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NO. 97530-2

SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals, Division II No. 49836-7-II

DAN AND BILL'S RV PARK

Petitioner,

v.

ESTATE OF EDNA ALLEN, an individual, and MANUFACTURED
HOUSING DISPUTE RESOLUTION PROGRAM, WASHINGTON
STATE ATTORNEY GENERAL'S OFFICE,

Respondents.

DAN & BILL'S RV PARK ANSWER TO ESTATE OF EDNA
ALLEN'S PETITION FOR REVIEW

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I. IDENTITY OF RESPONDING PARTY

Comes now Dan and Bill's RV Park ("RV Park"), through undersigned counsel Seth Goodstein and Carolyn Lake of Goodstein Law Group, PLLC, and seeks relief designated below.

II. RELIEF REQUESTED

RV Park respectfully requests the Court deny the Estate of Edna Allen's ("the Estate" or "Ms. Allen") Petition for Review. This is an administrative law review case arising under the Mobile Home Dispute Resolution Program, RCW Ch. 59.30 *et seq.* In Washington State, dissatisfied mobile home community tenants and landlords may choose to file suit for violation RCW Ch. 59.20, or they may work through the mobile home dispute resolution process set forth at RCW § 59.30.040. The Estate appears to invite the Court to ignore the difference in summoning a party to court under RCW Ch. 59.20 (not what happened here) and this administrative law review under RCW Ch. 59.30. The Estate's arguments that this case somehow specially "arises under" RCW Ch. 59.20 are of no avail; every administrative case initiated under RCW Ch. 59.30 begins with a complaint about an alleged RCW Ch. 59.20 violation.

Division II's published decision properly required the parties to bear their own fees and costs in accordance with the relevant statute, RCW

§ 59.30.040(9), which reads: “If an administrative hearing is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses”. Despite the plain mandate, the Estate asks that this Court accept review and construe the statute to mean something else.

The 2014 legislature introduced a bill and held a committee hearing on this precise issue - deleting RCW § 59.30.040 (9) mandate that each party bear the cost of his or her own legal expenses and adding language that expressly allows fee shifting in the event of judicial review of an administrative order. The legislature declined to advance the amendment past the committee hearing. The Court should leave in place the Division II result.

III. RELEVANT RECORD

This case concerns Ms. Allen’s rental of a campsite in Pierce County. In the Spring of 2014, RV Park informed Edna Allen that rental amount for parking her recreational vehicle would be increased from \$460 to \$480 per month. Ms. Allen complained to the Attorney General Office’s Mobile Home Dispute Resolution Program (“Mobile Home Program”) that RV Park did not provide ninety days of a \$20 rent increase, and that RV Park did not offer Ms. Allen a one-year lease, and apparently about receipting for rental payments. *Compl. Form.* AR 16-18.

On November 17, 2014, Mobile Home Program issued a notice of violation to the RV Park, concerning the rent increase, the term of Ms. Allen's lease. AR 7-11. The NOV added issues that were outside the scope of Ms. Allen's Complaint – such as RV Park's alleged failure to register with the Department of Revenue as a Mobile Home Park, and RV Park's alleged compliance with Pierce County zoning code (based upon the 2009 matter, which was dismissed in a court of law, AR 150). *Notice of Violation*. AR 10-11.

RV Park appealed the Notice of Violation. AR 3-6. The Attorney General has delegated review of its notices of violation to the Washington State Office of Administrative Hearings (OAH), which, through an administrative law judge (“ALJ”), renders the final administrative order of the Attorney General. RCW § 59.30.040. The Mobile Home Program convened an administrative hearing, which the OAH assigned case number 2014-AGO-0001. AR22. The ALJ overturned the Notice of Violation. Order. AR 869. Ms. Allen retained counsel and appealed the ALJ Order to the Thurston County Superior Court. *Pet. for Judicial Review*. CP 3-23. Ms. Allen alleged as ground of Superior Court Jurisdiction:

2.1 This court has jurisdiction pursuant to RCW § 59.30.040(10)(c) and RCW Ch. 34.05.

2.2 Petitioner has standing to obtain judicial review herein pursuant to RCW Ch. 34.05.030.

Allen Pet. for Judicial Review 2:2-3. CP 4. Ms. Allen's petition for review did not make any mention of RCW § 59.20.120¹.

The Thurston County Superior Court overturned the ALJ by ruling that the Mobile Home Landlord Tenant Act applies to RV Park. *Order*. CP 215-227. The Thurston County Superior Court awarded Ms. Allen's counsel attorney's fees against RV Park. *J.* CP 213-14. *Order*. CP 228-30.

From there, this matter arrived at Division II and Ms. Allen unfortunately passed away. *Notice of Appeal*. CP 231-50. By Published Opinion filed October 16, 2018, Division II affirmed application of Mobile Home Landlord Tenant Act to RV Park. *Allen v. Dan & Bill's RV Park*, 6 Wn. App. 2d 349, 354, 428 P.3d 376 (Div. 2, 2018). The Court overturned the Superior Court's fee award. *Id.* at 372-73. In overturning the fee award, the Court relied upon the plain language of RCW § 59.30.040(9) to reject the Estate's argument that this matter "arose out of" RCW Ch. 59.20 for purposes of applying RCW § 59.20.110 fee shifting. *Id.* The Court noted that that the Estate had a choice of remedy and chose

¹ Venue. Venue for any action arising under this chapter shall be in the district or superior court of the county in which the mobile home lot is located.

dispute resolution under RCW Ch. 59.30, which is “distinct from that provided by RCW Ch. 59.20 RCW....” *Id.*

In a footnote, the Court also found that the Estate did not properly preserve a possible request for attorney’s fees under the Equal Access to Justice Act, RCW § 4.84.350. 6.Wn.App at 373, n. 9. The Court explained that the Estate did not establish its status as a qualified party.

The Estate filed for reconsideration of Division II’s attorney fee ruling. The Estate’s Motion mostly sought reconsideration of the Court’s reasoning that this case does not arise under RCW Ch. 59.20, but, briefly requests that the Court revise the superior court award to \$25,000. The Estate does not request that the proper party – the Mobile Home Dispute Resolution Program – bear proposed reduced award costs. Division II summarily denied the Motion for Reconsideration.

IV. GROUNDS FOR RELIEF & ARGUMENT

1. Petition does not Adequately Address RAP 13.4 Factors.

The Estate dedicates merely one sentence to why this Court should grant review “This case presents issues of substantial public importance that should be determined by the Supreme Court”. This is inadequate² and not true. RCW § 59.30.030(e) requires the Mobile Home Dispute Resolution Program to maintain a list of outcomes for each complaint.

² *Cowiche Canyon Conservancy v. Bosley*, 118 Wash.2d at 809, 828 P.2d 549 (1992).

Administrative review of Mobile Home Program complaints is rare. In 2018, only two of the 422³ complaints the Mobile Home Program received resulted received father administrative law review. In 2017, zero of the 244⁴ resulted in administrative law review, the Court of appeal ruled on one prior appeal. RV Park is aware of just two appeals decisions stemming from Mobile Home Program complaints, this matter and *Narrows Real Estate, Inc. v. Manufactured/Mobile Home Dispute Resolution Program*, 401 P.3d 346, 199 Wn.App. 842 (Div. 2, 2017). The Court should not grant review of fee shifting under RAP 13.4(b)(4).

2. The Plain Language of RCW § 59.30.040(9) Does not Invite Construction, and Requires Denial of the Petition.

It is undisputed that had the Estate summoned RV Park into the Pierce County Superior Court a determination on MHLTA issues pursuant to RCW § 59.20.120, then Ms. Allen would be entitled to an award of attorney's fees and costs under RCW § 59.20.110. For example, courts have used RCW § 59.20.110 to award fees and costs to parties in mobile

³*Manufactured Housing Dispute Resolution Program 2018 Annual Report to the Legislature.*
https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/Safeguarding_Consumers/Manufactured_Housing_Dispute_Resolution_Program/Stats_and_Outcomes/2018-MHU-Annual-Report-V2corrected.pdf . Accessed September 9, 2019.

⁴*Manufactured Housing Dispute Resolution Program 2017 Annual Report to the Legislature.*
https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/Safeguarding_Consumers/Manufactured_Housing_Dispute_Resolution_Program/Stats_and_Outcomes/2017-MHU-Annual-Report-2.pdf . Accessed September 9, 2019.

home unlawful detainer actions. *See, e.g., Hartson P'ship v. Martinez*, 123 Wn. App. 36, 44, 96 P.3d 449 (2004), *review denied*, 154 Wn.2d 1010 (2005); *Duvall Highlands, LLC v. Elwell*, 104 Wn. App. 763, 771-72, 19 P.3d 1051 (2001). But, Ms. Allen did not summon RV Park into Court for an action arising under RCW § 59.20. *Pet. for Review* 14-15. The Estate expressly sought judicial review in the Thurston County Superior Court under RCW § 59.30.040 and the Administrative Procedures Act, 34.05:

2.1 This court has jurisdiction pursuant to RCW § 59.30.040(10)(c) and RCW Ch. 34.05.

2.2 Petitioner has standing to obtain judicial review herein pursuant to RCW Ch. 34.05.030.

Allen Pet. for Judicial Review 2:2-3. CP 4.

