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HOUSE BILL 1837

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives Casada, Grant, May, Ludwig, Horn, Rayburn, Bray, Schmidt, Winsley, Betrozoff, Miller, Chandler, Hochstatter, Paris, Beck, Prince, Franklin, Bowman, Edmondson, P. Johnson, Hargrove, Forner, Silver, Tate, Padden, Vance, Holland, Ballard, Van Luven, Wilson, Roland, Ferguson, Kremen, Mielke, Broback, Rasmussen, Orr, Fuhrman, Brough, Wineberry, Wynne, Sheldon and Moyer.

Read first time February 12, 1991.      Referred to Committee on Judiciary\Appropriations.

1            AN ACT Relating to attorneys' fees, costs, and expenses awarded  
2 against the state; adding a new section to chapter 4.84 RCW; and  
3 creating new sections.

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

5            NEW SECTION.    **Sec. 1.**            The legislature finds that certain  
6 individuals, smaller partnerships, smaller corporations, and other  
7 organizations may be deterred from seeking review of or defending  
8 against unreasonable agency action because of the expense involved in  
9 securing the vindication of their rights in administrative proceedings.  
10 The legislature further finds that because of the greater resources of  
11 the state of Washington, individuals, smaller partnerships, smaller  
12 corporations, and other organizations are often deterred from seeking  
13 review of or defending against state agency actions because of the  
14 costs for attorneys, expert witnesses, and other costs.    The  
15 legislature therefore adopts this equal access to justice act to ensure

1 that these parties have a greater opportunity to defend themselves from  
2 inappropriate state agency actions and to protect their rights.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.84 RCW  
4 to read as follows:

5 (1)(a) Except as otherwise specifically provided by statute, a  
6 court shall award to a prevailing party other than the state of  
7 Washington fees and other expenses including reasonable attorneys'  
8 fees, in addition to any reasonable costs awarded, incurred by that  
9 party in any civil action except an action for personal injury or  
10 wrongful death, including proceedings for judicial review of agency  
11 action, unless the court finds that the position of the state of  
12 Washington was substantially justified or that circumstances make an  
13 award unjust.

14 (b) A party seeking an award of fees and other expenses shall,  
15 within thirty days of final judgment in the action, submit to the court  
16 an application for fees and other expenses which shows that the party  
17 is a prevailing party and is eligible to receive an award under this  
18 subsection, and the amount sought, including an itemized statement from  
19 any attorney or expert witness representing or appearing on behalf of  
20 the party stating the actual time expended and the rate at which fees  
21 and other expenses were computed. The party shall also allege that the  
22 position of the state of Washington was not substantially justified.  
23 Whether or not the position of the state of Washington was  
24 substantially justified shall be determined on the basis of the record,  
25 including the record with respect to the action or failure by the  
26 agency upon which the civil action is based, which is made in the civil  
27 action for which fees and other expenses are sought.

28 (c) The court, in its discretion, may reduce the amount to be  
29 awarded pursuant to this subsection, or deny an award, to the extent

1 that the prevailing party during the course of the proceedings engaged  
2 in conduct which unduly and unreasonably protracted the final  
3 resolution of the matter in controversy.

4 (2) For purposes of this section:

5 (a) "Fees and other expenses" includes the reasonable expenses of  
6 expert witnesses, the reasonable cost of any study, analysis,  
7 engineering report, test, or project which is found by the court to be  
8 necessary for the preparation of the party's case, and reasonable  
9 attorneys' fees. The amount of fees awarded under this subsection  
10 shall be based upon the prevailing market rates for the kind and  
11 quality of the services furnished, except that (i) no expert witness  
12 shall be compensated at a rate in excess of the highest rate of  
13 compensation for expert witnesses paid by the state of Washington; and  
14 (ii) attorneys shall not be awarded in excess of one hundred fifty  
15 dollars per hour unless the court determines that an increase in the  
16 cost of living or a special factor, such as the limited availability of  
17 qualified attorneys for the proceedings involved, justify a higher fee;

18 (b) "Party" means (i) an individual whose net worth did not exceed  
19 two million dollars at the time the civil action was filed, or (ii) any  
20 owner of an unincorporated business, or any partnership, corporation,  
21 association, or organization, the net worth of which did not exceed  
22 seven million dollars at the time the civil action was filed; except  
23 that an organization described in section 501(c)(3) of the Internal  
24 Revenue Code of 1986 (26 U.S.C. Sec. 501 (c)(3)) exempt from taxation  
25 under section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C.  
26 Sec. 501(a)), or a cooperative association as defined by section 15(a)  
27 of the agricultural marketing act (12 U.S.C. Sec. 1141j(a)), may be a  
28 party regardless of the net worth of such organization or cooperative  
29 association;

1 (c) "Washington state" includes any agency and any official of the  
2 state of Washington acting in his or her official capacity;

3 (d) "Position of the state of Washington" means, in addition to the  
4 position taken by the state of Washington in the civil action, the  
5 action or failure to act by the agency upon which the civil action is  
6 based; except that fees and expenses may not be awarded to a party for  
7 any portion of the litigation in which the party has unreasonably  
8 protracted the proceedings;

9 (e) "Civil action" means a civil action brought by or against the  
10 state of Washington and includes an appeal by a party of a decision of  
11 an agency action.

12 NEW SECTION. **Sec. 3.** The office of financial management shall  
13 report annually to the legislature on the amount of fees and other  
14 expenses awarded during the preceding fiscal year under this act. The  
15 report shall describe the number, nature, and amount of the awards, the  
16 claims involved in the controversy, and any other relevant information  
17 which may aid the legislature in evaluating the scope and impact of the  
18 awards.