

Estrella
House BILL NO. 553

M. Loran

1
 2 INTRODUCED BY *Storal* *DeGruyke* ORR *Jack Beaudry*
 3 *Sliter* *Stoney* *Tom* *W. Egan* *MacCaffrey* *Joe*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PARTY IN CERTAIN ACTIONS AND
 5 PROCEEDINGS MUST BE AWARDED REASONABLE ATTORNEY FEES ON THE ISSUES ON WHICH THE *Hall*
 6 PARTY PREVAILED; AMENDING SECTIONS 25-10-101 AND 25-10-302, MCA; REPEALING SECTIONS *Clark*
 7 25-10-102, 25-10-106, AND 25-10-303, MCA; AND PROVIDING AN APPLICABILITY DATE." *Cinco*
 8 *Robert* *Curist* *Bob* *Emerson* *Bob* *Boj* *Keating*
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-10-101, MCA, is amended to read:

"25-10-101. ~~When costs allowed, of course, to plaintiff and reasonable attorney fees must be awarded to prevailing party.~~ (1) ~~Costs are allowed, of course, and attorney fees must be awarded to the plaintiff upon a judgment in his favor~~ prevailing party in the following cases:

- (1)(a) in an action for the recovery of real property or damages ~~thereto~~ to real property;
- (2)(b) in an action to recover the possession of personal property ~~where~~ when the value of the property exceeds ~~\$50~~ \$200; ~~such~~. The value shall must be determined by the jury, court, or referee by whom the action is tried;
- (3)(c) in an action for the recovery of money or damages, exclusive of interest, when the plaintiff seeks or recovers over ~~\$50~~ \$200;
- (4)(d) in a special proceeding;
- (5)(e) in an action ~~which~~ that involves:
 - (i) the title or possession or right of possession of real estate; or
 - (ii) the legality of any tax, impost, assessment, toll, or municipal fine; or
 - (iii) quo warranto proceedings;
- (6)(f) in an action to foreclose a lien or pledge, to prevent or abate a nuisance, or for an injunction;
- or
- (7)(g) in an action for property damage arising out of the ownership, maintenance, or use of a motor vehicle ~~if he is entitled to attorney's fees under 25-10-303.~~

(2) A party prevailing on some but not all of the matters or issues in dispute must be awarded

1 costs and reasonable attorney fees relating to the matters or issues upon which the party prevailed, as
2 determined by the court."

3

4 **Section 2.** Section 25-10-302, MCA, is amended to read:

5 **"25-10-302. Inclusion of ~~attorney's~~ attorney fees in bill of costs.** The ~~attorney's~~ attorney fees
6 mentioned in 30-9-511, 71-1-233, and 71-3-124, ~~and 25-10-303~~ need not be included in the cost bill if
7 they are made a part of the judgment."

8

9 **NEW SECTION. Section 3. Repealer.** Sections 25-10-102, 25-10-106, and 25-10-303, MCA, are
10 repealed.

11

12 **NEW SECTION. Section 4. Applicability.** [This act] applies to actions and proceedings filed after
13 October 1, 1997.

14

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0553, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill requiring that a party in certain actions and proceedings be awarded reasonable attorney fees on the issues on which the party prevailed.

ASSUMPTIONS:

1. It is assumed that even if state or local governments prevail in their case, costs and attorney fees would not be awarded. This assumption stems from the Montana Supreme Court's ruling in Northern Border Pipeline v. State of Montana, that a state agency would not be awarded attorney fees in any case in which it was represented by an attorney who is employed by the agency.
2. Twenty-five agencies responded to a request for a fiscal note for HB 553. As expected, 14 of the smaller agencies expected no fiscal impact from the bill. Five agencies expected some impact, but could not propose an estimate since court cases are not predictable.
3. The Department of Justice (DOJ) believes that the bill would likely apply to cases in which the constitutionality of a state statute is challenged. Within the last year, the DOJ has handled 10 to 15 constitutionally-based challenges. The number of such cases varies from year to year, but at any given time, the DOJ has 5 to 10 such cases pending. Attorneys' fees in constitutional challenges can be significant, and in many cases will exceed \$100,000, for which the state could be liable if the challenge is successful. Because of the language in Section 1(2), the state could be liable for fees if a preliminary injunction is granted, even if the state ultimately prevails in the litigation.
4. The remaining five departments (Environmental Quality, Transportation, Revenue, Corrections and Administration) estimated a combined impact based upon the previous biennium (or the last 10 years in Administration's case) of approximately \$1.2 million per year. Of course, this is based on many variables, and is only an estimate.

FISCAL IMPACT:

Expenditures:

Because the volume, size or outcome of future cases which will involve the state cannot be predicted with any degree of reliance, a satisfactory fiscal impact cannot be offered. It can be concluded, based on past history, that some impact is inevitable, and that amount is significant.

Revenues:

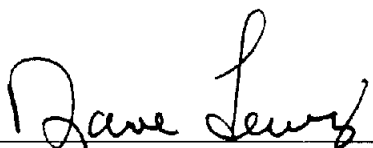
According to assumption #1, the state would not receive any revenue or offsetting expenses if they were to prevail.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments would also likely experience an expenditure impact, but it to cannot be predicted with the necessary degree of accuracy.

TECHNICAL NOTES:

It is not clear whether a state agency or local government that uses an employee as attorney in a case and prevails would be entitled to reimbursement for the salary paid for the hours expended. If the legislature intends that salaries be reimbursed, the bill should be clarified.

 2-21-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

JAY STOVALL, PRIMARY SPONSOR DATE

Fiscal Note for HB0553, as introduced

HB553

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PROCEEDING AND TO THE PREVAILING PARTY IN ANY APPEAL in the following cases:**

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seeks or recovers over ~~\$50~~ \$200;

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(i) the title or possession or right of possession of real estate; ~~or~~

(ii) the legality of any tax, impost, assessment, toll, or municipal fine; or

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or

1 ~~(7)(g)~~ in an action for property damage arising out of the ownership, maintenance, or use of a
2 motor vehicle if he is entitled to attorney's fees under ~~25-10-303~~.

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