

---

HOUSE BILL 1867

---

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Pollet, Hudgins, Upthegrove, Bergquist, Fitzgibbon, Appleton, Ryu, and Fey

Read first time 02/13/13. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to ethical standards for public officers and  
2 agencies; and amending RCW 42.23.020, 42.23.030, 42.23.040, 42.23.050,  
3 and 42.23.070.

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

5 **Sec. 1.** RCW 42.23.020 and 1961 c 268 s 3 are each amended to read  
6 as follows:

7 ~~((For the purpose of chapter 268, Laws of 1961:))~~ The definitions  
8 in this section apply throughout this chapter unless the context  
9 clearly requires otherwise.

10 (1) "Municipality" ~~((shall))~~ includes all counties, cities, towns,  
11 districts, and other municipal corporations and quasi municipal  
12 corporations organized under the laws of the state of Washington~~((+))~~.

13 (2) "Municipal officer" and "officer" ~~((shall))~~ each include all  
14 elected and appointed officers of a municipality, together with all  
15 deputies and assistants of such an officer, and all persons exercising  
16 or undertaking to exercise any of the powers or functions of a  
17 municipal officer~~((+))~~.

18 (3) "Contract" ~~((shall))~~ includes any contract, sale, lease, or  
19 purchase~~((+))~~.

1 (4) "Contracting party" (~~shall~~) includes any person, partnership,  
2 association, cooperative, corporation, or other business entity which  
3 is a party to a contract with a municipality.

4 (5) "Apparent conflict of interest" means the appearance of a  
5 private interest, actual or not, that a reasonable person would  
6 conclude based on the circumstances is likely to compromise the  
7 officer's or employee's judgment or is in conflict with the proper  
8 discharge of the officer's or employee's official duties.

9 (6) "Beneficial interest" has the definition in RCW 42.52.010.

10 (7) "Municipal employee" or "employee" means an individual who is  
11 employed by any department in any branch of municipal government.

12 (8) "Participate" means to participate in municipal action or a  
13 proceeding personally and substantially as a municipal officer or  
14 municipal employee, through approval, disapproval, decision,  
15 recommendation, the rendering of advice, investigation, or otherwise  
16 but does not include preparation, consideration, or enactment of  
17 legislation or the performance of legislative duties.

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

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

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

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

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

34 **Sec. 2.** RCW 42.23.030 and 2007 c 298 s 1 are each amended to read  
35 as follows:

36 (1) No municipal officer or municipal employee shall be  
37 beneficially interested, directly or indirectly, in any contract which

1 may be made by, through, or under the supervision of such officer or  
2 employee, in whole or in part, or which may be made for the benefit of  
3 his or her office or position, or accept, directly or indirectly, any  
4 compensation, gratuity or reward in connection with such contract from  
5 any other person beneficially interested therein. This section shall  
6 not apply in the following cases:

7 ((+1)) (a) The furnishing of electrical, water, or other utility  
8 services by a municipality engaged in the business of furnishing such  
9 services, at the same rates and on the same terms as are available to  
10 the public generally;

11 ((+2)) (b) The designation of public depositaries for municipal  
12 funds;

13 ((+3)) (c) The publication of legal notices required by law to be  
14 published by any municipality, upon competitive bidding or at rates not  
15 higher than prescribed by law for members of the general public;

16 ((+4)) (d) The designation of a school director as clerk or as  
17 both clerk and purchasing agent of a school district;

18 ((+5)) (e) The employment of any person by a municipality for  
19 unskilled day labor at wages not exceeding two hundred dollars in any  
20 calendar month. The exception provided in this subsection does not  
21 apply to a county with a population of one hundred twenty-five thousand  
22 or more, a city with a population of more than one thousand five  
23 hundred, an irrigation district encompassing more than fifty thousand  
24 acres, or a first-class school district;

25 ((+6)(a)) (f)(i) The letting of any other contract in which the  
26 total amount received under the contract or contracts by the municipal  
27 officer or the municipal officer's business does not exceed one  
28 thousand five hundred dollars in any calendar month.

29 ((+b)) (ii) However, in the case of a particular officer of a  
30 second-class city or town, or a noncharter optional code city, or a  
31 member of any county fair board in a county which has not established  
32 a county purchasing department pursuant to RCW 36.32.240, the total  
33 amount of such contract or contracts authorized in this subsection  
34 ((+6)) (1)(f) may exceed one thousand five hundred dollars in any  
35 calendar month but shall not exceed eighteen thousand dollars in any  
36 calendar year.

