

# HOUSE BILL REPORT

## HB 1045

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### As Reported By House Committee On: Law & Justice

**Title:** An act relating to attorneys' fees, costs, and expenses awarded against the state.

**Brief Description:** Allowing the court to award attorney fees and other court costs to an individual or small business that successfully appeals a state agency directive in court.

**Sponsors:** 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.

**Brief History:**

**Committee Activity:**

Law & Justice: 1/20/95, 1/31/95, 2/7/95 [DPS].

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Campbell; Carrell; Chappell; Lambert; McMahan; Morris; Robertson; Sheahan and Smith.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Costa, Assistant Ranking Minority Member; Cody; Thibaudeau and Veloria.

**Staff:** Edie Adams (786-7180).

**Background:** In Washington, a prevailing party is not entitled to an award of attorneys' fees as part of the cost of litigation unless a statute or contract specifically provides for the payment of attorneys' fees to the prevailing party.

The federal government and many other states have passed "Equal Access to Justice" statutes which shift attorneys' fees and costs to specified nongovernmental prevailing parties when the position of the government is not substantially justified.

**Summary of Substitute Bill:** In civil actions, except civil infraction actions, vehicle impoundment hearings, and driver's license actions, the court shall award to a prevailing party other than the State of Washington, fees and other expenses of the litigation. Fees and other expenses may be awarded in actions seeking judicial review of agency action. "Fees and other expenses" include reasonable expenses of expert witnesses, reasonable attorneys' fees, and reasonable costs of necessary studies, reports, tests, or projects.

An application for fees and other expenses must be submitted to the court within 30 days after final judgment. The application must include the amount of fees sought, an itemized statement from an attorney or expert witness of the actual time expended and the rate charged, and an allegation that the position of the state was not substantially justified. The court may reduce the amount to be awarded or deny an award if the prevailing party engaged in conduct which unduly and unreasonably protracted the final resolution of the action.

"Party" is defined as an individual whose net worth does not exceed \$2 million, an owner of an unincorporated business, partnership, corporation, limited liability company association, or organization the net worth of which does not exceed \$7 million. "Washington State" is defined as any agency and any official of the state acting in his or her official capacity. "Prevailing party" is defined as a party in whose favor judgment is entered or a party who substantially prevails on the majority of issues.

The Office of Financial Management shall report annually to the Legislature on the amount of fees and other expenses awarded under this act.

**Substitute Bill Compared to Original Bill:** The substitute bill applies to personal injury and wrongful death actions and specifically exempts civil infraction actions, vehicle impoundment hearings, and driver's license hearings.

The substitute bill deletes language which provided that an award would not be made if the position of the state was substantially justified or special circumstances would make an award unjust.

The substitute bill adds a definition of "prevailing party" and includes limited liability companies within the definition of "party."

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** Individuals and small businesses do not have access to the courts because the cost of litigation is too expensive. The government has greater resources and can beat down individuals and small businesses. The government's fees are paid by the taxpayers, but individuals must pay for their own litigation expenses, win or lose. Individuals are deterred from pursuing actions because they are intimidated and have limited resources.

**Testimony Against:** The bill is very broad and will have the unintended consequences of discouraging resolution of disputes during the administrative process. The bill will encourage more claims and turn existing claims into expensive litigation. The state is already responsible for paying fees in some cases. The bill will have a substantial fiscal impact and will divert resources from vital state services.

**Testified:** Terry Van Doren, Washington Cattlemen's Association (pro); Dave Seago, C3HRM Corporation (pro); Krista Eichler, Greater Seattle Chamber of Commerce (pro); Tony Meinhardt, Independent Businesses Association (pro); Carolyn Logue, National Federation of Independent Businesses (pro); Bill Fritz, lobbyist (pro); Betty Reed, State Risk Manager, Department of General Administration; and Suzi Rao, Building Industry Association of Washington.