

SENATE BILL REPORT

SB 6286

As of January 31, 2012

Title: An act relating to attorney general powers.

Brief Description: Revising the statutory powers of the attorney general.

Sponsors: Senators Kline, Keiser, Kohl-Welles and Fraser.

Brief History:

Committee Activity: Judiciary: 1/31/12.

SENATE COMMITTEE ON JUDICIARY

Staff: Aldo Melchiori (786-7439)

Background: The Attorney General (AG) must:

- appear for and represent the state in all cases in which the state is interested;
- institute and prosecute all actions and proceedings for, or for the use of the state, which may be necessary in the execution of the duties of any state officer;
- defend all actions and proceedings against any state officer or employee acting in his or her official capacity;
- consult with and advise prosecuting attorneys in matters relating to the duties of their office, and when the interests of the state require, attend the trial of any person accused of a crime, and assist in the prosecution;
- consult with and advise the Governor, members of the Legislature, and other state officers, and when requested, give written opinions upon all constitutional or legal questions relating to their duties;
- prepare proper drafts of contracts and other instruments relating to subjects in which the state is interested;
- give written opinions, when requested by either branch of the Legislature or legislative committees, upon constitutional or legal questions; and
- enforce the proper application of funds appropriated for the public institutions of the state, and prosecute corporations for failure or refusal to make the reports required by law.

In addition, the AG must represent the state and all officials, departments, boards, commissions, and agencies in the courts, before all administrative tribunals or bodies, in all legal or quasi legal matters, hearings, or proceedings, and advise all officials, departments,

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boards, commissions, or agencies in all these matters, except those declared by law to be the duty of the prosecuting attorney of any county.

The Washington Supreme Court held that the AG was required to represent the Commissioner of Public Lands as requested by the commissioner, in a land condemnation case, and that the AG had no discretion to deny the Commissioner legal representation. In another decision released on the same day, the Washington Supreme Court held that the AG did not have to withdraw from a multistate federal lawsuit challenging the constitutionality of federal health care reform legislation. The AG had the general statutory authority to appear for and represent the state in all cases in which the state was interested. The Court stated that it is for the people and their elected representatives to define the role of the AG.

Summary of Bill: It is clarified that the AG, having only those powers granted by statute, must appear for and represent the state in all cases in which the state is interested when a statute gives the AG authority over the subject matter or when requested to do so by a state officer with authority over the subject matter. The AG must institute all actions and proceedings necessary in the execution of the duties of any other state officer upon that officer's request.

When the AG is granted authority of the subject matter or a state officer with authority over the subject matter requests, the AG must provide representation, but may decline to do so if the matter is not well grounded in fact, not warranted under existing law or a good faith argument for a change in law, or for an improper purpose.

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.

Staff Summary of Public Testimony: PRO: This is the year to do this bill because there will be a new AG after the elections. It is a basic principle that an attorney represents a client and that the client has to authorize a lawsuit in their name. When a client, in this case a state officer, wants to appeal a case, the AG should have a duty to represent them.

CON: The AG must conduct their representation with the interests of the entire state in mind. It is within the purview of the Legislature to establish the AG's powers, but it would be bad policy to establish the limitations in this bill. The bill would transfer authority to more than 200 separate agencies and officials who are not directly answerable to the people and whose program interests are limited.

Persons Testifying: PRO: Senator Kline, prime sponsor.

CON: Maureen Hart, Office of the AG; Reagan Dunn, citizen.