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SENATE BILL 6005

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State of Washington

63rd Legislature

2014 Regular Session

By Senators Roach and Hasegawa; by request of Office of Financial Management

Read first time 01/13/14. Referred to Committee on Governmental Operations.

1 AN ACT Relating to eliminating the human resources director;  
2 amending RCW 43.41.113, 28A.345.060, 41.80.020, 49.74.020, 48.37.060,  
3 43.131.090, 42.17A.705, 41.06.167, 41.06.157, 41.04.665, 34.12.100,  
4 34.05.030, 43.03.040, 43.06.013, and 41.04.680; reenacting and amending  
5 RCW 41.04.340 and 41.06.020; and repealing RCW 41.06.160.

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

7 **Sec. 1.** RCW 43.41.113 and 2011 1st sp.s. c 43 s 430 are each  
8 amended to read as follows:

9 (1) The office of financial management shall direct and supervise  
10 the personnel policy and application of the civil service laws, chapter  
11 41.06 RCW.

12 ~~(2) ((The human resources director is created in the office of~~  
13 ~~financial management. The human resources director shall be appointed~~  
14 ~~by the governor, and shall serve at the pleasure of the governor. The~~  
15 ~~director shall receive a salary in an amount fixed by the governor.~~

16 ~~(3))~~ The ~~((human resources))~~ director of the office of financial  
17 management or the director's designee has the authority and shall  
18 perform the functions as prescribed in chapter 41.06 RCW, or as  
19 otherwise prescribed by law.

1           (~~(4)~~) (3) The (~~human resources~~) director may delegate to any  
2 agency the authority to perform administrative and technical personnel  
3 activities if the agency requests such authority and the (~~human~~  
4 ~~resources~~) director is satisfied that the agency has the personnel  
5 management capabilities to effectively perform the delegated  
6 activities. The (~~human resources~~) director shall prescribe standards  
7 and guidelines for the performance of delegated activities. If the  
8 (~~human resources~~) director determines that an agency is not  
9 performing delegated activities within the prescribed standards and  
10 guidelines, the director shall withdraw the authority from the agency  
11 to perform such activities.

12           **Sec. 2.** RCW 41.04.340 and 2011 1st sp.s. c 43 s 432 and 2011 1st  
13 sp.s. c 39 s 12 are each reenacted and amended to read as follows:

14           (1) An attendance incentive program is established for all eligible  
15 employees. As used in this section the term "eligible employee" means  
16 any employee of the state, other than eligible employees of the  
17 community and technical colleges and the state board for community and  
18 technical colleges identified in RCW 28B.50.553, and teaching and  
19 research faculty at the state and regional universities and The  
20 Evergreen State College, entitled to accumulate sick leave and for whom  
21 accurate sick leave records have been maintained. No employee may  
22 receive compensation under this section for any portion of sick leave  
23 accumulated at a rate in excess of one day per month. The state and  
24 regional universities and The Evergreen State College shall maintain  
25 complete and accurate sick leave records for all teaching and research  
26 faculty.

27           (2) In January of the year following any year in which a minimum of  
28 sixty days of sick leave is accrued, and each January thereafter, any  
29 eligible employee may receive remuneration for unused sick leave  
30 accumulated in the previous year at a rate equal to one day's monetary  
31 compensation of the employee for each four full days of accrued sick  
32 leave in excess of sixty days. Sick leave for which compensation has  
33 been received shall be deducted from accrued sick leave at the rate of  
34 four days for every one day's monetary compensation.

35           From July 1, 2011, through June 29, 2013, the rate of monetary  
36 compensation for the purposes of this subsection shall not be reduced  
37 by any temporary salary reduction.

1 (3) At the time of separation from state service due to retirement  
2 or death, an eligible employee or the employee's estate may elect to  
3 receive remuneration at a rate equal to one day's current monetary  
4 compensation of the employee for each four full days of accrued sick  
5 leave. From July 1, 2011, through June 29, 2013, the rate of monetary  
6 compensation for the purposes of this subsection shall not be reduced  
7 by any temporary salary reduction.

8 (4) Remuneration or benefits received under this section shall not  
9 be included for the purpose of computing a retirement allowance under  
10 any public retirement system in this state.

11 (5) Except as provided in subsections (7) through (9) of this  
12 section for employees not covered by chapter 41.06 RCW, this section  
13 shall be administered, and rules shall be adopted to carry out its  
14 purposes, by the ~~((human resources))~~ director of the office of  
15 financial management for persons subject to chapter 41.06 RCW(~~(+~~  
16 ~~PROVIDED, That determination of classes of eligible employees shall be~~  
17 ~~subject to approval by the office of financial management))~~).

18 (6) Should the legislature revoke any remuneration or benefits  
19 granted under this section, no affected employee shall be entitled  
20 thereafter to receive such benefits as a matter of contractual right.

21 (7) In lieu of remuneration for unused sick leave at retirement as  
22 provided in subsection (3) of this section, an agency head or designee  
23 may with equivalent funds, provide eligible employees with a benefit  
24 plan that provides for reimbursement for medical expenses. This plan  
25 shall be implemented only after consultation with affected groups of  
26 employees. For eligible employees covered by chapter 41.06 RCW,  
27 procedures for the implementation of these plans shall be adopted by  
28 the ~~((human resources))~~ director of the state health care authority.  
29 For eligible employees exempt from chapter 41.06 RCW, ~~((and classified~~  
30 ~~employees who have opted out of coverage of chapter 41.06 RCW as~~  
31 ~~provided in RCW 41.56.201,))~~ implementation procedures shall be adopted  
32 by an agency head having jurisdiction over the employees.

33 (8) Implementing procedures adopted by the ~~((human resources))~~  
34 director of the state health care authority or agency heads shall  
35 require that each medical expense plan authorized by subsection (7) of  
36 this section apply to all eligible employees in any one of the  
37 following groups: (a) Employees in an agency; (b) employees in a major  
38 organizational subdivision of an agency; (c) employees at a major

1 operating location of an agency; (d) exempt employees under the  
2 jurisdiction of an elected or appointed Washington state executive; (e)  
3 employees of the Washington state senate; (f) employees of the  
4 Washington state house of representatives; (g) classified employees in  
5 a bargaining unit established by the (~~director of personnel~~) public  
6 employment relations commission; or (h) other group of employees  
7 defined by an agency head that is not designed to provide an  
8 individual-employee choice regarding participation in a medical expense  
9 plan. However, medical expense plans for eligible employees in any of  
10 the groups under (a) through (h) of this subsection who are covered by  
11 a collective bargaining agreement shall be implemented only by written  
12 agreement with the bargaining unit's exclusive representative and a  
13 separate medical expense plan may be provided for unrepresented  
14 employees.

