
SUBSTITUTE SENATE BILL 5849

State of Washington

64th Legislature

2015 Regular Session

By Senate Law & Justice (originally sponsored by Senators Padden, Pedersen, Hatfield, and Pearson)

1 AN ACT Relating to authorizing establishment of an ethics defense
2 trust fund under certain circumstances; amending RCW 42.52.150;
3 reenacting and amending RCW 42.52.010; and adding new sections to
4 chapter 42.52 RCW.

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

6 NEW SECTION. **Sec. 1.** (1) A state officer as defined in RCW
7 42.52.010 may establish an ethics defense trust fund and name a
8 trustee if the state officer is subject to a complaint for an ethics
9 violation filed or issued under this chapter relating to the state
10 officer's official duties.

11 (2)(a) The proceeds of the trust fund may be used to:

12 (i) Defray legal expenses and pay monetary penalties incurred by
13 the state officer as a result of a complaint filed or issued for an
14 ethics violation under this chapter or an internal legislative
15 investigatory proceeding;

16 (ii) Defray costs reasonably incurred in administering the trust
17 fund, including but not limited to costs incident to the solicitation
18 of funds; and

19 (iii) Discharge any tax liabilities incurred as a result of the
20 creation, operation, or administration of the trust fund.

1 (b) The proceeds of a trust fund may also be used to defray or
2 discharge legal expenses, penalties, costs, or liabilities incurred
3 before the trust fund was established if the legal expenses,
4 penalties, costs, or liabilities are related to the complaint
5 proceedings for which the trust fund was established.

6 (3) Except as provided in subsection (2) of this section, the
7 state officer may not use proceeds from the trust fund for personal
8 use.

9 (4) A state officer may not establish or maintain more than one
10 ethics defense trust fund at any one time.

11 (5) Chapter 11.98 RCW does not apply to a trust fund established
12 under this chapter.

13 NEW SECTION. **Sec. 2.** (1) The trustee of an ethics defense trust
14 fund is responsible for:

15 (a) The receipt and deposit of contributions to the trust fund;

16 (b) The authorization of expenditures and disbursements from the
17 trust fund;

18 (c) The performance of other tasks incident to the administration
19 of the trust fund.

20 (2)(a) A trustee of an ethics defense trust fund shall establish
21 a single exclusive account in a depository, as defined in RCW
22 42.17A.005. The depository must be located in this state and must
23 ordinarily conduct business with the general public in this state.

24 (b) The trustee shall maintain the account in the name of the
25 trust fund.

26 (c) All expenditures made by the trustee shall be drawn from the
27 account and:

28 (i) Issued on a check signed by the trustee; or

29 (ii) Paid using a debit card or other form of electronic
30 transaction.

31 (d) A contribution received by the trustee shall be deposited
32 into the account not later than three working days after the date the
33 contribution is received.

34 (e) This section does not prohibit the transfer of any amount
35 deposited in the account into a certificate of deposit, stock fund,
36 or other investment instrument.

37 (f) The account may not include any public or private moneys or
38 any moneys of any other person, other than contributions received by
39 the trustee.

1 (g) The trustee shall retain a copy of each depository account
2 statement from the account described in this section for not less
3 than two years after the date the statement is issued by the
4 depository.

5 (h) The trustee may not be a member of the family of or an
6 employee of the state officer.

7 NEW SECTION. **Sec. 3.** (1) Any person may contribute to an ethics
8 defense trust fund established in section 1 of this act.

9 (2) The maximum contribution by any person per year to an ethics
10 defense trust fund shall be one thousand dollars.

11 (3) The ethics defense trust fund agreement, contributions,
12 expenditures, and other transfers of moneys to or from the trust fund
13 shall be reported to the public disclosure commission once a month,
14 within ten days after the completion of the month, for all
15 transactions occurring in that month. Failure to report as required
16 by this subsection is a violation of chapter 42.17A RCW.

17 (4) Reports filed with the public disclosure commission under
18 subsection (3) of this section are nonexempt public records subject
19 to disclosure under chapter 42.56 RCW.

