S-1675.1

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

**SUBSTITUTE SENATE BILL 5120**

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

**State of Washington 65th Legislature 2017 Regular Session**

**By** Senate State Government (originally sponsored by Senators Carlyle, Miloscia, Hunt, Dansel, Rolfes, Cleveland, Keiser, Kuderer, and Chase; by request of Attorney General)

AN ACT Relating to enhancing oversight and transparency of lobbying activity; amending RCW 42.17A.635 and 42.52.080; adding a new section to chapter 42.17A RCW; adding a new section to chapter 42.52 RCW; creating new sections; and providing an effective date.

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

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

(1) All lobbyists and lobbyists' employers required to file reports under RCW 42.17A.600, 42.17A.615, 42.17A.625, 42.17A.630, or 42.17A.635 must file all reports required by this chapter electronically over the internet as provided by the commission under RCW 42.17A.055.

(2) The commission must design, develop, implement, and maintain computer hardware and software or other applications to accommodate electronic filing of the reports required by this section and a database and query system compatible with current architecture, technology, and operating systems that result in readily available data to the public for review and analysis. The commission is encouraged to engage stakeholders in the design and development of the system.

**Sec.**  RCW 42.17A.635 and 2010 c 204 s 808 are each amended to read as follows:

(1) The house of representatives and the senate shall report annually: The total budget; the portion of the total attributed to staff; and the number of full-time and part-time staff positions by assignment, with dollar figures as well as number of positions.

(2) Unless authorized by subsection (3) of this section or otherwise expressly authorized by law, no public funds may be used directly or indirectly for lobbying. However, this does not prevent officers or employees of an agency from communicating with a member of the legislature on the request of that member; or communicating to the legislature, through the proper official channels, requests for legislative action or appropriations that are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties. This subsection does not apply to the legislative branch.

(3) Any agency, not otherwise expressly authorized by law, may expend public funds for lobbying, but such lobbying activity shall be limited to (a) providing information or communicating on matters pertaining to official agency business to any elected official or officer or employee of any agency or (b) advocating the official position or interests of the agency to any elected official or officer or employee of any agency. Public funds may not be expended as a direct or indirect gift or campaign contribution to any elected official or officer or employee of any agency. For the purposes of this subsection, "gift" means a voluntary transfer of any thing of value without consideration of equal or greater value, but does not include informational material transferred for the sole purpose of informing the recipient about matters pertaining to official agency business. This section does not permit the printing of a state publication that has been otherwise prohibited by law.

(4) No elective official or any employee of his or her office or any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, in any effort to support or oppose an initiative to the legislature. "Facilities of a public office or agency" has the same meaning as in RCW 42.17A.555 and 42.52.180. The provisions of this subsection shall not apply to the following activities:

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose an initiative to the legislature so long as (i) any required notice of the meeting includes the title and number of the initiative to the legislature, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(b) A statement by an elected official in support of or in opposition to any initiative to the legislature at an open press conference or in response to a specific inquiry;

(c) Activities that are part of the normal and regular conduct of the office or agency;

(d) Activities conducted regarding an initiative to the legislature that would be permitted under RCW 42.17A.555 and 42.52.180 if conducted regarding other ballot measures.

(5)(a) Each state agency, county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district that expends public funds for lobbying and each employee of such an agency lobbying on behalf of the agency shall ((~~file with the commission, except as exempted by (d) of this subsection, quarterly statements providing the following information for the quarter just completed:~~

~~(a) The name of the agency filing the statement;~~

~~(b) The name, title, and job description and salary of each elected official, officer, or employee who lobbied, a general description of the nature of the lobbying, and the proportionate amount of time spent on the lobbying;~~

~~(c) A listing of expenditures incurred by the agency for lobbying including but not limited to travel, consultant or other special contractual services, and brochures and other publications, the principal purpose of which is to influence legislation;~~)), except as provided in this subsection (5), register and report as a lobbyist under RCW 42.17A.600 and 42.17A.615. Each such state and local agency shall report as a lobbyist employer pursuant to RCW 42.17A.630.

((~~(d)~~)) (b) For purposes of this subsection (5), "lobbying" does not include:

(i) Requests for appropriations by a state agency to the office of financial management pursuant to chapter 43.88 RCW nor requests by the office of financial management to the legislature for appropriations other than its own agency budget requests;

(ii) Recommendations or reports to the legislature in response to a legislative request expressly requesting or directing a specific study, recommendation, or report by an agency on a particular subject;

(iii) Official reports including recommendations submitted to the legislature on an annual or biennial basis by a state agency as required by law;

(iv) Requests, recommendations, or other communication between or within state agencies or between or within local agencies;

(v) Any other lobbying to the extent that it includes:

(A) Telephone conversations or preparation of written correspondence;

(B) In-person lobbying on behalf of an agency of no more than four days or parts thereof during any three-month period by officers or employees of that agency and in-person lobbying by any elected official of such agency on behalf of such agency or in connection with the powers, duties, or compensation of such official. The total expenditures of nonpublic funds made in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington may not exceed fifteen dollars for any three-month period. The exemption under this subsection (5)((~~(d)~~)) (b)(v)(B) is in addition to the exemption provided in ((~~(d)~~)) (b)(v)(A) of this subsection;

(C) Preparation or adoption of policy positions.

