

SENATE BILL REPORT

SB 5143

As of January 21, 2025

Title: An act relating to the ethics in public service act.

Brief Description: Concerning the ethics in public service act.

Sponsors: Senators Gildon, Pedersen and Nobles; by request of Legislative Ethics Board.

Brief History:

Committee Activity: State Government, Tribal Affairs & Elections: 1/21/25.

Brief Summary of Bill

- Revises the Ethics in Public Service Act by adding definitions, removing obsolete provisions, correcting internal references, and updating statutory citations.
- Increases the gift threshold from \$50 to \$100 and excludes from the definition of gift the following: gift cards of \$25 or less given to legislative employees and unsolicited gifts from legislators to legislative staff.
- Allows the following to be posted on a legislator's official website: generally recognized days or months of note and posts about achievements, honors or awards of extraordinary distinction relating to a constituent as long as the constituent has agreed to the posting.
- Removes the combined \$5,000 cap for penalties and costs, which allows penalties not to exceed \$5,000 and a separate order for the recovery of costs of the Legislative Ethics Board.
- Grants Legislative and Executive Board members and employees absolute privilege from suit in any civil or criminal action for their official acts, which is the same privilege granted to members and employees of the Commission on Judicial Conduct.

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.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL AFFAIRS & ELECTIONS

Staff: William Bridges (786-7312)

Background: The Ethics in Public Service Act. The Ethics in Public Service Act (Ethics Act) addresses conflicts of interest, improper use of state resources, compensation for outside activities, and gifts. It prohibits state officers and state employees from using their public employment for personal gain or private advantage, or to provide special privileges or exemptions for anyone else unless required to perform duties within the scope of their employment. The Ethics Act applies to all three branches of government: executive, judicial, and legislative. Each branch has a single board responsible for enforcing the law with respect to employees in that branch. The three boards are the Executive Ethics Board, the Commission on Judicial Conduct, and the Legislative Ethics Board.

Gifts Under the Ethics Act. The Ethics Act generally prohibits a state officer or employee from accepting the following in a calendar year:

- gifts with an aggregate value in excess of \$50 from a single source; or
- a single gift from multiple sources with a value in excess of \$50.

A state officer or employee is prohibited from accepting or soliciting any gift that could reasonably be expected to influence the recipient's vote, action, or judgment.

Gift Exemptions. The Legislature has adopted a number of exemptions to the general rule against receiving gifts. In these circumstances, the \$50 value threshold does not apply, and the gift is presumed not to influence the recipient. Examples include the following:

- unsolicited flowers;
- unsolicited tokens or awards of appreciation;
- food and beverage consumed at a hosted reception related to official duties;
- unsolicited gifts from dignitaries from another state or country;
- admission, including food and beverages, to events sponsored by a civic, charitable, governmental, or community organization; and
- gifts solicited on behalf of national legislative associations, the National Lieutenant Governors' Association, or the National Association of State Treasurers to host an official conference in the state.

Legislative Nexus. Legislative nexus must exist before legislators can use public resources. Legislative nexus means that the activity for which the legislator wants to use public resources must have a tangible and substantial connection to the legislature.

Legislative Ethics Board. The Legislative Ethics Board has nine members, five of which are citizens. The Legislative Ethics Board enforces the Ethics Act against legislators and legislative staff.

Legislative Ethics Board's Enforcement Power. The Legislative Ethics Board is authorized to investigate, conduct hearings, order payment of any damages sustained by the state, issue civil penalties, recover reasonable administrative costs, and recommend suspension and dismissal of violators. Penalties must be reduced by the amount of costs assessed, and penalties and costs combined may not exceed \$5,000.

Privilege from Suit. Members and employees of the Judicial Conduct Commission (commission), including any lawyers or special masters temporarily employed by the commission, are absolutely privileged from suit in any action, civil or criminal, based upon any disciplinary proceedings or upon other official acts as members or employees of the commission. Statements made to the commission or its investigators or other employees are absolutely privileged in actions for defamation. This absolute privilege does not apply to statements made in any other forum.

Summary of Bill: Revising and Adding Definitions, and Making Technical Changes to the Ethics in Public Service Act. Various definitions have been revised and added. For example, the definition of gift has been combined with other gift provisions. New terms have been added and defined, such as beneficial interest, charitable association, civic organization, and community organization. Various technical changes are made, such as removing obsolete provisions, correcting internal references, and updating statutory citations.

Revising Gift Provisions. The gift threshold amount is raised from \$50 to \$100. References to gifts solicited or accepted for the expansion of tourism has been removed because the statute referring to tourism was repealed in 2014. Added to the list of what is not considered a gift are gift cards received by legislative employees in an amount of \$25 or less and unsolicited gifts from legislators to legislative staff.

Clarifying Legislative Nexus. In regard to the legislative nexus required for the use of state resources, generally recognized days or months of note may be posted on a legislator's official website as well as posts about achievements, honors or awards of extraordinary distinction relating to a constituent as long as the constituent has agreed to the posting.

Revising Provisions Related to Penalties and Costs. The total \$5,000 cap for penalties and costs is removed. Penalties may be ordered not to exceed \$5,000. No monetary cap applies to costs that may be ordered.

Expanding Privilege from Suit to Members and Employees of the Legislative and Executive Ethics Boards. Members and employees of either the Legislative Ethics Board or the Executive Ethics Board, including any lawyers or special masters temporarily employed by either board, are immune from suit in any action, civil or criminal, based upon any complaint investigations or other official acts performed in the course of their duties. Statements made to either board or its investigators or other employees are absolutely privileged in actions for defamation. This absolute privilege does not apply to statements

made in any other forum.

Appropriation: None.

Fiscal Note: Not requested.

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: PRO: This is unanimous request from the Legislative Ethics Board (Board), and this is the first bill ever requested by the Board. A lot has changed since 1993, when the Ethics Act was passed. Terms and citations need to be updated and clarified, scattered provisions need to be consolidated, and Board interpretations need to be incorporated.

CON: The immunity provision is being added late as a reaction to on-going litigation against the Board.

Persons Testifying: PRO: Senator Chris Gildon, Prime Sponsor; Jamie Pedersen, Senator.

CON: Brady Horenstein, Attorney at Law.

Persons Signed In To Testify But Not Testifying: No one.