

HOUSE BILL REPORT

SHB 2046

As Passed House:
February 8, 2022

Title: An act relating to ethics in public service rules governing certain legislative activity.

Brief Description: Concerning ethics in public service rules governing certain legislative activity.

Sponsors: House Committee on State Government & Tribal Relations (originally sponsored by Representatives Stonier, Abbarno and Senn).

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/26/22, 1/27/22, 1/31/22 [DPS].

Floor Activity:

Passed House: 2/8/22, 95-1.

Brief Summary of Substitute Bill

- States that, as applied to a legislator and appropriate legislative staff designees, it is not a violation of the prohibition on the use of public resources for special privileges, private gain, or campaign purposes to engage in the following activities: (1) communications directly pertaining to any legislative proposal which has been introduced in the Legislature; and (2) posting information to a legislator's official legislative website about emergencies, holidays, congratulatory letters, and information originally provided by a government entity that provides information about government resources.
- Adjusts the start of the election year freeze period for mail and electronic mails to constituents from December 1 the year before the general election to the first day of candidate filing in the year of the general election.
- Specifies that the election year freeze restrictions for websites and mail

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do not apply to legislators who have announced their retirement from public office and who have not filed a declaration of candidacy by the end of the candidacy filing period.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Valdez, Chair; Lekanoff, Vice Chair; Volz, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Dolan, Graham and Gregerson.

Staff: Desiree Omli (786-7105).

Background:

Ethics—Use of Public Resources for Personal Gain and Special Privileges.

The Ethics in Public Service Act (Ethics Act) prohibits state officers and state employees from using their public employment for personal gain or private advantage, or to provide special privileges or exemptions for anyone else. The only exception to this rule is when state officers and state employees must use a privilege or exemption not available to the general public to perform duties within the scope of their employment. The Legislative Ethics Board (Board) enforces the Ethics Act against legislators and legislative staff.

As it applies to the prohibition on the use of public resources for private gain or special privileges, the Board has found that it is not an improper use of a legislator's position or public resources to advocate for constituents when a legislative nexus exists. The Board has found that a legislative nexus exists in situations where the constituent is: (1) involved in a dispute with a government agency or official; or (2) seeking assistance on legislative issues.

Ethics—Election Year Freeze.

During an election year, certain communications by legislators are prohibited during a specified period. This prohibition is known as the "election year freeze." Beginning on the first day of the candidacy filing period, which is the Monday two weeks before Memorial Day, through the date of the certification of the general election, the official legislative website of a legislator seeking reelection or election to any public office may not be altered. The Board has advised that a legislative website includes official social media accounts and pages.

In addition, a legislator who is a candidate may not send mail or electronic mail (e-mail) to a constituent during the period beginning on December 1 of the year before a general election for a state legislator's election to office through the date of certification of the

general election. Certain exemptions apply such as routine legislative correspondence, two newsletters, and congratulatory letters. Congratulatory letters include letters to a 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. In addition, until the first day of candidacy filing, a legislator may send mail or e-mail to constituents in instances where constituents have specifically indicated that they would like to be contacted to receive regular or periodic updates on legislative matters or have been added to a distribution list if given an opportunity to opt out.

Summary of Substitute Bill:

Ethics—Use of Public Resources.

With regard to the exemption from the prohibition on the use of public resources to secure special privileges, an act within the scope of employment includes a duty enumerated in law or an activity that has a tangible legislative nexus. Activities with a legislative nexus include:

- communications directly pertaining to any legislative proposal which has been introduced in either chamber of the Legislature; and
- posting information to a legislator's official legislative website, including an official legislative social media account about:
 - emergencies;
 - federal holidays, state and legislatively recognized holidays, and religious holidays;
 - information originally provided or published by other government entities which provide information about government resources; and
 - achievements, honors, or awards of extraordinary distinction.

It is also not a violation of the prohibition on the use of public resources for private benefit or gain to engage in an activity with a legislative nexus.

For the purpose of the prohibition on the use of public resources for campaigns, activities that are considered as part of the normal and regular conduct of the Legislature, and therefore are permitted, are the same activities that are specified as an activity with a legislative nexus.

Ethics—Election Year Freeze.

The beginning of the election year freeze period during which mail and e-mail may not be sent to constituents is shifted forward to the first day of the declaration of candidacy filing, aligning it with the beginning of the period during which it is prohibited to alter a legislator's official legislative website. The term "official legislative website" is clarified to include a legislator's official legislative social media accounts. The exemption allowing legislators to mail two newsletters is removed.

The election year freeze restrictions do not apply to 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 statutory filing period.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) A legislator's tools of communication are important in sharing what they are working on in Olympia. As a result of outdated language in statute, there are difficult restrictions to navigate. This policy aligns the period when communications go dark before the election for both mail and website communications. This policy also continues to make sure that all communications are strictly tied to the work that legislators do. Currently, the Board interprets the statute to determine what is permissible to send out to constituents. Inconsistent opinions results in confusion. This policy clarifies in statute what is permitted. This bill expands allowable communication by specifying that the election year freeze does not apply to legislators who are retiring and fixing the "donut hole" in election year restrictions by moving the start of the mailing freeze period to align with the start of the website freeze period.

(Opposed) None.

Persons Testifying: Representative Monica Jurado Stonier, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.