



## PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112  
Toll Free 1-877-601-2828 • E-mail: [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov) • Website: [www.pdcc.wa.gov](http://www.pdcc.wa.gov)

To: Members, Washington State Public Disclosure Commission  
From: Lori Anderson, Communications & Training Officer  
Date: June 18, 2015  
Re: Review of Legislative Ethics Board's Proposal to Define Travel for Reporting Purposes

### AGENDA ITEM

The Legislative Ethics Board (LEB) requests that the Commission review the LEB's draft proposal to define "travel" for reporting purposes.

### BACKGROUND

The Ethics Act, Chapter 42.52 RCW, defines "gift" and sets parameters under which state officials and employees may accept gifts. "Travel" is excluded from the definition of gift when the travel is "*incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity*" and "*reasonable [and] attributable to attending seminars and educational programs*" sponsored by certain entities. [RCW 42.52.010\(9\)\(d\) and \(f\)](#). Two boards administer the Act: the LEB administers the Act for legislators and legislative staff and the Executive Ethics Board (EEB) for state employees and officers.

The Ethics Act does not address how complimentary travel allowed under the Act will be disclosed. Statutory provisions enforced by the Public Disclosure Commission require the disclosure of this travel, as follows:

- Individuals required to file the annual personal financial affairs statement (F-1) who accept complimentary travel must disclose the provider's name, purpose, and cost; and
- Lobbyists disclose, on their monthly reports, expenditures for travel made by lobbyists and lobbyist employers.

[RCWs 42.17A.710\(1\)\(m\)](#) and [42.17A.615.\(2\)\(e\)](#).

Staff received notice in early June that the LEB, on June 16, would review the attached report that proposes defining travel for reporting purposes. The report proposes to bifurcate travel provided for a legislative tour so that legislators and legislative staff are relieved from disclosing, on the F-1, the portion of travel that is strictly transporting participants to the site where the tour begins. Staff submitted written comments to the LEB before the June 16 meeting to share concerns that:

- the Commission would likely not be in favor of reducing what information is disclosed and available to the public;

- adopting the proposal may confuse F-1 filers since it would not apply to individuals under the jurisdiction of the EEB (the governor and his staff, agency directors, and board and commission members); and
- an exception granted to F-1 filers may be perceived by lobbyists as an exception that the Commission should extend to them.

The LEB postponed its June 16 review to allow the Commission to comment on the proposal. Staff believes LEB member Kenny Pittman will attend the Commission's June 25 meeting to explain the proposal.

Attached:     LEB Subcommittee Report  
                  June 12 email from Lori Anderson to Mike O'Connell, LEB Counsel

Clarification of Travel and Tours  
(recommended)

Legislators and legislative staff are often invited to attend events hosted by third parties. Under limited circumstances, legislators may receive payment of reasonable expenses incurred as a result of attending those events.

Travel provided by a third party, incurred in association with an appropriate legislative event, can be accepted to the extent that it constitutes reasonable expenses associated with the event.

RCW 42.52.010 (9) authorizes legislators and staff to receive gifts under limited circumstances. In addition, some items may be received because they are not considered gifts; this includes the cost of travel:

*"Gift" means anything of economic value for which no consideration is given. "Gift" does not include:*

\*\*\*\*\*

*(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;*

\*\*\*\*\*

*(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;*

"Travel" is not separately defined in statute. The value of complimentary travel must be reported to the PDC annually. RCW 42.17A.710(1)(m).

Within the range of activities allowable under these provisions are legislative tours. These educational events are generally intended to allow officials and staff to witness first-hand an activity with which the invitees might be personally unfamiliar, such as an aerial tour of a

disaster area, or a “farm to table” program featuring an agricultural product. On some occasions the tour itself includes transporting participants from one location to another.

In most instances, the acceptance of complimentary transportation is straightforward. If a “nongovernmental entity” pays to fly a legislator or staff member to San Francisco to make a presentation on a legislative issue, the flight is “travel” and its value must be reported to the PDC.

Under other circumstances, it is not so evident that the legislature intended to include all forms of transportation as “travel” under the statute. As an example, following a natural disaster, officials may be invited to tour the affected area via helicopter. Although in a technical sense this is also “travel,” it is not the type of transportation that the legislature intended to include as reportable travel under the statute.

The subcommittee recommends that the Board consider reportable travel to be all travel that is not an integral part of a tour. This involves the consideration of various factors that may be present:

- What is the purpose of the transportation? To solely move participants from one location to another, or to provide the opportunity for education of the participants? If the exclusive purpose of the transportation is to move participants to a second location, it is more likely to be reportable travel.
- When does the tour actually begin? Are all the participants gathered in a single location before the transportation occurs?
- What occurs during the transportation itself? Does it provide for further education of the participants? If the event organizers use the time during the transportation of participants to inform and educate them, the transportation is less likely to be considered reportable travel.
- Is the transportation so unique that there is no commercial equivalent?

These factors can be used to provide context, and assist legislators and staff to determine whether particular forms of transportation constitute travel under RCW 42.52.010.

### **Examples of legislative events**

These are different events/tours that meet the overall tests of RCW 42.52.010 (9) (d) and (f): tours that legislators and staff are allowed to accept. Each tour has some degree of transportation involved, occurring after the tour begins.

