

SENATE BILL REPORT

SB 5240

As of January 28, 2009

Title: An act relating to addressing the enforceability of court rules that create new nonconstitutionally mandated programs, or increase levels of service under existing programs, on any political subdivision of the state.

Brief Description: Addressing the enforceability of court rules that create new nonconstitutionally mandated programs, or increase levels of service under existing programs, on any political subdivision of the state.

Sponsors: Senators Hargrove and McCaslin.

Brief History:

Committee Activity: Judiciary: 1/27/09.

SENATE COMMITTEE ON JUDICIARY

Staff: Lidia Mori (786-7755)

Background: The Supreme Court has the authority to dictate the forms of writs and all other legal process, including the mode and manner of filing pleadings and proceedings, giving notice, and service of orders. In addition, the Supreme Court has the power to regulate and prescribe by rule the practice and procedure to be used in all suits, actions, appeals, and proceedings of any nature by the Supreme Court, superior courts, and district courts of the state.

Summary of Bill: After July 1, 2008, any court rule enacted by the Supreme Court that creates a new program not mandated by the constitution or that increases levels of service under existing programs on any subdivision of the state is not enforceable unless there is a specific appropriation made to cover the costs.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

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.

Staff Summary of Public Testimony: PRO: This bill speaks to a court rule that is not constitutionally mandated. It doesn't restrict the procedural regulation by the courts. Substantive rights are the final say of the Legislature. There is some tension drawing the line between what is procedural and what is substantive. The bill seeks to deal solely with court rules that cross the line into substantive matters. The language in the bill "that increases the level of service" is taken from the initiative and there may be a need to tighten that language. This bill does look at separation of powers; it is believed that there has been an intrusion on the legislative budget authority, whether that be at the state level or at the county level. The Supreme Court has been our ally in court rules that have come out of the Washington State Bar Association (WSBA) and in deciding not to adopt certain rules. It is a complaint directed towards the WSBA. They are not respecting the line between procedural and substantive. The WSBA doesn't do fiscal notes; there is no fiscal review process.

The Constitution also talks about no expenditure without appropriation and that's as important to consider as separation of power. The court will decide what's "not constitutionally mandated" and we need to pay attention to the line between substantive and procedural policy. Language could be changed in the bill to give taxing authority or something broader than the appropriation language. If you're creating something new that's substantive and costs money, it should be done by the Legislature. Policy decisions should be tied to the budget. We have no concern with respect to constitutionally-mandated programs. This legislation is only concerned with the nonconstitutionally mandated ones. Counties have to have the ability to make choices in the face of finite resources, this bill preserves that ability. If these things aren't procedural and they're not constitutionally required, they're policy decisions and policy decisions have to be tied to budget.

While it is true that the public is able to come and testify about a court rule, it is not a particularly open process since most of the work and discussion happens in committees and the only public testimony is actually only allowed at the governing board of the WSBA. The concern is that the Coalition of Sexual Assault Programs is increasing the amount of time that is necessary to track and respond to court rules. We are glad this discussion is taking place and hope it continues.

CON: The bill is an inappropriate infringement on court's inherent power to make rules that govern procedure and practice. Procedural rules are ones that pertain to the operation of the court, by which substantive rights and remedies are effected. Supreme Court in rule 9 has defined rule making authority. Essentially this bill would provide almost a preemptive muzzle on proposals from interest groups to the court. The decision as to whether something is procedural or substantive will be up to the court. This bill spills over into the procedural area that is the domain of the court.

Persons Testifying: PRO: Tom McBride, Washington Association of Prosecuting Attorneys; Brian Enslow, Washington State Association of Counties; Lonnie Johns Brown, Washington Coalition of Sexual Assault Programs.

CON: Judge Marilyn Paja, Board for Judicial Administration.