
SUBSTITUTE SENATE BILL 5084

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Government Operations (originally sponsored by Senators Roach, Schow, Benton, Swecker, Zarelli, Morton, Hochstatter, Johnson, McCaslin, Winsley, Stevens and Oke)

Read first time 02/17/97.

1 AN ACT Relating to attorneys' fees, costs, and expenses awarded
2 against the state; amending RCW 4.84.340 and 4.84.350; and adding a new
3 section to chapter 4.84 RCW.

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

5 **Sec. 1.** RCW 4.84.340 and 1995 c 403 s 902 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout RCW 4.84.340 through 4.84.360.

9 (1) "Agency" means any state board, commission, department,
10 institution of higher education, or officer, authorized by law to make
11 rules or to conduct adjudicative proceedings, except those in the
12 legislative or judicial branches, the governor, or the attorney general
13 except to the extent otherwise required by law.

14 (2) "Agency action" means agency action as defined by chapter 34.05
15 RCW.

16 (3) "Fees and other expenses" includes the reasonable expenses of
17 expert witnesses, the reasonable cost of a study, analysis, engineering
18 report, test, or project that is found by the court to be necessary for
19 the preparation of the party's case, and reasonable attorneys' fees.

1 Reasonable attorneys' fees shall be based on the prevailing market
2 rates for the kind and quality of services furnished, except that (a)
3 no expert witness shall be compensated at a rate in excess of the
4 highest rates of compensation for expert witnesses paid by the state of
5 Washington, and (b) attorneys' fees shall not be awarded in excess of
6 one hundred fifty dollars per hour unless the court determines that an
7 increase in the cost of living or a special factor, such as the limited
8 availability of qualified attorneys for the proceedings involved,
9 justifies a higher fee.

10 (4) "Judicial review" means a judicial review as defined by chapter
11 34.05 RCW.

12 (5) "Qualified party" means (a) an individual whose net worth did
13 not exceed (~~one~~) two million dollars at the time the initial petition
14 for judicial review was filed or (b) a sole owner of an unincorporated
15 business, or a partnership, corporation, association, or organization
16 whose net worth did not exceed (~~five~~) seven million dollars at the
17 time the initial petition for judicial review was filed, except that an
18 organization described in section 501(c)(3) of the federal internal
19 revenue code of 1954 as exempt from taxation under section 501(a) of
20 the code and a cooperative association as defined in section 15(a) of
21 the agricultural marketing act (12 U.S.C. 1141J(a)), may be a party
22 regardless of the net worth of such organization or cooperative
23 association.

24 **Sec. 2.** RCW 4.84.350 and 1995 c 403 s 903 are each amended to read
25 as follows:

26 (1) Except as otherwise specifically provided by statute, a court
27 shall award a qualified party that prevails in a judicial review of an
28 agency action fees and other expenses, including reasonable attorneys'
29 fees, unless the court finds that the agency action was substantially
30 justified or that circumstances make an award unjust. A qualified
31 party shall be considered to have prevailed if the qualified party
32 obtained relief on a significant issue that achieves some benefit that
33 the qualified party sought.

34 (2) (~~The amount awarded a qualified party under subsection (1) of~~
35 ~~this section shall not exceed twenty five thousand dollars.~~)
36 Subsection (1) of this section shall not apply unless all parties
37 challenging the agency action are qualified parties. (~~If two or more~~
38 ~~qualified parties join in an action, the award in total shall not~~

1 ~~exceed twenty five thousand dollars.))~~ The court, in its discretion,
2 may reduce the amount to be awarded pursuant to subsection (1) of this
3 section, or deny any award, to the extent that a qualified party during
4 the course of the proceedings engaged in conduct that unduly or
5 unreasonably protracted the final resolution of the matter in
6 controversy.

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

9 The office of financial management shall report annually to the
10 legislature on the amount of fees and other expenses awarded during the
11 preceding fiscal year under RCW 4.84.350. The report shall describe
12 the number, nature, and amount of the awards, the claims involved in
13 the controversy, and other relevant information that may aid the
14 legislature in evaluating the scope and impact of the awards.

--- END ---