

SENATE BILL REPORT

SB 5120

As Reported by Senate Committee On:
State Government, February 17, 2017
Ways & Means, February 6, 2018

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

Brief Description: Concerning employment after public service in state government. [**Revised for 1st Substitute:** Enhancing oversight and transparency of lobbying activity.]

Sponsors: Senators Carlyle, Miloscia, Hunt, Dansel, Rolfes, Cleveland, Keiser, Kuderer and Chase; by request of Attorney General.

Brief History:

Committee Activity: State Government: 1/25/17, 2/17/17 [DPS, DNP].
Ways & Means: 1/31/18, 2/06/18 [w/oRec, DNP].

Brief Summary of Bill

- Prohibits various state officers and employees from receiving compensation for certain lobbying activities for one year after leaving state service.
- Requires state officers and employees subject to that prohibition to file post-employment disclosure statements.
- Requires display of post-employment disclosure statements on the Executive Ethics Board's website.
- Requires lobbyist and lobbyist employer reports to be filed electronically.
- Requires public agencies and employees to file as lobbyist employers and lobbyists, respectively, for lobbying activities, with limited exceptions.

SENATE COMMITTEE ON STATE GOVERNMENT

Majority Report: That Substitute Senate Bill No. 5120 be substituted therefor, and the substitute bill do pass.

Signed by Senators Miloscia, Chair; Zeiger, Vice Chair; Kuderer and Pearson.

Minority Report: Do not pass.

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.

Signed by Senator Hunt, Ranking Minority Member.

Staff: Samuel Brown (786-7470)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That it be referred without recommendation.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Bailey, Becker, Billig, Brown, Carlyle, Conway, Darneille, Fain, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker, Rivers, Wagoner and Warnick.

Minority Report: Do not pass.

Signed by Senator Van De Wege.

Staff: Julie Murray (786-7711)

Background: Post-Public Employment Restrictions. Former state officers and employees are barred from entering into certain employment and contractual arrangements after they leave public service. 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.

A former officer or employee may not have a beneficial interest in a contract or grant for two years after leaving public service, if the former officer or employee participated in the specific legislative or executive funding of that contract or grant. A former officer or employee may never accept employment or compensation from an employer if the former officer or employee 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 not assist another person in any transaction involving the state if the former officer or employee participated in the transaction during state employment.

Enforcement. The Legislative Ethics Board, the Executive Ethics Board, and the Commission on Judicial Conduct have authority over the members and employees of their respective branches of government regarding the enforcement of state ethics laws. The Attorney General may investigate persons not under the jurisdiction of the boards who are suspected of violating state ethics laws.

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

Summary of Bill (First Substitute): Post-Employment Prohibitions. Certain 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.

The following former officers and employees are banned from lobbying or attempting to influence any state agency for one year after leaving state employment:

- statewide elected officials and state legislators;
- heads of cabinet agencies and 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 managed by the heads of executive cabinet agencies, of legislative agencies, and of agencies managed by statewide elected officials.

The following former officers and employees are banned from lobbying or attempting to influence their former agency for one year after leaving state employment:

- heads of non-cabinet agencies and their chiefs of staff;
- top administrators who report directly to those agency heads; and
- senior executive staff of those agencies.

Senior executive staff include state employees and officers who exercise significant discretion and judgment on final agency policies. Each agency must annually submit the name and position of each senior executive staff member 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 unless lobbying on behalf of that agency, 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 subject to 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. The statement is due within 14 days after the person leaves public service and extends through the first year after leaving public service. The person must update the statement within 45 days after the person takes a new compensated position with an employer that conducts business with the state.

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, the former officer or employee must provide more information on the disclosure form, including:

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

The ethics boards must collaborate to provide online filing and a process to send forms to the executive ethics board. Post-employment disclosure statements must be available on the Executive Ethics Board's website, and linked to by the other ethics boards and the Public Disclosure Commission.

Lobbying Disclosure. Lobbyists and lobbyist employers must file reports electronically with the PDC. The PDC must maintain a system for accepting electronically filed lobbyist reports. Each public agency employee who lobbies on behalf of an agency, with limited exceptions, must register as a lobbyist with the PDC. Each public agency with employees who register with the PDC as lobbyists for lobbying on behalf of the agency must register as a lobbyist employer with the PDC.

Other Provisions. The bill contains a severability clause stating that if any provision is held invalid, other provisions in the bill shall not be affected.

EFFECT OF CHANGES MADE BY STATE GOVERNMENT COMMITTEE (First Substitute): Lobbyists and lobbyist employers must file reports electronically with the PDC. The PDC must maintain a system for accepting electronically filed lobbyist reports. Each public agency employee who lobbies on behalf of an agency, with limited exceptions, must register as a lobbyist with the PDC. Each public agency with employees who register with the PDC as lobbyists for lobbying on behalf of the agency must register as a lobbyist employer with the PDC.

State employees and officials subject to the reporting requirements of the act are prohibited from receiving compensation for lobbying on behalf of a public agency within one year of leaving their previous position unless a waiver is granted.

Statements of legislative intent are removed.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (State Government): *Testimony from 2017 Regular Session. The committee recommended a different version of the bill than*

what was heard. PRO: Public trust in government institutions is vitally important. Washington State lags behind a majority of other states in post-employment prohibition requirements for lobbying. Current laws in the state are unclear and too narrow to be sufficiently enforced. Voters believe that people in government positions that immediately transfer to lobbying their former agencies after employment to be a form of corruption. This bill will provide increased clarity and transparency for newspapers and voters, and a 12 month cooling off period between government employment and lobbying is modest and fair.

Persons Testifying (State Government): PRO: Senator Reuven Carlyle, Prime Sponsor; Mike Webb, Office of the Attorney General; Kathy Sakahara, League of Women Voters; Rowland Thompson, Allied Daily Newspapers of Washington; Arthur West, citizen.

Persons Signed In To Testify But Not Testifying (State Government): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: The purpose of this bill is to ensure that high-ranking public officials are free from improper influence. Public officers and public officials of agencies can leave their state job on Friday and start work as a lobbyist on Monday—paid to influence their former colleagues. This revolving door creates an appearance of special access, unfair advantage, and conflict of interest. The bill pauses the revolving door for a one-year cooling off period to restore public trust. It comes at very little cost. Creating a cooling off period may be uncomfortable and deeply sensitive, but most states have some form of this. Among national rankings, Washington has the weakest ethical standards between lobbying and public service. This would be an important and meaningful step forward to doing more. I am open to ways to improve the legislation. It is important to public trust.

Persons Testifying (Ways & Means): PRO: Senator Reuven Carlyle, Prime Sponsor; Bryan Russell, Attorney General's Office.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.