

Senate Bill 222

In The Senate

January 21, 1981	Introduced and referred to Committee on Judiciary.
	Fiscal note requested.
January 27, 1981	Fiscal note returned.
February 9, 1981	Committee recommend bill do pass as amended.
February 10, 1981	Bill printed and placed on members' desks.
February 11, 1981	Second reading do pass.
February 12, 1981	Correctly engrossed.
February 13, 1981	Third reading passed.

In The House

February 14, 1981	Introduced and referred to Committee on Judiciary.
March 27, 1981	Committee recommend bill concurred as amended.
March 30, 1981	Second reading concurred as amended.
	On motion rules suspended and bill placed on third reading this day.
March 31, 1981	Third reading not concurred.
	On motion rules suspended and bill allowed to be transmitted on 71st day. Motion adopted.
	Return to Senate with amendments.

In The Senate

April 1, 1981	Returned from House not concurred.
---------------	------------------------------------

1 *Senate* BILL NO. 222
2 INTRODUCED BY Sen. Mike Anderson Rep. Mike Anderson
3 Sen. J. O'Hara Rep. Michael Johnson
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
5 25-10-711, MCA, TO PROVIDE FOR A LESS RESTRICTIVE STANDARD
6 FOR CIRCUMSTANCES IN WHICH COSTS MAY BE ALLOWED TO A PARTY
7 PREVAILING AGAINST THE STATE OR POLITICAL SUBDIVISION AND TO
8 PROVIDE THAT COSTS MAY NOT BE AWARDED IF A COURT FINDS THE
9 POSITION OF THE STATE OR POLITICAL SUBDIVISION SUBSTANTIALLY
10 JUSTIFIED OR AN AWARD OF COSTS UNJUST."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 Section 1. Section 25-10-711, MCA, is amended to read:
14 "25-10-711. Award of costs against governmental entity
15 when-suit-or-defense-is-frivetoous-or-pursued-in--bad--faith.
16 (1) In any civil action brought by or against the state, a
17 political subdivision, or an agency of the state or a
18 political subdivision, the opposing party, whether plaintiff
19 or defendant, is entitled to the costs enumerated in
20 25-10-201 and reasonable attorney's fees as determined by
21 the court if:
22 if he prevails against the state, political
23 subdivision, or agency;
24 if the court finds that the claim or defense of the
25 state, political subdivision, or agency that brought or

1 defended the action was frivolous or pursued in bad faith
2 except that such costs may not be awarded if the court finds
3 that the position of the state, political subdivision, or
4 agency was substantially justified or that special
5 circumstances make an award of costs unjust.
6 (2) Costs may be granted pursuant to subsection 1
7 notwithstanding any other provision of the law to the
8 contrary."

-End-

STATE OF MONTANA

REQUEST NO. 195-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 23, 19 81, there is hereby submitted a Fiscal Note for Senate Bill 222 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation

To provide for a less restrictive standard for circumstances in which costs may be allowed to a party prevailing against the State of Montana or political subdivision.

Assumptions

1. Assume that SB 222 applies to all litigation involving state agencies, i.e., torts, contracts, declaratory judgments, and judicial reviews of administrative proceedings including tax protests.
2. Assume that 19 executive departments, and their attached boards, the OSPI, and the State Auditor will lose an average of 5 cases per year in which the courts find the state's position unjustified.

Fiscal Impact

1. 19 executive departments + OSPI + State Auditor = 21 agencies x 5 cases = 105 adverse decisions.

2. Assume attorney fees will be awarded as follows:

- a. 30 cases at \$ 1,000 = \$ 30,000
- b. 40 cases at 5,000 = 200,000
- c. 25 cases at 10,000 = 250,000
- d. 5 cases at 20,000 = 100,000
- e. 3 cases at 30,000 = 90,000
- f. 2 cases at 40,000 = 80,000

Total \$750,000

A projected cost of \$1,500,000 for the biennium.

Comments

The exclusion of fees where actions of the state are substantially justified is unclear. Presumably, any case with an adverse decision cannot be "substantially justified". Therefore, the courts could conceivably award attorneys fees for all judgments against the state.

David M. Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-27-81

Local Impact

A similar impact would be incurred by all political subdivisions.

Approved by Committee
on Judiciary

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 25-10-711, MCA, is amended to read:

16 "25-10-711. Award of costs AND ATTORNEY'S FEES against

17 governmental entity when--suit--or--defense-is-fraudulent-or

18 pursued-in-bad-faith. (1) In any civil action LISTED IN

19 25-10-101 brought by or against the state, a political

20 subdivision, or an agency of the state or a political

21 subdivision, the opposing party, whether plaintiff or

22 defendant, is entitled to the costs enumerated in 25-10-201

23 and--reasonable--attorney's--fees-as-determined-by-the-court

²⁵ See, for example, *Principles of the Law of the Sea* (1982), article 10.

