

SENATE BILL REPORT

SB 5896

As Reported By Senate Committee On:
Ways & Means, February 10, 1998

Title: An act relating to the civil rights act of 1997.

Brief Description: Creating the civil rights act of 1997.

Sponsors: Senators Roach, McCaslin, Kohl, Oke, Schow, Kline, Zarelli, Goings, Hargrove and Stevens.

Brief History:

Committee Activity: Law & Justice: 2/24/97, 3/3/97 [DP-WM, DNP].

Ways & Means: 3/10/97, 2/4/98, 2/10/98 [DPS, DNP].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5896 be substituted therefor, and the substitute bill do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Hochstatter, Loveland, McDonald, Roach, Rossi, Schow, Swecker and Zarelli.

Minority Report: Do not pass.

Signed by Senators Fraser, B. Sheldon, Snyder and Thibaudeau.

Staff: Terry Wilson (786-7433)

Background: The federal Civil Rights Act of 1871, 42 U.S.C. 1983, provides redress for deprivations, under color of law, of any rights, privileges and immunities secured by the Constitution and laws of the United States. There is no comparable state statute. Attorneys' fees are available under 42 U.S.C. 1988 to successful plaintiffs, and, under limited circumstances, successful defendants as well. The state itself cannot be sued in the federal courts under the 11th Amendment, but that provision does not protect local governments, nor state officers or agents acting in their individual capacity, but under color of law. Several categories of officials are immune from suit, such as judges and prosecutors, under federal case law.

Summary of Substitute Bill: The Washington State Civil Rights Act of 1997 is enacted. The bill substantially parallels the federal Civil Rights Act. A governmental entity or person who, under any statute, ordinance, regulation, custom, or usage deprives any person of any right, privilege or immunity secured by the state Constitution is liable to the injured person. All damages and remedies available under the federal Civil Rights Act are available under this bill.

No court may impose or levy as a remedy a general or special tax, assessment, fee, toll, charge or other monetary obligation on the citizens of the state.

The act is to be construed liberally in order to effectuate its purposes of redressing injuries and deterring future violations of the state Constitution.

The act applies to causes of action arising after the effective date of the act.

Substitute Bill Compared to Original Bill: The original bill provided attorney's fees must be awarded to prevailing plaintiffs unless such an award would be unjust and may be awarded to a prevailing defendant only when the underlying claim is found to be frivolous or totally without merit. The original bill was effective immediately. The substitute bill is effective 90 days after the end of the session and applies to causes of action arising after the effective date of the act.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For (Law & Justice): Violations of the state Constitution by state and local officials is not compensable today under state law, unless the act also constitutes a tort. There is a need to rejuvenate— the state Constitution, particularly the Declaration of Rights. There needs to be a vehicle for people to obtain attorneys' fees, so they have the means to vindicate their constitutional rights. This will inhibit the infringement of constitutional rights in the first place.

Testimony Against (Law & Justice): It will be very expensive to defend against many nonmeritorious claims. There is a great overlap in this area, and most claims are already covered under the federal act. This bill will encourage double dipping. In this year, cities will pay out about \$15 million in claims under the federal act, about half of which (\$7.4 million) will go to attorneys' fees.

Testified (Law & Justice): Justice Richard Sanders (pro); Jamaica Filgo, Washington Families (pro); Jerry Sheehan, ACLU (pro); Mark Erickson, Olympia City Attorney (con); Michael Shaw, Washington Association of Counties (con).

Testimony For (Ways & Means): 1997: There is currently no ability in state law to recover damages if state constitutional rights are violated. Ten states now have similar legislation. This is a serious matter to people who have had to fight for their rights. Civil rights can be violated flagrantly now. This will prevent violations of civil rights by agencies and will save money. **1998:** State constitutional rights mean nothing unless they can be enforced. There will be no additional inmate litigation. There may be additional judgments, but the amount of the judgments will not increase. The state Constitution protects property rights more than the federal Constitution. This allows property owners to enforce their rights.

Testimony Against (Ways & Means): 1997: None. **1998:** This bill has many problems. There will be a large fiscal impact on counties. This is complex legislation. It will take years of litigation to determine the scope of it. It will create many new and innovative causes of action. Most wrongs are already addressed. The current system works now.

Testified (Ways & Means): 1997: Jerry Seehan, ACLU (pro); Jamaica J. Filgo, citizen (pro). **1998:** PRO: Joe Waldron, CCRKBA; Greg Onerstreet, BIAW; Jeffery Neddle, WSTLA; Al Woddbridge, WA State Rifle & Pistol, Western Fish & Wildlife, WA Property Rights Alliance; CON: Pat Brock, City of Tumwater; Michael Shaw, Assn. of Counties.