((~~The statements shall be in the form and the manner prescribed by the commission and shall be filed within one month after the end of the quarter covered by the report.~~))

(6) ((~~In lieu of reporting under subsection (5) of this section, any county, city, town, municipal corporation, quasi municipal corporation, or special purpose district may determine and so notify the public disclosure commission that elected officials, officers, or employees who, on behalf of any such local agency, engage in lobbying reportable under subsection (5) of this section shall register and report such reportable lobbying in the same manner as a lobbyist who is required to register and report under RCW 42.17A.600 and 42.17A.615. Each such local agency shall report as a lobbyist employer pursuant to RCW 42.17A.630.~~

~~(7)~~)) The provisions of this section do not relieve any elected official or officer or employee of an agency from complying with other provisions of this chapter, if such elected official, officer, or employee is not otherwise exempted.

((~~(8)~~)) (7) The purpose of this section is to require each state agency and certain local agencies to report the identities of those persons who lobby on behalf of the agency for compensation, together with certain separately identifiable and measurable expenditures of an agency's funds for that purpose. This section shall be reasonably construed to accomplish that purpose and not to require any agency to report any of its general overhead cost or any other costs that relate only indirectly or incidentally to lobbying or that are equally attributable to or inseparable from nonlobbying activities of the agency.

(8) The public disclosure commission may adopt rules clarifying and implementing this legislative interpretation and policy.

**Sec.**  RCW 42.52.080 and 1999 c 299 s 3 are each amended to read as follows:

(1) No former state officer or state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from an employer if:

(a) The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration;

(b) Such a contract or contracts have a total value of more than ten thousand dollars; and

(c) The duties of the employment with the employer or the activities for which the compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts. This subsection shall not be construed to prohibit a state officer or state employee from accepting employment with a state employee organization.

(2) No person who has served as a state officer or state employee may, within a period of two years following the termination of state employment, have a direct or indirect beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

(3) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the officer or employee knows or has reason to believe that the offer of employment or compensation was intended, in whole or in part, directly or indirectly, to influence the officer or employee or as compensation or reward for the performance or nonperformance of a duty by the officer or employee during the course of state employment.

(4) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the circumstances would lead a reasonable person to believe the offer has been made, or compensation given, for the purpose of influencing the performance or nonperformance of duties by the officer or employee during the course of state employment.

(5) No former state officer or state employee may at any time subsequent to his or her state employment assist another person, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment. This subsection shall not be construed to prohibit any employee or officer of a state employee organization from rendering assistance to state officers or state employees in the course of employee organization business.

(6)(a) The following categories of former state officers and state employees apply to this subsection (6):

(i) Category A:

(A) Statewide elected officials;

(B) State legislators;

(C) Heads of agencies included in the governor's executive cabinet;

(D) Chiefs of staff or equivalent top administrators who report directly to statewide elected officials and heads of agencies included in the governor's executive cabinet;

(E) Chiefs of staff and top administrators of the legislature, which includes the chief clerk of the house of representatives, the secretary of the senate, the legal counsel for each legislative chamber, and the caucus chiefs of staff and caucus leadership counsel in each legislative chamber; and

(F) Senior executive staff of legislative agencies and agencies managed by statewide elected officials or heads of agencies included in the governor's executive cabinet; and

(ii) Category B:

(A) Heads of agencies not otherwise listed in category A;

(B) Chiefs of staff or equivalent top administrators who report directly to heads of agencies not otherwise listed in category A; and

(C) Senior executive staff managed by heads of agencies not otherwise listed in category A.

(b) For the purpose of this subsection (6), "senior executive staff" means those state employees or state officers whose primary responsibilities require the exercise of significant discretion and judgment on final agency policy, rule, legislative matter, or state action. By January 15th of each year, every agency shall submit to the relevant ethics board the names and staff positions meeting the criteria of senior executive staff, and must periodically update that list throughout the year as necessary to reflect changes in staff.

(c) Persons in categories A and B shall file a postemployment disclosure statement under section 4 of this act.

(d) Persons in category A, within one year after leaving state office or employment, may not receive compensation for:

(i) Serving as a lobbyist as defined in RCW 42.17A.005 for others;

(ii) Lobbying on behalf of a state or local agency as described in RCW 42.17A.635;

(iii) Practicing or appearing before any state agency; or

(iv) Attempting, on behalf of another, to influence a state action by any state agency.

