

SENATE BILL REPORT

SB 5370

As Reported by Senate Committee On:
Law & Justice, February 9, 2015

Title: An act relating to the payment of interim attorneys' fees to nongovernment parties under certain claims.

Brief Description: Concerning the payment of interim attorneys' fees to nongovernment parties under certain claims.

Sponsors: Senators Dansel, Honeyford and Roach.

Brief History:

Committee Activity: Law & Justice: 1/27/15, 2/09/15 [DP, DNP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pearson and Roach.

Minority Report: Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille and Kohl-Welles.

Staff: Melissa Burke-Cain (786-7755)

Background: Current law, sometimes called the prevailing party rule, permits a party who prevails in litigation, once the court enters judgment, to seek reimbursement for attorney fees and costs paid from the party who did not prevail. Under the current law, a prevailing party must wait until the case is over before seeking cost and attorney fee reimbursement.

Summary of Bill: In any court case in which a nongovernment party claims that a government party has knowingly acted contrary to law, the nongovernment party may seek an award of interim attorneys fees and costs at the beginning of the case. Courts must grant interim attorney fees and costs when the nongovernment party proves beyond a reasonable doubt that the government party knowingly acted contrary to law. The interim payment must be sufficient to cover the costs of the nongovernment party's claim. The court decides how to structure the interim attorney fee and cost payment. If the government party fails to pay as the court requires, the court may hold the government party in contempt and the contempt order is deemed a final order for purposes of appeal. The term government party means the

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state of Washington, all state agencies, counties, cities, special districts, municipal corporations, and the government sub-agencies.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill is mostly limited to disputes involving land use and growth management hearings at superior court. Interim awards for nongovernment parties will level the playing field for individuals. The cost of ordinary people going to court against an agency can be very high. In property cases, people are facing loss of their land or lost use of their land. These are important issues, but access to justice is not balanced. Government has a lot of resources; property owners don't. The high cost to property owners to defend their property rights can prevent them from being heard in court.

CON: Government should be accountable for its actions in court, but this bill would create incentives to go to court and disincentives to try to reach settlement. Government has no chance to recoup fees it pays during litigation when the nongovernment party eventually loses but has no money to reimburse for the interim payments. The state already has broad exposure to liability compared to other states. This is far too costly.

Persons Testifying: PRO: Senator Dansel, prime sponsor; Cindy Alia, Citizens' Alliance for Property Rights.

CON: Candice Bock, Assn. of WA Cities.