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SECOND SUBSTITUTE SENATE BILL 5084

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State of Washington

55th Legislature

1997 Regular Session

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

Read first time 03/07/97.

1 AN ACT Relating to attorneys' fees, costs, and expenses awarded  
2 against the state; amending RCW 4.84.340 and 4.84.350; and adding a new  
3 section to chapter 4.84 RCW.

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

5 **Sec. 1.** RCW 4.84.340 and 1995 c 403 s 902 are each amended to read  
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout RCW 4.84.340 through 4.84.360.

9 (1) "Agency" means any state board, commission, department,  
10 institution of higher education, or officer, authorized by law to make  
11 rules or to conduct adjudicative proceedings, except those in the  
12 legislative or judicial branches, the governor, or the attorney general  
13 except to the extent otherwise required by law.

14 (2) "Agency action" means agency action as defined by chapter 34.05  
15 RCW.

16 (3) "Fees and other expenses" includes the reasonable expenses of  
17 expert witnesses, the reasonable cost of a study, analysis, engineering  
18 report, test, or project that is found by the court to be necessary for  
19 the preparation of the party's case, and reasonable attorneys' fees.

1 Reasonable attorneys' fees shall be based on the prevailing market  
2 rates for the kind and quality of services furnished, except that (a)  
3 no expert witness shall be compensated at a rate in excess of the  
4 highest rates of compensation for expert witnesses paid by the state of  
5 Washington, and (b) attorneys' fees shall not be awarded in excess of  
6 one hundred fifty dollars per hour unless the court determines that an  
7 increase in the cost of living or a special factor, such as the limited  
8 availability of qualified attorneys for the proceedings involved,  
9 justifies a higher fee.

10 (4) "Judicial review" means a judicial review as defined by chapter  
11 34.05 RCW.

12 (5) "Qualified party" means (a) an individual whose net worth did  
13 not exceed (~~one~~) two million dollars at the time the initial petition  
14 for judicial review was filed or (b) a sole owner of an unincorporated  
15 business, or a partnership, corporation, association, or organization  
16 whose net worth did not exceed (~~five~~) seven million dollars at the  
17 time the initial petition for judicial review was filed, except that an  
18 organization described in section 501(c)(3) of the federal internal  
19 revenue code of 1954 as exempt from taxation under section 501(a) of  
20 the code and a cooperative association as defined in section 15(a) of  
21 the agricultural marketing act (12 U.S.C. 1141J(a)), may be a party  
22 regardless of the net worth of such organization or cooperative  
23 association.

24 **Sec. 2.** RCW 4.84.350 and 1995 c 403 s 903 are each amended to read  
25 as follows:

26 (1) Except as otherwise specifically provided by statute, a court  
27 shall award a qualified party that prevails in a judicial review of an  
28 agency action fees and other expenses incurred in the judicial review,  
29 including reasonable attorneys' fees, unless the court finds that the  
30 agency action was substantially justified or that circumstances make an  
31 award unjust. A qualified party shall be considered to have prevailed  
32 if the qualified party obtained relief on a significant issue that  
33 achieves some benefit that the qualified party sought.

34 (2) The amount awarded a qualified party under subsection (1) of  
35 this section shall not exceed (~~twenty-five~~) fifty thousand dollars.  
36 Subsection (1) of this section shall not apply unless all parties  
37 challenging the agency action are qualified parties. If two or more  
38 qualified parties join in an action, the award in total shall not

1 exceed ((~~twenty-five~~)) fifty thousand dollars. The court, in its  
2 discretion, may reduce the amount to be awarded pursuant to subsection  
3 (1) of this section, or deny any award, to the extent that a qualified  
4 party during the course of the proceedings engaged in conduct that  
5 unduly or unreasonably protracted the final resolution of the matter in  
6 controversy.

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

9 The office of financial management shall report annually to the  
10 legislature on the amount of fees and other expenses awarded during the  
11 preceding fiscal year under RCW 4.84.350. The report shall describe  
12 the number, nature, and amount of the awards, the claims involved in  
13 the controversy, and other relevant information that may aid the  
14 legislature in evaluating the scope and impact of the awards.

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