15 (9) Medical expense plans authorized by subsection (7) of this  
16 section must require as a condition of participation in the plan that  
17 employees in the group affected by the plan sign an agreement with the  
18 employer. The agreement must include a provision to hold the employer  
19 harmless should the United States government find that the employer or  
20 the employee is in debt to the United States as a result of the  
21 employee not paying income taxes due on the equivalent funds placed  
22 into the plan, or as a result of the employer not withholding or  
23 deducting a tax, assessment, or other payment on the funds as required  
24 by federal law. The agreement must also include a provision that  
25 requires an eligible employee to forfeit remuneration under subsection  
26 (3) of this section if the employee belongs to a group that has been  
27 designated to participate in the medical expense plan permitted under  
28 this section and the employee refuses to execute the required  
29 agreement.

30 **Sec. 3.** RCW 28A.345.060 and 2011 1st sp.s. c 43 s 467 are each  
31 amended to read as follows:

32 The association shall contract with (~~the human resources director~~  
33 ~~in~~) the office of financial management to audit in odd-numbered years  
34 the association's staff classifications and employees' salaries. The  
35 association shall give copies of the audit reports to the office of  
36 financial management and the committees of each house of the  
37 legislature dealing with common schools.

1           **Sec. 4.** RCW 41.80.020 and 2013 2nd sp.s. c 4 § 972 are each  
2 amended to read as follows:

3           (1) Except as otherwise provided in this chapter, the matters  
4 subject to bargaining include wages, hours, and other terms and  
5 conditions of employment, and the negotiation of any question arising  
6 under a collective bargaining agreement.

7           (2) The employer is not required to bargain over matters pertaining  
8 to:

9           (a) Health care benefits or other employee insurance benefits,  
10 except as required in subsection (3) of this section;

11           (b) Any retirement system or retirement benefit; or

12           (c) Rules of the (~~human resources~~) director of the office of  
13 financial management, the director of enterprise services, or the  
14 Washington personnel resources board adopted under RCW 41.06.157.

15           (3) Matters subject to bargaining include the number of names to be  
16 certified for vacancies, promotional preferences, and the dollar amount  
17 expended on behalf of each employee for health care benefits. However,  
18 except as provided otherwise in this subsection for institutions of  
19 higher education, negotiations regarding the number of names to be  
20 certified for vacancies, promotional preferences, and the dollar amount  
21 expended on behalf of each employee for health care benefits shall be  
22 conducted between the employer and one coalition of all the exclusive  
23 bargaining representatives subject to this chapter. The exclusive  
24 bargaining representatives for employees that are subject to chapter  
25 47.64 RCW shall bargain the dollar amount expended on behalf of each  
26 employee for health care benefits with the employer as part of the  
27 coalition under this subsection. Any such provision agreed to by the  
28 employer and the coalition shall be included in all master collective  
29 bargaining agreements negotiated by the parties. For institutions of  
30 higher education, promotional preferences and the number of names to be  
31 certified for vacancies shall be bargained under the provisions of RCW  
32 41.80.010(4). For agreements covering the 2013-2015 fiscal biennium,  
33 any agreement between the employer and the coalition regarding the  
34 dollar amount expended on behalf of each employee for health care  
35 benefits is a separate agreement and shall not be included in the  
36 master collective bargaining agreements negotiated by the parties.

37           (4) The employer and the exclusive bargaining representative shall  
38 not agree to any proposal that would prevent the implementation of

1 approved affirmative action plans or that would be inconsistent with  
2 the comparable worth agreement that provided the basis for the salary  
3 changes implemented beginning with the 1983-1985 biennium to achieve  
4 comparable worth.

5 (5) The employer and the exclusive bargaining representative shall  
6 not bargain over matters pertaining to management rights established in  
7 RCW 41.80.040.

8 (6) Except as otherwise provided in this chapter, if a conflict  
9 exists between an executive order, administrative rule, or agency  
10 policy relating to wages, hours, and terms and conditions of employment  
11 and a collective bargaining agreement negotiated under this chapter,  
12 the collective bargaining agreement shall prevail. A provision of a  
13 collective bargaining agreement that conflicts with the terms of a  
14 statute is invalid and unenforceable.

15 (7) This section does not prohibit bargaining that affects  
16 contracts authorized by RCW 41.06.142.

17 **Sec. 5.** RCW 49.74.020 and 2011 1st sp.s. c 43 s 463 are each  
18 amended to read as follows:

19 If the commission reasonably believes that a state agency, an  
20 institution of higher education, or the state patrol has failed to  
21 comply with an affirmative action rule adopted under RCW 41.06.150 or  
22 43.43.340, the commission shall notify the director of the state  
23 agency, president of the institution of higher education, or chief of  
24 the Washington state patrol of the noncompliance, as well as the  
25 (~~human resources~~) director of the office of financial management.  
26 The commission shall give the director of the state agency, president  
27 of the institution of higher education, or chief of the Washington  
28 state patrol an opportunity to be heard on the failure to comply.

29 **Sec. 6.** RCW 48.37.060 and 2011 1st sp.s. c 43 s 460 are each  
30 amended to read as follows:

31 (1) When the commissioner determines that other market conduct  
32 actions identified in RCW 48.37.040(4)(a) have not sufficiently  
33 addressed issues raised concerning company activities in Washington  
34 state, the commissioner has the discretion to conduct market conduct  
35 examinations in accordance with the NAIC market conduct uniform  
36 examination procedures and the NAIC market regulation handbook.

1 (2)(a) In lieu of an examination of an insurer licensed in this  
2 state, the commissioner shall accept an examination report of another  
3 state, unless the commissioner determines that the other state does not  
4 have laws substantially similar to those of this state, or does not  
5 have a market oversight system that is comparable to the market conduct  
6 oversight system set forth in this law.

7 (b) The commissioner's determination under (a) of this subsection  
8 is discretionary with the commissioner and is not subject to appeal.