37 ((+e)(i)) (iii)(A) In the case of a particular officer of a rural  
38 public hospital district, as defined in RCW 70.44.460, the total amount

1 of such contract or contracts authorized in this subsection ((+6+))  
2 (1)(f) may exceed one thousand five hundred dollars in any calendar  
3 month, but shall not exceed twenty-four thousand dollars in any  
4 calendar year.

5 ((+ii+)) (B) At the beginning of each calendar year, beginning with  
6 the 2006 calendar year, the legislative authority of the rural public  
7 hospital district shall increase the calendar year limitation described  
8 in this subsection ((+6+)(e+)) (1)(f)(iii) by an amount equal to the  
9 dollar amount for the previous calendar year multiplied by the change  
10 in the consumer price index as of the close of the twelve-month period  
11 ending December 31st of that previous calendar year. If the new dollar  
12 amount established under this subsection is not a multiple of ten  
13 dollars, the increase shall be rounded to the next lowest multiple of  
14 ten dollars. As used in this subsection, "consumer price index" means  
15 the consumer price index compiled by the bureau of labor statistics,  
16 United States department of labor for the state of Washington. If the  
17 bureau of labor statistics develops more than one consumer price index  
18 for areas within the state, the index covering the greatest number of  
19 people, covering areas exclusively within the boundaries of the state,  
20 and including all items shall be used.

21 ((+d+)) (iv) The exceptions provided in this subsection ((+6+))  
22 (1)(f) do not apply to:

23 ((+i+)) (A) A sale or lease by the municipality as the seller or  
24 lessor;

25 ((+ii+)) (B) The letting of any contract by a county with a  
26 population of one hundred twenty-five thousand or more, a city with a  
27 population of ten thousand or more, or an irrigation district  
28 encompassing more than fifty thousand acres; or

29 ((+iii+)) (C) Contracts for legal services, except for  
30 reimbursement of expenditures.

31 ((+e+)) (v) The municipality shall maintain a list of all contracts  
32 that are awarded under this subsection ((+6+)) (1)(f). The list must  
33 be made available for public inspection and copying;

34 ((+7+)) (g) The leasing by a port district as lessor of port  
35 district property to a municipal officer or to a contracting party in  
36 which a municipal officer may be beneficially interested, if in  
37 addition to all other legal requirements, a board of three  
38 disinterested appraisers and the superior court in the county where the

1 property is situated finds that all terms and conditions of such lease  
2 are fair to the port district and are in the public interest. The  
3 appraisers must be appointed from members of the American Institute of  
4 Real Estate Appraisers by the presiding judge of the superior court;

5 ~~((+8))~~ (h) The letting of any employment contract for the driving  
6 of a school bus in a second-class school district if the terms of such  
7 contract are commensurate with the pay plan or collective bargaining  
8 agreement operating in the district;

9 ~~((+9))~~ (i) The letting of an employment contract as a substitute  
10 teacher or substitute educational aide to an officer of a second-class  
11 school district that has two hundred or fewer full-time equivalent  
12 students, if the terms of the contract are commensurate with the pay  
13 plan or collective bargaining agreement operating in the district and  
14 the board of directors has found, consistent with the written policy  
15 under RCW 28A.330.240, that there is a shortage of substitute teachers  
16 in the school district;

17 ~~((+10))~~ (j) The letting of any employment contract to the spouse  
18 of an officer of a school district, when such contract is solely for  
19 employment as a substitute teacher for the school district. This  
20 exception applies only if the terms of the contract are commensurate  
21 with the pay plan or collective bargaining agreement applicable to all  
22 district employees and the board of directors has found, consistent  
23 with the written policy under RCW 28A.330.240, that there is a shortage  
24 of substitute teachers in the school district;

25 ~~((+11))~~ (k) The letting of any employment contract to the spouse  
26 of an officer of a school district if the spouse was under contract as  
27 a certificated or classified employee with the school district before  
28 the date in which the officer assumes office and the terms of the  
29 contract are commensurate with the pay plan or collective bargaining  
30 agreement operating in the district. However, in a second-class school  
31 district that has less than two hundred full-time equivalent students  
32 enrolled at the start of the school year as defined in RCW 28A.150.040,  
33 the spouse is not required to be under contract as a certificated or  
34 classified employee before the date on which the officer assumes  
35 office;

36 ~~((+12))~~ (l) The authorization, approval, or ratification of any  
37 employment contract with the spouse of a public hospital district  
38 commissioner if: ~~((+a))~~ (i) The spouse was employed by the public

1 hospital district before the date the commissioner was initially  
2 elected; ~~((b))~~ (ii) the terms of the contract are commensurate with  
3 the pay plan or collective bargaining agreement operating in the  
4 district for similar employees; ~~((c))~~ (iii) the interest of the  
5 commissioner is disclosed to the board of commissioners and noted in  
6 the official minutes or similar records of the public hospital district  
7 prior to the letting or continuation of the contract; and ~~((d))~~ (iv)  
8 and the commissioner does not vote on the authorization, approval, or  
9 ratification of the contract or any conditions in the contract.

