

SENATE BILL REPORT

2SSB 5084

As Passed Senate, January 28, 1998

Title: An act relating to attorneys' fees, costs, and expenses awarded against the state.

Brief Description: Modifying the definition of a qualified party and the amount of attorneys' fees they may recover in an action appealing a state agency directive.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Roach, Schow, Benton, Swecker, Zarelli, Morton, Hochstatter, Johnson, McCaslin, Winsley, Stevens and Oke).

Brief History:

Committee Activity: Government Operations: 1/30/97, 2/13/97 [DPS-WM].

Ways & Means: 2/27/97, 3/4/97 [DP2S].

Passed Senate, 3/17/97, 44-4.

Passed Senate, 1/28/98, 37-11.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: That Substitute Senate Bill No. 5084 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators McCaslin, Chair; Anderson, Haugen, Horn, Patterson and Swanson.

Staff: Kathleen Healy (786-7403)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5084 be substituted therefor, and the second substitute bill do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Bauer, Hochstatter, Long, Loveland, McDonald, Roach, Rossi, Schow, Sheldon, Snyder, Swecker, Thibaudeau, Winsley and Zarelli.

Staff: Steve Jones (786-7440)

Background: During the 1995 legislative session, the Legislature passed ESHB 1010. In part, the bill allows qualified parties who successfully challenge an agency action an award of attorneys' fees and expenses not exceeding \$25,000 unless the court finds that the agency action was substantially justified or that circumstances made an award unjust.

Qualified parties include an individual whose net worth does not exceed \$1 million, and a sole owner of an unincorporated business or organization whose net worth does not exceed \$5 million. Awarded fees and expenses may not exceed \$25,000, and include reasonable attorneys' fees (generally limited to not more than \$150 per hour), expert witness expenses,

and costs of studies or other projects or tests found by the court to be necessary for preparation of the party's case. A court may reduce or deny an award if it finds that the qualified party unduly protracted final resolution of the dispute.

The awarded fees and costs will be paid by the agency over which the qualified person prevailed. Payments are reported to OFM. OFM must report annually to the Legislature on the amount of fees and expenses awarded.

Summary of Bill: A party prevailing in a judicial review of an agency action is awarded fees and other expenses, including reasonable attorneys' fees, incurred in the judicial review. The \$25,000 cap is raised to \$50,000.

The definition of a qualified party is amended to include an individual whose net worth does not exceed \$2 million at the time the civil action was filed, and an owner of an unincorporated business or organization whose net worth does not exceed \$7 million.

OFM must report annually to the Legislature on the amount of fees and other expenses awarded.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This is a fair bill and gives a more appropriate level of net worth for those who can be considered a qualified party. The Equal Access to Justice Act has not been abused. This will allow for the full recovery of fees and expenses in successfully challenging an agency's action. The original legislation and this bill are not intended to include legal costs incurred in administrative hearings.

Testimony Against: None.

Testified: PRO: Dick Welsh, National Association of Reversionary Property Owners; Amber Balch, AWB; Gary Smith, Independent Business Association; Dedi Hitchen, NFIB.