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## Judiciary Committee

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### HB 1034

**Title:** An act relating to legal actions against the state by state officials.

**Brief Description:** Concerning legal actions against the state by state officials.

**Sponsors:** Representative Manweller.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Requires that separately elected state executive officers first obtain the approval of the Governor before instituting or prosecuting any legal action against the state, and modifies the duty of the Attorney General to provide representation in such cases.</li></ul>
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**Hearing Date:** 1/12/17

**Staff:** Cece Clynch (786-7195).

**Background:**

Separately Elected State Executive Officers.

Washington has several separately elected state executive officers. The state Constitution specifies that the executive department shall consist of a Governor, Lieutenant Governor, Secretary of State (SOS), Treasurer, Auditor, Attorney General (AG), Superintendent of Public Instruction (SPI), and Commissioner of Public Lands. The office of the Insurance Commissioner is created in statute, which specifies that the Insurance Commissioner shall be elected at the time and in the manner that other state officers are elected.

The Constitution provides that the supreme executive power of the state shall be vested in the Governor. Duties of the Governor include: requiring information from the officers of the state with respect to the duties of their offices; seeing that the laws are faithfully executed; communicating messages to the Legislature; convening the Legislature on extraordinary occasions; acting as commander-in-chief; and, exercising veto power.

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*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.*

Duties of the state executive officers, other than the Governor, are outlined in the Constitution as follows:

- The Lieutenant Governor shall be the presiding officer of the Senate, and shall discharge such other duties as prescribed by law.
- The SOS shall keep certain records and perform such other duties as assigned by law.
- The Treasurer shall perform such duties as prescribed by law.
- The Auditor is the auditor of public accounts and shall have such powers and perform such duties in connection therewith as may be prescribed by law.
- The AG shall be the legal adviser of the state officers, and shall perform such other duties as may be prescribed by law.
- The SPI shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law.
- The Commissioner of Public Lands shall perform such duties as the Legislature may direct.

#### Attorney General Required to Represent the State and State Officials.

The AG is required to represent the state and all officials, departments, boards, commissions, and agencies of the state in the courts, and before all administrative tribunals or bodies of any nature, in all legal or quasi legal matters, hearings, or proceedings, and advise all officials, departments, boards, commissions, or agencies of the state in all such matters, except those declared by law to be the duty of a county prosecuting attorney. A separate statute provides that, with respect to the Commissioner of Public Lands, in particular, it is the duty of the AG to institute, or defend, any action or proceeding to which the state, or the Commissioner is or may be a party, or in which the interests of the state are involved in any court or tribunal when so requested by the Commissioner.

State officers, directors, administrative agencies, boards, and commissions, other than the AG, are generally prohibited from employing, appointing, or retaining in employment any attorney or other person to act as attorney in any legal capacity in the exercise of any of the powers or performance of any of the duties specified by law to be performed by the AG, except where it is provided that the duty belongs to a judge or a prosecuting attorney to employ or appoint such persons. This general prohibition does not apply to a few entities, such as the Commission on Judicial Conduct and the University of Washington.

In some circumstances, the AG hires private attorneys to act as special assistant attorneys general. These are private attorneys employed on a less than full-time basis to transact business of a legal or quasi legal nature for the state.

#### **Summary of Bill:**

The Lieutenant Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Instruction, Commissioner of Public Lands, and Insurance Commissioner may not institute or prosecute any legal action against the state without first having sought and obtained the prior written approval of the Governor. Upon request, the Governor is required to consult with the state official seeking such approval. If the action is approved by the Governor, the Attorney General (AG) must institute and prosecute the action through appointment of a special assistant attorney general.

The requirement that the AG represent the state and all officials, departments, boards, commissions, and agencies of the state in the courts, and before all administrative tribunals or bodies of any nature, in legal and quasi legal matters does not apply to any action for which the Governor's approval must be sought.

**Appropriation:** None.

**Fiscal Note:** Requested on 1/10/17.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.