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HOUSE BILL 2941

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State of Washington

65th Legislature

2018 Regular Session

By Representatives Stambaugh, Sawyer, Tharinger, Frame, and Kraft

Read first time 01/26/18. Referred to Committee on State Govt, Elections & IT.

1 AN ACT Relating to reporting to ethics boards licensing  
2 agreements for public use of certain state resources produced by  
3 state agencies; amending RCW 42.52.320 and 42.52.360; reenacting and  
4 amending RCW 42.52.010; adding a new section to chapter 42.52 RCW;  
5 and creating a new section.

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

7 NEW SECTION. **Sec. 1.** The legislative and executive ethics  
8 boards hold an important role of protecting the direct and proper use  
9 of state resources. When agencies enter into contractual agreements  
10 with entities outside of the legislative and executive branches,  
11 state resources become subject to contractual terms that interrupt  
12 the jurisdiction of the ethics boards and may jeopardize state  
13 resources. To protect the use of state resources, the ethics boards  
14 must be informed when contractual agreements are entered. The  
15 legislature acknowledges that the legislative ethics board has  
16 determined the creation of state resources at public expense does not  
17 determine a violation of the ethics in public service act. Rather, it  
18 is the use to which the materials are put which determines whether  
19 the statute had been violated. Therefore, the legislature recognizes  
20 the importance of the placement of state resources and finds

1 contractual agreements may alter direct protection of state resources  
2 and the efficacy of the ethics in public service act.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 42.52  
4 RCW to read as follows:

5 Any agency, as defined in RCW 42.52.010, within the legislative  
6 or executive branches that enters into a contract to grant a license  
7 to any person, as defined in RCW 42.52.010, to allow any type of  
8 indirect use of state resources, as defined in RCW 42.52.010, shall  
9 submit a copy of any such contract to:

- 10 (1) The legislative ethics board for agencies within the  
11 legislative branch; or  
12 (2) The executive ethics board for agencies within the executive  
13 branch.

14 **Sec. 3.** RCW 42.52.320 and 1994 c 154 s 202 are each amended to  
15 read as follows:

16 (1) The legislative ethics board shall enforce this chapter and  
17 rules adopted under it with respect to members and employees of the  
18 legislature.

19 (2) The legislative ethics board shall:

20 (a) Develop educational materials and training with regard to  
21 legislative ethics for legislators and legislative employees;

22 (b) Issue advisory opinions;

23 (c) Adopt rules or policies governing the conduct of business by  
24 the board, and adopt rules defining working hours for purposes of RCW  
25 42.52.180 and where otherwise authorized under chapter 154, Laws of  
26 1994;

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

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

30 (f) Recommend suspension or removal to the appropriate  
31 legislative entity, or recommend prosecution to the appropriate  
32 authority; (~~and~~)

33 (g) Establish criteria regarding the levels of civil penalties  
34 appropriate for different types of violations of this chapter and  
35 rules adopted under it; and

36 (h) Receive copies of contracts that establish indirect use of  
37 state materials and information submitted by agencies as required in  
38 section 2 of this act; but shall not take any enforcement actions

1 available under this chapter based on such indirect use of state  
2 resources.

3 (3) 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  
6 under examination by the board or involved in any hearing;

7 (b) Administer oaths and affirmations;

8 (c) Examine witnesses; and

9 (d) Receive evidence.

10 (4) Subject to RCW 42.52.540, the board has jurisdiction over any  
11 alleged violation that occurred before January 1, 1995, and that was  
12 within the jurisdiction of any of the boards established under  
13 chapter 44.60 RCW. The board's jurisdiction with respect to any such  
14 alleged violation shall be based on the statutes and rules in effect  
15 at (~~(the)~~) the time of the violation.

16 **Sec. 4.** RCW 42.52.360 and 2013 c 190 s 3 are each amended to  
17 read as follows:

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

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

25 (a) With respect to compliance with RCW 42.52.030, 42.52.110,  
26 42.52.130, 42.52.140, and 42.52.150, the administrative process shall  
27 be consistent with and adhere to no less than the current standards  
28 in regulations of the United States public health service and the  
29 office of the secretary of the department of health and human  
30 services in Title 42 C.F.R. Part 50, Subpart F relating to promotion  
31 of objectivity in research.

32 (b) With respect to compliance with RCW 42.52.040, 42.52.080, and  
33 42.52.120, the administrative process shall include a comprehensive  
34 system for the disclosure, review, and approval of outside work  
35 activities by university research employees while assuring that such  
36 employees are fulfilling their employment obligations to the  
37 university.

38 (c) With respect to compliance with RCW 42.52.160, the  
39 administrative process shall include a reasonable determination by

1 the university of acceptable private uses having de minimis costs to  
2 the university and a method for establishing fair and reasonable  
3 reimbursement charges for private uses the costs of which are in  
4 excess of de minimis.