The law here is clear. “If an administrative hearing is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses”. RCW § 59.30.040(9). In this case, Ms. Allen was the Complainant. *See, i.e., Compl. Form.* AR 16-18, *Allen Testimony* AR 1006-7. RV Park caused an administrative hearing to be initiated, from which the Estate appealed to Thurston County Superior Court under RCW § 59.30.040. *Allen Pet. for Judicial Review* 2:2-3. CP 4.

The Estate misplaces reliance upon RCW § 59.20.110, a statute from 1977 that reads “In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs”.

In 2007, the legislature enacted RCW Ch. 59.30 dispute resolution program and its attendant requirement RCW § 59.30.040(9) that *Complainants*⁵, like the Estate, bear their own fees and costs.

Similarly, in *Holiday Resort Cmty. Ass'n v. Echo Lake Assocs., LLC*, 134 Wn. App. 210, 228, n. 15, 135 P.3d 499 (Div. 1, 2006), the court ruled a plaintiff who claimed damages under Washington State's Consumer Protection Act stemming from alleged violations of RCW Ch. 59.20 could not recover attorney's fees under RCW § 59.20.110 because the CPA claim, despite alleging a violation of RCW Ch. 59.20, does not arise under 59.20:

RCW 59.20.[110] provides for an award of fees in "any action arising out of the MHLTA. [sic] We disagree with the trial court's conclusion that the tenants' CPA claim arises out of the MHLTA. Should MHCW prevail, they are not entitled to attorney fees under the MHLTA, RCW 59.20.110. Should the tenants prevail on their CPA claim, they would be entitled to request attorney fees under the CPA.

Division II's holding mirrors the holding *Holiday Resort*:

Allen argues that the action "clearly arose out of the Park's violations of the MHLTA and Ms. Allen's subsequent complaints to the [Program]." *Reply Br. of Allen at 22*. However, although the reason for Allen's request for dispute resolution may have come from a potential violation of chapter 59.20 RCW, this particular

⁵ In its Reply in Support of Reconsideration before Division II, the Estate claimed that Ms. Allen was not a "party" the Office of Administrative hearings proceedings, and only became a "party" upon filing the Petition for Review to the Superior Court. This creative argument fails, because RCW § 59.30.040(9) requires *complainants* to bear their own fees and costs, the Estate was undoubtedly the complainant here.

action arose out of and was initiated under chapter 59.30 RCW, the dispute resolution statute.

Allen, 6 Wn. App. 2d 3at 372. These cases establish that the mere need for a legal determination under RCW Ch. 59.20 does not necessarily mean that the case arises under RCW Ch. 59.20 for purposes of fee shifting under RCW § 59.20.120.

There can be no dispute that this case arose as an administrative hearing pursuant to RCW § 59.30.040. *Allen Pet. for Judicial Rev.* 2. Therefore, the plain language of RCW § 59.30.040 applies and precludes award of fees “(9) If an administrative hearing is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses”.

3. Washington State’s Legislature Ruled Against this Precise Issue in 2014

Aside from the plain language of RCW § 59.30.040(9). Most damning to the Estate’s Petition is the fact that the 2014 legislature took up this precise issue and decided not to allow fee shifting in this type of case. SB 6309⁶ proposed to delete RCW § 59.30.040(9) and replace it with:

NEW SECTION. Sec. 2. A new section is added to chapter 59.30 RCW to read as follows:

In any administrative or judicial review of any notice of violation issued by the attorney general under RCW §

⁶ <https://app.leg.wa.gov/billsummary?BillNumber=6309&Year=2013&Initiative=false>, accessed March 15, 2019. **Appendix 1** hereto.

59.30.040, the prevailing party is entitled to reasonable attorneys' fees and costs.

SB 6309. Appendix 1. The SB 6309 Digest states that the bill

Entitles a prevailing party to reasonable attorneys' fees and costs in an administrative or judicial review of a notice of violation issued by the attorney general under the manufactured/mobile home dispute resolution program.

Appendix 2. On January 28, 2014, SB 6309 received a committee hearing. *Senate Bill Rpt.* Appendix 3. Thirteen witnesses testified.

Committee Notes. Appendix 4. The Mobile Home Program testified against allowing fee shifting. *Id.* SB 6309 failed to advance out of committee. SB 6309 is not the law.

SB 6309 is instructive for two reasons. It confirms enough state legislators understood the plain meaning of RCW § 59.30.040(9) consistent with this Division II's Opinion in this case to file a bill and have a hearing on whether 59.30.040(9) should be amended to allow fee shifting in this situation. Second, to the extent that this Court might entertain interpretation of the very plainly worded RCW § 59.30.040(9), legislative history informs that construction. *Tenino Aerie v. Grand Aerie*, 148 Wn.2d 224, 243, 59 P.3d 655 (2002) ("In ascertaining legislative intent, this court resorts to legislative history, statutory construction, and relevant case law"). In this instance, the legislative history requires denial of Ms. Allen's Petition because the legislature did not intend fee shifting

in administrative review cases under RCW § 59.30.040, and had the opportunity to introduce the fee shifting, but did not.

4. Other Foundational Statutory Construction Principles Require Denial of the Estate's Petition

Given the legislature's blunt directive on attorney's fees in this type of case and the legislative history on the issue at bar, the Court does not need to engage in statutory construction of RCW § 59.30.040(9)'s unambiguous mandate. By way of response to the Estate's various construction arguments, RV park first points out that the Court's fundamental task in construing a statute is to arrive at the legislature's intent. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318, 320 (2003). In doing so, the Court presumes that the legislature is aware of surrounding previous enactments (*State v. Olson*, 182 Wn. App. 362, 377, 329 P.3d 121 (2014)) does not enact meaningless legislation (*State v. McCullum*, 98 Wn.2d 484, 493, 656 P.2d 1064, 1070 (1983)). The Estate's proposal runs afoul of these basic statutory construction principles.

The Estate's proposal would impermissibly render RCW § 59.30.040(9) meaningless. This Court must presume that the Legislature was aware of RCW § 59.20.110 when it enacted RCW § 59.20.030 thirty years later and did not engage in meaningless action. Therefore, the Estate's proposal is untenable. Under MHDRP, "An aggrieved party has

the right to file a complaint with the attorney general alleging a violation of chapter 59.20 RCW”. RCW § 59.30.040(1). Thus, the trigger for the MHDRP process occurs when a landlord or tenant alleges a violation of RCW 59.20. The complaint may ripen into an order or a notice of violation, and then an administrative hearing. “If an administrative hearing is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses”. RCW § 59.30.040(9). Therefore, the triggering event for a MHDRP administrative hearing always involves the need for a determination under RCW Ch. 59.20. It follows that the administrative hearing will always involve a determination about whether parties are in violation of MHLTA. Therefore, the Estate’s proposal renders RCW Ch. 59.30.040 completely meaningless.

The later enactment and more specific nature of RCW § 59.30.040 mean that it trumps the older and more general RCW § 59.20.110. “It is the law in this jurisdiction, as elsewhere, that where concurrent general and special acts are *in pari materia* and cannot be harmonized, the latter will prevail, unless it appears that the legislature intended to make the general act controlling”. *Wark v. Wash. Nat’l Guard*, 87 Wn.2d 864, 867, 557 P.2d 844, 845 (1976). RCW § 59.20.110 was enacted in 1977. RCW § 59.20.120, *notes*. § 59.30.040 was enacted in 2007 and is specific to administrative law review cases stemming from the Mobile Home Dispute

Resolution Program. Therefore, RCW § 59.30.040 controls as to this administrative law review matter.

The Estate's proposal would also contravene the express policy of RCW Ch. 59.30. In 2007, the legislature established the mobile home dispute resolution program in order to provide a "process that resolves disputes quickly and efficiently" and to avoid the necessity of legal fees. RCW § 59.30.010.

5. RCW § 59.20.120 Underscores that an action "arising under" Ch. 59.20 must a legal action filed in district or superior court.

The MHLTA itself clarifies that an action "arising under" MHLTA requires summoning a party into court for a legal action. The legislature provides: "Venue for any action arising under this chapter shall be in the district or superior court of the county in which the mobile home lot is located". RCW § 59.20.120.

Whereas, under MHDRP and the APA, proceedings are initiated by filing a request for administrative hearing, which the Washington Office of Administrative Hearings, and not the district or superior court, will conduct. RCW § 59.30.040(10). RCW Ch. 59.30 expressly

acknowledges that MHDRP proceedings constitute something other than a “legal action”. RCW § 59.30.040(13)⁷.

RCW Ch. 59.30 venue provisions are also inconsistent with RCW § 59.20.120. An aggrieved party may appeal the OAH order pursuant to the RCW Ch. 34.05, the APA. RCW § 59.30.040(10)(c). Under the APA, venue for the appeal is either Thurston County or the County in which the dispute arose. RCW § 34.05.514. APA venue provisions are inconsistent with the requirement that an action “arising under” RCW Ch. 59.20 be heard in the same county as the location of the real property. Here, in fact, the Estate and AGO did file for review in Thurston County, which is not the county where Ms. Allen’s trailer was located. Therefore, this action did not “arise under” RCW Ch. 59.20, because that phrase applies only when a plaintiff must summon a defendant into court. Ms. Allen’s self-serving “arising under” argument fails.

