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SENATE BILL 5540

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State of Washington

53rd Legislature

1993 Regular Session

By Senator Talmadge

Read first time 02/02/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to open government; amending RCW 42.17.020 and  
2 42.30.020; reenacting and amending RCW 49.60.040; adding a new section  
3 to chapter 42.17 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 42.17.020 and 1992 c 139 s 1 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, including the state  
10 legislature. "Local agency" includes every county, city, town,  
11 municipal corporation, quasi-municipal corporation, or special purpose  
12 district, or any office, department, division, bureau, board,  
13 commission, or agency thereof, or 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  
16 proposed to be submitted to the voters of the state or any municipal  
17 corporation, political subdivision, or other voting constituency from  
18 and after the time when the proposition has been initially filed with

1 the appropriate election officer of that constituency prior to its  
2 circulation for signatures.

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

5 (4) "Treasurer" and "deputy treasurer" mean the individuals  
6 appointed by a candidate or political committee, pursuant to RCW  
7 42.17.050, to perform the duties specified in that section.

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

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

12 (b) Announces publicly or files for office.

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

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

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

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

30 (10) "Contribution" includes a loan, gift, deposit, subscription,  
31 forgiveness of indebtedness, donation, advance, pledge, payment,  
32 transfer of funds between political committees, or transfer of anything  
33 of value, including personal and professional services for less than  
34 full consideration, but does not include interest on moneys deposited  
35 in a political committee's account, ordinary home hospitality and the  
36 rendering of personal services of the sort commonly performed by  
37 volunteer campaign workers, or incidental expenses personally incurred  
38 by volunteer campaign workers not in excess of fifty dollars personally  
39 paid for by the worker. Volunteer services, for the purposes of this

1 chapter, means services or labor for which the individual is not  
2 compensated by any person. For the purposes of this chapter,  
3 contributions other than money or its equivalents shall be deemed to  
4 have a money value equivalent to the fair market value of the  
5 contribution. Sums paid for tickets to fund-raising events such as  
6 dinners and parties are contributions; however, the amount of any such  
7 contribution may be reduced for the purpose of complying with the  
8 reporting requirements of this chapter, by the actual cost of  
9 consumables furnished in connection with the purchase of the tickets,  
10 and only the excess over the actual cost of the consumables shall be  
11 deemed a contribution.

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

15 (12) "Election" includes any primary, general, or special election  
16 for public office and any election in which a ballot proposition is  
17 submitted to the voters: PROVIDED, That an election in which the  
18 qualifications for voting include other than those requirements set  
19 forth in Article VI, section 1 (Amendment 63) of the Constitution of  
20 the state of Washington shall not be considered an election for  
21 purposes of this chapter.

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

25 (14) "Expenditure" includes a payment, contribution, subscription,  
26 distribution, loan, advance, deposit, or gift of money or anything of  
27 value, and includes a contract, promise, or agreement, whether or not  
28 legally enforceable, to make an expenditure. The term "expenditure"  
29 also includes a promise to pay, a payment, or a transfer of anything of  
30 value in exchange for goods, services, property, facilities, or  
31 anything of value for the purpose of assisting, benefiting, or honoring  
32 any public official or candidate, or assisting in furthering or  
33 opposing any election campaign. For the purposes of this chapter,  
34 agreements to make expenditures, contracts, and promises to pay may be  
35 reported as estimated obligations until actual payment is made. The  
36 term "expenditure" shall not include the partial or complete repayment  
37 by a candidate or political committee of the principal of a loan, the  
38 receipt of which loan has been properly reported.

