H-2336.1

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**SUBSTITUTE HOUSE BILL 2046**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** House State Government & Tribal Relations (originally sponsored by Representatives Stonier, Abbarno, and Senn)

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

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

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

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

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

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

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

(i) Emergencies;

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

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

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

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

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

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

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

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

(iii) Constitutes sexual harassment.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition as long as (i) required notice of the meeting includes the title and number of the ballot proposition, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

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

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

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

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

(d) Activities that are part of the normal and regular conduct of the office or agency, which include but are not limited to:

(i) Communications by a legislator or appropriate legislative staff designee directly pertaining to any legislative proposal which has been introduced in either chamber of the legislature; and

(ii) Posting, by a legislator or appropriate legislative staff designee, information to a legislator's official legislative website including an official legislative social media account, about:

(A) Emergencies;

(B) Federal holidays, state and legislatively recognized holidays established under RCW 1.16.050, and religious holidays;

(C) Information originally provided or published by other government entities which provide information about government resources; and

(D) Achievements, honors, or awards of extraordinary distinction; and

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

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

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

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

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

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

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

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

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

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

(4) For purposes of this section:

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

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

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