

Fiscal Estimate Narratives

DATCP 9/26/2011

LRB Number 11-1560/2	Introduction Number SB-191	Estimate Type Original
Description Awarding costs in administrative agency actions		

Assumptions Used in Arriving at Fiscal Estimate

This bill eliminates financial and entity size limitations for prevailing parties to be eligible to receive costs in administrative agency actions, allowing an award of costs to any trust or person, other than the state, that is a prevailing party unless the court finds the agency was substantially justified in taking its position or if such an award would be unjust under the circumstances. This bill also eliminates the requirement that hearing examiners and courts rely on federal case law as of November 20, 1985, when interpreting these provisions governing costs to prevailing parties.

Under current law and under the bill, costs to prevailing parties are paid from "the applicable appropriation under s. 20.865 (1) (a), (g) or (q)" (See s. 227.485(8), Stats.) The bill would therefore not affect expenditures payable directly by the Department of Agriculture, Trade and Consumer Protection (DATCP), from DATCP appropriations.

It is impossible to accurately estimate additional state costs under the bill from contested cases concerning DATCP administrative actions. Department records identify one contested case since 1990 in which the respondent prevailed, and was awarded costs and fees of approximately \$11,000. It is possible that removal of size limitations for prevailing parties would increase the number and size of claims for costs. Such an effect is indeterminate.

Long-Range Fiscal Implications