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ENGROSSED SUBSTITUTE SENATE BILL 5149

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State of Washington                      52nd Legislature                      1991 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Nelson and Rasmussen; by request of Public Disclosure Commission).

Read first time February 26, 1991.

1            AN ACT Relating to gifts and public office funds; amending RCW  
2 42.17.020, 42.17.095, 42.17.170, 42.17.240, and 42.17.243; and  
3 providing an effective date.

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

5            **Sec. 1.** RCW 42.17.020 and 1990 c 139 s 2 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. "Local agency"  
10 includes every county, city, town, municipal corporation, quasi-  
11 municipal corporation, or special purpose district, or any office,  
12 department, division, bureau, board, commission, or agency thereof, or  
13 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

1 proposed to be submitted to the voters of the state or any municipal  
2 corporation, political subdivision, or other voting constituency from  
3 and after the time when the proposition has been initially filed with  
4 the appropriate election officer of that constituency prior to its  
5 circulation for signatures.

6 (3) "Benefit" means any commercial, proprietary, financial,  
7 economic, or monetary advantage, or the avoidance of any commercial,  
8 proprietary, financial, economic, or monetary disadvantage.

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

11 ((+4)) (5) "Treasurer" and "deputy treasurer" mean the individuals  
12 appointed by a candidate or political committee, pursuant to RCW  
13 42.17.050, to perform the duties specified in that section.

14 ((+5)) (6) "Candidate" means any individual who seeks election to  
15 public office. An individual shall be deemed to seek election when he  
16 first:

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

19 (b) Announces publicly or files for office.

20 ((+6)) (7) "Commercial advertiser" means any person who sells the  
21 service of communicating messages or producing printed material for  
22 broadcast or distribution to the general public or segments of the  
23 general public whether through the use of newspapers, magazines,  
24 television and radio stations, billboard companies, direct mail  
25 advertising companies, printing companies, or otherwise.

26 ((+7)) (8) "Commission" means the agency established under RCW  
27 42.17.350.

28 ((+8)) (9) "Compensation" unless the context requires a narrower  
29 meaning, includes payment in any form for real or personal property or  
30 services of any kind: PROVIDED, That for the purpose of compliance with

1 RCW 42.17.241, the term "compensation" shall not include per diem  
2 allowances or other payments made by a governmental entity to reimburse  
3 a public official for expenses incurred while the official is engaged  
4 in the official business of the governmental entity.

5 ~~((9))~~ (10) "Continuing political committee" means a political  
6 committee that is an organization of continuing existence not  
7 established in anticipation of any particular election campaign.

8 ~~((10))~~ (11) "Contribution" includes a loan, gift, deposit,  
9 subscription, forgiveness of indebtedness, donation, advance, pledge,  
10 payment, transfer of funds between political committees, or transfer of  
11 anything of value, including personal and professional services for  
12 less than full consideration, but does not include interest on moneys  
13 deposited in a political committee's account, ordinary home hospitality  
14 and the rendering of personal services of the sort commonly performed  
15 by volunteer campaign workers, or incidental expenses personally  
16 incurred by volunteer campaign workers not in excess of fifty dollars  
17 personally paid for by the worker. Volunteer services, for the  
18 purposes of this chapter, means services or labor for which the  
19 individual is not compensated by any person. For the purposes of this  
20 chapter, contributions other than money or its equivalents shall be  
21 deemed to have a money value equivalent to the fair market value of the  
22 contribution. Sums paid for tickets to fund-raising events such as  
23 dinners and parties are contributions; however, the amount of any such  
24 contribution may be reduced for the purpose of complying with the  
25 reporting requirements of this chapter, by the actual cost of  
26 consumables furnished in connection with the purchase of the tickets,  
27 and only the excess over the actual cost of the consumables shall be  
28 deemed a contribution.

1       (~~(11)~~) (12) "Elected official" means any person elected at a  
2 general or special election to any public office, and any person  
3 appointed to fill a vacancy in any such office.

4       (~~(12)~~) (13) "Election" includes any primary, general, or special  
5 election for public office and any election in which a ballot  
6 proposition is submitted to the voters: PROVIDED, That an election in  
7 which the qualifications for voting include other than those  
8 requirements set forth in Article VI, section 1 (Amendment 63) of the  
9 Constitution of the state of Washington shall not be considered an  
10 election for purposes of this chapter.

