

HOUSE BILL REPORT

HB 2596

As Reported By House Committee On:

Law & Justice
Appropriations

Title: An act relating to awards of reasonable attorneys' fees in civil actions brought by the state.

Brief Description: Authorizing award of attorneys' fees to private defendants who prevail over governmental plaintiffs.

Sponsors: Representatives Clements, Hickel, Chandler, Boldt, Honeyford, McMorris, Delvin, Huff, Campbell, Hymes and Thompson.

Brief History:

Committee Activity:

Law & Justice: 1/30/69, 2/1/96 [DP];

Appropriations: 2/3/96 [DP].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 13 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Lambert; McMahan; Morris; Robertson; Smith and Sterk.

Minority Report: Do not pass. Signed by 4 members: Representatives Dellwo, Ranking Minority Member; Cody; Murray and Veloria.

Staff: Bill Perry (786-7123).

Background: Generally, Washington follows the "American Rule" regarding payment of attorneys' fees. That is, each party to a lawsuit must bear the cost of his or her own attorneys' fees, regardless of which party wins or loses. By statute, however, in some instances prevailing parties in some kinds of lawsuits are allowed to recover reasonable attorneys' fees. For instance, a party who prevails against a frivolous lawsuit may recover reasonable attorneys' fees.

By statute, the state has waived sovereign immunity and has allowed the state and local governments to be sued.

Last year, as part of HB 1010 (now RCW 4.84.340, *et seq.*), certain qualified parties who successfully challenge a state agency action will be awarded fees and expenses. The fees and expenses may not exceed \$25,000, and may not be awarded if the court finds that the agency action was substantially justified or that circumstances make an award unjust. Qualified parties include an individual whose net worth does not exceed \$1 million, and a sole owner of an unincorporated business 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 attorneys' fees (generally limited to \$150 per hour), expert witness expenses, and 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 final resolution of the dispute.

Awarded fees and expenses will be paid by the agency over which the qualified party prevailed.

Summary of Bill: Certain private party defendants who prevail in civil lawsuits brought by the state are entitled to recovery of their reasonable expenses and attorneys' fees.

Eligible defendants are limited to those who are not public entities and are not represented by attorneys paid for by public funds.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The average person cannot compete against the state in a lawsuit. The bill will level the playing field, and businesses and others won't be forced to accept a deal from the state just because it's too expensive to fight.

Testimony Against: None.

Testified: Representative Clements, prime sponsor; Ted Slatten, Independent Business Association of Washington (pro); and Chris Cheney, Washington Growers League and Hop Growers of Washington (pro).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 24 members: Representatives Huff, Chairman; Clements, Vice Chairman; Pelesky, Vice Chairman; Beeksma; Brumsickle; Carlson; Chappell; Cooke; Crouse; Dyer; Foreman; Grant; Hargrove; Hickel; Kessler; Lambert; Linville; McMorris; Poulsen; Reams; Sehlin; Sheahan; Talcott and Wolfe.

Minority Report: Do not pass. Signed by 4 members: Representatives H. Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Dellwo and Rust.

Staff: Kristen Reiber (786-7148).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Law & Justice: No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: None.

Testimony Against: None.

Testified: None.