

HOUSE BILL REPORT

HB 1136

As Reported by House Committee On:
State Government

Title: An act relating to employment after public service in state government.

Brief Description: Concerning employment after public service in state government.

Sponsors: Representatives Carlyle, S. Hunt, Tarleton, Kilduff, Appleton, Pike, Gregerson, Bergquist, Ormsby, Haler, Ryu, Sells, Pollet, Fey and Farrell; by request of Attorney General.

Brief History:

Committee Activity:

State Government: 1/28/15, 2/17/15 [DPS].

Brief Summary of Substitute Bill

- Prohibits certain former state officials and employees from lobbying or attempting to influence state government within one year of leaving public service.
- Requires the same former officials and employees to disclose certain employment activities for one year after leaving public service.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Appleton, Gregory and Hawkins.

Minority Report: Do not pass. Signed by 2 members: Representatives Holy, Ranking Minority Member; Van Werven, Assistant Ranking Minority Member.

Staff: Sean Flynn (786-7124).

Background:

Under the state ethics law, former state officers and employees are barred from entering into certain employment and contractual arrangement after they leave public service.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Post-Public Employment Prohibitions.

One-Year Prohibition. A former officer or employee may not accept employment or receive compensation from an employer for one year after leaving public service if:

- the former officer or employee was in a position to affect contract negotiations or administration with the employer within two years before leaving public service;
- the contract or multiple contracts had a total value over \$10,000; and
- the employment opportunity includes fulfilling or implementing the contract provisions.

Two-Year Prohibition. A former officer or employee may not have a beneficial interest in a contract or grant for two years after leaving public service, if he or she participated in the specific legislative or executive funding of that contract or grant.

Lifetime Prohibition. A former officer or employee may never accept employment or compensation from an employer, if he or she has reason to believe the employer intended that the offer would influence the officer or employee's duties in public service, or would compensate or reward the officer or employee for past performance. The ban also applies where a reasonable person would believe the offer was made for the purpose of influencing the performance of the officer or employee while in public service.

A former officer or employee may never assist another person in any transaction involving the state if he or she participated in the transaction during state employment.

Enforcement.

The state ethics boards include a legislative and executive board as well as a commission on judicial conduct. Each board has authority, respectively, over the members and employees of each branch of government regarding the enforcement of the state ethics law. The Attorney General may investigate persons not under the jurisdiction of the boards who are suspected of violating the ethics laws.

Each board has authority to issue civil penalties for violations of the state ethics law. The board may impose a penalty up to \$5,000 per violation, or up to three times the value of each thing received or sought that was in violation of the ethics law.

Summary of Substitute Bill:

Post-Employment Prohibitions.

Certain former state officers and employees are prohibited for one year after leaving public service from receiving compensation to serve as a lobbyist, practice or appeal before certain state agencies, or attempt to influence state actions on behalf of another person.

Statewide Prohibition. The following former officers and employees are banned for one year from lobbying or attempting to influence any state agency:

- statewide elected officials and state legislators;

- heads of agencies in the governor's executive cabinet, as well as chiefs of staff and top administrators who report directly to those agency heads;
- the Chief Clerk of the House of Representatives, the Secretary of the Senate, and certain top administrators of each legislative chamber; and
- senior executive staff of legislative agencies and agencies managed by statewide elected officials or managed by the heads of executive cabinet agencies.

Prohibition Limited to Former Agency. The following former officers and employees are banned for one year from lobbying or attempting to influence their former agency:

- heads of agencies outside the Governor's cabinet, as well as chiefs of staff and top administrators who report directly to those agency heads; and
- senior executive staff of those agencies.

Senior executive staff includes state employees and officers who exercise significant discretion and judgment on final agency policies. Each agency must submit annually the names and positions of each senior executive staff member's name and position to the relevant ethics board.

Exceptions.

The one year post-employment ban on lobbying or influencing state agencies does not apply to persons working for another state, local, or federal agency, or a charitable non-profit organization. It also does not apply to persons representing a person or testifying in a judicial or administrative hearing, testifying in a public legislative committee session, participating in rulemaking at the request of an agency, or assisting with ministerial activities.

The state ethics boards must adopt rules for persons who seek a waiver from the post-employment lobbying and influencing prohibitions. A waiver must be conditioned upon a finding that the compensated service does not present a conflict of interest, the need outweighs any potential conflict of interest, or emergency circumstances warrant a waiver.

Disclosure Statements.

Each former state officer or employee covered under the post-employment prohibition on lobbying state government must submit a post-employment disclosure form to the relevant state ethics board. The statement includes the former officer or employee's name, the last position held and state agency, and an acknowledgement of the post-employment prohibitions.

If the former officer or employee receives compensation from an employer or entity that conducts business with the state, or takes action to influence any state policy, rule, or legislative matter, he or she must provide more information on the disclosure form, including:

- the name of the new employer and supervisor or source of compensation;
- the date the new employment will begin or began; and
- a description of the duties for the new employer or business.

The statement is due within 14 days after the person left public service and extends through the first year after leaving public service. The person must update the statement within 45

days after he or she takes a new compensated position with an employer that conducts business with the state.

The ethics boards must collaborate to provide online filing and a process to send forms to the executive ethics board. The executive ethics board must make post-employment disclosure statements available on its website. The other ethics boards and the Public Disclosure Commission must provide links to the website.

Substitute Bill Compared to Original Bill:

The substitute provides an exception to the post-employment ban for former officers or employees that work for a charitable nonprofit organization.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect July 1, 2016, except section 4 relating to the ethics board rulemaking authority, which takes effect 90 days after session.

Staff Summary of Public Testimony:

(In support) The disconnect between the public's perception regarding how representative democracy works and how the system of government functions must be addressed to ensure the public's trust. Without clear dividing lines between government and private work, it is difficult to have healthy and vibrant discussions of policy issues on all sides. Despite the fact that most public servants have strong personal values, the public has deep questions about whether decisions are being made in their best interest. High-level officials have access to information and access that is entrusted to state officers by the people to be used in the public's interest. When officials quickly turn from public to private employment, the public's trust is diminished.

Thirty-two states have some form of delineation between public and private employment. In 1994 then-Attorney-General Christine Gregoire proposed our current ethics laws, which target specific post-employment activities, such as benefitting from a state contract after leaving state service. However, these laws do not prevent a state officer from leaving state employment and immediately entering into private employment to lobby the same agency where he or she worked. The current law does not provide strong dividing lines for senior executive officials.

A one-year limitation period does not impose a great burden on former state officials and employees from making a living after public service, but does help to restore public confidence and reduces the opportunities for mixing private and public interests. This bill is not intended to limit the participation and service of legislative members who are full-time legislators and do not have careers outside of the Legislature, but it will help mitigate the

influence and power of information a former employee may have when leaving office. It is a reasonable and thoughtful measure to deal with sensitive and important issues.

The bill does not prohibit a former employee from taking a position in the public sector, and this ban on lobbying does not foreclose all opportunities in the private sector.

(Opposed) None.

Persons Testifying: Representative Carlyle, prime sponsor; Mamie Marcus and Nancy Krier, Office of the Attorney General; and John King, Fix Democracy First.

Persons Signed In To Testify But Not Testifying: None.