9 (c) If the insurer to be examined is part of an insurance holding  
10 company system, the commissioner may also seek to simultaneously  
11 examine any affiliates of the insurer under common control and  
12 management which are licensed to write the same lines of business in  
13 this state.

14 (3) Before commencement of a market conduct examination, market  
15 conduct oversight personnel shall prepare a work plan consisting of the  
16 following:

- 17 (a) The name and address of the insurer being examined;
- 18 (b) The name and contact information of the examiner-in-charge;
- 19 (c) The name of all market conduct oversight personnel initially  
20 assigned to the market conduct examination;
- 21 (d) The justification for the examination;
- 22 (e) The scope of the examination;
- 23 (f) The date the examination is scheduled to begin;
- 24 (g) Notice of any noninsurance department personnel who will assist  
25 in the examination;
- 26 (h) A time estimate for the examination;
- 27 (i) A budget for the examination if the cost of the examination is  
28 billed to the insurer; and
- 29 (j) An identification of factors that will be included in the  
30 billing if the cost of the examination is billed to the insurer.

31 (4)(a) Within ten days of the receipt of the information contained  
32 in subsection (3) of this section, insurers may request the  
33 commissioner's discretionary review of any alleged conflict of  
34 interest, pursuant to RCW 48.37.090(2), of market conduct oversight  
35 personnel and noninsurance department personnel assigned to a market  
36 conduct examination. The request for review shall specifically  
37 describe the alleged conflict of interest in the proposed assignment of  
38 any person to the examination.

1 (b) Within five business days of receiving a request for  
2 discretionary review of any alleged conflict of interest in the  
3 proposed assignment of any person to a market conduct examination, the  
4 commissioner or designee shall notify the insurer of any action  
5 regarding the assignment of personnel to a market conduct examination  
6 based on the insurer's allegation of conflict of interest.

7 (5) Market conduct examinations shall, to the extent feasible, use  
8 desk examinations and data requests before an on-site examination.

9 (6) Market conduct examinations shall be conducted in accordance  
10 with the provisions set forth in the NAIC market regulation handbook  
11 and the NAIC market conduct uniform examinations procedures, subject to  
12 the precedence of the provisions of chapter 82, Laws of 2007.

13 (7) The commissioner shall use the NAIC standard data request.

14 (8) Announcement of the examination shall be sent to the insurer  
15 and posted on the NAIC's examination tracking system as soon as  
16 possible but in no case later than sixty days before the estimated  
17 commencement of the examination, except where the examination is  
18 conducted in response to extraordinary circumstances as described in  
19 RCW 48.37.050(2)(a). The announcement sent to the insurer shall  
20 contain the examination work plan and a request for the insurer to name  
21 its examination coordinator.

22 (9) If an examination is expanded significantly beyond the original  
23 reasons provided to the insurer in the notice of the examination  
24 required by subsection (3) of this section, the commissioner shall  
25 provide written notice to the insurer, explaining the expansion and  
26 reasons for the expansion. The commissioner shall provide a revised  
27 work plan if the expansion results in significant changes to the items  
28 presented in the original work plan required by subsection (3) of this  
29 section.

30 (10) The commissioner shall conduct a preexamination conference  
31 with the insurer examination coordinator and key personnel to clarify  
32 expectations at least thirty days before commencement of the  
33 examination, unless otherwise agreed by the insurer and the  
34 commissioner.

35 (11) Before the conclusion of the field work for market conduct  
36 examination, the examiner-in-charge shall review examination findings  
37 to date with insurer personnel and schedule an exit conference with the



1 insurer, in accordance with procedures in the NAIC market regulation  
2 handbook.

3 (12)(a) No later than sixty days after completion of each market  
4 conduct examination, the commissioner shall make a full written report  
5 of each market conduct examination containing only facts ascertained  
6 from the accounts, records, and documents examined and from the sworn  
7 testimony of individuals, and such conclusions and recommendations as  
8 may reasonably be warranted from such facts.

9 (b) The report shall be certified by the commissioner or by the  
10 examiner-in-charge of the examination, and shall be filed in the  
11 commissioner's office subject to (c) of this subsection.

12 (c) The commissioner shall furnish a copy of the market conduct  
13 examination report to the person examined not less than ten days and,  
14 unless the time is extended by the commissioner, not more than thirty  
15 days prior to the filing of the report for public inspection in the  
16 commissioner's office. If the person so requests in writing within  
17 such period, the commissioner shall hold a hearing to consider  
18 objections of such person to the report as proposed, and shall not so  
19 file the report until after such hearing and until after any  
20 modifications in the report deemed necessary by the commissioner have  
21 been made.

22 (d) Within thirty days of the end of the period described in (c) of  
23 this subsection, unless extended by order of the commissioner, the  
24 commissioner shall consider the report, together with any written  
25 submissions or rebuttals and any relevant portions of the examiner's  
26 work papers and enter an order:

27 (i) Adopting the market conduct examination report as filed or with  
28 modification or corrections. If the market conduct examination report  
29 reveals that the company is operating in violation of any law, rule, or  
30 order of the commissioner, the commissioner may order the company to  
31 take any action the commissioner considers necessary and appropriate to  
32 cure that violation;

33 (ii) Rejecting the market conduct examination report with  
34 directions to the examiners to reopen the examination for purposes of  
35 obtaining additional data, documentation, or information, and refileing  
36 under this subsection; or

37 (iii) Calling for an investigatory hearing with no less than twenty

1 days' notice to the company for purposes of obtaining additional  
2 documentation, data, information, and testimony.

3 (e) All orders entered under (d) of this subsection must be  
4 accompanied by findings and conclusions resulting from the  
5 commissioner's consideration and review of the market conduct  
6 examination report, relevant examiner work papers, and any written  
7 submissions or rebuttals. The order is considered a final  
8 administrative decision and may be appealed under the administrative  
9 procedure act, chapter 34.05 RCW, and must be served upon the company  
10 by certified mail or certifiable electronic means, together with a copy  
11 of the adopted examination report. A copy of the adopted examination  
12 report must be sent by certified mail or certifiable electronic means  
13 to each director at the director's residential address or to a personal  
14 e-mail account.

