

# HOUSE BILL REPORT

## ESB 5394

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to judges pro tempore.

**Brief Description:** Revising provisions concerning the use of judges pro tempore.

**Sponsors:** By Senators Kline, Long and Constantine; by request of Administrator for the Courts.

**Brief History:**

**Committee Activity:**

Judiciary: 3/27/01, 3/30/01 [DPA].

**Brief Summary of Engrossed Bill**  
**(As Amended by House Committee)**

- Allows the appointment of a judge pro tempore to hear a case in the superior court, without agreement by the parties, if the judge pro tempore is a sitting elected judge and is appointed pursuant to supreme court rule.
- Requires that the supreme court rule consider the judges' experience and provide for the right to a change of judge pro tempore.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 10 members: Representatives Carrell, Republican Co-Chair; Lantz, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Boldt, Casada, Dickerson, Esser, Lovick and McDermott.

**Staff:** Trudes Hutcheson (786-7384).

**Background:**

The state constitution and statutes authorize the appointment of judges pro tempore to temporarily serve in the courts for various reasons, such as in the absence of a regular judge or to deal with excessive caseloads.

Article IV, Section 7, of the state constitution allows the appointment of a judge pro tempore to hear a case in superior court if: (1) the person appointed is a member of the bar; (2) the appointment is agreed upon by the parties or their attorneys; (3) the appointment is approved by the court; and (4) the appointee takes the oath provided by statute.

Consent from the parties is not necessary if a previously elected judge of the superior court retires while there is a pending case in which that judge made rulings and the judge hears that pending case as a judge pro tempore.

A party has a statutory right to obtain a change of judge in superior court by filing an affidavit of prejudice. The party has a right to a change of judge providing the motion is timely and the judge has not yet made any discretionary rulings in the case. Generally, a party is entitled to only one affidavit of prejudice for a change of judge.

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**Summary of Amended Bill:**

A case in superior court may be tried by a judge pro tempore without the parties' agreement if the judge pro tempore is a sitting elected judge and appointed pursuant to supreme court rule.

The supreme court rule must require assignments of judges pro tempore based on the judges' experience. The rule must also provide for the right, exercisable once during a case, to a change of judge pro tempore. The right is in addition to the right the parties have to file an affidavit of prejudice.

The act takes effect January 1, 2002, if the proposed amendment to Article IV, Section 7, of the state constitution, relating to qualifications for judges pro tempore, is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, the act is void in its entirety.

**Amended Bill Compared to Engrossed Bill:**

The amended bill requires the supreme court rule to consider the judges' experience and to provide for the right, exercisable once during a case, for the change of a judge pro tempore. The amended bill clarifies that the right to a change of judge pro tempore is in addition to the parties' right to file an affidavit of prejudice.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date of Amended Bill:** The bill takes effect on January 1, 2002, if the proposed constitutional amendment is ratified at the next general election.

**Testimony For:** The courts must be able to substitute judges in superior court and get help from judges in district courts. Allowing pro tem judges would allow flexibility to the judiciary to use assets the judiciary already has within the system. Courts are so backed up that providing defendants with their right to a speedy trial has become an issue. This bill does not add new judges or cost the taxpayers any money. It makes the courts more efficient and helps ease the overburdened workload in superior courts. Litigants in civil actions have to wait a long time to get their cases heard, and that is expensive for the parties. This bill will encourage cooperation between the judiciary and the bar to ensure that the lists of pro tem judges include high quality judges.

**Testimony Against:** It is inappropriate to delegate so much authority to the court by supreme court rule. Using pro tem judges who come from different districts than the parties goes against the notion that parties appear before judges who the parties have elected. It is difficult enough to remove bad judges that sit on the court now.

**Testified:** (In support) Senator Kline, prime sponsor; Chief Justice Gerry Alexander, Washington State Supreme Court; Jan Eric Peterson, Washington State Bar Association; and Larry Shannon, Washington State Trial Lawyers Association.

(Opposed) Lawrence Hutt; and Mark Bennett.