

**SENATE BILL REPORT**

**SB 5289**

**AS REPORTED BY COMMITTEE ON WAYS & MEANS, MARCH 11, 1991**

**Brief Description:** Requiring the state to pay attorneys' fees, costs, and expenses when the state is not the prevailing party.

**SPONSORS:** Senators Rasmussen, Nelson, Erwin, Hayner, Thorsness, Hansen, Oke, Craswell and McCaslin.

**SENATE COMMITTEE ON LAW & JUSTICE**

**Majority Report:** Do pass.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, Hayner, L. Kreidler, Madsen, Rasmussen, and A. Smith.

**Staff:** Susan Carlson (786-7418)

**Hearing Dates:** February 12, 1991; February 15, 1991

**SENATE COMMITTEE ON WAYS & MEANS**

**Majority Report:** That Substitute Senate Bill No. 5289 be substituted therefor, and the substitute bill do pass.

Signed by Senators McDonald, Chairman; Craswell, Vice Chairman; Bailey, Bauer, Bluechel, Cantu, Gaspard, Hayner, Johnson, L. Kreidler, Metcalf, Newhouse, Niemi, Saling, L. Smith, Talmadge, West, Williams, and Wojahn.

**Staff:** Steve Jones (786-7715)

**Hearing Dates:** March 11, 1991

**BACKGROUND:**

As a general rule, each party to a civil action is responsible for his or her own attorneys' fees and expenses.

In litigation with citizens and private entities, the state of Washington and its political subdivisions have relatively vast resources available to pursue and defend their position. There is a concern that this may discourage the pursuit or defense of legal rights by citizens or private entities of the state.

It is suggested that attorneys' fees, costs, and expenses be awarded to a private party when the state or political subdivision is not the prevailing party in the litigation.

**SUMMARY:**

In all civil cases, except tort actions, in which the state of Washington or a political subdivision is a party and does not prevail, the state or subdivision shall be liable for payment of reasonable attorneys' fees, costs and expenses to the prevailing party. The act applies to actions commenced or pending on or after January 1, 1992.

**EFFECT OF PROPOSED SUBSTITUTE:**

Local governments are excluded from the entities against which fees and costs may be assessed. In order to award the fees and costs, the court must find that the state's position in the case was not substantially justified and that the award would not be unjust. The only parties entitled to an award of fees and expenses are: (1) individuals with a net worth under \$2 million; (2) businesses with a net worth under \$7 million; (3) charitable organization; and (4) agricultural cooperatives.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** available

**TESTIMONY FOR (Law & Justice):**

The bill would assist citizens in pursuing actions against the state.

**TESTIMONY AGAINST (Law & Justice):** None

**TESTIFIED (Law & Justice):** PRO: Gene Krauss, Independent Business Association; Gary Smith, Independent Business Association; Otto Jensen, citizen

**TESTIMONY FOR (Ways & Means):**

The bill will provide a "level playing field" when individuals and small business face state agencies in court. State government has significantly greater legal resources, which gives government an unfair advantage. Many states and the federal government have similar laws, which have operated successfully.

**TESTIMONY AGAINST (Ways & Means):** None

**TESTIFIED (Ways & Means):** PRO: Senator A. L. "Slim" Rasmussen; Gene Krauss, Independent Business Association; Gary Smith, Independent Business Association; Otto Jensen, citizen