive, legislative, or judicial  
32 office of the state. "State officer" includes judges of the superior  
33 court, judges of the court of appeals, justices of the supreme court,  
34 members of the legislature together with the secretary of the senate  
35 and the chief clerk of the house of representatives, holders of  
36 elective offices in the executive branch of state government, chief  
37 executive officers of state agencies, members of boards, commissions,  
38 or committees with authority over one or more state agencies or

1 institutions, and employees of the state who are engaged in  
2 supervisory, policy-making, or policy-enforcing work. For the purposes  
3 of this chapter, "state officer" also includes any person exercising or  
4 undertaking to exercise the powers or functions of a state officer.

5 ~~((+20))~~ (21) "Thing of economic value," in addition to its  
6 ordinary meaning, includes:

7 (a) A loan, property interest, interest in a contract or other  
8 chose in action, and employment or another arrangement involving a  
9 right to compensation;

10 (b) An option, irrespective of the conditions to the exercise of  
11 the option; and

12 (c) A promise or undertaking for the present or future delivery or  
13 procurement.

14 ~~((+21))~~ (22)(a) "Transaction involving the state" means a  
15 proceeding, application, submission, request for a ruling or other  
16 determination, contract, claim, case, or other similar matter that the  
17 state officer, state employee, or former state officer or state  
18 employee in question believes, or has reason to believe:

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

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

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

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

30 ~~((+22))~~ (23) "University" includes "state universities" and  
31 "regional universities" as defined in RCW 28B.10.016 and also includes  
32 any research or technology institute affiliated with a university,  
33 including without limitation, the Spokane intercollegiate research and  
34 technology institute and the Washington technology center.

35 ~~((+23))~~ (24) "University research employee" means a state officer  
36 or state employee employed by a university, but only to the extent the  
37 state officer or state employee is engaged in research, technology

1 transfer, approved consulting activities related to research and  
2 technology transfer, or other incidental activities.

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

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

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

13 (2)(a) With respect to compliance with RCW 42.52.030, 42.52.110,  
14 42.52.130, 42.52.140, and 42.52.150, the administrative process shall  
15 be consistent with and adhere to no less than the current standards in  
16 regulations of the United States public health service and the office  
17 of the secretary of the department of health and human services in  
18 Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity  
19 in research.

20 (b) With respect to compliance with RCW 42.52.040, 42.52.080, and  
21 42.52.120, the administrative process shall include a comprehensive  
22 system for the disclosure, review, and approval of outside work  
23 activities by university research employees while assuring that such  
24 employees are fulfilling their employment obligations to the  
25 university.

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

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

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

34 ~~(b) Adopt rules and policies governing the conduct of business by~~  
35 ~~the board, and adopt rules defining working hours for purposes of RCW~~  
36 ~~42.52.180 and where otherwise authorized under chapter 154, Laws of~~  
37 ~~1994;~~



1       ~~(c) Issue advisory opinions;~~  
2       ~~(d) Investigate, hear, and determine complaints by any person or on~~  
3 ~~its own motion;~~  
4       ~~(e) Impose sanctions including reprimands and monetary penalties;~~  
5       ~~(f) Recommend to the appropriate authorities suspension, removal~~  
6 ~~from position, prosecution, or other appropriate remedy; and~~  
7       ~~(g) Establish criteria regarding the levels of civil penalties~~  
8 ~~appropriate for violations of this chapter and rules adopted under it.~~  
9       ~~(4) The board may:~~  
10       ~~(a) Issue subpoenas for the attendance and testimony of witnesses~~  
11 ~~and the production of documentary evidence relating to any matter under~~  
12 ~~examination by the board or involved in any hearing;~~  
13       ~~(b) Administer oaths and affirmations;~~  
14       ~~(c) Examine witnesses; and~~  
15       ~~(d) Receive evidence.~~  
16       ~~(5) Except as provided in RCW 42.52.220, the executive ethics board~~  
17 ~~may review and approve agency policies as provided for in this chapter.~~  
18       ~~(6) This section does not apply to state officers and state~~  
19 ~~employees of the judicial branch.))~~

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

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

32       ~~(2))~~) No citizen member of the legislative ethics board may (a)  
33 hold or campaign for partisan elective office other than the position  
34 of precinct committeeperson, or any full-time nonpartisan office; (b)  
35 be an officer of any political party or political committee as defined  
36 in chapter 42.17A RCW, other than the position of precinct  
37 committeeperson; (c) permit his or her name to be used, or make

1 contributions, in support of or in opposition to any legislative  
2 candidate, any legislative caucus campaign committee that supports or  
3 opposes legislative candidates, or any political action committee that  
4 supports or opposes legislative candidates; or (d) engage in lobbying  
5 in the legislative branch under circumstances not exempt, under RCW  
6 42.17A.610, from lobbyist registration and reporting.

