

SENATE BILL REPORT

ESSB 6111

AS PASSED SENATE, FEBRUARY 12, 1994

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)

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: That Substitute Senate Bill No. 6111 be substituted therefor, and the substitute bill do pass.

Signed by Senators Haugen, Chairman; Drew, Vice Chairman; Loveland, McCaslin, Oke, Owen and Winsley.

Staff: Rod McAulay (786-7754)

Hearing Dates: January 25, 1994; February 3, 1994

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6111 as recommended by Committee on Government Operations be substituted therefor, and the substitute bill do pass.

Signed by Senators Rinehart, Chairman; Quigley, Vice Chairman; Bauer, Bluechel, Gaspard, Ludwig, Moyer, Pelz, Snyder, Spanel, Sutherland, Talmadge, Williams and Wojahn.

Staff: Steve Jones (786-7440)

Hearing Dates: February 7, 1994; February 8, 1994

HOUSE COMMITTEE ON STATE GOVERNMENT

BACKGROUND:

Early in the 1993 legislative session, the Legislature enacted a law establishing a Commission on Ethics in Government and Campaign Financing. This legislation was in response to reported abuses of legislative staff for campaign purposes and other general concerns with standards for both campaign practices and state employment.

The commission was charged to "study, hold public meetings, take public testimony, and make recommendations on the need and appropriate scope of legislation necessary to: (a) promote public trust and confidence in government; (b) promote fair campaign practices; and (c) ensure the effective

administration of public disclosure, conflict of interest, and ethics laws." The commission was also charged to make a report by December 1, 1993.

The commission included the Governor, the Attorney General, a designee of the Chief Justice of the Supreme Court, two senators, two representatives, and ten citizen members appointed by the Governor - 17 members in all. During 1993, the commission met at various locations around the state under the guidance of two co-chairpersons, Professor Hubert Locke of the University of Washington, and Delores Teutsch, a former legislator. The citizen membership included persons with backgrounds or involvement in education, the League of Women Voters, Common Cause, the Perot campaign for President, the press, the campaign for term limits, and reapportionment of legislative districts.

To complete its tasks, the commission operated in two sub-groups, one focused on campaign and public disclosure commission issues and the other focused on state employee ethics issues. A draft report was completed on December 1, 1993 and after a period of public comment and further debate within the commission, a final report was issued prior to the commencement of the 1994 legislative session.

Following the issuance of the preliminary report, work began to draft legislation to implement the recommendations of the report. This legislation has been introduced in the form of two bills, one focused on campaign and public disclosure commission reform and one focused on state employee ethics issues.

The issues with regard to state employee ethics include concerns about the patchwork nature of current laws, the fact that various standards and definitions apply only to certain groups of employees or certain branches of state government, the laxity or lack of clarity in current law with regard to the receipt of gifts, outside employment, contracts with the state, post-public employment activities, honoraria, and the use of public resources for political campaign purposes. Concerns also include the absence of a credible enforcement process which involves citizen participation.

SUMMARY:

The laws prescribing ethical standards for state employees and statutory definitions pertaining to those laws are consolidated into a single chapter which applies to all branches of state government except where an individual requirement is expressly excluded. All current prohibitions are retained, recodified or otherwise restated and new prohibitions are added.

Prohibitions affecting state officers and employees include:

- * any interest or business which is in conflict with state duties;

- * transacting business on behalf of the state with an entity in which the employee has an interest;
- * assisting another person in a transaction with the state in which the employee has either participated or had under his or her official responsibility within the preceding two years;
- * accepting employment which might reasonably require the disclosure of confidential information obtained through state employment;
- * refusing, in bad faith, to disclose information required to be released;
- * using state position to obtain special privileges or exemptions;
- * accepting employment within one year of leaving state employment with a business with which the employee negotiated a contract of a value of at least \$10,000 and in the performance of which the employee will have a role;
- * accepting employment or compensation if the circumstances would lead a reasonable person to believe it is a reward for performance or nonperformance of state duties;
- * having any beneficial interest in a contract or grant within two years after leaving state employment where the contract or grant was expressly authorized or funded by action of the employee or their agency;
- * accepting any compensation or benefit beyond regular compensation provided by law for the performance of state duties;
- * while employed by the state, accepting a contract or grant from the state, unless the services are bona fide and actually performed, the services are not under the employee's supervision; the services are not otherwise prohibited by conflicts of interest laws and rules or laws limiting the receipt of gifts; the contract is obtained through competitive bidding or, if the employee was the sole bidder or competitive bidding is not used, the contract is approved by the appropriate ethics board;
- * accepting honoraria unless permitted under standards adopted by the employee's agency, which standards must be approved by the appropriate ethics board and meet minimal requirements established by law;
- * accepting anything of economic value given to influence the performance of state duties;

(NOTE: gifts with an aggregate value in excess of \$50 may not be received from a single source in one year. Certain unsolicited gifts such as flowers,

food at public receptions, etc. are presumed not to influence. Meals may be accepted on infrequent occasions if provided in the ordinary course and attendance is related to official duties. State employees in regulatory agencies are subject to stricter limitations.)

