

112TH CONGRESS  
1ST SESSION

# S. 1061

To amend titles 5 and 28, United States Code, with respect to the award of fees and other expenses in cases brought against agencies of the United States, to require the Administrative Conference of the United States to compile, and make publically available, certain data relating to the Equal Access to Justice Act, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 25, 2011

Mr. BARRASSO (for himself, Mr. CRAPO, Mr. ENZI, Mr. HELLER, Mr. LEE, Mr. RISCH, Mr. THUNE, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend titles 5 and 28, United States Code, with respect to the award of fees and other expenses in cases brought against agencies of the United States, to require the Administrative Conference of the United States to compile, and make publically available, certain data relating to the Equal Access to Justice Act, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Government Litigation  
3 Savings Act”.

4 **SEC. 2. MODIFICATION OF EQUAL ACCESS TO JUSTICE**  
5 **PROVISIONS.**

6       (a) AGENCY PROCEEDINGS.—

7           (1) ELIGIBILITY PARTIES; ATTORNEY FEES.—

8       Section 504 of title 5, United States Code, is  
9 amended—

10           (A) in subsection (a)(1), by inserting after  
11 “prevailing party” the following: “who has a di-  
12 rect and personal monetary interest in the adju-  
13 dication, including because of personal injury,  
14 property damage, or unpaid agency disburse-  
15 ment,”; and

16           (B) in subsection (b)(1)—

17           (i) in subparagraph (A)(ii), by strik-  
18 ing “\$125 per hour” and all that follows  
19 through “a higher fee” and inserting  
20 “\$175 per hour”; and

21           (ii) in subparagraph (B), by striking  
22 “; except that” and all that follows  
23 through “section 601”.

24           (2) REDUCTION OR DENIAL OF AWARDS.—Sec-  
25 tion 504(a)(3) of title 5, United States Code, is  
26 amended in the first sentence—

1 (A) by striking “may reduce the amount to  
 2 be awarded, or deny an award,” and inserting  
 3 “shall reduce the amount to be awarded, or  
 4 deny an award, commensurate with pro bono  
 5 hours and related fees and expenses, or”;

6 (B) by striking “unduly and”; and

7 (C) by striking “controversy.” and insert-  
 8 ing “controversy or acted in an obdurate, dila-  
 9 tory, mendacious, or oppressive manner, or in  
 10 bad faith.”.

11 (3) LIMITATION ON AWARDS.—Section 504(a)  
 12 of title 5, United States Code, is amended by adding  
 13 at the end the following:

14 “(5) A party may not receive an award of fees and  
 15 other expenses under this section—

16 “(A) in excess of \$200,000 in any single adver-  
 17 sary adjudication, or

18 “(B) for more than 3 adversary adjudications  
 19 initiated in the same calendar year,

20 unless the adjudicative officer of the agency determines  
 21 that an award exceeding such limits is required to avoid  
 22 severe and unjust harm to the prevailing party.”.

23 (4) REPORTING IN AGENCY ADJUDICATIONS.—  
 24 Section 504 of such title is amended—

1 (A) in subsection (c)(1), by striking “,  
2 United States Code”; and

3 (B) by striking subsection (e) and insert-  
4 ing the following:

5 “(e)(1) The Chairman of the Administrative Con-  
6 ference of the United States shall issue an annual, online  
7 report to the Congress on the amount of fees and other  
8 expenses awarded during the preceding fiscal year pursu-  
9 ant to this section. The report shall describe the number,  
10 nature, and amount of the awards, the nature of and  
11 claims involved in each controversy (including the law  
12 under which the controversy arose), and any other relevant  
13 information that may aid the Congress in evaluating the  
14 scope and impact of such awards. The report shall be  
15 made available to the public online, and contain a search-  
16 able database of the total awards given, and the total num-  
17 ber of applications for the award of fees and other ex-  
18 penses that were filed, defended, and heard, and shall in-  
19 clude, with respect to each such application, the following:

20 “(A) The name of the party seeking the award  
21 of fees and other expenses.

22 “(B) The agency to which the application for  
23 the award was made.

1           “(C) The names of the administrative law  
2 judges in the adversary adjudication that is the sub-  
3 ject of the application.

