SENATE BILL REPORT
SB 5577

As of February 28, 2013

Title: An act relating to protecting public employees who act ethically and legally.

Brief Description: Protecting public employees who act ethically and legally.

Sponsors: Senator Carrell.

Brief History:
Committee Activity: Human Services & Corrections: 2/14/13, 2/19/13 [DPS-WM].
Ways & Means:

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5577 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carrell, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Hargrove, Harper and Padden.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Steve Jones (786-7440)

Background: The Executive Ethics Board (EEB), Legislative Ethics Board, and Commission on Judicial Conduct investigate and may initiate complaints regarding the conduct of state government employees. 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 ethic 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.

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

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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.

A state officer or employee may not accept a thing of economic value by contract or grant unless the contract or grant is bona fide and actually performed, performance is not within the course of official duties, is not prohibited by outside employment laws, is not compensated by someone from whom the officer or employee would be prohibited from receiving a gift, the contract or grant is not created by the officer or employee, and the contract or grant does not require unauthorized disclosure of confidential information. Whistleblower protection applies to a person who reports alleged improper governmental action in good faith report to the State Auditor, Attorney General, the director of the employee's agency, or the EEB. Such a person receives protection from retaliatory action.

Summary of Bill (Recommended Substitute): Knowing acquiescence by a supervisor in the ethics violation of an employee is made an ethics violation. Exceptions to the rule requiring a state officer or employee to not accept a thing of economic value by contract or grant are made unavailing if the officer or employee has not attended an approved ethics training within the past 36 months. The EEB may delegate its authority to issue complaints to the board's executive director.

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 minimum penalty of a reprimand and may be subject to a civil penalty of up to $5,000 and receive up to 30 days suspension without pay.

The EEB may investigate potential ethics violations discovered in the course of its investigations of exempt employees. Investigations by agency staff must be overseen by the EEB and conflicts of interest must be disclosed, with an independent investigator provided upon request of the EEB. The EEB may request the assistance of the Attorney General or a contract investigator when investigating the conduct of an exempt employee.

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.

Every state officer and employee must attend an approved ethics training within 60 days of employment and at least every three years thereafter. 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.

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. A statute giving the subject of an ethics complaint the right to a hearing before an administrative law judge when there is the possibility of a penalty greater than $500 is repealed.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): Exceptions to the rule requiring a state officer or employee to not accept a thing of economic value by contract or grant are made unavailing if the officer or employee has not attended an approved ethics training within the past 36 months.

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 on Original Bill (Human Services & Corrections): PRO: Several individuals came to me a few years ago with information showing violations of ethics laws, with the full knowledge and encouragement of upper management. People who want to do the right thing should be protected from retaliation. This bill goes a long way toward clarifying sections of the ethics act which have long needed it. Legislators should not have to reveal sources of information or be subject to deposition. Please better define in the bill who has the authority to take action against retaliators.

CON: Portions of this bill are problematic. The scope and method of the investigation should be consistent for exempt and non-exempt employees. Management is capable of investigating wrongdoing. The public disclosure provisions should be amended to protect complaints that are brought to management. Training should not be approved by a regulatory agency.

Persons Testifying (Human Services & Corrections): PRO: Senator Carrell, prime sponsor; Melanie de Leon, EEB.

CON: Bruce Miller, citizen.