

Reprinted 4/5/83

MAR 18 1983
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SENATE FILE 470

BY COMMITTEE ON SMALL BUSINESS
AND ECONOMIC DEVELOPMENT

(FORMERLY SSB 168)

Approved 3/13/83 (p. 851)

Passed Senate, Date 3-22-83 (p. 898) Passed House, Date 4-14-83 (p. 1332)

Vote: Ayes 47 Nays 0 Vote: Ayes 95 Nays 0

Approved May 9, 1983

Motion to Reconsider (p. 899) (902)
" " 3/23 (p. 928)

Amended & Passed 3-30-83 (p. 1037)

A BILL FOR

- 1 An Act relating to the payment of costs in certain civil
- 2 and administrative actions to which the state is a party.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 470

S-3299

1 Amend Senate File 470 as follows:

- A 2 1. Page 2, line 2, by inserting after the figure
- 3 "19A" the words ", the Iowa civil rights commission
- 4 under chapter 601A, or any other regulatory agency".
- 5 2. Page 2, line 11, by striking the word "fifty"
- B 6 and inserting in lieu thereof the word "twenty".
- 7 3. Page 2, line 14, by striking the word "two"
- 8 and inserting in lieu thereof the word "one".

S-3299 FILED

BY TOM MANN, JR.

MARCH 23, 1983

B-Adopted, A-wkr 3/30/83 (p. 1037)

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1 Section 1. NEW SECTION. DEFINITIONS. As used in sec-
2 tion 2 of this Act, unless the context otherwise requires:

3 1. "Fees and other expenses" include the reasonable at-
4 torney fees and reasonable expenses of expert witnesses plus
5 court costs, but they do not include any portion of an attor-
6 ney's fees or salary paid by a unit of local, state, or federal
7 government for the attorney's services in the case.

8 2. "State" includes the state of Iowa, an agency of the
9 state, or any official of the state acting in an official
10 capacity.

11 Sec. 2. NEW SECTION. FINES--EXPENSES.

12 1. Unless otherwise provided by law, and if the prevailing
13 party meets the eligibility requirements of subsection 2,
14 the court in a civil action brought by the state or an action
15 for judicial review brought against the state pursuant to
16 chapter 17A other than for a rule-making decision, shall award
17 fees and other expenses to the prevailing party unless the
18 prevailing party is the state. However, the court shall not
19 make an award under this section if it finds one of the
20 following:

21 a. The position of the state was supported by substantial
22 evidence.

23 b. The state's role in the case was primarily adjudicative.

24 c. Special circumstances exist which would make the award
25 unjust.

26 d. The action arose from a proceeding in which the role
27 of the state was to determine the eligibility or entitlement
28 of an individual to a monetary benefit or its equivalent or
29 to adjudicate a dispute or issue between private parties or
30 to establish or fix a rate.

31 e. The proceeding was brought by the state pursuant to
32 titles 35 through 37.

33 f. The proceeding involved eminent domain, foreclosure,
34 collection of judgment debts, or was a proceeding in which
35 the state was a nominal party.

1 g. The proceeding involved the Iowa merit employment
2 commission under chapter 19A.

3 h. The proceeding is a tort claim.

4 2. To be eligible for an award of fees and other expenses
5 under this section, the prevailing party shall be one of the
6 following:

7 a. A natural person.

8 b. A sole proprietorship, partnership, corporation,
9 association, or public or private organization, any of which
10 meets the following criteria:

11 (1) Its average daily employment was fifty persons or
12 less for the twelve months preceding the filing of the action.

13 (2) Its gross receipts for the twelve-month period
14 preceding the filing of the action were two million dollars
15 or less, or its average gross receipts for the three twelve-
16 month periods preceding the filing of the action were two
17 million dollars or less.

18 3. A party seeking an award for fees and other expenses
19 under this section must file a claim for relief as a part
20 of the civil action or as a part of the action for judicial
21 review brought against the state pursuant to chapter 17A.
22 If the amount sought includes an attorney's fees or fees for
23 an expert, the application shall include an itemized statement
24 for these fees indicating the actual time expended in
25 representing the party and the rate at which the fees were
26 computed. The party seeking relief must establish that the
27 state's case was not supported by substantial evidence.