11       (~~(13)~~) (14) "Election campaign" means any campaign in support of  
12 or in opposition to a candidate for election to public office and any  
13 campaign in support of, or in opposition to, a ballot proposition.

14       (~~(14)~~) (15) "Expenditure" includes a payment, contribution,  
15 subscription, distribution, loan, advance, deposit, or gift of money or  
16 anything of value, and includes a contract, promise, or agreement,  
17 whether or not legally enforceable, to make an expenditure. The term  
18 "expenditure" also includes a promise to pay, a payment, or a transfer  
19 of anything of value in exchange for goods, services, property,  
20 facilities, or anything of value for the purpose of assisting,  
21 benefiting, or honoring any public official or candidate, or assisting  
22 in furthering or opposing any election campaign. For the purposes of  
23 this chapter, agreements to make expenditures, contracts, and promises  
24 to pay may be reported as estimated obligations until actual payment is  
25 made. The term "expenditure" shall not include the partial or complete  
26 repayment by a candidate or political committee of the principal of a  
27 loan, the receipt of which loan has been properly reported.

28       (~~(15)~~) (16) "Final report" means the report described as a final  
29 report in RCW 42.17.080(2).

1       (~~(16)~~) (17) "Gift" means a rendering of money, property,  
2 services, discount, loan forgiveness, payment of indebtedness,  
3 reimbursements from or payments by persons, other than the state of  
4 Washington or any agency or political subdivision thereof, for travel  
5 or anything else of value in excess of fifty dollars in return for  
6 which legal consideration of equal or greater value is not given and  
7 received but does not include:

8       (a) Any contribution that is required to be reported under RCW  
9 42.17.090 or 42.17.243;

10       (b) Any informational material that is transferred for the purpose  
11 of informing the recipient about matters pertaining to official agency  
12 business, and that is not intended to financially benefit that  
13 recipient;

14       (c) Any symbolic presentation that is not intended to financially  
15 benefit the recipient;

16       (d) Any honorarium that is required to be reported under this  
17 chapter;

18       (e) Any hosting in the form of entertainment, meals, or  
19 refreshments, the value of which does not exceed one hundred dollars,  
20 furnished in connection with official appearances, official ceremonies,  
21 and occasions where official agency business is discussed;

22       (f) Gifts that are not used and that, within thirty days after  
23 receipt, are returned to the donor or delivered to a charitable  
24 organization without being claimed as a charitable contribution for tax  
25 purposes;

26       (g) Intrafamily gifts; or

27       (h) Gifts received in the normal course of private business or  
28 social interaction that are not related to public policy decisions or  
29 agency actions.

1        (18) "Immediate family" includes the spouse, dependent children,  
2 and other dependent relatives, if living in the household.

3        (~~(17)~~) (19) "Legislation" means bills, resolutions, motions,  
4 amendments, nominations, and other matters pending or proposed in  
5 either house of the state legislature, and includes any other matter  
6 that may be the subject of action by either house or any committee of  
7 the legislature and all bills and resolutions that, having passed both  
8 houses, are pending approval by the governor.

9        (~~(18)~~) (20) "Lobby" and "lobbying" each mean attempting to  
10 influence the passage or defeat of any legislation by the legislature  
11 of the state of Washington, or the adoption or rejection of any rule,  
12 standard, rate, or other legislative enactment of any state agency  
13 under the state Administrative Procedure Act, chapter 34.05 RCW.  
14 Neither "lobby" nor "lobbying" includes an association's or other  
15 organization's act of communicating with the members of that  
16 association or organization.

17        (~~(19)~~) (21) "Lobbyist" includes any person who lobbies either in  
18 his or her own or another's behalf.

19        (~~(20)~~) (22) "Lobbyist's employer" means the person or persons by  
20 whom a lobbyist is employed and all persons by whom he is compensated  
21 for acting as a lobbyist.

22        (~~(21)~~) (23) "Person" includes an individual, partnership, joint  
23 venture, public or private corporation, association, federal, state, or  
24 local governmental entity or agency however constituted, candidate,  
25 committee, political committee, political party, executive committee  
26 thereof, or any other organization or group of persons, however  
27 organized.

