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SENATE BILL 6159

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State of Washington

64th Legislature

2016 Regular Session

By Senators Dammeier, Miloscia, Becker, Roach, Benton, and Darneille

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1 AN ACT Relating to the appointment of independent counsel by  
2 counties to serve the public interest; amending RCW 36.27.040,  
3 36.32.200, 43.10.030, and 43.10.232; adding a new section to chapter  
4 43.10 RCW; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 36.27.040 and 2009 c 549 s 4047 are each amended to  
7 read as follows:

8 Except as provided in section 2 of this act, the prosecuting  
9 attorney may appoint one or more deputies who shall have the same  
10 power in all respects as their principal. Each appointment shall be  
11 in writing, signed by the prosecuting attorney, and filed in the  
12 county auditor's office. Each deputy thus appointed shall have the  
13 same qualifications required of the prosecuting attorney, except that  
14 such deputy need not be a resident of the county in which he or she  
15 serves. The prosecuting attorney may appoint one or more special  
16 deputy prosecuting attorneys upon a contract or fee basis whose  
17 authority shall be limited to the purposes stated in the writing  
18 signed by the prosecuting attorney and filed in the county auditor's  
19 office. Such special deputy prosecuting attorney shall be admitted to  
20 practice as an attorney before the courts of this state but need not  
21 be a resident of the county in which he or she serves and shall not

1 be under the legal disabilities attendant upon prosecuting attorneys  
2 or their deputies except to avoid any conflict of interest with the  
3 purpose for which he or she has been engaged by the prosecuting  
4 attorney. The prosecuting attorney shall be responsible for the acts  
5 of his or her deputies and may revoke appointments at will.

6 Two or more prosecuting attorneys may agree that one or more  
7 deputies for any one of them may serve temporarily as deputy for any  
8 other of them on terms respecting compensation which are acceptable  
9 to said prosecuting attorneys. Any such deputy thus serving shall  
10 have the same power in all respects as if he or she were serving  
11 permanently.

12 The provisions of chapter 39.34 RCW shall not apply to such  
13 agreements.

14 The provisions of RCW 41.56.030(~~((+2))~~) (11) shall not be  
15 interpreted to permit a prosecuting attorney to alter the at-will  
16 relationship established between the prosecuting attorney and his or  
17 her appointed deputies by this section for a period of time exceeding  
18 his or her term of office. Neither shall the provisions of RCW  
19 41.56.030(~~((+2))~~) (11) require a prosecuting attorney to alter the at-  
20 will relationship established by this section.

21 **Sec. 2.** RCW 36.32.200 and 1983 c 129 s 1 are each amended to  
22 read as follows:

23 (1) Except as provided in subsection (2) of this section, it  
24 shall be unlawful for a county legislative authority to employ or  
25 contract with any attorney or counsel to perform any duty which any  
26 prosecuting attorney is authorized or required by law to perform,  
27 unless the contract of employment of such attorney or counsel has  
28 been first reduced to writing and approved by the presiding superior  
29 court judge of the county in writing endorsed thereon. This section  
30 shall not prohibit the appointment of deputy prosecuting attorneys in  
31 the manner provided by law.

32 Any contract written pursuant to this (~~section~~) subsection  
33 shall be limited to two years in duration.

34 (2) If a county prosecuting attorney is accused of criminal or  
35 civil wrongdoing or potential or actual ethical violations, a county  
36 legislative authority may request the attorney general to determine  
37 whether appointment of an outside attorney or counsel may be  
38 appropriate as provided in section 5 of this act. If the attorney  
39 general concludes that an outside attorney or counsel would best

1 represent the interests of the public in the matter, the county  
2 legislative authority may contract with the attorney general to  
3 provide representation or contract with any attorney or counsel to  
4 provide representation limited to the matter at hand. Prior to any  
5 representation by an attorney or counsel under this section, the  
6 attorney or counsel and the county legislative authority must reach  
7 an agreement regarding the payment of all costs, including expert  
8 witness fees, associated with the representation.

