

HOUSE BILL REPORT

SHB 2754

As Passed Legislature

Title: An act relating to mandatory arbitration.

Brief Description: Modifying mandatory arbitration provisions.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Esser, Dickerson, Jarrett, Lysen and Kagi).

Brief History:

Committee Activity:

Judiciary: 2/7/02, 2/8/02 [DPS];

Appropriations: 2/9/02 [DPS(JUDI)].

Floor Activity:

Passed House: 2/18/02, 88-9.

Passed Senate: 3/4/02, 44-3.

Passed Legislature.

Brief Summary of Substitute Bill

- Requires implementation of mandatory arbitration in all counties of over 150,000.
- Raises the maximum limit on the fee that counties may assess for filing a request for mandatory arbitration from \$120 to \$220.
- Allows waiver of the filing fee by indigent parties.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Hurst, Vice Chair; Carrell, Ranking Minority Member; Boldt, Dickerson, Esser, Jarrett, Lovick and Lysen.

Staff: Bill Perry (786-7123).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Judiciary be substituted therefor

and the substitute bill do pass. Signed by 16 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Alexander, Cody, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, Mastin, McIntire, Ruderman, Schual-Berke and Tokuda.

Minority Report: Do not pass. Signed by 9 members: Representatives Sehlin, Ranking Minority Member; Boldt, Buck, Clements, Cox, Lisk, Pearson, Pflug and Talcott.

Staff: Linda Brooks (786-7153).

Background:

Arbitration is a nonjudicial method for resolving disputes in which a neutral party is given authority to decide the case. Arbitration is intended to be a less expensive and time-consuming way of settling problems than taking a dispute to court. Parties are generally free to agree between themselves to submit an issue to arbitration. In some cases, however, arbitration is mandatory.

A statute allows any superior court, by a majority vote of its judges, to adopt mandatory arbitration in prescribed cases. In counties of 70,000 or more population, the county legislative authority may also impose this mandatory arbitration. This mandatory arbitration applies to cases in which the sole relief sought is a money judgment of \$15,000 or less. By a two-thirds vote, the judges of the superior court may raise this limit to \$35,000. These limits were set at their current levels in 1988, when they were raised from \$10,000 and \$25,000, respectively. Superior court judges may also vote to use mandatory arbitration in child support cases, without limit as to the dollar amount of the support payments.

Anyone agreed to by the parties may be an arbitrator. If agreement is not reached, the court will appoint an arbitrator who must be a retired judge or a lawyer with at least five years membership in the bar. Arbitrators are paid at the same rate as judges pro tem of the superior court.

An award by an arbitrator may be appealed to the superior court. The superior court will hear the appeal "de novo." That is, the court on appeal will conduct a trial on all issues of fact and law essentially as though the arbitration had not occurred. Amounts awarded on appeal are not subject to any dollar limits. The mandatory arbitration statute provides that supreme court rules will establish the procedures to be used in mandatory arbitration and that such rules may provide for the recovery of costs and "reasonable" attorney fees from a party who appeals and fails to improve his or her position. The rules make the award of costs and fees mandatory when an appealing party fails to improve his or her position, and makes such awards discretionary when an appealing party withdraws the appeal. The determination of whether or not the appealing party's position has been improved is based on the amount awarded in arbitration compared to the amount awarded at the trial de novo.

In 2000 the Legislature authorized counties to assess a fee of up to \$120 for requesting mandatory arbitration. Revenue from such a fee is to be used solely for a county's mandatory arbitration program. A county's imposition of a fee was made subject to the possibility that voter approval of the fee would be required under Initiative 695. The initiative was subsequently declared unconstitutional by the state supreme court.

Summary of Substitute Bill:

Counties with a population of more than 150,000 are required to adopt mandatory arbitration. In counties with a population of less than 150,000, either the superior court judges or the county legislative authority may adopt mandatory arbitration.

The maximum fee that a county may assess for mandatory arbitration requests is increased to \$220. The reference to possible voter approval under Initiative 695 is removed.

The fee for requesting mandatory arbitration may be waived in the case of an indigent filer.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: (Judiciary) Local courts have been hit with serious budget losses. The mandatory arbitration program is a valuable tool in reducing court congestion and court costs. This bill will allow the program to become self-supporting. Failure to pass the bill will result in many more cases going to trial.

Testimony For: (Appropriations) None.

Testimony Against: (Judiciary) There is bias in favor of plaintiffs in the mandatory arbitration system because the majority of arbitrators are current or former plaintiffs' attorneys. The bill would be costly, and the costs of the increased fees will just be passed on to the parties in the arbitration proceedings.

Testimony Against: (Appropriations) None.

Testified: (Judiciary) (In support) Larry Shannon, Washington State Trial Lawyers Association.

(Opposed) George McLean, State Farm Insurance.

Testified: (Appropriations) None.