
SENATE BILL 5063

State of Washington

63rd Legislature

2013 Regular Session

By Senators Carrell, Benton, Hargrove, Padden, and Shin

Read first time 01/16/13. Referred to Committee on Governmental Operations .

1 AN ACT Relating to ethics in public service; amending RCW
2 42.52.050, 42.52.120, 42.52.360, 42.52.410, 42.52.420, and 42.52.460;
3 reenacting and amending RCW 42.52.010; adding new sections to chapter
4 42.52 RCW; creating a new section; and repealing RCW 42.52.500.

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

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

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

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

16 (1) "Agency" means any state board, commission, bureau, committee,
17 department, institution, division, or tribunal in the legislative,
18 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 42.52.050 and 2005 c 274 s 292 are each amended to
9 read as follows:

10 (1) No state officer or state employee may accept employment or
11 engage in any business or professional activity that the officer or
12 employee might reasonably expect would require or induce him or her to
13 make an unauthorized disclosure of confidential information acquired by
14 the official or employee by reason of the official's or employee's
15 official position.

16 (2) No state officer or state employee may make a disclosure of
17 confidential information gained by reason of the officer's or
18 employee's official position or otherwise use the information for his
19 or her personal gain or benefit or the gain or benefit of another,
20 unless the disclosure has been authorized by statute or by the terms of
21 a contract involving (a) the state officer's or state employee's agency
22 and (b) the person or persons who have authority to waive the
23 confidentiality of the information.

24 (3) No state officer or state employee may disclose confidential
25 information to any person not entitled or authorized to receive the
26 information.

27 (4) No state officer or state employee may intentionally conceal a
28 record if the officer or employee knew the record was required to be
29 released under chapter 42.56 RCW, was under a personal obligation to
30 release the record, and failed to do so. This subsection does not
31 apply where the decision to withhold the record was made in good faith.
32 As used in this subsection, "intentionally concealing a record" means
33 that the state officer or state employee knew the record was required
34 to be released under chapter 42.56 RCW, knew of the record's existence,
35 and intentionally did not provide the record to the requestor within
36 the time frame established by the agency.

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. 6.** RCW 42.52.360 and 2005 c 106 s 5 are each amended to read
37 as follows:

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

5 (2) The executive ethics board shall enforce this chapter with
6 regard to the activities of university research employees as provided
7 in this subsection.

8 (a) With respect to compliance with RCW 42.52.030, 42.52.110,
9 42.52.130, 42.52.140, and 42.52.150, the administrative process shall
10 be consistent with and adhere to no less than the current standards in
11 regulations of the United States public health service and the office
12 of the secretary of the department of health and human services in
13 Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity
14 in research.

15 (b) With respect to compliance with RCW 42.52.040, 42.52.080, and
16 42.52.120, the administrative process shall include a comprehensive
17 system for the disclosure, review, and approval of outside work
18 activities by university research employees while assuring that such
19 employees are fulfilling their employment obligations to the
20 university.

21 (c) With respect to compliance with RCW 42.52.160, the
22 administrative process shall include a reasonable determination by the
23 university of acceptable private uses having de minimis costs to the
24 university and a method for establishing fair and reasonable
25 reimbursement charges for private uses the costs of which are in excess
26 of de minimis.

27 (3) The executive ethics board shall:

28 (a) Develop educational materials and training;

29 (b) Adopt rules and policies governing the conduct of business by
30 the board, and adopt rules defining working hours for purposes of RCW
31 42.52.180 and where otherwise authorized under chapter 154, Laws of
32 1994;

33 (c) Issue advisory opinions;

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

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

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

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

3 (4) The board may:

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

7 (b) Administer oaths and affirmations;

8 (c) Examine witnesses; ~~((and))~~

9 (d) Receive evidence; and

10 (e) Delegate its authority to issue complaints to the board's
11 executive director.

12 (5) Except as provided in RCW 42.52.220, the executive ethics board
13 may review and approve agency policies as provided for in this chapter.

14 (6) This section does not apply to state officers and state
15 employees of the judicial branch.

16 **Sec. 7.** RCW 42.52.410 and 1994 c 154 s 211 are each amended to
17 read as follows:

18 (1) A person may, personally or by his or her attorney, make, sign,
19 and file with the appropriate ethics board a complaint on a form
20 provided by the appropriate ethics board. The complaint shall state
21 the name of the person alleged to have violated this chapter or rules
22 adopted under it and the particulars thereof, and contain such other
23 information as may be required by the appropriate ethics board.