28        (~~(22)~~) (24) "Person in interest" means the person who is the  
29 subject of a record or any representative designated by that person,  
30 except that if that person is under a legal disability, the term

1 "person in interest" means and includes the parent or duly appointed  
2 legal representative.

3 ~~((+23+))~~ (25) "Political advertising" includes any advertising  
4 displays, newspaper ads, billboards, signs, brochures, articles,  
5 tabloids, flyers, letters, radio or television presentations, or other  
6 means of mass communication, used for the purpose of appealing,  
7 directly or indirectly, for votes or for financial or other support in  
8 any election campaign.

9 ~~((+24+))~~ (26) "Political committee" means any person (except a  
10 candidate or an individual dealing with his own funds or property)  
11 having the expectation of receiving contributions or making  
12 expenditures in support of, or opposition to, any candidate or any  
13 ballot proposition.

14 ~~((+25+))~~ (27) "Public office" means any federal, state, county,  
15 city, town, school district, port district, special district, or other  
16 state political subdivision elective office.

17 ~~((+26+))~~ (28) "Public record" includes any writing containing  
18 information relating to the conduct of government or the performance of  
19 any governmental or proprietary function prepared, owned, used, or  
20 retained by any state or local agency regardless of physical form or  
21 characteristics.

22 ~~((+27+))~~ (29) "Surplus funds" mean, in the case of a political  
23 committee or candidate, the balance of contributions that remain in the  
24 possession or control of that committee or candidate subsequent to the  
25 election for which the contributions were received, and that are in  
26 excess of the amount necessary to pay remaining debts incurred by the  
27 committee or candidate prior to that election. In the case of a  
28 continuing political committee, "surplus funds" mean those  
29 contributions remaining in the possession or control of the committee

1 that are in excess of the amount necessary to pay all remaining debts  
2 when it makes its final report under RCW 42.17.065.

3 ~~((28))~~ (30) "Writing" means handwriting, typewriting, printing,  
4 photostating, photographing, and every other means of recording any  
5 form of communication or representation, including letters, words,  
6 pictures, sounds, or symbols, or combination thereof, and all papers,  
7 maps, magnetic or paper tapes, photographic films and prints, magnetic  
8 or punched cards, discs, drums, and other documents.

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

11 **Sec. 2.** RCW 42.17.095 and 1982 c 147 s 8 are each amended to read  
12 as follows:

13 The surplus funds of a candidate, or of a political committee  
14 supporting or opposing a candidate, may only be disposed of in any one  
15 or more of the following ways:

16 (1) Return the surplus to a contributor in an amount not to exceed  
17 that contributor's original contribution;

18 (2) Transfer the surplus to the candidate's personal account as  
19 reimbursement for lost earnings incurred as a result of that  
20 candidate's election campaign. Such lost earnings shall be verifiable  
21 as unpaid salary or, when the candidate is not salaried, as an amount  
22 not to exceed income received by the candidate for services rendered  
23 during an appropriate, corresponding time period. All lost earnings  
24 incurred shall be documented and a record thereof shall be maintained  
25 by the candidate or the candidate's political committee. The committee  
26 shall include a copy of such record when its expenditure for such  
27 reimbursement is reported pursuant to RCW 42.17.090;

28 (3) Transfer all or part of the surplus to a public office fund  
29 established in accordance with RCW 42.17.243;

1       (4) Transfer the surplus to one or more candidates or to a  
2 political committee or party;

3       (~~(4)~~) (5) Donate the surplus to a charitable organization  
4 registered in accordance with chapter 19.09 RCW;

5       (~~(5)~~) (6) Transmit the surplus to the state treasurer for deposit  
6 in the general fund; or

7       (~~(6)~~) (7) Hold the surplus in the (~~campaign~~) depository or  
8 depositories designated in accordance with RCW 42.17.050 for possible  
9 use in a future election campaign, for political activity, or for  
10 community activity, or for nonreimbursed public office related expenses  
11 and report any such disposition in accordance with RCW 42.17.090(~~(+  
12 PROVIDED, That)~~). However, if the candidate subsequently announces or  
13 publicly files for office, information as appropriate is reported to  
14 the commission in accordance with RCW 42.17.040 through 42.17.090. If  
15 a subsequent office is not sought the surplus held shall be disposed of  
16 in accordance with the requirements of this section.

