

HOUSE BILL REPORT

ESSB 5143

As Passed House - Amended:

April 23, 2025

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

Brief Description: Concerning the ethics in public service act.

Sponsors: Senate Committee on State Government, Tribal Affairs & Elections (originally sponsored by Senators Gildon, Pedersen and Nobles; by request of Legislative Ethics Board).

Brief History:

Committee Activity:

State Government & Tribal Relations: 3/19/25, 3/28/25 [DP].

Floor Activity:

Passed House: 4/15/25, 70-26.

Passed House: 4/23/25, 58-39.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- 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.
- Makes modifications to activities that have a per se legislative nexus.
- Removes costs from the combined \$5,000 cap for penalties and costs imposed for violations of ethics laws, and removes the prohibition on ordering costs that exceed the amount of penalties.
- Creates a definition of tangible legislative nexus and provides a list of specified activities with per se tangible legislative nexus for purposes of cases that require a legislative nexus for the use of state resources.

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.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass. Signed by 6 members: Representatives Mena, Chair; Stearns, Vice Chair; Walsh, Assistant Ranking Minority Member; Chase, Doglio and Farivar.

Staff: Desiree Omli (786-7105).

Background:

The Ethics in Public Service Laws.

The Ethics in Public Service laws prohibit 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 beneficial 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 laws are enforced by the three state ethics boards. Each branch of government has its own board—the Executive Ethics Board, the Commission on Judicial Conduct, and the Legislative Ethics Board—that investigates, conducts hearings, and issues civil sanctions for its respective employees' violations of these ethics laws. Any person may initiate a complaint, and state employees who file complaints have whistleblower protections.

Beneficial Interest. A state officer or employee is prohibited from having a direct or indirect beneficial interest in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the state officer or employee. The term "beneficial interest" has the same meaning as that assigned to it by case law. Washington courts have found that a beneficial interest is synonymous with having a financial interest.

Legislative Nexus. State officers and employees are prohibited from using their position to secure special privileges or public resources for private benefit or gain. Activities with a tangible legislative nexus are permissible and not in violation of these prohibitions. For legislators and legislative employees, activities with a tangible legislative nexus include, but are not limited to: communications directly pertaining to any legislative proposal which has been introduced and posting information to a legislator's official legislative website or social media account about emergencies, federal holidays, state and legislatively recognized holidays, religious holidays, information originally provided by another government entity, and achievements, honors, or awards of extraordinary distinction.

Gifts. No state officer or employee may accept gifts with an aggregate value in excess of \$50 in a calendar year unless specifically authorized by statute. Gifts in the form of food and beverages that exceed \$50 on a single occasion must be reported on the financial affairs statement as required under the campaign finance laws.

Using State Facilities for Campaign Purposes. State officers and employees are prohibited from using state resources to assist a campaign. This prohibition does not apply to certain enumerated activities such as activities that are part of the normal and regular conduct of the office or agency which include but are not limited to activities with a tangible legislative nexus as previously described. Even if certain activities are not subject to the prohibition on using public resources to assist a campaign, these activities must comply with election year activity freeze requirements prescribed by law and policies adopted by each chamber of the Legislature.

Election Year Activity Restrictions. No state officer or employee may use the facilities of an agency for the purpose of assisting a campaign. Certain activities are exempt from this prohibition such as the maintenance of official legislative websites. However, during an election year freeze period beginning on the first day of the declaration of candidacy filing period through the date of certification of the general election, the official legislative websites of legislators seeking election may not be altered other than during a special legislative session. The Standards of Conduct for each chamber of the Legislature presumes that certain activities are campaign related if conducted by candidates during the election year freeze period. Such activities are permitted during this period only if prior approval is given, after the consideration of specific factors such as a triggering event, timeliness of an activity, relation of the activity to legislative business, connection with the issue that is specific to the requesting member, whether the activity is within normal and regular conduct of a legislative office, and the newsworthiness of the activity.