7 ~~((+3))~~ (2) No citizen member of the legislative ethics board may  
8 hold or campaign for a seat in the state house of representatives or  
9 the state senate within two years of serving on the board if the  
10 citizen member opposes an incumbent who has been the respondent in a  
11 complaint before the board.

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

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

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

26 In case of refusal to obey a subpoena issued to a person, the  
27 superior court of a county within the jurisdiction of which the  
28 investigation, proceeding, or hearing under this chapter is carried on  
29 or within the jurisdiction of which the person refusing to obey is  
30 found or resides or transacts business, upon application by the ethics  
31 board or appropriate ~~((ethics—board))~~ commission shall have  
32 jurisdiction to issue to the person an order requiring the person to  
33 appear before the ethics board or ~~((its member))~~ appropriate commission  
34 to produce evidence if so ordered, or to give testimony touching the  
35 matter under investigation or in question. Failure to obey such order  
36 of the court may be punished by the court as contempt.

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

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

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

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

17           (1) After the filing of any complaint, except as provided in RCW  
18 42.52.450, the staff of the ethics board or appropriate (~~ethics~~  
19 ~~board~~) commission shall investigate the complaint. The investigation  
20 shall be limited to the allegations contained in the complaint.

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

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

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

32           (1) Based on the investigation conducted under RCW 42.52.420 or  
33 42.52.450, and subject to rules issued by the ethics board and each  
34 (~~board~~) commission, the ethics board or commission or the staff of  
35 the ethics board or appropriate (~~ethics board~~) commission may issue  
36 an order of dismissal based on any of the following findings:

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

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

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

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

14 (3) In the event that a complaint is dismissed by staff under this  
15 section, the complainant may request that the ethics board or  
16 commission review the action. Following review, the ethics board or  
17 commission shall:

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

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

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

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

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

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

31 (2) The ethics board or commission shall designate the location of  
32 the hearing. The case in support of the complaint shall be presented  
33 at the hearing by staff of the ethics board or commission.

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

1 (4) Testimony taken at the hearing shall be under oath and  
2 recorded.

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

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

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

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

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

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

28 (1) If a complaint alleges a violation of RCW 42.52.180 by a  
29 legislator or statewide elected official other than the attorney  
30 general, the attorney general shall, if requested by the ethics board  
31 or appropriate ((ethics board)) commission, conduct the investigation  
32 under RCW 42.52.420 and recommend action.

33 (2) If a complaint alleges a violation of RCW 42.52.180 by the  
34 attorney general, the state auditor shall conduct the investigation  
35 under RCW 42.52.420 and recommend action to the ((appropriate)) ethics  
36 board or public disclosure commission.

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

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

18       If the person who brings the citizen's action prevails, the  
19 judgment awarded shall escheat to the state, but the person shall be  
20 entitled to be reimbursed by the state of Washington for costs and  
21 attorneys' fees incurred. If a citizen's action that the court finds  
22 was brought without reasonable cause is dismissed, the court may order  
23 the person commencing the action to pay all costs of trial and  
24 reasonable attorneys' fees incurred by the defendant.

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

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

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

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

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

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

5 (1) Except as otherwise provided by law, (~~an~~) the ethics board,  
6 the public disclosure commission, or the commission on judicial conduct  
7 may order payment of the following amounts if it finds a violation of  
8 this chapter or rules adopted under it after a hearing under RCW  
9 42.52.370 or other applicable law:

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

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

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

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

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

24 (1) Upon a written determination by the attorney general that the  
25 action of (~~an~~) the ethics board or a commission was clearly erroneous  
26 or if requested by (~~an~~) the ethics board or a commission, the  
27 attorney general may bring a civil action in the superior court of the  
28 county in which the violation is alleged to have occurred against a  
29 state officer, state employee, former state officer, former state  
30 employee, or other person who has violated or knowingly assisted  
31 another person in violating any of the provisions of this chapter or  
32 the rules adopted under it. In such action the attorney general may  
33 recover the following amounts on behalf of the state of Washington:

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

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

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

9 (2) In any civil action brought by the attorney general upon the  
10 basis that the attorney general has determined that the ethics board's  
11 or the commission's action was clearly erroneous, the court shall not  
12 proceed with the action unless the attorney general has first shown,  
13 and the court has found, that the action of the ethics board or the  
14 commission was clearly erroneous.

