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HOUSE BILL 2402

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State of Washington

62nd Legislature

2012 Regular Session

By Representatives Hudgins, Hunt, and Ormsby

Read first time 01/13/12. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to transferring ethics enforcement responsibility;  
2 amending RCW 42.52.320, 42.52.360, 42.52.390, 42.52.400, 42.52.410,  
3 42.52.420, 42.52.425, 42.52.430, 42.52.440, 42.52.450, 42.52.460,  
4 42.52.470, 42.52.480, 42.52.490, 42.52.500, 42.52.510, 42.52.530,  
5 42.52.540, 42.17A.100, 42.17A.705, 42.40.020, and 43.15.020; reenacting  
6 and amending RCW 42.52.010 and 9.95.003; creating a new section; and  
7 repealing RCW 42.52.310, 42.52.340, 42.52.350, 42.52.380, and  
8 42.52.550.

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

10 **Sec. 1.** RCW 42.52.010 and 2011 c 60 s 28 are each reenacted and  
11 amended to read as follows:

12 Unless the context clearly requires otherwise, the definitions in  
13 this section apply throughout this chapter.

14 (1) "Agency" means any state board, commission, bureau, committee,  
15 department, institution, division, or tribunal in the legislative,  
16 executive, or judicial branch of state government. "Agency" includes  
17 all elective offices, the state legislature, those institutions of  
18 higher education created and supported by the state government, and  
19 those courts that are parts of state government.

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

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

11 (4) "Commission" means the commission on judicial conduct or the  
12 public disclosure commission.

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

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

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

26 ((-7) ~~"Ethics boards" means the commission on judicial conduct, the~~  
27 ~~legislative ethics board, and the executive ethics board.~~)

28 (8) "Family" has the same meaning as "immediate family" in RCW  
29 42.17A.005.

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

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

36 (b) Items related to the outside business of the recipient that are  
37 customary and not related to the recipient's performance of official  
38 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) "Head of agency" means the chief executive officer of an  
27 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) "Honorarium" means money or thing of value offered to a state  
32 officer or state employee for a speech, appearance, article, or similar  
33 item or activity in connection with the state officer's or state  
34 employee's official role.

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

1 (13) "Participate" means to participate in state action or a  
2 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) "Person" means any individual, partnership, association,  
8 corporation, firm, institution, or other entity, whether or not  
9 operated for profit.

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

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

20 (17) "State action" means any action on the part of an agency,  
21 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) "State employee" means an individual who is employed by an  
27 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) "State officer" means every person holding a position of  
31 public trust in or under an executive, legislative, or judicial office  
32 of the state. "State officer" includes judges of the superior court,  
33 judges of the court of appeals, justices of the supreme court, members  
34 of the legislature together with the secretary of the senate and the  
35 chief clerk of the house of representatives, holders of elective  
36 offices in the executive branch of state government, chief executive  
37 officers of state agencies, members of boards, commissions, or  
38 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) "Thing of economic value," in addition to its ordinary  
6 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)(a) "Transaction involving the state" means a proceeding,  
15 application, submission, request for a ruling or other determination,  
16 contract, claim, case, or other similar matter that the state officer,  
17 state employee, or former state officer or state employee in question  
18 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) "University" includes "state universities" and "regional  
31 universities" as defined in RCW 28B.10.016 and also includes any  
32 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) "University research employee" means a state officer or state  
36 employee employed by a university, but only to the extent the state  
37 officer or state employee is engaged in research, technology transfer,

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

3 **Sec. 2.** RCW 42.52.320 and 1994 c 154 s 202 are each amended to  
4 read as follows:

5 (1) The (~~legislative ethics board~~) public disclosure commission  
6 created in chapter 42.17A RCW shall enforce this chapter and rules  
7 adopted under it with respect to members and employees of the  
8 legislature, statewide elected officers and all other officers and  
9 employees in the executive branch, boards and commissions, and  
10 institutions of higher education. This section does not apply to state  
11 officers and state employees of the judicial branch.

