

HOUSE BILL REPORT

ESSB 6111

As Reported By House Committee On:
State Government

Title: An act relating to ethics in public service.

Brief Description: Changing ethics provisions for state officers and state employees.

Sponsors: Senate Committee on Government Operations (originally sponsored by Senators Drew, McCaslin, Gaspard, Sellar, Haugen, Snyder, Fraser, Franklin, Sheldon, Bauer, Owen, Spanel, Pelz, M. Rasmussen, Winsley, Oke and Skratek; by request of Commission on Ethics in Government & Campaign Financing, Governor Lowry and Attorney General).

Brief History:

Reported by House Committee on:
State Government, February 23, 1994, DPA.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass as amended. Signed by 8 members: Representatives Anderson, Chair; Veloria, Vice Chair; Reams, Ranking Minority Member; L. Thomas, Assistant Ranking Minority Member; Conway; Dyer; King and Pruitt.

Minority Report: Do not pass. Signed by 1 member: Representative Campbell.

Staff: Tim Burke (786-7103).

Background: In 1993, the Legislature created the Commission on Ethics in Government and Campaign Practices. The commission has issued a detailed report in which it recommends the enactment of new ethics rules governing state officials and state employees, as well as numerous changes to the Public Disclosure Act and to other laws dealing with political campaigns. Its major recommendations in the ethics area are that new or revised ethics rules should be adopted; the new rules, and provisions for enforcing them, should be consolidated into a single code of ethics; the new code should apply to all state officials and employees of the executive, legislative, and judicial branches of state government; and each branch should have its own ethics commission which would hear and determine complaints, impose

sanctions, recommend disciplinary action, and issue advisory opinions.

While neither the executive nor judicial branches have an ethics board with jurisdiction over all officials and employees of these branches, the legislative branch has vested ethics jurisdiction over legislators and legislative staff in the House Board of Legislative Ethics, the Senate Board of Legislative Ethics, and the Joint Board of Legislative Ethics. The boards are composed of equal numbers of legislators and non-legislators and their powers generally are limited to providing advice and recommendations on conflict of interest matters. Since their establishment in 1967, the legislative ethics boards have issued many advisory opinions providing guidance to legislators and staff. While these advisory opinions deal with a wide array of ethics questions, a large number answer members' questions concerning the propriety of hypothetical private business and employment activities.

Summary of Amended Bill: This measure is designed to implement the recommendations for ethics law reform of the Commission of Ethics in Government and Campaign Practices.

The measure would establish new or revised ethics rules; consolidate the rules in a single RCW chapter; and apply the new chapter to all state officials and employees of the executive, legislative and judicial branches of state government. To enforce the new rules, the measure would create new ethics boards in the executive and legislative branches and expand the authority of the judicial branch's Commission on Judicial Conduct. Each of these entities, as well as the Attorney General, would have broad powers to enforce the new ethics chapter.

(1) RULES OF CONDUCT

Most of this measures' rules of conduct can be found in one form or another in existing statutes or rules. These existing laws or rules typically only apply to certain classes of public servants. (Two examples: the Executive Conflict of Interest Act applies only to executive branch employees who are not agency heads and the Legislative Ethics Act only applies to legislators and legislative staff.) A major result of this measure would be the application of the same statutory rules of conduct to all officials and employees of the three branches of state government.

Generally and subject to numerous exceptions, this measure's rules or conduct would prohibit elected state officials and state employees from:

- Having any private interest or business which is in conflict with their state duties (ú 102);
- Transacting business on behalf of the state with an entity in which they have a financial interest (ú 103);
- Assisting another person in a transaction with the state in which they have been substantially involved as part of their official duties but where the assistance is not within their official duties (ú 104);
- Releasing confidential information to persons not authorized to receive it (ú 105);
- Using their state positions to obtain special privileges or exemptions (ú 107);
- Within one year after leaving state service, accepting employment with a business with which, during a two-year period before leaving state service, they had negotiated a contract having a value of at least \$10,000 and where their employment with the business would involve implementing the contract (ú 108(1));
- Within two years after leaving state service, having a financial interest in a state contract or grant that, before leaving state service, they played an important role in authorizing or funding (ú 108(2));
- At any time after leaving state service, accepting employment under circumstances where it would be reasonable to believe that the employment offer was intended to influence their official conduct while in state service (ú 108(4));
- At any time after leaving state service, assisting another person in any transaction involving the state in which they had played an important role while in state service (ú 108(5));
- Accepting any compensation or benefit, other than their state compensation, for their carrying out official duties (ú 111);
- When not part of their official duties, entering into a contract with or accepting a grant from a state agency (ú 112);