20 NEW SECTION. **Sec. 4.** (1) An ethics defense trust fund
21 established under section 1 of this act may be terminated by:

22 (a) The state officer who established the trust fund; or

23 (b) Subject to subsection (2) of this section, the terms of the
24 trust agreement.

25 (2) A trust agreement may provide that an ethics defense trust
26 fund is terminated not later than six months following the completion
27 of the payments authorized under section 1(2) of this act.

28 (3) Following termination of an ethics defense trust fund, the
29 trustee may not accept contributions to or make expenditures from the
30 trust fund.

31 (4) Not later than thirty days after an ethics defense trust fund
32 is terminated, the trustee of the trust fund shall return any moneys
33 remaining in the trust fund to contributors to the trust fund on a
34 pro rata basis.

35 **Sec. 5.** RCW 42.52.010 and 2011 c 60 s 28 are each reenacted and
36 amended to read as follows:

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

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

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

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

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

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

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

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

34 (8) "Family" has the same meaning as "immediate family" in RCW
35 42.17A.005.

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

38 (a) Items from family members or friends where it is clear beyond
39 a reasonable doubt that the gift was not made as part of any design

1 to gain or maintain influence in the agency of which the recipient is
2 an officer or employee;

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

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

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

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

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

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

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

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

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

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

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

1 (12) "Official duty" means those duties (~~(within the specific~~
2 ~~scope of employment of the state officer or state employee as defined~~
3 ~~by the officer's or employee's agency or by statute or the state~~
4 ~~Constitution)) prescribed in the state Constitution and state
5 statutes, authorized, appointed, funded, or mandated authority and
6 responsibilities, job description, or any tasks or actions directly
7 incident to carrying out the activities of the state officer's
8 position.~~

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

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

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

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

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

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

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

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

38 (19) "State officer" means every person holding a position of
39 public trust in or under an executive, legislative, or judicial
40 office of the state. "State officer" includes judges of the superior

1 court, judges of the court of appeals, justices of the supreme court,
2 members of the legislature together with the secretary of the senate
3 and the chief clerk of the house of representatives, holders of
4 elective offices in the executive branch of state government, chief
5 executive officers of state agencies, members of boards, commissions,
6 or committees with authority over one or more state agencies or
7 institutions, and employees of the state who are engaged in
8 supervisory, policy-making, or policy-enforcing work. For the
9 purposes of this chapter, "state officer" also includes any person
10 exercising or undertaking to exercise the powers or functions of a
11 state officer.

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

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

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

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

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

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

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

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

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

37 (22) "University" includes "state universities" and "regional
38 universities" as defined in RCW 28B.10.016 and also includes any
39 research or technology institute affiliated with a university,

1 including without limitation, the Spokane intercollegiate research
2 and technology institute and the Washington technology center.

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

8 **Sec. 6.** RCW 42.52.150 and 2011 c 60 s 29 are each amended to
9 read as follows:

10 (1) No state officer or state employee may accept gifts, other
11 than those specified in subsections (2) (~~and~~), (5), and (6) of this
12 section, with an aggregate value in excess of fifty dollars from a
13 single source in a calendar year or a single gift from multiple
14 sources with a value in excess of fifty dollars. For purposes of this
15 section, "single source" means any person, as defined in RCW
16 42.52.010, whether acting directly or through any agent or other
17 intermediary, and "single gift" includes any event, item, or group of
18 items used in conjunction with each other or any trip including
19 transportation, lodging, and attendant costs, not excluded from the
20 definition of gift under RCW 42.52.010. The value of gifts given to
21 an officer's or employee's family member or guest shall be attributed
22 to the official or employee for the purpose of determining whether
23 the limit has been exceeded, unless an independent business, family,
24 or social relationship exists between the donor and the family member
25 or guest.

