

HOUSE BILL REPORT

E2SSB 5395

As Reported by House Committee On:
State Government & Tribal Relations
Appropriations

Title: An act relating to use of state resources during periods where state employees are required to work from home.

Brief Description: Concerning use of state resources during periods where state employees are required to work from home.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hunt, Dhingra, Hasegawa, Kuderer, Nguyen, Nobles, Randall, Saldaña, Wellman and Wilson, C.).

Brief History:

Committee Activity:

State Government & Tribal Relations: 3/18/21, 3/22/21 [DPA];
Appropriations: 4/1/21 [DPA(SGOV)].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended By Committee)**

- Authorizes state agencies, defined as any branch, department, or unit of the state government, to provide state employees with office supplies, services, and other materials necessary to effectively work from home.
- Allows agencies to reimburse state employees, subject to appropriation, for additional necessary expenditures incurred since April 1, 2020, for supplies that are needed to carry out tasks within the employee's scope of employment and related to the services directly performed for the agency, with exceptions.
- Requires the Office of Financial Management (OFM) to adopt policies and procedures for the purchase or reimbursement of supplies, services, and other materials.
- Authorizes state employees to use state Internet resources outside of

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normal business hours during the proclaimed state of emergency in direct response to COVID-19 for certain social activities that have no expense to the state.

- Requires the OFM to establish and lead a work group to review issues related to working in a remote environment and provide recommendations on policies to more effectively allow state employees to work remotely.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass as amended. Signed by 5 members: Representatives Valdez, Chair; Lekanoff, Vice Chair; Volz, Ranking Minority Member; Dolan and Gregerson.

Minority Report: Do not pass. Signed by 1 member: Representative Walsh, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 1 member: Representative Graham.

Staff: Desiree Omli (786-7105).

Background:

Use of State Equipment.

The state ethics laws generally prohibit the use of state resources for personal or private benefit, including the use of state facilities for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. State employees may use public resources to benefit others as part of the state employee's official duties. Certain de minimis use of state facilities is allowable. The Executive Ethics Board, Legislative Ethics Board, and the Commission on Judicial Conduct adopts rules to provide for exceptions to the general ethics laws for occasional de minimis use of state resources for activities that do not interfere with the proper performance of public duties.

Employee Reimbursement.

Under state law, employers are not required to provide for reimbursement or per diem for meals and lodging while travelling. Employers may reimburse employees for fuel, parking fees, tolls, or other purchases made by an employee, but is not required to do so. Employers are not required to pay for the cost of required clothing or attire unless it is considered a "uniform."

Within state government, state agencies may, but are not required to, provide reasonable

allowances to state employees to cover:

- reasonable and necessary subsistence and lodging expenses while engaged in official business away from their designated posts of duty;
- travel expenses, including mileage reimbursement, when it is necessary for an employee to travel while engaged on official business; and
- moving expenses when it is reasonably necessary for an employee to move within the state as a result of a transfer from one assigned station to another.

The Office of Financial Management (OFM) adopts rules and policies that govern reimbursement to state employees for costs incurred while the employee is engaged in official business.

Under federal law, required uniforms and items such as equipment or use of a personal vehicle that primarily benefits the employer are generally considered business expenses. The employer must reimburse the employee for such expenses if the expense reduces the employee's wage below the federal minimum wage or cuts into overtime compensation. A reimbursement to cover expenses incurred on the employer's behalf or for the employer's convenience is sufficient if it reasonably approximates the expenses incurred.

COVID-19 Proclamations.

On January 30, 2020, the World Health Organization declared the outbreak of COVID-19 to be a public health emergency of international concern. On January 31, 2020, the federal Department of Health and Human Services declared a public health emergency for the United States. On February 29, 2020, Governor Inslee declared a state of emergency in all counties of Washington and directed state agencies to take all reasonable measures to assist affected local governments to respond to and recover from the COVID-19 outbreak.

On March 23, 2020, Governor Inslee issued a "Stay Home, Stay Healthy" order which banned all gatherings and, effective March 25, 2020, temporarily restricted the operation of non-essential businesses, until April 6, 2020. The order was subsequently extended. Effective June 1, 2020, Governor Inslee implemented the "Safe Start Washington: Phased Reopening County-by-County" plan, where each county applied to the Secretary of Health to open in phases. Authorization for counties to move on to the next phase of reopening was based on key factors and the county's ability to respond to situations that may arise in their county, including outbreaks, increased hospitalizations or deaths, health system capacity and other factors.

Summary of Amended Bill:

Use of State Equipment.

Use of materials and supplies when approved by an agency is not considered use of state resources for private gain. "Agency" is defined as any branch, department, or unit of the state government.