The Court does not need not resort to common English dictionary definitions and should disregard the Estate’s invitation to do so.

6. California Cases are not Persuasive

Despite

- the plain language of RCW § 59.30.040(9),

⁷ (13) This section is not exclusive and does not limit the right of landlords or tenants to take legal action against another party as provided in chapter 59.20 RCW or otherwise. Exhaustion of the administrative remedy provided in this chapter is not required before a landlord or tenants may bring a legal action....

- the Legislature’s unwillingness with SB 6309 to amend the statute to allow fees in this sort of case,
- the Estate’s admission that this case was not a legal action filed under RCW 59.20,
- The Supreme Court’s rule in *Holiday Resort Cmty. Ass’n, supra*, that mere necessity of a legal determination under RCW 59.20 does not suffice to invoke RCW 59.20.110 fee shifting, and
- the output of a simple statutory construction;

the Estate appears to ask the Court use California State cases to avoid these authorities. The Estate cites to a trade restraint case (*Pet. for Review 9, SC Manufactured Homes, Inc. v. Canyon View Estates, Inc.*, 148 Cal.App.4th 663, 675, 56 Cal.Rptr.3d 79 (2007)), an unlawful detainer case (*Pet. for Review 11-12, Palmer v. Agee*, 87 Cal.App.3d 377, 150 Cal.Rptr. 841 (1978)) and California Attorney General’s lawsuit against a bank and mobile home park for forfeiture (*Pet. for Review 12, People v. McKale*, 25 Cal.3d 626, 159 Cal.Rptr. 811 (1979)). The Court should not be persuaded.

Each of these cases involved summoning defendants into California’s equivalent to Superior Court, and not an administrative law process. The California Department of Housing and Community Development confirms:

The Mobile home Residency Law (MRL), like provisions of conventional landlord-tenant law, **is enforced by the courts**; that is, **the disputing parties must enforce the MRL against one another in a court of law**. The Department of Housing and Community Development does not have authority to enforce these

Civil Code provisions. For example, a park owner must utilize an unlawful detainer procedure in a court to evict a homeowner for non-payment of rent or failure to abide by reasonable park rules. By the same token, a manufactured home owner must bring legal action, in court, to enforce a notice or other MRL requirement, or obtain an injunction, if the management will not otherwise abide by the MRL.

<http://www.hcd.ca.gov/manufactured-mobile-home/mobile-home-ombudsman/mobilehome-resident-rights.shtml>; accessed March 15, 2019.

Undersigned counsel is unable to locate any California equivalent

Washington State's Mobile Home Dispute Resolution Program.

The Washington State legislature enacted RCW Ch. 59.30 to *avoid* the situation as described above in California:

(2) The legislature finds that taking legal action against a manufactured/mobile home community landlord for violations of the manufactured/mobile home landlord-tenant act can be a costly and lengthy process, and that many people cannot afford to pursue a court process to vindicate statutory rights. Manufactured/mobile home community landlords will also benefit by having access to a process that resolves disputes quickly and efficiently.

(3)(a) Therefore, it is the intent of the legislature to provide an equitable as well as a less costly and more efficient way for manufactured/mobile home tenants and manufactured/mobile home community landlords to resolve disputes, and to provide a mechanism for state authorities to quickly locate manufactured/mobile home community landlords.

RCW § 59.30.010. RCW § 59.30.040(9) requires that as part of this system, the Estate pays its own fees. Therefore, the California cases are not persuasive.

At least some of the outcomes in the California cases would be the same if litigants employed similarly summoned litigants to superior court in Washington State procedures in Washington. *See, e.g. W. Plaza, LLC v. Tison*, 184 Wn.2d 702, 707, 364 P.3d 76, 78 (2015) (Unlawful detainer award of fees under RCW § 59.20.110) *accord. SC Manufactured Homes, Inc.* 148 Cal.App.4th at 675; *Gillette v. Z*, 68 Wn. App. 838, 843, 846 P.2d 574 (Div. 3, 1993) (Mobile home vendor summoned park owner into superior court for determination on security deposit, award of attorney’s fees under RCW § 59.20.110), *accord McKale*, 25 Cal.3d 626,. The California cases do not persuade, because, as the Estate acknowledges (*Pet. for Super. Ct. Review* CP 3-4 & *Pet. for Review* 14-15), the Estate did not file a lawsuit against RV Park. The Estate chose instead to pursue MHDRP and administrative law review and subjected itself to the attendant fees shifting mandate.

7. The Estate Chose to Pursue Administrative Law Review and Cannot Now Complain of Estate’s Own Choice of Remedy

The Court should overrule the Estate’s appeal to what it describes as “fundamental fairness”. *Pet. for Review* 15. RCW Ch. 59.30.040 administrative law process is not an exclusive remedy. RCW §

59.30.040(13)⁸. The Estate chose to pursue that remedy. No amount of claimed fundamental fairness authorizes this Court deviating from RCW § 59.30.040(9). The Estate ignores that the legislature enacted RCW Ch. 59.30 to address “inequality in the bargaining position of the parties” and to provide a “less costly and more efficient way” to resolve disputes. RCW § 59.30.010.

As the Estate acknowledges, the Estate had a choice of remedy, to seek dispute resolution or to take legal action under RCW 59.20. RCW § 59.30.040(13). *Pet. for Review* 14. The Estate benefitted from having the Attorney General advocate for Ms. Allen’s position. Although RV Park disagrees with the Attorney General’s posture in this case, Division II noted that the Estate’s advocacy may have been cumulative and unnecessary. 6 Wn. App. 2d 349, 354 n.2.

8. Denial of Fees Under Equal Access to Justice Act Consistent with Court’s Lengthy History of Denying Fees for Failure to Comply with Procedural Prerequisites

Washington State’s Appellate Courts have a lengthy history of denying attorney’s fee awards when litigants fail to follow simple procedural steps. The Court of Appeals frequently denies fees to parties

⁸ This section is not exclusive and does not limit the right of landlords or tenants to take legal action against another party as provided in chapter 59.20 RCW or otherwise. Exhaustion of the administrative remedy provided in this chapter is not required before a landlord or tenants may bring a legal action.

when those parties neglect comply, even partially, with the RAP 18.1(b)⁹ requirement to include a simple request for attorney’s fees in the first brief and expressly reference RAP 18.1. *E.g.*, *Denaxas v. Sandstone Court of Bellevue, LLC*, 148 Wn.2d 654, 671, 63 P.3d 125 (2003) (fees denied where “[n]one of the briefs mentioned attorney fees”); *Bishop of Victoria Corp. Sole v. Corp. Bus. Park, LLC*, 138 Wn. App. 443, 462, 158 P.3d 1183 (2007) (fees denied where requested in the last sentence of the brief, but without any citation to authority or argument); *Phillips Bldg. Co. v. An*, 81 Wn. App. 696, 704, 915 P.2d 1146 (1996) (fees requested on appeal “without any argument or citation to authority”); *Austin v. U.S. Bank of Wash.*, 73 Wn. App. 293, 313, 869 P.2d 404 (1994) (parties “have made no argument and cited no authority to support their request for fees”). Here, the Estate did comply with RAP 18.1(b). The Estate did not mention 18.1(b). *Opening Br.* 46. The Estate substantively did not put the Court in the position to award fees due to the Estate’s oversight. *Allen*, 6 Wn.App.2d at 373 n.9. (Recounting the Estate’s neglect to establish Ms. Allen’s status as RCW § 4.84.350 qualified party.) The Estate further failed to put the Court in a position to award fees under RCW § 4.84.350.

⁹ Argument in Brief. The party must devote a section of its opening brief to the request for the fees or expenses. Requests made at the Court of Appeals will be considered as continuing requests at the Supreme Court, except as stated in section (j). The request should not be made in the cost bill. In a motion on the merits pursuant to Rule 18.14, the request and supporting argument must be included in the motion or response if the requesting party has not yet filed a brief.

The Estate did not expressly request attorney's fees under EAJA in its Petition for Review to the Superior Court. CP 5-6.

9. Fees Cannot be Awarded Against Private Citizens Under RCW 4.84.350.

The Equal Access to Justice Act does not support an award against RV Park. *Pet. for Review*. 19-20. The Estate appears to fall back to a position of asking the Court to revise downward the Superior Court's attorney's fee award against RV Park to \$25,000 under RCW § 4.84.350. *Pet. for Review* 19. However, fees under RCW § 4.84.350 can only be awarded against an "agency". RCW § 4.84.360¹⁰. "'Agency' means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law". RCW § 4.84.340(1). RV Park is not an "agency."

V. CONCLUSION

For the above reasons, the Court should deny the Estate's Petition for Review under RAP 13.4(b)(4). The statute at issue is rarely utilized. The State's clarity does not invite any construction exercises.

¹⁰ ("Fees and other expenses awarded under RCW 4.84.340 and 4.84.350 shall be paid by the agency over which the party prevails from operating funds appropriated to the agency within sixty days").

RESPECTFULLY SUBMITTED this 9th day of September 2019.

