H-3557.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2397**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Hudgins, Smith, Ormsby, and Wylie

AN ACT Relating to transferring oversight of filings of statements of financial affairs by legislative staff from the public disclosure commission to the legislative ethics board; amending RCW 42.17A.705, 42.52.320, 42.17A.020, and 42.17A.620; reenacting and amending RCW 42.52.010 and 42.52.150; and adding new sections to chapter 42.52 RCW.

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

**Sec.**  RCW 42.17A.705 and 2017 3rd sp.s. c 6 s 111 are each amended to read as follows:

For the purposes of RCW 42.17A.700, "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, the director of the department of services for the blind, the secretary of children, youth, and families, the director of the state system of community and technical colleges, the director of commerce, the director of the consolidated technology services agency, the secretary of corrections, the director of ecology, the commissioner of employment security, the chair of the energy facility site evaluation council, the director of enterprise services, the secretary of the state finance committee, the director of financial management, the director of fish and wildlife, the executive secretary of the forest practices appeals board, the director of the gambling commission, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the executive director of the public disclosure commission, the executive director of the Puget Sound partnership, the director of the recreation and conservation office, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the president of each of the regional and state universities and the president of The Evergreen State College, and each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor; and

(3) ((~~Each professional staff member of the legislature; and~~

~~(4)~~)) Central Washington University board of trustees, the boards of trustees of each community college and each technical college, each member of the state board for community and technical colleges, state convention and trade center board of directors, Eastern Washington University board of trustees, Washington economic development finance authority, Washington energy northwest executive board, The Evergreen State College board of trustees, executive ethics board, fish and wildlife commission, forest practices appeals board, forest practices board, gambling commission, Washington health care facilities authority, student achievement council, higher education facilities authority, horse racing commission, state housing finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, state investment board, commission on judicial conduct, legislative ethics board, life sciences discovery fund authority board of trustees, state liquor and cannabis board, lottery commission, Pacific Northwest electric power and conservation planning council, parks and recreation commission, Washington personnel resources board, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public employees' benefits board, recreation and conservation funding board, salmon recovery funding board, shorelines hearings board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington State University board of regents, and Western Washington University board of trustees.

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

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

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

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

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

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

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

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

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

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

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

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

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

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

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

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

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

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

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

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

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

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

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

(12) "Official duty" means those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution.

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

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

(15) "Professional staff member of the legislature" means an individual retained on a full or part-time basis whose primary responsibilities require the exercise of judgment and discretion in policy-related matters, including such individuals who are involved in the development of legislation. "Professional staff member of the legislature" does not include individuals retained primarily for clerical, ministerial, or internal accounting and bookkeeping purposes.

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

((~~(16)~~)) (17) "Responsibility" in connection with a transaction involving the state, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove, or otherwise direct state action in respect of such transaction.

((~~(17)~~)) (18) "State action" means any action on the part of an agency, including, but not limited to:

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

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

((~~(18)~~)) (19) "State employee" means an individual who is employed by an agency in any branch of state government. For purposes of this chapter, employees of the superior courts are not state officers or state employees.

((~~(19)~~)) (20) "State officer" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. "State officer" includes judges of the superior court, judges of the court of appeals, justices of the supreme court, members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work. For the purposes of this chapter, "state officer" also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

((~~(20)~~)) (21) "Thing of economic value," in addition to its ordinary meaning, includes:

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

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

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

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

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

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

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

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

((~~(22)~~)) (23) "University" includes "state universities" and "regional universities" as defined in RCW 28B.10.016 and also includes any research or technology institute affiliated with a university((~~, including without limitation, the Spokane intercollegiate research and technology institute and the Washington technology center~~)).

((~~(23)~~)) (24) "University research employee" means a state officer or state employee employed by a university, but only to the extent the state officer or state employee is engaged in research, technology transfer, approved consulting activities related to research and technology transfer, or other incidental activities.

