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**SUBSTITUTE SENATE BILL 5849**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Padden, Pedersen, Hatfield, and Pearson)

AN ACT Relating to authorizing establishment of an ethics defense trust fund under certain circumstances; amending RCW 42.52.150; reenacting and amending RCW 42.52.010; and adding new sections to chapter 42.52 RCW.

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

NEW SECTION. **Sec.**  (1) A state officer as defined in RCW 42.52.010 may establish an ethics defense trust fund and name a trustee if the state officer is subject to a complaint for an ethics violation filed or issued under this chapter relating to the state officer's official duties.

(2)(a) The proceeds of the trust fund may be used to:

(i) Defray legal expenses and pay monetary penalties incurred by the state officer as a result of a complaint filed or issued for an ethics violation under this chapter or an internal legislative investigatory proceeding;

(ii) Defray costs reasonably incurred in administering the trust fund, including but not limited to costs incident to the solicitation of funds; and

(iii) Discharge any tax liabilities incurred as a result of the creation, operation, or administration of the trust fund.

(b) The proceeds of a trust fund may also be used to defray or discharge legal expenses, penalties, costs, or liabilities incurred before the trust fund was established if the legal expenses, penalties, costs, or liabilities are related to the complaint proceedings for which the trust fund was established.

(3) Except as provided in subsection (2) of this section, the state officer may not use proceeds from the trust fund for personal use.

(4) A state officer may not establish or maintain more than one ethics defense trust fund at any one time.

(5) Chapter 11.98 RCW does not apply to a trust fund established under this chapter.

NEW SECTION. **Sec.**  (1) The trustee of an ethics defense trust fund is responsible for:

(a) The receipt and deposit of contributions to the trust fund;

(b) The authorization of expenditures and disbursements from the trust fund;

(c) The performance of other tasks incident to the administration of the trust fund.

(2)(a) A trustee of an ethics defense trust fund shall establish a single exclusive account in a depository, as defined in RCW 42.17A.005. The depository must be located in this state and must ordinarily conduct business with the general public in this state.

(b) The trustee shall maintain the account in the name of the trust fund.

(c) All expenditures made by the trustee shall be drawn from the account and:

(i) Issued on a check signed by the trustee; or

(ii) Paid using a debit card or other form of electronic transaction.

(d) A contribution received by the trustee shall be deposited into the account not later than three working days after the date the contribution is received.

(e) This section does not prohibit the transfer of any amount deposited in the account into a certificate of deposit, stock fund, or other investment instrument.

(f) The account may not include any public or private moneys or any moneys of any other person, other than contributions received by the trustee.

(g) The trustee shall retain a copy of each depository account statement from the account described in this section for not less than two years after the date the statement is issued by the depository.

(h) The trustee may not be a member of the family of or an employee of the state officer.

NEW SECTION. **Sec.**  (1) Any person may contribute to an ethics defense trust fund established in section 1 of this act.

(2) The maximum contribution by any person per year to an ethics defense trust fund shall be one thousand dollars.

(3) The ethics defense trust fund agreement, contributions, expenditures, and other transfers of moneys to or from the trust fund shall be reported to the public disclosure commission once a month, within ten days after the completion of the month, for all transactions occurring in that month. Failure to report as required by this subsection is a violation of chapter 42.17A RCW.

(4) Reports filed with the public disclosure commission under subsection (3) of this section are nonexempt public records subject to disclosure under chapter 42.56 RCW.

NEW SECTION. **Sec.**  (1) An ethics defense trust fund established under section 1 of this act may be terminated by:

(a) The state officer who established the trust fund; or

(b) Subject to subsection (2) of this section, the terms of the trust agreement.

(2) A trust agreement may provide that an ethics defense trust fund is terminated not later than six months following the completion of the payments authorized under section 1(2) of this act.

(3) Following termination of an ethics defense trust fund, the trustee may not accept contributions to or make expenditures from the trust fund.

(4) Not later than thirty days after an ethics defense trust fund is terminated, the trustee of the trust fund shall return any moneys remaining in the trust fund to contributors to the trust fund on a pro rata basis.

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

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

(1) "Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

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

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

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

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

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

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

(8) "Family" has the same meaning as "immediate family" in RCW 42.17A.005.

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) "Official duty" means those duties ((~~within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution~~)) prescribed in the state Constitution and state statutes, authorized, appointed, funded, or mandated authority and responsibilities, job description, or any tasks or actions directly incident to carrying out the activities of the state officer's position.

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

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

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

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

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

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

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

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

(19) "State officer" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. "State officer" includes judges of the superior court, judges of the court of appeals, justices of the supreme court, members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work. For the purposes of this chapter, "state officer" also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

(20) "Thing of economic value," in addition to its ordinary meaning, includes:

(a) A loan, property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation;

(b) An option, irrespective of the conditions to the exercise of the option; and

(c) A promise or undertaking for the present or future delivery or procurement.

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

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

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

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

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

(22) "University" includes "state universities" and "regional universities" as defined in RCW 28B.10.016 and also includes any research or technology institute affiliated with a university, including without limitation, the Spokane intercollegiate research and technology institute and the Washington technology center.

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

**Sec.**  RCW 42.52.150 and 2011 c 60 s 29 are each amended to read as follows:

(1) No state officer or state employee may accept gifts, other than those specified in subsections (2) ((~~and~~)), (5), and (6) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under RCW 42.52.140, and may be accepted without regard to the limit established by subsection (1) of this section:

(a) Unsolicited flowers, plants, and floral arrangements;

(b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(f) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(g) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for deposit in the legislative international trade account created in RCW 43.15.050;

(h) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for the purpose of promoting the expansion of tourism as provided for in RCW 43.330.090;

(i) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, solicited on behalf of a national legislative association, 2006 official conference of the national lieutenant governors' association, or host committee for the purpose of hosting an official conference under the circumstances specified in RCW 42.52.820 and section 2, chapter 5, Laws of 2006. Anything solicited or accepted may only be received by the national association or host committee and may not be commingled with any funds or accounts that are the property of any person;

(j) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(k) Unsolicited gifts from dignitaries from another state or a foreign country that are intended to be personal in nature.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

(a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(g) Those items excluded from the definition of gift in RCW 42.52.010 except:

(i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution; and

(iii) Flowers, plants, and floral arrangements.

(5) A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in chapter 42.17A RCW.

(6) A state officer may accept contributions made to an ethics defense trust fund established under section 1 of this act.

NEW SECTION. **Sec.**  Sections 1 through 4 of this act are each added to chapter 42.52 RCW.

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