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

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

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

33 (1) The attorney general may, on request of the governor or the  
34 appropriate agency, and in addition to other available rights of  
35 rescission, bring an action in the superior court of Thurston county to  
36 cancel or rescind state action taken by a state officer or state



1 employee, without liability to the state of Washington, contractual or  
2 otherwise, if the governor (~~(or)~~), ethics board, or the appropriate  
3 commission has reason to believe that: (a) A violation of this chapter  
4 or rules adopted under it has substantially influenced the state  
5 action, and (b) the interest of the state requires the cancellation or  
6 rescission. The governor may suspend state action pending the  
7 determination of the merits of the controversy under this section. The  
8 court may permit persons affected by the governor's actions to post an  
9 adequate bond pending such resolution to ensure compliance by the  
10 defendant with the final judgment, decree, or other order of the court.

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

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

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

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

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

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

33 The citizen members of the legislative ethics board (~~(and the~~  
34 ~~members of the executive ethics board)~~) shall be compensated as  
35 provided in RCW 43.03.250 and reimbursed for travel expenses as

1 provided in RCW 43.03.050 and 43.03.060. Legislator members of the  
2 legislative ethics board shall be reimbursed as provided in RCW  
3 44.04.120.

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

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

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

25 (3) The members of the board and staff assigned to the board shall  
26 not engage in any other business or profession or hold any other public  
27 office without the prior approval of the (~~executive ethics board~~)  
28 public disclosure commission indicating compliance with RCW 42.52.020,  
29 42.52.030, 42.52.040, and 42.52.120; nor shall they, at the time of  
30 appointment or employment or during their incumbency, serve as the  
31 representative of any political party on an executive committee or  
32 other governing body thereof, or as an executive officer or employee of  
33 any political committee or association. The members of the board shall  
34 each severally receive salaries fixed by the governor in accordance  
35 with the provisions of RCW 43.03.040, and in addition shall receive  
36 travel expenses incurred in the discharge of their official duties in  
37 accordance with RCW 43.03.050 and 43.03.060.

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

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

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

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

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

19       (a) Holding or campaigning for elective office;

20       (b) Serving as an officer of any political party or political  
21 committee;

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

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

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

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

35       (4) A vacancy on the commission shall be filled within thirty days  
36 of the vacancy by the governor, with the consent of the senate, and the  
37 appointee shall serve for the remaining term of his or her predecessor.

1 A vacancy shall not impair the powers of the remaining members to  
2 exercise all of the powers of the commission.

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

6 (6) Members shall be compensated in accordance with RCW 43.03.250  
7 and shall be reimbursed for travel expenses incurred while engaged in  
8 the business of the commission as provided in RCW 43.03.050 and  
9 43.03.060. The compensation provided pursuant to this section shall  
10 not be considered salary for purposes of the provisions of any  
11 retirement system created under the laws of this state.

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

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

16 (1) The chief administrative law judge, the director of  
17 agriculture, the director of the department of services for the blind,  
18 the chief information officer of the office of chief information  
19 officer, the director of the state system of community and technical  
20 colleges, the director of commerce, the director of the consolidated  
21 technology services agency, the secretary of corrections, the director  
22 of early learning, the director of ecology, the commissioner of  
23 employment security, the chair of the energy facility site evaluation  
24 council, the director of enterprise services, the secretary of the  
25 state finance committee, the director of financial management, the  
26 director of fish and wildlife, the executive secretary of the forest  
27 practices appeals board, the director of the gambling commission, the  
28 secretary of health, the administrator of the Washington state health  
29 care authority, the executive secretary of the health care facilities  
30 authority, the executive secretary of the higher education facilities  
31 authority, the executive secretary of the horse racing commission, the  
32 human resources director, the executive secretary of the human rights  
33 commission, the executive secretary of the indeterminate sentence  
34 review board, the executive director of the state investment board, the  
35 director of labor and industries, the director of licensing, the  
36 director of the lottery commission, the director of the office of  
37 minority and women's business enterprises, the director of parks and

1 recreation, the executive director of the public disclosure commission,  
2 the executive director of the Puget Sound partnership, the director of  
3 the recreation and conservation office, the director of retirement  
4 systems, the director of revenue, the secretary of social and health  
5 services, the chief of the Washington state patrol, the executive  
6 secretary of the board of tax appeals, the secretary of transportation,  
7 the secretary of the utilities and transportation commission, the  
8 director of veterans affairs, the president of each of the regional and  
9 state universities and the president of The Evergreen State College,  
10 and each district and each campus president of each state community  
11 college;

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

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

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

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

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

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

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

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

17       (4) "Gross mismanagement" means the exercise of management  
18 responsibilities in a manner grossly deviating from the standard of  
19 care or competence that a reasonable person would observe in the same  
20 situation.

