

SENATE BILL REPORT

SB 5560

As Reported by Senate Committee On:
Law & Justice, February 7, 2019

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

Brief Description: Concerning mediation of disputes between elected officials.

Sponsors: Senators Padden and Pedersen.

Brief History:

Committee Activity: Law & Justice: 2/05/19, 2/07/19 [DPS].

Brief Summary of First Substitute Bill

- Requires mediation of disputes between county officials before starting a lawsuit.
- Provides for notice, a mediation process, and a 90-day mediation timeline.
- Allows the parties to petition the court if they are not able to agree about the mediation procedure.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5560 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

Staff: Melissa Burke-Cain (786-7755)

Background: The Washington State courts favor alternative dispute resolution (ADR) as an effective method to resolve disputes. The two most commonly used ADR processes are mediation and arbitration. The Washington courts describe mediation as a form of ADR that may help solve conflicts more quickly and at lower cost than litigation.

Mediation is a confidential, non-binding process using a neutral third party to assist the parties to reach a mutually beneficial resolution of their disagreement. The resolution may

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include an agreement not available via the court system. If the parties do not reach full agreement from mediating their dispute, mediation may still help to clarify and narrow the disputed issues.

Mediation uses a problem-solving approach. The mediator does not impose their will or judgment on the parties, but helps them decide for themselves whether to settle, and on what terms. The mediator is a catalyst, helping parties reach agreement by identifying issues, exploring possible bases for agreement, and weighing the consequences of not settling.

Mediation may be successful in both one-on-one disputes and in large, multi-group conflicts. It can be effective in all types of civil matters, and may occur before or after filing a lawsuit. Although attorneys may be present during the mediation process, they are not essential to the process.

In some instances, court rules or statutes require ADR as part of the judicial process. Washington adopted the Uniform Mediation Act in 2005 governing mediations pursuant to a referral or an agreement to mediate made on or after January 1, 2006.

Examples of mediation required or authorized under Washington laws include:

- requiring mediation of health care claims, subject to exceptions;
- allowing mediation and court hearing to be set concurrently in dissolution and legal separation matters;
- permitting parties to resolve trust and estate disputes through mediation, arbitration, and agreement or by judicial process; and
- authorizing Washington's environmental hearings boards to mediate appeals to the boards upon a party's request and with agreement of all parties to the appeal.

Local court jurisdictions often require mediating family law and small claims cases before seeking a judge's decision. Dispute resolution centers (DRC) are located in most Washington counties to help parties resolve disagreements instead of going to court. Typical DRC cases include disputes between property owners and tenants, consumers and merchants, citizens and government agencies, employees and employers, and disagreements between family members.

Summary of Bill (First Substitute): The following county officials must participate in mediation before commencing a lawsuit in a dispute between them while acting in their official capacities:

- any elected or appointed county officer as listed in the Revised Code of Washington;
- equivalent positions in charter counties, whether elected or appointed; and
- superior, district, and municipal court judges located within the county.

The party bringing the claim must request mediation and send a notice to all parties. The mediation must occur within 90 days unless the parties all agree otherwise. The statute of limitations is tolled during the mediation period. The parties choose the mediator, and the date for the mediation. The parties share the mediation costs equally. The terms of the mediation must be set out in a mediation agreement.

If the parties cannot agree, the court may appoint a mediator, allocate the mediation costs between the parties, and set the mediation date. If one of the parties is a superior court judge, or all the parties serve in the same county, any court action must be in an adjacent county. If any party refuses to mediate, fails to mediate in good faith, or if mediation does not resolve the claim, the claimant may initiate a lawsuit 90 days after the notice.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Tolls the statute of limitations during the mediation period.
- Corrects an internal reference to the defined term elected official.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Over the years there have been a number of incidents in which county officials are in a disagreement, and the disagreement becomes a lawsuit. These lawsuits cost taxpayers money. The bill is a common sense way to deal with these disputes before they escalate. It is the nature of county government for disputes to occur between county officials. We understand the views of this bill's sponsors about these intra county disputes. The optics are terrible. A required mediation process forces everyone to sit down and try to resolve their dispute. Personalities can get in the way of resolving disagreements. This bill is better for taxpayers. The process incorporates a cooling off period. We see similar approaches in other types of cases. Mediation is quite common in association with court claims and it is quite common to build a cooling off period into the process. For example, a dispute occurred among county officials in Grays Harbor county some years ago. The issue was over funding for the courts. A great deal of money was spent on lawyers for each side; it may have even ended up in the state supreme court. In another county, the dispute was over the need for a juvenile court administrator. Then, most recently, there was a dispute in a county over who controlled the court files, the judges or the clerk. Whatever the issue may be, spending three months sorting it out is a good idea.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Steve Warning, Superior Court Judges; Sean O'Donnell, Superior Court Judges.

Persons Signed In To Testify But Not Testifying: No one.