15 (f)(i) Upon the adoption of the market conduct examination report  
16 under (d) of this subsection, the commissioner shall continue to hold  
17 the content of the examination report as private and confidential  
18 information for a period of five days except that the order may be  
19 disclosed to the person examined. Thereafter, the commissioner may  
20 open the report for public inspection so long as no court of competent  
21 jurisdiction has stayed its publication.

22 (ii) If the commissioner determines that regulatory action is  
23 appropriate as a result of any market conduct examination, he or she  
24 may initiate any proceedings or actions as provided by law.

25 (iii) Nothing contained in this subsection requires the  
26 commissioner to disclose any information or records that would indicate  
27 or show the existence or content of any investigation or activity of a  
28 criminal justice agency.

29 (g) The insurer's response shall be included in the commissioner's  
30 order adopting the final report as an exhibit to the order. The  
31 insurer is not obligated to submit a response.

32 (13) The commissioner may withhold from public inspection any  
33 examination or investigation report for so long as he or she deems it  
34 advisable.

35 (14)(a) Market conduct examinations within this state of any  
36 insurer domiciled or having its home offices in this state, other than  
37 a title insurer, made by the commissioner or the commissioner's

1 examiners and employees shall, except as to fees, mileage, and expense  
2 incurred as to witnesses, be at the expense of the state.

3 (b) Every other examination, whatsoever, or any part of the market  
4 conduct examination of any person domiciled or having its home offices  
5 in this state requiring travel and services outside this state, shall  
6 be made by the commissioner or by examiners designated by the  
7 commissioner and shall be at the expense of the person examined; but a  
8 domestic insurer shall not be liable for the compensation of examiners  
9 employed by the commissioner for such services outside this state.

10 (c) When making a market conduct examination under this chapter,  
11 the commissioner may contract, in accordance with applicable state  
12 contracting procedures, for qualified attorneys, appraisers,  
13 independent certified public accountants, contract actuaries, and other  
14 similar individuals who are independently practicing their professions,  
15 even though those persons may from time to time be similarly employed  
16 or retained by persons subject to examination under this chapter, as  
17 examiners as the commissioner deems necessary for the efficient conduct  
18 of a particular examination. The compensation and per diem allowances  
19 paid to such contract persons shall be reasonable in the market and  
20 time incurred, shall not exceed one hundred twenty-five percent of the  
21 compensation and per diem allowances for examiners set forth in the  
22 guidelines adopted by the national association of insurance  
23 commissioners, unless the commissioner demonstrates that one hundred  
24 twenty-five percent is inadequate under the circumstances of the  
25 examination, and subject to the provisions of (a) of this subsection.

26 (d)(i) The person examined and liable shall reimburse the state  
27 upon presentation of an itemized statement thereof, for the actual  
28 travel expenses of the commissioner's examiners, their reasonable  
29 living expenses allowance, and their per diem compensation, including  
30 salary and the employer's cost of employee benefits, at a reasonable  
31 rate approved by the commissioner, incurred on account of the  
32 examination. Per diem, salary, and expenses for employees examining  
33 insurers domiciled outside the state of Washington shall be established  
34 by the commissioner on the basis of the national association of  
35 insurance commissioner's recommended salary and expense schedule for  
36 zone examiners, or the salary schedule (~~established by the human~~  
37 ~~resources director~~) and the expense schedule established by the office

1 of financial management, whichever is higher. A domestic title insurer  
2 shall pay the examination expense and costs to the commissioner as  
3 itemized and billed by the commissioner.

4 (ii) The commissioner or the commissioner's examiners shall not  
5 receive or accept any additional emolument on account of any  
6 examination.

7 (iii) Market conduct examination fees subject to being reimbursed  
8 by an insurer shall be itemized and bills shall be provided to the  
9 insurer on a monthly basis for review prior to submission for payment,  
10 or as otherwise provided by state law.

11 (e) Nothing contained in this chapter limits the commissioner's  
12 authority to terminate or suspend any examination in order to pursue  
13 other legal or regulatory action under the insurance laws of this  
14 state. Findings of fact and conclusions made pursuant to any  
15 examination are prima facie evidence in any legal or regulatory action.

16 (f) The commissioner shall maintain active management and oversight  
17 of market conduct examination costs, including costs associated with  
18 the commissioner's own examiners, and with retaining qualified contract  
19 examiners necessary to perform an examination. Any agreement with a  
20 contract examiner shall:

21 (i) Clearly identify the types of functions to be subject to  
22 outsourcing;

23 (ii) Provide specific timelines for completion of the outsourced  
24 review;

25 (iii) Require disclosure to the insurer of contract examiners'  
26 recommendations;

27 (iv) Establish and use a dispute resolution or arbitration  
28 mechanism to resolve conflicts with insurers regarding examination  
29 fees; and

30 (v) Require disclosure of the terms of the contracts with the  
31 outside consultants that will be used, specifically the fees and/or  
32 hourly rates that can be charged.

33 (g) The commissioner, or the commissioner's designee, shall review  
34 and affirmatively endorse detailed billings from the qualified contract  
35 examiner before the detailed billings are sent to the insurer.

36 **Sec. 7.** RCW 43.131.090 and 2011 1st sp.s. c 43 s 459 are each  
37 amended to read as follows:

1 Unless the legislature specifies a shorter period of time, a  
2 terminated entity shall continue in existence until June 30th of the  
3 next succeeding year for the purpose of concluding its affairs:  
4 PROVIDED, That the powers and authority of the entity shall not be  
5 reduced or otherwise limited during this period. Unless otherwise  
6 provided:

7 (1) All employees of terminated entities classified under chapter  
8 41.06 RCW, the state civil service law, shall be transferred as  
9 appropriate or as otherwise provided in the procedures adopted by the  
10 (~~human resources~~) director of the office of financial management  
11 pursuant to RCW 41.06.150;

12 (2) All documents and papers, equipment, or other tangible property  
13 in the possession of the terminated entity shall be delivered to the  
14 custody of the entity assuming the responsibilities of the terminated  
15 entity or if such responsibilities have been eliminated, documents and  
16 papers shall be delivered to the state archivist and equipment or other  
17 tangible property to the department of enterprise services;

18 (3) All funds held by, or other moneys due to, the terminated  
19 entity shall revert to the fund from which they were appropriated, or  
20 if that fund is abolished to the general fund;

21 (4) Notwithstanding the provisions of RCW 34.05.020, all rules made  
22 by a terminated entity shall be repealed, without further action by the  
23 entity, at the end of the period provided in this section, unless  
24 assumed and reaffirmed by the entity assuming the related legal  
25 responsibilities of the terminated entity;

26 (5) All contractual rights and duties of an entity shall be  
27 assigned or delegated to the entity assuming the responsibilities of  
28 the terminated entity, or if there is none to such entity as the  
29 governor shall direct.

