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**SUBSTITUTE SENATE BILL 5170**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate State Government & Elections (originally sponsored by Senators Carlyle, Hunt, Kuderer, Liias, Saldaña, and Wilson, C.)

AN ACT Relating to employment after public service in state government; amending RCW 42.52.080 and 42.52.900; reenacting and amending RCW 42.52.010; adding a new section to chapter 42.52 RCW; creating new sections; and providing an effective date.

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

**Sec.**  RCW 42.52.010 and 2011 c 60 s 28 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

(2) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person.

(3) "Beneficial interest" has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(4) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person.

(5) "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

(6) "Contract" or "grant" means an agreement between two or more persons that creates an obligation to do or not to do a particular thing. "Contract" or "grant" includes, but is not limited to, an employment contract, a lease, a license, a purchase agreement, or a sales agreement.

(7) "Ethics boards" means the commission on judicial conduct, the legislative ethics board, and the executive ethics board.

(8) "Family" has the same meaning as "immediate family" in RCW 42.17A.005.

(9) "Gift" means anything of economic value for which no consideration is given. "Gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items a state officer or state employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter 42.17A RCW;

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group; and

(j) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.

(10) "Head of agency" means the chief executive officer of an agency. In the case of an agency headed by a commission, board, committee, or other body consisting of more than one natural person, agency head means the person or board authorized to appoint agency employees and regulate their conduct.

(11) "Honorarium" means money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer's or state employee's official role.

(12) "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(13) "Official duty" means those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution.

((~~(13)~~)) (14) "Participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise but does not include preparation, consideration, or enactment of legislation or the performance of legislative duties.

((~~(14)~~)) (15) "Person" means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

((~~(15)~~)) (16) "Regulatory agency" means any state board, commission, department, or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

((~~(16)~~)) (17) "Responsibility" in connection with a transaction involving the state, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove, or otherwise direct state action in respect of such transaction.

((~~(17)~~)) (18) "State action" means any action on the part of an agency, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

((~~(18)~~)) (19) "State employee" means an individual who is employed by an agency in any branch of state government. For purposes of this chapter, employees of the superior courts are not state officers or state employees.

((~~(19)~~)) (20) "State officer" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. "State officer" includes judges of the superior court, judges of the court of appeals, justices of the supreme court, members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work. For the purposes of this chapter, "state officer" also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

((~~(20)~~)) (21) "Thing of economic value," in addition to its ordinary meaning, includes:

(a) A loan, property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation;

(b) An option, irrespective of the conditions to the exercise of the option; and

(c) A promise or undertaking for the present or future delivery or procurement.

((~~(21)~~)) (22)(a) "Transaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

(i) Is, or will be, the subject of state action; or

(ii) Is one to which the state is or will be a party; or

(iii) Is one in which the state has a direct and substantial proprietary interest.

(b) "Transaction involving the state" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit.

((~~(22)~~)) (23) "University" includes "state universities" and "regional universities" as defined in RCW 28B.10.016 and also includes any research or technology institute affiliated with a university, including without limitation, the Spokane intercollegiate research and technology institute and the Washington technology center.

((~~(23)~~)) (24) "University research employee" means a state officer or state employee employed by a university, but only to the extent the state officer or state employee is engaged in research, technology transfer, approved consulting activities related to research and technology transfer, or other incidental activities.

**Sec.**  RCW 42.52.080 and 1999 c 299 s 3 are each amended to read as follows:

(1) No former state officer or state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from an employer if:

(a) The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration;

(b) Such a contract or contracts have a total value of more than ten thousand dollars; and

(c) The duties of the employment with the employer or the activities for which the compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts. This subsection shall not be construed to prohibit a state officer or state employee from accepting employment with a state employee organization.

(2) No person who has served as a state officer or state employee may, within a period of two years following the termination of state employment, have a direct or indirect beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

(3) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the officer or employee knows or has reason to believe that the offer of employment or compensation was intended, in whole or in part, directly or indirectly, to influence the officer or employee or as compensation or reward for the performance or nonperformance of a duty by the officer or employee during the course of state employment.

(4) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the circumstances would lead a reasonable person to believe the offer has been made, or compensation given, for the purpose of influencing the performance or nonperformance of duties by the officer or employee during the course of state employment.

(5) No former state officer or state employee may at any time subsequent to his or her state employment assist another person, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment. This subsection shall not be construed to prohibit any employee or officer of a state employee organization from rendering assistance to state officers or state employees in the course of employee organization business.