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

3 (16) "Gift," for the purposes of RCW 42.17.170 and 42.17.2415,  
4 means a rendering of anything of value in return for which reasonable  
5 consideration is not given and received and includes a rendering of  
6 money, property, services, discount, loan forgiveness, payment of  
7 indebtedness, or reimbursements from or payments by persons (other than  
8 the federal government, or the state of Washington or any agency or  
9 political subdivision thereof) for travel or anything else of value.  
10 The term "reasonable consideration" refers to the approximate range of  
11 consideration that exists in transactions not involving donative  
12 intent. However, the value of the gift of partaking in a single hosted  
13 reception shall be determined by dividing the total amount of the cost  
14 of conducting the reception by the total number of persons partaking in  
15 the reception. "Gift" for the purposes of RCW 42.17.170 and 42.17.2415  
16 does not include:

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

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

21 (c) A contribution that is required to be reported under RCW  
22 42.17.090 or 42.17.243;

23 (d) Informational material that is transferred for the purpose of  
24 informing the recipient about matters pertaining to official business  
25 of the governmental entity of which the recipient is an official or  
26 officer, and that is not intended to confer on that recipient any  
27 commercial, proprietary, financial, economic, or monetary advantage, or  
28 the avoidance of any commercial, proprietary, financial, economic, or  
29 monetary disadvantage;

30 (e) A gift that is not used and that, within thirty days after  
31 receipt, is returned to the donor or delivered to a charitable  
32 organization. However, this exclusion from the definition does not  
33 apply if the recipient of the gift delivers the gift to a charitable  
34 organization and claims the delivery as a charitable contribution for  
35 tax purposes;

36 (f) A gift given under circumstances where it is clear beyond any  
37 doubt that the gift was not made as part of any design to gain or  
38 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 September 29, 1991.

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

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

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

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

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

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

30 (23) "Person in interest" means the person who is the subject of a  
31 record or any representative designated by that person, except that if  
32 that person is under a legal disability, the term "person in interest"  
33 means and includes the parent or duly appointed legal representative.

34 (24) "Political advertising" includes any advertising displays,  
35 newspaper ads, billboards, signs, brochures, articles, tabloids,  
36 flyers, letters, radio or television presentations, or other means of  
37 mass communication, used for the purpose of appealing, directly or  
38 indirectly, for votes or for financial or other support in any election  
39 campaign.

1 (25) "Political committee" means any person (except a candidate or  
2 an individual dealing with his own funds or property) having the  
3 expectation of receiving contributions or making expenditures in  
4 support of, or opposition to, any candidate or any ballot proposition.

5 (26) "Public office" means any federal, state, county, city, town,  
6 school district, port district, special district, or other state  
7 political subdivision elective office.

8 (27) "Public record" includes any writing containing information  
9 relating to the conduct of government or the performance of any  
10 governmental or proprietary function prepared, owned, used, or retained  
11 by any state or local agency regardless of physical form or  
12 characteristics.

13 (28) "Surplus funds" mean, in the case of a political committee or  
14 candidate, the balance of contributions that remain in the possession  
15 or control of that committee or candidate subsequent to the election  
16 for which the contributions were received, and that are in excess of  
17 the amount necessary to pay remaining debts incurred by the committee  
18 or candidate prior to that election. In the case of a continuing  
19 political committee, "surplus funds" mean those contributions remaining  
20 in the possession or control of the committee that are in excess of the  
21 amount necessary to pay all remaining debts when it makes its final  
22 report under RCW 42.17.065.

23 (29) "Writing" means handwriting, typewriting, printing,  
24 photostating, photographing, and every other means of recording any  
25 form of communication or representation, including, but not limited to,  
26 letters, words, pictures, sounds, or symbols, or combination thereof,  
27 and all papers, maps, magnetic or paper tapes, photographic films and  
28 prints, motion picture, film and video recordings, magnetic or punched  
29 cards, discs, drums, diskettes, sound recordings, and other documents  
30 including existing data compilations from which information may be  
31 obtained or translated.

