

HOUSE BILL REPORT

HB 2024

As Reported by House Committee On:
Appropriations Subcommittee on General Government

Title: An act relating to the institution or prosecution of legal proceedings by the attorney general on behalf of state officers.

Brief Description: Concerning legal proceedings by the attorney general on behalf of state officers.

Sponsors: Representatives Pedersen, Rodne, Jinkins, Klippert, Orwall, O'Ban, Wylie, Ormsby, Kirby, Buys, Roberts, Nealey, Goodman, Hansen, Kagi, Hunter, Ryu, Appleton and Manweller.

Brief History:

Committee Activity:

Appropriations Subcommittee on General Government: 4/4/13 [DP].

Brief Summary of Bill

- Provides that the Attorney General is not required to institute or prosecute actions on behalf of state officers against the state or a county in matters regarding the level or sufficiency of fiscal appropriations.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Majority Report: Do pass. Signed by 5 members: Representatives Hudgins, Chair; Dunshee, Hunt, Pedersen and Springer.

Minority Report: Do not pass. Signed by 4 members: Representatives Parker, Ranking Minority Member; Buys, Chandler and Taylor.

Staff: Danielle Cruver (786-7157).

Background:

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.

Washington Constitution Article III, section 21 provides that "[t]he attorney general shall be the legal adviser of the state officers, and shall perform such other duties as may be prescribed by law." Among the duties established in statute, the Legislature has provided that the Attorney General (AG) shall "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." Additionally, in a variety of cases and contexts, the Supreme Court has held that Superior Court judges are state officers, or both state and county officers.

Summary of Bill:

The AG is not required to institute or prosecute actions or proceedings on behalf of state officers against the state or a county when the cause of action is related to sufficiency or level of fiscal appropriation. The AG's duty to prosecute these cases, including cases currently in litigation, ends after the immediate effective date of this bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) Senate Bill 5860 (SB 5860) is limited by its title, and concerns only superior court judges. House Bill 2024 applies to all state officers, and was dropped in response to concerns expressed by judges that they were being singled out under SB 5860. The bills stem from a specific case in Grays Harbor that has gone from ridiculous to outrageous. The core power of the Legislature is to decide how money is spent. The taxpayers should not have to pay for both sides of a lawsuit against the state, the purpose of which is to seek more funding. If a state officer wants to mount such a suit, the officer should be willing to hire his or her own counsel and pay for it. Both bills do not need to be passed, but one of them does need to pass if the Legislature is going to avoid having to appropriate another \$385,000. These bills only apply to suits that are instituted by a judge or a state officer as a plaintiff, and then only in cases that are concerned with the level or sufficiency of appropriations. Even if the AG erects "fire walls" and represents the judge or state officer, rather than hires outside counsel, it is still the taxpayer that is funding both sides of the suit.

The Grays Harbor case is analogous to the McCleary case, and at its core concerns the level of state funding. Funding is primarily a Legislative function. In such a case, the AG could not erect a "fire wall" and represent both sides in-house. This is not like other cases. To date, about \$390,000 has been billed by the outside counsel representing the judges. The SB 5860 precisely addresses the Grays Harbor case. House Bill 2024 applies to all state officers. Neither bill prevents the AG, any state officer, or any judge from suing.

(Opposed) There are 189 superior court judges elected in this state. The superior courts are general jurisdiction courts, and hear all sorts of cases. In 2011 over 293,000 cases were filed statewide in superior courts. Each year, these courts collect about \$300 million, one-half of which goes to the state. The rest of the money remains at the county level. The framers understood that there would sometimes be cases and controversies between elected officials. To date, there have only been two instances when a superior court judge has sued for more funding. Grays Harbor County has been hard hit by the recession. It presented a unique situation. The judges sought additional funding for court services. The amount originally sought has turned out to be much less than what the fees have been. There were steps taken in the Grays Harbor case that caused the costs to be high. There were many appeals with respect to discovery matters. In addition, the AG did not have to hire outside counsel to represent the judges and could have erected a "fire wall" and had different assistant attorneys general represent the state and the judges. The AG can control the costs better in-house. Passage will signify that the Legislature is taking sides in the current Grays Harbor case. Judges are in a difficult position when it comes to seeking pro bono representation, and whether a lawyer agreed or declined to represent pro bono, it would affect the judge's impartiality. Both these bills are bad, and upset the constitutional balance. There should be a study group put together to study the situation before any action is taken.

Persons Testifying: (In support) Representative Pedersen, prime sponsor.

(Opposed) Tom Parker, Superior Court Judges Association.

Persons Signed In To Testify But Not Testifying: None.