

SENATE BILL REPORT

SB 6249

AS REPORTED BY COMMITTEE ON COMMERCE & LABOR, FEBRUARY 5, 1992

Brief Description: Providing for payment of attorneys' fees and court costs when the state or a state subdivision is a party and does not prevail.

SPONSORS: Senators Anderson, Rasmussen and Newhouse

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended.

Signed by Senators Matson, Chairman; Anderson, Vice Chairman; Bluechel, McCaslin, McDonald, McMullen, Moore, Murray, and Skratek.

Staff: Jonathan Seib (786-7427)

Hearing Dates: January 23, 1992; February 5, 1992

BACKGROUND:

As a general rule, a party seeking review of or defending against a state agency action is responsible for his or her own attorneys' fees and expenses.

In litigation with persons and small businesses, state agencies have relatively vast resources available to pursue and defend their position. There is concern that this discourages the pursuit or defense of legal rights by persons or small businesses in the state, and that this in turn encourages an abuse of agency authority.

It is suggested that attorneys' fees, costs and expenses be awarded to an individual or small business that prevails in a judicial review of a state agency action.

Congress enacted the Equal Access to Justice Act in 1982 to provide these remedies on the federal level.

SUMMARY:

A court is to award any eligible party that prevails in a judicial review of an agency action their fees and other expenses not exceeding \$10,000.

Eligible parties include: (1) an individual whose net worth does not exceed \$1 million; (2) a business whose net worth does not exceed \$5 million or that has no more than 100 employees; or (3) a nonprofit organization.

Agencies paying fees and expenses are to report such payment to the Office of Financial Management (OFM). OFM is to report

annually to the Legislature on the fees and expenses awarded during the preceding year.

SUMMARY OF PROPOSED COMMITTEE AMENDMENT:

"Agency" is defined to mean the same as it does in the state Administrative Procedure Act.

It is clarified that in determining eligibility for attorneys' fees, an individual or business' net worth is to be determined at the time of the initial petition for judicial review.

The meaning of "prevailing party" is clarified. A party is to be considered to have prevailed if the party obtained judicial relief on any significant issue which achieved some benefit that the party sought.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

Small businesses must be given the tools to challenge arbitrary or unreasonable agency actions. Many now simply submit to questionable agency directives because of the substantial resources necessary to challenge them. This is unfair and encourages abuse of agency authority. The fiscal impact of a similar measure at the federal level has not been significant.

TESTIMONY AGAINST: None

TESTIFIED: PRO: Gary Smith, IBA; Clif Finch, AWB; Jim Zimmerman, Trout Lodge, Inc.