30 **Sec. 8.** RCW 42.17A.705 and 2012 c 229 s 582 are each amended to  
31 read as follows:

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

34 (1) The chief administrative law judge, the director of  
35 agriculture, the director of the department of services for the blind,  
36 the chief information officer of the office of chief information  
37 officer, the director of the state system of community and technical

1 colleges, the director of commerce, the director of the consolidated  
2 technology services agency, the secretary of corrections, the director  
3 of early learning, the director of ecology, the commissioner of  
4 employment security, the chair of the energy facility site evaluation  
5 council, the director of enterprise services, the secretary of the  
6 state finance committee, the director of financial management, the  
7 director of fish and wildlife, the executive secretary of the forest  
8 practices appeals board, the director of the gambling commission, the  
9 secretary of health, the administrator of the Washington state health  
10 care authority, the executive secretary of the health care facilities  
11 authority, the executive secretary of the higher education facilities  
12 authority, the executive secretary of the horse racing commission,  
13 (~~the human resources director,~~) the executive secretary of the human  
14 rights commission, the executive secretary of the indeterminate  
15 sentence review board, the executive director of the state investment  
16 board, the director of labor and industries, the director of licensing,  
17 the director of the lottery commission, the director of the office of  
18 minority and women's business enterprises, the director of parks and  
19 recreation, the executive director of the public disclosure commission,  
20 the executive director of the Puget Sound partnership, the director of  
21 the recreation and conservation office, the director of retirement  
22 systems, the director of revenue, the secretary of social and health  
23 services, the chief of the Washington state patrol, the executive  
24 secretary of the board of tax appeals, the secretary of transportation,  
25 the secretary of the utilities and transportation commission, the  
26 director of veterans affairs, the president of each of the regional and  
27 state universities and the president of The Evergreen State College,  
28 and each district and each campus president of each state community  
29 college;

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

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

32 (4) Central Washington University board of trustees, the boards of  
33 trustees of each community college and each technical college, each  
34 member of the state board for community and technical colleges, state  
35 convention and trade center board of directors, Eastern Washington  
36 University board of trustees, Washington economic development finance  
37 authority, Washington energy northwest executive board, The Evergreen  
38 State College board of trustees, executive ethics board, fish and

1 wildlife commission, forest practices appeals board, forest practices  
2 board, gambling commission, Washington health care facilities  
3 authority, student achievement council, higher education facilities  
4 authority, horse racing commission, state housing finance commission,  
5 human rights commission, indeterminate sentence review board, board of  
6 industrial insurance appeals, state investment board, commission on  
7 judicial conduct, legislative ethics board, life sciences discovery  
8 fund authority board of trustees, liquor control board, lottery  
9 commission, Pacific Northwest electric power and conservation planning  
10 council, parks and recreation commission, Washington personnel  
11 resources board, board of pilotage commissioners, pollution control  
12 hearings board, public disclosure commission, public employees'  
13 benefits board, recreation and conservation funding board, salmon  
14 recovery funding board, shorelines hearings board, board of tax  
15 appeals, transportation commission, University of Washington board of  
16 regents, utilities and transportation commission, Washington State  
17 University board of regents, and Western Washington University board of  
18 trustees.

19 **Sec. 9.** RCW 41.06.167 and 2011 1st sp.s. c 43 s 413 are each  
20 amended to read as follows:

21 The (~~human resources~~) director of the office of financial  
22 management shall undertake comprehensive compensation surveys for  
23 officers and entry-level officer candidates of the Washington state  
24 patrol, with such surveys to be conducted in the year prior to the  
25 convening of every other one hundred five day regular session of the  
26 state legislature. Salary and fringe benefit survey information  
27 collected from private employers which identifies a specific employer  
28 with the salary and fringe benefit rates which that employer pays to  
29 its employees shall not be subject to public disclosure under chapter  
30 42.56 RCW.

31 **Sec. 10.** RCW 41.06.157 and 2011 1st sp.s. c 43 s 411 are each  
32 amended to read as follows:

33 (1) To promote the most effective use of the state's workforce and  
34 improve the effectiveness and efficiency of the delivery of services to  
35 the citizens of the state, the director shall adopt and maintain a

1 comprehensive classification plan for all positions in the classified  
2 service. The classification plan must:

3 (a) Be simple and streamlined;

4 (b) Support state agencies in responding to changing technologies,  
5 economic and social conditions, and the needs of its citizens;

6 (c) Value workplace diversity;

7 (d) Facilitate the reorganization and decentralization of  
8 governmental services;

9 (e) Enhance mobility and career advancement opportunities; and

10 (f) Consider rates in other public employment and private  
11 employment in the state.

12 (2) An appointing authority and an employee organization  
13 representing classified employees of the appointing authority for  
14 collective bargaining purposes may jointly request the (~~human~~  
15 ~~resources~~) director of the office of financial management to initiate  
16 a classification study.

17 (3) For institutions of higher education and related boards, the  
18 director may adopt special salary ranges to be competitive with  
19 positions of a similar nature in the state or the locality in which the  
20 institution of higher education or related board is located.

21 (4) The director may undertake salary surveys of positions in other  
22 public and private employment to establish market rates. Any salary  
23 survey information collected from private employers which identifies a  
24 specific employer with salary rates which the employer pays to its  
25 employees shall not be subject to public disclosure under chapter 42.56  
26 RCW.

27 **Sec. 11.** RCW 41.06.020 and 2011 1st sp.s. c 43 s 401 are each  
28 reenacted and amended to read as follows:

29 Unless the context clearly indicates otherwise, the words used in  
30 this chapter have the meaning given in this section.

31 (1) "Affirmative action" means a procedure by which racial  
32 minorities, women, persons in the protected age category, persons with  
33 disabilities, Vietnam-era veterans, and disabled veterans are provided  
34 with increased employment opportunities. It shall not mean any sort of  
35 quota system.

