

HOUSE BILL ANALYSIS

SSB 5260

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

Brief Description: Creating an equal access to justice task force.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline, Johnson and Thibaudeau).

Brief Summary of Bill

- Creates a task force to review the statute authorizing attorney fees in appeals from administrative actions, and requires the task force to determine the types of administrative hearings that require attorney representation to preserve fundamental rights or entitlements.

HOUSE COMMITTEE ON JUDICIARY

Staff: Trudes Hutcheson (786-7384).

Background:

Administrative agencies have the delegated authority to adopt rules, decide cases, and implement legislative policies. When an agency decides a case that involves the rights, duties, or privileges of a specific party, the agency generally must provide the party with notice and an opportunity to be heard. The party may be represented by an attorney in administrative hearings, at the party's expense. The party may submit pleadings, motions, objections, and offers of settlement. The rules of evidence do not generally apply to administrative hearings, but may be used as guidelines.

A party may appeal an administrative agency's decision. Generally, a party seeking review of an agency decision must use all administrative remedies and agency methods for resolution before the party can appeal the agency action in a court.

If a party prevails in court on appeal from an agency action, the court must award the prevailing party fees and expenses, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. The party is considered prevailing— if the party obtained relief on a significant issue that achieves some benefit that the party sought.

The award of fees and expenses are not available to a party if the party's net worth exceeds a certain amount. Fees and expenses may include costs of expert witnesses,

reasonable costs of a study, report, or test if the court found such project necessary, and attorney fees. Attorney fees are based on the prevailing market rate and are capped at \$150 per hour, unless the court finds that an increase is justified. The fee and expense award cannot exceed \$25,000 and must be paid by the agency within 60 days.

Summary of Bill:

The Equal Access to Justice Task Force is created to study and review the attorney fees provisions in administrative hearings. The task force must:

- review and determine the type of administrative hearings that require the presence of counsel to preserve fundamental rights and entitlements;
- review issues related to representation and due process where the party has a substantial economic interest in the outcome of the agency action;
- determine whether to lower the current net worth amount that triggers whether a prevailing party may be awarded fees and expenses; and
- determine whether non-attorney representatives should be compensated.

The task force may also determine those cases where payment of attorney fees would encourage settlement prior to hearings and where payment would discourage appeals of meritless claims.

The task force is composed of two individuals from the Washington State Bar Association, two individuals from the Access to Justice Board, four individuals representing state agencies, two state senators (one from each political party) and two state representatives (one from each political party).

The task force must report to the appropriate legislative committees during the 2000 regular session and will terminate July 1, 2000.

Fiscal Note: Available.

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

Office of Program Research