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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, Lias, Saldaña, and Wilson, C.)

READ FIRST TIME 02/08/21.

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

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

6 **Sec. 1.** RCW 42.52.010 and 2011 c 60 s 28 are each reenacted and  
7 amended to read as follows:

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

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

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

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

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

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

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

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

21 (8) "Family" has the same meaning as "immediate family" in RCW  
22 42.17A.005.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (~~(13)~~) (14) "Participate" means to participate in state action  
36 or a proceeding personally and substantially as a state officer or  
37 state employee, through approval, disapproval, decision,  
38 recommendation, the rendering of advice, investigation, or otherwise  
39 but does not include preparation, consideration, or enactment of  
40 legislation or the performance of legislative duties.

1       (~~(14)~~) (15) "Person" means any individual, partnership,  
2 association, corporation, firm, institution, or other entity, whether  
3 or not operated for profit.

4       (~~(15)~~) (16) "Regulatory agency" means any state board,  
5 commission, department, or officer, except those in the legislative  
6 or judicial branches, authorized by law to conduct adjudicative  
7 proceedings, issue permits or licenses, or to control or affect  
8 interests of identified persons.

9       (~~(16)~~) (17) "Responsibility" in connection with a transaction  
10 involving the state, means the direct administrative or operating  
11 authority, whether intermediate or final, and either exercisable  
12 alone or through subordinates, effectively to approve, disapprove, or  
13 otherwise direct state action in respect of such transaction.

14       (~~(17)~~) (18) "State action" means any action on the part of an  
15 agency, including, but not limited to:

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

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

20       (~~(18)~~) (19) "State employee" means an individual who is  
21 employed by an agency in any branch of state government. For purposes  
22 of this chapter, employees of the superior courts are not state  
23 officers or state employees.

24       (~~(19)~~) (20) "State officer" means every person holding a  
25 position of public trust in or under an executive, legislative, or  
26 judicial office of the state. "State officer" includes judges of the  
27 superior court, judges of the court of appeals, justices of the  
28 supreme court, members of the legislature together with the secretary  
29 of the senate and the chief clerk of the house of representatives,  
30 holders of elective offices in the executive branch of state  
31 government, chief executive officers of state agencies, members of  
32 boards, commissions, or committees with authority over one or more  
33 state agencies or institutions, and employees of the state who are  
34 engaged in supervisory, policy-making, or policy-enforcing work. For  
35 the purposes of this chapter, "state officer" also includes any  
36 person exercising or undertaking to exercise the powers or functions  
37 of a state officer.

38       (~~(20)~~) (21) "Thing of economic value," in addition to its  
39 ordinary meaning, includes:

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

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

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

8 (~~(21)~~) (22) (a) "Transaction involving the state" means a  
9 proceeding, application, submission, request for a ruling or other  
10 determination, contract, claim, case, or other similar matter that  
11 the state officer, state employee, or former state officer or state  
12 employee in question believes, or has reason to believe:

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

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

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

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

24 (~~(22)~~) (23) "University" includes "state universities" and  
25 "regional universities" as defined in RCW 28B.10.016 and also  
26 includes any research or technology institute affiliated with a  
27 university, including without limitation, the Spokane intercollegiate  
28 research and technology institute and the Washington technology  
29 center.

30 (~~(23)~~) (24) "University research employee" means a state  
31 officer or state employee employed by a university, but only to the  
32 extent the state officer or state employee is engaged in research,  
33 technology transfer, approved consulting activities related to  
34 research and technology transfer, or other incidental activities.

35 **Sec. 2.** RCW 42.52.080 and 1999 c 299 s 3 are each amended to  
36 read as follows:

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

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

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

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

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

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

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

37 (5) No former state officer or state employee may at any time  
38 subsequent to his or her state employment assist another person,  
39 whether or not for compensation, in any transaction involving the  
40 state in which the former state officer or state employee at any time

1 participated during state employment. This subsection shall not be  
2 construed to prohibit any employee or officer of a state employee  
3 organization from rendering assistance to state officers or state  
4 employees in the course of employee organization business.

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

7 (i) Category A:

8 (A) Statewide elected officials;

9 (B) State legislators;

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

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

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

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

23 (ii) Category B:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (7) The ethics boards shall adopt rules at each of their agencies  
35 describing a process for a person to seek a waiver from the  
36 postemployment requirements in subsection (6)(d) and (e) of this  
37 section. Rules must be adopted by July 1, 2022. No waiver may be  
38 granted from the requirement to file a postemployment disclosure  
39 statement in subsection (6)(c) of this section. The ethics boards are  
40 authorized to delegate waiver approval to the chair or the chair's



1 designee, including the executive director. Before granting a waiver,  
2 the board must find that:

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

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

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

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

16 **Sec. 3.** RCW 42.52.900 and 1994 c 154 s 1 are each amended to  
17 read as follows:

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

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

37 The obligations of government rest equally on the state's  
38 citizenry. The effectiveness of government depends, fundamentally, on  
39 the confidence citizens can have in the judgments and decisions of

1 their elected representatives. Citizens, therefore, should honor and  
2 respect the principles and the spirit of representative democracy,  
3 recognizing that both elected and appointed officials, together with  
4 state employees, seek to carry out their public duties with  
5 professional skill and dedication to the public interest. Such  
6 service merits public recognition and support.

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

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

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

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

35 NEW SECTION. Sec. 4. A new section is added to chapter 42.52  
36 RCW to read as follows:

37 (1) The postemployment disclosure statement required under RCW  
38 42.52.080(6) must include the following information:

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

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

3 (c) An acknowledgment that the person has reviewed RCW 42.52.080  
4 and 42.52.090, and for former executive branch employees, RCW  
5 42.52.100.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 NEW SECTION. **Sec. 5.** The ethics boards may begin the  
19 rule-making process under sections 2 and 4 of this act on the  
20 effective date of this section.

21 NEW SECTION. **Sec. 6.** This act applies to state officers and  
22 employees who were employed in state positions on or after the  
23 effective date of this section.

24 NEW SECTION. **Sec. 7.** Sections 2 through 4 and 6 of this act  
25 take effect July 1, 2022.

26 NEW SECTION. **Sec. 8.** If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

--- END ---