

SENATE BILL REPORT

SB 5395

As Reported by Senate Committee On:
State Government & Elections, February 12, 2021
Ways & Means, February 22, 2021

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: Senators Hunt, Dhingra, Hasegawa, Kuderer, Nguyen, Nobles, Randall, Saldaña, Wellman and Wilson, C..

Brief History:

Committee Activity: State Government & Elections: 2/10/21, 2/12/21 [DPS-WM, w/oRec].
Ways & Means: 2/19/21, 2/22/21 [DP2S, DNP].

Brief Summary of Second Substitute Bill

- Authorizes agencies to provide or purchase supplies, services, and other materials necessary for an employee to work from home.
- Allows state agencies, subject to availability of amounts appropriated, to reimburse a state employee for necessary additional expenditures incurred and directly related to services performed for the agency.
- Requires the Office of Financial Management to establish policies and procedures for the purchase or reimbursement of supplies, services, and other materials.
- Allows state employees to use state Internet resources outside of normal business hours during the COVID-19 emergency for social activities that have no expense to the state.
- Establishes a workgroup to review issues related to working in a remote

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environment and prepare a report to the Governor and the Legislature to provide recommendations.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5395 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Hasegawa.

Minority Report: That it be referred without recommendation.

Signed by Senators Wilson, J., Ranking Member; Hawkins.

Staff: Melissa Van Gorkom (786-7491)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5395 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Mullet, Pedersen, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital; Braun, Gildon, Muzzall, Rivers, Wagoner and Warnick.

Staff: Amanda Cecil (786-7460)

Background: Employee Expenses. Current state law addresses reimbursement of certain employee travel or moving expenses. The Office of Financial Management (OFM) establishes policies regarding travel and moving expenses for state employees, officials, institutions, and members of boards or commissions. State law is silent on reimbursement of other expenses an employee may incur.

Under the Fair Labor Standards Act and corresponding regulations, if an employee incurs expenses on the employer's behalf for the convenience of the employer, the employee is entitled to reimbursement to the extent their earnings would otherwise fall below the minimum wage.

Use of State Resources. State ethics law generally prohibits use of state resources for personal use or private benefit. The appropriate ethics boards may adopt rules providing

exceptions to allow for occasional use of state resources by a state officer or state employee, if the activity does not result in interference with the proper performance of public duties and has de minimis cost and value.

Office of Financial Management. OFM, originally named the Office of Program Planning and Fiscal Management, was created in 1969 as a division of the Office of the Governor, to integrate the short- and long-term planning and fiscal activities of state government. Throughout its existence, the Legislature has assigned OFM various statutory functions, including state human resources and statewide accounting. The State Human Resources division of OFM manages statewide human resource policy functions. The primary role of statewide Accounting is to issue statewide financial and administrative policies, provide fiscal consulting, monitoring, training services, and statewide reports.

Summary of Bill (Second Substitute): Employee Expenses. A state agency, board, or commission may provide or purchase supplies, services and other materials necessary for an employee to effectively perform their work from home.

Subject to amounts appropriated, a state employee may be reimbursed for necessary additional expenditures incurred by the employee within the employees 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 the employees to do their jobs, which may include reimbursement or stipend to the employee to support the increased cost;
- equipment and services that assist employees with disabilities or special needs to conduct their jobs remotely; and
- other items or services determined by the head of the agency, based on guidance provided by OFM, to be necessary for employees to perform their jobs.

An employee may be reimbursed for expenses incurred after April 1, 2020. Employees must follow the process established by the agency when submitting a request for a stipend or reimbursement of any necessary expenditure with appropriate supporting documentation. Employees may not request payment for purchasing equipment if the agency has made, or will make, the same type of equipment available to the employee.

Approval of purchases, reimbursements, and stipends must be done within the policies and procedures established by OFM. The director of 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.

Use of State Resources. Use of materials and supplies when approved by the agency is not considered use of state resources for private gain.

Use of state Internet resources outside of normal business hours by state employees during the COVID-19 emergency for social gathering activities that have no expense to the state are considered de minimis activities. Employees may not receive overtime or compensatory time for participating in such activities. Such activities may include, but are not limited to:

- sharing ideas and tips for working remotely;
- lunch time gatherings;
- guest speakers; and
- open microphone sessions.

