

HOUSE BILL REPORT

HB 2161

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to the general powers and duties of the attorney general's office.

Brief Description: Concerning the general powers and duties of the attorney general's office.

Sponsors: Representatives Farivar, Berry, Ryu, Leavitt, Reed, Mena, Zahn, Street, Scott, Gregerson, Ormsby, Reeves, Thai, Macri, Fosse, Salahuddin, Pollet and Timmons; by request of Attorney General.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/20/26, 1/30/26 [DPS].

Brief Summary of Substitute Bill

- Authorizes the Attorney General to issue civil investigative demands for documents, oral testimony, and answers to interrogatories when investigating possible violations of the United States Constitution, the Washington Constitution, and other specified laws.
- Provides standards for required contents of a demand and how it must be served; the process for production of documents and information; the confidentiality of disclosed documents, testimony, and information; and court action for contesting, modifying, or enforcing a demand.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Taylor, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Salahuddin and Thai.

Minority Report: Do not pass. Signed by 5 members: Representatives Walsh, Ranking

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Member; Abell, Assistant Ranking Minority Member; Burnett, Graham and Jacobsen.

Staff: Edie Adams (786-7180).

Background:

The Attorney General has broad authority under state law to investigate and enforce violation of civil laws. Among other powers and duties, state law directs the Attorney General to appear for and represent the state before the Supreme Court or the court of appeals in all cases in which the state is interested. The Washington Supreme Court has interpreted this statutory provision as granting the Attorney General discretionary authority to act in any court on a matter of public concern, provided that there is a cognizable common law or statutory cause of action.

The Attorney General has authority to issue civil investigative demands when investigating potential violations of certain statutes. A civil investigative demand allows the Attorney General to obtain discovery of material information relevant to an investigation prior to the commencement of a civil action. A civil investigative demand may be issued to require persons and entities to produce documents, permit inspection and copying of records, answer written interrogatories, and give oral testimony.

The Attorney General's authority to issue civil investigative demands currently applies when investigating potential violations of the Consumer Protection Act, the Medicaid Fraud False Claims Act, the Service Members' Civil Relief Act, and laws addressing rent stabilization, firearm industry controls, charitable corporations, performing rights societies, and criminal records information in hiring.

Summary of Substitute Bill:

The Attorney General is authorized to issue written civil investigative demands when investigating possible violations of:

- the United State Constitution;
- the Washington Constitution;
- the Washington Law Against Discrimination;
- the City and County Jails Act;
- laws addressing permissible use of force by peace officers, peace officer tactics and use of equipment, and law enforcement agency restrictions relating to federal immigration enforcement; and
- laws addressing wage requirements and labor standards, including prevailing wages, minimum wage, and overtime.

When the Attorney General believes that a person or entity may be in possession of tangible

documents or have knowledge of any information relevant to the subject matter of an investigation, the Attorney General may issue a civil investigative demand, prior to institution of a civil suit, requiring the person or entity to produce the documentary material, permit inspection and copying, answer written interrogatories, or give oral testimony relating to the documentary material or information. Authority to issue a civil investigative demand does not apply to criminal prosecutions.

Contents.

A civil investigative demand must: indicate the general subject matter of the investigation and statutes governing the alleged violation; describe the documentary material to be produced with reasonable specificity; specify the date for compliance with the demand; and identify the members of the Attorney General's staff who will receive the documents and information or conduct the examination for oral testimony.

A civil investigative demand must not contain any requirement that would be unreasonable or improper if contained in a discovery request or subpoena duces tecum; or require the disclosure of any documentary material that would be privileged or would not be required by a subpoena duces tecum.

Service.

Service of a civil investigative demand may be made by: delivery to the person or to an entity's officer or managing agent; delivery to the person or entity's principal place of business in this state; or mailing by registered or certified mail addressed to the person or entity at the person's or entity's principal office or place of business.

Production.

Documentary material must be produced for inspection and copying during normal business hours at the principal office or place of business of the person or entity served, or as otherwise agreed. Written interrogatories must be answered, and oral testimony taken, in the same manner as provided in the civil rules for superior court.

Disclosure.

Documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand may not be disclosed to anyone other than an authorized employee of the Attorney General without consent of the person or entity subject to the demand, except:

- by court order for good cause shown;
- to the person or entity subject to the demand, or an authorized representative, subject to reasonable terms and conditions imposed by the Attorney General; or
- to an official of the state, federal government, or another state who is charged with the enforcement of federal or state laws, if the official agrees in writing that the information may not be disclosed to anyone other than that official or authorized employees. Disclosed material may not be used in a criminal prosecution.

A person or entity may not disclose the existence or content of a demand that, pursuant to court approval, specifically prohibits such disclosure, except for disclosure to counsel for the recipient of the demand or unless otherwise required by law. A violation is a misdemeanor offense. This prohibition does not apply to specified financial institutions.

The Attorney General may use copies of disclosed documents and information in the enforcement of federal or state law, including presentation before any court. Documents and information that contain trade secrets may not be presented except with court approval and prior notice to the person or entity that produced the documents or information.

Court Proceedings.

A person or entity served with a civil investigative demand may file a petition to extend the time to respond; modify or set aside the demand; or require the Attorney General to comply with obligations relating to the demand. The petition and any other petition in connection with a demand may be filed in the superior court for Thurston County or in the county where the parties reside.

If a person or entity fails to comply with a civil investigative demand, the Attorney General may file a petition for a court order to enforce the demand. The petition may be filed in the superior court of the county in which the person or entity resides, is found, or transacts business. In court proceedings relating to civil investigative demands, the court has jurisdiction to impose sanctions as provided for in the civil rules for superior court with respect to discovery motions.

Substitute Bill Compared to Original Bill:

The substitute bill provides that: civil investigative demands may not be used in criminal investigations; a demand must not be issued for improper purposes that are inconsistent with the Rules of Professional Conduct; and an action to modify or set aside a demand must be brought within 30 days (rather than 20 days) after the demand is served.

Appropriation: None.

Fiscal Note: Available.

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) The legislation is about giving the Attorney General the tools it needs to investigate civil violations in important areas of public interest. A core function of the Attorney General's Office is enforcing the civil laws. The Attorney General doesn't have

the same tools to investigate possible violations of the law against discrimination or wage theft that it has in other contexts. As a result, these investigations can take much longer and be more costly. The bill does not give the Attorney General any new authority to enforce laws. It just allows the Attorney General to conduct more effective and efficient investigations. Wage theft is the largest form of theft in this country and typically happens on a systematic basis. Workers often have limited ability to seek redress. The process is lengthy and arduous, and remedies are largely individualized and do not address widespread abuses. The bill will provide an important tool to speed up those investigations to ensure that workers are able to get remedies quickly.

(Opposed) The bill creates an intrusive process that allows the Attorney General to issue investigative demands without first filing a lawsuit and without any standard of proof or reasonable basis requirement. This bill will make the Attorney General the watchdog of Washington law enforcement. There is no requirement that the Attorney General first work with a law enforcement agency to address identified concerns, creating an antagonistic environment rather than a cooperative one. The bill also contains things that are likely unconstitutional, including the provision allowing the Attorney General to prevent a person from talking about a demand with anyone other than their attorney. The bill purports to prevent use in criminal proceedings, but in actuality it does not. The bill is overbroad, unconstitutional, and does not protect the rights of the people who would be impacted.

(Other) The bill will turn the Attorney General's Office into a powerful investigative agency with statewide authority. Cities are concerned that the bill provides authority to investigate local public safety agencies over policing policies, resources, and operations. Allowing the Attorney General to investigate individual violations, rather than patterns of conduct, could have potentially massive impacts on a city's resources in trying to respond to all the potential investigations. There is concern about the bill's impact on retail businesses, 90 percent of which are small business owners. Guardrails are needed to protect private employee information and proprietary business information. This authority should not apply in criminal investigations. The scope of oral testimony should be limited and more time is needed for a business to examine the issue and decide whether or not to appeal.

Persons Testifying: (In support) Elaine Simons, Washington Coalition for Police Accountability; Patricio Marquez, Attorney General's Office; Samantha Grad, Teamsters 117; Jeremiah Miller, Fair Work Center and Working Washington.

(Opposed) Ryan Lufkin, WACOPS—Washington Council of Police and Sheriffs; and James McMahan, WA Assoc Sheriffs and Police Chiefs.

(Other) Derrick Nunnally, Association of Washington Cities; and Rose Gundersen, WA Retail Association.

Persons Signed In To Testify But Not Testifying: Brad Banks, Washington State Association of Counties (WSAC).