17       **Sec. 3.** RCW 42.17.170 and 1990 c 139 s 3 are each amended to read  
18 as follows:

19       (1) Any lobbyist registered under RCW 42.17.150 and any person who  
20 lobbies shall file with the commission periodic reports of his  
21 activities signed by the lobbyist. The reports shall be made in the  
22 form and manner prescribed by the commission. They shall be due  
23 monthly and shall be filed within fifteen days after the last day of  
24 the calendar month covered by the report.

25       (2) Each such monthly periodic report shall contain:

26       (a) The totals of all expenditures for lobbying activities made or  
27 incurred by such lobbyist or on behalf of such lobbyist by the  
28 lobbyist's employer during the period covered by the report. Such  
29 totals for lobbying activities shall be segregated according to

1 financial category, including compensation; food and refreshments;  
2 living accommodations; advertising; travel; contributions; and other  
3 expenses or services. Each individual expenditure of more than  
4 (~~twenty-five~~) fifty dollars for entertainment shall be identified by  
5 date, place, amount, and the names of all persons in the group  
6 partaking in or of such entertainment including any portion thereof  
7 attributable to the lobbyist's participation therein but without  
8 allocating any portion of such expenditure to individual participants.

9 Notwithstanding the foregoing, lobbyists are not required to report  
10 the following:

11 (i) Unreimbursed personal living and travel expenses not incurred  
12 directly for lobbying;

13 (ii) Any expenses incurred for his or her own living  
14 accommodations;

15 (iii) Any expenses incurred for his or her own travel to and from  
16 hearings of the legislature;

17 (iv) Any expenses incurred for telephone, and any office expenses,  
18 including rent and salaries and wages paid for staff and secretarial  
19 assistance.

20 (b) In the case of a lobbyist employed by more than one employer,  
21 the proportionate amount of such expenditures in each category incurred  
22 on behalf of each of his employers.

23 (c) An itemized listing of each such expenditure in the nature of  
24 a contribution of money or of tangible or intangible personal property  
25 to any candidate, elected official, or officer or employee of any  
26 agency, or any political committee supporting or opposing any ballot  
27 proposition, or for or on behalf of any candidate, elected official, or  
28 officer or employee of any agency, or any political committee  
29 supporting or opposing any ballot proposition. All contributions made  
30 to, or for the benefit of, any candidate, elected official, or officer

1 or employee of any agency, or any political committee supporting or  
2 opposing any ballot proposition shall be identified by date, amount,  
3 and the name of the candidate, elected official, or officer or employee  
4 of any agency, or any political committee supporting or opposing any  
5 ballot proposition receiving, or to be benefited by each such  
6 contribution. When a listing or a report of contributions is made to  
7 the commission under this subsection (2)(c), a copy of the listing or  
8 report must be given to the candidate, elected official, professional  
9 staff member of the legislature, or officer or employee of any agency,  
10 or any political committee supporting or opposing any ballot  
11 proposition named in the listing or report.

12 (d) The subject matter of proposed legislation or other legislative  
13 activity or rule-making under chapter 34.05 RCW, the state  
14 Administrative Procedure Act, and the state agency considering the  
15 same, which the lobbyist has been engaged in supporting or opposing  
16 during the reporting period.

17 (e) Such other information relevant to lobbying activities as the  
18 commission shall by rule prescribe. Information supporting such  
19 activities as are required to be reported is subject to audit by the  
20 commission.

21 **Sec. 4.** RCW 42.17.240 and 1989 c 158 s 1 are each amended to read  
22 as follows:

23 (1) Every elected official and every executive state officer shall  
24 after January 1st and before April 15th of each year file with the  
25 commission a statement of financial affairs for the preceding calendar  
26 year. However, any local elected official whose term of office expires  
27 immediately after December 31st shall file the statement required to be  
28 filed by this section for the year that ended on that December 31st.  
29 In addition to and in conjunction with the statement of financial

1 affairs, every official and officer shall file a statement describing  
2 any gifts received during the preceding calendar year.

3 (2) Every candidate shall within two weeks of becoming a candidate  
4 file with the commission a statement of financial affairs for the  
5 preceding twelve months.

6 (3) Every person appointed to a vacancy in an elective office or  
7 executive state officer position shall within two weeks of being so  
8 appointed file with the commission a statement of financial affairs for  
9 the preceding twelve months.

