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HOUSE BILL 2887

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State of Washington

53rd Legislature

1994 Regular Session

By Representatives L. Thomas, Reams, Cooke, Brough, Tate, Horn and Silver

Read first time 01/28/94. Referred to Committee on Judiciary.

1 AN ACT Relating to fees and costs of the judicial review of agency  
2 actions; adding new sections to chapter 4.84 RCW; adding a new section  
3 to chapter 43.88 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that certain  
6 individuals, smaller partnerships, smaller corporations, and other  
7 organizations may be deterred from seeking review of or defending  
8 against an unreasonable agency action because of the expense involved  
9 in securing the vindication of their rights in administrative  
10 proceedings. The legislature further finds that because of the greater  
11 resources and expertise of the state of Washington, individuals,  
12 smaller partnerships, smaller corporations, and other organizations are  
13 often deterred from seeking review of or defending against state agency  
14 actions because of the costs for attorneys, expert witnesses, and other  
15 costs. The legislature therefore adopts this equal access to justice  
16 act to ensure that these parties have a greater opportunity to defend  
17 themselves from inappropriate state agency actions and to protect their  
18 rights.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 4.84 RCW  
2 to read as follows:

3        Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout sections 2 through 4 of this act.

5        (1) "Agency action" means agency action as defined by chapter 34.05  
6 RCW.

7        (2) "Fees and other expenses" includes the reasonable expenses of  
8 expert witnesses, the reasonable cost of a study, analysis, engineering  
9 report, test, or project that is found by the court to be necessary for  
10 the preparation of the party's case, and reasonable attorneys' fees.  
11 Reasonable attorneys' fees shall be based on the prevailing market  
12 rates for the kind and quality of services furnished, except that (a)  
13 no expert witness shall be compensated at a rate in excess of the  
14 highest rates of compensation for expert witnesses paid by the state of  
15 Washington, and (b) attorneys' fees shall not be awarded in excess of  
16 one hundred fifty dollars per hour unless the court determines that an  
17 increase in the cost of living or a special factor, such as the limited  
18 availability of qualified attorneys for the proceedings involved,  
19 justifies a higher fee.

20        (3) "Judicial review" means a judicial review as defined by chapter  
21 34.05 RCW.

22        (4) "Party" means (a) an individual whose net worth did not exceed  
23 one million dollars at the time the judicial review was filed, (b) a  
24 sole owner of an unincorporated business, or a partnership,  
25 corporation, association, or organization whose net worth did not  
26 exceed five million dollars at the time the judicial review was filed,  
27 except that an organization described in section 501(c)(3) of the  
28 federal internal revenue code of 1954 as exempt from taxation under  
29 section 501(a) of the code and a cooperative association as defined in  
30 section 15(a) of the agricultural marketing act (12 U.S.C. 1141J(a)),  
31 may be a party regardless of the net worth of such organization or  
32 cooperative association, or (c) a sole owner of an unincorporated  
33 business, or a partnership, corporation, association, or organization,  
34 having not more than one hundred employees at the time the judicial  
35 review was filed.

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

1 A party that prevails in a judicial review of an agency action  
2 shall be awarded by the court, fees and other expenses not to exceed  
3 ten thousand dollars. A party shall be considered to have prevailed if  
4 the party obtained relief on a significant issue that achieves some  
5 benefit that the party sought.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 4.84 RCW  
7 to read as follows:

8 Fees and other expenses awarded under sections 2 through 4 of this  
9 act shall be paid by the agency over which the party prevails from  
10 operating funds appropriated to the agency within sixty days. Agencies  
11 paying fees and other expenses pursuant to sections 2 through 4 of this  
12 act shall report all payments to the office of financial management  
13 within five days of paying the fees and other expenses. Fees and other  
14 expenses awarded by the court shall be subject to the provisions of  
15 chapter 39.76 RCW and shall be deemed payable on the date the court  
16 announces the award.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.88 RCW  
18 to read as follows:

19 The office of financial management shall report annually to the  
20 legislature on the amount of fees and other expenses awarded during the  
21 preceding fiscal year pursuant to sections 2 through 4 of this act.  
22 The report shall describe the number, nature, and amount of the awards,  
23 the claims involved in the controversy, and other relevant information  
24 that may aid the legislature in evaluating the scope and impact of the  
25 awards.

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