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**SUBSTITUTE SENATE BILL 5025**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** Senate Committee on State & Local Government (originally sponsored by Senators Spanel and Long; by request of Legislative Ethics Board)

Read first time 02/09/99.

1 AN ACT Relating to ethics in public service; amending RCW  
2 42.52.420, 42.52.180, 42.17.130, 42.17.190, 42.52.120, and 42.52.010;  
3 and adding a new section to chapter 42.52 RCW.

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

5 **Sec. 1.** RCW 42.52.420 and 1994 c 154 s 212 are each amended to  
6 read as follows:

7 (1) After the filing of any complaint, except as provided in RCW  
8 42.52.450, the staff of the appropriate ethics board shall investigate  
9 the complaint. The investigation shall be limited to the ((alleged  
10 facts)) allegations contained in the complaint.

11 (2) The results of the investigation shall be reduced to writing  
12 and the staff shall either make a determination ((shall be made)) that  
13 the complaint should be dismissed pursuant to section 2 of this act, or  
14 recommend to the board that there is or that there is not reasonable  
15 cause to believe that a violation of this chapter or rules adopted  
16 under it has been or is being committed.

17 ((A copy of the written)) (3) The board's determination on  
18 reasonable cause shall be provided to the complainant and to the person  
19 named in such complaint.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 42.52 RCW  
2 to read as follows:

3        (1) Based on the investigation conducted under RCW 42.52.420, and  
4 subject to rules issued by each board, the staff of the appropriate  
5 ethics board may issue an order of dismissal based on any of the  
6 following findings:

7        (a) Any violation that may have occurred is not within the  
8 jurisdiction of the board;

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

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

14       (2) Written notice of the determination under subsection (1) of  
15 this section shall be provided to the complainant, respondent, and the  
16 board.

17       (3) In the event that a complaint is dismissed under this section,  
18 the complainant may request that the board review the action.  
19 Following review, the board shall:

20       (a) Affirm the staff dismissal;

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

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

24       (4) The board's decision under subsection (3) of this section shall  
25 be reduced to writing and provided to the complainant and the  
26 respondent.

27       **Sec. 3.**    RCW 42.52.180 and 1995 c 397 s 30 are each amended to read  
28 as follows:

29       (1) No state officer or state employee may use or authorize the use  
30 of facilities of an agency, directly or indirectly, for the purpose of  
31 assisting a campaign for election of a person to an office, for the  
32 purpose of assisting the appointment of a person to a vacancy in an  
33 elective office, or for the promotion of or opposition to a ballot  
34 proposition or an initiative to the legislature. Knowing acquiescence  
35 by a person with authority to direct, control, or influence the actions  
36 of the state officer or state employee using public resources in  
37 violation of this section constitutes a violation of this section.  
38 Facilities of an agency include, but are not limited to, use of

1 stationery, postage, machines, and equipment, use of state employees of  
2 the agency during working hours, vehicles, office space, publications  
3 of the agency, and clientele lists of persons served by the agency.

4 (2) This section shall not apply to the following activities:

5 (a) Action taken at an open public meeting by members of an elected  
6 legislative body to express a collective decision, or to actually vote  
7 upon a motion, proposal, resolution, order, or ordinance, or to support  
8 or oppose a ballot proposition or an initiative to the legislature as  
9 long as (i) required notice of the meeting includes the title and  
10 number of the ballot proposition, and (ii) members of the legislative  
11 body or members of the public are afforded an approximately equal  
12 opportunity for the expression of an opposing view;

13 (b) A statement by an elected official in support of or in  
14 opposition to any ballot proposition or an initiative to the  
15 legislature at an open press conference or in response to a specific  
16 inquiry. For the purposes of this subsection, it is not a violation of  
17 this section for an elected official to respond to an inquiry regarding  
18 a ballot proposition or an initiative to the legislature, to make  
19 incidental remarks concerning a ballot proposition or an initiative to  
20 the legislature in an official communication, or otherwise comment on  
21 a ballot proposition or an initiative to the legislature without an  
22 actual, measurable expenditure of public funds. The ethics boards  
23 shall adopt by rule a definition of measurable expenditure;

24 (c) Activities that are part of the normal and regular conduct of  
25 the office or agency; and

26 (d) De minimis use of public facilities by state-wide elected  
27 officials and legislators incidental to the preparation or delivery of  
28 permissible communications, including written and verbal communications  
29 initiated by them of their views on ballot propositions or initiatives  
30 to the legislature that foreseeably may affect a matter that falls  
31 within their constitutional or statutory responsibilities.