GOODSTEIN LAW GROUP PLLC

By: *s/Seth S. Goodstein*

Seth S. Goodstein, WSBA No. 45091

Carolyn A. Lake, WSBA No. 13980

Attorneys for RV Park

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

Amy Teng Office of the Attorney General Manufactured Housing Dispute Resolution Program 800 Fifth Avenue, Ste. 2000 Seattle, WA 98104 Email: amyt2@atg.wa.gov	<input checked="" type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email
Dan R. Young Law Offices of Dan R. Young 1000 2nd Ave., Ste. 3200 Seattle, WA 98104 Email: dan@truthandjustice.legal	<input checked="" type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email
Leslie W. Owen Northwest Justice Project 711 Capitol Way S #704 Olympia, WA 98501 Email: esliewowen@gmail.com	<input checked="" type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email
Walter H. Olsen, Jr., Esq. Olsen Law Firm PLLC 205 S Meridian Puyallup, WA 98371-5915 Email: walt@olsenlawfirm.com deric@olsenlawfirm.com	<input checked="" type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email

Kelly Ann Owen, Esq. Northwest Justice Project 1814 Cornwall Ave Bellingham, WA 98225-4615 Email: kellyo@nwjustice.org	<input checked="" type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email
Stephen Parsons Northwest Justice Project 715 Tacoma Avenue S Tacoma, WA 98402 Email: stevep@nwjustice.org	<input checked="" type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email

DATED this 9th day of September 2019, at Tacoma, Washington.

s/Seth S. Goodstein
 Seth S. Goodstein

SENATE BILL 6309

State of Washington 63rd Legislature 2014 Regular Session

By Senators Sheldon and Benton

Read first time 01/20/14. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to legal fees and costs affiliated with notice of
2 violation review under the manufactured/mobile home dispute resolution
3 program; amending RCW 59.30.040; and adding a new section to chapter
4 59.30 RCW.

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

6 **Sec. 1.** RCW 59.30.040 and 2007 c 431 s 4 are each amended to read
7 as follows:

8 (1) An aggrieved party has the right to file a complaint with the
9 attorney general alleging a violation of chapter 59.20 RCW.

10 (2) Upon receiving a complaint under this chapter, the attorney
11 general must:

12 (a) Inform the complainant of any notification requirements under
13 RCW 59.20.080 for tenant violations or RCW 59.20.200 for landlord
14 violations and encourage the complainant to appropriately notify the
15 respondent of the complaint; and

16 (b) If a statutory time period is applicable, inform the
17 complainant of the time frame that the respondent has to remedy the
18 complaint under RCW 59.20.080 for tenant violations or RCW 59.20.200
19 for landlord violations.

APPENDIX 1

1 (3) After receiving a complaint under this chapter, the attorney
2 general shall initiate the manufactured/mobile home dispute resolution
3 program by investigating the alleged violations at its discretion and,
4 if appropriate, facilitating negotiations between the complainant and
5 the respondent.

6 (4)(a) Complainants and respondents shall cooperate with the
7 attorney general in the course of an investigation by (i) responding to
8 subpoenas issued by the attorney general, which may consist of
9 providing access to papers or other documents, and (ii) providing
10 access to the manufactured/mobile home facilities relevant to the
11 investigation. Complainants and respondents must respond to attorney
12 general subpoenas within thirty days.

13 (b) Failure to cooperate with the attorney general in the course of
14 an investigation is a violation of this chapter.

15 (5) If after an investigation the attorney general determines that
16 an agreement cannot be negotiated between the parties, the attorney
17 general shall make a written determination on whether a violation of
18 chapter 59.20 RCW has occurred.

19 (a) If the attorney general finds by a written determination that
20 a violation of chapter 59.20 RCW has occurred, the attorney general
21 shall deliver a written notice of violation to the respondent who
22 committed the violation by certified mail. The notice of violation
23 must specify the violation, the corrective action required, the time
24 within which the corrective action must be taken, the penalties
25 including fines, other penalties, and actions that will result if
26 corrective action is not taken within the specified time period, and
27 the process for contesting the determination, fines, penalties, and
28 other actions included in the notice of violation through an
29 administrative hearing. The attorney general must deliver to the
30 complainant a copy of the notice of violation by certified mail.

31 (b) If the attorney general finds by a written determination that
32 a violation of chapter 59.20 RCW has not occurred, the attorney general
33 shall deliver a written notice of nonviolation to both the complainant
34 and the respondent by certified mail. The notice of nonviolation must
35 include the process for contesting the determination included in the
36 notice of nonviolation through an administrative hearing.

37 (6) Corrective action must take place within fifteen business days
38 of the respondent's receipt of a notice of violation, except as

1 required otherwise by the attorney general, unless the respondent has
2 submitted a timely request for an administrative hearing to contest the
3 notice of violation as required under subsection (8) of this section.
4 If a respondent, which includes either a landlord or a tenant, fails to
5 take corrective action within the required time period and the attorney
6 general has not received a timely request for an administrative
7 hearing, the attorney general may impose a fine, up to a maximum of two
8 hundred fifty dollars per violation per day, for each day that a
9 violation remains uncorrected. The attorney general must consider the
10 severity and duration of the violation and the violation's impact on
11 other community residents when determining the appropriate amount of a
12 fine or the appropriate penalty to impose on a respondent. If the
13 respondent shows upon timely application to the attorney general that
14 a good faith effort to comply with the corrective action requirements
15 of the notice of violation has been made and that the corrective action
16 has not been completed because of mitigating factors beyond the
17 respondent's control, the attorney general may delay the imposition of
18 a fine or penalty.

19 (7) The attorney general may issue an order requiring the
20 respondent, or its assignee or agent, to cease and desist from an
21 unlawful practice and take affirmative actions that in the judgment of
22 the attorney general will carry out the purposes of this chapter. The
23 affirmative actions may include, but are not limited to, the following:

24 (a) Refunds of rent increases, improper fees, charges, and
25 assessments collected in violation of this chapter;

26 (b) Filing and utilization of documents that correct a statutory or
27 rule violation; and

28 (c) Reasonable action necessary to correct a statutory or rule
29 violation.

30 (8) A complainant or respondent may request an administrative
31 hearing before an administrative law judge under chapter 34.05 RCW to
32 contest:

33 (a) A notice of violation issued under subsection (5)(a) of this
34 section or a notice of nonviolation issued under subsection (5)(b) of
35 this section;

36 (b) A fine or other penalty imposed under subsection (6) of this
37 section; or

1 (c) An order to cease and desist or an order to take affirmative
2 actions under subsection (7) of this section.

3 The complainant or respondent must request an administrative
4 hearing within fifteen business days of receipt of a notice of
5 violation, notice of nonviolation, fine, other penalty, order, or
6 action. If an administrative hearing is not requested within this time
7 period, the notice of violation, notice of nonviolation, fine, other
8 penalty, order, or action constitutes a final order of the attorney
9 general and is not subject to review by any court or agency.

10 ~~(9) ((If an administrative hearing is initiated, the respondent and
11 complainant shall each bear the cost of his or her own legal expenses.~~

12 ~~(10))~~ The administrative law judge appointed under chapter 34.12
13 RCW shall:

14 (a) Hear and receive pertinent evidence and testimony;

15 (b) Decide whether the evidence supports the attorney general
16 finding by a preponderance of the evidence; and

17 (c) Enter an appropriate order within thirty days after the close
18 of the hearing and immediately mail copies of the order to the affected
19 parties.

20 The order of the administrative law judge constitutes the final
21 agency order of the attorney general and may be appealed to the
22 superior court under chapter 34.05 RCW.

23 ~~((11))~~ (10) When the attorney general imposes a fine, refund, or
24 other penalty against a respondent, the respondent may not seek any
25 recovery or reimbursement of the fine, refund, or other penalty from a
26 complainant or from other manufactured/mobile home tenants.

27 ~~((12))~~ (11) All receipts from the imposition of fines or other
28 penalties collected under this section other than those due to a
29 complainant must be deposited into the manufactured/mobile home dispute
30 resolution program account created in RCW 59.20.070.

31 ~~((13))~~ (12) This section is not exclusive and does not limit the
32 right of landlords or tenants to take legal action against another
33 party as provided in chapter 59.20 RCW or otherwise. Exhaustion of the
34 administrative remedy provided in this chapter is not required before
35 a landlord or tenants may bring a legal action. This section does not
36 apply to unlawful detainer actions initiated under RCW 59.20.080 prior
37 to the filing and service of an unlawful detainer court action;
38 however, a tenant is not precluded from seeking relief under this

1 chapter if the complaint claims the notice of termination violates RCW
2 59.20.080 prior to the filing and service of an unlawful detainer
3 action.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 59.30 RCW
5 to read as follows:

6 In any administrative or judicial review of any notice of violation
7 issued by the attorney general under RCW 59.30.040, the prevailing
8 party is entitled to reasonable attorneys' fees and costs.

--- END ---

SB 6309 - DIGEST

Entitles a prevailing party to reasonable attorneys' fees and costs in an administrative or judicial review of a notice of violation issued by the attorney general under the manufactured/mobile home dispute resolution program.

SENATE BILL REPORT

SB 6309

As of January 27, 2014

Title: An act relating to legal fees and costs affiliated with notice of violation review under the manufactured/mobile home dispute resolution program.

Brief Description: Concerning legal fees and costs affiliated with notice of violation review under the manufactured/mobile home dispute resolution program.

