



## 1997 ASSEMBLY BILL 810

February 19, 1998 - Introduced by Representatives ALBERS, GRONEMUS, JENSEN, SYKORA, SERATTI, GREEN, MUSSER, WARD, SPILLNER, BRANDEMUEHL, JOHNSRUD, SCHAFER, HAHN, GUNDERSON, OLSEN, HARS DORF, OTTE, FREESE and SKINDRUD, cosponsored by Senators WELCH, DRZEWIECKI and SCHULTZ. Referred to Committee on Land Use.

1     **AN ACT to repeal and recreate** 59.694 (14), 60.65 (5) and 62.23 (7) (e) 14.; and  
2             **to create** 59.694 (15) of the statutes; **relating to:** requiring a court to award  
3             litigation expenses in certain appeals of zoning decisions.

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### *Analysis by the Legislative Reference Bureau*

Under current law, costs are not allowed against a town or county board of adjustment or a city board of appeals when an appeal is taken against that board and the person appealing prevails unless the court determines that the board acted with gross negligence, in bad faith or with malice in making the decision. This bill allows a person who prevails in an appeal of a board of adjustment or board of appeals to receive the costs generally provided in civil actions, which includes the attorney fees of up to \$100 and all necessary disbursements for service of documents, postage and expert fees of up to \$100 for each expert who testifies. The bill allows the court to award costs to the person who brings the appeal as a matter of equity, regardless of the disposition of the case. In addition, if the court determines that the board acted with gross negligence, in bad faith, with malice or unreasonably in making the decision, the bill requires the court to award the party who commenced the action and prevailed his or her costs, disbursements and other expenses, including attorney fees and expert witness fees.

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For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 59.694 (14) of the statutes is repealed and recreated to read:

2           59.694 (14) COSTS AND LITIGATION EXPENSES. (a) In this subsection, “litigation  
3 expenses” means the sum of the costs, disbursements and expenses, including  
4 reasonable attorney fees and expert witness fees necessary to prepare for and  
5 participate in the appeal of a decision of the board of adjustment.

6           (b) Except as provided in par. (c) and except for appeals relating to metallic  
7 mining operations, costs under s. 814.04 shall be allowed in any appeal of an action  
8 of the board of adjustment if the person bringing the appeal prevails.

9           (c) In lieu of costs under s. 814.04, litigation expenses shall be awarded to the  
10 person appealing the decision of the board of adjustment if that person prevails, if  
11 the appeal is not related to metallic mining operations and if the court determines  
12 that the board of adjustment acted with gross negligence, in bad faith, with malice  
13 or unreasonably.

14           **SECTION 2.** 59.694 (15) of the statutes is created to read:

15           59.694 (15) PREFERENCE. All issues in any proceeding under this section shall  
16 have preference over all other civil actions and proceedings.

17           **SECTION 3.** 60.65 (5) of the statutes is repealed and recreated to read:

18           60.65 (5) BOARD OF ADJUSTMENT POWERS, DUTIES AND PROCEDURES. Subject to this  
19 section and except where clearly inconsistent with this section, the board of  
20 adjustment under a town zoning ordinance is subject to all of the provisions of s.  
21 59.964.

