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ENGROSSED SUBSTITUTE SENATE BILL 5149

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AS AMENDED BY THE HOUSE

Passed Legislature - 1991 First Special Session

**State of Washington                      52nd Legislature                      1991 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Nelson and Rasmussen; by request of Public Disclosure Commission).

Read first time February 26, 1991.

1            AN ACT Relating to gifts and public office funds; amending RCW  
2 42.17.020, 42.17.170, and 42.17.243; adding a new section to chapter  
3 42.17 RCW; and declaring an emergency.

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

5            **Sec. 1.** RCW 42.17.020 and 1990 c 139 s 2 are each amended to read  
6 as follows:

7            (1) "Agency" includes all state agencies and all local agencies.  
8 "State agency" includes every state office, department, division,  
9 bureau, board, commission, or other state agency. "Local agency"  
10 includes every county, city, town, municipal corporation, quasi-  
11 municipal corporation, or special purpose district, or any office,  
12 department, division, bureau, board, commission, or agency thereof, or  
13 other local public agency.

14            (2) "Ballot proposition" means any "measure" as defined by RCW  
15 29.01.110, or any initiative, recall, or referendum proposition

1 proposed to be submitted to the voters of the state or any municipal  
2 corporation, political subdivision, or other voting constituency from  
3 and after the time when the proposition has been initially filed with  
4 the appropriate election officer of that constituency prior to its  
5 circulation for signatures.

6 (3) "Depository" means a bank designated by a candidate or  
7 political committee pursuant to RCW 42.17.050.

8 (4) "Treasurer" and "deputy treasurer" mean the individuals  
9 appointed by a candidate or political committee, pursuant to RCW  
10 42.17.050, to perform the duties specified in that section.

11 (5) "Candidate" means any individual who seeks election to public  
12 office. An individual shall be deemed to seek election when he first:

13 (a) Receives contributions or makes expenditures or reserves space  
14 or facilities with intent to promote his candidacy for office; or

15 (b) Announces publicly or files for office.

16 (6) "Commercial advertiser" means any person who sells the service  
17 of communicating messages or producing printed material for broadcast  
18 or distribution to the general public or segments of the general public  
19 whether through the use of newspapers, magazines, television and radio  
20 stations, billboard companies, direct mail advertising companies,  
21 printing companies, or otherwise.

22 (7) "Commission" means the agency established under RCW 42.17.350.

23 (8) "Compensation" unless the context requires a narrower meaning,  
24 includes payment in any form for real or personal property or services  
25 of any kind: PROVIDED, That for the purpose of compliance with RCW  
26 42.17.241, the term "compensation" shall not include per diem  
27 allowances or other payments made by a governmental entity to reimburse  
28 a public official for expenses incurred while the official is engaged  
29 in the official business of the governmental entity.

1 (9) "Continuing political committee" means a political committee  
2 that is an organization of continuing existence not established in  
3 anticipation of any particular election campaign.

4 (10) "Contribution" includes a loan, gift, deposit, subscription,  
5 forgiveness of indebtedness, donation, advance, pledge, payment,  
6 transfer of funds between political committees, or transfer of anything  
7 of value, including personal and professional services for less than  
8 full consideration, but does not include interest on moneys deposited  
9 in a political committee's account, ordinary home hospitality and the  
10 rendering of personal services of the sort commonly performed by  
11 volunteer campaign workers, or incidental expenses personally incurred  
12 by volunteer campaign workers not in excess of fifty dollars personally  
13 paid for by the worker. Volunteer services, for the purposes of this  
14 chapter, means services or labor for which the individual is not  
15 compensated by any person. For the purposes of this chapter,  
16 contributions other than money or its equivalents shall be deemed to  
17 have a money value equivalent to the fair market value of the  
18 contribution. Sums paid for tickets to fund-raising events such as  
19 dinners and parties are contributions; however, the amount of any such  
20 contribution may be reduced for the purpose of complying with the  
21 reporting requirements of this chapter, by the actual cost of  
22 consumables furnished in connection with the purchase of the tickets,  
23 and only the excess over the actual cost of the consumables shall be  
24 deemed a contribution.

