
SUBSTITUTE HOUSE BILL 2535

State of Washington

54th Legislature

1996 Regular Session

By House Committee on Trade & Economic Development (originally sponsored by Representatives Van Luven, Jacobsen and Carlson)

Read first time 01/25/96.

1 AN ACT Relating to ethics, technology, and federal standards for
2 conflicts in public service; and amending RCW 42.52.010, 42.52.020,
3 42.52.030, 42.52.050, 42.52.110, 42.52.120, and 42.52.160.

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

5 **Sec. 1.** RCW 42.52.010 and 1994 c 154 s 101 are each amended to
6 read as follows:

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

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

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

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

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

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

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

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

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

25 ((+8)) (9) "Family" has the same meaning as "immediate family" in
26 RCW 42.17.020.

27 ((+9)) (10) "Gift" means anything of economic value for which no
28 consideration is given. "Gift" does not include:

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

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

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

38 (d) Payments by a governmental or nongovernmental entity of
39 reasonable expenses incurred in connection with a speech, presentation,

1 appearance, or trade mission made in an official capacity. As used in
2 this subsection, "reasonable expenses" are limited to travel, lodging,
3 and subsistence expenses incurred the day before through the day after
4 the event;

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

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

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

16 (h) Campaign contributions reported under chapter 42.17 RCW;
17 (~~and~~)

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

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

22 (~~(10)~~) (11) "Honorarium" means money or thing of value offered to
23 a state officer or state employee for a speech, appearance, article, or
24 similar item or activity in connection with the state officer's or
25 state employee's official role.

26 (~~(11)~~) (12) "Official duty" means those duties within the
27 specific scope of employment of the state officer or state employee as
28 defined by the officer's or employee's agency or by statute or the
29 state Constitution.

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

36 (~~(12)~~) (14) "Person" means any individual, partnership,
37 association, corporation, firm, institution, or other entity, whether
38 or not operated for profit.

1 (~~(13)~~) (15) "Regulatory agency" means any state board,
2 commission, department, or officer, except those in the legislative or
3 judicial branches, authorized by law to conduct adjudicative
4 proceedings, issue permits or licenses, or to control or affect
5 interests of identified persons.

6 (~~(14)~~) (16) "Responsibility" in connection with a transaction
7 involving the state, means the direct administrative or operating
8 authority, whether intermediate or final, and either exercisable alone
9 or through subordinates, effectively to approve, disapprove, or
10 otherwise direct state action in respect of such transaction.

11 (~~(15)~~) (17) "State action" means any action on the part of an
12 agency, including, but not limited to:

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

17 (~~(16)~~) (18) "State officer" means every person holding a position
18 of public trust in or under an executive, legislative, or judicial
19 office of the state. "State officer" includes judges of the superior
20 court, judges of the court of appeals, justices of the supreme court,
21 members of the legislature together with the secretary of the senate
22 and the chief clerk of the house of representatives, holders of
23 elective offices in the executive branch of state government, chief
24 executive officers of state agencies, members of boards, commissions,
25 or committees with authority over one or more state agencies or
26 institutions, and employees of the state who are engaged in
27 supervisory, policy-making, or policy-enforcing work. For the purposes
28 of this chapter, "state officer" also includes any person exercising or
29 undertaking to exercise the powers or functions of a state officer.

30 (~~(17)~~) (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 (~~(18)~~) (20) "Thing of economic value," in addition to its
35 ordinary meaning, includes:

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

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

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

5 (~~(19)~~) (21)(a) "Transaction involving the state" means a
6 proceeding, application, submission, request for a ruling or other
7 determination, contract, claim, case, or other similar matter that the
8 state officer, state employee, or former state officer or state
9 employee in question believes, or has reason to believe:

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

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

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

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

21 **Sec. 2.** RCW 42.52.020 and 1994 c 154 s 102 are each amended to
22 read as follows:

23 No state officer or state employee may have an interest, financial
24 or otherwise, direct or indirect, or engage in a business or
25 transaction or professional activity, or incur an obligation of any
26 nature, that is in conflict with the proper discharge of the state
27 officer's or state employee's official duties.