32 (3) As to state officers and employees, this section operates to  
33 the exclusion of RCW 42.17.130 and 42.17.190.

34 **Sec. 4.** RCW 42.17.130 and 1979 ex.s. c 265 s 2 are each amended to  
35 read as follows:

36 No elective official nor any employee of his or her office nor any  
37 person appointed to or employed by any public office or agency may use  
38 or authorize the use of any of the facilities of a public office or

1 agency, directly or indirectly, for the purpose of assisting a campaign  
2 for election of any person to any office, for the purpose of assisting  
3 the appointment of a person to a vacancy in an elective office, or for  
4 the promotion of or opposition to any ballot proposition. Facilities  
5 of public office or agency include, but are not limited to, use of  
6 stationery, postage, machines, and equipment, use of employees of the  
7 office or agency during working hours, vehicles, office space,  
8 publications of the office or agency, and clientele lists of persons  
9 served by the office or agency: PROVIDED, That the foregoing  
10 provisions of this section shall not apply to the following activities:

11 (1) Action taken at an open public meeting by members of an elected  
12 legislative body to express a collective decision, or to actually vote  
13 upon a motion, proposal, resolution, order, or ordinance, or to support  
14 or oppose a ballot proposition so long as (a) any required notice of  
15 the meeting includes the title and number of the ballot proposition,  
16 and (b) members of the legislative body or members of the public are  
17 afforded an approximately equal opportunity for the expression of an  
18 opposing view;

19 (2) A statement by an elected official in support of or in  
20 opposition to any ballot proposition at an open press conference or in  
21 response to a specific inquiry;

22 (3) Activities which are part of the normal and regular conduct of  
23 the office or agency.

24 **Sec. 5.** RCW 42.17.190 and 1995 c 397 s 7 are each amended to read  
25 as follows:

26 (1) The house of representatives and the senate shall report  
27 annually: The total budget; the portion of the total attributed to  
28 staff; and the number of full-time and part-time staff positions by  
29 assignment, with dollar figures as well as number of positions.

30 (2) Unless authorized by subsection (3) of this section or  
31 otherwise expressly authorized by law, no public funds may be used  
32 directly or indirectly for lobbying: PROVIDED, This does not prevent  
33 officers or employees of an agency from communicating with a member of  
34 the legislature on the request of that member; or communicating to the  
35 legislature, through the proper official channels, requests for  
36 legislative action or appropriations which are deemed necessary for the  
37 efficient conduct of the public business or actually made in the proper

1 performance of their official duties: PROVIDED FURTHER, That this  
2 subsection does not apply to the legislative branch.

3 (3) Any agency, not otherwise expressly authorized by law, may  
4 expend public funds for lobbying, but such lobbying activity shall be  
5 limited to (a) providing information or communicating on matters  
6 pertaining to official agency business to any elected official or  
7 officer or employee of any agency or (b) advocating the official  
8 position or interests of the agency to any elected official or officer  
9 or employee of any agency: PROVIDED, That public funds may not be  
10 expended as a direct or indirect gift or campaign contribution to any  
11 elected official or officer or employee of any agency. For the  
12 purposes of this subsection, the term "gift" means a voluntary transfer  
13 of any thing of value without consideration of equal or greater value,  
14 but does not include informational material transferred for the sole  
15 purpose of informing the recipient about matters pertaining to official  
16 agency business. This section does not permit the printing of a state  
17 publication which has been otherwise prohibited by law.