9       **Sec. 3.** RCW 43.10.030 and 2009 c 549 s 5048 are each amended to  
10 read as follows:

11       The attorney general shall:

12       (1) Appear for and represent the state before the supreme court  
13 or the court of appeals in all cases in which the state is  
14 interested;

15       (2) Institute and prosecute all actions and proceedings for, or  
16 for the use of the state, which may be necessary in the execution of  
17 the duties of any state officer;

18       (3) Defend all actions and proceedings against any state officer  
19 or employee acting in his or her official capacity, in any of the  
20 courts of this state or the United States;

21       (4) Consult with and advise the several prosecuting attorneys in  
22 matters relating to the duties of their office, and when the  
23 interests of the state require, he or she shall attend the trial of  
24 any person accused of a crime, and assist in the prosecution;

25       (5) Consult with and advise the governor, members of the  
26 legislature, and other state officers, and when requested, give  
27 written opinions upon all constitutional or legal questions relating  
28 to the duties of such officers;

29       (6) Prepare proper drafts of contracts and other instruments  
30 relating to subjects in which the state is interested;

31       (7) Give written opinions, when requested by either branch of the  
32 legislature, or any committee thereof, upon constitutional or legal  
33 questions;

34       (8) Enforce the proper application of funds appropriated for the  
35 public institutions of the state, and prosecute corporations for  
36 failure or refusal to make the reports required by law;

37       (9) Consult and give a written opinion, when requested by a  
38 county legislative authority as provided in section 2 of this act,  
39 regarding the need for an outside attorney or counsel in cases where

1 the county prosecuting attorney is accused of criminal or civil  
2 wrongdoing or potential or actual ethical violations.

3 (10) Keep in proper books a record of all cases prosecuted or  
4 defended by him or her, on behalf of the state or its officers, and  
5 of all proceedings had in relation thereto, and deliver the same to  
6 his or her successor in office;

7 ~~((10))~~ (11) Keep books in which he or she shall record all the  
8 official opinions given by him or her during his or her term of  
9 office, and deliver the same to his or her successor in office;

10 ~~((11))~~ (12) Pay into the state treasury all moneys received by  
11 him or her for the use of the state.

12 **Sec. 4.** RCW 43.10.232 and 1986 c 257 s 16 are each amended to  
13 read as follows:

14 (1) The attorney general shall have concurrent authority and  
15 power with the prosecuting attorneys to investigate crimes and  
16 initiate and conduct prosecutions upon the request of or with the  
17 concurrence of any of the following:

18 (a) The county prosecuting attorney of the jurisdiction in which  
19 the offense has occurred;

20 (b) The governor of the state of Washington; ~~((or))~~

21 (c) A majority of the committee charged with the oversight of the  
22 organized crime intelligence unit; or

23 (d) A county legislative authority as provided in section 2 of  
24 this act.

25 (2) Such request or concurrence shall be communicated in writing  
26 to the attorney general.

27 (3) Prior to any prosecution by the attorney general under this  
28 section, the attorney general and the county in which the offense  
29 occurred shall reach an agreement regarding the payment of all costs,  
30 including expert witness fees, and defense attorneys' fees associated  
31 with any such prosecution.

32 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.10  
33 RCW to read as follows:

34 At the request of a county legislative authority as provided in  
35 section 2 of this act, the attorney general must give a written  
36 opinion regarding the need for an outside attorney or counsel in  
37 cases where the county prosecuting attorney is accused of criminal or

1 civil wrongdoing or potential or actual ethical violations. The  
2 attorney general must:

3 (1) Conduct an initial investigation including any factual or  
4 legal research deemed appropriate by the attorney general to better  
5 inform the opinion; and

6 (2) Determine whether the public interest would best be served by  
7 appointing an outside attorney or counsel.

8 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of  
10 the state government and its existing public institutions, and takes  
11 effect immediately.

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