

# SENATE BILL REPORT

## SB 5395

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As of February 10, 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.

### Brief Summary of Bill

- Authorizes agencies to provide or purchase supplies, services, and other materials necessary for an employee to work from home.
- Requires state agencies 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.

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### SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

**Staff:** Melissa Van Gorkom (786-7491)

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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.*

**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 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:** 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 within the policies and procedures set by OFM.

A state employee must be reimbursed for all 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;
- 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, with approval from OFM, to be necessary for employees to perform their jobs.

An employee may be reimbursed for expenses incurred after April 1, 2020. Employees must submit any necessary expenditure information to the appropriate agency personnel.

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; and
- establishment of thresholds for when equipment must be returned to the agency when the employee 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. 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.

**Appropriation:** None.

**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:** 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 have 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:** 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:** No one.