

HB 790 INTRODUCED BY REHBERG, ET AL.
COSTS AND ATTORNEY FEES OF SMALL BUSINESS PAID BY
STATE IN CERTAIN ACTIONS

2/17	INTRODUCED		
2/17	REFERRED TO JUDICIARY		
2/17	FISCAL NOTE REQUESTED		
2/20	HEARING		
2/21	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/23	FISCAL NOTE RECEIVED		
2/24	2ND READING PASSED	97	3
2/24	3RD READING PASSED	95	5
	TRANSMITTED TO SENATE		
3/02	REFERRED TO JUDICIARY		
3/19	HEARING		
3/27	TABLED IN COMMITTEE		

1 administrative hearing and the action or policy of the state
2 that gave rise to the civil action or administrative
3 hearing.

4 (6) "Prevailing" means obtaining a favorable judgment
5 in a civil judicial action or administrative hearing or
6 reaching a settlement of a civil judicial action or
7 administrative hearing on terms favorable to a small
8 business.

9 (7) "Small business" means a commercial or business
10 entity, including a sole proprietorship or a partnership,
11 with a net worth of less than \$2 million and fewer than 250
12 employees. The term does not include an entity that is a
13 subsidiary or affiliate of another entity that is not a
14 small business.

15 (8) "State" means the state of Montana, its agencies,
16 commissions, boards, and departments, and its officers and
17 employees acting in their official capacity.

18 (9) "Substantially justified" means reasonable in both
19 law and fact.

20 Section 3. Award of fees and expenses in court cases.

21 (1) In addition to any costs awarded as prescribed by
22 statute, a court shall award to a prevailing small business
23 reasonable fees and expenses incurred by the small business
24 in:

25 (a) a civil action brought by or against the state and

1 involving the business regulatory function of the state,
2 unless the state shows and the court finds that the position
3 of the state was substantially justified; and

4 (b) a judicial proceeding to review an administrative
5 hearing decision of the state, unless the court finds that
6 the position of the state is substantially justified. The
7 court shall include reasonable fees and expenses incurred
8 during the administrative hearing unless the court finds
9 that the position of the state is substantially justified.

10 (2) Fees and expenses awarded under this section are
11 in addition to costs and attorney fees awarded under any
12 other statute, but a prevailing small business may not be
13 reimbursed under this section, 25-10-711, or any other
14 section more than once for any cost, expense, or attorney
15 fee.

16 Section 4. Award of fees and expenses in
17 administrative hearings. (1) If the state initiates an
18 administrative hearing, it shall award to a prevailing small
19 business reasonable fees and expenses incurred by the small
20 business in connection with the hearing unless the hearing
21 officer finds that the position of the state was
22 substantially justified.

23 (2) A prevailing small business dissatisfied with the
24 fee determination may appeal it to the proper court.

25 (3) The attorney general shall adopt a model rule

1 establishing specific procedures for the submission and
2 consideration of applications for an award of reasonable
3 fees and expenses under subsection (1) of this section.

4 (4) Fees and expenses awarded under this section are
5 in addition to costs and attorney fees awarded under any
6 other statute, but a prevailing small business may not be
7 reimbursed under this section, 25-10-711, or any other
8 section more than once for any cost, expense, or attorney
9 fee.

10 Section 5. Discretion to reduce or deny an award. The
11 judge in a court action and the hearing officer in an
12 administrative hearing may deny or reduce the award upon
13 finding:

14 (1) that the prevailing small business unreasonably
15 protracted the final resolution of the matter; or

16 (2) that the prevailing small business refused an
17 offer of settlement by the state which was at least as
18 favorable to the prevailing small business as the relief
19 ultimately obtained.

20 Section 6. Payment of awards -- report to the
21 legislature. (1) An award of reasonable fees and expenses
22 under [sections 1 through 6] may be paid by the state
23 agency, commission, board, or department over which the
24 small business prevailed out of its liability insurance or
25 out of a self-insurance pool maintained by state agencies,

1 commissions, boards, and departments. If insurance is not
2 available to pay an award, the award may be paid by an
3 appropriation made to the agency, commission, board, or
4 department at the next regular session of the legislature.

