

ESSB 5577 - H COMM AMD

By Committee on Government Operations & Elections

NOT ADOPTED 04/15/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that ensuring public
4 trust in government is a priority. The public expects its elected
5 officials and state employees to adhere to the highest ethical
6 standards during their service, and this includes a commitment to full
7 and independent investigations, with proper penalties, in cases where
8 the ethics in public service act is violated.

9 **Sec. 2.** RCW 42.52.050 and 2005 c 274 s 292 are each amended to
10 read as follows:

11 (1) No state officer or state employee may accept employment or
12 engage in any business or professional activity that the officer or
13 employee might reasonably expect would require or induce him or her to
14 make an unauthorized disclosure of confidential information acquired by
15 the official or employee by reason of the official's or employee's
16 official position.

17 (2) No state officer or state employee may make a disclosure of
18 confidential information gained by reason of the officer's or
19 employee's official position or otherwise use the information for his
20 or her personal gain or benefit or the gain or benefit of another,
21 unless the disclosure has been authorized by statute or by the terms of
22 a contract involving (a) the state officer's or state employee's agency
23 and (b) the person or persons who have authority to waive the
24 confidentiality of the information.

25 (3) No state officer or state employee may disclose confidential
26 information to any person not entitled or authorized to receive the
27 information.

28 (4) No state officer or state employee may intentionally conceal a
29 record if the officer or employee knew the record was required to be

1 released under chapter 42.56 RCW, was under a personal obligation to
2 release the record, and failed to do so. This subsection does not
3 apply where the decision to withhold the record was made in good faith.
4 As used in this subsection, "intentionally concealing a record" means
5 that the state officer or state employee knew the record was required
6 to be released under chapter 42.56 RCW, knew of the record's existence,
7 and intentionally did not provide the record to the requestor within
8 the time frame established by the agency.

9 NEW SECTION. Sec. 3. A new section is added to chapter 42.52 RCW
10 to read as follows:

11 Knowing acquiescence by a person exempt under chapter 41.06 or
12 41.56 RCW with authority to direct, control, or influence the actions
13 of the state office or state employee in violation of RCW 42.52.020,
14 42.52.070, 42.52.120, or 42.52.160 constitutes a violation of this
15 chapter.

16 **Sec. 4.** RCW 42.52.410 and 1994 c 154 s 211 are each amended to
17 read as follows:

18 (1) A person may, personally or by his or her attorney, make, sign,
19 and file with the appropriate ethics board a complaint on a form
20 provided by the appropriate ethics board. The complaint shall state
21 the name of the person alleged to have violated this chapter or rules
22 adopted under it and the particulars thereof, and contain such other
23 information as may be required by the appropriate ethics board.

24 (2) If it has reason to believe that any person has been engaged or
25 is engaging in a violation of this chapter or rules adopted under it,
26 an ethics board may issue a complaint.

27 (3)(a) A state employee who files a complaint with the appropriate
28 ethics board shall be afforded the protection afforded to a
29 whistleblower under RCW 42.40.050 and 49.60.210(2), subject to the
30 limitations of RCW 42.40.035 and 42.40.910. An agency, manager, or
31 supervisor may not retaliate against a state employee who, after making
32 a reasonable attempt to ascertain the correctness of the information
33 furnished, files a complaint with the appropriate ethics board.

34 (b) A state employee may not be denied the protections in chapter
35 42.40 RCW even if the ethics board denies an investigation of the
36 complaint.

1 (4) If a determination is made that a reprisal or retaliatory
2 action has been taken against the state employee, the retaliator may be
3 subject to a civil penalty of up to five thousand dollars.

4 **Sec. 5.** RCW 42.52.360 and 2005 c 106 s 5 are each amended to read
5 as follows:

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

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

13 (a) With respect to compliance with RCW 42.52.030, 42.52.110,
14 42.52.130, 42.52.140, and 42.52.150, the administrative process shall
15 be consistent with and adhere to no less than the current standards in
16 regulations of the United States public health service and the office
17 of the secretary of the department of health and human services in
18 Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity
19 in research.