28 4. The court, in its discretion, may reduce the amount
29 to be awarded pursuant to this section, or deny an award,
30 to the extent that the prevailing party, during the course
31 of the proceedings engaged in conduct which unduly and
32 unreasonably protracted the final resolution of the matter
33 in controversy.

34 5. An award pursuant to this section shall not personally
35 obligate any officer or employee of this state for payment.

1 fees and other expenses on the prevailing party being a natural
 2 person or an organization that is not a large business entity.
 3 The award will include fees and expenses incurred in a
 4 prior administrative proceeding as well. The award will be
 5 paid from the state general fund unless the court finds that
 6 a state agency acted in bad faith by initiating an action
 7 deemed frivolous or without merit, in which case the agency
 8 will pay the award from its own funds. It requires agencies
 9 to report annually to the general assembly the number, nature,
 10 and amount of any such awards. The bill will apply only to
 11 proceedings initiated after its effective date which will
 12 be July 1 following the bill's enactment.

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SENATE FILE 470
 FISCAL NOTE

REQUESTED BY SENATOR HUSAK

In compliance with a written request there is hereby submitted a Fiscal Note for Senate File 470 pursuant to Joint Rule 17.

Senate File 470 provides that a civil action brought by the state, or in an action for judicial review brought against the state, the court shall award fees and other expenses to the prevailing party, if the party is not the state, unless the court finds the award is disqualified because of circumstances listed in section 2 of the bill.

The award will be paid from the state general fund unless the court finds that a state agency acted in bad faith by initiating an action deemed without merit. In this case, the agency will pay the award from its own funds.

Fiscal Impact: There are fifteen divisions in the Department of Justice. Nine of these divisions are involved in civil litigations. The total aggregate loss for calendar year 1983 would be approximately \$400,000. (0736S, 83-399, KMM)

SOURCE: ATTORNEY GENERAL

RECEIVED BY THE SECRETARY OF THE SENATE, MARCH 31, 1983

FILED:

APRIL 6, 1983

BY LEGISLATIVE FISCAL BUREAU

DENNIS C. PROUTY, DIRECTOR

LSB 736S 70

rn/jw/5

Senate File 470
Senate File 470

Small Business and Commerce: Swartz, Chair; Diemer, Gronings, Halvorson of Clayton and Sturgeon. FILE 470

3581 4/18/83 BY COMMITTEE ON SMALL BUSINESS AND ECONOMIC DEVELOPMENT

(AS AMENDED AND PASSED BY THE SENATE MARCH 30, 1983)

Passed Senate, Date 3-22-83 (7798) Passed House, Date 4-14-83 (A. 1332)
Vote: Ayes 47 Nays 0 Vote: Ayes 95 Nays 0
Approved May 9, 1983 (7.1641)

A BILL FOR

1 An Act relating to the payment of costs in certain civil
2 and administrative actions to which the state is a party.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
SENATE FILE 470

H-3543

1 Amend Senate File 470 as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 2, line 2, by inserting after the figure
4 "19A" the words and figure "or the Iowa civil rights
5 commission under chapter 601A, or any other regulatory
6 agency".

H-3543 FILED APRIL 6, 1983 BY BUHR of Polk
4/12 4/13/83 (7.1331)

SENATE FILE 470

H-3581

1 Amend Senate File 470 as amended, passed and
2 reprinted by the Senate, as follows:
3 1. Page 3, line 14, by striking the word "that"
4 and inserting in lieu thereof the words "for which
5 the treasurer of state".
6 2. Page 3, line 19, by inserting after the word
7 "by" the words "the treasurer of state for".

H-3581 FILED APRIL 8, 1983 BY COMMITTEE ON SMALL BUSINESS AND COMMERCE
4/12 4/14/83 (7.1332)

1 Section 1. NEW SECTION. DEFINITIONS. As used in sec-
2 tion 2 of this Act, unless the context otherwise requires:

3 1. "Fees and other expenses" include the reasonable at-
4 torney fees and reasonable expenses of expert witnesses plus
5 court costs, but they do not include any portion of an attor-
6 ney's fees or salary paid by a unit of local, state, or federal
7 government for the attorney's services in the case.