5 (2) Each agency, commission, board, or department that
6 pays an award or awards shall report to the legislature
7 during the first week of the next regular session on the
8 number, nature, and amount of the award or awards, the claim
9 involved in each, and such other relevant information as may
10 aid the legislature in evaluating the scope and impact of
11 [sections 1 through 6].

12 Section 7. Applicability. This act applies to actions
13 and hearings that begin after the effective date of this
14 act.

15 Section 8. Effective date. This act is effective on
16 passage and approval.

17 Section 9. Termination. This act terminates June 30,
18 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB790, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to provide for payment by the state of costs and attorney fees of small businesses who prevail against the state in certain court and administrative proceedings; and providing an applicability date, an immediate effective date, and a termination date.

ASSUMPTIONS:

1. Could impact the state's self-insurance fund.
2. Applies to the Department of Fish, Wildlife and Parks in its role as a regulatory agency for the outfitter industry, license agents, and game farm and commercial fish pond operators.
3. The business regulatory function of the Department of Highways is the control of outdoor advertising.
4. The United States Supreme Court has ruled that water is an article of interstate commerce. Therefore, all water permit and change approvals, water reservation, and flood plain regulations hearings are business regulatory functions of the state.
5. Would affect judicial wage claim reviews, prevailing wage, judicial unemployment benefit reviews, recovery of unemployment taxes and overpayments, and human right cases of the Department of Labor and Industry.
6. The fiscal impact is shown for some of the agencies impacted.

FISCAL IMPACT:

Department of Administration:

The state presently has no "liability insurance" to cover the costs associated with this bill. To implement this legislation, agencies would have to establish a self insurance pool for the purpose of paying these costs. No basis available to predict number of cases in which costs and fees would be awarded.

Department of Fish, Wildlife & Parks:

Estimating that the department will receive an adverse judgement in litigation with a small business once every three years, and the award to the prevailing litigant for legal expenses would be approximately \$10,000. As this act terminates June 30, 1989, there exists a strong possibility that the department will not be fiscally impacted by this legislation.

Department of Highways:

Two administrative hearings per year may result. Each hearing will take approximately 32 hours including preparation, briefs, hearings and appeal to district court. \$2,660 per hearing or \$5,320 per year of additional costs to the agency.

 DATE 2/23/87

DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

 DATE 2/24/87
DENNIS REHBERG, PRIMARY SPONSOR

Fiscal Note for HB790, as introduced.

HB 790

Fiscal Note Request, HB790, as introduced.

Form BD-15

Page 2

Department of State Lands:

Legal fees and court costs will average \$20,000 per case at two cases per year, total of \$40,000 of additional costs per year of the biennium.

Department of Natural Resources and Conservation:

The annual cost will range from \$0 to \$270,000, based on the estimated number of administrative cases handled yearly and the estimated average cost of each. The department believes cases would be found to be substantially justified and, therefore, the costs assessed under this bill would be minimal.

Department of Labor and Industry:

Average costs for fees and expenses would be \$3,500. 12 to 13 cases per year would be additional expenses of \$44,000 for each year of the biennium.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

N/A

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

N/A

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

N/A

HB 790

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 790

INTRODUCED BY REHBERG, D. BROWN, GALT,
MEYER, KOLSTAD, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR PAYMENT
BY THE STATE OF COSTS AND ATTORNEY FEES OF SMALL BUSINESSES
WHO PREVAIL AGAINST THE STATE IN CERTAIN COURT AND
ADMINISTRATIVE PROCEEDINGS; AND PROVIDING AN APPLICABILITY
DATE, ~~AN IMMEDIATE EFFECTIVE DATE,~~ AND A TERMINATION DATE."

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

Section 1. Findings and purposes. The legislature finds that small businesses are deterred from challenging or defending against unreasonable state actions by the expense of vindicating their rights. The legislature further finds that because of the greater legal and financial resources of the state, the standard for the award of attorney fees and expenses against the state should be different from the standard applicable to a private litigant. The purposes of [sections 1 through 6] are to allow eligible small businesses to recover reasonable litigation expenses from the state in civil court actions and certain administrative hearings and to promote reasonable regulatory and enforcement activities in the state.

