

HOUSE BILL REPORT

HB 1044

As Reported By House Committee On:

Law & Justice

Appropriations

Title: An act relating to attorneys' fees, costs, and expenses awarded against state and other units of government.

Brief Description: Providing of payment of attorneys' fees, costs, and expenses in actions against governmental units.

Sponsors: Representatives Hickel, Delvin, Smith, Crouse, Padden, Dyer, Costa, Schoesler, Johnson, Thompson, Beeksa, Radcliff, Cairnes, Mastin, Carrell, Chappell, Foreman, Fuhrman, Campbell, Morris and Casada.

Brief History:

Committee Activity:

Law & Justice: 1/20/95, 1/31/95, 2/7/95 [DPS];

Appropriations: 2/27/95, 3/2/95 [DP2S(w/o sub LJ)].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Campbell; Carrell; Chappell; Lambert; McMahan; Morris; Robertson; Sheahan and Smith.

Minority Report: Do not pass. Signed by 4 members: Representatives Costa, Assistant Ranking Minority Member; Cody; Thibaudeau and Veloria.

Staff: Edie Adams (786-7180).

Background: In Washington, a prevailing party is not entitled to an award of attorneys' fees as part of the cost of litigation unless a statute or contract specifically provides for payment of attorneys' fees to the prevailing party.

The federal government and many other states have passed "Equal Access to Justice" statutes which provide for an award of attorneys' fees and costs of litigation to

specified nongovernmental prevailing parties when the position of the government is not substantially justified.

Summary of Substitute Bill: In all civil actions, including appeals, in which the state, a political subdivision, a municipal corporation, or a department or agent of the state, a political subdivision or a municipal corporation is a party, the governmental party shall pay the nongovernmental party's reasonable attorneys' fees, costs, and litigation expenses if the nongovernmental party prevails.

Prevailing party is defined as the party in whose favor judgment is entered or the party who prevails on the majority of issues.

The act specifically exempts: (1) quasi-municipal corporations or special purpose districts; (2) cities with a population less than 7,500; (3) civil infraction actions; (4) vehicle impoundment hearings; and (5) driver's license actions.

The act applies to all actions pending on or commenced after July 1, 1995.

Substitute Bill Compared to Original Bill: The substitute bill applies only to civil actions, and specifically exempts civil infraction actions, vehicle impoundment hearings, and driver's license actions. The substitute bill specifically exempts quasi-municipal corporations, special purpose districts, and cities with a population less than 7,500.

The substitute adds a definition of prevailing party and applies to all actions pending on or commenced after July 1, 1995.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 1995.

Testimony For: Litigation is very expensive and often the costs of litigation are higher than any expected judgment. Individuals are deterred from pursuing actions because of the costs involved, especially in actions involving the government. The government has infinite resources and can take advantage of individuals and small businesses who have limited resources. This bill will even the playing field between the government and small businesses and individuals. The bill will not open the floodgates to litigation because it is too costly for individuals and small businesses to pursue frivolous lawsuits.

Testimony Against: This bill represents enormous potential costs on local governments and cities. These costs will ultimately be paid by the taxpayers. Local governments, cities, and towns have very limited resources which are needed to pay for basic services. This bill will encourage individuals to bring more suits against counties, cities, and towns and will encourage attorney involvement from the beginning, decreasing the likelihood of settlement. Currently most suits involving governmental entities are settled. This bill is inequitable because there is no system to determine whether the governmental party had a legitimate claim. Many suits brought by cities or counties are required to comply with state or federal law.

Testified: Representative Timothy Hickel, prime sponsor; Richard Sanders, citizen (pro); Suzie Rao, Building Industry Association of Washington (pro); Jim Whittenburg, pharmacist (pro); Terry Van Doren, Washington Cattlemen's Association (pro); Bill Fritz, lobbyist (pro); Jim McDonald, Association of Washington Cities (con); Lewis Leigh, Washington Cities Insurance Authority (con); Sonja Alexander, City of Bellevue (con); Lorraine Wilson, Washington School Directors Association (con); Kurt Sharar (con); and Betty Reed, State Risk Manager, Department of General Administration.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Law & Justice. Signed by 27 members: Representatives Silver, Chairman; Clements, Vice Chairman; Huff, Vice Chairman; Pelesky, Vice Chairman; Basich; Beeksmas; Brumsickle; Carlson; Chappell; Cooke; Crouse; Dellwo; Foreman; Grant; Hargrove; Hickel; Jacobsen; Lambert; Lisk; McMorris; Poulsen; Reams; Rust; Sehlin; Sheahan; Talcott and Wolfe.

Minority Report: Do not pass. Signed by 3 members: Representatives Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; and Thibaudeau.

Staff: Kristen Reiber (786-7148).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Law & Justice: The second substitute expressly permits the recovery of attorneys' fees in a civil action for judicial review of an administrative decision. To recover attorneys' fees under the bill, the non-governmental party must prevail as against the governmental party. A court may award attorneys' fees only to individuals or businesses whose net worths do not exceed specified amounts. The Office of Financial Management shall report annually to the Legislature on the amount of fees awarded under the act.

Appropriation: None.

Fiscal Note: Available.

Effective Date The bill contains an emergency clause and takes effect on July 1, 1995.

Testimony For: (Substitute) This bill will save government money in the long run by forcing government to comply with the law; it won't cost government if government is doing the right thing. A private citizen cannot afford to take the government to court, even if the citizen's position is legally justified, and this bill will permit citizens and small businesses to defend their rights. The prevailing party requirement will prevent awards of attorneys' fees in questionable cases.

Testimony Against: (Substitute) This bill's high cost to counties and cities will ultimately be borne by the taxpayers. Government is perceived as a "deep pocket," and the bill will increase questionable claims. The bill encourages potential litigants to sue and discourages alternative dispute resolution. At the same time, it discourages government from going to court when court is the best alternative. Counties enforce state law and must bear the costs of implementing state mandates; the state should not require counties to pay attorneys' fees for defending state-imposed laws.

Testified: (In favor) Dick Welsh, citizen; John Parker, National Association for the Self-Employed and Bill Fritz, Washington Food Processors. (In favor with amendment) Krista Eichler, Seattle Chamber of Commerce; and Carolyn Logue, NFIB. (Against) Devone Smith, Washington Federation of State Employees; Dick King, IBEW #46; Molly Rutz, Brenda Mason, and Eugene St. John, Washington Public Employees Association; John Crawford, Association of Cities; Sonja Alexander, city of Bellevue; Kurt Sharar, Association of Counties; Tom McBride, Prosecutors Association; and John Crawford, County Insurance Trust.