Costs. An ethics board may order payment for damages, penalties, and costs upon finding a violation. Costs and penalties combined may not exceed the greater of \$5,000 per violation or three times the economic value of any thing received or sought in violation of the ethics laws. Costs may not exceed the penalty imposed and the payment owed on the penalty must be reduced by the amount of costs paid.

Summary of Amended Bill:

Beneficial Interest.

The definition is updated to incorporate case law by defining beneficial interest as a financial interest in a contract, sale, lease, purchase, or grant to which a state officer or employee is not a party but is an owner of an entity that is a party. An ownership interest of less than 10 percent of an entity is not a beneficial interest.

Legislative Nexus.

A definition of "legislative nexus" is created to mean activities by legislators and staff having a reasonably objective connection to the legislator's or staff's official duties or to the policy or programmatic prerogatives of the Legislature, or the legislative institution.

Provisions relating to activities with per se tangible legislative nexus are modified to also include posting on an official legislative website or social media account about:

- generally recognized days or months of note;
- a legislator if the information posted has a direct and tangible relationship to a legislative proposal or policy introduced in the Legislature; and
- commemorations or celebrations of Washington historical events, holidays, and persons who are not current legislators.

In addition, posts about achievements, honors, or awards of extraordinary distinction constitute activities with a tangible legislative nexus if it was received by a constituent and that constituent granted permission to post about such achievement, honor, or award. "Extraordinary award" is defined as a national, state, or local award with very few recipients that is sufficiently infrequent to be noteworthy to a reasonable person.

Regarding posts about emergencies, an "emergency" is defined as a serious, unexpected, and often dangerous situation requiring immediate action.

Gifts.

The monetary threshold for acceptable gifts, including food and beverages, is increased to \$100. The definition of "gift" is amended to specify that it does not include gift cards received by legislative employees in an amount not exceeding \$25. Legislative employees may accept unsolicited gifts from a legislator without being in violation of ethics laws. Gifts, grants, conveyances, bequests, and devises of real or personal property in trust or otherwise accepted and solicited for the purpose of promoting the expansion of tourism is removed to conform with a 2014 change in law which repealed the pertinent statute related to tourism industry expansion. These changes to the definition under the ethics laws also apply to gifts as defined under the campaign finance laws.

Using State Facilities for Campaign Purposes.

Activities designated as activities that are per se part of the normal and regular conduct of the office or agency are instead designated as activities with a tangible legislative nexus, and expanded to conform with the new definition of activities with per se tangible legislative nexus.

Election Year Activity Restrictions.

Official legislative websites of legislators seeking reelection or election to any office may be altered during the election year freeze period to change office contact information. Language is added to specify that official legislative websites that are not an official legislative website of a legislator may not directly or indirectly reference a ballot measure or legislator running for elected office during the election year freeze period.

Costs.

Language specifying that costs may not exceed penalties imposed is removed in addition to the requirement that the penalty be reduced by the amount of the costs paid. Costs are no longer included as part of the \$5,000 combined limit for penalties and costs, thereby capping penalties alone at \$5,000.

Miscellaneous.

Various definitions have been revised and new terms have been defined, such as charitable association, civic organization, and community organization. Various technical changes are made, such as removing obsolete provisions, correcting internal references, and updating statutory citations.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) Right now there is a definition of "gifts" but also an entirely different section in law that discusses gifts. The two statutes have some overlapping exemptions and restrictions which make it challenging for ethics advisors to give advice about permissive and prohibited activities. This bill would clarify the rules around gifts to make it easier for people to understand and for boards to enforce. The increase in dollar amounts for acceptable gifts is to account for inflation; the current monetary amount has not been updated since 1993.

This is bicameral and bipartisan legislation. Members of the Legislative Ethics Board participated in shaping this bill and support it.

(Opposed) None.

(Other) The changes made in the Senate to remove blanket immunity for the Executive Ethics Board is an improvement in the bill and this bill should continue in its current form without the inclusion of that provision.

Persons Testifying: (In support) Senator Chris Gildon, prime sponsor; and Senator Jamie Pedersen.

(Other) Brady Horenstein, Attorney at Law.

Persons Signed In To Testify But Not Testifying: None.