Section 2. Definitions. As used in [sections 1 through

6]:

(1) "Administrative hearing" means an adversary or contested proceeding or hearing in which the state is represented by counsel, but does not include:

(a) proceedings not involving the business regulatory function of the state;

(b) proceedings to establish or fix a rate;

(c) proceedings involving eminent domain or condemnation; and

(d) proceedings in which the state is only a nominal party.

(2) "Business regulatory function of the state" means state laws and administrative rules regulating business and commerce.

(3) "Fees and expenses" includes the reasonable expenses of expert witnesses; the reasonable cost of any study analysis, engineering report, test, or project; and discovery costs found by a hearing officer or court to be necessary for the preparation of the small business's case, and reasonable attorney fees.

(4) "Hearing officer" means the deciding official who presided at an adversary or contested case hearing, whether the official is designated as an administrative law judge, hearing officer, examiner, referee, or otherwise.

(5) "Position of the state" means both the litigation

1 stance taken by the state in a civil action or agency
 2 administrative hearing and the action or policy of the state
 3 that gave rise to the civil action or administrative
 4 hearing.

5 (6) "Prevailing" means obtaining a favorable judgment
 6 in a civil judicial action or administrative hearing or
 7 reaching a settlement of a civil judicial action or
 8 administrative hearing on terms favorable to a small
 9 business.

10 (7) "Small business" means a commercial or business
 11 entity, including a sole proprietorship or a partnership,
 12 with a net worth of less than \$2 million and fewer than 250
 13 25 employees. The term does not include an entity that is a
 14 subsidiary or affiliate of another entity that is not a
 15 small business.

16 (8) "State" means the state of Montana, its agencies,
 17 commissions, boards, and departments, and its officers and
 18 employees acting in their official capacity.

19 (9) "Substantially justified" means reasonable in both
 20 law and fact.

21 Section 3. Award of fees and expenses in court cases.
 22 (1) In addition to any costs awarded as prescribed by
 23 statute, a court shall award to a prevailing small business
 24 reasonable fees and expenses incurred by the small business
 25 in:

1 (a) a civil action brought by or against the state and
 2 involving the business regulatory function of the state,
 3 unless the state shows and the court finds that the position
 4 of the state was substantially justified; and

5 (b) a judicial proceeding to review an administrative
 6 hearing decision of the state, unless the court finds that
 7 the position of the state is substantially justified. The
 8 court shall include reasonable fees and expenses incurred
 9 during the administrative hearing unless the court finds
 10 that the position of the state is substantially justified.

11 (2) Fees and expenses awarded under this section are
 12 in addition to costs and attorney fees awarded under any
 13 other statute, but a prevailing small business may not be
 14 reimbursed under this section, 25-10-711, or any other
 15 section more than once for any cost, expense, or attorney
 16 fee.

17 Section 4. Award of fees and expenses in
 18 administrative hearings. (1) If the state initiates an
 19 administrative hearing, it shall award to a prevailing small
 20 business reasonable fees and expenses incurred by the small
 21 business in connection with the hearing unless the hearing
 22 officer finds that the position of the state was
 23 substantially justified.

24 (2) A prevailing small business dissatisfied with the
 25 fee determination may appeal it to the proper court.

1 (3) The attorney general shall adopt a model rule
 2 establishing specific procedures for the submission and
 3 consideration of applications for an award of reasonable
 4 fees and expenses under subsection (1) of this section.

5 (4) Fees and expenses awarded under this section are
 6 in addition to costs and attorney fees awarded under any
 7 other statute, but a prevailing small business may not be
 8 reimbursed under this section, 25-10-711, or any other
 9 section more than once for any cost, expense, or attorney
 10 fee.

11 Section 5. Discretion to reduce or deny an award. The
 12 judge in a court action and the hearing officer in an
 13 administrative hearing may deny or reduce the award upon
 14 finding:

15 (1) that the prevailing small business unreasonably
 16 protracted the final resolution of the matter; or

17 (2) that the prevailing small business refused an
 18 offer of settlement by the state which was at least as
 19 favorable to the prevailing small business as the relief
 20 ultimately obtained.

