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SENATE BILL 5260

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State of Washington                      56th Legislature                      1999 Regular Session

By Senators Kline, Johnson and Thibaudeau

Read first time 01/18/1999. Referred to Committee on Judiciary.

1            AN ACT Relating to the equal access to justice act; and amending  
2 RCW 4.84.340, 4.84.350, and 4.84.360.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 4.84.340 and 1995 c 403 s 902 are each amended to read  
5 as follows:

6            Unless the context clearly requires otherwise, the definitions in  
7 this section apply throughout RCW 4.84.340 through 4.84.360.

8            (1) "Adjudicative proceeding" means an adjudicative proceeding as  
9 defined in RCW 34.05.010 and an administrative review as defined in RCW  
10 34.05.464.

11            (2) "Administrative review" means an adjudicative proceeding as  
12 defined in RCW 34.05.010 and 34.05.464 pursuant to agency action as  
13 defined in chapter 34.05 RCW.

14            (3) "Administrative tribunal" means the authority that conducts an  
15 adjudicative proceeding or a review of agency action pursuant to  
16 chapter 34.05 RCW.

17            (4) "Agency" means any state board, commission, department,  
18 institution of higher education, or officer, authorized by law to make  
19 rules or to conduct adjudicative proceedings, except those in the

1 legislative or judicial branches, the governor, or the attorney general  
2 except to the extent otherwise required by law.

3 ~~((+2))~~ (5) "Agency action" means agency action as defined by  
4 chapter 34.05 RCW.

5 ~~((+3))~~ (6) "Fees and other expenses" includes the reasonable  
6 expenses of expert witnesses, the reasonable cost of a study, analysis,  
7 engineering report, test, or project that is found by the court or  
8 administrative tribunal to be necessary for the preparation of the  
9 party's case, and reasonable attorneys' fees. Reasonable attorneys'  
10 fees shall be based on the prevailing market rates for the kind and  
11 quality of services furnished, except that (a) no expert witness shall  
12 be compensated at a rate in excess of the highest rates of compensation  
13 for expert witnesses paid by the state of Washington, and (b)  
14 attorneys' fees shall not be awarded in excess of one hundred fifty  
15 dollars per hour unless the court or administrative tribunal determines  
16 that an increase in the cost of living or a special factor, such as the  
17 limited availability of qualified attorneys for the proceedings  
18 involved, justifies a higher fee.

19 ~~((+4))~~ (7) "Judicial review" means a judicial review as defined by  
20 chapter 34.05 RCW.

21 ~~((+5))~~ (8) "Qualified party" means (a) an individual whose net  
22 worth did not exceed one million dollars at the time the initial  
23 petition for judicial review was filed or (b) a sole owner of an  
24 unincorporated business, or a partnership, corporation, association, or  
25 organization whose net worth did not exceed five million dollars at the  
26 time the initial adjudicative proceeding petition for administrative  
27 review or judicial review was filed, except that an organization  
28 described in section 501(c)(3) of the federal internal revenue code of  
29 1954 as exempt from taxation under section 501(a) of the code and a  
30 cooperative association as defined in section 15(a) of the agricultural  
31 marketing act (12 U.S.C. 1141J(a)), may be a party regardless of the  
32 net worth of such organization or cooperative association.

33 **Sec. 2.** RCW 4.84.350 and 1995 c 403 s 903 are each amended to read  
34 as follows:

35 (1) Except as otherwise specifically provided by statute, a court  
36 or administrative tribunal shall award a qualified party that prevails  
37 in a judicial review of an agency action, or an administrative or  
38 adjudicative proceeding challenging an agency action under chapter

1 34.05 RCW, fees and other expenses, including reasonable attorneys'  
2 fees, unless the court or administrative tribunal finds that the agency  
3 action was substantially justified or that circumstances make an award  
4 unjust. A qualified party shall be considered to have prevailed if the  
5 qualified party obtained relief on a significant issue that achieves  
6 some benefit that the qualified party sought.

7 (2) The amount awarded a qualified party under subsection (1) of  
8 this section shall not exceed twenty-five thousand dollars for the  
9 total request for the combined proceedings, administrative hearing,  
10 administrative review, or superior court proceedings. Subsection (1)  
11 of this section shall not apply unless all parties challenging the  
12 agency action are qualified parties. If two or more qualified parties  
13 join in an action, the award in total shall not exceed twenty-five  
14 thousand dollars. The court or administrative tribunal, in its  
15 discretion, may reduce the amount to be awarded pursuant to subsection  
16 (1) of this section, or deny any award, to the extent that a qualified  
17 party during the course of the proceedings engaged in conduct that  
18 unduly or unreasonably protracted the final resolution of the matter in  
19 controversy.

20 (3) Offers of settlement in adjudicative proceedings shall be  
21 governed by civil rule 68.

22 (4) When adjudicative proceedings, including, but not limited to,  
23 agency reviews pursuant to RCW 34.05.464, are conducted at the  
24 administrative level by the office of administrative hearings pursuant  
25 to chapter 34.05 RCW, the qualified party may be represented by any  
26 person only as permitted by law. The representative of each qualified  
27 party is entitled to be paid a fee consistent with this section.

28 (5) The agencies that conduct their own administrative hearings or  
29 agency reviews pursuant to chapter 34.05 RCW and the chief  
30 administrative law judge of the office of administrative hearings that  
31 conducts administrative hearings pursuant to chapter 34.05 RCW are  
32 authorized to adopt any rules that are necessary to implement this act  
33 effectively and efficiently and that are otherwise consistent with the  
34 intent of this act. The administrative tribunal may establish a  
35 schedule for hours, rates, or limitations on amounts of fees and other  
36 expenses presumed reasonable for the type of adjudicative proceeding.

37 **Sec. 3.** RCW 4.84.360 and 1995 c 403 s 904 are each amended to read  
38 as follows:

1 Fees and other expenses awarded under RCW 4.84.340 and 4.84.350  
2 shall be paid by the agency over which the party prevails from  
3 operating funds appropriated to the agency within sixty days. Agencies  
4 paying fees and other expenses pursuant to RCW 4.84.340 and 4.84.350  
5 shall report all payments to the office of financial management within  
6 five days of paying the fees and other expenses. Fees and other  
7 expenses awarded by the court or administrative tribunal shall be  
8 subject to the provisions of chapter 39.76 RCW and shall be deemed  
9 payable on the date the court or administrative tribunal announces the  
10 award.

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