- * using state resources for personal benefit;
- * using, or knowingly acquiescing in the use of, state facilities to assist in any campaign for a person or ballot measure; and
- * if responsible for the investment of state funds, having any direct or indirect interest in any subject of investment.

Separate ethics boards are established for the legislative and executive branches with authority to educate, render advisory opinions, investigate, conduct hearings, issue subpoenas, seek judicial enforcement of subpoenas, conduct hearings, impose penalties and recommend suspension and dismissal of violators. The Legislative Ethics Board has nine members, five of which are nonlegislators. Provisions are included to provide for transfer of jurisdiction from the existing legislative ethics boards to the new legislative ethics board and granting the new boards jurisdiction over violations occurring prior to their existence. The executive ethics board has five members appointed by the Governor subject to certain restrictions. Political activity by citizen members of the executive and legislative ethics boards is limited.

The jurisdiction of the Commission on Judicial Conduct is expanded to include employees in the judicial branch. The Judicial Conduct Commission may fulfill its obligations under this law by exercising their authority under Article IV, Sec. 31 of the constitution.

The ethics boards may refer complaints to the affected agency for investigation or to the Attorney General for investigation or enforcement. Hearings before an ethics board may be conducted by an administrative law judge if the potential penalty is greater than \$500. Orders of ethics boards are subject to reconsideration and review as provided by the Administrative Procedure Act.

The Attorney General may independently institute investigations for ethics violations and commence civil proceedings. If the ethics boards and the Attorney General fail to take action on a complaint regarding the use of state facilities for a political campaign or ballot measure within a fixed time, citizens may institute actions for such violations. The statute of limitations for ethics violations is extended from three years from the occurrence of the violation to five years from the occurrence or two years after it was, or reasonably should have been, discovered, whichever is later.

Appropriation: none

Revenue: none

Fiscal Note: available

Effective Date: Sections 101-121, 206-223 and 301-316 take effect on January 1, 1995.

TESTIMONY FOR:

This legislation creates a uniform standard for all employees, tightens existing standards and establishes an investigation and enforcement mechanism with citizen participation. It provides balanced and workable standards. All the rules are established in one chapter of the code.

TESTIMONY AGAINST:

The rule allowing a minority of five to require production of a conference report should be reinstated. The Kentucky model for membership of ethics boards should be used. There should be no legislators on the legislative ethics board. The "de minimis" standard for use of public facilities is open to interpretation. Coverage should be extended to local government. The ethics boards will consist of the "political elite." Personal service contract standards are not tight enough. All honoraria and gifts should be banned.

TESTIFIED: Christine Gregoire, Attorney General; Senator Kathleen Drew, Sarah Chandler, Delores Teutsch, Ethics Commission members; Chuck Sauvage, Common Cause (pro); David Clark, Public Disclosure Commission (pro); Ralph Munro, Secretary of State; Mary McQueen, Supreme Court; Shawn Newman, CLEAN; Hubert G. Locke, Commission on Ethics and Fair Campaign Practices; Sherry Bockwinkle, LIMIT; Paul Telford

HOUSE AMENDMENT(S):

The definition of "beneficial interest" is changed by deleting the express definition and substituting a reference to the common law standard. The definition of "employer" is narrowed.

Violation of agency policies is deleted as a basis for any ethics enforcement activity under this act, limiting enforcement to violations of statutes and agency rules.

The authority of the several ethics boards to approve agency ethics rules is deleted. Ethics boards may only comment on proposed agency rules.

The exception to the prohibition on use of public facilities by a statewide elected officer for campaign purposes is restricted to de minimis use for communications on "ballot propositions" rather than "permissible communications."

A new section is added which authorizes statewide elected officials and legislators to use campaign funds, other than surplus campaign funds, to pay nonreimbursed office-related expenses.

A new section is added which states that the Constitution provides that the Legislature consist of "citizen legislators" and provides that the act be interpreted in light of this principle.

The jurisdiction of the new Legislative Ethics Board over violations occurring prior to January 1, 1995 is limited to matters which would have been within the jurisdiction of the current ethics panels.

The section which fixes the maximum penalty which may be imposed by an ethics board against a violator at \$5,000 and provides that any costs assessed shall be deducted from any penalty is modified to also provide that costs may not exceed \$5,000.

A new section is added which requires that when the Attorney General pursues a civil action against an ethics violator in cases where the Attorney General believes that a disposition by an ethics board was clearly erroneous, the Attorney General must first prove to the court that the action was, in fact, clearly erroneous, before otherwise proceeding with the case.

Ethics boards are given authority to request that an administrative law judge preside at an ethics violation hearing. If an alleged violator is not given an opportunity to request that an administrative law judge preside at an ethics violation hearing, any penalty subsequently imposed may not exceed \$500.

The statute of limitations is modified by providing that any extension beyond five years can only be as a result of concealment by the person charged.

A new section is added which provides for compensation of citizen members of ethics boards.

Various changes are made to improve syntax and terminology.