
ENGROSSED SUBSTITUTE SENATE BILL 6009

State of Washington

62nd Legislature

2012 Regular Session

By Senate Government Operations, Tribal Relations & Elections
(originally sponsored by Senators Carrell, Schoesler, Becker, Morton,
Fain, Holmquist Newbry, Swecker, Delvin, Hill, and Roach)

READ FIRST TIME 02/01/12.

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

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

5 NEW SECTION. **Sec. 1.** The legislature finds that ensuring public
6 trust in government is among its paramount duties. The public expects
7 its elected officials and state employees to adhere to the highest
8 ethical standards during their service, and this includes a commitment
9 to full and independent investigations, with proper penalties, in cases
10 where the ethics in public service act is violated.

11 **Sec. 2.** RCW 42.52.010 and 2011 c 60 s 28 are each reenacted and
12 amended to read as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

15 (1) "Agency" means any state board, commission, bureau, committee,
16 department, institution, division, or tribunal in the legislative,
17 executive, or judicial branch of state government. "Agency" includes

1 all elective offices, the state legislature, those institutions of
2 higher education created and supported by the state government, and
3 those courts that are parts of state government.

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

9 (3) "Beneficial interest" has the meaning ascribed to it under the
10 Washington case law. However, an ownership interest in a mutual fund
11 or similar investment pooling fund in which the owner has no management
12 powers does not constitute a beneficial interest in the entities in
13 which the fund or pool invests.

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

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

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

26 (7) "Ethics" means adherence to the standards as set forth in this
27 chapter.

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

30 ~~((+8))~~ (9) "Family" has the same meaning as "immediate family" in
31 RCW 42.17A.005.

32 ~~((+9))~~ (10) "Gift" means anything of economic value for which no
33 consideration is given. "Gift" does not include:

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

1 (b) Items related to the outside business of the recipient that are
2 customary and not related to the recipient's performance of official
3 duties;

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

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

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

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

21 (g) Items returned by the recipient to the donor within thirty days
22 of receipt or donated to a charitable organization within thirty days
23 of receipt;

24 (h) Campaign contributions reported under chapter 42.17A RCW;

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

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

29 ~~((+10+))~~ (11) "Head of agency" means the chief executive officer of
30 an agency. In the case of an agency headed by a commission, board,
31 committee, or other body consisting of more than one natural person,
32 agency head means the person or board authorized to appoint agency
33 employees and regulate their conduct.

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

1 (~~(12)~~) (13) "Official duty" means those duties within the
2 specific scope of employment of the state officer or state employee as
3 defined by the officer's or employee's agency or by statute or the
4 state Constitution.

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

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

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

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

24 (~~(17)~~) (18) "State action" means any action on the part of an
25 agency, including, but not limited to:

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

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

30 (~~(18)~~) (19) "State employee" means an individual who is employed
31 by an agency in any branch of state government. For purposes of this
32 chapter, employees of the superior courts are not state officers or
33 state employees.

34 (~~(19)~~) (20) "State officer" means every person holding a position
35 of public trust in or under an executive, legislative, or judicial
36 office of the state. "State officer" includes judges of the superior
37 court, judges of the court of appeals, justices of the supreme court,
38 members of the legislature together with the secretary of the senate

1 and the chief clerk of the house of representatives, holders of
2 elective offices in the executive branch of state government, chief
3 executive officers of state agencies, members of boards, commissions,
4 or committees with authority over one or more state agencies or
5 institutions, and employees of the state who are engaged in
6 supervisory, policy-making, or policy-enforcing work. For the purposes
7 of this chapter, "state officer" also includes any person exercising or
8 undertaking to exercise the powers or functions of a state officer.

9 ~~((+20+))~~ (21) "Thing of economic value," in addition to its
10 ordinary 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+))~~ (22)(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 ~~((+22+))~~ (23) "University" includes "state universities" and
35 "regional universities" as defined in RCW 28B.10.016 and also includes
36 any research or technology institute affiliated with a university,
37 including ~~((without limitation, the Spokane Intercollegiate Research~~

1 and—Technology—Institute—and—the—Washington—Technology—Center))
2 innovate Washington.

3 ((+23)) (24) "University research employee" means a state officer
4 or state employee employed by a university, but only to the extent the
5 state officer or state employee is engaged in research, technology
6 transfer, approved consulting activities related to research and
7 technology transfer, or other incidental activities.

8 **Sec. 3.** RCW 42.52.120 and 1997 c 318 s 1 are each amended to read
9 as follows:

10 (1) No state officer or state employee may receive any thing of
11 economic value under any contract or grant outside of his or her
12 official duties. The prohibition in this subsection does not apply
13 where the state officer or state employee has complied with RCW
14 42.52.030((+2)) or each of the following conditions are met:

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

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

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

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

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

27 (f) The contract or grant would not require unauthorized disclosure
28 of confidential information; and

29 (g) The state officer or state employee has attended an ethics
30 training approved by the appropriate ethics board within the past
31 twenty-four months.