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

34 **Sec. 2.** RCW 42.30.020 and 1985 c 366 s 1 are each amended to read  
35 as follows:

36 As used in this chapter unless the context indicates otherwise:

37 (1) "Public agency" means:

1 (a)(i) Any state board, commission, committee, department,  
2 educational institution, or other state agency which is created by or  
3 pursuant to statute, other than courts (~~and the legislature~~); and

4 (ii) The state legislature and its standing, ad hoc, and conference  
5 committees, other than party caucus meetings;

6 (b) Any county, city, school district, special purpose district, or  
7 other municipal corporation or political subdivision of the state of  
8 Washington;

9 (c) Any subagency of a public agency which is created by or  
10 pursuant to statute, ordinance, or other legislative act, including but  
11 not limited to planning commissions, library or park boards,  
12 commissions, and agencies;

13 (d) Any policy group whose membership includes representatives of  
14 publicly owned utilities formed by or pursuant to the laws of this  
15 state when meeting together as or on behalf of participants who have  
16 contracted for the output of generating plants being planned or built  
17 by an operating agency.

18 (2) "Governing body" means the multimember board, commission,  
19 committee, council, or other policy or rule-making body of a public  
20 agency, or any committee thereof when the committee acts on behalf of  
21 the governing body, conducts hearings, or takes testimony or public  
22 comment.

23 (3) "Action" means the transaction of the official business of a  
24 public agency by a governing body including but not limited to receipt  
25 of public testimony, deliberations, discussions, considerations,  
26 reviews, evaluations, and final actions. "Final action" means a  
27 collective positive or negative decision, or an actual vote by a  
28 majority of the members of a governing body when sitting as a body or  
29 entity, upon a motion, proposal, resolution, order, or ordinance.

30 (4) "Meeting" means meetings at which action is taken.

31 **Sec. 3.** RCW 49.60.040 and 1985 c 203 s 2 and 1985 c 185 s 2 are  
32 each reenacted and amended to read as follows:

33 As used in this chapter:

34 "Person" includes one or more individuals, partnerships,  
35 associations, organizations, corporations, cooperatives, legal  
36 representatives, trustees and receivers, or any group of persons; it  
37 includes any owner, lessee, proprietor, manager, agent, or employee,  
38 whether one or more natural persons; and further includes any political

1 or civil subdivisions of the state, the state legislature, and any  
2 agency or instrumentality of the state or of any political or civil  
3 subdivision thereof;

4 "Commission" means the Washington state human rights commission;

5 "Employer" includes any person acting in the interest of an  
6 employer, directly or indirectly, who employs eight or more persons,  
7 and does not include any religious or sectarian organization not  
8 organized for private profit;

9 "Employee" does not include any individual employed by his or her  
10 parents, spouse, or child, or in the domestic service of any person;

11 "Labor organization" includes any organization which exists for the  
12 purpose, in whole or in part, of dealing with employers concerning  
13 grievances or terms or conditions of employment, or for other mutual  
14 aid or protection in connection with employment;

15 "Employment agency" includes any person undertaking with or without  
16 compensation to recruit, procure, refer, or place employees for an  
17 employer;

18 "National origin" includes "ancestry";

19 "Full enjoyment of" includes the right to purchase any service,  
20 commodity, or article of personal property offered or sold on, or by,  
21 any establishment to the public, and the admission of any person to  
22 accommodations, advantages, facilities, or privileges of any place of  
23 public resort, accommodation, assemblage, or amusement, without acts  
24 directly or indirectly causing persons of any particular race, creed,  
25 color, sex, or with any sensory, mental, or physical handicap, or a  
26 blind or deaf person using a trained dog guide, to be treated as not  
27 welcome, accepted, desired, or solicited;

28 "Any place of public resort, accommodation, assemblage, or  
29 amusement" includes, but is not limited to, any place, licensed or  
30 unlicensed, kept for gain, hire, or reward, or where charges are made  
31 for admission, service, occupancy, or use of any property or  
32 facilities, whether conducted for the entertainment, housing, or  
33 lodging of transient guests, or for the benefit, use, or accommodation  
34 of those seeking health, recreation, or rest, or for the burial or  
35 other disposition of human remains, or for the sale of goods,  
36 merchandise, services, or personal property, or for the rendering of  
37 personal services, or for public conveyance or transportation on land,  
38 water, or in the air, including the stations and terminals thereof and  
39 the garaging of vehicles, or where food or beverages of any kind are



