

Fiscal Estimate Narratives

DPI 9/22/2011

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| LRB Number 11-1062/2 | Introduction Number AB-0223 | Estimate Type Original |
| Description Awarding costs in administrative agency actions | | |

Assumptions Used in Arriving at Fiscal Estimate

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. Current law also requires hearing examiners and courts in this state to be guided by federal case law as of November 20, 1985, when interpreting these provisions governing costs to prevailing parties.

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.

State: While DPI has many judicial reviews, the agency has never been ordered to pay costs. Costs have been requested, but DPI has always been found to be substantially justified. The changes of financial and entity size limitations should not affect DPI.

Long-Range Fiscal Implications