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HOUSE BILL 1806

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By Representatives Kenney, Haigh, Kessler, Morrell, Dickerson, Williams, P. Sullivan, Ericks, Anderson, McDermott, Wood, Linville, Moeller and Hudgins; by request of Governor Gregoire

Read first time 02/07/2005. Referred to Committee on State Government Operations & Accountability.

1 AN ACT Relating to encouraging the ethical transfer of technology  
2 for the economic benefit of the state; amending RCW 42.52.010,  
3 42.52.030, 42.52.200, and 42.52.360; and adding a new section to  
4 chapter 42.52 RCW.

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

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

8 Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this chapter.

10 (1) "Agency" means any state board, commission, bureau, committee,  
11 department, institution, division, or tribunal in the legislative,  
12 executive, or judicial branch of state government. "Agency" includes  
13 all elective offices, the state legislature, those institutions of  
14 higher education created and supported by the state government, and  
15 those courts that are parts of state government.

16 (2) "Head of agency" means the chief executive officer of an  
17 agency. In the case of an agency headed by a commission, board,  
18 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) "Beneficial interest" has the meaning ascribed to it under the  
9 Washington case law. However, an ownership interest in a mutual fund  
10 or similar investment pooling fund in which the owner has no management  
11 powers does not constitute a beneficial interest in the entities in  
12 which the fund or pool invests.

13 (5) "Compensation" means anything of economic value, however  
14 designated, that is paid, loaned, granted, or transferred, or to be  
15 paid, loaned, granted, or transferred for, or in consideration of,  
16 personal services to any person.

17 (6) "Confidential information" means (a) specific information,  
18 rather than generalized knowledge, that is not available to the general  
19 public on request or (b) information made confidential by law.

20 (7) "Contract" or "grant" means an agreement between two or more  
21 persons that creates an obligation to do or not to do a particular  
22 thing. "Contract" or "grant" includes, but is not limited to, an  
23 employment contract, a lease, a license, a purchase agreement, or a  
24 sales agreement.

25 (8) "Ethics boards" means the commission on judicial conduct, the  
26 legislative ethics board, and the executive ethics board.

27 (9) "Family" has the same meaning as "immediate family" in RCW  
28 42.17.020.

29 (10) "Gift" means anything of economic value for which no  
30 consideration is given. "Gift" does not include:

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

35 (b) Items related to the outside business of the recipient that are  
36 customary and not related to the recipient's performance of official  
37 duties;

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

3 (d) Payments by a governmental or nongovernmental entity of  
4 reasonable expenses incurred in connection with a speech, presentation,  
5 appearance, or trade mission made in an official capacity. As used in  
6 this subsection, "reasonable expenses" are limited to travel, lodging,  
7 and subsistence expenses incurred the day before through the day after  
8 the event;

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

11 (f) Payment of enrollment and course fees and reasonable travel  
12 expenses attributable to attending seminars and educational programs  
13 sponsored by a bona fide governmental or nonprofit professional,  
14 educational, trade, or charitable association or institution. As used  
15 in this subsection, "reasonable expenses" are limited to travel,  
16 lodging, and subsistence expenses incurred the day before through the  
17 day after the event;

18 (g) Items returned by the recipient to the donor within thirty days  
19 of receipt or donated to a charitable organization within thirty days  
20 of receipt;

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

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

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

26 (11) "Honorarium" means money or thing of value offered to a state  
27 officer or state employee for a speech, appearance, article, or similar  
28 item or activity in connection with the state officer's or state  
29 employee's official role.

30 (12) "Official duty" means those duties within the specific scope  
31 of employment of the state officer or state employee as defined by the  
32 officer's or employee's agency or by statute or the state Constitution.

33 (13) "Participate" means to participate in state action or a  
34 proceeding personally and substantially as a state officer or state  
35 employee, through approval, disapproval, decision, recommendation, the  
36 rendering of advice, investigation, or otherwise but does not include  
37 preparation, consideration, or enactment of legislation or the  
38 performance of legislative duties.

1 (14) "Person" means any individual, partnership, association,  
2 corporation, firm, institution, or other entity, whether or not  
3 operated for profit.

4 (15) "Regulatory agency" means any state board, commission,  
5 department, or officer, except those in the legislative or judicial  
6 branches, authorized by law to conduct adjudicative proceedings, issue  
7 permits or licenses, or to control or affect interests of identified  
8 persons.