1 subdivision, or agency~~s~~ and

2 that--the--court--finds--that--the--claim--or--defense--of--the

3 state--political--subdivision--or--agency--that--brought--or

4 defended--the--action--was--frivolous--or--pursued--in--bad--faith--

5 (2) IN ANY CIVIL ACTION, EXCEPT AN ACTION BROUGHT

6 UNDER TITLE 2, CHAPTER 9, PART 3, THAT IS BROUGHT BY OR

7 AGAINST THE STATE, A POLITICAL SUBDIVISION, OR AN AGENCY OF

8 EITHER, THE OPPOSING PARTY, WHETHER PLAINTIFF OR DEFENDANT,

9 IS ENTITLED TO HIS REASONABLE ATTORNEY'S FEES AS DETERMINED

10 BY THE COURT IF HE PREVAILS AGAINST THE STATE, POLITICAL

11 SUBDIVISION, OR AGENCY OF EITHER, except that such costs

12 ATTORNEY'S FEES may not be awarded if the court finds that

13 the position of the state, political subdivision, or agency

14 was substantially--justified REASONABLE or that special

15 circumstances make an award of costs unjust.

16 (2)(3) Costs may be granted pursuant to subsection 1

17 notwithstanding any other provision of the law to the

18 contrary."

19 SECTION 2. SAVING CLAUSE. THIS ACT DOES NOT APPLY TO

20 ANY CAUSE OF ACTION ARISING BEFORE THE EFFECTIVE DATE OF

21 THIS ACT.

-End-

SECOND READING

1 SENATE BILL NO. 222

2 INTRODUCED BY KOLSTAD, M. ANDERSON, KEYSER,
3 SEIFERT, J. O' HARA, VINGER, MANUEL, JACOBSEN

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
6 25-10-711, MCA, TO PROVIDE FOR A LESS RESTRICTIVE STANDARD
7 FOR CIRCUMSTANCES IN WHICH COSTS MAY BE ALLOWED TO A PARTY
8 PREVAILING AGAINST THE STATE OR POLITICAL SUBDIVISION AND;
9 TO PROVIDE THAT COSTS ATTORNEY'S FEES MAY NOT BE AWARDED IF
10 A COURT FINDS THE POSITION OF THE STATE OR POLITICAL
11 SUBDIVISION SUBSTANTIALLY-JUSTIFIED REASONABLE OR--AN--4WARD
12 OF-COSTS-UNJUST; AND PROVIDING A SAVING CLAUSE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 25-10-711, MCA, is amended to read:
16
17 "25-10-711. Award of costs AND ATTORNEY'S FEES against
18 governmental entity when--suit--or--defense-is-frivolous-or
19 pursued-in-bad-faith. (1) In any civil action LISTED IN
20 25-10-101 brought by or against the state, a political
21 subdivision, or an agency of the state or a political
22 subdivision, the opposing party, whether plaintiff or
23 defendant, is entitled to the costs enumerated in 25-10-201
24 and--reasonable--attorney's--fees-as-determined-by-the-court
25 if:
26
27 (a) he prevails against the state, political

1 subdivision, or agency;~~at-and~~

2 ~~if~~--the--court--finds--that--the--claim--or--defense--of--the
3 state--political--subdivision--or--agency--that--brought--or
4 defended--the--action--was--frivolous--or--pursued--in--bad--faith
5 121 IN ANY CIVIL ACTION, EXCEPT AN ACTION BROUGHT
6 UNDER TITLE 2, CHAPTER 9, PART 3, THAT IS BROUGHT BY OR
7 AGAINST THE STATE, A POLITICAL SUBDIVISION, OR AN AGENCY OF
8 EITHER, THE OPPOSING PARTY, WHETHER PLAINTIFF OR DEFENDANT,
9 IS ENTITLED TO HIS REASONABLE ATTORNEY'S FEES AS DETERMINED
10 BY THE COURT IF HE PREVAILS AGAINST THE STATE, POLITICAL
11 SUBDIVISION, OR AGENCY OF EITHER, except that such costs
12 ATTORNEY'S FEES may not be awarded if the court finds that
13 the position of the state, political subdivision, or agency
14 was substantially--justified REASONABLE or that special
15 circumstances make an award of costs unjust.

16 1213 Costs may be granted pursuant to subsection 1
17 notwithstanding any other provision of the law to the
18 contrary."

19 SECTION 2. SAVING CLAUSE. THIS ACT DOES NOT APPLY TO
20 ANY CAUSE OF ACTION ARISING BEFORE THE EFFECTIVE DATE OF
21 THIS ACT.