Work Group. 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;
- other potential areas of liability;
- cyber security and privacy; and
- ways to assist and facilitate state employees in their work.

The work group must be composed of representatives of large, medium, and small agencies, labor organizations, and institutions of higher education. The work group must provide its initial report to the Governor and appropriate committees of the Legislature by November 1, 2021, and the final report by June 30, 2022.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Provides that reimbursements are subject to amounts appropriated for this specific purpose.
- Changes the requirement to reimburse costs to making it allowable.
- Provides that, when making rules, OFM should adopt qualifying guidelines for employee reimbursement.
- Adds cybersecurity and privacy to the list of issues the work group must consider.
- Makes the cost scalable since it is now allowable instead of mandatory and subject to amounts provided.

EFFECT OF CHANGES MADE BY STATE GOVERNMENT & ELECTIONS COMMITTEE (First Substitute):

- Allows reimbursement for increased cost of upgraded Internet service to be in forms other than a stipend.
- Allows the head of the agency to approve other items based on guidance provided by OFM.
- Requires employees follow the process established by the agency when submitting a request for a stipend or reimbursement for necessary additional expenditures.
- Prohibits employees from seeking payment for equipment if the agency has or will make the equipment available.
- Requires all reimbursements and stipends be done within the policies and procedures established by OFM.
- Requires OFM establish thresholds for when equipment must be returned when an employee returns full-time to the office.
- Prohibits accrual of overtime or compensatory time when employees participate in social gatherings using state Internet resources outside of normal business hours during COVID-19.
- Establishes a work group to review issues related to working in a remote environment and prepare a report to the Governor and the Legislature to provide recommendations.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (State Government & Elections):

The committee recommended a different version of the bill than what was heard. PRO: These are short term solutions that may become long term if they are effective to provide employees with the resources they need. Teleworking has been successful, but now that employees are doing it the number one question is whether equipment can be used or if employees can be reimbursed for purchases, and the agency responses are inconsistent at best. Employers are worried about gifting of state resources because they do not having the necessary guidance. The bill is written fairly broadly to provide OFM the ability to provide policies and guidance to agencies for the specific information, such as depreciation, that must be considered so that the law does not have to be changed frequently. If teleworking is the new normal, then the social interactions allowed under the bill should not be limited to an emergency, it should become standard as they do not cost the state any money. The bill does not currently include higher education but we hope they will use this guidance as well. This is an important step to provide flexibility and clarity regarding this issue, and allow for state employees to get what they need to do the work.

OTHER: Appreciate the work to address short and long term issues regarding employees

working from home. Would like to clarify the role of stipends and address gifting and lending issues to make it clearer. Would also like to address some approval processes for agencies and cyber security issues. Would like to also include a formal sunset review so the committee and the Legislature have an opportunity to review what is working and not working. It may also be helpful to include a formal workgroup to continue working on this issue moving forward. Productivity increases when employees have the proper resources to do their work. Need to focus resources where it is most appropriate and would suggest changes to maybe provide a sliding scale or other adjustment to make reimbursements equitable to ensure employees have the right resources. Might need to engage state resource groups to determine the right method moving forward but are excited to continue to the conversation and work moving forward.

Persons Testifying (State Government & Elections): PRO: Senator Sam Hunt, Prime Sponsor; Seamus Petrie, Washington Public Employees Association; Dennis Eagle, Washington Federation of State Employees.

OTHER: Scott Merriman, Office of Financial Management; Stephanie Celt, Department of Natural Resources.

Persons Signed In To Testify But Not Testifying (State Government & Elections): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: This is not designed to make the state an office depot. Some employees were told they could not take equipment home and were forced to buy equipment. This allows OFM to recreate rules to be reimbursed for that cost. There is nothing in this bill that says you have to go buy equipment or furniture. It is just allowing agencies to follow a consistent policy.

OTHER: It is important to have uniform guidance for agencies when employees are working from home. It is a large fiscal note in size and volume.

Persons Testifying (Ways & Means): PRO: Senator Hunt, Prime Sponsor; Seamus Petrie, Washington Public Employees Association; Dennis Eagle, Washington Federation of State Employees.

OTHER: Scott Merriman, Office of Financial Management.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.