

SENATE BILL REPORT

ESHB 1788

As Passed Senate - Amended, April 10, 2019

Title: An act relating to the Washington state bar association.

Brief Description: Concerning the Washington state bar association.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representative Stokesbary).

Brief History: Passed House: 3/07/19, 96-1.

Committee Activity: Law & Justice: 3/19/19, 3/28/19 [DPA].

Floor Activity:

Passed Senate - Amended: 4/10/19, 26-18.

Brief Summary of Bill (As Amended by Senate)

- Transfers the powers of the State Bar Association (WSBA) to the State Supreme Court.
- Adds legislative recognition that the Washington Supreme Court created a workgroup to review the structure of the WSBA.
- Adds legislative intent to preserve the WSBA under the Supreme Court.
- Repeals most of the State Bar Act that may limit the court's authority to make structural changes.
- Requires that a majority of the governing board be elected if the Supreme Court delegates governance to a board.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

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

Staff: Tim Ford (786-7423)

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.

Background: Washington State Bar Association. Washington's Constitution vests the judicial power of the state in the judiciary. In 1933, the Legislature enacted the Washington State Bar Act which created an association known as the WSBA to be governed by a board of governors charged with the executive functions and the enforcement of many of the provisions of the act. Among other things, the board was empowered to adopt rules concerning membership, classification of membership, privileges of membership, and the collection, deposit, and disbursement of membership and admission fees, penalties, and all other funds.

Membership in the WSBA is mandatory in order to practice law in Washington. In order to remain active, a member must pay an annual license fee. The act includes provisions relating to admission and disbarment; qualifications on admission; the oath on admission; admission of veterans; membership fees for active and inactive members; suspension for nonpayment; the effect of noncompliance with a child support order; the unlawful practice of law; restrictions on practice by certain officers such as judges, sheriffs, coroners, clerks of court, and prosecutors; grounds for disbarment; and the code of ethics.

In September 2018 the court announced it would undertake a review of the structure of the WSBA to determine whether it is compliant with recent United States Supreme Court opinions regarding anti-trust law—*North Carolina State Board of Dental Examiners v. Federal Trade Commission*, and the first amendment—*Janus v. American Federation of State, County, and Municipal Employees*.

Summary of Amended Bill: The Legislature recognizes the inherent plenary authority of the Washington Supreme Court to regulate court-related functions, including the practice of law and the administration of justice, and therefore the Legislature is repealing the State Bar Act. The Legislature further recognizes that the Washington State Supreme Court has commissioned a work group to undertake a review of the structure of the WSBA. The Legislature intends to preserve the existing state bar association but repeal provisions of the act that may be interpreted as limiting the court's authority to make structural or governance changes that the court determines to be necessary or desirable.

Most of the State Bar Act is repealed. The two remaining sections concern the unlawful practice of law and certain restrictions on the practice of law applicable to judges, sheriffs, coroners, clerks of court, and prosecuting attorneys in cases in which there may be a conflict of interest. These two sections are recodified in a chapter pertaining to attorneys. In the section concerning the unlawful practice of law, references to the state bar are stricken and reference is made to the authority of the supreme court.

One section of the State Bar Act relating to the powers of WSBA is reenacted, amended, and recodified placing the WSBA under the State Supreme Court. The supreme court may provide for the WSBA's power, governance, and operations, including the establishment of fees sufficient to make the association self sufficient.

If the Supreme Court delegates responsibilities for governance of the association to a board, committee, or other group, a majority of the members must be subject to election.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill takes effect on July 1, 2020.

Staff Summary of Public Testimony on Bill as Amended by Committee: PRO: The governance task force in 2013 and 2014 put in its report that the State Bar Act has at least 16 sections that have been essentially over-ruled or superseded by actions of the Washington Supreme Court through rule or other action, and by federal court decisions. The State Bar Act is basically a fossil, an almost entirely empty shell, and the leftover pieces are under siege by Janus, anti-trust, and first amendment cases. The striker makes it clear that the bar can continue fully under the court as a separate entity with corporate powers. Importantly, the effective date is pushed off until July 1, 2020.

CON: A workgroup has been created by the Washington Supreme Court to look at the state bar association structure in light of the Supreme Court decision in Janus. The Janus decision relates generally to whether mandatory dues are a type of compelled speech that violates the first amendment rights on non-union members. However, the Janus decision does not directly relate to bar associations. Please do not pass this bar until the workgroup completes its review. This is not a surgical approach and the bill is very disruptive for the bar association. There may be unintended consequences and it is unclear what problem is being addressed by this bill. It is just dissolving the bar and creating a new entity under the court. WSBA funds that will go to the court can not be gifted back to the members. No entity can be abolished without damage to the employees and financial obligations.

There have been reform governors who have been elected because a lot of attorneys were dissatisfied with the bar association. However democracy takes time and progress is being made with the election of reform governors. There are problems with the bar association but the new governors are making improvements. We need time to figure out what the future structure will be before we pass legislation like this.

OTHER: I support the original version of the bill. The bar association is broken. The bar is full of dissension. The disciplinary process does not work well. It is like the fox guarding the hen house and attorneys are not disciplined.

Persons Testifying: PRO: Hugh Spitzer, citizen.

CON: Richard Bartholomew, Domestic Relations Attorneys of Washington; Jean Cotton, Grays Harbor County Bar Association; John Scannell, citizen; Kyle Sciuchetti, Governor—District 3, Washington State Bar Association; Alec Stephens, At-Large Governor, WSBA Board of Governors; Paul Swegle, Governor, WSBA; Rajeev Majumdar, President-Elect, WSBA.

OTHER: Arthur West, citizen.

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