
SUBSTITUTE HOUSE BILL 1045

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Hickel, Delvin, Robertson, Smith, Crouse, Padden, Sherstad, Benton, Dyer, Kremen, Costa, Schoesler, Johnson, Thompson, Beeksma, Radcliff, Mastin, Carrell, Mitchell, Chappell, Foreman, Van Luven, Koster, McMorris, Fuhrman, Campbell, Mielke, Silver, McMahan, Morris and Casada)

Read first time 02/08/95.

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

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

3 (1)(a) Except as otherwise specifically provided by statute, a
4 court shall award to a prevailing party other than the state of
5 Washington fees and other expenses including reasonable attorneys'
6 fees, in addition to any reasonable costs awarded, incurred by that
7 party in a civil action, including proceedings for judicial review of
8 agency action.

9 (b) A party seeking an award of fees and other expenses shall,
10 within thirty days of final judgment in the action, submit to the court
11 an application for fees and other expenses that shows that the party is
12 a prevailing party and is eligible to receive an award under this
13 subsection, and the amount sought, including an itemized statement from
14 an attorney or expert witness representing or appearing on behalf of
15 the party stating the actual time expended and the rate at which fees
16 and other expenses were computed.

17 (c) The court, in its discretion, may reduce the amount to be
18 awarded pursuant to this subsection, or deny an award, to the extent
19 that the prevailing party during the course of the proceedings engaged
20 in conduct that unduly and unreasonably protracted the final resolution
21 of the matter in controversy.

22 (2) For purposes of this section:

23 (a) "Fees and other expenses" includes the reasonable expenses of
24 expert witnesses, the reasonable cost of study, analysis, engineering
25 report, test, or project that is found by the court to be necessary for
26 the preparation of the party's case, and reasonable attorneys' fees.
27 The amount of fees awarded under this subsection shall be based upon
28 the prevailing market rates for the kind and quality of the services
29 furnished, except that (i) no expert witness shall be compensated at a
30 rate in excess of the highest rate of compensation for expert witnesses
31 paid by the state of Washington; and (ii) attorneys shall not be
32 awarded in excess of one hundred fifty dollars per hour unless the
33 court determines that an increase in the cost of living or a special
34 factor, such as the limited availability of qualified attorneys for the
35 proceedings involved, justify a higher fee;

36 (b) "Party" means (i) an individual whose net worth did not exceed
37 two million dollars at the time the civil action was filed, or (ii) an
38 owner of an unincorporated business, or a partnership, corporation,
39 limited liability company, association, or organization, the net worth

1 of which did not exceed seven million dollars at the time the civil
2 action was filed; except that an organization described in section
3 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501
4 (c)(3)) exempt from taxation under section 501(a) of the Internal
5 Revenue Code of 1986 (26 U.S.C. Sec. 501(a)), or a cooperative
6 association as defined by section 15(a) of the agricultural marketing
7 act (12 U.S.C. Sec. 1141j(a)), may be a party regardless of the net
8 worth of the organization or cooperative association;

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

11 (d) "Civil action" means a civil action brought by or against the
12 state of Washington, including an appeal by a party of a decision of an
13 agency action, except for:

14 (i) Civil infraction actions; or

15 (ii) Vehicle impoundment hearings and driver's license actions
16 under Title 46 RCW where the state of Washington is not represented by
17 counsel;

18 (e) "Prevailing party" means a party in whose favor judgment is
19 entered or a party who substantially prevails on the majority of
20 issues.

21 NEW SECTION. **Sec. 3.** The office of financial management shall
22 report annually to the legislature on the amount of fees and other
23 expenses awarded during the preceding fiscal year under section 2 of
24 this act. The report shall describe the number, nature, and amount of
25 the awards, the claims involved in the controversy, and other relevant
26 information that may aid the legislature in evaluating the scope and
27 impact of the awards.

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