18 (4) No elective official or any employee of his or her office or  
19 any person appointed to or employed by any public office or agency may  
20 use or authorize the use of any of the facilities of a public office or  
21 agency, directly or indirectly, in any effort to support or oppose an  
22 initiative to the legislature. Chapter 42.52 RCW governs actions  
23 relating to activities of state officers and state employees as defined  
24 in RCW 42.52.010 with respect to initiatives to the legislature.  
25 "Facilities of a public office or agency" has the same meaning as in  
26 RCW 42.17.130 and 42.52.180. The provisions of this subsection shall  
27 not apply to the following activities:

28 (a) Action taken at an open public meeting by members of an elected  
29 legislative body to express a collective decision, or to actually vote  
30 upon a motion, proposal, resolution, order, or ordinance, or to support  
31 or oppose an initiative to the legislature so long as (i) any required  
32 notice of the meeting includes the title and number of the initiative  
33 to the legislature, and (ii) members of the legislative body or members  
34 of the public are afforded an approximately equal opportunity for the  
35 expression of an opposing view;

36 (b) A statement by an elected official in support of or in  
37 opposition to any initiative to the legislature at an open press  
38 conference or in response to a specific inquiry;

1 (c) Activities which are part of the normal and regular conduct of  
2 the office or agency;

3 (d) Activities conducted regarding an initiative to the legislature  
4 that would be permitted under RCW 42.17.130 and 42.52.180 if conducted  
5 regarding other ballot measures.

6 (5) Each state agency, county, city, town, municipal corporation,  
7 quasi-municipal corporation, or special purpose district which expends  
8 public funds for lobbying shall file with the commission, except as  
9 exempted by (d) of this subsection, quarterly statements providing the  
10 following information for the quarter just completed:

11 (a) The name of the agency filing the statement;

12 (b) The name, title, and job description and salary of each elected  
13 official, officer, or employee who lobbied, a general description of  
14 the nature of the lobbying, and the proportionate amount of time spent  
15 on the lobbying;

16 (c) A listing of expenditures incurred by the agency for lobbying  
17 including but not limited to travel, consultant or other special  
18 contractual services, and brochures and other publications, the  
19 principal purpose of which is to influence legislation;

20 (d) For purposes of this subsection the term "lobbying" does not  
21 include:

22 (i) Requests for appropriations by a state agency to the office of  
23 financial management pursuant to chapter 43.88 RCW nor requests by the  
24 office of financial management to the legislature for appropriations  
25 other than its own agency budget requests;

26 (ii) Recommendations or reports to the legislature in response to  
27 a legislative request expressly requesting or directing a specific  
28 study, recommendation, or report by an agency on a particular subject;

29 (iii) Official reports including recommendations submitted to the  
30 legislature on an annual or biennial basis by a state agency as  
31 required by law;

32 (iv) Requests, recommendations, or other communication between or  
33 within state agencies or between or within local agencies;

34 (v) Any other lobbying to the extent that it includes:

35 (A) Telephone conversations or preparation of written  
36 correspondence;

37 (B) In-person lobbying on behalf of an agency of no more than four  
38 days or parts thereof during any three-month period by officers or  
39 employees of that agency and in-person lobbying by any elected official

1 of such agency on behalf of such agency or in connection with the  
2 powers, duties, or compensation of such official: PROVIDED, That the  
3 total expenditures of nonpublic funds made in connection with such  
4 lobbying for or on behalf of any one or more members of the legislature  
5 or state elected officials or public officers or employees of the state  
6 of Washington do not exceed fifteen dollars for any three-month period:  
7 PROVIDED FURTHER, That the exemption under this subsection is in  
8 addition to the exemption provided in (A) of this subsection;

9 (C) Preparation or adoption of policy positions.

10 The statements shall be in the form and the manner prescribed by  
11 the commission and shall be filed within one month after the end of the  
12 quarter covered by the report.

13 (6) In lieu of reporting under subsection (5) of this section any  
14 county, city, town, municipal corporation, quasi municipal corporation,  
15 or special purpose district may determine and so notify the public  
16 disclosure commission, that elected officials, officers, or employees  
17 who on behalf of any such local agency engage in lobbying reportable  
18 under subsection (5) of this section shall register and report such  
19 reportable lobbying in the same manner as a lobbyist who is required to  
20 register and report under RCW 42.17.150 and 42.17.170. Each such local  
21 agency shall report as a lobbyist employer pursuant to RCW 42.17.180.

