

# SENATE BILL REPORT

## SB 5710

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As Reported By Senate Committee On:  
Judiciary, February 27, 2001

**Title:** An act relating to the equal access to justice act.

**Brief Description:** Modifying the award of fees and expenses in administrative hearings.

**Sponsors:** Senators McCaslin, Kline, Thibaudeau, Costa, Johnson, Hargrove, Rasmussen, Hale and Shin.

**Brief History:**

**Committee Activity:** Judiciary: 2/15/01, 2/27/01 [DPS].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5710 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Constantine, Vice Chair; Costa, Hargrove, Johnson, Kastama, McCaslin, Roach, Thibaudeau and Zarelli.

**Staff:** Dick Armstrong (786-7460)

**Background:** Under the Equal Access to Justice Act, qualified parties who seek judicial review of an agency's actions and who prevail in such challenges may be awarded attorney's fees and expenses not exceeding \$25,000 unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A party is considered to have prevailed if the party obtains relief on a significant issue that achieves a benefit sought by the party.

Qualified parties include an individual whose net worth does not exceed \$1 million, a sole owner of an unincorporated business, or a corporation, partnership or organization whose net worth does not exceed \$5 million. Certain nonprofit organizations and agricultural cooperatives are eligible regardless of net worth. Fees and expenses to be awarded include reasonable attorney fees (generally limited to \$150 per hour), expert witness expenses, and the 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 the final resolution of the dispute.

There is a concern that some individuals and businesses do not hire attorneys to pursue their legal rights in an administrative hearing. If there were a procedure that would allow for the recovery of attorney's fees in some cases, it is believed that more people would elect to have legal representation.

**Summary of Substitute Bill:** The Equal Access to Justice Act is amended to allow qualified persons who prevail at the administrative hearing level (final agency action) to recover

reasonable attorney's fees not to exceed \$25,000 if it is determined that the agency was not substantially justified in its position or that circumstances would make an award unjust.

Agency cases subject to the provisions of the bill include:

- cases conducted for the Department of Social and Health Services, excluding child support and juvenile rehabilitation;
- licensing cases conducted for the Liquor Control Board;
- business and professional licensing cases for the Department of Licensing, excluding motor vehicle franchising cases; and
- specified employer assessment and penalty cases conducted for the Department of Employment Security.

Qualified parties under the act include individuals with a net worth not more than \$250,000 and businesses whose net worth do not exceed \$1,250,000. Certain nonprofit organizations and agricultural cooperatives are qualified parties regardless of net worth.

The chief administrative law judge is to adopt model rules of procedure to implement the bill. Agencies subject to the provisions of the bill are also authorized to adopt rules. Attorneys fees under the act are only to be paid when the agency order becomes final, and the payments are to be made from moneys appropriated to the agency for administrative purposes.

When an agency has made an offer to participate in alternative dispute resolution, the qualified parties must participate in good faith or be precluded from obtaining attorney's fees and costs.

Agencies who act solely as an impartial adjudicatory panel and who are not a party to the action may not be assessed attorney's fees under the equal access to justice statute.

**Substitute Bill Compared to Original Bill:** The original bill was not considered.

**Appropriation:** None.

**Fiscal Note:** Requested on February 7, 2001.

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

**Testimony For:** The WSBA supports the bill because there are numerous cases where the agencies make wrong decisions and appellants should get attorney fees and costs. Agencies have legal representation, so members of the public should also get legal representation. Agencies have the support of the largest law firm in the state and it is unfair to the public. Small businesses need protection because agencies are promulgating more rules all the time.

**Testimony Against:** The Governor has concerns about the impact of the bill. There is no pattern of abuse by agencies. This bill will create more formality and costs to handle cases. Agencies will be inhibited from taking on cases that are borderline. DSHS has taken many steps to help persons dealing with the agencies by making the process more user-friendly. This bill is not a good solution because attorneys are not always helpful to help solve cases.

**Testified:** PRO: Howard Graham, WSBA; Gary Smith, Independent Business Association; Amber Balch, AWB; Jim King, Washington Drywall Association; Bill Day, Adult Family Home Association; CON: Fred Hellberg, OFM; Ken Harden, DSHS; Art Wang, Office of Administration Hearings.