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**State Government & Tribal Relations  
Committee**

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**E2SSB 5395**

**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 Summary of Engrossed Second Substitute Bill**

- Authorizes agencies to provide state employees with office supplies, services, and other materials necessary for employees to effectively work from home when necessary.
- Allows agencies to reimburse state employees, since April 1, 2020, for additional expenditures necessarily incurred by the employee 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 normal business hours during the proclaimed state of emergency in direct response to COVID-19, for 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.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Hearing Date:** 3/18/21

**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 result in interference 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".

Likewise, 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 Engrossed Second Substitute Bill:**

#### Use of State Equipment.

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

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 during the COVID-19 state of emergency for social gathering activities that have no expense to the state are considered de minimis activities.

#### Employee Reimbursement—State Employees.

For expenses incurred after April 1, 2020, 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 when an employee is required to do so. Within available resources, 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 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 the OFM, to be necessary for employees to perform their jobs.

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.

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

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;
- other potential areas of liability;
- cyber security 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.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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