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SENATE BILL 5737

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State of Washington                      65th Legislature                      2017 Regular Session

By Senators Rivers, Miloscia, Schoesler, Zeiger, and Padden

Read first time 02/06/17. Referred to Committee on State Government.

1            AN ACT Relating to enhancing oversight and transparency of  
2 lobbying activity; amending RCW 42.17A.635 and 42.52.080; adding a  
3 new section to chapter 42.17A RCW; adding a new section to chapter  
4 42.52 RCW; creating new sections; and providing an effective date.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 42.17A  
7 RCW to read as follows:

8            (1) All lobbyists and lobbyists' employers required to file  
9 reports under RCW 42.17A.600, 42.17A.615, 42.17A.625, 42.17A.630, or  
10 42.17A.635 must file all reports required by this chapter  
11 electronically over the internet as provided by the commission under  
12 RCW 42.17A.055.

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

1       **Sec. 2.** RCW 42.17A.635 and 2010 c 204 s 808 are each amended to  
2 read as follows:

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

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

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

32       (4) No elective official or any employee of his or her office or  
33 any person appointed to or employed by any public office or agency  
34 may use or authorize the use of any of the facilities of a public  
35 office or agency, directly or indirectly, in any effort to support or  
36 oppose an initiative to the legislature. "Facilities of a public  
37 office or agency" has the same meaning as in RCW 42.17A.555 and  
38 42.52.180. The provisions of this subsection shall not apply to the  
39 following activities:

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

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

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

15 (d) Activities conducted regarding an initiative to the  
16 legislature that would be permitted under RCW 42.17A.555 and  
17 42.52.180 if conducted regarding other ballot measures.

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

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

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

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

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

39 (i) Requests for appropriations by a state agency to the office  
40 of financial management pursuant to chapter 43.88 RCW nor requests by

1 the office of financial management to the legislature for  
2 appropriations other than its own agency budget requests;

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

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

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

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

13 (A) Telephone conversations or preparation of written  
14 correspondence;

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

27 (C) Preparation or adoption of policy positions.

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

31 ~~(6) ((In lieu of reporting under subsection (5) of this section,  
32 any county, city, town, municipal corporation, quasi municipal  
33 corporation, or special purpose district may determine and so notify  
34 the public disclosure commission that elected officials, officers, or  
35 employees who, on behalf of any such local agency, engage in lobbying  
36 reportable under subsection (5) of this section shall register and  
37 report such reportable lobbying in the same manner as a lobbyist who  
38 is required to register and report under RCW 42.17A.600 and  
39 42.17A.615. Each such local agency shall report as a lobbyist  
40 employer pursuant to RCW 42.17A.630.~~

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

5       ~~((8))~~ (7) The purpose of this section is to require each state  
6 agency and certain local agencies to report the identities of those  
7 persons who lobby on behalf of the agency for compensation, together  
8 with certain separately identifiable and measurable expenditures of  
9 an agency's funds for that purpose. This section shall be reasonably  
10 construed to accomplish that purpose and not to require any agency to  
11 report any of its general overhead cost or any other costs that  
12 relate only indirectly or incidentally to lobbying or that are  
13 equally attributable to or inseparable from nonlobbying activities of  
14 the agency.

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

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

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

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

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

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

38       (2) No person who has served as a state officer or state employee  
39 may, within a period of two years following the termination of state

1 employment, have a direct or indirect beneficial interest in a  
2 contract or grant that was expressly authorized or funded by specific  
3 legislative or executive action in which the former state officer or  
4 state employee participated.

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

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

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

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

29 (i) Category A:

30 (A) Statewide elected officials;

31 (B) State legislators;

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

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

37 (E) Chiefs of staff and top administrators of the legislature,  
38 which includes the chief clerk of the house of representatives, the  
39 secretary of the senate, the legal counsel for each legislative

1 chamber, and the caucus chiefs of staff and caucus leadership counsel  
2 in each legislative chamber; and

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

6 (ii) Category B:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (8) As used in this section, "employer" means a person as defined  
40 in RCW 42.52.010 or any other entity or business that the person owns



1 or in which the person has a controlling interest. For purposes of  
2 subsection (1) of this section, the term "employer" does not include  
3 a successor organization to the rural development council under  
4 chapter 43.31 RCW.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 42.52  
6 RCW to read as follows:

7 (1) The postemployment disclosure statement required under RCW  
8 42.52.080(6) must include the following information:

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

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

12 (c) An acknowledgment that the person has reviewed RCW 42.52.080  
13 and 42.52.090, and for former executive branch employees, RCW  
14 42.52.100.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 NEW SECTION. **Sec. 5.** The ethics boards may begin the rule  
29 making process under section 4 of this act on the effective date of  
30 this section.

31 NEW SECTION. **Sec. 6.** This act applies to state officers and  
32 employees who were employed in state positions on or after the  
33 effective date of this section.

34 NEW SECTION. **Sec. 7.** Sections 3, 4, and 6 of this act take  
35 effect July 1, 2018.

1        NEW SECTION.    **Sec. 8.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

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