12 (2) The (~~legislative ethics board~~) commission shall:

13 (a) Develop educational materials and training with regard to  
14 (~~legislative~~) ethics for (~~legislators and legislative employees~~)  
15 the state employees under its jurisdiction;

16 (b) Issue advisory opinions;

17 (c) Adopt rules or policies governing the conduct of business by  
18 the (~~board~~) commission, and adopt rules defining working hours for  
19 purposes of RCW 42.52.180 and where otherwise authorized under chapter  
20 154, Laws of 1994;

21 (d) Investigate, hear, and determine complaints by any person or on  
22 its own motion;

23 (e) Impose sanctions including reprimands and monetary penalties;

24 (f) Recommend suspension or removal to the appropriate legislative  
25 entity, or recommend prosecution to the appropriate authority; and

26 (g) Establish criteria regarding the levels of civil penalties  
27 appropriate for different types of violations of this chapter and rules  
28 adopted under it.

29 (3) The (~~board~~) commission may:

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

33 (b) Administer oaths and affirmations;

34 (c) Examine witnesses; and

35 (d) Receive evidence.

36 (~~(4) Subject to RCW 42.52.540, the board has jurisdiction over any~~  
37 ~~alleged violation that occurred before January 1, 1995, and that was~~

1 ~~within the jurisdiction of any of the boards established under chapter~~  
2 ~~44.60 RCW. The board's jurisdiction with respect to any such alleged~~  
3 ~~violation shall be based on the statutes and rules in effect at [the]~~  
4 ~~time of the violation.))~~

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

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

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

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

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

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

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

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

36 ~~(b) Adopt rules and policies governing the conduct of business by~~

1 the board, and adopt rules defining working hours for purposes of RCW  
2 42.52.180 and where otherwise authorized under chapter 154, Laws of  
3 1994;

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

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

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

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

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

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

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

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

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

18 ~~(d) Receive evidence.~~

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

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

23 **Sec. 4.** RCW 42.52.390 and 1994 c 154 s 209 are each amended to  
24 read as follows:

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

35 **Sec. 5.** RCW 42.52.400 and 1994 c 154 s 210 are each amended to  
36 read as follows:



1 In case of refusal to obey a subpoena issued to a person, the  
2 superior court of a county within the jurisdiction of which the  
3 investigation, proceeding, or hearing under this chapter is carried on  
4 or within the jurisdiction of which the person refusing to obey is  
5 found or resides or transacts business, upon application by the  
6 appropriate (~~ethics board~~) commission shall have jurisdiction to  
7 issue to the person an order requiring the person to appear before the  
8 (~~ethics board or its member~~) commission to produce evidence if so  
9 ordered, or to give testimony touching the matter under investigation  
10 or in question. Failure to obey such order of the court may be  
11 punished by the court as contempt.

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

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

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

24 **Sec. 7.** RCW 42.52.420 and 2000 c 211 s 1 are each amended to read  
25 as follows:

26 (1) After the filing of any complaint, except as provided in RCW  
27 42.52.450, the staff of the appropriate (~~ethics board~~) commission  
28 shall investigate the complaint. The investigation shall be limited to  
29 the allegations contained in the complaint.

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

1 (3) The ((~~board's~~)) commission's determination on reasonable cause  
2 shall be provided to the complainant and to the person named in such  
3 complaint.

4 **Sec. 8.** RCW 42.52.425 and 2005 c 116 s 1 are each amended to read  
5 as follows:

6 (1) Based on the investigation conducted under RCW 42.52.420 or  
7 42.52.450, and subject to rules issued by each ((~~board~~)) commission,  
8 the ((~~board~~)) commission or the staff of the appropriate ((~~ethics~~  
9 ~~board~~)) commission may issue an order of dismissal based on any of the  
10 following findings:

11 (a) Any violation that may have occurred is not within the  
12 jurisdiction of the ((~~board~~)) commission;

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

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

18 (2) Written notice of the determination under subsection (1) of  
19 this section shall be provided to the complainant, respondent, and the  
20 ((~~board~~)) commission. The written notice to the complainant shall  
21 include a statement of the complainant's right to appeal to the  
22 ((~~board~~)) commission under subsection (3) of this section if the  
23 dismissal order was issued by staff.