Sponsors: Senators Sheldon and Benton.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/28/14.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

Background: The Attorney General's Office (AGO) administers the Manufactured/Mobile Home Dispute Resolution Program (Program) to resolve disputes regarding alleged violations of the Manufactured/Mobile Home Landlord-Tenant Act (Act). Under this Program, the AGO may receive and investigate complaints from manufactured/mobile home tenants and landlords. If appropriate, the AGO may then facilitate an agreement between the parties.

If the AGO determines that no agreement can be reached, the AGO may make written determinations about whether a violation occurred and deliver a citation to any violator.

If the AGO issues a citation, the citation specifies the violation and the corrective action required. If no corrective action is taken and no administrative hearing is requested within the allowed 15 business days, the AGO may issue a fine up to \$250 per day per violation until the violation is corrected. Determinations of both violation and nonviolation, citations, fines, other penalties, and orders to cease and desist may be contested in an administrative hearing before an administrative law judge under the Administrative Procedure Act.

If no administrative hearing is requested, the order of the AGO is final and may not be appealed to any court or agency. The order of the administrative law judge is the final agency action and may be appealed to superior court.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Costs. Currently if an administrative hearing is initiated, respondents and complainants each bear the cost of their own legal expenses.

Summary of Bill: The language regarding each party bearing their own legal expenses for initiating an administrative hearing is stricken.

In an administrative or judicial review of any notice or violation issued by the AGO under the Program, the prevailing party is entitled to reasonable attorneys' fees and costs.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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



Washington State Senate

411B John A. Cherberg Building
PO Box 40466
Olympia, WA 98504-0466
(360) 786-7408

Financial Institutions, Housing & Insurance Committee

Senator Jan Angel, Co-Chair
Senator Steve Hobbs, Co-Chair
Senator Don Benton, Vice Co-Chair
Senator Mark Mullett, Vice Co-Chair

SHR 2

January 28, 2014

1:30 p.m.

J.A. Cherberg Building

TUESDAY

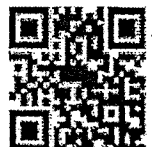
Public Hearing:

1. SB 6269 - Concerning the first mortgage interest business and occupation tax deduction. (Angel/Alison Mendiola)
2. SB 6270 - Transferring the insurance and financial responsibility program. (Hearing is on the Proposed Substitute). (Fain/Edward Redmond)
3. SB 6273 - Revising provisions governing money transmitters. (Hobbs/Alison Mendiola)
4. SB 6309 - Concerning legal fees and costs affiliated with notice of violation review under the manufactured/mobile home dispute resolution program. (Sheldon/Alison Mendiola)
5. SB 6319 - Modifying the definition of residential real property in homeowners' associations. (Bailey/Alison Mendiola)
6. SB 6324 - Disposing tax foreclosed property to cities for affordable housing purposes. (Darneille/Alison Mendiola)

Executive Session: SB 5978 - Addressing the regulation of service contracts and protection product guarantees. (Hobbs/Edward Redmond)

If draft bills, proposed substitutes, or striking amendments are to be heard, they can be obtained from committee staff or on the committee's website, <http://www.leg.wa.gov/Senate/Committees/FIHI/Pages/default.aspx>, as soon as they are available. Possible executive session on bills heard in committee. Other business.

Most Senate committees now use an electronic committee sign-in program. To sign in for a bill you may use a web-enabled device to scan the code at right or go to <http://app.leg.wa.gov/m/csi>. You must be connected to the WSL Public wireless network. You may also use one of the public access terminals, which are located in the Cherberg building hallway & hearing rooms, the 1st floor of the Pritchard Building, and in the Legislative Information Center in the Legislative Building.



SENATE STANDING COMMITTEE ON FINANCIAL INSTITUTIONS,
HOUSING & INSURANCE

DATE: January 28, 2014

TIME: 1:30 p.m.

LOCATION: Hearing Room 2

The meeting was called to order at 1:30 pm by Senator Hobbs.

Opening Remarks: Senator Hobbs introduced Senator Angel, co-chair.

Public Hearing

SB 6269 - Concerning the first mortgage interest business and occupation tax deduction.

Staff Presentation: Alison Mendiola

Prime Sponsor: Senator Angel

Panel: Brad Tower, Community Bankers of Washington

John Marvin, Raymond Federal Bank

Dwayne Aberle, Security State Bank

Question: Senator Mullet - request for fiscal note concern; Senator Angel - B&O tax

Comments: Senator Hatfield; Senator Hobbs

Denny Eliason, Washington Bankers Association

Comment: Senator Hobbs - circulation of new legislation being circulated

SB 6270 - Transferring the insurance and financial responsibility program. (Fain)

Staff Presentation: Edward Redmond (Proposed Substitute being heard)

Scott Merriman, Office of State Treasurer

SB 6273 - Revising provisions governing money transmitters. (Hobbs)

Staff Presentation: Alison Mendiola

Scott Hazelgrove, E-Bay/PayPal, with suggested amendments

Deb Bortner, Director of Consumer Services, Department of Financial Institutions

Caucus Called

Executive Session:

SB 5978 - Addressing the regulation of service contracts and protection product guarantees.

Senator Hobbs requested SB 5978 be before the Agriculture Committee

Senator Angel moved that Senate Bill 5978 be reported with a Do Pass recommendation

Edward Redmond, staff update with proposed substitute (sponsored by Senator Mullet)

Discussion: Amendments or Proposed Substitutes

Senator Angel moved that the proposed substitute bill be substituted therefore and that

the substitute bill receive a do pass recommendation to Rules

Senator Hobbs: Both a motion and second received/Discussion

Vote Called – Adopted

Senate Bill 5978 Received **DO PASS SUBSTITUTE** and be referred to Rules, subject to signature.

Public Hearing (cont)

SB 6319 - Modifying the definition of residential real property in homeowners' associations.
(Bailey)

Staff Presentation: Alison Mendiola

Panel: Norm Chapman, Anacortes (Skyline moorage condominium slip owner)
Alan Weeks, Anacortes
Dana Pratt, Camano Island

Panel: Martha Adams, Anacortes
Judy Chapman, Anacortes (with Letter from Oregon resident)
John Adams, Anacortes

SB 6324 - Disposing tax foreclosed property to cities for affordable housing purposes.

Staff Presentation: Alison Mendiola

Prime Sponsor: Senator Darneille

Briahna Taylor, City of Tacoma, Lobbyist

Senator Hobbs, listed those in support not testifying; those in opposition not testifying

SB 6309 - Concerning legal fees and costs affiliated with notice of violation review under the
manufactured/mobile home dispute resolution program. (Sheldon)

Staff Presentation: Alison Mendiola

PRO Panel: John Woodring, Manufactured Housing Communities of Washington
Dennis Daly, Manufactured Housing Communities of Washington
Tony Branson, Manufactured Housing Communities of Washington

CON Panel: Don Carlson, Olympia, former state senator
Ishbel Dickens, Executive Director, Manufactured Home Owners Assoc.
Bruce Neas, Columbia Legal Services

*Questions: Senator Mullet - reasonable costs; Senator Nelson - parks are low
income/senior residency; Senator Roach - single residents/widows;
Senator Fain - costs borne by Attorney General (?) home owners/park
owners*

Public Testimony:

Jennifer Steele, Attorney General's Office

Randy Chapman, Association of Manufactured Home Owners, President

MEETING ADJOURNED: 3:00 p.m.

MINUTES SUBMITTED BY: Dixie Huff (post session 5/21/2014)

**AN AUDIO RECORDING OF THE MEETING IS AVAILABLE AND WRITTEN
TESTIMONY SUBMITTED IS ON FILE WITH THE COMMITTEE.**



Washington State Senate

411B John A. Cherberg Building
PO Box 40466
Olympia, WA 98504-0466
(360) 786-7408

Financial Institutions, Housing & Insurance Committee

Senator Jan Angel, Co-Chair
Senator Steve Hobbs, Co-Chair
Senator Don Benton, Vice Co-Chair
Senator Mark Mullet, Vice Co-Chair

SHR 2
J.A. Cherberg Building

January 28, 2014
TUESDAY

1:30 p.m.

Public Hearing:

1. SB 6269 - Concerning the first mortgage interest business and occupation tax deduction. (Angel/Alison Mendiola)
2. SB 6270 - Transferring the insurance and financial responsibility program. (Hearing is on the Proposed Substitute). (Fain/Edward Redmond)
3. SB 6273 - Revising provisions governing money transmitters. (Hobbs/Alison Mendiola)
4. SB 6309 - Concerning legal fees and costs affiliated with notice of violation review under the manufactured/mobile home dispute resolution program. (Sheldon/Alison Mendiola)
5. SB 6319 - Modifying the definition of residential real property in homeowners' associations. (Bailey/Alison Mendiola)
6. SB 6324 - Disposing tax foreclosed property to cities for affordable housing purposes. (Darneille/Alison Mendiola)

Executive Session: SB 5978 - Addressing the regulation of service contracts and protection product guarantees. (Hobbs/Edward Redmond)

CHAIR:	May we have Senate Bill 5978 before us?
VICE/CO:	I move Senate Bill 5978.
CHAIR:	There is a motion and a second. Are there any amendments?
STAFF:	There is a Proposed Substitute on gold paper. {staff will describe}
CO:	I move the adoption of Proposed Substitute No S-4053.1 to Senate Bill 5978 on the salmon paper.
CHAIR:	It has been moved and seconded that the Proposed Substitute be adopted. Is there any discussion?
CHAIR:	All in favor say "Aye." All opposed say "Nay."
CHAIR:	The Proposed Substituted is adopted/has failed.
VICE/CO:	I move that Proposed Substitute Senate Bill 5978 be given a do pass recommendation and referred to the Rules Committee.
CHAIR:	There has been a motion and a second. Is there any further discussion?
CHAIR:	All in favor say "Aye." All opposed say "Nay."
CHAIR:	Proposed Substitute Senate Bill 5978 has received a do pass recommendation and is sent to Rules, subject to signatures.

