
SENATE BILL 5353

State of Washington

53rd Legislature

1993 Regular Session

By Senators A. Smith, Roach, Bauer, Newhouse, Jesernig, Quigley, Anderson, Hochstatter, Winsley, Talmadge, Deccio and Oke

Read first time 01/25/93. Referred to Committee on Law & Justice.

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 except an action for personal injury or
8 wrongful death, including proceedings for judicial review of agency
9 action, unless the court finds that the position of the state of
10 Washington was substantially justified or that circumstances make an
11 award unjust.

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

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

31 (2) For purposes of this section:

32 (a) "Fees and other expenses" includes the reasonable expenses of
33 expert witnesses, the reasonable cost of study, analysis, engineering
34 report, test, or project which is found by the court to be necessary
35 for the preparation of the party's case, and reasonable attorneys'
36 fees. The amount of fees awarded under this subsection shall be based
37 upon the prevailing market rates for the kind and quality of the
38 services furnished, except that (i) no expert witness shall be
39 compensated at a rate in excess of the highest rate of compensation for

1 expert witnesses paid by the state of Washington; and (ii) attorneys
2 shall not be awarded in excess of one hundred fifty dollars per hour
3 unless the court determines that an increase in the cost of living or
4 a special factor, such as the limited availability of qualified
5 attorneys for the proceedings involved, justify a higher fee;

6 (b) "Party" means (i) an individual whose net worth did not exceed
7 two million dollars at the time the civil action was filed, or (ii) an
8 owner of an unincorporated business, or a partnership, corporation,
9 association, or organization, the net worth of which did not exceed
10 seven million dollars at the time the civil action was filed; except
11 that an organization described in section 501(c)(3) of the Internal
12 Revenue Code of 1986 (26 U.S.C. Sec. 501 (c)(3)) exempt from taxation
13 under section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C.
14 Sec. 501(a)), or a cooperative association as defined by section 15(a)
15 of the agricultural marketing act (12 U.S.C. Sec. 1141j(a)), may be a
16 party regardless of the net worth of the organization or cooperative
17 association;

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

20 (d) "Position of the state of Washington" means, in addition to the
21 position taken by the state of Washington in the civil action, the
22 action or failure to act by the agency upon which the civil action is
23 based; except that fees and expenses may not be awarded to a party for
24 any portion of the litigation in which the party has unreasonably
25 protracted the proceedings;

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

29 NEW SECTION. **Sec. 3.** The office of financial management shall
30 report annually to the legislature on the amount of fees and other
31 expenses awarded during the preceding fiscal year under section 2 of
32 this act. The report shall describe the number, nature, and amount of
33 the awards, the claims involved in the controversy, and other relevant
34 information that may aid the legislature in evaluating the scope and
35 impact of the awards.

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