4           “(D) The disposition of the application, includ-  
5 ing any appeal of action taken on the application.

6           “(E) The amount of each award.

7           “(F) The hourly rates of expert witnesses stat-  
8 ed in the application that was awarded.

9           “(G) With respect to each award of fees and  
10 other expenses, the basis for the finding that the po-  
11 sition of the agency concerned was not substantially  
12 justified.

13          “(2)(A) The report under paragraph (1) shall cover  
14 payments of fees and other expenses under this section  
15 that are made pursuant to a settlement agreement, re-  
16 gardless of whether the settlement agreement is otherwise  
17 subject to nondisclosure provisions.

18          “(B) The disclosure of fees and other expenses re-  
19 quired under subparagraph (A) does not affect any other  
20 information that is subject to nondisclosure provisions in  
21 the settlement agreement.”.

22               (5) ADJUSTMENT OF ATTORNEY FEES.—Sec-  
23 tion 504 of such title is amended by adding at the  
24 end the following:

1       “(g) The Director of the Office of Management and  
 2 Budget may adjust the maximum hourly fee set forth in  
 3 subsection (b)(1)(A)(ii) for the fiscal year beginning Octo-  
 4 ber 1, 2012, and for each fiscal year thereafter, to reflect  
 5 changes in the Consumer Price Index, as determined by  
 6 the Secretary of Labor.”.

7       (b) COURT CASES.—

8               (1) ELIGIBILITY PARTIES; ATTORNEY FEES;  
 9       LIMITATION ON AWARDS.—Section 2412(d) of title  
 10       28, United States Code, is amended—

11                       (A) in paragraph (1)—

12                               (i) in subparagraph (A)—

13                                       (I) by striking “in any civil ac-  
 14                                       tion” and all that follows through “ju-  
 15                                       risdiction of that action” and insert-  
 16                                       ing “in the civil action”; and

17                                       (II) by striking “shall award to a  
 18                                       prevailing party other than the United  
 19                                       States” and inserting the following: “,  
 20                                       in any civil action (other than cases  
 21                                       sounding in tort), including pro-  
 22                                       ceedings for judicial review of agency  
 23                                       action, brought by or against the  
 24                                       United States in any court having ju-  
 25                                       risdiction of that action, shall award

1 to a prevailing party who has a direct  
 2 and personal monetary interest in the  
 3 civil action, including because of per-  
 4 sonal injury, property damage, or un-  
 5 paid agency disbursement, other than  
 6 the United States,”; and

7 (ii) by adding at the end the fol-  
 8 lowing:

9 “(E) An individual or entity may not receive an  
 10 award of fees and other expenses under this subsection  
 11 in excess of—

12 “(i) \$200,000 in any single civil action, or

13 “(ii) for more than 3 civil actions initiated in  
 14 the same calendar year,

15 unless the presiding judge determines that an award ex-  
 16 ceeding such limits is required to avoid severe and unjust  
 17 harm to the prevailing party.”; and

18 (B) in paragraph (2)—

19 (i) in subparagraph (A)(ii), by strik-  
 20 ing “\$125 per hour” and all that follows  
 21 through “a higher fee” and inserting  
 22 “\$175 per hour”; and

23 (ii) in subparagraph (B), by striking  
 24 “; except that” and all that follows  
 25 through “section 601”.

1           (2) REDUCTION OR DENIAL OF AWARDS.—Sec-  
2           tion 2412(d)(1)(C) of title 28, United States Code,  
3           is amended—

4                   (A) by striking “, in its discretion, may re-  
5                   duce the amount to be awarded pursuant to  
6                   this subsection, or deny an award,” and insert-  
7                   ing “shall reduce the amount to be awarded  
8                   under this subsection, or deny an award, com-  
9                   mensurate with pro bono hours and related fees  
10                  and expenses, or”;

11                  (B) by striking “unduly and”; and

12                  (C) by striking “controversy.” and insert-  
13                  ing “controversy or acted in an obdurate, dila-  
14                  tory, mendacious, or oppressive manner, or in  
15                  bad faith.”.