**Sec.**  RCW 42.52.150 and 2015 3rd sp.s. c 20 s 7 and 2015 c 45 s 2 are each reenacted and amended to read as follows:

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

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

(a) Unsolicited flowers, plants, and floral arrangements;

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

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

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

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

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

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

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

(i) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, solicited on behalf of a national legislative association, 2006 official conference of the national lieutenant governors' association, the annual conference of the national association of state treasurers((~~[,]~~)), or host committee for the purpose of hosting an official conference under the circumstances specified in RCW 42.52.820, section 2, chapter 5, Laws of 2006, or RCW 42.52.821. Anything solicited or accepted may only be received by the national association or host committee and may not be commingled with any funds or accounts that are the property of any person;

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

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

(l) Gifts, grants, donations, sponsorships, or contributions from any agency or federal or local government agency or program or private source for the purposes of chapter 28B.156 RCW.

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

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

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

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

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

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

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

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

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

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

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

(iii) Flowers, plants, and floral arrangements.

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

**Sec.**  RCW 42.52.320 and 1994 c 154 s 202 are each amended to read as follows:

(1) The legislative ethics board shall enforce this chapter and rules adopted under it with respect to members and employees of the legislature.

(2) The legislative ethics board shall:

(a) Develop educational materials and training with regard to legislative ethics for legislators and legislative employees;

(b) Issue advisory opinions;

(c) Adopt rules or policies governing the conduct of business by the board, and adopt rules defining working hours for purposes of RCW 42.52.180 and where otherwise authorized under chapter 154, Laws of 1994;

(d) Investigate, hear, and determine complaints by any person or on its own motion;

(e) Impose sanctions including reprimands and monetary penalties;

(f) Recommend suspension or removal to the appropriate legislative entity, or recommend prosecution to the appropriate authority; ((~~and~~))

(g) Establish criteria regarding the levels of civil penalties appropriate for different types of violations of this chapter and rules adopted under it;

(h) Develop and provide forms for the statements of financial affairs, in accordance with section 6 of this act, required to be filed by professional staff members of the legislature pursuant to section 5 of this act;

(i) Receive and maintain the statements of financial affairs filed by professional staff members of the legislature; and

(j) Grant or deny requests to suspend or modify reporting requirements in accordance with section 7 of this act.

(3) The board may:

(a) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under examination by the board or involved in any hearing;

(b) Administer oaths and affirmations;

(c) Examine witnesses; and

(d) Receive evidence.

(4) Subject to RCW 42.52.540, the board has jurisdiction over any alleged violation that occurred before January 1, 1995, and that was within the jurisdiction of any of the boards established under chapter 44.60 RCW. The board's jurisdiction with respect to any such alleged violation shall be based on the statutes and rules in effect at ((~~[the]~~)) the time of the violation.

NEW SECTION. **Sec.**  A new section is added to chapter 42.52 RCW to read as follows:

(1) Between January 1st and April 15th of each year, every professional staff member of the legislature who served for any portion of the preceding year shall file with the legislative ethics board a statement of financial affairs for the preceding calendar year or for that portion of the year served. Any professional staff member of the legislature in office for any period of time in a calendar year, but not in office as of January 1st of the following year, may file either within sixty days of leaving office or during the January 1st through April 15th reporting period of that following year. Such filing must include information for the portion of the current calendar year for which the professional staff member of the legislature was in office.

(2) Within two weeks of appointment, every professional staff member of the legislature appointed to a vacancy during the months of January through November shall file with the legislative ethics board a statement of financial affairs for the preceding twelve months, except as provided in subsection (3) of this section. For appointments made in December, the appointee must file the statement of financial affairs between January 1st and January 15th of the immediate following year for the preceding twelve-month period ending on December 31st.

(3) A statement of an appointee filed during the period from January 1st to April 15th shall cover the period from January 1st of the preceding calendar year to the time of appointment if the filing of the statement would relieve the individual of a prior obligation to file a statement covering the entire preceding calendar year.

(4) No individual may be required to file more than once in any calendar year.

(5) Each statement of financial affairs filed under this section must be sworn as to its truth and accuracy.

(6) Every professional staff member of the legislature shall file with their statement of financial affairs a statement certifying that they have read and are familiar with RCW 42.52.180.

NEW SECTION. **Sec.**  A new section is added to chapter 42.52 RCW to read as follows:

For standardization and consistency purposes, the form developed by the legislative ethics board for the statement of financial affairs shall include substantially similar disclosures as required under RCW 42.17A.710, except that the legislative ethics board shall adjust for inflation any monetary reporting thresholds reflected in RCW 42.17A.710 as it pertains to the statements of financial affairs required to be filed by professional staff members of the legislature. The revisions must be only for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management.