28 **Sec. 3.** RCW 42.52.030 and 1994 c 154 s 103 are each amended to
29 read as follows:

30 (1) No state officer or state employee, except as provided in
31 subsections (2) and (3) of this section, may be beneficially
32 interested, directly or indirectly, in a contract, sale, lease,
33 purchase, or grant that may be made by, through, or is under the
34 supervision of the officer or employee, in whole or in part, or accept,
35 directly or indirectly, any compensation, gratuity, or reward from any
36 other person beneficially interested in the contract, sale, lease,
37 purchase, or grant.

1 (2) No officer or employee of an institution of higher education or
2 of the Spokane intercollegiate research and technology institute,
3 except as provided in subsection (3) of this section, may be
4 beneficially interested, directly or indirectly, in a contract or grant
5 that may be made by, through, or is under the supervision of the
6 officer or employee, in whole or in part, or accept, directly or
7 indirectly, any compensation, gratuity, or reward from any other person
8 beneficially interested in the contract or grant, unless the
9 institution of higher education or the Spokane intercollegiate research
10 and technology institute has in effect a written administrative process
11 to identify and manage, reduce, or eliminate conflicting interests with
12 respect to such transactions as adopted pursuant to the national
13 science investigator financial disclosure (GPM 510) 1995 and the public
14 health service regulations, 42 C.F.R. Part 50 and 45 C.F.R. Subtitle A
15 as each of those regulations existed on the effective date of this
16 section, and the state employee or state officer has complied with such
17 policy.

18 (3) No state officer or state employee may participate in a
19 transaction involving the state in his or her official capacity with a
20 person of which the officer or employee is an officer, agent, employee,
21 or member, or in which the officer or employee owns a beneficial
22 interest, except that an officer or employee of an institution of
23 higher education or the Spokane intercollegiate research and technology
24 institute may serve as an officer, agent, employee, or member, or on
25 the board of directors, board of trustees, advisory board, or committee
26 or review panel for any nonprofit institute, foundation, or fundraising
27 entity; and may serve as a member of an advisory board, committee, or
28 review panel for a governmental or other nonprofit entity.

29 **Sec. 4.** RCW 42.52.050 and 1994 c 154 s 105 are each amended to
30 read as follows:

31 ~~((1))~~ (1) No state officer or state employee may accept
32 employment or engage in any business or professional activity that the
33 officer or employee might reasonably expect would require or induce him
34 or her to ~~((disclose))~~ make an unauthorized disclosure of confidential
35 information acquired by the official or employee by reason of the
36 official's or employee's official position.

37 (2) No state officer or state employee may ~~((disclose))~~ make a
38 disclosure of confidential information gained by reason of the

1 officer's or employee's official position or otherwise use the
2 information for his or her personal gain or benefit or the gain or
3 benefit of another, unless the disclosure has been authorized by
4 statute or by the terms of a contract involving (a) the state officer's
5 or state employee's agency and (b) the person or persons who have
6 authority to waive the confidentiality of the information.

7 (3) No state officer or state employee may disclose confidential
8 information to any person not entitled or authorized to receive the
9 information.

10 (4) No state officer or state employee may intentionally conceal a
11 record if the officer or employee knew the record was required to be
12 released under chapter 42.17 RCW, was under a personal obligation to
13 release the record, and failed to do so. This subsection does not
14 apply where the decision to withhold the record was made in good faith.

15 **Sec. 5.** RCW 42.52.110 and 1994 c 154 s 111 are each amended to
16 read as follows:

17 No state officer or state employee may, directly or indirectly, ask
18 for or give or receive or agree to receive any compensation, gift,
19 reward, or gratuity from a source for performing or omitting or
20 deferring the performance of any official duty, unless otherwise
21 authorized by law except: (1) The state of Washington ((for performing
22 or omitting or deferring the performance of any official duty, unless
23 otherwise authorized by law)); or (2) in the case of officers or
24 employees of institutions of higher education or of the Spokane
25 intercollegiate research and technology institute, a governmental
26 entity, an agency or instrumentality of a governmental entity, or a
27 nonprofit corporation organized for the benefit and support of the
28 state employee's agency or other state agencies pursuant to an
29 agreement with the state employee's agency.

