

SENATE BILL REPORT

SB 6606

As Reported By Senate Committee On:
Government Operations & Elections, February 6, 2004

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

Brief Description: Amending the equal access to justice act.

Sponsors: Senators Roach, Hargrove, Mulliken, Swecker and Stevens.

Brief History:

Committee Activity: Government Operations & Elections: 2/3/04, 2/6/04 [DP-WM].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

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

Signed by Senators Roach, Chair; Stevens, Vice Chair; Berkey, Fairley, Horn and McCaslin.

Staff: Aldo Melchiori (786-7439)

Background: Within the scope of its authority, an agency may commence adjudicative proceedings with respect to a matter within the agency's jurisdiction. Adjudicative proceedings may also be required by law or constitutional right upon application by any person. The adjudicative procedures are provided in the Administrative Procedure Act (Act).

Under the Act, "qualified party" means (a) an individual whose net worth did not exceed \$1 million at the time the initial petition for judicial review was filed, or (b) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization whose net worth did not exceed \$5 million at the time the initial petition for judicial review was filed, except that an organization recognized by the federal internal revenue code of 1954 as exempt from taxation and a cooperative association as defined in the agricultural marketing act, may be a party regardless of the net worth of such organization or cooperative association.

A court awards a prevailing qualified party, in a judicial review of an agency action, fees and other expenses, including reasonable attorneys' fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party is considered to have prevailed if the qualified party obtained relief on a significant issue that achieved some benefit that the qualified party sought. The amount awarded a qualified party may not exceed \$25,000. If two or more qualified parties join in an action, the award in total must not exceed \$25,000. The court, in its discretion, may reduce the amount to be awarded, or deny any award, to the extent that a qualified party during the course of the proceedings engaged in conduct that unduly or unreasonably protracted the final resolution of the matter. Fees and other expenses awarded are deemed payable on the date the court announces the award.

Summary of Bill: "Adjudicative proceeding" includes all adjudicative procedures under the Act. Under the rules of civil procedure in cases subject to judicial or administrative review, fees and expenses, including reasonable attorney's fees are only recoverable against the Department of Social and Health Services (other than the Division of Child Support, Division of Juvenile Rehabilitation), Liquor Control Board, Department of Licensing (in business and professional licensing cases), or Employment Security Department (in employer assessment and penalty cases), instead of against any agency.

Qualified parties are divided depending upon the forum in which they appear. A "qualified administrative party" is (a) an individual whose net worth did not exceed \$250,000 at the time the initial petition for an adjudicatory proceeding was filed, or (b) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization whose net worth did not exceed \$1,250,000 at the time the initial petition for an adjudicatory proceeding was filed. A "qualified judicial party" means (a) an individual whose net worth did not exceed \$1 million at the time the initial petition for judicial review was filed, or (b) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization whose net worth did not exceed \$5 million at the time the initial petition for judicial review was filed. Organizations described in the federal Internal Revenue Code as exempt from taxation under Section 501(a) of the code and cooperative associations as defined in the agricultural marketing act, may be a party regardless of the net worth of such organization or cooperative association.

If the Department of Social and Health Services (other than the Division of Child Support, Division of Juvenile Rehabilitation), Liquor Control Board, Department of Licensing (in business and professional licensing cases), or Employment Security Department (in employer assessment and penalty cases) offer to participate in an alternative dispute resolution process, the appellants are required to participate in good faith or they are precluded from applying for attorney's fees or expenses. The chief administrative law judge and the governed agencies are authorized to adopt rules to implement the new costs provisions.

The amount awarded to qualified parties may not exceed a total of \$25,000 for the combined administrative and court proceedings. No fees or expenses may be awarded against an administrative tribunal of these agencies for actions taken solely as an administrative body. Fees and other expenses awarded must be paid within 60 days after an order becomes final.

Appropriation: None.

Fiscal Note: Requested on January 31, 2004.

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

Testimony For: This legislation has always received broad support for policy reasons. It will make agencies take a harder look at the decisions they make. Business owners lose money even if they prevail at administrative hearings because of large attorney's fees.

Testimony Against: Concerns: The fiscal impact cannot be ignored.

Testified: PRO: Jim King, Washington Drywall Coalition; Gary Smith Independent Business Association; Carolyn Logue, NFIB; CONCERNS: Claire Hesselhoff, OFM.