8 2. "State" includes the state of Iowa, an agency of the
9 state, or any official of the state acting in an official
10 capacity.

11 Sec. 2. NEW SECTION. FINES--EXPENSES.

12 1. Unless otherwise provided by law, and if the prevailing
13 party meets the eligibility requirements of subsection 2,
14 the court in a civil action brought by the state or an action
15 for judicial review brought against the state pursuant to
16 chapter 17A other than for a rule-making decision, shall award
17 fees and other expenses to the prevailing party unless the
18 prevailing party is the state. However, the court shall not
19 make an award under this section if it finds one of the
20 following:

21 a. The position of the state was supported by substantial
22 evidence.

23 b. The state's role in the case was primarily adjudicative.

24 c. Special circumstances exist which would make the award
25 unjust.

26 d. The action arose from a proceeding in which the role
27 of the state was to determine the eligibility or entitlement
28 of an individual to a monetary benefit or its equivalent or
29 to adjudicate a dispute or issue between private parties or
30 to establish or fix a rate.

31 e. The proceeding was brought by the state pursuant to
32 titles 35 through 37.

33 f. The proceeding involved eminent domain, foreclosure,
34 collection of judgment debts, or was a proceeding in which
35 the state was a nominal party.

1 g. The proceeding involved the Iowa merit employment
2 commission under chapter 19A.

3 h. The proceeding is a tort claim.

4 2. To be eligible for an award of fees and other expenses
5 under this section, the prevailing party shall be one of the
6 following:

7 a. A natural person.

8 b. A sole proprietorship, partnership, corporation,
9 association, or public or private organization, any of which
10 meets the following criteria:

11 (1) Its average daily employment was twenty persons or
12 less for the twelve months preceding the filing of the action.

13 (2) Its gross receipts for the twelve-month period
14 preceding the filing of the action were one million dollars
15 or less, or its average gross receipts for the three twelve-
16 month periods preceding the filing of the action were two
17 million dollars or less.

18 3. A party seeking an award for fees and other expenses
19 under this section must file a claim for relief as a part
20 of the civil action or as a part of the action for judicial
21 review brought against the state pursuant to chapter 17A.
22 If the amount sought includes an attorney's fees or fees for
23 an expert, the application shall include an itemized statement
24 for these fees indicating the actual time expended in
25 representing the party and the rate at which the fees were
26 computed. The party seeking relief must establish that the
27 state's case was not supported by substantial evidence.

28 4. The court, in its discretion, may reduce the amount
29 to be awarded pursuant to this section, or deny an award,
30 to the extent that the prevailing party, during the course
31 of the proceedings engaged in conduct which unduly and
32 unreasonably protracted the final resolution of the matter
33 in controversy.

34 5. An award pursuant to this section shall not personally
35 obligate any officer or employee of this state for payment.

1 6. Fees and other expenses awarded under this section
2 may be ordered in addition to any compensation awarded in
3 a judgment. When awarding fees and other expenses against
4 the state under this section, the court shall order the auditor
5 of state to issue a warrant drawn on the state general fund
6 for the amount of the award. The treasurer of state shall
7 pay the warrant. However, if the court finds that an agency
8 of state government, against which fees and other expenses
9 are awarded for an action for judicial review of an agency
10 proceeding under chapter 17A, has acted in bad faith in
11 initiating an action deemed frivolous or without merit, then
12 the agency shall make the payment ordered from the moneys
13 appropriated to that agency.

14 7. Each agency that pays fees or other expenses for an
15 action for judicial review of an agency proceeding under
16 chapter 17A shall report annually to the chairs and ranking
17 members of the appropriate appropriations subcommittees of
18 the general assembly the amount of fees or other expenses
19 paid during the preceding fiscal year by that agency. In
20 its report the agency shall describe the number, nature, and
21 amount of the awards, the claims involved in the action, and
22 other relevant information which might aid the general assembly
23 in evaluating the scope and impact of these awards.