36 (2) "Agency" means an office, department, board, commission, or  
37 other separate unit or division, however designated, of the state



1 government and all personnel thereof; it includes any unit of state  
2 government established by law, the executive officer or members of  
3 which are either elected or appointed, upon which the statutes confer  
4 powers and impose duties in connection with operations of either a  
5 governmental or proprietary nature.

6 (3) "Board" means the Washington personnel resources board  
7 established under the provisions of RCW 41.06.110, except that this  
8 definition does not apply to the words "board" or "boards" when used in  
9 RCW 41.06.070.

10 (4) "Career development" means the progressive development of  
11 employee capabilities to facilitate productivity, job satisfaction, and  
12 upward mobility through work assignments as well as education and  
13 training that are both state-sponsored and are achieved by individual  
14 employee efforts, all of which shall be consistent with the needs and  
15 obligations of the state and its agencies.

16 (5) "Classified service" means all positions in the state service  
17 subject to the provisions of this chapter.

18 (6) "Comparable worth" means the provision of similar salaries for  
19 positions that require or impose similar responsibilities, judgments,  
20 knowledge, skills, and working conditions.

21 (7) "Competitive service" means all positions in the classified  
22 service for which a competitive examination is required as a condition  
23 precedent to appointment.

24 (8) "Department" means an agency of government that has as its  
25 governing officer a person, or combination of persons such as a  
26 commission, board, or council, by law empowered to operate the agency  
27 responsible either to (a) no other public officer or (b) the governor.

28 (9) "Director" means the (~~human resources~~) director (~~within~~) of  
29 the office of financial management (~~and appointed under RCW~~  
30 ~~43.41.113~~) or the director's designee.

31 (10) "Institutions of higher education" means the University of  
32 Washington, Washington State University, Central Washington University,  
33 Eastern Washington University, Western Washington University, The  
34 Evergreen State College, and the various state community colleges.

35 (11) "Noncompetitive service" means all positions in the classified  
36 service for which a competitive examination is not required.

37 (12) "Related boards" means the state board for community and

1 technical colleges; and such other boards, councils, and commissions  
2 related to higher education as may be established.

3 (13) "Training" means activities designed to develop job-related  
4 knowledge and skills of employees.

5 **Sec. 12.** RCW 41.04.665 and 2011 1st sp.s. c 43 s 435 are each  
6 amended to read as follows:

7 (1) An agency head may permit an employee to receive leave under  
8 this section if:

9 (a)(i) The employee suffers from, or has a relative or household  
10 member suffering from, an illness, injury, impairment, or physical or  
11 mental condition which is of an extraordinary or severe nature;

12 (ii) The employee has been called to service in the uniformed  
13 services;

14 (iii) A state of emergency has been declared anywhere within the  
15 United States by the federal or any state government and the employee  
16 has needed skills to assist in responding to the emergency or its  
17 aftermath and volunteers his or her services to either a governmental  
18 agency or to a nonprofit organization engaged in humanitarian relief in  
19 the devastated area, and the governmental agency or nonprofit  
20 organization accepts the employee's offer of volunteer services; or

21 (iv) The employee is a victim of domestic violence, sexual assault,  
22 or stalking; (~~or~~

23 ~~(v) During the 2009-2011 fiscal biennium only, the employee is~~  
24 ~~eligible to use leave in lieu of temporary layoff under section 3(5),~~  
25 ~~chapter 32, Laws of 2010 1st sp. sess.;)~~)

26 (b) The illness, injury, impairment, condition, call to service,  
27 emergency volunteer service, or consequence of domestic violence,  
28 sexual assault, temporary layoff under section 3(5), chapter 32, Laws  
29 of 2010 1st sp. sess., or stalking has caused, or is likely to cause,  
30 the employee to:

31 (i) Go on leave without pay status; or

32 (ii) Terminate state employment;

33 (c) The employee's absence and the use of shared leave are  
34 justified;

35 (d) The employee has depleted or will shortly deplete his or her:

36 (i) Annual leave and sick leave reserves if he or she qualifies  
37 under (a)(i) of this subsection;

1 (ii) Annual leave and paid military leave allowed under RCW  
2 38.40.060 if he or she qualifies under (a)(ii) of this subsection; or

3 (iii) Annual leave if he or she qualifies under (a)(iii)(~~(7)~~) or  
4 (iv)(~~(7)~~~~or~~(~~v~~)) of this subsection;

5 (e) The employee has abided by agency rules regarding:

6 (i) Sick leave use if he or she qualifies under (a)(i) or (iv) of  
7 this subsection; or

8 (ii) Military leave if he or she qualifies under (a)(ii) of this  
9 subsection; and

10 (f) The employee has diligently pursued and been found to be  
11 ineligible for benefits under chapter 51.32 RCW if he or she qualifies  
12 under (a)(i) of this subsection.

13 (2) The agency head shall determine the amount of leave, if any,  
14 which an employee may receive under this section. However, an employee  
15 shall not receive a total of more than five hundred twenty-two days of  
16 leave, except that, a supervisor may authorize leave in excess of five  
17 hundred twenty-two days in extraordinary circumstances for an employee  
18 qualifying for the shared leave program because he or she is suffering  
19 from an illness, injury, impairment, or physical or mental condition  
20 which is of an extraordinary or severe nature. Shared leave received  
21 under the uniformed service shared leave pool in RCW 41.04.685 is not  
22 included in this total.

23 (3) An employee may transfer annual leave, sick leave, and his or  
24 her personal holiday, as follows:

25 (a) An employee who has an accrued annual leave balance of more  
26 than ten days may request that the head of the agency for which the  
27 employee works transfer a specified amount of annual leave to another  
28 employee authorized to receive leave under subsection (1) of this  
29 section. In no event may the employee request a transfer of an amount  
30 of leave that would result in his or her annual leave account going  
31 below ten days. For purposes of this subsection (3)(a), annual leave  
32 does not accrue if the employee receives compensation in lieu of  
33 accumulating a balance of annual leave.

34 (b) An employee may transfer a specified amount of sick leave to an  
35 employee requesting shared leave only when the donating employee  
36 retains a minimum of one hundred seventy-six hours of sick leave after  
37 the transfer.

1 (c) An employee may transfer, under the provisions of this section  
2 relating to the transfer of leave, all or part of his or her personal  
3 holiday, as that term is defined under RCW 1.16.050, or as such  
4 holidays are provided to employees by agreement with a school  
5 district's board of directors if the leave transferred under this  
6 subsection does not exceed the amount of time provided for personal  
7 holidays under RCW 1.16.050.