5 (3) The executive ethics board shall:

6 (a) Develop educational materials and training;

7 (b) Adopt rules and policies governing the conduct of business by  
8 the board, and adopt rules defining working hours for purposes of RCW  
9 42.52.180 and where otherwise authorized under chapter 154, Laws of  
10 1994;

11 (c) Issue advisory opinions;

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

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

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

17 (g) Establish criteria regarding the levels of civil penalties  
18 appropriate for violations of this chapter and rules adopted under  
19 it; and

20 (h) Receive copies of contracts that establish indirect use of  
21 state materials and information submitted by agencies as required in  
22 section 2 of this act; but shall not take any enforcement actions  
23 available under this chapter based on such indirect use of state  
24 resources.

25 (4) The board may:

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

29 (b) Administer oaths and affirmations;

30 (c) Examine witnesses; and

31 (d) Receive evidence.

32 (5) The board shall not delegate to the board's executive  
33 director its authority to issue advisories, advisory letters, or  
34 opinions.

35 (6) Except as provided in RCW 42.52.220, the executive ethics  
36 board may review and approve agency policies as provided for in this  
37 chapter.

38 (7) This section does not apply to state officers and state  
39 employees of the judicial branch.

1       **Sec. 5.** RCW 42.52.010 and 2011 c 60 s 28 are each reenacted and  
2 amended to read as follows:

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

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

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

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

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

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

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

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

36       (8) "Family" has the same meaning as "immediate family" in RCW  
37 42.17A.005.

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

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

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

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

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

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

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

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

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

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

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

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

39 (11) "Honorarium" means money or thing of value offered to a  
40 state officer or state employee for a speech, appearance, article, or

1 similar item or activity in connection with the state officer's or  
2 state employee's official role.

3 (12) "Indirect use of state resources" means materials or  
4 information properly created by an agency at public expense that have  
5 been contractually released by an agency for public use of the  
6 materials or information.

7 (13) "Official duty" means those duties within the specific scope  
8 of employment of the state officer or state employee as defined by  
9 the officer's or employee's agency or by statute or the state  
10 Constitution.

11 (~~(13)~~) (14) "Participate" means to participate in state action  
12 or a proceeding personally and substantially as a state officer or  
13 state employee, through approval, disapproval, decision,  
14 recommendation, the rendering of advice, investigation, or otherwise  
15 but does not include preparation, consideration, or enactment of  
16 legislation or the performance of legislative duties.

17 (~~(14)~~) (15) "Person" means any individual, partnership,  
18 association, corporation, firm, institution, or other entity, whether  
19 or not operated for profit.

20 (~~(15)~~) (16) "Regulatory agency" means any state board,  
21 commission, department, or officer, except those in the legislative  
22 or judicial branches, authorized by law to conduct adjudicative  
23 proceedings, issue permits or licenses, or to control or affect  
24 interests of identified persons.

25 (~~(16)~~) (17) "Responsibility" in connection with a transaction  
26 involving the state, means the direct administrative or operating  
27 authority, whether intermediate or final, and either exercisable  
28 alone or through subordinates, effectively to approve, disapprove, or  
29 otherwise direct state action in respect of such transaction.

30 (~~(17)~~) (18) "State action" means any action on the part of an  
31 agency, including, but not limited to:

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

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

36 (~~(18)~~) (19) "State employee" means an individual who is  
37 employed by an agency in any branch of state government. For purposes  
38 of this chapter, employees of the superior courts are not state  
39 officers or state employees.

1       (~~(19)~~) (20) "State officer" means every person holding a  
2 position of public trust in or under an executive, legislative, or  
3 judicial office of the state. "State officer" includes judges of the  
4 superior court, judges of the court of appeals, justices of the  
5 supreme court, members of the legislature together with the secretary  
6 of the senate and the chief clerk of the house of representatives,  
7 holders of elective offices in the executive branch of state  
8 government, chief executive officers of state agencies, members of  
9 boards, commissions, or committees with authority over one or more  
10 state agencies or institutions, and employees of the state who are  
11 engaged in supervisory, policy-making, or policy-enforcing work. For  
12 the purposes of this chapter, "state officer" also includes any  
13 person exercising or undertaking to exercise the powers or functions  
14 of a state officer.

15       (~~(20)~~) (21) "Thing of economic value," in addition to its  
16 ordinary meaning, includes:

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

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

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

24       (~~(21)~~) (22)(a) "Transaction involving the state" means a  
25 proceeding, application, submission, request for a ruling or other  
26 determination, contract, claim, case, or other similar matter that  
27 the state officer, state employee, or former state officer or state  
28 employee in question believes, or has reason to believe:

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

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

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

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



1        (~~(+22+)~~) (23) "University" includes "state universities" and  
2 "regional universities" as defined in RCW 28B.10.016 and also  
3 includes any research or technology institute affiliated with a  
4 university, including without limitation, the Spokane intercollegiate  
5 research and technology institute and the Washington technology  
6 center.

7        (~~(+23+)~~) (24) "University research employee" means a state  
8 officer or state employee employed by a university, but only to the  
9 extent the state officer or state employee is engaged in research,  
10 technology transfer, approved consulting activities related to  
11 research and technology transfer, or other incidental activities.

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