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

36 (a) The contract or grant is awarded or issued as a result of an

1 open and competitive bidding process in which more than one bid or
2 grant application was received; or

3 (b) The contract or grant is awarded or issued as a result of an
4 open and competitive bidding or selection process in which the
5 officer's or employee's bid or proposal was the only bid or proposal
6 received and the officer or employee has been advised by the
7 appropriate ethics board, before execution of the contract or grant,
8 that the contract or grant would not be in conflict with the proper
9 discharge of the officer's or employee's official duties; or

10 (c) The process for awarding the contract or issuing the grant is
11 not open and competitive, but the officer or employee has been advised
12 by the appropriate ethics board that the contract or grant would not be
13 in conflict with the proper discharge of the officer's or employee's
14 official duties.

15 (3) A state officer or state employee awarded a contract or issued
16 a grant in compliance with subsection (2) of this section shall file
17 the contract or grant with the appropriate ethics board within thirty
18 days after the date of execution; however, if proprietary formulae,
19 designs, drawings, or research are included in the contract or grant,
20 the proprietary formulae, designs, drawings, or research may be deleted
21 from the contract or grant filed with the appropriate ethics board.

22 (4) This section does not prevent a state officer or state employee
23 from receiving compensation contributed from the treasury of the United
24 States, another state, county, or municipality if the compensation is
25 received pursuant to arrangements entered into between such state,
26 county, municipality, or the United States and the officer's or
27 employee's agency. This section does not prohibit a state officer or
28 state employee from serving or performing any duties under an
29 employment contract with a governmental entity.

30 (5) As used in this section, "officer" and "employee" do not
31 include officers and employees who, in accordance with the terms of
32 their employment or appointment, are serving without compensation from
33 the state of Washington or are receiving from the state only
34 reimbursement of expenses incurred or a predetermined allowance for
35 such expenses.

36 **Sec. 4.** RCW 42.52.420 and 2000 c 211 s 1 are each amended to read
37 as follows:

1 (1) After the filing of any complaint, except as provided in RCW
2 42.52.450, the staff of the appropriate ethics board shall investigate
3 the complaint as provided in this subsection (1).

4 (a) The investigation shall ~~((be limited to))~~ investigate the
5 allegations contained in the complaint but may also, in the discretion
6 of the investigating ethics board, investigate other potential ethics
7 violations discovered during the course of its investigation when the
8 employee is not subject to the civil service laws as set forth in
9 chapter 41.06 or 41.56 RCW.

10 (b) Agency staff may assist ethics board staff in carrying out the
11 investigation, but in all cases ethics board staff must oversee the
12 investigation. Agency staff with actual or apparent conflicts of
13 interest because of a relationship with the persons under investigation
14 must disclose this relationship. Should the ethics board determine
15 that there is a conflict of interest that may affect the investigation,
16 the agency shall designate an independent employee with no conflict of
17 interest to assist the ethics board with its investigation.

18 (c) When the investigation involves an employee exempt under
19 chapter 41.06 or 41.56 RCW, and in the discretion of the ethics board,
20 the ethics board may request the assistance of the office of the
21 attorney general, which may be used to conduct or assist with an
22 investigation. If the office of the attorney general approves the
23 request, a contracted investigator may be used to assist or conduct an
24 investigation at the office's discretion. In cases where a contractor
25 is authorized, the investigation shall be limited to ninety days in
26 duration. The investigation may be extended for an additional ninety
27 days but only upon the approval of the office of the attorney general
28 when good cause to do so is shown.

29 (2) The results of the investigation shall be reduced to writing
30 and the staff shall either make a determination that the complaint
31 should be dismissed pursuant to RCW 42.52.425, or recommend to the
32 board that there is or that there is not reasonable cause to believe
33 that a violation of this chapter or rules adopted under it has been or
34 is being committed.

35 (3) The board's determination on reasonable cause shall be provided
36 to the complainant and to the person named in such complaint.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 42.52 RCW
2 to read as follows:

3 (1) Each agency shall designate an ethics advisor or advisors to
4 provide informal ethics advice to state officers and employees and to
5 ensure uniformity in the agency's operations with respect to the ethics
6 in public service law. Agencies shall inform the appropriate ethics
7 board of their designated advisors, and the advisors shall receive
8 regular training from the appropriate ethics board on a schedule to be
9 determined by the appropriate ethics board. Ethics advisors may
10 solicit informal and formal advice from the appropriate ethics board
11 and may also serve as a point of contact within an agency to assist
12 with ethics investigations or to coordinate ethics trainings and
13 updates.

14 (2) Every state officer and employee shall attend an ethics
15 training approved by the appropriate ethics board within sixty days of
16 taking office or employment. Beginning January 1, 2013, every state
17 officer and state employee shall attend an ethics training approved by
18 the appropriate ethics board in coordination with other agency-provided
19 training, including sexual harassment training, but no less than every
20 three years. Every state officer and state employee subject to RCW
21 42.52.150(4) must be provided specialized or enhanced ethics training
22 approved by the appropriate ethics board every three years thereafter.

--- END ---