8 (4) An employee of an institution of higher education under RCW  
9 28B.10.016, school district, or educational service district who does  
10 not accrue annual leave but does accrue sick leave and who has an  
11 accrued sick leave balance of more than twenty-two days may request  
12 that the head of the agency for which the employee works transfer a  
13 specified amount of sick leave to another employee authorized to  
14 receive leave under subsection (1) of this section. In no event may  
15 such an employee request a transfer that would result in his or her  
16 sick leave account going below twenty-two days. Transfers of sick  
17 leave under this subsection are limited to transfers from employees who  
18 do not accrue annual leave. Under this subsection, "sick leave" also  
19 includes leave accrued pursuant to RCW 28A.400.300(~~(+2)~~) (1)(b) or  
20 28A.310.240(1) with compensation for illness, injury, and emergencies.

21 (5) Transfers of leave made by an agency head under subsections (3)  
22 and (4) of this section shall not exceed the requested amount.

23 (6) Leave transferred under this section may be transferred from  
24 employees of one agency to an employee of the same agency or, with the  
25 approval of the heads of both agencies, to an employee of another state  
26 agency.

27 (7) While an employee is on leave transferred under this section,  
28 he or she shall continue to be classified as a state employee and shall  
29 receive the same treatment in respect to salary, wages, and employee  
30 benefits as the employee would normally receive if using accrued annual  
31 leave or sick leave.

32 (a) All salary and wage payments made to employees while on leave  
33 transferred under this section shall be made by the agency employing  
34 the person receiving the leave. The value of leave transferred shall  
35 be based upon the leave value of the person receiving the leave.

36 (b) In the case of leave transferred by an employee of one agency  
37 to an employee of another agency, the agencies involved shall arrange

1 for the transfer of funds and credit for the appropriate value of  
2 leave.

3 (i) Pursuant to rules adopted by the office of financial  
4 management, funds shall not be transferred under this section if the  
5 transfer would violate any constitutional or statutory restrictions on  
6 the funds being transferred.

7 (ii) The office of financial management may adjust the  
8 appropriation authority of an agency receiving funds under this section  
9 only if and to the extent that the agency's existing appropriation  
10 authority would prevent it from expending the funds received.

11 (iii) Where any questions arise in the transfer of funds or the  
12 adjustment of appropriation authority, the director of financial  
13 management shall determine the appropriate transfer or adjustment.

14 (8) Leave transferred under this section shall not be used in any  
15 calculation to determine an agency's allocation of full time equivalent  
16 staff positions.

17 (9) The value of any leave transferred under this section which  
18 remains unused shall be returned at its original value to the employee  
19 or employees who transferred the leave when the agency head finds that  
20 the leave is no longer needed or will not be needed at a future time in  
21 connection with the illness or injury for which the leave was  
22 transferred or for any other qualifying condition. Before the agency  
23 head makes a determination to return unused leave in connection with an  
24 illness or injury, or any other qualifying condition, he or she must  
25 receive from the affected employee a statement from the employee's  
26 doctor verifying that the illness or injury is resolved. To the extent  
27 administratively feasible, the value of unused leave which was  
28 transferred by more than one employee shall be returned on a pro rata  
29 basis.

30 (10) An employee who uses leave that is transferred to him or her  
31 under this section may not be required to repay the value of the leave  
32 that he or she used.

33 (11) The (~~human resources~~) director of the office of financial  
34 management may adopt rules as necessary to implement subsection (2) of  
35 this section.

36 **Sec. 13.** RCW 34.12.100 and 2011 1st sp.s. c 43 s 469 are each  
37 amended to read as follows:

1 The chief administrative law judge shall be paid a salary fixed by  
2 the governor after recommendation of the (~~human resources~~) director  
3 (~~in~~) of the office of financial management. The salaries of  
4 administrative law judges appointed under the terms of this chapter  
5 shall be determined by the chief administrative law judge after  
6 recommendation of the (~~department of personnel~~) director of the  
7 office of financial management.

8 **Sec. 14.** RCW 34.05.030 and 2011 1st sp.s. c 43 s 431 are each  
9 amended to read as follows:

10 (1) This chapter shall not apply to:

11 (a) The state militia, or

12 (b) The board of clemency and pardons, or

13 (c) The department of corrections or the indeterminate sentencing  
14 review board with respect to persons who are in their custody or are  
15 subject to the jurisdiction of those agencies.

16 (2) The provisions of RCW 34.05.410 through 34.05.598 shall not  
17 apply:

18 (a) To adjudicative proceedings of the board of industrial  
19 insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

20 (b) Except for actions pursuant to chapter 46.29 RCW, to the  
21 denial, suspension, or revocation of a driver's license by the  
22 department of licensing;

23 (c) To the department of labor and industries where another statute  
24 expressly provides for review of adjudicative proceedings of a  
25 department action, order, decision, or award before the board of  
26 industrial insurance appeals;

27 (d) To actions of the Washington personnel resources board, (~~the~~  
28 ~~human resources director, or~~) the office of financial management, and  
29 the department of enterprise services when carrying out their duties  
30 under chapter 41.06 RCW;

31 (e) To adjustments by the department of revenue of the amount of  
32 the surcharge imposed under RCW 82.04.261; or

33 (f) To the extent they are inconsistent with any provisions of  
34 chapter 43.43 RCW.

35 (3) Unless a party makes an election for a formal hearing pursuant  
36 to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not  
37 apply to a review hearing conducted by the board of tax appeals.

1 (4) The rule-making provisions of this chapter do not apply to:

2 (a) Reimbursement unit values, fee schedules, arithmetic conversion  
3 factors, and similar arithmetic factors used to determine payment rates  
4 that apply to goods and services purchased under contract for clients  
5 eligible under chapter 74.09 RCW; and

6 (b) Adjustments by the department of revenue of the amount of the  
7 surcharge imposed under RCW 82.04.261.

8 (5) All other agencies, whether or not formerly specifically  
9 excluded from the provisions of all or any part of the administrative  
10 procedure act, shall be subject to the entire act.

