

HOUSE BILL REPORT

SB 5913

As Passed House:
February 27, 2024

Title: An act relating to communication between employees of state institutions of higher education and student athletes regarding name, image, and likeness use.

Brief Description: Concerning communication between employees of state institutions of higher education and student athletes regarding name, image, and likeness use.

Sponsors: Senators Valdez, MacEwen, Hunt and Nobles.

Brief History:

Committee Activity:

State Government & Tribal Relations: 2/14/24, 2/21/24 [DP].

Floor Activity:

Passed House: 2/27/24, 92-2.

Brief Summary of Bill

- Provides that the Ethics in Public Service Act does not prohibit an employee of a state institution of higher education to use public resources to benefit a student athlete in advising, facilitation, acknowledgment, or education related to a matter involving name, image, and likeness.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass. Signed by 7 members: Representatives Ramos, Chair; Stearns, Vice Chair; Cheney, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Gregerson, Low and Mena.

Staff: Jason Zolle (786-7124).

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

Background:

The Ethics in Public Service Act.

The Ethics in Public Service Act (Ethics Act) prohibits state officers and state employees from using their public employment for personal gain or private advantage, or creating the appearance of such impropriety. Some prohibited activities include:

- having financial interests or engaging in business activity that conflicts with the proper discharge of official duties;
- using public resources for private gain;
- receiving gifts or outside compensation for official duties;
- receiving compensation for certain activity outside one's official duties;
- using public resources for private benefit or political campaigns; and
- using one's position to secure special privileges or exemptions for oneself or others, except as required to perform duties within the scope of employment.

The Ethics Act is enforced by the state ethics boards for each branch of government. Any person may initiate a complaint, and state employees who file complaints have whistleblower protections. Each branch of government has its own board that investigates, conducts hearings, and—if necessary—issues civil sanctions for its respective employees' violations of these ethics rules. The Attorney General may investigate persons not under the jurisdiction of an ethics board who were involved in unlawful transactions.

Name, Image, and Likeness for Student Athletes.

Name, image, and likeness (NIL) refers to a person's right of publicity that entitles them to prevent the unauthorized use of their NIL by others for commercial benefit. Prior to 2021, rules of the National Collegiate Athletic Association (NCAA) prohibited student athletes from accepting benefits and earning money for their NIL. Those rules changed in response to a ruling of the United States Supreme Court that these limits violated federal antitrust law. New NCAA rules permit student athletes to engage in NIL activities consistent with the law of the state in which the school is located. Student athletes are still prohibited from receiving improper recruiting inducements and pay-for-play. Colleges and universities are permitted to be a resource for state law questions.

Summary of Bill:

A provision is added to the Ethics Act to specify that an employee of a state institution of higher education may use public resources to benefit a student athlete in advising, facilitation, acknowledgment, or education related to NIL matters. Public resources includes personnel, money, and property. The use of public resources must adhere to the rules established by the NCAA.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) College athletics are dominated right now by discussions regarding NIL. NIL has been an excellent opportunity for student athletes to build their brand and learn entrepreneurial skills, but the student athletes need help. This bill comes at the request of the University of Washington and Washington State University so that their personnel can go beyond high-level discussions and instead provide counseling on specific NIL opportunities. Right now university employees have been advised that they are not allowed to discuss specifics about NIL, as the state's ethics laws create uncertainty and prohibitions. This bill is consistent with other states' approach to NIL and the state's universities will fall behind their peers if they cannot provide this support.

(Opposed) None.

Persons Testifying: Senator Javier Valdez, prime sponsor; Joe Dacca, University of Washington; and Chris Mulick and Brad Corbin, Washington State University.

Persons Signed In To Testify But Not Testifying: None.