25 (11) "Elected official" means any person elected at a general or  
26 special election to any public office, and any person appointed to fill  
27 a vacancy in any such office.

28 (12) "Election" includes any primary, general, or special election  
29 for public office and any election in which a ballot proposition is  
30 submitted to the voters: PROVIDED, That an election in which the

1 qualifications for voting include other than those requirements set  
2 forth in Article VI, section 1 (Amendment 63) of the Constitution of  
3 the state of Washington shall not be considered an election for  
4 purposes of this chapter.

5 (13) "Election campaign" means any campaign in support of or in  
6 opposition to a candidate for election to public office and any  
7 campaign in support of, or in opposition to, a ballot proposition.

8 (14) "Expenditure" includes a payment, contribution, subscription,  
9 distribution, loan, advance, deposit, or gift of money or anything of  
10 value, and includes a contract, promise, or agreement, whether or not  
11 legally enforceable, to make an expenditure. The term "expenditure"  
12 also includes a promise to pay, a payment, or a transfer of anything of  
13 value in exchange for goods, services, property, facilities, or  
14 anything of value for the purpose of assisting, benefiting, or honoring  
15 any public official or candidate, or assisting in furthering or  
16 opposing any election campaign. For the purposes of this chapter,  
17 agreements to make expenditures, contracts, and promises to pay may be  
18 reported as estimated obligations until actual payment is made. The  
19 term "expenditure" shall not include the partial or complete repayment  
20 by a candidate or political committee of the principal of a loan, the  
21 receipt of which loan has been properly reported.

22 (15) "Final report" means the report described as a final report in  
23 RCW 42.17.080(2).

24 (16) "Gift," for the purposes of RCW 42.17.170 and section 3 of  
25 this 1991 act, means a rendering of anything of value in return for  
26 which reasonable consideration is not given and received and includes  
27 a rendering of money, property, services, discount, loan forgiveness,  
28 payment of indebtedness, or reimbursements from or payments by persons  
29 (other than the federal government, or the state of Washington or any  
30 agency or political subdivision thereof) for travel or anything else of

1 value. The term "reasonable consideration" refers to the approximate  
2 range of consideration that exists in transactions not involving  
3 donative intent. However, the value of the gift of partaking in a  
4 single hosted reception shall be determined by dividing the total  
5 amount of the cost of conducting the reception by the total number of  
6 persons partaking in the reception. "Gift" for the purposes of RCW  
7 42.17.170 and section 3 of this 1991 act does not include:

8 (a) A gift, other than a gift of partaking in a hosted reception,  
9 with a value of fifty dollars or less;

10 (b) The gift of partaking in a hosted reception if the value of the  
11 gift is one hundred dollars or less;

12 (c) A contribution that is required to be reported under RCW  
13 42.17.090 or 42.17.243;

14 (d) Informational material that is transferred for the purpose of  
15 informing the recipient about matters pertaining to official business  
16 of the governmental entity of which the recipient is an official or  
17 officer, and that is not intended to confer on that recipient any  
18 commercial, proprietary, financial, economic, or monetary advantage, or  
19 the avoidance of any commercial, proprietary, financial, economic, or  
20 monetary disadvantage;

21 (e) A gift that is not used and that, within thirty days after  
22 receipt, is returned to the donor or delivered to a charitable  
23 organization. However, this exclusion from the definition does not  
24 apply if the recipient of the gift delivers the gift to a charitable  
25 organization and claims the delivery as a charitable contribution for  
26 tax purposes;

27 (f) A gift given under circumstances where it is clear beyond any  
28 doubt that the gift was not made as part of any design to gain or  
29 maintain influence in the governmental entity of which the recipient is

1 an officer or official or with respect to any legislative matter or  
2 matters of that governmental entity; or

3 (g) A gift given prior to the effective date of this 1991 act.

4 (17) "Immediate family" includes the spouse, dependent children,  
5 and other dependent relatives, if living in the household.

6 ~~((17))~~ (18) "Legislation" means bills, resolutions, motions,  
7 amendments, nominations, and other matters pending or proposed in  
8 either house of the state legislature, and includes any other matter  
9 that may be the subject of action by either house or any committee of  
10 the legislature and all bills and resolutions that, having passed both  
11 houses, are pending approval by the governor.

