

SENATE BILL REPORT

SB 5170

As Reported by Senate Committee On:
State Government & Elections, February 5, 2021

Title: An act relating to employment after public service in state government.

Brief Description: Concerning employment after public service in state government.

Sponsors: Senators Carlyle, Hunt, Kuderer, Lias, Saldaña and Wilson, C..

Brief History:

Committee Activity: State Government & Elections: 1/27/21, 2/05/21 [DPS, DNP].

Brief Summary of First Substitute Bill

- Prohibits various state officers and employees from receiving compensation for certain lobbying activities for one year after leaving state service.
- Requires state officers and employees subject to that prohibition to file post-employment disclosure statements.
- Requires display of post-employment disclosure statements on the Executive Ethics Board's website.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5170 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Hasegawa.

Minority Report: Do not pass.

Signed by Senators Wilson, J., Ranking Member; Hawkins.

Staff: Samuel Brown (786-7470)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Post-Public Employment Restrictions. Former state officers and employees are barred from entering into certain employment and contractual arrangements after they leave public service. A former officer or employee may not accept employment or receive compensation from an employer for one year after leaving public service if:

- the former officer or employee was in a position to affect contract negotiations or administration with the employer within two years before leaving public service;
- the contract or multiple contracts had a total value over \$10,000; and
- the employment opportunity includes fulfilling or implementing the contract provisions.

A former officer or employee may not have a beneficial interest in a contract or grant for two years after leaving public service, if the former officer or employee participated in the specific legislative or executive funding of that contract or grant. A former officer or employee may never accept employment or compensation from an employer if the former officer or employee has reason to believe the employer intended that the offer would influence the officer or employee's duties in public service, or would compensate or reward the officer or employee for past performance. The ban also applies where a reasonable person would believe the offer was made for the purpose of influencing the performance of the officer or employee while in public service. A former officer or employee may not assist another person in any transaction involving the state if the former officer or employee participated in the transaction during state employment.

Enforcement. The Legislative Ethics Board, the Executive Ethics Board, and the Commission on Judicial Conduct have authority over the members and employees of their respective branches of government regarding the enforcement of state ethics laws. The Attorney General may investigate persons not under the jurisdiction of the boards who are suspected of violating state ethics laws. Each board has authority to issue civil penalties of up to \$5,000 per violation of state ethics laws, or up to three times the value of each thing received or sought that was in violation of ethics law.

Summary of Bill (First Substitute): Post-Employment Prohibitions. Certain state officers and employees are prohibited, for one year after leaving public service, from receiving compensation to serve as a lobbyist, practicing or appearing before state agencies, or attempting to influence state actions on behalf of another person or entity. The following former officers and employees are banned from lobbying or attempting to influence any state agency for one year after leaving state employment:

- statewide elected officials and state legislators;
- heads of cabinet agencies and top administrators who report directly to those agency heads or to statewide elected officials;
- the Chief Clerk of the House of Representatives, the Secretary of the Senate, and certain top administrators of each legislative chamber; and
- senior executive staff managed by the heads of executive cabinet agencies, of legislative agencies, and of agencies managed by statewide elected officials.

The following former officers and employees are banned from lobbying or attempting to influence their former agency or practicing or appearing before their former agency for one year after leaving state employment:

- heads of non-cabinet agencies and their chiefs of staff;
- top administrators who report directly to those agency heads; and
- senior executive staff of those agencies.

Senior executive staff include state employees and officers who exercise significant discretion and judgment on final agency policies. Each agency must annually submit the name and position of each senior executive staff member to the relevant ethics board and periodically update the list during the year to reflect staff changes.

Exceptions. The one year post-employment ban on lobbying or influencing state agencies does not apply to persons working for another state, local, or federal agency, representing a person or testifying in a judicial or administrative hearing, invited testimony in a public legislative committee session, participating in rulemaking at the request of an agency, or assisting with ministerial activities. Former officers or employees may also seek waivers of the ban if the compensated service does not present a conflict of interest, the need outweighs any potential conflict of interest, or emergency circumstances warrant a waiver.

The state ethics boards must adopt rules for persons who seek a waiver from the postemployment lobbying and influencing prohibitions by July 1, 2022.

Disclosure Statements. Each former state officer or employee subject to the postemployment prohibition on lobbying state government must submit a post-employment disclosure form to the relevant state ethics board within 14 days after the person leaves public service. The waiver extends through the first year after leaving public service. The person must update the statement within 45 days if the person takes a new compensated position with an employer that conducts business with the state.

If the former officer or employee receives compensation from an employer or entity that conducts business with the state, or takes action to influence any state policy, rule, or legislative matter, the former officer or employee must provide the following information:

- the name and address of the employee's new employer and supervisor or source of compensation;
- the date the new employment will begin or began; and
- a description of the employee's anticipated duties for the new employer or business.

Ethics boards must collaborate to provide online filing and a process to send forms to the Executive Ethics Board. Post-employment disclosure statements must be available on the Executive Ethics Board's website, and linked to by the other ethics boards and the Public Disclosure Commission.

Other Provisions. The bill contains a severability clause stating that if any provision is held

invalid, other provisions in the bill shall not be affected. The bill does not apply retroactively to persons who are no longer in state service on its effective date.

EFFECT OF CHANGES MADE BY STATE GOVERNMENT & ELECTIONS COMMITTEE (First Substitute):

The term "local agency" is defined.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2022, except that agencies may begin rulemaking 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Washington receives a B-minus from a premier government watchdog agency, and the grade is not higher because of this particular gaping hole in our ethics laws. This modest but important measure sets an appropriate boundary and guidelines to give the public greater confidence in public servants. This will help solve low voter turnout, enthusiasm, and trust. People do not trust government or get involved in the political process because they feel the rich and powerful control everything. State officials and employees have a great deal of power, access, and connections, and it is unethical to exploit those for any special interest. This reform ensures the public's confidence that decisions made while in state service are motivated only by the obligation to govern on behalf of the people of the state. The federal government, many other states, and the city of Seattle have cooling-off periods.

Persons Testifying: PRO: Senator Reuven Carlyle, Prime Sponsor; Cindy Black, Fix Democracy First; Kathy Sakahara, League of Women Voters; Robert Colton, Office of the Attorney General.

Persons Signed In To Testify But Not Testifying: No one.