24 Sec. 3. This Act applies only to legal and administrative
25 agency proceedings initiated after the effective date of this
26 Act.

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SENATE FILE 470

AN ACT

RELATING TO THE PAYMENT OF COSTS IN CERTAIN CIVIL AND ADMINISTRATIVE ACTIONS TO WHICH THE STATE IS A PARTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. DEFINITIONS. As used in section 2 of this Act, unless the context otherwise requires:

1. "Fees and other expenses" include the reasonable attorney fees and reasonable expenses of expert witnesses plus court costs, but they do not include any portion of an attorney's fees or salary paid by a unit of local, state, or federal government for the attorney's services in the case.

2. "State" includes the state of Iowa, an agency of the state, or any official of the state acting in an official capacity.

Sec. 2. NEW SECTION. FINES--EXPENSES.

1. Unless otherwise provided by law, and if the prevailing party meets the eligibility requirements of subsection 2, the court in a civil action brought by the state or an action for judicial review brought against the state pursuant to chapter 17A other than for a rule-making decision, shall award fees and other expenses to the prevailing party unless the prevailing party is the state. However, the court shall not make an award under this section if it finds one of the following:

a. The position of the state was supported by substantial evidence.

b. The state's role in the case was primarily adjudicative.
c. Special circumstances exist which would make the award unjust.

d. The action arose from a proceeding in which the role of the state was to determine the eligibility or entitlement of an individual to a monetary benefit or its equivalent or to adjudicate a dispute or issue between private parties or to establish or fix a rate.

e. The proceeding was brought by the state pursuant to titles 35 through 37.

f. The proceeding involved eminent domain, foreclosure, collection of judgment debts, or was a proceeding in which the state was a nominal party.

g. The proceeding involved the Iowa merit employment commission under chapter 19A.

h. The proceeding is a tort claim.

2. To be eligible for an award of fees and other expenses under this section, the prevailing party shall be one of the following:

a. A natural person.

b. A sole proprietorship, partnership, corporation, association, or public or private organization, any of which meets the following criteria:

(1) Its average daily employment was twenty persons or less for the twelve months preceding the filing of the action.

(2) Its gross receipts for the twelve-month period preceding the filing of the action were one million dollars or less, or its average gross receipts for the three twelve-month periods preceding the filing of the action were two million dollars or less.

3. A party seeking an award for fees and other expenses under this section must file a claim for relief as a part of the civil action or as a part of the action for judicial review brought against the state pursuant to chapter 17A.

If the amount sought includes an attorney's fees or fees for an expert, the application shall include an itemized statement for these fees indicating the actual time expended in representing the party and the rate at which the fees were computed. The party seeking relief must establish that the state's case was not supported by substantial evidence.

4. The court, in its discretion, may reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the prevailing party, during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

5. An award pursuant to this section shall not personally obligate any officer or employee of this state for payment.

6. Fees and other expenses awarded under this section may be ordered in addition to any compensation awarded in a judgment. When awarding fees and other expenses against the state under this section, the court shall order the auditor of state to issue a warrant drawn on the state general fund for the amount of the award. The treasurer of state shall pay the warrant. However, if the court finds that an agency of state government, against which fees and other expenses are awarded for an action for judicial review of an agency proceeding under chapter 17A, has acted in bad faith in initiating an action deemed frivolous or without merit, then the agency shall make the payment ordered from the moneys appropriated to that agency.

7. Each agency that pays fees or other expenses for an action for judicial review of an agency proceeding under chapter 17A shall report annually to the chairs and ranking members of the appropriate appropriations subcommittees of the general assembly the amount of fees or other expenses paid during the preceding fiscal year by that agency. In its report the agency shall describe the number, nature, and

amount of the awards, the claims involved in the action, and other relevant information which might aid the general assembly in evaluating the scope and impact of these awards.

Sec. 3. This Act applies only to legal and administrative agency proceedings initiated after the effective date of this Act.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 470, Seventieth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved May 9, 1983

TERRY E. BRANSTAD
Governor