Huff, Dixie

To: @SCS Committee Action
Subject: Executive actions for Financial Institutions, Housing & Insurance on 1/28/2014 1:30:00 PM

Bill	Title	Majority	Minority	Referral
SB 5978	Service contracts regulation	DPS		Rules
SB 6269	1st mortgage interest/B&O tx	NO ACTION		
SB 6270	Insur & finan responsibility	NO ACTION		
SB 6273	Money transmitters	NO ACTION		
SB 6309	Manuf/mobile home violations	NO ACTION		
SB 6319	Homeowners' associations	NO ACTION		
SB 6324	Tax foreclosed property	NO ACTION		

Comments

SENATE BILL REPORT

SB 6309

As of January 23, 2014

Title: An act relating to legal fees and costs affiliated with notice of violation review under the manufactured/mobile home dispute resolution program.

Brief Description: Concerning legal fees and costs affiliated with notice of violation review under the manufactured/mobile home dispute resolution program.

Sponsors: Senators Sheldon and Benton.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/28/14.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

Background: The Attorney General's Office (AGO) administers the Manufactured/Mobile Home Dispute Resolution Program (Program) to resolve disputes regarding alleged violations of the Manufactured/Mobile Home Landlord-Tenant Act (Act). Under this Program, the AGO may receive and investigate complaints from manufactured/mobile home tenants and landlords. If appropriate, the AGO may then facilitate an agreement between the parties.

If the AGO determines that no agreement can be reached, the AGO may make written determinations about whether a violation occurred and deliver a citation to any violator.

If the AGO issues a citation, the citation specifies the violation and the corrective action required. If no corrective action is taken and no administrative hearing is requested within the allowed 15 business days, the AGO may issue a fine up to \$250 per day per violation until the violation is corrected. Determinations of both violation and nonviolation, citations, fines, other penalties, and orders to cease and desist may be contested in an administrative hearing before an administrative law judge under the Administrative Procedure Act.

If no administrative hearing is requested, the order of the AGO is final and may not be appealed to any court or agency. The order of the administrative law judge is the final agency action and may be appealed to superior court.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Costs. Currently if an administrative hearing is initiated, respondents and complainants each bear the cost of their own legal expenses.

Summary of Bill: The language regarding each party bearing their own legal expenses for initiating an administrative hearing is stricken.

In an administrative or judicial review of any notice or violation issued by the AGO under the Program, the prevailing party is entitled to reasonable attorneys' fees and costs.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

SENATE BILL 6309

State of Washington

63rd Legislature

2014 Regular Session

By Senators Sheldon and Benton

Read first time 01/20/14. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to legal fees and costs affiliated with notice of
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5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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9 attorney general alleging a violation of chapter 59.20 RCW.

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11 general must:

12 (a) Inform the complainant of any notification requirements under
13 RCW 59.20.080 for tenant violations or RCW 59.20.200 for landlord
14 violations and encourage the complainant to appropriately notify the
15 respondent of the complaint; and

16 (b) If a statutory time period is applicable, inform the
17 complainant of the time frame that the respondent has to remedy the
complaint under RCW 59.20.080 for tenant violations or RCW 59.20.200
19 for landlord violations.

1 (3) After receiving a complaint under this chapter, the attorney
2 general shall initiate the manufactured/mobile home dispute resolution
3 program by investigating the alleged violations at its discretion and,
4 if appropriate, facilitating negotiations between the complainant and
5 the respondent.

6 (4)(a) Complainants and respondents shall cooperate with the
7 attorney general in the course of an investigation by (i) responding to
8 subpoenas issued by the attorney general, which may consist of
9 providing access to papers or other documents, and (ii) providing
10 access to the manufactured/mobile home facilities relevant to the
11 investigation. Complainants and respondents must respond to attorney
12 general subpoenas within thirty days.

13 (b) Failure to cooperate with the attorney general in the course of
14 an investigation is a violation of this chapter.

15 (5) If after an investigation the attorney general determines that
16 an agreement cannot be negotiated between the parties, the attorney
17 general shall make a written determination on whether a violation of
18 chapter 59.20 RCW has occurred.

19 (a) If the attorney general finds by a written determination that
20 a violation of chapter 59.20 RCW has occurred, the attorney general
21 shall deliver a written notice of violation to the respondent who
22 committed the violation by certified mail. The notice of violation
23 must specify the violation, the corrective action required, the time
24 within which the corrective action must be taken, the penalties
25 including fines, other penalties, and actions that will result if
26 corrective action is not taken within the specified time period, and
27 the process for contesting the determination, fines, penalties, and
28 other actions included in the notice of violation through an
29 administrative hearing. The attorney general must deliver to the
30 complainant a copy of the notice of violation by certified mail.

31 (b) If the attorney general finds by a written determination that
32 a violation of chapter 59.20 RCW has not occurred, the attorney general
33 shall deliver a written notice of nonviolation to both the complainant
34 and the respondent by certified mail. The notice of nonviolation must
35 include the process for contesting the determination included in the
36 notice of nonviolation through an administrative hearing.

37 (6) Corrective action must take place within fifteen business days
38 of the respondent's receipt of a notice of violation, except as

1 required otherwise by the attorney general, unless the respondent has
2 submitted a timely request for an administrative hearing to contest the
3 notice of violation as required under subsection (8) of this section.
4 If a respondent, which includes either a landlord or a tenant, fails to
5 take corrective action within the required time period and the attorney
6 general has not received a timely request for an administrative
7 hearing, the attorney general may impose a fine, up to a maximum of two
8 hundred fifty dollars per violation per day, for each day that a
9 violation remains uncorrected. The attorney general must consider the
10 severity and duration of the violation and the violation's impact on
11 other community residents when determining the appropriate amount of a
12 fine or the appropriate penalty to impose on a respondent. If the
13 respondent shows upon timely application to the attorney general that
14 a good faith effort to comply with the corrective action requirements
15 of the notice of violation has been made and that the corrective action
16 has not been completed because of mitigating factors beyond the
17 respondent's control, the attorney general may delay the imposition of
18 a fine or penalty.

19 (7) The attorney general may issue an order requiring the
20 respondent, or its assignee or agent, to cease and desist from an
21 unlawful practice and take affirmative actions that in the judgment of
22 the attorney general will carry out the purposes of this chapter. The
23 affirmative actions may include, but are not limited to, the following:

24 (a) Refunds of rent increases, improper fees, charges, and
25 assessments collected in violation of this chapter;

26 (b) Filing and utilization of documents that correct a statutory or
27 rule violation; and

28 (c) Reasonable action necessary to correct a statutory or rule
29 violation.

30 (8) A complainant or respondent may request an administrative
31 hearing before an administrative law judge under chapter 34.05 RCW to
32 contest:

33 (a) A notice of violation issued under subsection (5)(a) of this
34 section or a notice of nonviolation issued under subsection (5)(b) of
35 this section;

36 (b) A fine or other penalty imposed under subsection (6) of this
37 section; or

1 (c) An order to cease and desist or an order to take affirmative
2 actions under subsection (7) of this section.

3 The complainant or respondent must request an administrative
4 hearing within fifteen business days of receipt of a notice of
5 violation, notice of nonviolation, fine, other penalty, order, or
6 action. If an administrative hearing is not requested within this time
7 period, the notice of violation, notice of nonviolation, fine, other
8 penalty, order, or action constitutes a final order of the attorney
9 general and is not subject to review by any court or agency.

10 ~~(9) ((If an administrative hearing is initiated, the respondent and
11 complainant shall each bear the cost of his or her own legal expenses.~~

12 ~~(10))~~ The administrative law judge appointed under chapter 34.12
13 RCW shall:

14 (a) Hear and receive pertinent evidence and testimony;

15 (b) Decide whether the evidence supports the attorney general
16 finding by a preponderance of the evidence; and

17 (c) Enter an appropriate order within thirty days after the close
18 of the hearing and immediately mail copies of the order to the affected
19 parties.

20 The order of the administrative law judge constitutes the final
21 agency order of the attorney general and may be appealed to the
22 superior court under chapter 34.05 RCW.

23 ~~((11))~~ (10) When the attorney general imposes a fine, refund, or
24 other penalty against a respondent, the respondent may not seek any
25 recovery or reimbursement of the fine, refund, or other penalty from a
26 complainant or from other manufactured/mobile home tenants.

27 ~~((12))~~ (11) All receipts from the imposition of fines or other
28 penalties collected under this section other than those due to a
29 complainant must be deposited into the manufactured/mobile home dispute
30 resolution program account created in RCW 59.30.070.

