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HOUSE BILL 2046

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State of Washington

67th Legislature

2022 Regular Session

By Representatives Stonier, Abbarno, and Senn

Read first time 01/19/22. Referred to Committee on State Government & Tribal Relations.

1 AN ACT Relating to ethics in public service rules governing  
2 certain legislative activity; and amending RCW 42.52.070, 42.52.160,  
3 42.52.180, and 42.52.185.

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

5 **Sec. 1.** RCW 42.52.070 and 2019 c 383 s 1 are each amended to  
6 read as follows:

7 (1) Except as required to perform duties within the scope of  
8 employment, no state officer or state employee may use his or her  
9 position to secure special privileges or exemptions for himself or  
10 herself, or his or her spouse, child, parents, or other persons.

11 (2) For purposes of this section, and only as applied to  
12 legislators, activities within the scope of employment are duties  
13 enumerated in law and activities that have a tangible legislative  
14 nexus. Activities with a legislative nexus include but are not  
15 limited to:

16 (a) Communications directly pertaining to any legislative  
17 proposal which has been introduced in either chamber of the  
18 legislature; and

19 (b) Posting information to a legislator's official legislative  
20 website, including an official legislative social media account,  
21 about:

1 (i) Emergencies;

2 (ii) Federal holidays, state and legislatively recognized  
3 holidays established under RCW 1.16.050, and religious holidays;

4 (iii) Information originally provided or published by other  
5 government entities which provide information about government  
6 resources; and

7 (iv) Achievements, honors, or awards of extraordinary  
8 distinction.

9 (3) It is not a violation of this section for a legislator or an  
10 appropriate legislative staff designee to engage in activities listed  
11 in subsection (2) of this section.

12 (4) For purposes of this section, and only as applied to  
13 legislators and employees of the legislative branch, "special  
14 privileges" includes, but is not limited to, engaging in behavior  
15 that constitutes harassment. As used in this section:

16 (a) "Harassment" means engaging in physical, verbal, visual, or  
17 psychological conduct that:

18 (i) Has the purpose or effect of interfering with the person's  
19 work performance;

20 (ii) Creates a hostile, intimidating, or offensive work  
21 environment; or

22 (iii) Constitutes sexual harassment.

23 (b) "Sexual harassment" means unwelcome or unwanted sexual  
24 advances, requests for sexual or romantic favors, sexually motivated  
25 bullying, or other verbal, visual, physical, or psychological conduct  
26 or communication of a sexual or romantic nature, when:

27 (i) Submission to the conduct or communication is either  
28 explicitly or implicitly a term or condition of current or future  
29 employment;

30 (ii) Submission to or rejection of the conduct or communication  
31 is used as the basis of an employment decision affecting the person;  
32 or

33 (iii) The conduct or communication unreasonably interferes with  
34 the person's job performance or creates a work environment that is  
35 hostile, intimidating, or offensive.

36 **Sec. 2.** RCW 42.52.160 and 2014 c 28 s 1 are each amended to read  
37 as follows:

38 (1) No state officer or state employee may employ or use any  
39 person, money, or property under the officer's or employee's official

1 control or direction, or in his or her official custody, for the  
2 private benefit or gain of the officer, employee, or another.

3 (2) This section does not prohibit the use of public resources to  
4 benefit others as part of a state officer's or state employee's  
5 official duties. It is not a violation of this section for a  
6 legislator or an appropriate legislative staff designee to engage in  
7 activities listed under RCW 42.52.070(2).

8 (3) This section does not prohibit de minimis use of state  
9 facilities to provide employees with information about (a) medical,  
10 surgical, and hospital care; (b) life insurance or accident and  
11 health disability insurance; or (c) individual retirement accounts,  
12 by any person, firm, or corporation administering such program as  
13 part of authorized payroll deductions pursuant to RCW 41.04.020.

14 (4) The appropriate ethics boards may adopt rules providing  
15 exceptions to this section for occasional use of the state officer or  
16 state employee, of de minimis cost and value, if the activity does  
17 not result in interference with the proper performance of public  
18 duties.

19 **Sec. 3.** RCW 42.52.180 and 2017 c 7 s 2 are each amended to read  
20 as follows:

21 (1) No state officer or state employee may use or authorize the  
22 use of facilities of an agency, directly or indirectly, for the  
23 purpose of assisting a campaign for election of a person to an office  
24 or for the promotion of or opposition to a ballot proposition.  
25 Knowing acquiescence by a person with authority to direct, control,  
26 or influence the actions of the state officer or state employee using  
27 public resources in violation of this section constitutes a violation  
28 of this section. Facilities of an agency include, but are not limited  
29 to, use of stationery, postage, machines, and equipment, use of state  
30 employees of the agency during working hours, vehicles, office space,  
31 publications of the agency, and clientele lists of persons served by  
32 the agency.

33 (2) This section shall not apply to the following activities:

34 (a) Action taken at an open public meeting by members of an  
35 elected legislative body to express a collective decision, or to  
36 actually vote upon a motion, proposal, resolution, order, or  
37 ordinance, or to support or oppose a ballot proposition as long as  
38 (i) required notice of the meeting includes the title and number of  
39 the ballot proposition, and (ii) members of the legislative body or

1 members of the public are afforded an approximately equal opportunity  
2 for the expression of an opposing view;

3 (b) A statement by an elected official in support of or in  
4 opposition to any ballot proposition at an open press conference or  
5 in response to a specific inquiry. For the purposes of this  
6 subsection, it is not a violation of this section for an elected  
7 official to respond to an inquiry regarding a ballot proposition, to  
8 make incidental remarks concerning a ballot proposition in an  
9 official communication, or otherwise comment on a ballot proposition  
10 without an actual, measurable expenditure of public funds. The ethics  
11 boards shall adopt by rule a definition of measurable expenditure;

12 (c) (i) The maintenance of official legislative websites  
13 throughout the year, regardless of pending elections. The websites  
14 may contain any discretionary material which was also specifically  
15 prepared for the legislator in the course of his or her duties as a  
16 legislator, including newsletters and press releases.

