

HOUSE BILL REPORT

HB 2587

As Reported by House Committee On: Judiciary

Title: An act relating to required disclosures for special prosecuting attorneys.

Brief Description: Concerning required disclosures for special prosecuting attorneys.

Sponsors: Representatives Valdez, McBride, Fitzgibbon, Wylie and Jinkins.

Brief History:

Committee Activity:

Judiciary: 1/24/18, 2/1/18 [DPS].

Brief Summary of Substitute Bill

- Addresses disclosure requirements when a county enters into a contract with a special prosecuting attorney.
- Requires that a contract for the services of a special prosecuting attorney be made publicly available.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Jinkins, Chair; Graves, Assistant Ranking Minority Member; Goodman, Hansen, Kirby, Orwall and Valdez.

Minority Report: Do not pass. Signed by 4 members: Representatives Haler, Klippert, Muri and Shea.

Staff: Ingrid Lewis (786-7289).

Background:

A county prosecuting attorney is a public officer elected or appointed to conduct suits on behalf of the state, county, and school districts in his or her jurisdiction. A county prosecuting attorney also serves as legal advisor to the county and all county officers in matters relating to their official business.

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.

County boards of commissioners and county prosecuting attorneys are authorized to appoint a special prosecutor or special deputy prosecutor when an elected prosecuting attorney is unable or unavailable to perform his or her duty. A special prosecutor or special deputy prosecutor possesses the same power as a county prosecuting attorney.

A contract for a special prosecuting attorney entered into by a county board of commissioners is required to be in writing, approved by the presiding superior court judge, and can last no longer than two years. A contract for a special deputy prosecuting attorney entered into by a county prosecuting attorney is required to be in writing, signed by the county prosecuting attorney, and filed in the county auditor's office.

A contract entered into for a special prosecuting attorney or special deputy prosecuting attorney is not exempt from the Public Records Act.

Summary of Substitute Bill:

A person or entity providing compensation to a special prosecuting attorney or special deputy prosecuting attorney is required to disclose the amount of compensation expected to be paid and the source of the funds used for compensation. If compensation is provided by a nonprofit or advocacy organization, all sources of funding must be disclosed whether it is a donation, grant, or other source.

A proposed contract for a special prosecuting attorney or special deputy prosecuting attorney must be made publicly available on a county website. A county board of commissioners is required to post a contract for a special prosecuting attorney at least seven days prior to seeking approval for the contract from the presiding superior court judge.

Disclosure requirements apply to any contract proposed or made retroactive to July 1, 2016.

Substitute Bill Compared to Original Bill:

The substitute bill adds a disclosure requirement for contracts made with special deputy prosecuting attorneys under RCW 36.27.040. The substitute also modifies the required disclosure statements to address only the following: the amount of the compensation expected to be paid; and the source of the funds used for compensation. Finally, the substitute bill provides that if compensation is provided by a nonprofit or advocacy organization, all sources of the funding must be disclosed whether it is a donation, grant, or other source.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute 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) This bill is about transparency in government. When private attorneys are being sworn in as special prosecuting attorneys and become public employees, the public has the right to know who these individuals are, how much they are getting paid, and where those funds are coming from. Under current law, there are no affirmative disclosure requirements. When these contracts are proposed, they should be posted on the county website so that residents and taxpayers can view the terms.

There has been increased activity by various interest groups from both sides of the political spectrum lobbying local governments to pass ordinances favorable to the county's position. This bill is not about prohibiting the practice of utilizing special prosecuting attorneys. This bill simply requires an affirmative disclosure to the public of the source of the funds and dollar amount expended by the county. The Public Records Act (PRA) requires that the people remain informed so that they may remain in control of the instruments that they have created. One of the most powerful instruments created by the people is the power to prosecute. These contracts are already subject to disclosure under the PRA, but this bill amplifies the public's right to know and the information to be disclosed.

(Opposed) Fundamentally, there is agreement with the transparency component of this bill. The concerns are as follows: (1) the items to be disclosed could interfere with attorney-client privilege; (2) the retroactive clause in the bill could impact current preexisting agreements; (3) there are definitions that would have to be created and clarified; and (4) when contracts are made, the controlling parties are the commissioners or the prosecuting attorney in the county, not an outside entity.

(Other) The two most common instances of a county retaining a special prosecuting attorney is: (1) where the prosecuting attorney's office is unable to perform its duty, which is the least common instance; and (2) when there is a conflict of interest or when a county does not have a specialized counsel for an issue, which is a common occurrence. This bill currently does not cover this second instance. These contracts happen frequently, they withstand scrutiny, and they are rendered in writing and are subject to public record disclosure. If a disclosure requirement is necessary, do not make it too onerous, because they happen a good deal of the time.

Persons Testifying: (In support) Representative Valdez, prime sponsor; Pat Thompson, Washington State Council of County and City Employees; Geoff Simpson, Washington State Council of Fire Fighters; and Rowland Thompson, Allied Daily Newspapers of Washington.

(Opposed) Eric Johnson, Washington State Association of Counties.

(Other) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.