20 (b) With respect to compliance with RCW 42.52.040, 42.52.080, and
21 42.52.120, the administrative process shall include a comprehensive
22 system for the disclosure, review, and approval of outside work
23 activities by university research employees while assuring that such
24 employees are fulfilling their employment obligations to the
25 university.

26 (c) With respect to compliance with RCW 42.52.160, the
27 administrative process shall include a reasonable determination by the
28 university of acceptable private uses having de minimis costs to the
29 university and a method for establishing fair and reasonable
30 reimbursement charges for private uses the costs of which are in excess
31 of de minimis.

32 (3) The executive ethics board shall:

33 (a) Develop educational materials and training;

34 (b) Adopt rules and policies governing the conduct of business by
35 the board, and adopt rules defining working hours for purposes of RCW
36 42.52.180 and where otherwise authorized under chapter 154, Laws of
37 1994;

- 1 (c) Issue advisory opinions;
- 2 (d) Investigate, hear, and determine complaints by any person or on
3 its own motion;
- 4 (e) Impose sanctions including reprimands and monetary penalties;
- 5 (f) Recommend to the appropriate authorities suspension, removal
6 from position, prosecution, or other appropriate remedy; and
- 7 (g) Establish criteria regarding the levels of civil penalties
8 appropriate for violations of this chapter and rules adopted under it.
- 9 (4) The board may:
- 10 (a) Issue subpoenas for the attendance and testimony of witnesses
11 and the production of documentary evidence relating to any matter under
12 examination by the board or involved in any hearing;
- 13 (b) Administer oaths and affirmations;
- 14 (c) Examine witnesses; and
- 15 (d) Receive evidence.
- 16 (5) The board shall not delegate to the board's executive director
17 its authority to issue advisories, advisory letters, or opinions.
- 18 (6) Except as provided in RCW 42.52.220, the executive ethics board
19 may review and approve agency policies as provided for in this chapter.
- 20 ((+6+)) (7) This section does not apply to state officers and state
21 employees of the judicial branch.

22 **Sec. 6.** RCW 42.52.420 and 2000 c 211 s 1 are each amended to read
23 as follows:

24 (1) After the filing of any complaint, except as provided in RCW
25 42.52.450, the staff of the appropriate ethics board shall investigate
26 the complaint.

27 (~~The investigation shall be limited to the allegations contained~~
28 ~~in the complaint.~~) The ethics board may request the assistance of the
29 office of the attorney general or a contract investigator in conducting
30 its investigation.

31 (2) The results of the investigation shall be reduced to writing
32 and the staff shall either make a determination that the complaint
33 should be dismissed pursuant to RCW 42.52.425, or recommend to the
34 board that there is or that there is not reasonable cause to believe
35 that a violation of this chapter or rules adopted under it has been or
36 is being committed.

1 (3) The board's determination on reasonable cause shall be provided
2 to the complainant and to the person named in such complaint.

3 (4) The identity of a person filing a complaint under RCW
4 42.52.410(1) is exempt from public disclosure unless the person filing
5 a complaint consents to public disclosure and copying by written
6 waiver.

7 **Sec. 7.** RCW 42.52.460 and 1994 c 154 s 216 are each amended to
8 read as follows:

9 Any person who has notified the appropriate ethics board and the
10 attorney general in writing that there is reason to believe that RCW
11 42.52.180 is being or has been violated may, in the name of the state,
12 bring a citizen action for any of the actions authorized under this
13 chapter. A citizen action may be brought only if the appropriate
14 ethics board or the attorney general have failed to commence an action
15 under this chapter within forty-five days after notice from the person,
16 the person has thereafter notified the appropriate ethics board and the
17 attorney general that the person will commence a citizen's action
18 within ten days upon their failure to commence an action, and the
19 appropriate ethics board and the attorney general have in fact failed
20 to bring an action within ten days of receipt of the second notice. An
21 action is deemed to have been commenced when the appropriate ethics
22 board or the board's executive director accepts a complaint for filing
23 and initiates a preliminary investigation.