30 **Sec. 6.** RCW 42.52.120 and 1994 c 154 s 112 are each amended to
31 read as follows:

32 (1) No state officer or state employee may receive any thing of
33 economic value under any contract or grant outside of his or her
34 official duties. The prohibition in this subsection does not apply
35 where the state officer or state employee has complied with RCW
36 42.52.030(2) or each of the following conditions are met:

37 (a) The contract or grant is bona fide and actually performed;

1 (b) The performance or administration of the contract or grant is
2 not within the course of the officer's or employee's official duties,
3 or is not under the officer's or employee's official supervision;

4 (c) The performance of the contract or grant is not prohibited by
5 RCW 42.52.040 or by applicable laws or rules governing outside
6 employment for the officer or employee;

7 (d) The contract or grant is neither performed for nor compensated
8 by any person from whom such officer or employee would be prohibited by
9 RCW 42.52.150(4) from receiving a gift;

10 (e) The contract or grant is not one expressly created or
11 authorized by the officer or employee in his or her official capacity
12 or by his or her agency;

13 (f) The contract or grant would not require unauthorized disclosure
14 of confidential information.

15 (2) In addition to satisfying the requirements of subsection (1) of
16 this section, a state officer or state employee may have a beneficial
17 interest in a grant or contract with a state agency only if:

18 (a) The contract or grant is awarded or issued as a result of an
19 open and competitive bidding process in which more than one bid or
20 grant application was received; or

21 (b) The contract or grant is awarded or issued as a result of an
22 open and competitive bidding or selection process in which the
23 officer's or employee's bid or proposal was the only bid or proposal
24 received and the officer or employee has been advised by the
25 appropriate ethics board, before execution of the contract or grant,
26 that the contract or grant would not be in conflict with the proper
27 discharge of the officer's or employee's official duties; or

28 (c) The process for awarding the contract or issuing the grant is
29 not open and competitive, but the officer or employee has been advised
30 by the appropriate ethics board that the contract or grant would not be
31 in conflict with the proper discharge of the officer's or employee's
32 official duties.

33 (3) A state officer or state employee awarded a contract or issued
34 a grant in compliance with subsection (2) of this section shall file
35 the contract or grant with the appropriate ethics board within thirty
36 days after the date of execution; however, if proprietary formulae,
37 designs, drawings, or research are included in the contract or grant,
38 the proprietary formulae, designs, drawings, or research may be deleted
39 from the contract or grant filed with the appropriate ethics board.

1 (4) This section does not prevent a state officer or state employee
2 from receiving compensation contributed from the treasury of the United
3 States, another state, county, or municipality if the compensation is
4 received pursuant to arrangements entered into between such state,
5 county, municipality, or the United States and the officer's or
6 employee's agency. This section does not prohibit a state officer or
7 state employee from serving or performing any duties under an
8 employment contract with a governmental entity.

9 (5) As used in this section, "officer" and "employee" do not
10 include officers and employees who, in accordance with the terms of
11 their employment or appointment, are serving without compensation from
12 the state of Washington or are receiving from the state only
13 reimbursement of expenses incurred or a predetermined allowance for
14 such expenses.

15 **Sec. 7.** RCW 42.52.160 and 1994 c 154 s 116 are each amended to
16 read as follows:

17 (1) No state officer or state employee may employ or use any
18 person, money, or property under the officer's or employee's official
19 control or direction, or in his or her official custody, for the
20 private benefit or gain of the officer, employee, or another.

21 (2) This section does not prohibit the use of public resources to
22 benefit others as part of a state officer's or state employee's
23 (~~public~~) official duties.

24 (3) The appropriate ethics boards may adopt rules providing
25 exceptions to this section for occasional use of the state officer or
26 state employee, of de minimis cost and value, if the activity does not
27 result in interference with the proper performance of public duties.

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