22 (7) The provisions of this section do not relieve any elected  
23 official or officer or employee of an agency from complying with other  
24 provisions of this chapter, if such elected official, officer, or  
25 employee is not otherwise exempted.

26 (8) The purpose of this section is to require each state agency and  
27 certain local agencies to report the identities of those persons who  
28 lobby on behalf of the agency for compensation, together with certain  
29 separately identifiable and measurable expenditures of an agency's  
30 funds for that purpose. This section shall be reasonably construed to  
31 accomplish that purpose and not to require any agency to report any of  
32 its general overhead cost or any other costs which relate only  
33 indirectly or incidentally to lobbying or which are equally  
34 attributable to or inseparable from nonlobbying activities of the  
35 agency.

36 The public disclosure commission may adopt rules clarifying and  
37 implementing this legislative interpretation and policy.

1       **Sec. 6.** RCW 42.52.120 and 1997 c 318 s 1 are each amended to read  
2 as follows:

3       (1) No state officer or state employee may receive any thing of  
4 economic value under any contract or grant outside of his or her  
5 official duties. The prohibition in this subsection does not apply  
6 where the state officer or state employee has complied with RCW  
7 42.52.030(2) or each of the following conditions are met:

8       (a) The contract or grant is bona fide and actually performed;

9       (b) The performance or administration of the contract or grant is  
10 not within the course of the officer's or employee's official duties,  
11 or is not under the officer's or employee's official supervision;

12       (c) The performance of the contract or grant is not prohibited by  
13 RCW 42.52.040 or by applicable laws or rules governing outside  
14 employment for the officer or employee;

15       (d) The contract or grant is neither performed for nor compensated  
16 by any person from whom such officer or employee would be prohibited by  
17 RCW 42.52.150(4) from receiving a gift;

18       (e) The contract or grant is not one expressly created or  
19 authorized by the officer or employee in his or her official capacity;

20       (f) The contract or grant would not require unauthorized disclosure  
21 of confidential information.

22       (2) In addition to satisfying the requirements of subsection (1) of  
23 this section, a state officer or state employee may have a beneficial  
24 interest in a grant or contract or a series of substantially identical  
25 contracts or grants with a state agency only if:

26       (a) The contract or grant is awarded or issued as a result of an  
27 open and competitive bidding process in which more than one bid or  
28 grant application was received; or

29       (b) The contract or grant is awarded or issued as a result of an  
30 open and competitive bidding or selection process in which the  
31 officer's or employee's bid or proposal was the only bid or proposal  
32 received and the officer or employee has been advised by the  
33 appropriate ethics board, before execution of the contract or grant,  
34 that the contract or grant would not be in conflict with the proper  
35 discharge of the officer's or employee's official duties; or

36       (c) The process for awarding the contract or issuing the grant is  
37 not open and competitive, but the officer or employee has been advised  
38 by the appropriate ethics board that the contract or grant would not be



1 in conflict with the proper discharge of the officer's or employee's  
2 official duties.

3 (3) A state officer or state employee awarded a contract or issued  
4 a grant in compliance with subsection (2) of this section shall file  
5 the contract or grant with the appropriate ethics board within thirty  
6 days after the date of execution; however, if proprietary formulae,  
7 designs, drawings, or research are included in the contract or grant,  
8 the proprietary formulae, designs, drawings, or research may be deleted  
9 from the contract or grant filed with the appropriate ethics board.

10 (4) This section does not prevent a state officer or state employee  
11 from receiving compensation contributed from the treasury of the United  
12 States, another state, county, or municipality if the compensation is  
13 received pursuant to arrangements entered into between such state,  
14 county, municipality, or the United States and the officer's or  
15 employee's agency. This section does not prohibit a state officer or  
16 state employee from serving or performing any duties (~~under an~~  
17 ~~employment contract with a~~) as an officer or employee of more than one  
18 governmental entity. Such compensation or employment is subject to the  
19 restrictions in RCW 42.52.020.

