

SENATE BILL REPORT

SB 6111

AS REPORTED BY COMMITTEE ON WAYS & MEANS, FEBRUARY 8, 1994

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

SPONSORS: 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

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 employee 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 or from a local government using state funding, 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 was obtained through competitive bidding or, if the employee was the sole bidder or competitive bidding was not used, the contract is approved by the appropriate ethics board;
- * accepting honoraria unless 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 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. The executive ethics board has five members appointed by the Governor subject to certain restrictions. The jurisdiction of the Commission on Judicial Conduct is expanded to include employees in the judicial branch.

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 within a fixed time, citizens may institute actions for ethics 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.

EFFECT OF PROPOSED SUBSTITUTE:

Terminology is corrected to be consistent throughout the bill and grammatical errors are corrected. A definition of "beneficial interest" is added. The criteria by which ethics boards may disallow an agency rule permitting honoraria is made unlimited. A "single source" for gifts and a "single gift" are defined. Gifts presumed not to influence must be unsolicited. The Judicial Conduct Commission may fulfill its obligations under this law by exercising their authority under Article IV, Sec. 31 of the constitution. Provisions are added 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. Political activity by citizen members of the executive and legislative ethics boards is limited. The statute of limitations is modified to provide that it runs in five years or two years after a violation is discovered or reasonably should have been discovered either by a superior or by the appropriate ethics boards. Effective dates are included to provide that the ethics boards may be created and may organize their affairs during 1994. The new ethics standards will become effective on January 1, 1995. The staff for the executive ethics board shall be provided by the Attorney General rather than the State Auditor.

Appropriation: none

Revenue: none

Fiscal Note: available

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