

# SENATE BILL REPORT

## SB 5063

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As of February 20, 2013

**Title:** An act relating to ethics in public service.

**Brief Description:** Regarding ethics in public service.

**Sponsors:** Senators Carrell, Benton, Hargrove, Padden and Shin.

**Brief History:**

**Committee Activity:** Governmental Operations: 2/19/13.

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### SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

**Staff:** Karen Epps (786-7424)

**Background:** The Legislature enacted the Ethics in Public Service Act (Ethics Act) in 1994. The Ethics Act established new and revised ethics rules; consolidated ethics rules in a single RCW chapter; and applied the new chapter to all state officials and employees of the executive, legislative, and judicial branches of state government. New ethics boards in the executive and legislative branches were created and the authority of the Commission on Judicial Conduct was expanded. Each of these entities, as well as the Attorney General, have broad powers to enforce the ethics chapter.

The Executive Ethics Board is composed of five members, each appointed by the Governor. The members must include the following: one classified civil service employee; one state officer or state employee in an exempt position; one citizen selected from a list of three persons submitted by the Attorney General; one citizen selected from a list of three persons submitted by the State Auditor; and one citizen member selected by the Governor. Members serve a single five-year term. No more than three members may be identified with the same political party. The members elect a chair who could be any member of the board. The Attorney General provides staff to the board.

Any person may file a complaint with an ethics board alleging violations of the ethics law. An investigation is limited to the assertions made in the complaint. The staff of an ethics board may issue an order of dismissal based on the complaint not being within the ethics board's jurisdiction, the complaint being unfounded or frivolous, or the complaint alleging violations that do not constitute material violations of the ethics laws. If the staff issues an order of dismissal, the order may be appealed to the appropriate ethics board.

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If the investigation results in a determination of reasonable cause that a violation occurred, the ethics board must hold a public hearing regarding the merits of the complaint. The staff of the appropriate ethics board must present the case in support of the complaint. The respondent must file a response to the complaint and may appear in person at the hearing and submit testimony. If the ethics board finds, upon a preponderance of evidence, that the respondent has violated ethics laws, an enforcement action may be taken. If the ethics board finds that the respondent has not violated the law, it must file an order dismissing the complaint.

Whistleblower protection applies to a person who reports alleged improper governmental action in a good faith report to the State Auditor, Attorney General, the director of the employee's agency, or the Executive Ethics Board. A whistleblower receives protection from retaliatory action.

The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** An ethics action is deemed to have been commenced when the appropriate ethics board or the board's executive director accepts a complaint for filing and initiates a preliminary investigation. The Executive Ethics Board may investigate potential ethics violations discovered in the course of its investigations of employees, except when the investigation concerns a civil service employee or someone covered by a collective bargaining agreement. Knowing acquiescence by a supervisor of a possible ethics violation of an employee is in itself an ethics violation.

Agency staff that do not have a conflict of interest with the person under investigation may assist ethics board staff in an investigation. If a conflict is determined to exist, the Executive Ethics Board may designate an independent employee to assist with the investigation. The Executive Ethics Board may request the assistance of the Attorney General or a contract investigator when investigating the conduct of an exempt employee. The Executive Ethics Board may delegate its authority to issue complaints to the board's executive director.

Each state agency must designate an ethics advisor to provide informal ethics advice to state officers and ensure uniformity in the agency's operations with respect to the ethics law. Agency advisors must receive training from the ethics board. Every state officer and employee must attend an approved ethics training within 60 days of employment and at least every three years thereafter. A state officer or state employee may be exempt from the prohibition of receiving anything of economic value under a contract or grant outside of their official duties if the officer or employee meets certain existing conditions and has attended an approved ethics training within the past 24 months.

The identity of a person filing an ethics complaint and all documents related to the complaint and investigation of the complaint are exempt from public disclosure, unless waived by the complainant. No legislator or statewide elected official may be compelled to disclose the identity of a person who makes a report of possible improper governmental action and who requests to remain anonymous, nor be compelled to disclose records of any investigation related to the report.

A state employee who files an ethics complaint must be afforded whistleblower protection and receive protection from retaliation, even if the complaint is denied. A retaliator will receive a letter of reprimand and may be subject to a civil penalty of up to \$5,000 and receive up to 30 days' suspension without pay.

The following investigative information is exempt from public inspection and copying under the PRA:

- information identifying a person who reports possible improper governmental action to a legislator or statewide elected official and requests that their identity or any identifying information not be disclosed;
- investigative records compiled by a legislator or statewide elected official conducting an investigation of a possible improper governmental action;
- information identifying a person who files a complaint under the Ethics Act and requests that their identity or any identifying information not be disclosed; and
- investigative records compiled by a legislator or statewide elected official conducting an investigation of a possible ethics violation pursuant to a complaint filed under the Ethics Act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: This bill is the result of whistleblowers who contacted a legislator with documents showing violations of the Ethics Act by a director at the agency. This individual was found likely to be guilty of all the charges. This bill is about management. The Ethics Act currently allows management of the agency to investigate possible ethics violations of other managers and this is a little like roosters looking at roosters. The net result is that management does not follow up on the complaints. This bill is designed to establish one standard for everyone, both management and employees.

OTHER: There are concerns with the bill because it specifies certain disciplinary actions to take place if a supervisor or manager retaliates against a state employee that reports an ethical violation. Currently, under the collective bargaining agreements and the merit system rules for non-represented civil service employees, there is a just cause standard for discipline. Provisions in this bill could conflict with the just cause standard for discipline.

**Persons Testifying:** PRO: Senator Carrell, prime sponsor.

OTHER: Shane Esquibel, Office of Financial Management.