31 ~~((13))~~ (12) This section is not exclusive and does not limit the
32 right of landlords or tenants to take legal action against another
33 party as provided in chapter 59.20 RCW or otherwise. Exhaustion of the
34 administrative remedy provided in this chapter is not required before
35 a landlord or tenants may bring a legal action. This section does not
36 apply to unlawful detainer actions initiated under RCW 59.20.080 prior
37 to the filing and service of an unlawful detainer court action;
38 however, a tenant is not precluded from seeking relief under this

1 chapter if the complaint claims the notice of termination violates RCW
2 59.20.080 prior to the filing and service of an unlawful detainer
3 action.

4 NEW SECTION. Sec. 2. A new section is added to chapter 59.30 RCW
5 to read as follows:

6 In any administrative or judicial review of any notice of violation
7 issued by the attorney general under RCW 59.30.040, the prevailing
8 party is entitled to reasonable attorneys' fees and costs.

--- END ---

Multiple Agency Fiscal Note Summary

Bill Number: 6309 SB	Title: Manuf/mobile home violations
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Estimated Cash Receipts

Agency Name	2013-15		2015-17		2017-19	
	GF State	Total	GF State	Total	GF State	Total
Office of Administrative Hearings	0	180	0	360	0	360
Total \$	0	180	0	360	0	360

Estimated Expenditures

Agency Name	2013-15			2015-17			2017-19		
	FYBLS	GF State	Total	FYBLS	GF State	Total	FYBLS	GF State	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Office of Attorney General	.0	0	11,600	.0	0	23,200	.0	0	23,200
Office of Administrative Hearings	.0	0	180	.0	0	360	.0	0	360
Total	0.0	\$0	\$11,780	0.0	\$0	\$23,560	0.0	\$0	\$23,560

Local Gov. Courts *									
School dist-SPI									
Local Gov. Other **	Non-zero but indeterminate cost. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Impact

NONE

Prepared by: Chris Stanley, OFM	Phone: (360) 902-9810	Date Published: Final 1/27/2014
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See Office of the Administrator for the Courts judicial fiscal note

** See local government fiscal note

FNPID: 36479

FNS029 Multi Agency rollup

Judicial Impact Fiscal Note

Bill Number: 6309 SB	Title: Manuf/mobile home violations	Agency: 055-Admin Office of the Courts
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Part I: Estimates

No Fiscal Impact

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.

Legislative Contact: Alison Mendiola	Phone: 360-786-7483	Date: 01/20/2014
Agency Preparation: David Elliott	Phone: 360-705-5229	Date: 01/22/2014
Agency Approval: Ramsey Radwan	Phone: 360-357-2406	Date: 01/22/2014
OFM Review: Cheri Keller	Phone: 360-902-0563	Date: 01/23/2014

Request # civil-1

Bill # 6309 SB

Part II: Narrative Explanation

I. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

This bill modifies and adds elements to Chapter 59.30 RCW relating to payment of legal expenses in administrative and judicial reviews. There is not expected to be any court impact. The processes covered by the bill are rare.

Section 1 would amend RCW 59.30.040 to remove the provision requiring the respondent and complainant to pay his or her legal expenses in an administrative hearing.

Section 2 – new. In any administrative or judicial review of any notice of violation issued by the attorney general under RCW 53.30.040 (Manufactured/Mobile Home Communities Dispute Resolution Program), the prevailing party is entitled to reasonable attorneys' fees and costs.

II. B - Cash Receipts Impact

none

II. C - Expenditures

none

Part III: Expenditure Detail

Part IV: Capital Budget Impact

Individual State Agency Fiscal Note

Bill Number: 6309 SB	Title: Manuf/mobile home violations	Agency: 100-Office of Attorney General
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

	FY 2014	FY 2015	2013-15	2015-17	2017-19
Account					
Manufactured/Mobile Home Dispute Resolution Program Account-State 12f-1	0	11,600	11,600	23,200	23,200
Total \$	0	11,600	11,600	23,200	23,200

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Alison Mendiola	Phone: 360-786-7483	Date: 01/20/2014
Agency Preparation: Toni Ursich	Phone: (509) 456-3123	Date: 01/22/2014
Agency Approval: Brendan VanderVelde	Phone: 360 586-2104	Date: 01/22/2014
OFM Review: Chris Stanley	Phone: (360) 902-9810	Date: 01/22/2014

Request # 2014-067

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 1 amends RCW 59.30.040, striking paragraph (9), which required the respondent and complainant to bear their own legal costs if an administrative hearing is initiated.

Section 2 adds a new section to chapter 59.30 RCW, providing that in any administrative or judicial review of a notice of violation issued by the Attorney General under RCW 59.30.040, the prevailing party is entitled to reasonable attorneys' fees and costs.

The Attorney General's Office (AGO) estimates direct litigation costs of \$11,600 in Fiscal Year (FY) 2015 and in each FY thereafter.

This bill is assumed effective 90 days after the end of the 2014 legislative session.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

No cash receipt impact.

These AGO activities are funded with Manufactured/Mobile Home Dispute Resolution account dollars.

There is no client agency to bill for legal services.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

The AGO estimates direct litigation costs of \$11,600 in FY2015 and in each FY thereafter.

Assumptions:

1. Legal services associated with the enactment of this bill are assumed to begin on July 1, 2014.
2. We assume this bill will have a fiscal impact on the Manufactured/Mobile Home Housing Dispute Resolution Program (MHD). This bill provides that in any administrative appeal and/or judicial review of a notice of violation, the prevailing party is entitled to attorneys' fees and costs. The bill does not indicate whether the recovery is discretionary or mandatory.
3. We have difficulty in estimating the fiscal impact of this bill because the AGO will prevail in some cases and recover costs and fees, and may not prevail in other case and have to pay costs and fees. It is possible that the AGO Mobile Homes Dispute Unit (MHU) could be awarded costs and fees and not ever receive the ordered amount, as the losing party does not/cannot pay.

4. Pursuant to RCW 59.30.070, we assume recoveries will be paid into the 12F fund (MHD).
5. We assume any funds the MFU Program is required pay to a prevailing party as a result of this bill would be paid out of the 12F fund. We assume budgeting issues should the MHU Program be directed to pay costs and fees to a prevailing party, as such payments will reduce the funds available for MHU Program operations. .
6. We assume the current workload will be sustained over the next few years. Over the past 12 months, the MHU has spent 446 hours litigating appeals of notices of violations.
7. We assume a reasonable hourly rate of \$300 for defense attorneys. However, we assume it to be unlikely that an Administrative Law Judge (ALJ) would award the AGO market rates, but would instead award the agency billing rate of \$111 per hour.
8. We assume the AGO will prevail on 2 out of 3 cases and be awarded \$33,000 in attorneys' fees (at a rate of \$111 per hour). We assume the defense will prevail on 1 out of 3 cases and be awarded a market rate of \$44,600.
9. We assume fiscal impact on the AGO will be \$11,600 (\$44,600 - \$33,000) per year. These costs are direct litigation costs which will pay for court reporters, courier services, and court fees.
10. MHD (Account 12F-6) is non-appropriated.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2014	FY 2015	2013-15	2015-17	2017-19
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits					
C-Professional Service Contracts		11,600	11,600	23,200	23,200
E-Goods and Other Services					
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total:	\$0	\$11,600	\$11,600	\$23,200	\$23,200

III. C - Expenditures By Program (optional)

Program	FY 2014	FY 2015	2013-15	2015-17	2017-19
Mobile Home Dispute Unit (MHD)		11,600	11,600	23,200	23,200
Total \$		11,600	11,600	23,200	23,200

Part IV: Capital Budget Impact

NONE

Request # 2014-067

Bill # 6309 SB

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

One.

Individual State Agency Fiscal Note

Bill Number: 6309 SB	Title: Manuf/mobile home violations	Agency: 110-Office of Administrative Hearings
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

ACCOUNT	FY 2014	FY 2015	2013-15	2015-17	2017-19
Administrative Hearings Revolving Account-State 484-1		180	180	360	360
Total \$		180	180	360	360

Estimated Expenditures from:

Account	FY 2014	FY 2015	2013-15	2015-17	2017-19
Administrative Hearings Revolving Account-State 484-1	0	180	180	360	360
Total \$	0	180	180	360	360

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Alison Mendiola	Phone: 360-786-7483	Date: 01/20/2014
Agency Preparation: Jane Habegger	Phone: 360-407-2756	Date: 01/22/2014
Agency Approval: Larry Dzieza	Phone: 360-407-2717	Date: 01/22/2014
OFM Review: Chris Stanley	Phone: (360) 902-9810	Date: 01/22/2014

Request #

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

SB 6309 amends the Manufactured/Mobile Home Communities Dispute Resolution and Registration statutes to provide that the prevailing party of any notice of violation issued by the attorney general is entitled to reasonable attorneys' fees and costs to be awarded by an Administrative Law Judge (ALJ) for an administrative hearing. ALJs are employed by the Office of Administrative Hearings.

Depending on the length and complexity of an individual hearing under this legislation, the additional costs per hearing could range from .2 hours to 4.0 hours of ALJ time to review the bill submitted by the prevailing party's attorney for reasonableness. The ALJ billable rate is \$120 an hour, inclusive. For purposes of this fiscal note, OAH assumes .5 hours per case additional ALJ time to review attorney billings as proposed by this legislation.