- Accepting honoraria that do not meet specified requirements (ú 113);
- Accepting gifts under circumstances where it could be reasonably expected that the gifts would influence their votes, actions or official judgment; or, during any calendar year, accepting gifts with an aggregate value or more than \$50 from any single source (úú 114-115);
- Using state property under their official control for their private benefit or gain (ú 116);
- Using, or knowingly acquiescing in the use of, state facilities for campaign purposes (ú 118); and
- If responsible for the investment of state funds, having any personal investments that are not authorized (ú 119).

2. ETHICS BOARDS

Legislative Ethics Board: The board would be composed of nine members, including:

- (a) Two senators, one from each Senate caucus and appointed by the President of the Senate;
- (b) Two representatives, one from each House caucus and appointed by the Speaker;
- (c) Four citizen members, each appointed by the Governor from a list of three persons selected separately by each legislative caucus; and
- (d) One citizen member appointed by at least three of the four citizen members (ú 201).

Citizen members would serve five-year terms and legislative members two-year terms. No more than three citizen members could be identified with the same political party. The chair would be a citizen member selected by the citizen members. (See ú 201.)

Generally, citizen members could not hold or campaign for elective office; could not be an officer of a political party or political committee; could not make campaign contributions in state elections; and could not engage in lobbying activities (ú 207).

Among other things, the board would be empowered to: issue advisory opinions; investigate, hear, and determine complaints by any person; impose sanctions, including reprimands and monetary penalties; recommend suspension or removal to the appropriate legislative entity, or recommend prosecution to the appropriate authority; and establish criteria regarding the levels of civil penalties appropriate for different types of violations (ú 202).

The board's power to impose monetary penalties would include the greater of (a) civil penalties of up to \$5000 per violation, or (b) three times the economic value of any thing received in violation of the ethics rules. The board would also be authorized to order violators to pay the damages sustained by the state as a result of the violation and costs, including reasonable investigative costs. (See ú 217.)

Executive Ethics Board: This board would be composed of five members, each appointed by the Governor. The members would include: one classified civil service employee; one state officer or state employee in an exempt position; one citizen selected from a list of three persons submitted by the Attorney General; one citizen selected from a list of three persons submitted by the State Auditor; and one citizen member selected by the Governor. (See ú 204.)

No more than three members could be identified with the same political party. Each member would serve a single five-year term. The members would elect a chair who could be any member of the board. The Attorney General would provide staff to the board. (See ú 204.)

The Executive Ethics Board generally would have the same powers as would be vested in the Legislative Ethics Board. (See úú 205, 208-214, 216-217, 219, and 223.)

The members of the board would be required to comply with the same restrictions on political activities and lobbying as are applicable to the citizen members of the Legislative Ethics Board (ú 207).

The Commission on Judicial Conduct: The Commission on Judicial Conduct is an existing entity, established under Article IV, Section 31 of the Washington Constitution. This measure would vest in the commission the duty to enforce the ethics rules with respect to state officers and employees of the judicial branch. In addition to the sanctions which the commission is authorized to impose under the constitution, the commission generally would be authorized to impose the same sanctions as the Legislative Ethics Board and Executive Ethics Board could impose. (See ú 206.)

3. MISCELLANEOUS PROVISIONS

Public Disclosure Commission: The Public Disclosure Act vests in the commission the authority to enforce the act's provisions prohibiting the use of public resources in election campaigns (RCW 42.17.130). With respect to state officers and state employees, this measure would transfer enforcement authority to the new ethics boards and the Commission on Judicial Conduct (ú 118).

