

FIRST REGULAR SESSION

SENATE BILL NO. 272

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GREEN.

Read 1st time February 14, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1327S.011

AN ACT

To repeal section 536.087, RSMo, and to enact in lieu thereof one new section relating to appropriations of awards for attorney fees and expenses against a state agency.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 536.087, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 536.087, to read as follows:

536.087. 1. A party who prevails in an agency proceeding or civil action arising therefrom, brought by or against the state, shall be awarded those reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust.

2. In awarding reasonable fees and expenses under this section to a party who prevails in any action for judicial review of an agency proceeding, the court shall include in that award reasonable fees and expenses incurred during such agency proceeding unless the court finds that during such agency proceeding the position of the state was substantially justified, or that special circumstances make an award unjust.

3. A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in an agency proceeding or final judgment in a civil action, submit to the court, agency or commission which rendered the final disposition or judgment an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 and the rate at which fees and other expenses are computed. The party shall also
20 allege that the position of the state was not substantially justified. The fact that
21 the state has lost the agency proceeding or civil action creates no legal
22 presumption that its position was not substantially justified. Whether or not the
23 position of the state was substantially justified shall be determined on the basis
24 of the record (including the record with respect to the action or failure to act by
25 an agency upon which a civil action is based) which is made in the agency
26 proceeding or civil action for which fees and other expenses are sought, and on
27 the basis of the record of any hearing the court or agency deems appropriate to
28 determine whether an award of reasonable fees and expenses should be made,
29 provided that any such hearing shall be limited to consideration of matters which
30 affected the agency's decision leading to the position at issue in the fee
31 application.

32 4. A prevailing party in an agency proceeding shall submit an application
33 for fees and expenses to the administrative body before which the party prevailed.
34 A prevailing party in a civil action on appeal from an agency proceeding shall
35 submit an application for fees and expenses to the court. The filing of an
36 application shall not stay the time for appealing the merits of a case. When the
37 state appeals the underlying merits of an adversary proceeding, no decision on
38 the application for fees and other expenses in connection with that adversary
39 proceeding shall be made under this section until a final and unreviewable
40 decision is rendered by the court on the appeal or until the underlying merits of
41 the case have been finally determined pursuant to the appeal.

42 5. The court or agency may either reduce the amount to be awarded or
43 deny any award, to the extent that the prevailing party during the course of the
44 proceedings engaged in conduct which unduly and unreasonably protracted the
45 final resolution of the matter in controversy.

46 6. The decision of a court or an agency on the application for reasonable
47 fees and expenses shall be in writing, separate from the judgment or order of the
48 court or the administrative decision which determined the prevailing party, and
49 shall include written findings and conclusions and the reason or basis
50 therefor. The decision of a court or an agency on the application for fees and
51 other expenses shall be final, subject respectively to appeal or judicial review.

52 7. If a party or the state is dissatisfied with a determination of fees and
53 other expenses made in an agency proceeding, that party or the state may within
54 thirty days after the determination is made, seek judicial review of that

55 determination from the court having jurisdiction to review the merits of the
56 underlying decision of the agency adversary proceeding. If a party or the state
57 is dissatisfied with a determination of fees and other expenses made in a civil
58 action arising from an agency proceeding, that party or the state may, within the
59 time permitted by law, appeal that order or judgment to the appellate court
60 having jurisdiction to review the merits of that order or judgment. The reviewing
61 or appellate court's determination on any judicial review or appeal heard under
62 this subsection shall be based solely on the record made before the agency or
63 court below. The court may modify, reverse or reverse and remand the
64 determination of fees and other expenses if the court finds that the award or
65 failure to make an award of fees and other expenses, or the calculation of the
66 amount of the award, was arbitrary and capricious, was unreasonable, was
67 unsupported by competent and substantial evidence, or was made contrary to law
68 or in excess of the court's or agency's jurisdiction. Awards made pursuant to this
69 act shall be payable from amounts appropriated therefor. [The state agency
70 against which the award was made shall request an appropriation to pay the
71 award.] **No agency shall request, or be granted, an additional**
72 **appropriation of money in order to satisfy an award made under this**
73 **section. Within thirty days of the judgement awarding fees and other**
74 **expenses becoming final, including the exhaustion of any appeals, the**
75 **agency shall forward the amount of awarded fees and other expenses**
76 **to the chair of the house budget committee and the chair of the senate**
77 **appropriations committee.**

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