In 2013 the Office of Administrative Hearings received three appeals related to disputes between landlords and tenants who reside in a mobile or manufactured home. These hearings took an average of approximately 40 hours to complete. Assuming we would receive the of these appeals per year with this same level of complexity, we estimate that it would take the ALJ 1.5 hours (30 minutes per case x 3 cases) to review the attorneys' fees and costs for reasonableness. At our ALJ billable rate of \$120 an hour, the total cost would be \$180 per year.

OAH assumes no costs in the first year, as bills enacted in the regular session of the 2014 Legislature will take effect June 12, 2014.

II. B - Cash receipts Impact

Describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

NONE

Part IV: Capital Budget Impact

NONE

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

LOCAL GOVERNMENT FISCAL NOTE

Department of Community, Trade and Economic Development

Bill Number: 6309 SB	Title: Manuf/mobile home violations
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Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- Cities: Cities that own mobile home communities, if found to have committed a violation of the manufactured/mobile home portion of the Landlord Tenant Act, would be required to cover complainants' legal costs.
- Counties: Counties that own mobile home communities, if found to have committed a violation of the manufactured/mobile home portion of the Landlord Tenant Act, would be required to cover complainants' legal costs.
- Special Districts: Housing authorities that own mobile home communities, if found to have committed a violation of the manufactured/mobile home portion of the Landlord Tenant Act, would be required to cover complainants' legal costs.
- Specific jurisdictions only:
- Variance occurs due to:

Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time: How many administrative hearings would occur and which party would prevail. Also how many mobile home communities are owned by local governments or housing authorities compared with those owned by private parties.

Estimated revenue impacts to:

Indeterminate Impact

Estimated expenditure impacts to:

Indeterminate Impact

Part III: Preparation and Approval

Fiscal Note Analyst: Elizabeth Green-Taylor	Phone: 360-725-5036	Date: 01/27/2014
Leg. Committee Contact: Alison Mendiola	Phone: 360-786-7483	Date: 01/20/2014
Agency Approval: Steve Salmi	Phone: (360) 725 5034	Date: 01/27/2014
OFM Review: Chris Stanley	Phone: (360) 902-9810	Date: 01/27/2014

Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.

Section 1 amends RCW 59.30.040 to delete paragraph (9), which provides that each party to an administrative hearing regarding a violation of the manufactured/mobile home portion of the Landlord Tenant Act bear his or her own legal fees.

Section 2 adds a new section to RCW 59.30.040, stating that the prevailing party in such a hearing is entitled to reasonable attorney fees and costs.

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

The bill will create indeterminate expenditure impacts that will occur only in cases in which a local government or housing authority:

- Owns a mobile home community, and
- Is party to an administrative hearing regarding violations of the Landlord Tenant Act, and
- Is not the prevailing party in the hearing.

Assuming that the \$300 hourly market rate and 446 hours per year are substantially similar for complainants, and assuming that the landlord is the non-prevailing party in approximately two-thirds of the cases, prevailing complainant legal fees would run approximately \$89,200 annually ($300 \times 446 \times 2/3 = \$89,200$). Adding the OAH's \$180 to the costs, total prevailing complainant costs would be approximately \$89,380 annually.

However, those legal costs cover all administrative hearings regarding violations of the manufactured/mobile home portion of the Landlord Tenant Act, most of which will involve private, not public, landlords. The ratio of mobile home communities owned by local governments or housing authorities to those that are privately owned is not possible to determine. It is thus not possible to determine what portion of the annual complainants' costs would fall onto local governments or housing authorities. Therefore, expenditure impacts for this bill are indeterminate.

ASSUMPTIONS:

Local agencies' assumptions include:

From the Office of Administrative Hearings (OAH)

- In 2013, OAH received three appeals in disputes related to the manufactured/mobile home portion of the Landlord Tenant Act.
- OAH estimates 30 minutes of judge's time per case to review the attorney's fees.
- At a billable rate of \$120 per hour for an Administrative Law Judge (ALJ), OAH costs per case would be \$60, or \$180 per year.

From the Attorney General's Office (AGO)

- In 2013, the AGO's Mobile Home Unit spent 446 hours on appeals of notices of violations.
- Market rate for attorneys is \$300.
- The defense (landlord) will prevail in one out of three cases.
- Legal services relating to this bill are assumed to begin on July 1, 2014 (FY 2015).

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

The bill will create indeterminate revenue impacts for local governments or housing authorities that own a mobile home community, and is party to an administrative hearing regarding violations of the Landlord Tenant Act, and is the prevailing party in the hearing. However, in all instances in which a local government would receive revenue under the bill, the revenue would equal the local government's expenditures for legal services.

According to the Department of Commerce's Housing Division and the Washington Association of Housing Authorities, several housing authorities in the state own mobile home communities, but a complete list is not available. Cities or counties might also own a mobile home community, primarily if the mobile home community was acquired through foreclosure for unpaid taxes or a similar action.

Under the lead agency assumptions (see discussion in Expenditures section), an estimate of the total number of hearings annually in which the landlord prevails is possible. However, it is not possible to draw a conclusion about what portions of that total might involve a public entity. The estimate covers both privately and publically owned mobile home communities, and there is no data available for the ratio of publically

to privately owned mobile home communities.

SOURCES:

Department of Commerce, Housing Division
Office of the Attorney General
Office of Administrative Hearings
Association of Washington Housing Authorities

Senate Committee Services - Testimony/Attendance Roster

Committee: Financial Institutions, Housing & Insurance

Bill Number: SB 6309

Date: 1/28/2014 1:30 PM

Short Title: Manuf/mobile home violations

Testify?	Pro	Con	Other	Name	Organization/ Title	Mailing Address	Out of Town	Called Up	Phone/E-mail	Comment
Yes		X		bruce neas	columbia legal services					
Yes		X		Don Carlson		3799 14th Ave SE #69 Olympia, WA 98501			(360) 456-8331 sendcarl@comcast.net	
Yes		X		Ishbel Dickens	National Manufactured Home Owners Association/ Executive Director	Seattle, WA	X		(206) 851-6385 ishbel@nmhoa.org	
Yes		X		Don Carlson	AMHO					
Yes		X		Randy Chapman	Association of Manufactured Home Owners/ President	Spokane, WA	X			
Yes		X		ishbel dickens						
Yes		X		don carlson						
Yes		X		Jennifer Steele	Attorney General's Office	Kent, WA			(206) 389-2106 lvestohunt@gmail.com	

Senate Committee Services - Testimony/Attendance Roster

Committee: Financial Institutions, Housing & Insurance

Bill Number: SB 6309

Date: 1/28/2014 1:30 PM

Short Title: Manuf/mobile home violations

Testify?	Pro	Con	Other	Name	Organization/ Title	Mailing Address	Out of Town	Called Up	Phone/E-mail	Comment
Yes	X			John Woodring	Manufactured Housing Communities of Washington	2120 State Avenue NE, Suite 101 Olympia, WA 98506			(360) 224-4647 johnwoodring.law@g mail.com	
Yes	X			Dennis Daly	Manufactured Housing Communities of Washington	6200 Fair Oaks Rd SE #201 Olympia, WA 98513			(206) 604-6523	
Yes	X			Tony Branson	Manufactured Housing Communities of Washington	205 S. Meridian Puyallup, WA 98371	X		(253) 200-2288 tony@olsenlawfirm.co m	
No	X			Bob Mitchell	Washington REALTORS	PO Box 719 Olympia, WA 98507			(360) 951-2781 bob.mitchell@warealt or.org	
No	X			Chester Baldwin	Manufactured Housing Communities of Washington	1428 4th Avenue East Olympia, WA 98506			(360) 705-0113 Chet@lobbywa.com	
No	X			Mark Gjurasic	Manufactured Housing Communities of Washington	1428 4th Avenue East Olympia, WA 98506			(360) 705-0113	
No	X			Cindy Hager	Commonwealth Real Estate Services/Regional Manager	2375 130th Ave NE Ste. 102 Bellevue, WA 98005	X		(425) 478-3974 cindy@cwres.com	

Senate Committee Services - Testimony/Attendance Roster

Committee: Financial Institutions, Housing & Insurance

Bill Number: SB 6309

Date: 1/28/2014 1:30 PM

Short Title: Manuf/mobile home violations

Testify?	Pro	Con	Other	Name	Organization/ Title	Mailing Address	Out of Town	Called Up	Phone/E-mail	Comment
No		X		Ingrid McDonald	AARP Washington	9750 3rd Ave NE Seattle, WA 98117	X		(206) 330-6531 imcdonald@aar.org	

GOODSTEIN LAW GROUP PLLC

September 09, 2019 - 4:47 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97530-2
Appellate Court Case Title: Estate of Edna Allen v. Dan and Bills RV Park
Superior Court Case Number: 15-2-02446-6

The following documents have been uploaded:

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- amyt2@atg.wa.gov
- camille@truthandjustice.legal
- clake@goodsteinlaw.com
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Sender Name: Deena Pinckney - Email: dpinckney@goodsteinlaw.com

Filing on Behalf of: Seth S. Goodstein - Email: sgoodstein@goodsteinlaw.com (Alternate Email: dpinckney@goodsteinlaw.com)

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Phone: (253) 779-4000

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