(6)(a) The following categories of former state officers and state employees apply to this subsection (6):

(i) Category A:

(A) Statewide elected officials;

(B) State legislators;

(C) Heads of agencies included in the governor's executive cabinet;

(D) Chiefs of staff or equivalent top administrators who report directly to statewide elected officials and heads of agencies included in the governor's executive cabinet;

(E) Chiefs of staff and top administrators of the legislature, which includes the chief clerk of the house of representatives, the secretary of the senate, the legal counsel for each legislative chamber, and the caucus chiefs of staff and caucus leadership counsel in each legislative chamber; and

(F) Senior executive staff of legislative agencies and agencies managed by statewide elected officials or heads of agencies included in the governor's executive cabinet; and

(ii) Category B:

(A) Heads of agencies not otherwise listed in category A;

(B) Chiefs of staff or equivalent top administrators who report directly to heads of agencies not otherwise listed in category A; and

(C) Senior executive staff managed by heads of agencies not otherwise listed in category A.

(b) For the purpose of this subsection (6), "senior executive staff" means those state employees or state officers whose primary responsibilities require the exercise of significant discretion and judgment on final agency policy, rule, legislative matter, or state action. By January 15th of each year, every agency shall submit to the relevant ethics board the names and staff positions meeting the criteria of senior executive staff, and must periodically update that list throughout the year as necessary to reflect changes in staff.

(c) Persons in categories A and B shall file a postemployment disclosure statement under section 4 of this act.

(d) Persons in category A, within one year after leaving state office or employment, may not receive compensation for:

(i) Serving as a lobbyist as defined in RCW 42.17A.005 for others;

(ii) Practicing or appearing before any state agency; or

(iii) Attempting, on behalf of another, to influence a state action by any state agency.

(e) Persons in category B, within one year after leaving state office or employment, may not receive compensation for:

(i) Serving as a lobbyist for others as defined in RCW 42.17A.005 on any matter that was or is under the authority of his or her most recent former state employer;

(ii) Practicing or appearing before his or her most recent former state employer; or

(iii) Attempting, on behalf of another, to influence a state action by his or her most recent former state employer.

(f) This subsection (6) does not apply to persons receiving compensation for the following activities:

(i) Performing official duties as a current state officer or state employee;

(ii) Leaving a state agency to take another state agency, local agency, or federal government position;

(iii) Representing a person in a judicial or quasi-judicial proceeding including administrative hearings;

(iv) Being called or requested to testify in any judicial or quasi-judicial proceeding, or in public sessions of the committees of the legislature;

(v) Participating in rule making at the request of an agency under RCW 34.05.310;

(vi) Assisting a natural person or corporation in obtaining or completing application forms or other forms required by a state agency for the conduct of business, or similar ministerial activities defined in rule by the ethics boards; or

(vii) Activities approved by a waiver under the relevant ethics boards.

(7) The ethics boards shall adopt rules at each of their agencies describing a process for a person to seek a waiver from the postemployment requirements in subsection (6)(d) and (e) of this section. Rules must be adopted by July 1, 2022. No waiver may be granted from the requirement to file a postemployment disclosure statement in subsection (6)(c) of this section. The ethics boards are authorized to delegate waiver approval to the chair or the chair's designee, including the executive director. Before granting a waiver, the board must find that:

(a) The postemployment activity presents no conflict with the state's interest;

(b) A need for the former state officer or employee's compensated service outweighs any potential or perceived conflict with the state's interest; or

(c) Extraordinary, emergency, or unique circumstances otherwise warrant granting a waiver.

(8) As used in this section, "employer" means a person as defined in RCW 42.52.010 or any other entity or business that the person owns or in which the person has a controlling interest. For purposes of subsection (1) of this section, the term "employer" does not include a successor organization to the rural development council under chapter 43.31 RCW.

**Sec.**  RCW 42.52.900 and 1994 c 154 s 1 are each amended to read as follows:

Government derives its powers from the people. Ethics in government are the foundation on which the structure of government rests. State officials and employees of government hold a public trust that obligates them, in a special way, to honesty and integrity in fulfilling the responsibilities to which they are elected and appointed. Paramount in that trust is the principle that public office, whether elected or appointed, may not be used for personal gain or private advantage.

