

HOUSE RESEARCH

Bill Summary

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Overview

Current law allows specified parties to recover fees and expenses if they prevail in a civil action or contested case brought by or against the state. The bill makes various changes in this law, including expanding expenses that can be covered and parties who can recover, as well as changing the standard for making an award.

- 1 **Expenses.** Amends the definition of "expenses" for purposes of what can be recovered from the state under the act. Adds a new item: the reasonable cost of any study, analysis, engineering report, test, or project.
- 2 **Demand.** Defines this to mean the express demand by the state that led to the civil action or contested case proceeding or a demand made before the trial or contested case. Does not include the statement of a maximum statutory penalty in the complaint or elsewhere when accompanied by an express demand for a lesser amount.
- 3 **Final judgment.** Means a judgment that is not appealable and includes an order of settlement.
- 4 **Fees.** Amends the witness compensation rate under the act to reference the state witness fees. Current law references the federal rate for witness compensation. Increases from \$100 to \$125: the maximum hourly rate for attorney fees that can be awarded under the act.
- 5 **Party.** Amends the definition that governs who is a party able to recover fees under the act:
 - adds an individual whose net worth did not exceed \$2,000,000 when the matter was initiated;
 - adds a unit of local government, nonprofit corporation, and agricultural cooperative whose annual revenues do not exceed \$7 million;
 - increases the size of currently covered businesses and organizations: (1) from those with a maximum of 50 employees to those with 500 employees; and (2) to include entities with annual revenues of up to \$7 million, instead of \$4 million..
- 6 **Prevailing party.** Adds a definition that applies to eminent domain proceedings. Means a party

who obtains a final judgment other than by settlement and exclusive of interest, the amount of which is as close to the highest valuation attested to at trial by the property owner as it is to the highest valuation attested to at trial for the state.

7 **Position of the state.** In addition to the state's position in a civil action or contested case, this term is defined to mean action or failure to act by the agency on which the action is based.

8 **Fees and expenses.** Requires a court or administrative law judge to award fees and costs to a prevailing party other than the state unless (1) it finds the state's position is substantially justified or (2) special circumstances make an award unjust. Current law provides for an award if the state's position was not substantially justified.

Adds proceedings for judicial review of agency action to the kinds of proceedings where fees and costs can be awarded.

Provides the manner of applying for fees and costs under the law. Provides for determining whether the state's position was substantially justified on the basis of the record in the civil action or contested case.

Provides that if, in a civil action or contested case proceeding, the state's demand is substantially in excess of the judgement it obtains and is unreasonable compared to the judgment, the court must award the fees and expenses of defending, unless the party committed a willful violation of law or otherwise acted in bad faith.

Provides that if the state appeals an award under this section and the award is affirmed in whole or part, interest must be paid at the judgment rate on the award as affirmed.

9 **Repealer.** Repeals the definition of "substantially justified" in the act.