(e) Persons in category B, within one year after leaving state office or employment, may not receive compensation for:

(i) Serving as a lobbyist for others as defined in RCW 42.17A.005 on any matter that was or is under the authority of his or her most recent former state employer;

(ii) Lobbying on behalf of a state or local agency as described in RCW 42.17A.635 on any matter that was or is under the authority of his or her most recent former state employer;

(iii) Practicing or appearing before his or her most recent former state employer; or

(iv) Attempting, on behalf of another, to influence a state action by his or her most recent former state employer.

(f) This subsection (6) does not apply to persons receiving compensation for the following activities:

(i) Performing official duties not related to lobbying as a current state officer or state employee;

(ii) Leaving a state agency to take another state agency, local agency, or federal government position as long as that position does not involve lobbying;

(iii) Representing a person in a judicial or quasi-judicial proceeding including an administrative hearing;

(iv) Being called or requested to testify in any judicial or quasi-judicial proceeding, or in public sessions of the committees of the legislature;

(v) Participating in rule making at the request of an agency under RCW 34.05.310;

(vi) Assisting a natural person or corporation in obtaining or completing application forms or other forms required by a state agency for the conduct of business, or similar ministerial activities defined in rule by the ethics boards; or

(vii) Activities approved by a waiver under the relevant ethics boards.

(7) The ethics boards shall adopt rules at each of their agencies describing a process for a person to seek a waiver from the postemployment requirements in subsection (6)(d) and (e) of this section. Rules must be adopted by July 1, 2018. No waiver may be granted from the requirement to file a postemployment disclosure statement in subsection (6)(c) of this section. The ethics boards are authorized to delegate waiver approval to the chair or the chair's designee, including the executive director. Before granting a waiver, the board must find that:

(a) The postemployment activity presents no conflict with the state's interest;

(b) A need for the former state officer or employee's compensated service outweighs any potential or perceived conflict with the state's interest; or

(c) Extraordinary, emergency, or unique circumstances otherwise warrant granting a waiver.

(8) As used in this section, "employer" means a person as defined in RCW 42.52.010 or any other entity or business that the person owns or in which the person has a controlling interest. For purposes of subsection (1) of this section, the term "employer" does not include a successor organization to the rural development council under chapter 43.31 RCW.

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

(1) The postemployment disclosure statement required under RCW 42.52.080(6) must include the following information:

(a) The name of the person leaving state service;

(b) The position held in state government before leaving state service and the name of the most recent employer agency; and

(c) An acknowledgment that the person has reviewed RCW 42.52.080 and 42.52.090, and for former executive branch employees, RCW 42.52.100.

(2) If, following state service, the person leaving state service receives compensation from an employer or other entity that does business with the state or takes action to influence any state policy, rule, legislative matter, or action, the postemployment disclosure statement required under RCW 42.52.080(6) must also include the following information:

(a) The name and address of the new employer or source of compensation following state service;

(b) The name of the supervisor at the new employer, if any, or other identifying information of the principal of the employing or contracting entity;

(c) The date such new employment begins or began; and

(d) A description of anticipated postemployment duties at the new employer or employing business or provided by a contract.

(3) The person must date the statement and sign it under oath. An electronic signature is permitted if the form is filed electronically.

(4)(a) The statement is required during the twelve-month period after the date the person leaves state service and takes a new employment position or receives compensation during that same period. The information in the statement is public information.

(b) The person shall submit the statement to the respective ethics board no later than fourteen days after the person leaves state service to take a compensated employment position or takes the compensated employment position, whichever occurs earlier.

(c) If during the twelve-month period a person changes employers or sources of employment compensation to another employer that does business with the state or takes action to influence any state policy, rule, legislative matter, or action, he or she shall submit a new statement within forty-five days.

(d) For the purposes of this section and the statement required by it, compensation does not mean income received through the person's retirement or investment accounts, social security, or similar sources.

(5) The ethics boards shall collaborate as necessary to design a uniform postemployment statement that permits online filing and on a process to send copies of filed statements to the executive ethics board. The ethics boards may adopt the statement and filing process by rule.

(6) The legislative ethics board and the commission on judicial conduct shall provide a copy of filed postemployment statements to the executive ethics board. Postemployment statements must be made available online in a searchable database on the executive ethics board web site. The other ethics boards and the public disclosure commission shall link to the database on their respective web sites. As used in this subsection, "searchable database" means copies of statements are posted on the executive ethics board's web site and can be searched by the names of the employee or state officer, former employer, and if required to be disclosed under subsection (2) of this section, the new employer.

(7) The ethics boards may adopt rules to implement this section with any initial rules adopted by July 1, 2018.

NEW SECTION. **Sec.**  The ethics boards may begin the rule-making process under sections 3 and 4 of this act on the effective date of this section.

NEW SECTION. **Sec.**  This act applies to state officers and employees who were employed in state positions on or after the effective date of this section.

NEW SECTION. **Sec.**  Sections 3, 4, and 6 of this act take effect July 1, 2018.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**