10 (4) A statement of a candidate or appointee filed during the period  
11 from January 1st to April 15th shall cover the period from January 1st  
12 of the preceding calendar year to the time of candidacy or appointment  
13 if the filing of the statement would relieve the individual of a prior  
14 obligation to file a statement covering the entire preceding calendar  
15 year.

16 (5) No individual may be required to file more than once in any  
17 calendar year.

18 (6) Each statement of financial affairs filed under this section  
19 shall be sworn as to its truth and accuracy.

20 (7) For the purposes of this section, the term "executive state  
21 officer" includes those listed in RCW 42.17.2401.

22 (8) This section does not apply to incumbents or candidates for a  
23 federal office or the office of precinct committee officer.

24 **Sec. 5.** RCW 42.17.243 and 1977 ex.s. c 366 s 5 are each amended to  
25 read as follows:

26 (1) Elected and appointed officials required to report under RCW  
27 42.17.240(~~(7)~~) shall report for themselves and for members of their  
28 immediate family to the commission any contributions received (~~during~~  
29 ~~the preceding calendar year~~) for the officials' use in defraying

1 nonreimbursed public office related expenses. Contributions (~~reported~~  
2 ~~under this section~~) received for this purpose shall be referred to as  
3 a "public office fund" and shall (~~not be transferred to a political~~  
4 ~~committee nor used to promote or oppose a candidate or ballot~~  
5 ~~proposition, other than as provided by subsection (3) (a) of this~~  
6 ~~section. For the purposes of this section contributions shall include~~  
7 ~~reimbursements from or payments by persons, other than the state of~~  
8 ~~Washington or any agency, for travel expenses~~) be held in a separate  
9 bank account established for that purpose.

10 (2) Within two weeks of the day the public office fund is  
11 established, the official for whom it is established shall file with  
12 the commission a registration statement to include:

13 (a) The name of the official;

14 (b) The name and business address of the person who will maintain  
15 all financial records of the fund;

16 (c) Such other information as the commission may prescribe by rule,  
17 in keeping with the policies and purposes of this chapter.

18 Any official who has a public office fund in existence on the  
19 effective date of this act shall file a registration statement at the  
20 time the quarterly report required by subsection (3) of this section  
21 first comes due.

22 (3) A report shall be filed (~~during the month of January of any~~  
23 ~~year following a year~~) within one month after the end of each calendar  
24 quarter in which (~~such contributions were received for or expenditures~~  
25 ~~made from~~) a public office fund existed. The report shall include:

26 (a) The name and address of each contributor;

27 (b) A description of each contribution, including the date on which  
28 it was received and its amount or, if its dollar value is  
29 unascertainable, an estimate of its fair market value; (~~and~~)

1 (c) A description of each expenditure made from a public office  
2 fund, including the name and address of the recipient, the amount, and  
3 the date of each ~~((such))~~ expenditure; and

4 (d) Such other information as the commission may prescribe by rule,  
5 in keeping with the policies and purpose of this chapter.

6 The official for whom the office fund is established shall certify  
7 that the report is correct.

8 ~~((2))~~ (4) No report under ~~((subsection (1)))~~ subsections (2) and  
9 (3) of this section ~~((shall be))~~ is required if ~~((+~~

10 ~~(a) The receipt of the contribution has been reported pursuant to~~  
11 ~~RCW 42.17.065 (continuing political committee reports) or RCW 42.17.090~~  
12 ~~(political committee reports); or~~

13 ~~(b))~~ the contribution is in the form of meals, refreshments, or  
14 entertainment given in connection with official appearances or  
15 occasions where public business was discussed.

16 ~~((3))~~ (5) Expenditures may be made from a public office fund only  
17 to pay expenses incurred by the official or members of the official's  
18 immediate family solely because of the person holding a public office.

19 (a) No funds or assets of a public office fund may be used to  
20 support or oppose a candidate or ballot proposition, political party,  
21 or political committee except as provided in subsection (6)(a) of this  
22 section.

23 (b) No payment may be made from a public office fund to an official  
24 to reimburse that official or a member of the official's family for  
25 lost earnings incurred as a result of that person being a public  
26 official.

27 (c) No funds or assets of a public office fund may be transferred  
28 to the public office fund of another person.

29 (d) All payments shall be substantiated by receipts or other  
30 appropriate documentation.