9 (16) "Responsibility" in connection with a transaction involving  
10 the state, means the direct administrative or operating authority,  
11 whether intermediate or final, and either exercisable alone or through  
12 subordinates, effectively to approve, disapprove, or otherwise direct  
13 state action in respect of such transaction.

14 (17) "State action" means any action on the part of an agency,  
15 including, but not limited to:

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

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

20 (18) "State officer" means every person holding a position of  
21 public trust in or under an executive, legislative, or judicial office  
22 of the state. "State officer" includes judges of the superior court,  
23 judges of the court of appeals, justices of the supreme court, members  
24 of the legislature together with the secretary of the senate and the  
25 chief clerk of the house of representatives, holders of elective  
26 offices in the executive branch of state government, chief executive  
27 officers of state agencies, members of boards, commissions, or  
28 committees with authority over one or more state agencies or  
29 institutions, and employees of the state who are engaged in  
30 supervisory, policy-making, or policy-enforcing work. For the purposes  
31 of this chapter, "state officer" also includes any person exercising or  
32 undertaking to exercise the powers or functions of a state officer.

33 (19) "State employee" means an individual who is employed by an  
34 agency in any branch of state government. For purposes of this  
35 chapter, employees of the superior courts are not state officers or  
36 state employees.

37 (20) "State university" has the meaning as defined in RCW

1 28B.10.016 and also includes any research or technology institute  
2 affiliated with a state university, including without limitation, the  
3 Spokane Intercollegiate Research and Technology Institute.

4 (21) "State university research employee" means a state officer or  
5 state employee employed by a state university, but only to the extent  
6 the state officer or state employee is engaged in research, technology  
7 transfer, approved consulting activities related to research and  
8 technology transfer, or other incidental activities.

9 (22) "Thing of economic value," in addition to its ordinary  
10 meaning, includes:

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

14 (b) An option, irrespective of the conditions to the exercise of  
15 the option; and

16 (c) A promise or undertaking for the present or future delivery or  
17 procurement.

18 ~~((+21+))~~ (23)(a) "Transaction involving the state" means a  
19 proceeding, application, submission, request for a ruling or other  
20 determination, contract, claim, case, or other similar matter that the  
21 state officer, state employee, or former state officer or state  
22 employee in question believes, or has reason to believe:

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

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

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

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

34 **Sec. 2.** RCW 42.52.030 and 1996 c 213 s 3 are each amended to read  
35 as follows:

36 (1) No state officer or state employee, except as provided in  
37 subsection(~~(s)~~) (2) (~~and~~~~(3)~~) of this section, may be beneficially

1 interested, directly or indirectly, in a contract, sale, lease,  
2 purchase, or grant that may be made by, through, or is under the  
3 supervision of the officer or employee, in whole or in part, or accept,  
4 directly or indirectly, any compensation, gratuity, or reward from any  
5 other person beneficially interested in the contract, sale, lease,  
6 purchase, or grant.

7 ~~(2) ((No officer or employee of an institution of higher education  
8 or of the Spokane intercollegiate research and technology institute,  
9 except as provided in subsection (3) of this section, may be  
10 beneficially interested, directly or indirectly, in a contract or grant  
11 that may be made by, through, or is under the supervision of the  
12 officer or employee, in whole or in part, or accept, directly or  
13 indirectly, any compensation, gratuity, or reward from any other person  
14 beneficially interested in the contract or grant, unless the  
15 institution of higher education or the Spokane intercollegiate research  
16 and technology institute has in effect a written administrative process  
17 to identify and manage, reduce, or eliminate conflicting interests with  
18 respect to such transactions as adopted pursuant to the national  
19 science investigator financial disclosure (GPM 510) 1995 and the public  
20 health service regulations, 42 C.F.R. Part 50 and 45 C.F.R. Subtitle A  
21 as each of those regulations existed on June 6, 1996, and the state  
22 employee or state officer has complied with such policy.~~

23 ~~(3))~~ No state officer or state employee may participate in a  
24 transaction involving the state in his or her official capacity with a  
25 person of which the officer or employee is an officer, agent, employee,  
26 or member, or in which the officer or employee owns a beneficial  
27 interest, except that an officer or employee of an institution of  
28 higher education or the Spokane intercollegiate research and technology  
29 institute may serve as an officer, agent, employee, or member, or on  
30 the board of directors, board of trustees, advisory board, or committee  
31 or review panel for any nonprofit institute, foundation, or fundraising  
32 entity; and may serve as a member of an advisory board, committee, or  
33 review panel for a governmental or other nonprofit entity.

