# SENATE BILL REPORT
# SB 5771

As Reported by Senate Committee On:
Government Operations & Security, February 12, 2015

**Title**: An act relating to providing for due process during an ethics investigation.

**Brief Description**: Addressing investigations under the ethics act.

**Sponsors**: Senators Liias, Pearson, Dansel, Hatfield, Rivers, Hobbs and Fain.

**Brief History:**
**Committee Activity**: Government Operations & Security: 2/09/15, 2/12/15 [DP-WM].

## SENATE COMMITTEE ON GOVERNMENT OPERATIONS & SECURITY

**Majority Report**: Do pass and be referred to Committee on Ways & Means.
Signed by Senators Roach, Chair; Benton, Vice Chair; Pearson, Vice Chair; Liias, Ranking Minority Member; McCoy.

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

**Background**: In 1994 the Legislature enacted the Ethics in Public Service Act (Ethics Act), establishing new and revised ethics rules, consolidating them in a single RCW chapter, and applying the new chapter to all state officials and employees of the executive, legislative, and judicial branches of state government. The Ethics Act created the Executive Ethics Board (EEB) and Legislative Ethics Board (LEB) – collectively referred to as Board, and expanded the authority of the Commission on Judicial Conduct. Each of these Boards have broad powers to enforce the Ethics Act, and may investigate and initiate complaints regarding the conduct of state government employees.

The EEB 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 Office of the Attorney General (AGO) provides staff to the board.

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LEB has nine members, consisting of two members of the Senate, two members of the House of Representatives, and five citizen members. The citizen members include the following: one citizen member chosen by the Governor from a list of three individuals submitted by each of the four legislative caucuses; and one citizen member selected by three of the four other citizen members of the LEB. Non-legislative members serve a single five-year term. The LEB hires its own staff

Any person may file a complaint with a Board alleging violations of the ethics law. An investigation is limited to the assertions made in the complaint. The staff of a Board may issue an order of dismissal based on the complaint not being within the 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 Board.

If the investigation results in a determination of reasonable cause that a violation occurred, the Board must hold a public hearing regarding the merits of the complaint. The staff of the 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 Board finds, upon a preponderance of evidence, that the respondent has violated ethics laws, an enforcement action may be taken. If the Board finds that the respondent has not violated the law, it must file an order dismissing the complaint.

**Summary of Bill**: A Board may not contract with or request the assistance of the AGO in conducting an investigation. If the complaint alleges a violation related to the official duties of a state official, the AGO must represent the state official in front of the Board.

Staff of a Board cannot discuss the results of the investigation with the Board until the Board meeting in which staff presents recommendations to the Board that there is or is not reasonable cause to believe that a violation of this chapter or rules adopted under it has been or is being committed. Additionally the respondent must be allowed to attend the Board meeting in which staff presents recommendations to the appropriate Board that there is or is not reasonable cause to believe that a violation of this chapter or rules adopted under it has been or is being committed. Additionally, the respondent must have the opportunity to present evidence in person to the Board prior to the Board's determination on reasonable cause. The Board's deliberation on reasonable cause must be done in executive session without the public and staff in attendance.

**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 intended to talk about the due process involved as part of the ethics review process. Having an ethics complaint filed against someone is something that should be taken very seriously. It is important to make

sure an elected official is not the victim of frivolous complaints or that the public is heard when they feel an elected official is not doing the right thing. This bill is designed to make sure that due process is in place and that both sides have the opportunity to have their perspectives heard. The process that currently exists is an administrative procedure but there needs to be due process. Staff presents the case, the respondent is found guilty, then the Board passes sentence, and they fine you; then the respondent is supposed to try to prove the respondent's innocence by entering into negotiations, rather than getting to actually present evidence to prove the respondent's innocence. The AGO defends the decision of the Board and they are not interested in new evidence, explanations, or mitigating factors. If a respondent appeals the decision, the administrative law judge and superior court only look to see if the Board followed the process. A respondent can go back to the Board, after the Board has already ruled against the respondent, and ask them to change their minds, but the Board has already made its decision at that point. The only way to make it fair and impartial is to separate the staff from the Board and allow both sides to present before any decision is made and also have the AGO as an impartial advisor of some kind. This bill provides that once staff has prepared their findings, they give the findings to the respondent so the respondent can prepare their case. Next, both sides present their case before the Board. This process would force the staff to present all the evidence, because sometimes the staff does not present all the evidence.

OTHER: A person accused of violating the Ethics Act gets due process at two points. If there is a complaint filed, the respondent is provided a copy of the complaint and permitted to file as much evidence as the respondent would like in a written response to the complaint, including information for the staff, witnesses to be interviewed, and documents in support of dismissing the complaint. If the Board finds there is reason to believe that a violation was committed, then the respondent is entitled to a hearing. It is like court and a respondent can have a lawyer, call witnesses, present evidence, challenge the staff's evidence, and cross-examine the witnesses. If a respondent is not happy with the Board's decision, it can be appealed to superior court and so on up to the Supreme Court. This bill would essentially insert an additional hearing into the process that would be triggered by a decision of the staff. This process puts the respondent into the conversation between the staff and the Board over whether to file charges. The bill appears to say that staff cannot rely on the AGO which creates an issue because the AGO is the lawyer for the Board. If the Board wants legal advice, it would normally come from the AGO.

**Persons Testifying**: PRO: Senator Liias, prime sponsor; Brad Owen, Lt. Governor.

OTHER: Dave Horn, AGO.