12 ~~((18))~~ (19) "Lobby" and "lobbying" each mean attempting to  
13 influence the passage or defeat of any legislation by the legislature  
14 of the state of Washington, or the adoption or rejection of any rule,  
15 standard, rate, or other legislative enactment of any state agency  
16 under the state Administrative Procedure Act, chapter 34.05 RCW.  
17 Neither "lobby" nor "lobbying" includes an association's or other  
18 organization's act of communicating with the members of that  
19 association or organization.

20 ~~((19))~~ (20) "Lobbyist" includes any person who lobbies either in  
21 his own or another's behalf.

22 ~~((20))~~ (21) "Lobbyist's employer" means the person or persons by  
23 whom a lobbyist is employed and all persons by whom he is compensated  
24 for acting as a lobbyist.

25 ~~((21))~~ (22) "Person" includes an individual, partnership, joint  
26 venture, public or private corporation, association, federal, state, or  
27 local governmental entity or agency however constituted, candidate,  
28 committee, political committee, political party, executive committee  
29 thereof, or any other organization or group of persons, however  
30 organized.

1       (~~(22)~~) (23) "Person in interest" means the person who is the  
2 subject of a record or any representative designated by that person,  
3 except that if that person is under a legal disability, the term  
4 "person in interest" means and includes the parent or duly appointed  
5 legal representative.

6       (~~(23)~~) (24) "Political advertising" includes any advertising  
7 displays, newspaper ads, billboards, signs, brochures, articles,  
8 tabloids, flyers, letters, radio or television presentations, or other  
9 means of mass communication, used for the purpose of appealing,  
10 directly or indirectly, for votes or for financial or other support in  
11 any election campaign.

12       (~~(24)~~) (25) "Political committee" means any person (except a  
13 candidate or an individual dealing with his own funds or property)  
14 having the expectation of receiving contributions or making  
15 expenditures in support of, or opposition to, any candidate or any  
16 ballot proposition.

17       (~~(25)~~) (26) "Public office" means any federal, state, county,  
18 city, town, school district, port district, special district, or other  
19 state political subdivision elective office.

20       (~~(26)~~) (27) "Public record" includes any writing containing  
21 information relating to the conduct of government or the performance of  
22 any governmental or proprietary function prepared, owned, used, or  
23 retained by any state or local agency regardless of physical form or  
24 characteristics.

25       (~~(27)~~) (28) "Surplus funds" mean, in the case of a political  
26 committee or candidate, the balance of contributions that remain in the  
27 possession or control of that committee or candidate subsequent to the  
28 election for which the contributions were received, and that are in  
29 excess of the amount necessary to pay remaining debts incurred by the  
30 committee or candidate prior to that election. In the case of a



1 continuing political committee, "surplus funds" mean those  
2 contributions remaining in the possession or control of the committee  
3 that are in excess of the amount necessary to pay all remaining debts  
4 when it makes its final report under RCW 42.17.065.

5 ~~((28))~~ (29) "Writing" means handwriting, typewriting, printing,  
6 photostating, photographing, and every other means of recording any  
7 form of communication or representation, including letters, words,  
8 pictures, sounds, or symbols, or combination thereof, and all papers,  
9 maps, magnetic or paper tapes, photographic films and prints, magnetic  
10 or punched cards, discs, drums, and other documents.

11 As used in this chapter, the singular shall take the plural and any  
12 gender, the other, as the context requires.

13 **Sec. 2.** RCW 42.17.170 and 1990 c 139 s 3 are each amended to read  
14 as follows:

15 (1) Any lobbyist registered under RCW 42.17.150 and any person who  
16 lobbies shall file with the commission periodic reports of his  
17 activities signed by the lobbyist. The reports shall be made in the  
18 form and manner prescribed by the commission. They shall be due  
19 monthly and shall be filed within fifteen days after the last day of  
20 the calendar month covered by the report.