34 **Sec. 3.** RCW 42.52.200 and 1994 c 154 s 120 are each amended to  
35 read as follows:

36 (1) Each agency may adopt rules consistent with law, for use within  
37 the agency to protect against violations of this chapter.

1 (2) Each agency proposing to adopt rules under this section shall  
2 forward the rules to the appropriate ethics board before they may take  
3 effect. The board may submit comments to the agency regarding the  
4 proposed rules.

5 (3) This section applies to state universities only to the extent  
6 their activities are not subject to section 4 of this act.

7 NEW SECTION. Sec. 4. A new section is added to chapter 42.52 RCW  
8 to read as follows:

9 (1) Consistent with the state policy to encourage basic and applied  
10 scientific research by the state's research universities as stated in  
11 RCW 28B.140.005, each state university may develop, adopt, and  
12 implement one or more written administrative processes that shall, upon  
13 approval by the governor, apply in place of the obligations imposed on  
14 state universities and state university research employees under RCW  
15 42.52.030, 42.52.040, 42.52.080, 42.52.110, 42.52.120, 42.52.130,  
16 42.52.140, 42.52.150, and 42.52.160. A state university research  
17 employee in compliance with the processes authorized in this section  
18 shall be deemed to be in compliance with RCW 42.52.030, 42.52.040,  
19 42.52.080, 42.52.110, 42.52.120, 42.52.130, 42.52.140, 42.52.150, and  
20 42.52.160.

21 (2) The executive ethics board shall enforce activity subject to  
22 the written approval processes under this section, as provided in RCW  
23 42.52.360.

24 **Sec. 5.** RCW 42.52.360 and 1994 c 154 s 206 are each amended to  
25 read as follows:

26 (1) The executive ethics board shall enforce this chapter and rules  
27 adopted under it with respect to statewide elected officers and all  
28 other officers and employees in the executive branch, boards and  
29 commissions, and institutions of higher education.

30 (2) The executive ethics board shall enforce this chapter with  
31 regard to the activities of state university research employees as  
32 provided in this subsection.

33 (a) With respect to compliance with RCW 42.52.030, 42.52.110,  
34 42.52.130, 42.52.140, and 42.52.150, the administrative process shall  
35 be consistent with and adhere to no less than the current standards in  
36 regulations of the United States public health service and the office

1 of the secretary of the department of health and human services in  
2 Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity  
3 in research.

4 (b) With respect to compliance with RCW 42.52.040, 42.52.080, and  
5 42.52.120, the administrative process shall include a comprehensive  
6 system for the disclosure, review, and approval of outside work  
7 activities by state university research employees while assuring that  
8 such employees are fulfilling their employment obligations to the state  
9 university.

10 (c) With respect to compliance with RCW 42.52.160, the  
11 administrative process shall include a reasonable determination by the  
12 state university of acceptable private uses having de minimis costs to  
13 the state university and a method for establishing fair and reasonable  
14 reimbursement charges for private uses the costs of which are in excess  
15 of de minimis.

16 (3) The executive ethics board shall:

17 (a) Develop educational materials and training;

18 (b) Adopt rules and policies governing the conduct of business by  
19 the board, and adopt rules defining working hours for purposes of RCW  
20 42.52.180 and where otherwise authorized under chapter 154, Laws of  
21 1994;

22 (c) Issue advisory opinions;

23 (d) Investigate, hear, and determine complaints by any person or on  
24 its own motion;

25 (e) Impose sanctions including reprimands and monetary penalties;

26 (f) Recommend to the appropriate authorities suspension, removal  
27 from position, prosecution, or other appropriate remedy; and

28 (g) Establish criteria regarding the levels of civil penalties  
29 appropriate for violations of this chapter and rules adopted under it.

30 ~~((3))~~ (4) The board may:

31 (a) Issue subpoenas for the attendance and testimony of witnesses  
32 and the production of documentary evidence relating to any matter under  
33 examination by the board or involved in any hearing;

34 (b) Administer oaths and affirmations;

35 (c) Examine witnesses; and

36 (d) Receive evidence.

37 ~~((4))~~ (5) Except as provided in section 4 of this act, the

1 executive ethics board may review and approve agency policies as  
2 provided for in this chapter.

3 ~~((5))~~ (6) This section does not apply to state officers and state  
4 employees of the judicial branch.

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