The citizens of the state expect all state officials and employees to perform their public responsibilities in accordance with the highest ethical and moral standards and to conduct the business of the state only in a manner that advances the public's interest. State officials and employees are subject to the sanctions of law and scrutiny of the media; ultimately, however, they are accountable to the people and must consider this public accountability as a particular obligation of the public service. Only when affairs of government are conducted, at all levels, with openness as provided by law and an unswerving commitment to the public good does government work as it should.

The obligations of government rest equally on the state's citizenry. The effectiveness of government depends, fundamentally, on the confidence citizens can have in the judgments and decisions of their elected representatives. Citizens, therefore, should honor and respect the principles and the spirit of representative democracy, recognizing that both elected and appointed officials, together with state employees, seek to carry out their public duties with professional skill and dedication to the public interest. Such service merits public recognition and support.

All who have the privilege of working for the people of Washington state can have but one aim: To give the highest public service to its citizens.

Furthermore, the legislature finds that the state has a compelling interest in preserving the public trust in the integrity of our government and ensuring that the actions of state employees are free from improper influence. The ability of a former public officer or employee in state government to be paid to influence state government actions immediately after leaving state service creates the appearance to the public of special favor, unfair access, and conflicts of interest. The practice of paying former public servants in state government to use their special knowledge of internal agency process and personal relationships with former colleagues to gain influence for private and special interests should be tempered for a period of time to protect the public interest.

A majority of states, as well as the federal government, have enacted laws requiring a cooling off period or other postgovernment employment laws addressing when a former public officer may lobby government or seek to influence his or her former employer. These laws impose anywhere from a one-year to a lifetime ban on certain postemployment activities. A cooling off period can effectively reduce the leverage a former officer or high-level employee has when he or she is paid to influence policy decisions within the authority of his or her former employer or former duties, until that influence is mitigated through the passage of time.

The disclosure by former state officers and high-level employees of their postemployment income sources will strengthen transparency and confidence in the integrity of government.

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

(1) The postemployment disclosure statement required under RCW 42.52.080(6) must include the following information:

(a) The name of the person leaving state service;

(b) The position held in state government before leaving state service and the name of the most recent employer agency; and

(c) An acknowledgment that the person has reviewed RCW 42.52.080 and 42.52.090, and for former executive branch employees, RCW 42.52.100.

(2) If, following state service, the person leaving state service receives compensation from an employer or other entity that does business with the state or takes action to influence any state policy, rule, legislative matter, or action, the postemployment disclosure statement required under RCW 42.52.080(6) must also include the following information:

(a) The name and address of the new employer or source of compensation following state service;

(b) The name of the supervisor at the new employer, if any, or other identifying information of the principal of the employing or contracting entity;

(c) The date such new employment begins or began; and

(d) A description of anticipated postemployment duties at the new employer or employing business or provided by a contract.

(3) The person must date the statement and sign it under oath. An electronic signature is permitted if the form is filed electronically.

(4)(a) The statement is required during the twelve-month period after the date the person leaves state service and takes a new employment position or receives compensation during that same period. The information in the statement is public information.

(b) The person shall submit the statement to the respective ethics board no later than 14 days after the person leaves state service to take a compensated employment position or takes the compensated employment position, whichever occurs earlier.

(c) If during the 12-month period a person changes employers or sources of employment compensation to another employer that does business with the state or takes action to influence any state policy, rule, legislative matter, or action, he or she shall submit a new statement within 45 days.

(d) For the purposes of this section and the statement required by it, compensation does not mean income received through the person's retirement or investment accounts, social security, or similar sources.

(5) The ethics boards shall collaborate as necessary to design a uniform postemployment statement that permits online filing and on a process to send copies of filed statements to the executive ethics board. The ethics boards may adopt the statement and filing process by rule.

(6) The legislative ethics board and the commission on judicial conduct shall provide a copy of filed postemployment statements to the executive ethics board. Postemployment statements must be made available online in a searchable database on the executive ethics board website. The other ethics boards and the public disclosure commission shall link to the database on their respective websites. "Searchable database" means copies of statements are posted on the executive ethics board's website and can be searched by the names of the employee or state officer, former employer, and if required to be disclosed under subsection (2) of this section, the new employer.

(7) The ethics boards may adopt rules to implement this section with any initial rules adopted by July 1, 2022.

NEW SECTION. **Sec.**  The ethics boards may begin the rule‑making process under sections 2 and 4 of this act on the effective date of this section.

NEW SECTION. **Sec.**  This act applies to state officers and employees who were employed in state positions on or after the effective date of this section.

NEW SECTION. **Sec.**  Sections 2 through 4 and 6 of this act take effect July 1, 2022.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**