10 (2) A municipal officer may not vote in the authorization,  
11 approval, or ratification of a contract in which he or she is  
12 beneficially interested even though one of the exemptions allowing the  
13 awarding of such a contract applies. The interest of the municipal  
14 officer must be disclosed to the governing body of the municipality and  
15 noted in the official minutes or similar records of the municipality  
16 before the formation of the contract.

17 (3) Except as otherwise provided in subsection (1) of this section,  
18 no municipal officer or municipal employee may participate in a  
19 transaction involving the municipality in his or her official capacity  
20 with a contracting party of which the officer or employee is an  
21 officer, agent, employee, or member, or in which the officer or  
22 employee has a beneficial interest.

23 **Sec. 3.** RCW 42.23.040 and 1999 c 261 s 3 are each amended to read  
24 as follows:

25 (1) A municipal officer or municipal employee is not interested in  
26 a contract, within the meaning of RCW 42.23.030, if the officer or  
27 employee has only a remote interest in the contract and the extent of  
28 the interest is disclosed to the governing body of the municipality of  
29 which the officer is an officer, or the employee is an employee, and  
30 noted in the official minutes or similar records of the municipality  
31 prior to the formation of the contract, and thereafter the governing  
32 body authorizes, approves, or ratifies the contract in good faith by a  
33 vote of its membership sufficient for the purpose without counting the  
34 vote or votes of ~~((the))~~ any officer having ~~((the))~~ a remote interest.

35 (2) As used in this section, "remote interest" means:

36 ~~((1))~~ (a) That of a nonsalaried officer of a nonprofit  
37 corporation;

1 ((+2)) (b) That of an employee or agent of a contracting party  
2 where the compensation of such employee or agent consists entirely of  
3 fixed wages or salary;

4 ((+3)) (c) That of a landlord or tenant of a contracting party;

5 ((+4)) (d) That of a holder of less than one percent of the shares  
6 of a corporation or cooperative which is a contracting party.

7 (3) None of the provisions of this section are applicable to any  
8 officer or employee interested in a contract, even if the officer's or  
9 employee's interest is only remote, if the officer or employee  
10 influences or attempts to influence any other officer or employee of  
11 the municipality (~~(of which he or she is an officer)~~) to enter into the  
12 contract.

13 **Sec. 4.** RCW 42.23.050 and 1999 c 261 s 4 are each amended to read  
14 as follows:

15 Any contract made in violation of the provisions of this chapter is  
16 void and the performance thereof, in full or in part, by a contracting  
17 party shall not be the basis of any claim against the municipality.  
18 Any officer or employee violating the provisions of this chapter is  
19 liable to the municipality of which he or she is an officer or employee  
20 for a penalty in the amount of five hundred dollars, in addition to  
21 such other civil or criminal liability or penalty as may otherwise be  
22 imposed upon the officer or employee by law.

23 In addition to all other penalties, civil or criminal, the  
24 violation by any officer of the provisions of this chapter may be  
25 grounds for forfeiture of his or her office.

26 **Sec. 5.** RCW 42.23.070 and 1994 c 154 s 121 are each amended to  
27 read as follows:

28 (1) No municipal officer or municipal employee may use his or her  
29 position to secure special privileges or exemptions for himself,  
30 herself, or others.

31 (2) No municipal officer or employee may, directly or indirectly,  
32 give or receive or agree to receive any compensation, gift, reward, or  
33 gratuity from a source except the employing municipality, for a matter  
34 connected with or related to the officer's or employee's services as  
35 such an officer or employee unless otherwise provided for by law.

1           (3) No municipal officer or municipal employee may accept  
2 employment or engage in business or professional activity that the  
3 officer or employee might reasonably expect would require or induce him  
4 or her by reason of his or her (~~official~~) position to disclose  
5 confidential information acquired by reason of his or her (~~official~~)  
6 position.

7           (4) No municipal officer or municipal employee may disclose  
8 confidential information gained by reason of the officer's or  
9 employee's position, nor may the officer or employee otherwise use such  
10 information for his or her personal gain or benefit.

11           (5) No municipal officer or municipal employee may accept  
12 employment, paid or unpaid, or engage in any business or professional  
13 activity in a supervisory capacity of any kind that is an apparent  
14 conflict of interest.

--- END ---