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**SENATE BILL 6159**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senators Dammeier, Miloscia, Becker, Roach, Benton, and Darneille

AN ACT Relating to the appointment of independent counsel by counties to serve the public interest; amending RCW 36.27.040, 36.32.200, 43.10.030, and 43.10.232; adding a new section to chapter 43.10 RCW; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 36.27.040 and 2009 c 549 s 4047 are each amended to read as follows:

Except as provided in section 2 of this act, the prosecuting attorney may appoint one or more deputies who shall have the same power in all respects as their principal. Each appointment shall be in writing, signed by the prosecuting attorney, and filed in the county auditor's office. Each deputy thus appointed shall have the same qualifications required of the prosecuting attorney, except that such deputy need not be a resident of the county in which he or she serves. The prosecuting attorney may appoint one or more special deputy prosecuting attorneys upon a contract or fee basis whose authority shall be limited to the purposes stated in the writing signed by the prosecuting attorney and filed in the county auditor's office. Such special deputy prosecuting attorney shall be admitted to practice as an attorney before the courts of this state but need not be a resident of the county in which he or she serves and shall not be under the legal disabilities attendant upon prosecuting attorneys or their deputies except to avoid any conflict of interest with the purpose for which he or she has been engaged by the prosecuting attorney. The prosecuting attorney shall be responsible for the acts of his or her deputies and may revoke appointments at will.

Two or more prosecuting attorneys may agree that one or more deputies for any one of them may serve temporarily as deputy for any other of them on terms respecting compensation which are acceptable to said prosecuting attorneys. Any such deputy thus serving shall have the same power in all respects as if he or she were serving permanently.

The provisions of chapter 39.34 RCW shall not apply to such agreements.

The provisions of RCW 41.56.030((~~(2)~~)) (11) shall not be interpreted to permit a prosecuting attorney to alter the at-will relationship established between the prosecuting attorney and his or her appointed deputies by this section for a period of time exceeding his or her term of office. Neither shall the provisions of RCW 41.56.030((~~(2)~~)) (11) require a prosecuting attorney to alter the at-will relationship established by this section.

**Sec.**  RCW 36.32.200 and 1983 c 129 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, it shall be unlawful for a county legislative authority to employ or contract with any attorney or counsel to perform any duty which any prosecuting attorney is authorized or required by law to perform, unless the contract of employment of such attorney or counsel has been first reduced to writing and approved by the presiding superior court judge of the county in writing endorsed thereon. This section shall not prohibit the appointment of deputy prosecuting attorneys in the manner provided by law.

Any contract written pursuant to this ((~~section~~)) subsection shall be limited to two years in duration.

(2) If a county prosecuting attorney is accused of criminal or civil wrongdoing or potential or actual ethical violations, a county legislative authority may request the attorney general to determine whether appointment of an outside attorney or counsel may be appropriate as provided in section 5 of this act. If the attorney general concludes that an outside attorney or counsel would best represent the interests of the public in the matter, the county legislative authority may contract with the attorney general to provide representation or contract with any attorney or counsel to provide representation limited to the matter at hand. Prior to any representation by an attorney or counsel under this section, the attorney or counsel and the county legislative authority must reach an agreement regarding the payment of all costs, including expert witness fees, associated with the representation.

**Sec.**  RCW 43.10.030 and 2009 c 549 s 5048 are each amended to read as follows:

The attorney general shall:

(1) Appear for and represent the state before the supreme court or the court of appeals in all cases in which the state is interested;

(2) Institute and prosecute all actions and proceedings for, or for the use of the state, which may be necessary in the execution of the duties of any state officer;

(3) Defend all actions and proceedings against any state officer or employee acting in his or her official capacity, in any of the courts of this state or the United States;

(4) Consult with and advise the several prosecuting attorneys in matters relating to the duties of their office, and when the interests of the state require, he or she shall attend the trial of any person accused of a crime, and assist in the prosecution;

(5) Consult with and advise the governor, members of the legislature, and other state officers, and when requested, give written opinions upon all constitutional or legal questions relating to the duties of such officers;

(6) Prepare proper drafts of contracts and other instruments relating to subjects in which the state is interested;

(7) Give written opinions, when requested by either branch of the legislature, or any committee thereof, upon constitutional or legal questions;

(8) Enforce the proper application of funds appropriated for the public institutions of the state, and prosecute corporations for failure or refusal to make the reports required by law;

(9) Consult and give a written opinion, when requested by a county legislative authority as provided in section 2 of this act, regarding the need for an outside attorney or counsel in cases where the county prosecuting attorney is accused of criminal or civil wrongdoing or potential or actual ethical violations.

(10) Keep in proper books a record of all cases prosecuted or defended by him or her, on behalf of the state or its officers, and of all proceedings had in relation thereto, and deliver the same to his or her successor in office;

((~~(10)~~)) (11) Keep books in which he or she shall record all the official opinions given by him or her during his or her term of office, and deliver the same to his or her successor in office;

((~~(11)~~)) (12) Pay into the state treasury all moneys received by him or her for the use of the state.

**Sec.**  RCW 43.10.232 and 1986 c 257 s 16 are each amended to read as follows:

(1) The attorney general shall have concurrent authority and power with the prosecuting attorneys to investigate crimes and initiate and conduct prosecutions upon the request of or with the concurrence of any of the following:

(a) The county prosecuting attorney of the jurisdiction in which the offense has occurred;

(b) The governor of the state of Washington; ((~~or~~))

(c) A majority of the committee charged with the oversight of the organized crime intelligence unit; or

(d) A county legislative authority as provided in section 2 of this act.

(2) Such request or concurrence shall be communicated in writing to the attorney general.

(3) Prior to any prosecution by the attorney general under this section, the attorney general and the county in which the offense occurred shall reach an agreement regarding the payment of all costs, including expert witness fees, and defense attorneys' fees associated with any such prosecution.

NEW SECTION. **Sec.**  A new section is added to chapter 43.10 RCW to read as follows:

At the request of a county legislative authority as provided in section 2 of this act, the attorney general must give a written opinion regarding the need for an outside attorney or counsel in cases where the county prosecuting attorney is accused of criminal or civil wrongdoing or potential or actual ethical violations. The attorney general must:

(1) Conduct an initial investigation including any factual or legal research deemed appropriate by the attorney general to better inform the opinion; and

(2) Determine whether the public interest would best be served by appointing an outside attorney or counsel.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**