

SENATE BILL REPORT

SB 5353

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, JANUARY 28, 1994

Brief Description: Allowing the court to award attorney fees and other court costs to an individual or small business that successfully appeals a state agency directive in court.

SPONSORS: Senators A. Smith, Roach, Bauer, Newhouse, Jesernig, Quigley, Anderson, Hochstatter, Winsley, Talmadge, Deccio and Oke

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators A. Smith, Chairman; Ludwig, Vice Chairman; Hargrove, Nelson, Niemi, Quigley, Roach, Schow and Spanel.

Staff: Lidia Mori (786-7755)

Hearing Dates: February 11, 1993; February 16, 1993; January 25, 1994; January 28, 1994

BACKGROUND:

The federal Equal Access to Justice Act was enacted in 1981 and renewed again in 1985. Its purpose is to encourage equality between citizens and the federal government by awarding court costs to citizens who successfully challenge federal agencies through the court system.

Twenty-four states have adopted an equal access to justice policy. There is concern that most citizens lack the resources to defend themselves against inappropriate or unreasonable government agencies' decisions or actions.

SUMMARY:

A prevailing party, if other than the state of Washington, is entitled to fees and other expenses incurred in a civil action except when it is in an action for personal injury or wrongful death. If the court finds that the position of the state of Washington was substantially justified or that circumstances make an award unjust then the court may refrain from making the award. The prevailing party is entitled to these fees and costs in proceedings for judicial review of agency actions also. The court may reduce the award or deny it if the prevailing party unduly or unreasonably protracted the resolution of the matter in controversy.

A "party" is defined as an individual whose net worth does not exceed \$2 million at the time the civil action is filed or an owner of an unincorporated business or corporation,

partnership, association or organization whose net worth does not exceed \$7 million at the time the action was filed. Organizations that are exempt from taxation and cooperative associations may be a party regardless of their net worth.

The Office of Financial Management is directed to report annually to the Legislature on the amount of fees and other expenses awarded under this act during the preceding fiscal year as well as what types of claims were involved in controversy.

Appropriation: none

Revenue: none

Fiscal Note: requested

TESTIMONY FOR:

This bill allows small businesses to have parity with the state due to differences in resources. There is concern this will cost the state millions; however, there are enough safeguards in the bill so that such cost will not occur. People need a recourse other than administrative agency review when contesting an agency rule.

TESTIMONY AGAINST:

All these kinds of reforms should occur through the Governor's commission. The bill does not include labor unions and it should. This legislation is not needed.

TESTIFIED: PRO: Tony Meinhardt, Assn. of WA Business; Gayle Seyl, Winslow Auto Parts; Julia Porter, Assn. of WA Business; Carolyn Logue, NFIB; CON: Bill Henselman, WA State Dept. of Transportation; Robert Dilger, WA State Building & Construction Trades Council