24 (2) If it has reason to believe that any person has been engaged or
25 is engaging in a violation of this chapter or rules adopted under it,
26 an ethics board, or the executive director under authority delegated
27 under RCW 42.52.360, may issue a complaint.

28 **Sec. 8.** RCW 42.52.420 and 2000 c 211 s 1 are each amended to read
29 as follows:

30 (1) After the filing of any complaint, except as provided in RCW
31 42.52.450, the staff of the appropriate ethics board shall investigate
32 the complaint as provided in this subsection (1).

33 (a) The ~~((investigation))~~ investigating ethics board shall ~~((be~~
34 ~~limited to))~~ investigate the allegations contained in the complaint but
35 may also, in its discretion, investigate other potential ethics

1 violations discovered during the course of its investigation when the
2 employee is not subject to the civil service laws as set forth in
3 chapter 41.06 or 41.56 RCW.

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

12 (c) When the investigation involves an employee exempt under
13 chapter 41.06 or 41.56 RCW, and in the discretion of the ethics board,
14 the ethics board may request the assistance of the office of the
15 attorney general or a contract investigator in conducting its
16 investigation.

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

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

25 **Sec. 9.** RCW 42.52.460 and 1994 c 154 s 216 are each amended to
26 read as follows:

27 Any person who has notified the appropriate ethics board and the
28 attorney general in writing that there is reason to believe that RCW
29 42.52.180 is being or has been violated may, in the name of the state,
30 bring a citizen action for any of the actions authorized under this
31 chapter. A citizen action may be brought only if the appropriate
32 ethics board or the attorney general have failed to commence an action
33 under this chapter within forty-five days after notice from the person,
34 the person has thereafter notified the appropriate ethics board and the
35 attorney general that the person will commence a citizen's action
36 within ten days upon their failure to commence an action, and the
37 appropriate ethics board and the attorney general have in fact failed

1 to bring an action within ten days of receipt of the second notice. An
2 action is deemed to have been commenced when the appropriate ethics
3 board or the board's executive director accepts a complaint for filing
4 and initiates a preliminary investigation.

5 If the person who brings the citizen's action prevails, the
6 judgment awarded shall escheat to the state, but the person shall be
7 entitled to be reimbursed by the state of Washington for costs and
8 attorneys' fees incurred. If a citizen's action that the court finds
9 was brought without reasonable cause is dismissed, the court may order
10 the person commencing the action to pay all costs of trial and
11 reasonable attorneys' fees incurred by the defendant.

12 Upon commencement of a citizen action under this section, at the
13 request of a state officer or state employee who is a defendant, the
14 office of the attorney general shall represent the defendant if the
15 attorney general finds that the defendant's conduct complied with this
16 chapter and was within the scope of employment.

17 NEW SECTION. **Sec. 10.** A new section is added to chapter 42.52 RCW
18 to read as follows:

19 (1) Each agency shall designate an ethics advisor or advisors to
20 provide informal ethics advice to state officers and employees and to
21 ensure uniformity in the agency's operations with respect to the ethics
22 in public service law. Agencies shall inform the appropriate ethics
23 board of their designated advisors, and the advisors shall receive
24 regular training from the appropriate ethics board on a schedule to be
25 determined by the appropriate ethics board. Ethics advisors may
26 solicit informal and formal advice from the appropriate ethics board
27 and may also serve as a point of contact within an agency to assist
28 with ethics investigations or to coordinate ethics trainings and
29 updates.

30 (2) Every state officer and employee shall attend an ethics
31 training approved by the appropriate ethics board within sixty days of
32 taking office or employment. Beginning January 1, 2014, every state
33 officer and state employee shall attend an ethics training approved by
34 the appropriate ethics board in coordination with other agency-provided
35 training, including sexual harassment training, but no less than every
36 three years. Every state officer and state employee subject to RCW

1 42.52.150(4) must be provided specialized or enhanced ethics training
2 approved by the appropriate ethics board every three years thereafter.

3 NEW SECTION. **Sec. 11.** RCW 42.52.500 (Optional hearings by
4 administrative law judge) and 1994 c 154 s 220 are each repealed.

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