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

25       (6)(a) "Improper governmental action" means any action by an  
26 employee undertaken in the performance of the employee's official  
27 duties:

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

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

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

34       (iv) Which is gross mismanagement; or

35       (v) Which prevents the dissemination of scientific opinion or  
36 alters technical findings without scientifically valid justification,  
37 unless state law or a common law privilege prohibits disclosure. This  
38 provision is not meant to preclude the discretion of agency management

1 to adopt a particular scientific opinion or technical finding from  
2 among differing opinions or technical findings to the exclusion of  
3 other scientific opinions or technical findings. Nothing in this  
4 subsection prevents or impairs a state agency's or public official's  
5 ability to manage its public resources or its employees in the  
6 performance of their official job duties. This subsection does not  
7 apply to de minimis, technical disagreements that are not relevant for  
8 otherwise improper governmental activity. Nothing in this provision  
9 requires the auditor to contract or consult with external experts  
10 regarding the scientific validity, invalidity, or justification of a  
11 finding or opinion.

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

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

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

31 (9) "Use of official authority or influence" includes threatening,  
32 taking, directing others to take, recommending, processing, or  
33 approving any personnel action such as an appointment, promotion,  
34 transfer, assignment including but not limited to duties and office  
35 location, reassignment, reinstatement, restoration, reemployment,  
36 performance evaluation, determining any material changes in pay,  
37 provision of training or benefits, tolerance of a hostile work

1 environment, or any adverse action under chapter 41.06 RCW, or other  
2 disciplinary action.

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

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

8 (ii) An employee who is perceived by the employer as reporting,  
9 whether they did or not, alleged improper governmental action to the  
10 auditor or other public official, as defined in subsection (7) of this  
11 section, initiating an investigation by the auditor under RCW  
12 42.40.040.

13 (b) For purposes of the provisions of this chapter and chapter  
14 49.60 RCW relating to reprisals and retaliatory action, the term  
15 "whistleblower" also means:

16 (i) An employee who in good faith provides information to the  
17 auditor or other public official, as defined in subsection (7) of this  
18 section, in connection with an investigation under RCW 42.40.040 and an  
19 employee who is believed to have reported asserted improper  
20 governmental action to the auditor or other public official, as defined  
21 in subsection (7) of this section, or to have provided information to  
22 the auditor or other public official, as defined in subsection (7) of  
23 this section, in connection with an investigation under RCW 42.40.040  
24 but who, in fact, has not reported such action or provided such  
25 information; or

26 (ii) An employee who in good faith identifies rules warranting  
27 review or provides information to the rules review committee, and an  
28 employee who is believed to have identified rules warranting review or  
29 provided information to the rules review committee but who, in fact,  
30 has not done so.

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

36 (2)(a) On the effective date of this section, any complaints or  
37 other matters under investigation or consideration by the executive



1 ethics board under this chapter shall be transferred to the public  
2 disclosure commission. All reports, documents, surveys, books,  
3 records, files, papers, or written material in the possession of the  
4 executive ethics board shall be delivered to the custody of the public  
5 disclosure commission. All cabinets, furniture, office equipment,  
6 motor vehicles, and other tangible property employed by the executive  
7 ethics board shall be made available to the public disclosure  
8 commission. All funds, credits, or other assets held by the executive  
9 ethics board shall be assigned to the public disclosure commission.

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

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

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

23 (4) The transfer of the powers, duties, and functions of the  
24 executive ethics board shall not affect the validity of any act  
25 performed before the effective date of this section.

26 (5) If apportionments of budgeted funds are required because of the  
27 transfers directed by this section, the director of financial  
28 management shall certify the apportionments to the agencies affected,  
29 the state auditor, and the state treasurer. Each of these shall make  
30 the appropriate transfer and adjustments in funds and appropriation  
31 accounts and equipment records in accordance with the certification.

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

34 (1) RCW 42.52.340 (Transfer of jurisdiction) and 1994 c 154 s 204;  
35 and

36 (2) RCW 42.52.350 (Executive ethics board) and 1994 c 154 s 205.

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

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

--- END ---