20 (5) As used in this section, "officer" and "employee" do not  
21 include officers and employees who, in accordance with the terms of  
22 their employment or appointment, are serving without compensation from  
23 the state of Washington or are receiving from the state only  
24 reimbursement of expenses incurred or a predetermined allowance for  
25 such expenses.

26 **Sec. 7.** RCW 42.52.010 and 1998 c 7 s 1 are each amended to read as  
27 follows:

28 Unless the context clearly requires otherwise, the definitions in  
29 this section apply throughout this chapter.

30 (1) "Agency" means any state board, commission, bureau, committee,  
31 department, institution, division, or tribunal in the legislative,  
32 executive, or judicial branch of state government. "Agency" includes  
33 all elective offices, the state legislature, those institutions of  
34 higher education created and supported by the state government, and  
35 those courts that are parts of state government.

36 (2) "Head of agency" means the chief executive officer of an  
37 agency. In the case of an agency headed by a commission, board,  
38 committee, or other body consisting of more than one natural person,

1 agency head means the person or board authorized to appoint agency  
2 employees and regulate their conduct.

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

8 (4) "Ballot proposition" means any proposition as defined by RCW  
9 42.17.020 and includes initiatives to the legislature. For the  
10 purposes of RCW 42.52.180, an initiative to the legislature shall not  
11 be considered a ballot proposition during the time beginning ten days  
12 before the regular legislative session and ending on the last day of  
13 the session, or the day when the legislature takes final action on the  
14 initiative, whichever is first.

15 (5) "Beneficial interest" has the meaning ascribed to it under the  
16 Washington case law. However, an ownership interest in a mutual fund  
17 or similar investment pooling fund in which the owner has no management  
18 powers does not constitute a beneficial interest in the entities in  
19 which the fund or pool invests.

20 (~~(+5)~~) (6) "Compensation" means anything of economic value,  
21 however designated, that is paid, loaned, granted, or transferred, or  
22 to be paid, loaned, granted, or transferred for, or in consideration  
23 of, personal services to any person.

24 (~~(+6)~~) (7) "Confidential information" means (a) specific  
25 information, rather than generalized knowledge, that is not available  
26 to the general public on request or (b) information made confidential  
27 by law.

28 (~~(+7)~~) (8) "Contract" or "grant" means an agreement between two or  
29 more persons that creates an obligation to do or not to do a particular  
30 thing. "Contract" or "grant" includes, but is not limited to, an  
31 employment contract, a lease, a license, a purchase agreement, or a  
32 sales agreement.

33 (~~(+8)~~) (9) "Ethics boards" means the commission on judicial  
34 conduct, the legislative ethics board, and the executive ethics board.

35 (~~(+9)~~) (10) "Family" has the same meaning as "immediate family" in  
36 RCW 42.17.020.

37 (~~(+10)~~) (11) "Gift" means anything of economic value for which no  
38 consideration is given. "Gift" does not include:

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

5 (b) Items related to the outside business of the recipient that are  
6 customary and not related to the recipient's performance of official  
7 duties;

8 (c) Items exchanged among officials and employees or a social event  
9 hosted or sponsored by a state officer or state employee for coworkers;

10 (d) Payments by a governmental or nongovernmental entity of  
11 reasonable expenses incurred in connection with a speech, presentation,  
12 appearance, or trade mission made in an official capacity. As used in  
13 this subsection, "reasonable expenses" are limited to travel, lodging,  
14 and subsistence expenses incurred the day before through the day after  
15 the event;

16 (e) Items a state officer or state employee is authorized by law to  
17 accept;

18 (f) Payment of enrollment and course fees and reasonable travel  
19 expenses attributable to attending seminars and educational programs  
20 sponsored by a bona fide governmental or nonprofit professional,  
21 educational, trade, or charitable association or institution. As used  
22 in this subsection, "reasonable expenses" are limited to travel,  
23 lodging, and subsistence expenses incurred the day before through the  
24 day after the event;

25 (g) Items returned by the recipient to the donor within thirty days  
26 of receipt or donated to a charitable organization within thirty days  
27 of receipt;

28 (h) Campaign contributions reported under chapter 42.17 RCW;

29 (i) Discounts available to an individual as a member of an employee  
30 group, occupation, or similar broad-based group; and

31 (j) Awards, prizes, scholarships, or other items provided in  
32 recognition of academic or scientific achievement.

