

## 2007 ASSEMBLY BILL 372

May 29, 2007 – Introduced by Representatives FRISKE, VOS, BIES, GUNDERSON, MURSAU, JESKEWITZ, ALBERS, HAHN, MUSSER and TOWNSEND, cosponsored by Senators SCHULTZ, GROTHMAN, LEIBHAM and DARLING. Referred to Committee on Judiciary and Ethics.

1     **AN ACT** *to repeal* 227.485 (2) (b), (c) and (d), 227.485 (7), 814.245 (2) (a), (b) and  
2           (c) and 814.245 (8); and *to amend* 106.20 (1) (f), 227.485 (3), 227.485 (6) and  
3           814.245 (3) of the statutes; **relating to:** awarding costs in administrative  
4           agency actions.

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### *Analysis by the Legislative Reference Bureau*

Under current law, if an individual, small nonprofit corporation, or a small business is the prevailing party in an administrative agency contested case, in an action brought by an agency, or in a judicial review proceeding under s. 227.485 (6), that prevailing party is entitled to an award of costs unless the court finds the agency was substantially justified in taking its position or if such an award would be unjust under the circumstances. If the prevailing party is an individual, that party is not entitled to recover costs if the party's federal adjusted gross income was \$150,000 or more in each of the three years prior to the commencement of the action.

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 all persons who are prevailing parties unless the court finds the agency was substantially justified in taking its position or if such an award would be unjust under the circumstances.

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For further information see the *state* 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.** 106.20 (1) (f) of the statutes is amended to read:

2           106.20 (1) (f) “Small business” ~~has the meaning given in s. 227.485 (2) (c) means~~  
3           a business entity, including its affiliates, which is independently owned and  
4           operated, and which employs 25 or fewer full-time employees or which has gross  
5           annual sales of less than \$5,000,000.

6           **SECTION 2.** 227.485 (2) (b), (c) and (d) of the statutes are repealed.

7           **SECTION 3.** 227.485 (3) of the statutes is amended to read:

8           227.485 (3) In any contested case in which ~~an individual, a small nonprofit~~  
9           ~~corporation or a small business~~ a person other than the state is the prevailing party  
10          and submits a motion for costs under this section, the hearing examiner shall award  
11          the prevailing party the costs incurred in connection with the contested case, unless  
12          the hearing examiner finds that the state agency which is the losing party was  
13          substantially justified in taking its position or that special circumstances exist that  
14          would make the award unjust.

15          **SECTION 4.** 227.485 (6) of the statutes is amended to read:

16          227.485 (6) A final decision under sub. (5) is subject to judicial review under  
17          s. 227.52. ~~If the individual, small nonprofit corporation or small business~~ a person  
18          other than the state is the prevailing party in the proceeding for judicial review, the  
19          court shall make the findings applicable under s. 814.245 and, if appropriate, award  
20          costs related to that proceeding under s. 814.245, regardless of who petitions for

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1 judicial review. In addition, the court on review may modify the order for payment  
2 of costs in the final decision under sub. (5).

3 **SECTION 5.** 227.485 (7) of the statutes is repealed.

4 **SECTION 6.** 814.245 (2) (a), (b) and (c) of the statutes are repealed.

5 **SECTION 7.** 814.245 (3) of the statutes is amended to read:

6 814.245 (3) Except as provided in s. 814.25, if ~~an individual, a small nonprofit~~  
7 ~~corporation or a small business~~ a person other than the state is the prevailing party  
8 in any action by a state agency or in any proceeding for judicial review under s.  
9 227.485 (6) and submits a motion for costs under this section, the court shall award  
10 costs to the prevailing party, unless the court finds that the state agency was  
11 substantially justified in taking its position or that special circumstances exist that  
12 would make the award unjust.

13 **SECTION 8.** 814.245 (8) of the statutes is repealed.

14 **SECTION 9. Initial applicability.**

15 (1) The treatment of sections 106.20 (1) (f), 227.485 (3), 227.485 (6), and 814.245  
16 (3) of the statutes and the repeal of sections 227.485 (2) (b), (c), and (d), 227.485 (7),  
17 814.245 (2) (a), (b), and (c), and 814.245 (8) of the statutes first applies to  
18 administrative agency contested cases, actions by a state agency and judicial review  
19 proceedings under s. 227.485 (6), commenced on the effective date of this subsection.

20 **SECTION 10. Effective date.**

21 (1) This act takes effect on the first day of the 4th month beginning after  
22 publication.

23 (END)