

HOUSE BILL REPORT

SSB 5560

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to mediation of disputes between elected officials.

Brief Description: Concerning mediation of disputes between elected officials.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Padden and Pedersen).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/13/19, 3/22/19 [DPA].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Provides for mediation before a lawsuit may be commenced in disputes between county elected officials.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 14 members: Representatives Jinkins, Chair; Thai, Vice Chair; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

Staff: Cece Clynch (786-7195).

Background:

Mediation.

Mediation is an alternative dispute resolution process in which the parties use a neutral third party to help them negotiate a settlement or compromise to their dispute. The mediator does not act as a judge and does not make decisions or issue orders in the case. The parties do not reach a solution unless all sides agree.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Mediation can be required by written agreements between the parties, or by court rules or statutes. A variety of statutes encourage or require mediation, such as those pertaining to: dissolution proceedings, certain conditional and special use permits, cases before the Environmental Hearings Board, and the Foreclosure Fairness Act.

Forms of County Government.

The Washington Constitution provides for two forms of county government: (1) a "commission" form to be established through general laws by the Legislature; and (2) a "home rule" charter form, which any county may choose to adopt. Several of the state's 39 counties have adopted home rule charters.

Under a commission form, the county has a three-member board of elected commissioners who serve as the county's legislative body and also perform executive functions. Counties with populations greater than 300,000 may increase the size of the commission from three to five members. The commissioners share administrative functions with other elected county officials, including a clerk, treasurer, sheriff, assessor, coroner, and auditor.

Under a home rule charter form, the county charter may provide for a form of government different from a commission form. For instance, with a council/executive form, a county executive serves as the head of the executive branch and a county council serves as the legislative branch. Home rule charters can modify the duties of the board of county commissioners and other elected officials, or may entirely replace certain officers or subject them to restrictions.

Statutes of Limitation.

The goal or policy behind statutes of limitation is to require claims to be brought when the evidence is still available and while witnesses can still recall the events. Generally, a limitations period begins to run when the cause of action "accrues," which is such time as all elements of the cause of action are susceptible of proof and the injured party has a right to apply to a court for relief.

There are numerous statutes of limitation. Which one applies depends upon the cause of action. For instance:

- Actions upon written contracts must be commenced within six years.
- Actions upon contracts that are not in writing must be commenced within three years.
- Actions for relief for which there is not a specific statute of limitations provided must be commenced within two years.

Summary of Amended Bill:

Mediation of Disputes Between County Elected Officials.

Before a lawsuit may be commenced in disputes between elected officials in their official capacity, the party bringing the claim must first provide written notice to the other parties.

The notice must:

- request mediation;

- notify all interested parties that the mediation must take place within 90 days of providing the notice; and
- include a copy of this new statutory section requiring the notice.

The making of a written, good faith notice tolls the statute of limitations until the ninetieth day from the date of notice, or the day following the date set for mediation, or mediation ends, whichever is later.

After the notice has been provided to all interested parties, unless otherwise agreed to by the parties, all interested parties must mediate. If any party refuses to mediate, fails to mediate in good faith, or if mediation does not resolve the claim, the party bringing the claim may commence a lawsuit upon the passage of the ninetieth day from the date of notice or the day following the date set for mediation, whichever is later.

The parties shall agree to a mediator. In the absence of agreement, any party may petition for appointment of the mediator in the superior court in the county in which one of the parties serves as an elected official. Once the initial petition for appointment is filed, no other party may file such a petition. If one of the parties is a superior court judge, then the petition may not be filed in the superior court in which that judge sits. If any party is a superior court judge and all the parties serve in the same county, the action shall be filed in an adjacent county.

Upon designation of the mediator, by agreement or by the court, a date for mediation shall be set. If a date cannot be agreed upon within 10 days of the designation, a party may petition the court to set a date. The mediation shall occur within 90 days from the date the notice was provided, or on a later date if agreed to by all parties and the mediator, or as scheduled by the court.

Unless the court determines otherwise in an order appointing the mediator, the parties shall equally share the costs of mediation, including reasonable compensation for the mediator's services. The mediator's compensation and the cost details shall be spelled out in the mediation agreement between the mediator and all parties or in the order appointing the mediator. Absent an agreement, and other than the costs of the mediation and compensation of the mediator, each party shall bear its own costs, including legal fees and witness expenses in connection with the mediation. If the matter is not resolved by mediation and the parties cannot agree as to how costs are assessed among the parties, the court that resolves the matter shall determine how costs are assessed among the parties.

Definition of "Elected Official."

For purposes of this mediation provision, "elected official" means:

- any of the following elected or appointed county officers:
 - assessor;
 - auditor;
 - clerk;
 - coroner or medical examiner;
 - commissioner;
 - prosecuting attorney;
 - sheriff; or

- treasurer;
- equivalent positions whether elected or appointed in charter counties; and
- superior, district, and municipal court judges.

Amended Bill Compared to Substitute Bill:

Rather than codify the new provision regarding mediation in the campaign disclosure and finance laws, it is codified as its own new chapter in the title of the Revised Code of Washington that pertains to counties.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The concept for this bill came to Senators Padden and Pedersen four years ago. It arose out of the dispute that was ongoing at the time in Grays Harbor County between the Superior Court judges and the Grays Harbor County commissioners. The county taxpayers in that case bore the financial burden on both sides of that dispute. That case eventually settled, but then there was another dispute between elected county officials in Okanogan County, and then in yet a third county. In drafting the bill, there was close work done with the Superior Court judges. Of course, there is some cost associated with mediation, but this will be much less expensive than the costs that are incurred when a case goes to trial. The commitment to mediation, collaboration, and cooperation that is demonstrated in this bill is appreciated. Although dispute resolution centers (DRCs) are not named in the bill, it is hoped that DRCs will be involved. Dispute resolution center case files are privileged and confidential, and DRCs are very appropriately situated to handle matters such as this. There is an old chestnut that all politics are local. Lawsuits are expensive and are a lousy avenue for dealing with problems between county officials. Mediation is a model that is used in lots of other arenas. The work of Senators Short, Pedersen, and Padden on this bill is appreciated. It passed the Senate with a vote of 48-1.

(Opposed) None.

Persons Testifying: Senator Padden, prime sponsor; Amber Ulvenes, Resolution Washington; and Stephen Warning, Superior Court Judges Association.

Persons Signed In To Testify But Not Testifying: None.