Until the termination of the proclaimed state of emergency in response to COVID-19, use of state Internet resources outside of normal business hours by state employees for social gathering activities that have no expense to the state is considered de minimis use. Examples of such activities include sharing ideas and tips for working remotely, lunch time gatherings, and guest speakers.

Employee Reimbursement—State Employees.

For expenses incurred after April 1, 2020, an agency may provide or purchase supplies, services, and other materials necessary for a state employee to effectively perform their work from home when the employee is required to do so. Subject to appropriations, a state employee may be reimbursed for necessary additional expenditures incurred by the employee within the employee's scope of employment and directly related to services performed for the agency. Necessary expenditures include:

- desks, computer stands, computers, computer supplies, and chairs;
- upgraded Internet service that is necessary for employees to do their jobs, which may include reimbursement to the employee to support the increased cost;
- equipment and services that assist an employee with disabilities or special needs to conduct their job remotely; and
- other items or services determined by the head of the agency, based on guidance provided by the OFM, to be necessary for an employee to perform their job.

If an agency has made or will make the same type of equipment available to the employee, the employee may not request a reimbursement to cover the cost of purchasing such equipment.

The Director of the OFM must adopt policies and procedures including:

- the percentage of time necessary for an employee working from home to qualify for coverage;
- qualifying guidelines for employee reimbursement; and
- establishment of thresholds for when equipment must be returned to the agency when the employee returns full time to the office or leaves state service, taking depreciation of the items into consideration.

Executive branch agencies must approve purchases and reimbursements consistent with the policies and procedures established by the OFM. The judicial and legislative branches are encouraged to use the policies and procedures established by the OFM to create uniformity in the application of the act across all of state government.

Work Group.

The OFM must establish and chair a remote working environment work group to review the issues relating to working in a remote environment, including:

- scheduling;
- the provision of equipment, supplies, and other services needed to perform the duties

- of employment;
- ways to cover additional expenses incurred by employees for remote work;
- ergonomic issues;
- potential areas of liability;
- cybersecurity and privacy; and
- ways to assist and facilitate state employees in their work.

The work group must include representatives of large, medium, and small agencies; labor organizations; and institutions of higher education. By November 1, 2021, the work group must submit an initial report on its recommendations on policies to more effectively allow state employees to work remotely. The final report is due by June 30, 2022.

Amended Bill Compared to Engrossed Second Substitute Bill:

Reimbursements to state employees for necessary expenditures are authorized subject to appropriation, rather than authorized within available resources of an agency. The authority of a state to provide a stipend to employees for certain expenses related to working remotely is removed. A definition for "agency" or "state agency" is included to mean any branch, department, or unit of the state government. It is specified that the legislative and judicial branches are encouraged, rather than required, to use the policies and procedures related to the provision of supplies and reimbursements to state employees that are established by the OFM in order to create uniformity in the application of the act across all of state government.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The way the state did business a year ago is very different than the way the state does business now. In early March of last year, people were sent home in a hurry and there was no guidance or opportunity for guidance on how employees should conduct their work from home. This resulted in inconsistent approaches among the agencies. Many employees used their own resources so that they could continue to carry out public business from home. Employees continue to be productive while working remotely and the state is benefiting from their productivity, but they need supplies such as a standing desk and a printer. It has always been the responsibility of the employer to provide equipment necessary for employees to do their jobs, and the change in location of work should not change this practice. Also, with teleworking, employees need a way to socially gather as

they normally would for events such as retirement parties and lunch gatherings. It is important that they are given the flexibility to continue to do so in the remote environment using state Internet resources.

Conformity is needed throughout the agencies about what to provide and what to reimburse. There should be rules to make sure future teleworking practices are consistent with state laws and applied with consistency statewide.

The assumption in the fiscal note that each employee would be reimbursed \$500 is likely not accurate, so work needs to be done around this.

(Opposed) None.

(Other) Some employees are using personal funds to continue their work from home, and some are not. Not all state employees fit into one category—it is a mixed bag. There is also a pending question about whether the state should maintain the same footprint in office space moving forward. These are questions that need to be worked through. The OFM provided general guidance for assumptions to agencies for the fiscal note, but not all agencies followed that guidance. For example, some agencies assumed all employees will need a laptop, when that is likely not the case. There are ways to make this bill more affordable, but the addition of the provision that agencies will provide reimbursements "within available resources" could lead to some agencies being able to afford reimbursements and some not.

Persons Testifying: (In support) Senator Hunt, prime sponsor; Seamus Petrie, Washington Public Employees Association; and Andrea Vaughn, Washington Federation of State Employees.

(Other) Scott Merriman, Office of Financial Management.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on State Government & Tribal Relations. Signed by 31 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Minority Report: Without recommendation. Signed by 2 members: Representatives Stokesbary, Ranking Minority Member; Schmick.

Staff: Jessica Van Horne (786-7288).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On State Government & Tribal Relations:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested March 24, 2021.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.