

SENATE BILL REPORT

SB 5058

As of January 31, 2017

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: Senator Dandel.

Brief History:

Committee Activity: Law & Justice: 1/25/17.

Brief Summary of Bill

- Provides interim attorney fees and costs during any action, suit, or judicial review if a government agency knowingly acts contrary to law.
- Allows a nongovernment party to move for interim attorneys' fees, which must be heard and decided before other proceedings in the case.
- Requires the nongovernment party to bear the burden of proof beyond a reasonable doubt that the government party knowingly acted contrary to law.
- Awards interim attorney fees and costs in an amount adequate to finance the nongovernment party's claim.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: Washington follows the American rule that each party to a court action bears their own attorney fees. This can be modified by contract, in equity for bad faith or oppressive conduct on the part of the losing party, or by statute. For example, statutes providing attorney fees to the prevailing party if the court finds that the action or defense was frivolous and advanced without reasonable cause, in family law or eminent domain cases, cases under Consumer Protection Act, and many others.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In any action in the superior court of Washington, the prevailing party is entitled to their costs and disbursements. Costs are allowed to the prevailing party for expenses including:

- filing fees;
- fees for the service of process by a public officer, registered process server;
- fees for service by publication;
- notary fees;
- reasonable expenses, exclusive of attorneys' fees, incurred in obtaining reports and records, which are admitted into evidence;
- statutory attorney and witness fees; and
- to the extent that the court or arbitrator finds that it was necessary to achieve the successful result, the reasonable expense of the transcription of depositions used at trial or at the mandatory arbitration hearing.

Summary of Bill: In an action in any court, including actions for judicial review of administrative actions or decisions, a nongovernment party may move the court for interim attorneys' fees if the nongovernment party claims or counterclaims for legal or equitable relief against a government party alleging that the government party knowingly acted contrary to law. The motion must be heard and decided before any other proceedings in the case.

The nongovernment party must prove beyond a reasonable doubt that the government party knowingly acted contrary to law. If so, the court must order the government party to pay costs and interim attorneys' fees to the nongovernment party in an amount adequate to finance the nongovernment party's claim against the government party.

Government party means the state and all state agencies, counties, cities, special districts, municipal corporations, and their agencies.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: It is important to provide for the ability of citizens with limited financial resources to challenge government action. Citizens shouldn't need to spend all their money to assert their rights.

CON: This would require a judge to make a decision on facts and award attorney fees before the case in chief is heard. There is no mechanism provided to recover the money if the government wins the case.

OTHER: It is intimidating to bring a case against the government. There are many hurdles faced by citizens trying to hold government accountable.

Persons Testifying: PRO: Cindy Alia, Citizens Alliance for Property Rights.

CON: Candice Bock, Association of Washington Cities.

OTHER: Arthur West, citizen.

Persons Signed In To Testify But Not Testifying: No one.