21 Section 6. Payment of awards -- report to the
 22 legislature. (1) An award of reasonable fees and expenses
 23 under [sections 1 through 6] may be paid by the state
 24 agency, commission, board, or department over which the
 25 small business prevailed out of its liability insurance or

1 out of a self-insurance pool maintained by state agencies,
 2 commissions, boards, and departments. If insurance is not
 3 available to pay an award, the award may be paid by an
 4 appropriation made to the agency, commission, board, or
 5 department at the next regular session of the legislature.

6 (2) Each agency, commission, board, or department that
 7 pays an award or awards shall report to the legislature
 8 during the first week of the next regular session on the
 9 number, nature, and amount of the award or awards, the claim
 10 involved in each, and such other relevant information as may
 11 aid the legislature in evaluating the scope and impact of
 12 [sections 1 through 6].

13 Section 7. Applicability. This act applies to actions
 14 and hearings that begin after the effective date of this
 15 act.

16 ~~Section 8. --Effective-date:--This-act-is--effective--on~~
 17 ~~passage-and-approval:~~

18 Section 8. Termination. This act terminates June 30,
 19 ~~1989~~ 1991.

-End-

1 HOUSE BILL NO. 790

2 INTRODUCED BY REHBERG, D. BROWN, GALT,
3 MEYER, KOLSTAD, HARPER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR PAYMENT
6 BY THE STATE OF COSTS AND ATTORNEY FEES OF SMALL BUSINESSES
7 WHO PREVAIL AGAINST THE STATE IN CERTAIN COURT AND
8 ADMINISTRATIVE PROCEEDINGS; AND PROVIDING AN APPLICABILITY
9 DATE, ~~AN IMMEDIATE EFFECTIVE DATE,~~ AND A TERMINATION DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Findings and purposes. The legislature
13 finds that small businesses are deterred from challenging or
14 defending against unreasonable state actions by the expense
15 of vindicating their rights. The legislature further finds
16 that because of the greater legal and financial resources of
17 the state, the standard for the award of attorney fees and
18 expenses against the state should be different from the
19 standard applicable to a private litigant. The purposes of
20 [sections 1 through 6] are to allow eligible small
21 businesses to recover reasonable litigation expenses from
22 the state in civil court actions and certain administrative
23 hearings and to promote reasonable regulatory and
24 enforcement activities in the state.

25 Section 2. Definitions. As used in [sections 1 through

1 6]:

2 (1) "Administrative hearing" means an adversary or
3 contested proceeding or hearing in which the state is
4 represented by counsel, but does not include:

5 (a) proceedings not involving the business regulatory
6 function of the state;

7 (b) proceedings to establish or fix a rate;

8 (c) proceedings involving eminent domain or
9 condemnation; and

10 (d) proceedings in which the state is only a nominal
11 party.

12 (2) "Business regulatory function of the state" means
13 state laws and administrative rules regulating business and
14 commerce.

15 (3) "Fees and expenses" includes the reasonable
16 expenses of expert witnesses; the reasonable cost of any
17 study analysis, engineering report, test, or project; and
18 discovery costs found by a hearing officer or court to be
19 necessary for the preparation of the small business's case,
20 and reasonable attorney fees.

21 (4) "Hearing officer" means the deciding official who
22 presided at an adversary or contested case hearing, whether
23 the official is designated as an administrative law judge,
24 hearing officer, examiner, referee, or otherwise.

25 (5) "Position of the state" means both the litigation

1 stance taken by the state in a civil action or agency
 2 administrative hearing and the action or policy of the state
 3 that gave rise to the civil action or administrative
 4 hearing.

5 (6) "Prevailing" means obtaining a favorable judgment
 6 in a civil judicial action or administrative hearing or
 7 reaching a settlement of a civil judicial action or
 8 administrative hearing on terms favorable to a small
 9 business.

10 (7) "Small business" means a commercial or business
 11 entity, including a sole proprietorship or a partnership,
 12 with a net worth of less than \$2 million and fewer than 250
 13 25 employees. The term does not include an entity that is a
 14 subsidiary or affiliate of another entity that is not a
 15 small business.