1 sold for consumption on the premises, or where public amusement,  
2 entertainment, sports, or recreation of any kind is offered with or  
3 without charge, or where medical service or care is made available, or  
4 where the public gathers, congregates, or assembles for amusement,  
5 recreation, or public purposes, or public halls, public elevators, and  
6 public washrooms of buildings and structures occupied by two or more  
7 tenants, or by the owner and one or more tenants, or any public library  
8 or educational institution, or schools of special instruction, or  
9 nursery schools, or day care centers or children's camps: PROVIDED,  
10 That nothing contained in this definition shall be construed to include  
11 or apply to any institute, bona fide club, or place of accommodation,  
12 which is by its nature distinctly private, including fraternal  
13 organizations, though where public use is permitted that use shall be  
14 covered by this chapter; nor shall anything contained in this  
15 definition apply to any educational facility, columbarium, crematory,  
16 mausoleum, or cemetery operated or maintained by a bona fide religious  
17 or sectarian institution;

18 "Real property" includes buildings, structures, real estate, lands,  
19 tenements, leaseholds, interests in real estate cooperatives,  
20 condominiums, and hereditaments, corporeal and incorporeal, or any  
21 interest therein;

22 "Real estate transaction" includes the sale, exchange, purchase,  
23 rental, or lease of real property;

24 "Sex" means gender.

25 "Credit transaction" includes any open or closed end credit  
26 transaction, whether in the nature of a loan, retail installment  
27 transaction, credit card issue or charge, or otherwise, and whether for  
28 personal or for business purposes, in which a service, finance, or  
29 interest charge is imposed, or which provides for repayment in  
30 scheduled payments, when such credit is extended in the regular course  
31 of any trade or commerce, including but not limited to transactions by  
32 banks, savings and loan associations or other financial lending  
33 institutions of whatever nature, stock brokers, or by a merchant or  
34 mercantile establishment which as part of its ordinary business permits  
35 or provides that payment for purchases of property or service therefrom  
36 may be deferred.

37 NEW SECTION. **Sec. 4.** A new section is added to chapter 42.17 RCW  
38 to read as follows:

1 (1) In addition to the provisions of RCW 42.17.395, a violation of  
2 RCW 42.17.130 is a gross misdemeanor. Each violation is a separate  
3 offense, regardless of whether the violation occurred as part of a  
4 common scheme or operation, and shall be prosecuted accordingly.

5 (2) Any prosecution for a violation of RCW 42.17.130 shall be  
6 conducted by a special prosecutor, or a special deputy prosecutor, to  
7 be appointed by the presiding superior court judge in the county in  
8 which the violation occurred. If a defendant is charged with a  
9 violation in more than one county, the trials shall be held in the  
10 order in which the largest number of violations are charged first, and  
11 then in descending order of the number of violations which are alleged.  
12 A defendant may waive his or her right to separate trials and agree to  
13 the consolidation of the trials into one county.

14 (3) If the prosecuting attorney for any county, or the attorney for  
15 any city or town, has probable cause to believe a violation of RCW  
16 42.17.130 has occurred, the prosecution shall be conducted pursuant to  
17 subsection (2) of this section.

18 (4) The commission may request the appointment of a special  
19 prosecutor or deputy prosecutor. The request shall be made to the  
20 presiding superior court judge in each county in which the commission  
21 has probable cause to believe a violation occurred, together with such  
22 material as the commission deems appropriate. A judge to whom such a  
23 request is submitted shall review the request and, within thirty days  
24 of receipt of the request, (a) appoint the special prosecutor or (b)  
25 respond in writing to the commission, stating the reasons why the  
26 request has been denied.

27 (5) A prosecution conducted pursuant to this section does not  
28 preclude the commission from any other authority granted it by any  
29 other statute.

30 (6) A person convicted pursuant to this section may, as a result of  
31 such conviction, be ordered to make restitution to the commission and  
32 the local government that conducted the prosecution, for the costs of  
33 any investigation and prosecution. This provision shall be in addition  
34 to any other penalty, fine, or fee that may be entered against a person  
35 who violates RCW 42.17.130.

36 NEW SECTION. **Sec. 5.** If any provision of this act or its  
37 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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