

SENATE BILL REPORT

SB 6550

As Reported By Senate Committee On:
Judiciary, February 4, 2000

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

Brief Description: Amending the equal access to justice act.

Sponsors: Senators Kline, Johnson, Patterson, Prentice, Thibaudeau, McCaslin, Deccio, Long, Oke, Hargrove, Goings, Bauer, Winsley, Shin, Rasmussen, Roach, Kohl-Welles, Hochstatter, T. Sheldon and Haugen.

Brief History:

Committee Activity: Judiciary: 1/19/2000, 2/3/2000 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6550 be substituted therefor, and the substitute bill do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Hargrove, Haugen, Johnson, Long, McCaslin, Roach and Zarelli.

Staff: Dick Armstrong (786-7460)

Background: Under the Equal Access to Justice Act, qualified parties who seek judicial review of an agency's actions and who prevail in such challenges may be awarded attorney's fees and expenses not exceeding \$25,000 unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A party is considered to have prevailed if the party obtains relief on a significant issue that achieves a benefit sought by the party.

Qualified parties include an individual whose net worth does not exceed \$1 million, a sole owner of an unincorporated business, or a corporation, partnership 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 attorney fees (generally limited to \$150 per hour), expert witness expenses, and the 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 the final resolution of the dispute.

There is a concern that some individuals and businesses do not hire attorneys to pursue their legal rights in an administrative hearing. If there were a procedure that would allow for the recovery of attorney's fees in some cases, it is believed that more people would elect to have legal representation.

Summary of Substitute Bill: The Equal Access to Justice Act is amended to allow qualified persons who prevail at the administrative hearing level (final agency action) to recover reasonable attorney's fees not to exceed \$25,000 if it is determined that the agency was not substantially justified in its position or that circumstances would make an award unjust.

Agency cases subject to the provisions of the bill include:

- cases conducted for the Department of Social and Health Services, excluding child support and juvenile rehabilitation;
- licensing cases conducted for the Liquor Control Board;
- business and professional licensing cases for the Department of Licensing, excluding motor vehicle franchising cases;
- business and professional licensing for the Department of Labor and Industry; and
- specified employer assessment and penalty cases conducted for the Department of Labor and Industry and the Department of Employment Security.

Qualified parties under the act include individuals with a net worth not more than \$250,000 and businesses whose net worth do not exceed \$1,250,000. Certain nonprofit organizations and agricultural cooperatives are qualified parties regardless of net worth.

The chief administrative law judge is to adopt model rules of procedure to implement the bill. Agencies subject to the provisions of the bill are also authorized to adopt rules. Attorneys fees under the act are only to be paid when the agency order becomes final, and the payments are to be made from moneys appropriated to the agency for administrative purposes.

When an agency has made an offer to participate in alternative dispute resolution, the qualified parties must participate in good faith or be precluded from obtaining attorney's fees and costs.

Agencies who act solely as an impartial adjudicatory panel and who are not a party to the action may not be assessed attorney's fees under the equal access to justice statute.

Substitute Bill Compared to Original Bill: The substitute bill clarifies the rule-making process and allows all agencies subject to the bill to adopt rules. The substitute bill clarifies that attorneys fees are only to be paid on final agency orders and the payment is to come from monies appropriated for administrative purposes. Various technical amendments are also made.

Appropriation: None.

Fiscal Note: Requested on January 11, 2000.

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

Testimony For: An interim task force reviewed the Access to Justice Act on attorney fees and determined that it would be appropriate to allow attorney fees against just a few selected agencies, rather than across the board like last year's bill. Agencies should make accurate decisions and the decisions should be reasonable. A large number of decisions, especially

in DSHS, are initially incorrect and this bill will help to rectify this situation. No attorney fees can be awarded against an agency if the position of the agency is reasonable.

Residents of adult family homes are summarily removed from homes without proper procedures being followed. Operators of such homes are also being mistreated by the Department of Social and Health Services.

Small employees need this bill to address their problems when disputes arise.

Employers need an access to legal counsel in the administrative process.

The bill will provide some much needed assistance for the owners of small business who occasionally need the assistance of attorneys when agencies are being unreasonable.

Testimony Against: Agencies have substantial concerns with the bill. The bill is not needed because there has not been a system of abuses in the agencies. Agencies are taking actions to use more alternative dispute resolution processes. The bill will increase costs to agencies because of a fear that they will be hit with attorney fees. The bill will have a chilling effect on agencies in making decisions in close cases. The bill will discourage an effort by the agencies to create more simple, informal processes to hear the dispute. Agency training has been extensive in order to make the system more user friendly.

The Office of Administrative Hearings will have more transactional costs under the bill. The involvement of more attorneys in many administrative hearings is not necessary because many times the hearings are not complicated.

Injured workers should be covered in the bill. Payments under the bill should not come from dedicated funds.

Testified: PRO: Howard Graham, State Bar Association; Bill Day, Adult Family Homes; Gary Smith, Independent Business Association; Jim King, Washington Drywall Association; Carolyn Logue, National Federation of Independent Businesses; CON: Art Wang, Office of Administrative Hearings; Fred Hellberg, Governor's Office; Edith Rice, Department of Social and Health Services; Steve Kant, Department of Labor and Industries; CONCERNS: Robbie Stern, State Labor Council.