24 (3) In the event that a complaint is dismissed by staff under this  
25 section, the complainant may request that the ((~~board~~)) commission  
26 review the action. Following review, the ((~~board~~)) commission shall:

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

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

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

31 (4) The ((~~board's~~)) commission's decision under subsection (3) of  
32 this section shall be reduced to writing and provided to the  
33 complainant and the respondent.

34 **Sec. 9.** RCW 42.52.430 and 1994 c 154 s 213 are each amended to  
35 read as follows:

36 (1) If the ((~~ethics—board~~)) commission determines there is

1 reasonable cause under RCW 42.52.420 that a violation of this chapter  
2 or rules adopted under it occurred, a public hearing on the merits of  
3 the complaint shall be held.

4 (2) The ((~~ethics board~~)) commission shall designate the location of  
5 the hearing. The case in support of the complaint shall be presented  
6 at the hearing by staff of the ((~~ethics board~~)) commission.

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

11 (4) Testimony taken at the hearing shall be under oath and  
12 recorded.

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

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

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

29 **Sec. 10.** RCW 42.52.440 and 1994 c 154 s 214 are each amended to  
30 read as follows:

31 Except as otherwise provided by law, reconsideration or judicial  
32 review of ((~~an ethics board's~~)) a commission's order that a violation  
33 of this chapter or rules adopted under it has occurred shall be  
34 governed by the provisions of chapter 34.05 RCW applicable to review of  
35 adjudicative proceedings.

1       **Sec. 11.** RCW 42.52.450 and 2005 c 116 s 2 are each amended to read  
2 as follows:

3       (1) If a complaint alleges a violation of RCW 42.52.180 by a  
4 legislator or statewide elected official other than the attorney  
5 general, the attorney general shall, if requested by the appropriate  
6 (~~ethics board~~) commission, conduct the investigation under RCW  
7 42.52.420 and recommend action.

8       (2) If a complaint alleges a violation of RCW 42.52.180 by the  
9 attorney general, the state auditor shall conduct the investigation  
10 under RCW 42.52.420 and recommend action to the (~~appropriate ethics~~  
11 ~~board~~) public disclosure commission.

12       **Sec. 12.** RCW 42.52.460 and 1994 c 154 s 216 are each amended to  
13 read as follows:

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

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

34       Upon commencement of a citizen action under this section, at the  
35 request of a state officer or state employee who is a defendant, the  
36 office of the attorney general shall represent the defendant if the

1 attorney general finds that the defendant's conduct complied with this  
2 chapter and was within the scope of employment.

3 **Sec. 13.** RCW 42.52.470 and 1994 c 154 s 217 are each amended to  
4 read as follows:

5 As (~~appropriate, an ethics board~~) applicable, the appropriate  
6 commission may refer a complaint:

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

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

12 **Sec. 14.** RCW 42.52.480 and 1994 c 154 s 218 are each amended to  
13 read as follows:

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

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

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

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

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

31 **Sec. 15.** RCW 42.52.490 and 1994 c 154 s 219 are each amended to  
32 read as follows:

33 (1) Upon a written determination by the attorney general that the  
34 action of (~~an ethics board~~) a commission was clearly erroneous or if  
35 requested by (~~an ethics board~~) a commission, the attorney general may

1 bring a civil action in the superior court of the county in which the  
2 violation is alleged to have occurred against a state officer, state  
3 employee, former state officer, former state employee, or other person  
4 who has violated or knowingly assisted another person in violating any  
5 of the provisions of this chapter or the rules adopted under it. In  
6 such action the attorney general may recover the following amounts on  
7 behalf of the state of Washington:

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

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

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

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

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

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

1 where an administrative law judge is not used and the ((board))  
2 commission did not give such option to the person who is the subject of  
3 the complaint.