24 If the person who brings the citizen's action prevails, the
25 judgment awarded shall escheat to the state, but the person shall be
26 entitled to be reimbursed by the state of Washington for costs and
27 attorneys' fees incurred. If a citizen's action that the court finds
28 was brought without reasonable cause is dismissed, the court may order
29 the person commencing the action to pay all costs of trial and
30 reasonable attorneys' fees incurred by the defendant.

31 Upon commencement of a citizen action under this section, at the
32 request of a state officer or state employee who is a defendant, the
33 office of the attorney general shall represent the defendant if the
34 attorney general finds that the defendant's conduct complied with this
35 chapter and was within the scope of employment.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 42.52 RCW
2 to read as follows:

3 (1) Each executive branch agency shall designate an ethics advisor
4 or advisors to assist the agency's employees in understanding their
5 obligations under the ethics in public service act. Agencies shall
6 inform the executive ethics board of their designated advisors. As
7 funding permits and as determined by the executive ethics board and the
8 agency head, the advisors shall receive regular ethics training.

9 (2) Executive branch officers and employees are encouraged to
10 attend ethics training offered by the executive ethics board at least
11 once every thirty-six months.

12 NEW SECTION. **Sec. 9.** A new section is added to chapter 42.40 RCW
13 to read as follows:

14 No legislator or statewide elected official may be compelled to
15 disclose information identifying a person who: (1) Makes a report of
16 a possible improper governmental action as defined in RCW 42.40.020 to
17 any legislator or statewide elected official; and (2) requests his or
18 her identity or any identifying information not be disclosed.

19 NEW SECTION. **Sec. 10.** A new section is added to chapter 42.56 RCW
20 to read as follows:

21 Information revealing the identity of a state employee or officer
22 who has reported improper governmental action as defined in RCW
23 42.20.020 or chapter 42.52 RCW, when in the possession of a legislator
24 or statewide elected official who has received the information in the
25 context of an investigation of the improper governmental action, is
26 exempt from public inspection and copying under this chapter."

27 Correct the title.

EFFECT: The striking amendment makes the following changes to the
underlying engrossed substitute senate bill:

Removes the provision authorizing the executive ethics board to
delegate its complaint-issuing authority to the executive director.

Prohibits the board from delegating to its executive director its
authority to issue advisories, advisory letters, or opinions.

Deletes changes made in the definitions of "ethics" and "university."

Provides that a state employee who files a complaint with the appropriate ethics board is afforded state employee whistleblower protection, as long as the employee has fulfilled the requirement in the whistleblower statute of having made a reasonable attempt to ascertain the correctness of information furnished.

Retains the civil penalty of up to \$5,000 for a person who has taken retaliatory action against a whistleblower, but removes the provisions establishing disciplinary consequences of a letter of reprimand and 30-day suspension.

Provides that the executive ethics board may request the assistance of the Office of the Attorney General or a contract investigator in conducting its investigation of a complaint involving any employee, rather than limiting such assistance to investigations involving exempt employees.

Creates a Public Records Act (PRA) exemption for information revealing the identity of a state employee or officer who has reported improper governmental action as defined in RCW 42.20.020 or chapter 42.52 RCW, when in the possession of a legislator or statewide elected official who has received the information in the context of an investigation of the improper governmental action.

Removes the PRA exemptions for all documents related to the complaint and subsequent investigation.

Limits to the executive branch the requirement that an ethics advisor be designated for each agency.

Replaces the mandatory ethics training requirement for all state officers and employees with a provision encouraging executive branch employees to attend such a training every 36 months.

Limits the prohibition on compelling a legislator or statewide elected official to disclose investigative records to information revealing the identity of a whistleblower who has requested anonymity.

Restores the option of a hearing by an administrative law judge where a person may be subject to a penalty and costs of \$500 or more.

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