Administrative Law Judge: If a board finds that the penalty and costs in a complaint might be more than \$500, then the board, either on its own initiative or at the request of the person charged, may have an administrative law judge conduct the hearing on the complaint and rule on evidentiary matters (ú 219).

Attorney General: If the Attorney General determines that an ethics board is "clearly erroneous" in not taking action against a violator, the Attorney General may bring a civil action for recovery of the amounts that generally the board could have recovered (ú 218).

Where an ethics board finds that, based on the facts alleged in a complaint, there is not reasonable cause to believe that a person has committed a violation or where an ethics board finds that a person has not committed a violation, then the Attorney General also must provide legal representation to the person in any subsequent legal action that is based on the facts in the complaint (ú 212).

Citizen Actions: Generally, a citizen may file a civil action for enforcement of the prohibition against use of public resources for campaign purposes. Such an action may only be filed if the citizen first notifies the Attorney General and appropriate board that there is reason to believe a violation has occurred and if the Attorney General or board fails to take action with respect to the matter. (See ú 215.)

Judicial Review: Judicial review of a board's decision that a violation has occurred would be as prescribed under the Administrative Procedure Act (ú 213).

Statute of Limitations: Any action against a violator of the ethics law must be commenced within five years from the date of the violation, except where the violator has concealed the violation. Where the violator has concealed the violation, the action must be commenced within two years from the date when the violation was discovered or reasonably should have been discovered by the violator's

supervisor or, if the violator does not have a supervisor, by the appropriate board. (See ú 223.)

Transition: The new rules of ethics would be effective on January 1, 1995 (ú 319). The members of the legislative and executive ethics boards must be appointed by October 1, 1994 (ú 224). The Legislative Ethics Act, which is the law establishing the three boards of legislative ethics, would be repealed and all files and any pending matters before any of these boards would be transferred to the new Legislative Ethics Board (úú 304 and 203).

Amended Bill Compared to Engrossed Substitute Bill: The amendments generally restrict state-wide elected officials' and legislators' use of public resources in ballot proposition campaigns; continue the case law interpretations of the "beneficial interest" prohibition; for purpose of provisions prohibiting former state officers' or employees' from accepting employment from persons with whom they had conducted business while in state service, define employer as also including any entity which the employer "owns" or in which the employer has a "controlling interest"; provide that the ethics boards' jurisdiction with respect to complaints and advisory opinions would be limited to the standards of conduct created under the bill; permit state-wide elected officials and legislators to use campaign funds, other than surplus campaign funds, for payment of nonreimbursed office-related expenses; provide limitations on the combined amount of penalty and costs that violators can be ordered to pay; restrict the two-year discovery rule provided under the statute of limitations to cases where the violator has concealed the violation; and make other clarifying and procedural changes.

Fiscal Note: Available.

Effective Date of Amended Bill: The following sections take effect January 1, 1995: Sections establishing the standards of ethics and sections repealing or amending existing standards of ethics and related laws. Other sections, including those establishing the ethics boards, will take effect 90 days after final adjournment.

Testimony For: This measure would be an important step toward restoring the public trust in state government. The public interest would be served by revising ethics standards and having the standards apply uniformly to all state officers and state employees. In order to have enforcement that is consistent with the "separation of powers" doctrine, a separate ethics board is needed in each branch of state government.

Testimony Against: This bill would be a step backward. It would remove criminal penalties and reduce civil fines for unethical conduct and would vest enforcement of ethics violations in a politically-controlled legislative ethics board. It would increase the permitted uses of public resources in ballot proposition campaigns.

Witnesses: Senator Drew, prime sponsor (pro); Chuck Sauvage, Common Cause (pro); Shawn Newman, CLEAN (con); Sherry Bockwinkel, LIMIT (con); Paul Telford (con); Delores Teutsch, Commission on Ethics in Government and Campaign Practices (pro); Leslie McMillan, Commission on Judicial Conduct (con); Bryan Crawford, Washington Watch (con); and Dave LaCourse, Washington Citizens for Justice (con).