4 **Sec. 17.** RCW 42.52.510 and 1994 c 154 s 221 are each amended to  
5 read as follows:

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

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

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

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

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

30 Any action taken under this chapter must be commenced within five  
31 years from the date of the violation. However, if it is shown that the  
32 violation was not discovered because of concealment by the person  
33 charged, then the action must be commenced within two years from the  
34 date the violation was discovered or reasonably should have been  
35 discovered: (1) By any person with direct or indirect supervisory

1 responsibilities over the person who allegedly committed the violation;  
2 or (2) if no person has direct or indirect supervisory authority over  
3 the person who committed the violation, by the appropriate (~~ethics~~  
4 ~~board~~) commission.

5 NEW SECTION. **Sec. 20.** On July 1, 2012, any complaints or other  
6 matters under investigation or consideration by the legislative ethics  
7 board or the executive ethics board under this chapter shall be  
8 transferred to the public disclosure commission created in RCW  
9 42.17A.100. All files, including but not limited to minutes of  
10 meetings, investigative files, records of proceedings, exhibits, and  
11 expense records, shall be transferred to the public disclosure  
12 commission and the public disclosure commission shall assume full  
13 jurisdiction over all pending complaints, investigations, and  
14 proceedings.

15 **Sec. 21.** RCW 9.95.003 and 2011 1st sp.s. c 40 s 15 and 2011 c 336  
16 s 336 are each reenacted and amended to read as follows:

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

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



1 (3) The members of the board and staff assigned to the board shall  
2 not engage in any other business or profession or hold any other public  
3 office without the prior approval of the (~~executive ethics board~~)  
4 public disclosure commission indicating compliance with RCW 42.52.020,  
5 42.52.030, 42.52.040, and 42.52.120; nor shall they, at the time of  
6 appointment or employment or during their incumbency, serve as the  
7 representative of any political party on an executive committee or  
8 other governing body thereof, or as an executive officer or employee of  
9 any political committee or association. The members of the board shall  
10 each severally receive salaries fixed by the governor in accordance  
11 with the provisions of RCW 43.03.040, and in addition shall receive  
12 travel expenses incurred in the discharge of their official duties in  
13 accordance with RCW 43.03.050 and 43.03.060.

14 **Sec. 22.** RCW 42.17A.100 and 2010 c 204 s 301 are each amended to  
15 read as follows:

16 (1) The public disclosure commission is established. The  
17 commission shall be composed of (~~five~~) seven members appointed by the  
18 governor, with the consent of the senate. All appointees shall be  
19 persons of the highest integrity and qualifications. No more than  
20 (~~three~~) four members shall have an identification with the same  
21 political party.

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

26 (b) In order to stagger terms, the initial terms of the two members  
27 appointed as a result of chapter . . . , Laws of 2012 (this act) shall  
28 be two years and five years.

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

32 (a) Holding or campaigning for elective office;

33 (b) Serving as an officer of any political party or political  
34 committee;

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

1 (d) Soliciting or making contributions to a candidate or in support  
2 of or in opposition to any candidate or proposition;

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

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

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

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

15 (6) Members shall be compensated in accordance with RCW 43.03.250  
16 and shall be reimbursed for travel expenses incurred while engaged in  
17 the business of the commission as provided in RCW 43.03.050 and  
18 43.03.060. The compensation provided pursuant to this section shall  
19 not be considered salary for purposes of the provisions of any  
20 retirement system created under the laws of this state.

21 **Sec. 23.** RCW 42.17A.705 and 2011 1st sp.s. c 43 s 109 are each  
22 amended to read as follows:

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

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

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

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

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

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

1 conservation planning council, parks and recreation commission,  
2 Washington personnel resources board, board of pilotage commissioners,  
3 pollution control hearings board, public disclosure commission, public  
4 employees' benefits board, recreation and conservation funding board,  
5 salmon recovery funding board, shorelines hearings board, board of tax  
6 appeals, transportation commission, University of Washington board of  
7 regents, utilities and transportation commission, Washington State  
8 University board of regents, and Western Washington University board of  
9 trustees.