16 (8) "State" means the state of Montana, its agencies,
 17 commissions, boards, and departments, and its officers and
 18 employees acting in their official capacity.

19 (9) "Substantially justified" means reasonable in both
 20 law and fact.

21 Section 3. Award of fees and expenses in court cases.

22 (1) In addition to any costs awarded as prescribed by
 23 statute, a court shall award to a prevailing small business
 24 reasonable fees and expenses incurred by the small business
 25 in:

1 (a) a civil action brought by or against the state and
 2 involving the business regulatory function of the state,
 3 unless the state shows and the court finds that the position
 4 of the state was substantially justified; and

5 (b) a judicial proceeding to review an administrative
 6 hearing decision of the state, unless the court finds that
 7 the position of the state is substantially justified. The
 8 court shall include reasonable fees and expenses incurred
 9 during the administrative hearing unless the court finds
 10 that the position of the state is substantially justified.

11 (2) Fees and expenses awarded under this section are
 12 in addition to costs and attorney fees awarded under any
 13 other statute, but a prevailing small business may not be
 14 reimbursed under this section, 25-10-711, or any other
 15 section more than once for any cost, expense, or attorney
 16 fee.

17 Section 4. Award of fees and expenses in
 18 administrative hearings. (1) If the state initiates an
 19 administrative hearing, it shall award to a prevailing small
 20 business reasonable fees and expenses incurred by the small
 21 business in connection with the hearing unless the hearing
 22 officer finds that the position of the state was
 23 substantially justified.

24 (2) A prevailing small business dissatisfied with the
 25 fee determination may appeal it to the proper court.

1 (3) The attorney general shall adopt a model rule
 2 establishing specific procedures for the submission and
 3 consideration of applications for an award of reasonable
 4 fees and expenses under subsection (1) of this section.

5 (4) Fees and expenses awarded under this section are
 6 in addition to costs and attorney fees awarded under any
 7 other statute, but a prevailing small business may not be
 8 reimbursed under this section, 25-10-711, or any other
 9 section more than once for any cost, expense, or attorney
 10 fee.

11 Section 5. Discretion to reduce or deny an award. The
 12 judge in a court action and the hearing officer in an
 13 administrative hearing may deny or reduce the award upon
 14 finding:

15 (1) that the prevailing small business unreasonably
 16 protracted the final resolution of the matter; or

17 (2) that the prevailing small business refused an
 18 offer of settlement by the state which was at least as
 19 favorable to the prevailing small business as the relief
 20 ultimately obtained.

21 Section 6. Payment of awards -- report to the
 22 legislature. (1) An award of reasonable fees and expenses
 23 under [sections 1 through 6] may be paid by the state
 24 agency, commission, board, or department over which the
 25 small business prevailed out of its liability insurance or

1 out of a self-insurance pool maintained by state agencies,
 2 commissions, boards, and departments. If insurance is not
 3 available to pay an award, the award may be paid by an
 4 appropriation made to the agency, commission, board, or
 5 department at the next regular session of the legislature.

6 (2) Each agency, commission, board, or department that
 7 pays an award or awards shall report to the legislature
 8 during the first week of the next regular session on the
 9 number, nature, and amount of the award or awards, the claim
 10 involved in each, and such other relevant information as may
 11 aid the legislature in evaluating the scope and impact of
 12 [sections 1 through 6].

13 Section 7. Applicability. This act applies to actions
 14 and hearings that begin after the effective date of this
 15 act.

16 ~~Section 8. --Effective-date--This act is--effective--on~~
 17 ~~passage-and-approval~~

18 Section 8. Termination. This act terminates June 30,
 19 ~~1989~~ 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB790, as introduced.

REVISED FISCAL NOTE

DESCRIPTION OF PROPOSED LEGISLATION:

An act to provide for payment by the state of costs and attorney fees of small businesses who prevail against the state in certain court and administrative proceedings; and providing an applicability date, an immediate effective date, and a termination date.