33 (~~(11)~~) (12) "Honorarium" means money or thing of value offered to  
34 a state officer or state employee for a speech, appearance, article, or  
35 similar item or activity in connection with the state officer's or  
36 state employee's official role.

37 (~~(12)~~) (13) "Official duty" means those duties within the  
38 specific scope of employment of the state officer or state employee as

1 defined by the officer's or employee's agency or by statute or the  
2 state Constitution.

3 (~~(13)~~) (14) "Participate" means to participate in state action or  
4 a proceeding personally and substantially as a state officer or state  
5 employee, through approval, disapproval, decision, recommendation, the  
6 rendering of advice, investigation, or otherwise but does not include  
7 preparation, consideration, or enactment of legislation or the  
8 performance of legislative duties.

9 (~~(14)~~) (15) "Person" means any individual, partnership,  
10 association, corporation, firm, institution, or other entity, whether  
11 or not operated for profit.

12 (~~(15)~~) (16) "Regulatory agency" means any state board,  
13 commission, department, or officer, except those in the legislative or  
14 judicial branches, authorized by law to conduct adjudicative  
15 proceedings, issue permits or licenses, or to control or affect  
16 interests of identified persons.

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

22 (~~(17)~~) (18) "State action" means any action on the part of an  
23 agency, including, but not limited to:

24 (a) A decision, determination, finding, ruling, or order; and

25 (b) A grant, payment, award, license, contract, transaction,  
26 sanction, or approval, or the denial thereof, or failure to act with  
27 respect to a decision, determination, finding, ruling, or order.

28 (~~(18)~~) (19) "State officer" means every person holding a position  
29 of public trust in or under an executive, legislative, or judicial  
30 office of the state. "State officer" includes judges of the superior  
31 court, judges of the court of appeals, justices of the supreme court,  
32 members of the legislature together with the secretary of the senate  
33 and the chief clerk of the house of representatives, holders of  
34 elective offices in the executive branch of state government, chief  
35 executive officers of state agencies, members of boards, commissions,  
36 or committees with authority over one or more state agencies or  
37 institutions, and employees of the state who are engaged in  
38 supervisory, policy-making, or policy-enforcing work. For the purposes

1 of this chapter, "state officer" also includes any person exercising or  
2 undertaking to exercise the powers or functions of a state officer.

3 ~~((19))~~ (20) "State employee" means an individual who is employed  
4 by an agency in any branch of state government. For purposes of this  
5 chapter, employees of the superior courts are not state officers or  
6 state employees.

7 ~~((20))~~ (21) "Thing of economic value," in addition to its  
8 ordinary meaning, includes:

9 (a) A loan, property interest, interest in a contract or other  
10 chose in action, and employment or another arrangement involving a  
11 right to compensation;

12 (b) An option, irrespective of the conditions to the exercise of  
13 the option; and

14 (c) A promise or undertaking for the present or future delivery or  
15 procurement.

16 ~~((21))~~ (22)(a) "Transaction involving the state" means a  
17 proceeding, application, submission, request for a ruling or other  
18 determination, contract, claim, case, or other similar matter that the  
19 state officer, state employee, or former state officer or state  
20 employee in question believes, or has reason to believe:

21 (i) Is, or will be, the subject of state action; or

22 (ii) Is one to which the state is or will be a party; or

23 (iii) Is one in which the state has a direct and substantial  
24 proprietary interest.

25 (b) "Transaction involving the state" does not include the  
26 following: Preparation, consideration, or enactment of legislation,  
27 including appropriation of moneys in a budget, or the performance of  
28 legislative duties by an officer or employee; or a claim, case,  
29 lawsuit, or similar matter if the officer or employee did not  
30 participate in the underlying transaction involving the state that is  
31 the basis for the claim, case, or lawsuit.

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