21 (2) Each such monthly periodic report shall contain:

22 (a) The totals of all expenditures for lobbying activities made or  
23 incurred by such lobbyist or on behalf of such lobbyist by the  
24 lobbyist's employer during the period covered by the report. Such  
25 totals for lobbying activities shall be segregated according to  
26 financial category, including compensation; food and refreshments;  
27 living accommodations; advertising; travel; contributions; and other  
28 expenses or services. Each individual expenditure of more than twenty-  
29 five dollars for entertainment shall be identified by date, place,

1 amount, and the names of all persons in the group partaking in or of  
2 such entertainment including any portion thereof attributable to the  
3 lobbyist's participation therein (~~but~~), without allocating any  
4 portion of such expenditure to individual participants. However, if  
5 the expenditure for a single hosted reception is more than one hundred  
6 dollars per person partaking therein, the report shall specify the per  
7 person amount, which shall be determined by dividing the total amount  
8 of the expenditure by the total number of persons partaking in the  
9 reception.

10 Notwithstanding the foregoing, lobbyists are not required to report  
11 the following:

12 (i) Unreimbursed personal living and travel expenses not incurred  
13 directly for lobbying;

14 (ii) Any expenses incurred for his or her own living  
15 accommodations;

16 (iii) Any expenses incurred for his or her own travel to and from  
17 hearings of the legislature;

18 (iv) Any expenses incurred for telephone, and any office expenses,  
19 including rent and salaries and wages paid for staff and secretarial  
20 assistance.

21 (b) In the case of a lobbyist employed by more than one employer,  
22 the proportionate amount of such expenditures in each category incurred  
23 on behalf of each of his employers.

24 (c) An itemized listing of each such expenditure in the nature of  
25 a contribution of money or of tangible or intangible personal property  
26 to any candidate, elected official, or officer or employee of any  
27 agency, or any political committee supporting or opposing any ballot  
28 proposition, or for or on behalf of any candidate, elected official, or  
29 officer or employee of any agency, or any political committee  
30 supporting or opposing any ballot proposition. All contributions made

1 to, or for the benefit of, any candidate, elected official, or officer  
2 or employee of any agency, or any political committee supporting or  
3 opposing any ballot proposition shall be identified by date, amount,  
4 and the name of the candidate, elected official, or officer or employee  
5 of any agency, or any political committee supporting or opposing any  
6 ballot proposition receiving, or to be benefited by each such  
7 contribution.

8 (d) The subject matter of proposed legislation or other legislative  
9 activity or rule-making under chapter 34.05 RCW, the state  
10 Administrative Procedure Act, and the state agency considering the  
11 same, which the lobbyist has been engaged in supporting or opposing  
12 during the reporting period.

13 (e) Such other information relevant to lobbying activities as the  
14 commission shall by rule prescribe. Information supporting such  
15 activities as are required to be reported is subject to audit by the  
16 commission.

17 (f) A listing of each gift, as defined in RCW 42.17.020, made to a  
18 state elected official or executive state officer or to a member of the  
19 immediate family of such an official or officer. Such a gift shall be  
20 separately identified by the date it was given, the approximate value  
21 of the gift, and the name of the recipient. However, for a hosted  
22 reception where the average per person amount is reported under (a) of  
23 this subsection, the approximate value for the gift of partaking in the  
24 event is such average per person amount. The commission shall adopt  
25 forms to be used for reporting the giving of gifts under this  
26 subsection (2)(f). The forms shall be designed to permit a lobbyist to  
27 report on a separate form for each recipient the reportable gifts given  
28 to that recipient during the reporting period or, alternatively, to  
29 report on one form all reportable gifts given by the lobbyist during  
30 the reporting period.

1       (3) If a state elected official or a member of such an official's  
2 immediate family is identified by a lobbyist in such a report as having  
3 received from the lobbyist a gift, as defined in RCW 42.17.020, the  
4 lobbyist shall transmit to the official a copy of the completed form  
5 used to identify the gift in the report at the same time the report is  
6 filed with the commission.

