

# HOUSE BILL REPORT

## SB 5152

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### As Reported By House Committee On:

Commerce & Labor

**Title:** An act relating to clarifying who are appointed personnel for the purpose of public employees' collective bargaining.

**Brief Description:** Clarifying who are appointed personnel for the purpose of public employees' collective bargaining.

**Sponsors:** Senators Kline, Fairley, Costa, Gardner and Goings.

### Brief History:

#### Committee Activity:

Commerce & Labor: 3/31/99, 4/2/99 [DPA].

<p style="text-align: center;"><b>Brief Summary of Bill</b> (As Amended by House Committee)</p>
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- Alters which employees are "public employees" for the purpose of public sector collective bargaining.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended. Signed by 6 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; Wood, Democratic Vice Chair; Hurst; Lisk and McIntire.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives B. Chandler, Republican Vice Chair and McMorris.

**Staff:** Douglas Ruth (786-7134).

### Background:

The statutes governing public sector collective bargaining cover all public employees except those specifically exempted by statute. Employees who are appointed to office pursuant to statute, ordinance, or resolution for a specified term of office are one

group of employees that are exempt from the requirements and privileges of the collective bargaining statute.

Deputy prosecutors are an example of employees exempt under this category. Deputy prosecutors are currently represented by collective bargaining units certified by the Public Employment Relations Commission (PERC) in six counties in Washington. However, the Washington State Supreme Court ruled 5-4 last year in a case arising in Spokane County that deputy prosecutors are appointed personnel and at-will employees who do not meet the definition of a public employee.

Deputy auditors and deputy assessors are also employees that may be exempt from collective bargaining as appointed officers.

Deputies, administrative assistants and secretaries that have a confidential relationship with an executive head of a public employer, or an appointed or elected official are also exempt from the collective bargaining statutes.

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

For purposes of collective bargaining, the definition of public employee is expanded. The exclusion for "appointed persons" is limited to persons appointed as a member of a multi member board, commission, or committee. Employees appointed to bodies other than boards, commissions, or committees, as well as their confidential deputies, administrative assistants and secretaries are now subject to, and receive the protections of, the collective bargaining statutes.

This expansion does not alter the at-will status of deputy prosecutors, and the limitation of their appointment to a term coinciding with the county prosecutor's term.

Court commissioners and court magistrates are exempted from the definition of public employees, and thus the collective bargaining statutes.

**Amended Bill Compared to Original Bill:** A definition of "confidential employee" was eliminated from the original bill and a modified version of the original "confidential employee" exemption was retained. The original "confidential employee" exemption was modified to apply only to confidential deputies, administrative assistants or secretaries of executive heads of public employers, elected officials and officials appointed to a multi member board, commission, or committee.

Court commissioners and court magistrates were explicitly exempted from the definition of public employee.

The amended bill clarifies that the changes in the definition of public employee does not alter the at-will status of deputy prosecutors, and the limitation of their appointment to a term coinciding with the county prosecutor's term.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The supreme court's decision had the effect of barring collective bargaining by deputy county prosecutors. This bill would reverse this decision and restore collective bargaining privileges to these deputy prosecutors. This promotes the goal of attracting the best attorneys to deputy prosecutor offices. The bill is intended to only change the status of deputy prosecutors, not other state employees. By their decision, the supreme court placed the issue of whether deputy prosecutors should be allowed to collectively bargain in the hands of the legislature. This bill insures that they retain that right. Collective bargaining insures that deputies have good working conditions. This is important for recruiting, since deputy prosecutors do not earn salaries comparable to private attorneys. In addition, without collective bargaining, the parties are forced to go to court with their labor disputes. This is costly and time consuming. As public employees, deputies may use the adjudication services of the PERC which speeds up resolutions. County prosecutors do not have control over their budgets. These are set by county commissioners. Without collective bargaining, deputy prosecutors have very little influence over their compensation. Deputy prosecutors have been able to collectively bargain since 1992.

(With concerns) Currently, county prosecutors are responsible for the acts of their deputies. According to statute, the county prosecutors may hire deputies and fire them at-will. Deputies make policy by accepting some cases and dismissing others. The bill should not change this status. It is important for prosecutors to continue to have control over their deputies. The bill should be amended to clarify that it only is intended to allow deputies to continue to collectively bargain if they so choose. If amended, the bill would provide stability in counties where deputies have collectively bargained and avert future law suits. The bill's affect may be much broader than just making deputy prosecutors public employees. Court commissioners, court magistrates, deputy department heads, administrators may be included. The bill needs to be narrowed to insure that many classes of employees beyond deputy prosecutors are not made subject to collective bargaining statutes. The definition of "confidential employee" that is added in the bill is too expansive. It may bring city deputies and

administrative assistants who do not assist with labor policy within the definition of public employee.

**Testimony Against:** None.

**Testified:** Pat Thompson, County and City Employees; Tom McBride, Washington Association of Prosecuting Attorneys; Mike Ryherd, Teamsters; Debby Kurbitc, Spokane County Prosecutor's Office; Laura Farris, Washington Council of County and Municipal Prosecuting Attorneys; John Sheeran, Washington Council of County and Municipal Prosecuting Attorneys; Judge Robert McBeth, District and Municipal Court Judges Association; Jim Justin, Association of Washington Cities; and Marvin Schurke, Public Employees Relations Commission.