-End-

1 SENATE BILL NO. 222

2 INTRODUCED BY KOLSTAD, M. ANDERSON, KEYSER,
 3 SEIFERT, J. O' HARA, VINGER, MANUEL, JACOBSEN

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
 6 25-10-711, MCA, TO PROVIDE FOR A LESS RESTRICTIVE STANDARD
 7 FOR CIRCUMSTANCES IN WHICH COSTS AND ATTORNEY'S FEES MAY BE
 8 ALLOWED TO A PARTY PREVAILING AGAINST THE STATE OR POLITICAL
 9 SUBDIVISION AND TO PROVIDE THAT COSTS COSTS AND ATTORNEY'S
 10 FEES MAY NOT NOT BE AWARDED IF UNLESS A COURT FINDS THE
 11 POSITION OF THE STATE OR POLITICAL SUBDIVISION SUBSTANTIALLY
 12 JUSTIFIED REASONABLE OR--AN--AWARD--OF--COSTS--UNJUST; AND
 13 PROVIDING A SAVING CLAUSE."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 25-10-711, MCA, is amended to read:
 17 "25-10-711. Award of costs AND ATTORNEY'S FEES against
 18 governmental entity when suit or defense is frivolous or
 19 persued--in--bad--faith. (1) In any civil action LISTED IN
 20 25-10-101 brought by or against the state, a--political
 21 subdivision CITY OR COUNTY, or an agency of the state or a
 22 political-subdivision, CITY OR COUNTY, the opposing party,
 23 whether plaintiff or defendant, is entitled to the costs
 24 enumerated in 25-10-201 and reasonable attorney's fees as
 25 determined by the court if:

1 1. he prevails against the state, political
 2 subdivision CITY OR COUNTY, or agency THEREOF; and
 3 (f) the court finds that the claim or defense of the
 4 state or political subdivision or agency that brought or
 5 defended the action was frivolous or pursued in bad faith.
 6 (2) IN ANY CIVIL ACTION, EXCEPT AN ACTION BROUGHT
 7 UNDER TITLE 2, CHAPTER 9, PART 3, THAT IS BROUGHT BY OR
 8 AGAINST THE STATE, A POLITICAL-SUBDIVISION CITY OR COUNTY,
 9 OR AN AGENCY OF--EITHER THEREOF, THE OPPONING PARTY, WHETHER
 10 PLAINTIFF OR DEFENDANT, IS ENTITLED TO HIS REASONABLE COSTS
 11 AND ATTORNEY'S FEES AS DETERMINED BY THE COURT IF HE
 12 PREVAILS AGAINST THE STATE, POLITICAL-SUBDIVISION CITY OR
 13 COUNTY, OR AGENCY OF--EITHER THEREOF, except that such costs
 14 COSTS AND ATTORNEY'S FEES may not be awarded if the court
 15 finds that the position of the state, political--subdivision
 16 CITY OR COUNTY, or agency THEREOF was substantially
 17 justified REASONABLE or that special circumstances make an
 18 award of costs COSTS AND ATTORNEY'S FEES unjust.
 19 (f) Costs may be granted pursuant to subsection 1
 20 notwithstanding any other provision of the law to the
 21 contrary."

22 SECTION 2. SAVING CLAUSE. THIS ACT DOES NOT APPLY TO
 23 ANY CAUSE OF ACTION ARISING BEFORE THE EFFECTIVE DATE OF
 24 THIS ACT.

-End-

HOUSE JUDICIARY

3/26/81

SENATE

222

Respectfully report as follows: That..... Bill No.....

BE AMENDED AS FOLLOWS:

1. Title, line 7.

Following: "COSTS"

Insert: "AND ATTORNEY'S FEES"

2. Title, line 9.

Following: "AWARDED"

Strike: "IF"

Insert: "UNLESS"

3. Page 1, line 24.

Following: "if"

Strike: ":"

4. Page 1, line 25.

Following: line 24

Strike: "(a)"

5. Page 2, line 15.

Following: "of"

Strike: "costs"

Insert: "attorney's fees"

House amendments to Senate Bill 222:

1. Title, line 7.

Following: "COSTS"

Insert: "AND ATTORNEY'S FEES"

2. Title, line 9.

Strike: "NEP"

Insert: "NOT"

3. Page 1, lines 19 and 20.

Following: "state,"

Strike: "a political subdivision"

Insert: "city or county"

4. Page 1, lines 20 and 21.

Following: "state"

Strike: "or a political subdivision"

Insert: ", city or county"

5. Page 1, line 25 and line 1 on page 2.

Following: "state," on line 25

Strike: "political subdivision"

Insert: "city or county"

Following: "agency" on line 1, page 2

Insert: "thereof"

6. Page 2, lines 7 and 8.

Following: "STATE,"

Strike: "A POLITICAL SUBDIVISION"

Insert: "city or county"

Following: "AGENCY" on line 7

Strike: "OF EITHER"

Insert: "thereof"

7. Page 2, lines 10 and 11.

Following: "STATE,"

Strike: "POLITICAL SUBDIVISION"

Insert: "city or county"

Following: "AGENCY" on line 11

Strike: "OF EITHER"

Insert: "thereof"

8. Page 2, line 13.

Following: "state,"

Strike: "political subdivision"

Insert: "city or county"

Following: "agency"

Insert: "thereof"

9. Page 2, line 15.

Following: "costs"

Insert: "and attorney's fees"