1. **Military tour:** Members of the Joint Committee on Veterans and Military Affairs are invited to attend a briefing at Camp Murray near Tacoma. The members and staff then board a military helicopter for transport to Fairchild AFB, followed by bus transport to Spokane Fire Training Facility, thereafter to Geiger Field, and back to Fairchild. Return to Camp Murray would be by military helicopter. Unless the helicopter flight is used to educate and inform the participants about various aspects of the event, it is reportable travel. The tour effectively begins upon arrival at Fairchild AFB; bus transportation between sites would be integral to the tour and not reportable. The value of the travel from Camp Murray to Fairchild AFB would be reportable. (This is different from the cost of such travel.)
2. **Wheat Tours:** Members and staff gather at single location in eastern Washington. Members travel by bus to different locations at which wheat is grown, processed, and prepared for shipment. Buses return members and staff to single hotel that serves as base for three or four days of touring. Often, staff and members can participate in only a portion of the trip. The tour begins at the point where members and staff initially gather. Transportation between the hotel and different wheat-related locations is integral to the tour. Analysis for members and staff does not vary if only a portion of the tour is attended.
3. **Mine Tours:** Examination of mining operation in northeast Washington. Professional organization hosts tour of gold mill and underground mine. At own expense, participants travel to motel nearest to working mining operations, about 50-75 miles away. Members board commercial vans to reach mining operations and are transported into underground mines using mine transport equipment. All travel between hotel and mines is integral to the tour.
4. **Software development legislation:** members offered airfare to San Francisco, with hotel stay near Palo Alto. Over the course of three days, members travel by private company bus to visit and tour Google, Facebook and Yahoo! Flight to Bay Area is reportable travel; remainder is integral to the tour.
5. **“Free” travel to legislative event.** Constituent with regular private flight to SeaTac offers members travel to attend legislative function (committee hearing, task force meeting, etc.). No additional cost to include legislator, as the flight “was going there anyway.” Travel is not associated with any tour. Such travel does not meet the criteria for allowable receipt of travel expenses under RCW 42.52.010 (9) (d) or (f).

**From:** Lori Anderson  
**To:** ["O"Connell, Mike"](#)  
**Cc:** [Tony Perkins](#); [Fred Kiga](#)  
**Subject:** RE: Travel  
**Date:** Friday, June 12, 2015 3:57:00 PM

---

Thanks again for the heads up, Mike. The PDC staff plans to attend the June 16 Legislative Ethics Board meeting and provide comment.

The Public Disclosure Commission's next meeting is June 25, so the Commission will not be able to review the proposal before the LEB meeting. Generally, staff believes the Commission would not be in favor of any plan to diminish the disclosure provisions of Chapter 42.17A, including those in RCW 42.17A.710 (F-1 report contents). The Commission regards all of the disclosure requirements it enforces to be critical to state government earning and keeping the public's trust.

PDC staff has two additional concerns, namely:

- Personal financial affairs filers may be confused. The proposal, if adopted, applies only to legislators and legislative staff. The remaining executive state officials who are subject to the Ethics Act and who file a personal financial statement under RCW 42.17A.705 will have a different disclosure requirement; and
- Lobbyists may believe the PDC should grant them a similar exception. Disclosing items authorized under RCW 42.52.010(d) and (f) is required for lobbyists who give the items and the officials who receive them. RCWs 42.17A.615(e) and 42.17A.710(1)(m), respectively. PDC staff is concerned that if the LEB defines travel so as to except disclosure by recipients, lobbyists will want the PDC to create a similar exception for them. The PDC staff believes that the public wants to know and should have access to information that explains who is paying and the amounts paid for travel, regardless of whether lobbying occurs during the travel time. For travel during which no lobbying occurs, the trip is an associated cost that delivers the target to the location where lobbying will occur and should be disclosed by the lobbyist.

I shared our concerns with Kenny Pittman earlier this week. He suggested I follow up with you so that the other board members and the House and Senate designated ethics advisers could be informed. I agreed that PDC staff will participate if the drafting subcommittee meets with the ethics advisers to consider revising the proposal.

**[Lori Anderson](#)**

---



P O Box 40908, Olympia, WA 98504-0908  
Phone: (360) 664-2737 or 1-877-601-2828  
Fax: (360) 753-1112  
Follow the PDC on [Facebook!](#)

---

**From:** O'Connell, Mike [mailto:OConnell.Mike@leg.wa.gov]  
**Sent:** Tuesday, June 09, 2015 1:31 PM  
**To:** Lori Anderson  
**Subject:** FW: Travel

Lori: Attached is a rough draft of an ethics subcommittee report to the Board. Staff and legislators have requested guidance from the Board as to what constitutes "travel." The topic could affect PDC reporting in that this subcommittee, staffed by House and Senate designated ethics advisers, suggests that travel may be bifurcated in some instances –

Since I didn't staff this group I am behind the curve on any conversations relative to PDC reporting and whether an ethics advisory which followed the lines of this draft would complement current PDC standards, or not.

The Board would appreciate any comments or observations you and others may have. The topic will be on our meeting agenda for 6/16 at noon in SHR 3. Thank you.

Mike

---

**From:** [canon@leg.wa.gov](mailto:canon@leg.wa.gov) [mailto:canon@leg.wa.gov]  
**Sent:** Tuesday, June 09, 2015 1:18 PM  
**To:** O'Connell, Mike  
**Subject:** Attached Image