17 (ii) The official legislative websites of legislators seeking  
18 reelection or election to any office shall not be altered, other than  
19 during a special legislative session, beginning on the first day of  
20 the declaration of candidacy filing period specified in RCW  
21 29A.24.050 through the date of certification of the general election  
22 of the election year. As used in this subsection, "legislator" means  
23 a legislator who is a "candidate," as defined in RCW 42.17A.005, for  
24 any public office. "Legislator" does not include a member of the  
25 legislature who has announced their retirement from elected public  
26 office and who does not file a declaration of candidacy by the end of  
27 the candidacy filing period specified in RCW 29A.24.050.

28 (iii) The website shall not be used for campaign purposes;

29 (d) Activities that are part of the normal and regular conduct of  
30 the office or agency; and

31 (e) De minimis use of public facilities by statewide elected  
32 officials and legislators incidental to the preparation or delivery  
33 of permissible communications, including written and verbal  
34 communications initiated by them of their views on ballot  
35 propositions that foreseeably may affect a matter that falls within  
36 their constitutional or statutory responsibilities.

37 (3) As to state officers and employees, this section operates to  
38 the exclusion of RCW 42.17A.555.

1 (4) As used in this section, "official legislative website"  
2 includes, but is not limited to, a legislator's official legislative  
3 social media accounts.

4 **Sec. 4.** RCW 42.52.185 and 2017 c 7 s 3 are each amended to read  
5 as follows:

6 (1) During the period beginning on ~~((December 1st of the year~~  
7 ~~before~~ a)) the first day of the declaration of candidacy filing  
8 period specified in RCW 29A.24.050 in the year of a general election  
9 for a state legislator's election to office and continuing through  
10 the date of certification of the general election, the legislator may  
11 not mail, either by regular mail or email, to a constituent at public  
12 expense a letter, newsletter, brochure, or other piece of literature,  
13 except for routine legislative correspondence, such as scheduling,  
14 and ~~((as follows:~~

15 ~~(a) The legislator may mail two mailings of newsletters to~~  
16 ~~constituents. All newsletters within each mailing of newsletters must~~  
17 ~~be identical as to their content but not as to the constituent name~~  
18 ~~or address. Both mailings must be mailed before the first day of the~~  
19 ~~declaration of candidacy filing period specified in RCW 29A.24.050.~~

20 ~~(b) The~~) the legislator may, by mail or email, send an  
21 individual letter to ~~((i))~~ (a) an individual constituent who has  
22 contacted the legislator regarding the subject matter of the letter  
23 during the legislator's current term of office; ~~((ii))~~ (b) an  
24 individual constituent who holds a governmental office with  
25 jurisdiction over the subject matter of the letter; or ~~((iii))~~ (c)  
26 an individual constituent who has received an award or honor of  
27 extraordinary distinction of a type that is sufficiently infrequent  
28 to be noteworthy to a reasonable person~~((7))~~ including, but not  
29 limited to: ~~((A))~~ (i) An international or national award such as  
30 the Nobel prize or the Pulitzer prize; ~~((B))~~ (ii) a state award  
31 such as Washington scholar; ~~((C))~~ (iii) an Eagle Scout award; and  
32 ~~((D))~~ (iv) a Medal of Honor.

33 ~~((c) In those cases where constituents have specifically~~  
34 ~~indicated that they would like to be contacted to receive regular or~~  
35 ~~periodic updates on legislative matters or been added to a~~  
36 ~~distribution list and provided regular opportunities to unsubscribe~~  
37 ~~from that mailing list, legislators may provide such updates by email~~  
38 ~~throughout the legislative session and up until the first day of the~~  
39 ~~declaration of candidacy filing period specified in RCW 29A.24.050.~~

1 ~~Legislators may also provide these updates by email during any~~  
2 ~~special legislative session.)~~)

3 (2) A violation of this section constitutes use of the facilities  
4 of a public office for the purpose of assisting a campaign under RCW  
5 42.52.180.

6 (3) The house of representatives and senate shall specifically  
7 limit expenditures per member for the total cost of mailings. Those  
8 costs include, but are not limited to, production costs, printing  
9 costs, and postage costs. The limits imposed under this subsection  
10 apply only to the total expenditures on mailings per member and not  
11 to any categorical cost within the total.

12 (4) For purposes of this section:

13 (a) "Legislator" means a legislator who is a "candidate," as  
14 defined in RCW 42.17A.005, for any public office(~~;~~and)).  
15 "Legislator" does not include a member of the legislature who has  
16 announced their retirement from elected public office and who does  
17 not file a declaration of candidacy by the end of the candidacy  
18 filing period specified in RCW 29A.24.050.

19 (b) Persons residing outside the legislative district represented  
20 by the legislator are not considered to be constituents, but  
21 students, military personnel, or others temporarily employed outside  
22 of the district who normally reside in the district are considered to  
23 be constituents.

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