7       NEW SECTION.   **Sec. 3.** A new section is added to chapter 42.17 RCW  
8 to read as follows:

9       At the same time that an elected official or executive state  
10 officer must file a statement of financial affairs under RCW  
11 42.17.240(1), the official or officer shall file a statement  
12 identifying each gift, as defined in RCW 42.17.020, which was received  
13 by the official or officer or by a member of his or her immediate  
14 family during the previous calendar year. The statement shall apply to  
15 that portion of the previous calendar year during which the official or  
16 officer held an office or position for which a statement of financial  
17 affairs is required under RCW 42.17.240. The statement shall identify  
18 the nature of the gift, the date it was received, and the name of the  
19 donor. The commission may adopt a form for reporting the receipt of  
20 gifts under this section or may incorporate that reporting into the  
21 form or forms adopted by the commission for the statement of financial  
22 affairs.

23       **Sec. 4.** RCW 42.17.243 and 1977 ex.s. c 336 s 5 are each amended to  
24 read as follows:

25       (1) Elected and appointed officials required to report under RCW  
26 42.17.240, shall report for themselves and for members of their  
27 immediate family to the commission any contributions received during  
28 the preceding calendar year for the officials' use in defraying

1 nonreimbursed public office related expenses. Contributions reported  
2 under this section shall be referred to as a "public office fund" and  
3 shall not be transferred to a political committee nor used to promote  
4 or oppose a candidate or ballot proposition, other than as provided by  
5 subsection (3) (a) of this section. (~~For the purposes of this section~~  
6 ~~contributions shall include reimbursements from or payments by persons,~~  
7 ~~other than the state of Washington or any agency, for travel~~  
8 ~~expenses.)) Reimbursements or payments for travel do not constitute  
9 contributions for the purposes of this section.~~

10 A report shall be filed during the month of January of any year  
11 following a year in which such contributions were received for or  
12 expenditures made from a public office fund. The report shall include:

13 (a) The name and address of each contributor;

14 (b) A description of each contribution, including the date on which  
15 it was received and its amount or, if its dollar value is  
16 unascertainable, an estimate of its fair market value; and

17 (c) A description of each expenditure made from a public office  
18 fund, including the name and address of the recipient, the amount, and  
19 the date of each such expenditure.

20 (2) No report under subsection (1) of this section shall be  
21 required if:

22 (a) The receipt of the contribution has been reported pursuant to  
23 RCW 42.17.065 (continuing political committee reports) or RCW 42.17.090  
24 (political committee reports); or

25 (b) The contribution is in the form of meals, refreshments, or  
26 entertainment given in connection with official appearances or  
27 occasions where public business was discussed.

28 (3) Any funds which remain in a public office fund after all  
29 permissible public office related expenses have been paid may only be  
30 disposed of in one or more of the following ways:

1 (a) Returned to a contributor in an amount not to exceed that  
2 contributor's original contribution; or

3 (b) Donated to a charitable organization registered in accordance  
4 with chapter 19.09 RCW; or

5 (c) Transferred to the state treasurer for deposit in the general  
6 fund.

8 **\*NEW SECTION.** *Sec. 5. This act is necessary for the immediate*  
9 *preservation of the public peace, health, or safety, or support of the*  
10 *state government and its existing public institutions, and shall take*  
11 *effect immediately.*

12 *\*Sec. 5 was vetoed, see message at end of chapter.*

Passed the Senate June 28, 1991.

Passed the House June 27, 1991.

Approved by the Governor July 2, 1991, with the exception of  
certain items which were vetoed.

Filed in Office of Secretary of State July 2, 1991.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 5,  
3 Engrossed Substitute Senate Bill No. 5149 entitled:

4 "AN ACT Relating to gifts and public office funds."

5 This bill represents a positive step in the area of public  
6 disclosure by requiring lobbyists and public officials to report  
7 certain gifts. The bill contains an emergency clause making the  
8 disclosure requirements effective immediately. The bill was originally  
9 proposed by the Public Disclosure Commission and did not contain an  
10 emergency clause. A short period of time is required to allow both the  
11 Commission and the approximately five thousand individuals affected by  
12 this bill to set up reporting procedures and record-keeping mechanisms.  
13 The Public Disclosure Commission agrees that a veto of the emergency  
14 clause is appropriate. For this reason, I have vetoed the emergency  
15 clause set out in section 5.

16 With the exception of section 5, Engrossed Substitute Senate Bill  
17 No. 5149 is approved."