ASSUMPTIONS:

1. Could impact the state's self-insurance fund.
2. Applies to the Department of Fish, Wildlife and Parks in its role as a regulatory agency for the outfitter industry, license agents, and game farm and commercial fish pond operators.
3. The business regulatory function of the Department of Highways is the control of outdoor advertising.
4. The United States Supreme Court has ruled that water is an article of interstate commerce. Therefore, all water permit and change approvals, water reservation, and flood plain regulations hearings are business regulatory functions of the state.
5. Would affect judicial wage claim reviews, prevailing wage, judicial unemployment benefit reviews, recovery of unemployment taxes and over-payments, and human right cases of the Department of Labor and Industry.
6. Includes all hearings of the Business Regulation Division, Department of Commerce. This would also include proposed rule hearings.
7. The fiscal impact is shown for some of the agencies impacted.

FISCAL IMPACT:

Department of Commerce:

The division will experience court costs verifying that there was substantial justification in taking the subject actions. There will be some cases that the division loses to small businesses even though the action taken appeared to be justified. This is happening currently and will continue.

Impact for the Department of Commerce:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures/Revenue:</u>						
Fees	\$ 4,072,937	\$ 4,372,937	\$ 300,000	\$ 4,207,951	\$ 4,507,951	\$ 300,000
General Fund	442,338	467,338	25,000	440,782	465,782	25,000
TOTAL	\$ 4,515,275	\$ 4,840,275	\$ 325,000	\$ 4,648,733	\$ 4,973,733	\$ 325,000

David L. Hunter DATE 3/7/89
 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning

 DENNIS REHBERG, PRIMARY SPONSOR

Fiscal Note for HB790, as introduced.
REVISED FISCAL NOTE **HB790**
2

Department of Administration:

The state presently has no "liability insurance" to cover the costs associated with this bill. To implement this legislation, agencies would have to establish a self insurance pool for the purpose of paying these costs. No basis available to predict number of cases in which costs and fees would be awarded.

Department of Fish, Wildlife & Parks:

Estimating that the department will receive an adverse judgement in litigation with a small business once every three years, and the award to the prevailing litigant for legal expenses would be approximately \$10,000. As this act terminates June 30, 1989, there exists a strong possibility that the department will not be fiscally impacted by this legislation.

Department of Highways:

Two administrative hearings per year may result. Each hearing will take approximately 32 hours including preparation, briefs, hearings and appeal to district court. \$2,660 per hearing or \$5,320 per year of additional costs to the agency.

Department of State Lands:

Legal fees and court costs will average \$20,000 per case at two cases per year, total of \$40,000 of additional costs per year of the biennium.

Department of Natural Resources and Conservation:

The annual cost will range from \$0 to \$270,000, based on the estimated number of administrative cases handled yearly and the estimated average cost of each. The department believes cases would be found to be substantially justified and, therefore, the costs assessed under this bill would be minimal.

Department of Labor and Industry:

Average costs for fees and expenses would be \$3,500. 12 to 13 cases per year would be additional expenses of \$44,000 for each year of the biennium.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The legislation if passed could make enforcement more costly and difficult. If this should occur the agencies may tend to ignore violations of the statutes and standards thus negatively impacting the well being of the public.

The legislation as drafted could cause reverse abuse by "small business" and provide a number of ways to circumvent the applicable laws and rules.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

Section 2, line 2-4, p.2

As drafted the "administrative hearing" definition includes even rule adoption hearings. Is this the intent of the legislation?

Section 2, line 21024, p.2

The definition of "hearing officer" appears to be in conflict with Section 2-4-621, MCA in that the hearing officer does not make the final decision.

Section 2, line 10-15, p.3

The use of net worth to define "small business" will be extremely controversial and possibly impossible to implement.

Section 2, line 19-20, p.3

"Substantially justified" is vague and difficult to define even in a court of law. This will create much controversy and increase the cost of doing business for both the courts and state agencies.

Section 8, line 18-19, p.6

The intent of the June 10, 1991 cut off date is unclear and should be explained.

Section 3, line 1-4, and line 5-16, p.4; Section 4, line 17-25, p.4

Agencies will experience non-budgeted expenditures proving they were substantially justified, paying small business court and contested hearings costs as well as those same costs related to normal rule adoption procedures.

HB 790
d2