11 **Sec. 15.** RCW 43.03.040 and 2011 1st sp.s. c 39 s 8 are each  
12 amended to read as follows:

13 Subject to RCW 41.04.820, the directors of the several departments  
14 and members of the several boards and commissions, whose salaries are  
15 fixed by the governor and the chief executive officers of the agencies  
16 named in RCW 43.03.028(1) as now or hereafter amended shall each  
17 severally receive such salaries, payable in monthly installments, as  
18 shall be fixed by the governor or the appropriate salary fixing  
19 authority, in an amount not to exceed the recommendations of the  
20 (~~department of personnel~~) office of financial management. From  
21 February 18, 2009, through June 30, 2013, a salary or wage increase  
22 shall not be granted to any position under this section, except that  
23 increases may be granted for positions for which the employer has  
24 demonstrated difficulty retaining qualified employees if the following  
25 conditions are met:

26 (1) The salary increase can be paid within existing resources;

27 (2) The salary increase will not adversely impact the provision of  
28 client services; and

29 (3) For any state agency of the executive branch, not including  
30 institutions of higher education, the salary increase is approved by  
31 the director of the office of financial management.

32 Any agency granting a salary increase from February 15, 2010,  
33 through June 30, 2011, to a position under this section shall submit a  
34 report to the fiscal committees of the legislature no later than July  
35 31, 2011, detailing the positions for which salary increases were  
36 granted, the size of the increases, and the reasons for giving the  
37 increases.

1 Any agency granting a salary increase from July 1, 2011, through  
2 June 30, 2013, to a position under this section shall submit a report  
3 to the fiscal committees of the legislature by July 31, 2012, and July  
4 31, 2013, detailing the positions for which salary increases were  
5 granted during the preceding fiscal year, the size of the increases,  
6 and the reasons for giving the increases.

7 **Sec. 16.** RCW 43.06.013 and 2011 1st sp.s. c 43 s 454 are each  
8 amended to read as follows:

9 When requested by the governor or the director of the department of  
10 enterprise services, nonconviction criminal history fingerprint record  
11 checks shall be conducted through the Washington state patrol  
12 identification and criminal history section and the federal bureau of  
13 investigation on applicants for agency head positions appointed by the  
14 governor. Information received pursuant to this section shall be  
15 confidential and made available only to the governor or director of the  
16 (~~department of personnel~~) office of financial management or their  
17 employees directly involved in the selection, hiring, or background  
18 investigation of the subject of the record check. When necessary,  
19 applicants may be employed on a conditional basis pending completion of  
20 the criminal history record check. "Agency head" as used in this  
21 section has the same definition as provided in RCW 34.05.010.

22 **Sec. 17.** RCW 41.04.680 and 2011 1st sp.s. c 43 s 437 are each  
23 amended to read as follows:

24 The office of financial management and other personnel authorities  
25 shall adopt rules or policies governing the accumulation and use of  
26 sick leave for state agency and department employees, expressly for the  
27 establishment of a plan allowing participating employees to pool sick  
28 leave and allowing any sick leave thus pooled to be used by any  
29 participating employee who has used all of the sick leave, annual  
30 leave, and compensatory leave that has been personally accrued by him  
31 or her. Each department or agency of the state may allow employees to  
32 participate in a sick leave pool established by the office of financial  
33 management and other personnel authorities.

34 (1) For purposes of calculating maximum sick leave that may be  
35 donated or received by any one employee, pooled sick leave:



1 (a) Is counted and converted in the same manner as sick leave under  
2 the Washington state leave sharing program as provided in this chapter;  
3 and

4 (b) Does not create a right to sick leave in addition to the amount  
5 that may be donated or received under the Washington state leave  
6 sharing program as provided in this chapter.

7 (2) The office of financial management and other personnel  
8 authorities, except the personnel authorities for higher education  
9 institutions, shall adopt rules which provide:

10 (a) That employees are eligible to participate in the sick leave  
11 pool after one year of employment with the state or agency of the state  
12 if the employee has accrued a minimum amount of unused sick leave, to  
13 be established by rule;

14 (b) That participation in the sick leave pool shall, at all times,  
15 be voluntary on the part of the employees;

16 (c) That any sick leave pooled shall be removed from the personally  
17 accumulated sick leave balance of the employee contributing the leave;

18 (d) That any sick leave in the pool that is used by a participating  
19 employee may be used only for the employee's personal illness,  
20 accident, or injury;

21 (e) That a participating employee is not eligible to use sick leave  
22 accumulated in the pool until all of his or her personally accrued  
23 sick, annual, and compensatory leave has been used;

24 (f) A maximum number of days of sick leave in the pool that any one  
25 employee may use;

26 (g) That a participating employee who uses sick leave from the pool  
27 is not required to recontribute such sick leave to the pool, except as  
28 otherwise provided in this section;

29 (h) That an employee who cancels his or her membership in the sick  
30 leave pool is not eligible to withdraw the days of sick leave  
31 contributed by that employee to the pool;

32 (i) That an employee who transfers from one position in state  
33 government to another position in state government may transfer from  
34 one pool to another if the eligibility criteria of the pools are  
35 comparable and the administrators of the pools have agreed on a formula  
36 for transfer of credits;

37 (j) That alleged abuse of the use of the sick leave pool shall be  
38 investigated, and, on a finding of wrongdoing, the employee shall repay

1 all of the sick leave credits drawn from the sick leave pool and shall  
2 be subject to such other disciplinary action as is determined by the  
3 agency head;

4 (k) That sick leave credits may be drawn from the sick leave pool  
5 by a part-time employee on a pro rata basis; and

6 (l) That each department or agency shall maintain accurate and  
7 reliable records showing the amount of sick leave which has been  
8 accumulated and is unused by employees, in accordance with guidelines  
9 established by the (~~department of personnel~~) office of financial  
10 management.

11 (3) Personnel authorities for higher education institutions shall  
12 adopt policies consistent with the needs of the employees under their  
13 respective jurisdictions.

14 NEW SECTION. **Sec. 18.** RCW 41.06.160 (Classification and salary  
15 schedules to consider rates in other public and private employment--  
16 Wage and fringe benefits surveys--Limited public disclosure exemption)  
17 and 2005 c 274 s 278, 2002 c 354 s 211, 1993 c 281 s 29, 1985 c 94 s 2,  
18 1980 c 11 s 1, 1979 c 151 s 58, 1977 ex.s. c 152 s 2, & 1961 c 1 s 16  
19 are each repealed.

--- END ---