26 (2) Except as provided in subsection (4) of this section, the
27 following items are presumed not to influence under RCW 42.52.140,
28 and may be accepted without regard to the limit established by
29 subsection (1) of this section:

- 30 (a) Unsolicited flowers, plants, and floral arrangements;
- 31 (b) Unsolicited advertising or promotional items of nominal
32 value, such as pens and note pads;
- 33 (c) Unsolicited tokens or awards of appreciation in the form of a
34 plaque, trophy, desk item, wall memento, or similar item;
- 35 (d) Unsolicited items received by a state officer or state
36 employee for the purpose of evaluation or review, if the officer or
37 employee has no personal beneficial interest in the eventual use or
38 acquisition of the item by the officer's or employee's agency;

1 (e) Informational material, publications, or subscriptions
2 related to the recipient's performance of official duties;

3 (f) Food and beverages consumed at hosted receptions where
4 attendance is related to the state officer's or state employee's
5 official duties;

6 (g) Gifts, grants, conveyances, bequests, and devises of real or
7 personal property, or both, in trust or otherwise accepted and
8 solicited for deposit in the legislative international trade account
9 created in RCW 43.15.050;

10 (h) Gifts, grants, conveyances, bequests, and devises of real or
11 personal property, or both, in trust or otherwise accepted and
12 solicited for the purpose of promoting the expansion of tourism as
13 provided for in RCW 43.330.090;

14 (i) Gifts, grants, conveyances, bequests, and devises of real or
15 personal property, or both, solicited on behalf of a national
16 legislative association, 2006 official conference of the national
17 lieutenant governors' association, or host committee for the purpose
18 of hosting an official conference under the circumstances specified
19 in RCW 42.52.820 and section 2, chapter 5, Laws of 2006. Anything
20 solicited or accepted may only be received by the national
21 association or host committee and may not be commingled with any
22 funds or accounts that are the property of any person;

23 (j) Admission to, and the cost of food and beverages consumed at,
24 events sponsored by or in conjunction with a civic, charitable,
25 governmental, or community organization; and

26 (k) Unsolicited gifts from dignitaries from another state or a
27 foreign country that are intended to be personal in nature.

28 (3) The presumption in subsection (2) of this section is
29 rebuttable and may be overcome based on the circumstances surrounding
30 the giving and acceptance of the item.

31 (4) Notwithstanding subsections (2) and (5) of this section, a
32 state officer or state employee of a regulatory agency or of an
33 agency that seeks to acquire goods or services who participates in
34 those regulatory or contractual matters may receive, accept, take, or
35 seek, directly or indirectly, only the following items from a person
36 regulated by the agency or from a person who seeks to provide goods
37 or services to the agency:

38 (a) Unsolicited advertising or promotional items of nominal
39 value, such as pens and note pads;

1 (b) Unsolicited tokens or awards of appreciation in the form of a
2 plaque, trophy, desk item, wall memento, or similar item;

3 (c) Unsolicited items received by a state officer or state
4 employee for the purpose of evaluation or review, if the officer or
5 employee has no personal beneficial interest in the eventual use or
6 acquisition of the item by the officer's or employee's agency;

7 (d) Informational material, publications, or subscriptions
8 related to the recipient's performance of official duties;

9 (e) Food and beverages consumed at hosted receptions where
10 attendance is related to the state officer's or state employee's
11 official duties;

12 (f) Admission to, and the cost of food and beverages consumed at,
13 events sponsored by or in conjunction with a civic, charitable,
14 governmental, or community organization; and

15 (g) Those items excluded from the definition of gift in RCW
16 42.52.010 except:

17 (i) Payments by a governmental or nongovernmental entity of
18 reasonable expenses incurred in connection with a speech,
19 presentation, appearance, or trade mission made in an official
20 capacity;

21 (ii) Payments for seminars and educational programs sponsored by
22 a bona fide governmental or nonprofit professional, educational,
23 trade, or charitable association or institution; and

24 (iii) Flowers, plants, and floral arrangements.

25 (5) A state officer or state employee may accept gifts in the
26 form of food and beverage on infrequent occasions in the ordinary
27 course of meals where attendance by the officer or employee is
28 related to the performance of official duties. Gifts in the form of
29 food and beverage that exceed fifty dollars on a single occasion
30 shall be reported as provided in chapter 42.17A RCW.

31 (6) A state officer may accept contributions made to an ethics
32 defense trust fund established under section 1 of this act.

33 NEW SECTION. **Sec. 7.** Sections 1 through 4 of this act are each
34 added to chapter 42.52 RCW.

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