16           (3) ADJUSTMENT OF ATTORNEY FEES.—Sec-  
17           tion 2412(d) of title 28, United States Code, is  
18           amended by adding at the end the following:

19           “(5) The Director of the Office of Management and  
20           Budget may adjust the maximum hourly fee set forth in  
21           paragraph (2)(A)(ii) for the fiscal year beginning October  
22           1, 2012, and for each fiscal year thereafter, to reflect  
23           changes in the Consumer Price Index, as determined by  
24           the Secretary of Labor.”.



1           (4) REPORTING.—Section 2412(d) of title 28,  
2       United States Code, is further amended by adding  
3       at the end the following:

4       “(6)(A) The Chairman of the Administrative Con-  
5       ference of the United States shall issue an annual, online  
6       report to the Congress on the amount of fees and other  
7       expenses awarded during the preceding fiscal year pursu-  
8       ant to this subsection. The report shall describe the num-  
9       ber, nature, and amount of the awards, the nature of and  
10      claims involved in each controversy (including the law  
11      under which the controversy arose), and any other relevant  
12      information that may aid the Congress in evaluating the  
13      scope and impact of such awards. The report shall be  
14      made available to the public online and shall contain a  
15      searchable database of total awards given and the total  
16      number of cases filed, defended, or heard, and shall in-  
17      clude with respect to each such case the following:

18           “(i) The name of the party seeking the award  
19           of fees and other expenses in the case.

20           “(ii) The district court hearing the case.

21           “(iii) The names of the presiding judges in the  
22           case.

23           “(iv) The agency involved in the case.

1           “(v) The disposition of the application for fees  
2           and other expenses, including any appeal of action  
3           taken on the application.

4           “(vi) The amount of each award.

5           “(vii) The hourly rates of expert witnesses stat-  
6           ed in the application that was awarded.

7           “(viii) With respect to each award of fees and  
8           other expenses, the basis for the finding that the po-  
9           sition of the agency concerned was not substantially  
10          justified.

11          “(B)(i) The report under subparagraph (A) shall  
12          cover payments of fees and other expenses under this sub-  
13          section that are made pursuant to a settlement agreement,  
14          regardless of whether the settlement agreement is other-  
15          wise subject to nondisclosure provisions.

16          “(ii) The disclosure of fees and other expenses re-  
17          quired under clause (i) does not affect any other informa-  
18          tion that is subject to nondisclosure provisions in the set-  
19          tlement agreement.

20          “(C) The Chairman of the Administrative Conference  
21          shall include in the annual report under subparagraph (A),  
22          for each case in which an award of fees and other expenses  
23          is included in the report—

24                  “(i) any amounts paid from section 1304 of  
25          title 31 for a judgment in the case;

1           “(ii) the amount of the award of fees and other  
2       expenses; and

3           “(iii) the statute under which the plaintiff filed  
4       suit.

5       “(D) The Attorney General of the United States shall  
6       provide to the Chairman of the Administrative Conference  
7       of the United States such information as the Chairman  
8       requests to carry out this paragraph.”.

9       (c) EFFECTIVE DATE.—

10           (1) MODIFICATIONS TO PROCEDURES.—The  
11       amendments made by—

12           (A) paragraphs (1), (2), and (3) of sub-  
13       section (a) shall apply with respect to adversary  
14       adjudications commenced on or after the date  
15       of the enactment of this Act; and

16           (B) paragraphs (1) and (2) of subsection  
17       (b) shall apply with respect to civil actions com-  
18       menced on or after such date of enactment.

19           (2) REPORTING.—The amendments made by  
20       paragraphs (4) and (5) of subsection (a) and by  
21       paragraphs (3) and (4) of subsection (b) shall take  
22       effect on the date of the enactment of this Act.

23 **SEC. 3. GAO STUDY.**

24       Not later than 30 days after the date of the enact-  
25       ment of this Act, the Comptroller General shall commence

1 an audit of the implementation of the Equal Access to  
2 Justice Act for the years 1995 through the end of the cal-  
3 endar year in which this Act is enacted. The Comptroller  
4 General shall, not later than 1 year after the end of the  
5 calendar year in which this Act is enacted, complete such  
6 audit and submit to the Congress a report on the results  
7 of the audit.

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