
HOUSE BILL 2510

State of Washington

52nd Legislature

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By Representatives Mielke, Zellinsky, Bowman, Dellwo, P. Johnson, Dorn, Basich, Cooper, Sheldon, Heavey, Van Luven, Tate, Ballard, Padden, McLean, D. Sommers, Carlson, Paris, Lisk, Orr, May, Broback, Brough, Kremen, Fuhrman, Wood, Wynne, Ludwig, Mitchell and Rasmussen

Read first time 01/20/92. Referred to Committee on Judiciary.

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

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 unreasonable agency action because of the expense involved in
9 securing the vindication of their rights in administrative proceedings.
10 The legislature further finds that because of the greater resources of
11 the state of Washington, individuals, smaller partnerships, smaller
12 corporations, and other organizations are often deterred from seeking
13 review of or defending against state agency actions because of the
14 costs for attorneys, expert witnesses, and other costs. The

1 legislature therefore adopts this equal access to justice act to ensure
2 that these parties have a greater opportunity to defend themselves from
3 inappropriate state agency actions and to protect their rights.

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

6 (1)(a) Except as otherwise specifically provided by statute, a
7 court shall award to a prevailing party other than the state of
8 Washington fees and other expenses including reasonable attorneys'
9 fees, in addition to any reasonable costs awarded, incurred by that
10 party in any civil action except an action for personal injury or
11 wrongful death, including proceedings for judicial review of agency
12 action, unless the court finds that the position of the state of
13 Washington was substantially justified or that circumstances make an
14 award unjust.

15 (b) A party seeking an award of fees and other expenses shall,
16 within thirty days of final judgment in the action, submit to the court
17 an application for fees and other expenses which shows that the party
18 is a prevailing party and is eligible to receive an award under this
19 subsection, and the amount sought, including an itemized statement from
20 any attorney or expert witness representing or appearing on behalf of
21 the party stating the actual time expended and the rate at which fees
22 and other expenses were computed. The party shall also allege that the
23 position of the state of Washington was not substantially justified.
24 Whether or not the position of the state of Washington was
25 substantially justified shall be determined on the basis of the record,
26 including the record with respect to the action or failure by the
27 agency upon which the civil action is based, which is made in the civil
28 action for which fees and other expenses are sought.

1 (c) The court, in its discretion, may reduce the amount to be
2 awarded pursuant to this subsection, or deny an award, to the extent
3 that the prevailing party during the course of the proceedings engaged
4 in conduct which unduly and unreasonably protracted the final
5 resolution of the matter in controversy.

6 (2) For purposes of this section:

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

20 (b) "Party" means (i) an individual whose net worth did not exceed
21 two million dollars at the time the civil action was filed, or (ii) any
22 owner of an unincorporated business, or any partnership, corporation,
23 association, or organization, the net worth of which did not exceed
24 seven million dollars at the time the civil action was filed; except
25 that an organization described in section 501(c)(3) of the Internal
26 Revenue Code of 1986 (26 U.S.C. Sec. 501 (c)(3)) exempt from taxation
27 under section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C.
28 Sec. 501(a)), or a cooperative association as defined by section 15(a)
29 of the agricultural marketing act (12 U.S.C. Sec. 1141j(a)), may be a

1 party regardless of the net worth of such organization or cooperative
2 association;

3 (c) "Washington state" includes any agency and any official of the
4 state of Washington acting in his or her official capacity;

5 (d) "Position of the state of Washington" means, in addition to the
6 position taken by the state of Washington in the civil action, the
7 action or failure to act by the agency upon which the civil action is
8 based; except that fees and expenses may not be awarded to a party for
9 any portion of the litigation in which the party has unreasonably
10 protracted the proceedings;

11 (e) "Civil action" means a civil action brought by or against the
12 state of Washington and includes an appeal by a party of a decision of
13 an agency action.

14 NEW SECTION. **Sec. 3.** The office of financial management shall
15 report annually to the legislature on the amount of fees and other
16 expenses awarded during the preceding fiscal year under section 2 of
17 this act. The report shall describe the number, nature, and amount of
18 the awards, the claims involved in the controversy, and any other
19 relevant information that may aid the legislature in evaluating the
20 scope and impact of the awards.