10 **Sec. 24.** RCW 42.40.020 and 2008 c 266 s 2 are each amended to read  
11 as follows:

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

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

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

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

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

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

34 (6)(a) "Improper governmental action" means any action by an  
35 employee undertaken in the performance of the employee's official  
36 duties:

- 1 (i) Which is a gross waste of public funds or resources as defined  
2 in this section;
- 3 (ii) Which is in violation of federal or state law or rule, if the  
4 violation is not merely technical or of a minimum nature;
- 5 (iii) Which is of substantial and specific danger to the public  
6 health or safety;
- 7 (iv) Which is gross mismanagement; or
- 8 (v) Which prevents the dissemination of scientific opinion or  
9 alters technical findings without scientifically valid justification,  
10 unless state law or a common law privilege prohibits disclosure. This  
11 provision is not meant to preclude the discretion of agency management  
12 to adopt a particular scientific opinion or technical finding from  
13 among differing opinions or technical findings to the exclusion of  
14 other scientific opinions or technical findings. Nothing in this  
15 subsection prevents or impairs a state agency's or public official's  
16 ability to manage its public resources or its employees in the  
17 performance of their official job duties. This subsection does not  
18 apply to de minimis, technical disagreements that are not relevant for  
19 otherwise improper governmental activity. Nothing in this provision  
20 requires the auditor to contract or consult with external experts  
21 regarding the scientific validity, invalidity, or justification of a  
22 finding or opinion.
- 23 (b) "Improper governmental action" does not include personnel  
24 actions, for which other remedies exist, including but not limited to  
25 employee grievances, complaints, appointments, promotions, transfers,  
26 assignments, reassignments, reinstatements, restorations,  
27 reemployments, performance evaluations, reductions in pay, dismissals,  
28 suspensions, demotions, violations of the state civil service law,  
29 alleged labor agreement violations, reprimands, claims of  
30 discriminatory treatment, or any action which may be taken under  
31 chapter 41.06 RCW, or other disciplinary action except as provided in  
32 RCW 42.40.030.
- 33 (7) "Public official" means the attorney general's designee or  
34 designees; the director, or equivalent thereof in the agency where the  
35 employee works; an appropriate number of individuals designated to  
36 receive whistleblower reports by the head of each agency; or the  
37 (~~executive ethics board~~) public disclosure commission.

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

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

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

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

19 (ii) An employee who is perceived by the employer as reporting,  
20 whether they did or not, alleged improper governmental action to the  
21 auditor or other public official, as defined in subsection (7) of this  
22 section, initiating an investigation by the auditor under RCW  
23 42.40.040.

24 (b) For purposes of the provisions of this chapter and chapter  
25 49.60 RCW relating to reprisals and retaliatory action, the term  
26 "whistleblower" also means:

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

37 (ii) An employee who in good faith identifies rules warranting  
38 review or provides information to the rules review committee, and an

1 employee who is believed to have identified rules warranting review or  
2 provided information to the rules review committee but who, in fact,  
3 has not done so.

4 **Sec. 25.** RCW 43.15.020 and 2011 c 158 s 12 are each amended to  
5 read as follows:

6 The lieutenant governor serves as president of the senate and is  
7 responsible for making appointments to, and serving on, the committees  
8 and boards as set forth in this section.

9 (1) The lieutenant governor serves on the following boards and  
10 committees:

- 11 (a) Capitol furnishings preservation committee, RCW 27.48.040;
- 12 (b) Washington higher education facilities authority, RCW  
13 28B.07.030;
- 14 (c) Productivity board, also known as the employee involvement and  
15 recognition board, RCW 41.60.015;
- 16 (d) State finance committee, RCW 43.33.010;
- 17 (e) State capitol committee, RCW 43.34.010;
- 18 (f) Washington health care facilities authority, RCW 70.37.030;
- 19 (g) State medal of merit nominating committee, RCW 1.40.020;
- 20 (h) Medal of valor committee, RCW 1.60.020; and
- 21 (i) Association of Washington generals, RCW 43.15.030.