NEW SECTION. **Sec.**  A new section is added to chapter 42.52 RCW to read as follows:

(1)(a) The board may suspend or modify any of the statement of financial affairs reporting requirements in sections 5 and 6 of this act if it finds that literal application of sections 5 and 6 of this act works a manifestly unreasonable hardship in a particular case and the suspension or modification will not frustrate the purposes of this act. The board may suspend or modify reporting requirements only to the extent necessary to substantially relieve the hardship and only after the board approves the request to suspend or modify the reporting requirement. The board may approve a suspension or modification of the financial affairs reporting requirements for up to three years.

(b) If a material change, as defined by the board, in the applicant's circumstances or relevant information occurs or has occurred, the applicant must reasonably notify the board of the material change and:

(i) Submit a statement of financial affairs during the next filing period, if the basis for the modification or suspension no longer exists and the applicant believes the modification or suspension of reporting requirements is no longer necessary; or

(ii) Request a new modification or suspension of reporting requirements at least one month prior to the next filing deadline rather than at the conclusion of the period for which modification or suspension was granted, if the applicant believes the modification or suspension is still necessary regardless of the material change.

(c) The board shall determine what constitutes reasonable notification of a material change, as it pertains to (b) of this subsection, including the method and time that the filer must notify the board.

(2) The board shall determine when a manifestly unreasonable hardship exists, but a manifestly unreasonable hardship also exists if reporting the name of an entity, as described under RCW 42.17A.710(1)(g)(ii), would be likely to adversely affect the competitive position of any entity in which the person filing the report, or any member of the person's immediate family, holds any office, directorship, general partnership interest, or an ownership interest of ten percent or more.

(3) Any information provided or prepared in relation to a request for modification or suspension under this section is confidential and may not be disclosed, except under circumstances where the statement of financial affairs may be disclosed in accordance with section 8 of this act, and only to the extent that disclosure of such information will not present a personal safety risk to a reasonable person.

(4) For the purposes of this section, "board" means the legislative ethics board.

NEW SECTION. **Sec.**  A new section is added to chapter 42.52 RCW to read as follows:

The legislative ethics board may not disclose the statement of financial affairs received pursuant to section 5 of this act, or otherwise make the statement of financial affairs available for public inspection or copying, except as follows:

(1) The statement of financial affairs may be disclosed to a law enforcement agency, the attorney general, or other investigative entity if requested by that entity for the purpose of aiding in any ongoing investigation concerning the professional staff member of the legislature.

(2) If, after any investigation of the professional staff member of the legislature for fraud, dishonesty, corruption, theft, or any act involving moral turpitude, the professional staff member of the legislature is found to have committed such an act, the legislative ethics board shall make the statement of financial affairs of that professional staff member of the legislature available for public inspection and copying, unless an exception applies under chapter 42.56 RCW.

**Sec.**  RCW 42.17A.020 and 1973 c 1 s 44 are each amended to read as follows:

(1) All statements and reports filed under this chapter shall be public records of the agency where they are filed, and shall be available for public inspection and copying during normal business hours at the expense of the person requesting copies, provided that the charge for such copies shall not exceed actual cost to the agency.

(2) The commission may not post any statements of financial affairs that have been filed by a professional staff member of the legislature, as defined under RCW 42.52.010, on any web site.

**Sec.**  RCW 42.17A.620 and 2010 c 204 s 805 are each amended to read as follows:

(1) When a listing or a report of contributions is made to the commission under RCW 42.17A.615(2)(c), a copy of the listing or report must be given to the candidate, elected official, professional staff member of the legislature as defined in RCW 42.52.010, or officer or employee of an agency, or a political committee supporting or opposing a ballot proposition named in the listing or report.

(2) If a state elected official or a member of the official's immediate family is identified by a lobbyist in a lobbyist report as having received from the lobbyist an item specified in RCW 42.52.150(5) or 42.52.010((~~(10)~~)) (9) (d) or (f), the lobbyist shall transmit to the official a copy of the completed form used to identify the item in the report at the same time the report is filed with the commission.

**--- END ---**