22 (2) The lieutenant governor, and when serving as president of the  
23 senate, appoints members to the following boards and committees:

- 24 (a) Civil legal aid oversight committee, RCW 2.53.010;
- 25 (b) Office of public defense advisory committee, RCW 2.70.030;
- 26 (c) Washington state gambling commission, RCW 9.46.040;
- 27 (d) Sentencing guidelines commission, RCW 9.94A.860;
- 28 (e) State building code council, RCW 19.27.070;
- 29 (f) Financial education public-private partnership, RCW  
30 28A.300.450;
- 31 (g) Joint administrative rules review committee, RCW 34.05.610;
- 32 (h) Capital projects advisory review board, RCW 39.10.220;
- 33 (i) Select committee on pension policy, RCW 41.04.276;
- 34 (j) (~~Legislative ethics board, RCW 42.52.310;~~
- 35 ~~(k))~~) Washington citizens' commission on salaries, RCW 43.03.305;
- 36 ((~~l~~)) (k) Legislative oral history committee, RCW 44.04.325;
- 37 ((~~m~~)) (l) State council on aging, RCW 43.20A.685;

1       ~~((n))~~ (m) State investment board, RCW 43.33A.020;  
2       ~~((o))~~ (n) Capitol campus design advisory committee, RCW  
3 43.34.080;  
4       ~~((p))~~ (o) Washington state arts commission, RCW 43.46.015;  
5       ~~((q) Information services board, RCW 43.105.032;~~  
6       ~~(r) Council for children and families, RCW 43.121.020;~~  
7       ~~((s))~~ (p) PNWER-Net working subgroup under chapter 43.147 RCW;  
8       ~~((t))~~ (q) Community economic revitalization board, RCW  
9 43.160.030;  
10       ~~((u))~~ (r) Washington economic development finance authority, RCW  
11 43.163.020;  
12       ~~((v))~~ (s) Life sciences discovery fund authority, RCW 43.350.020;  
13       ~~((w))~~ (t) Legislative children's oversight committee, RCW  
14 44.04.220;  
15       ~~((x))~~ (u) Joint legislative audit and review committee, RCW  
16 44.28.010;  
17       ~~((y))~~ (v) Joint committee on energy supply and energy  
18 conservation, RCW 44.39.015;  
19       ~~((z))~~ (w) Legislative evaluation and accountability program  
20 committee, RCW 44.48.010;  
21       ~~((aa))~~ (x) Agency council on coordinated transportation, RCW  
22 47.06B.020;  
23       ~~((bb))~~ (y) Washington horse racing commission, RCW 67.16.014;  
24       ~~((cc))~~ (z) Correctional industries board of directors, RCW  
25 72.09.080;  
26       ~~((dd))~~ (aa) Joint committee on veterans' and military affairs,  
27 RCW 73.04.150;  
28       ~~((ee))~~ (bb) Joint legislative committee on water supply during  
29 drought, RCW 90.86.020;  
30       ~~((ff))~~ (cc) Statute law committee, RCW 1.08.001; and  
31       ~~((gg))~~ (dd) Joint legislative oversight committee on trade  
32 policy, RCW 44.55.020.

33       NEW SECTION.   **Sec. 26.** The following acts or parts of acts are  
34 each repealed:

- 35       (1) RCW 42.52.310 (Legislative ethics board) and 1994 c 154 s 201;  
36       (2) RCW 42.52.340 (Transfer of jurisdiction) and 1994 c 154 s 204;  
37       (3) RCW 42.52.350 (Executive ethics board) and 1994 c 154 s 205;



1           (4) RCW 42.52.380 (Political activities of board members) and 2011  
2 c 60 s 32, 1997 c 11 s 1, & 1994 c 154 s 208; and  
3           (5) RCW 42.52.550 (Compensation of ethics boards) and 1994 c 154 s  
4 227.

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