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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **3132**

February 22, 2010

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The bill was read for the first time and referred to the Committee on Civil Justice

1.1 A bill for an act
1.2 relating to civil actions; awarding fees and expenses to prevailing parties in
1.3 certain actions involving municipalities; proposing coding for new law in
1.4 Minnesota Statutes, chapter 471.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. [471.421] DEFINITIONS.

1.7 Subdivision 1. Terms defined. For purposes of sections 471.421 to 471.423, the
1.8 terms defined in this section have the meanings given them.

1.9 Subd. 2. Expenses. "Expenses" means the costs incurred by the party in the
1.10 litigation, including:

1.11 (1) filing fees;

1.12 (2) subpoena fees and mileage;

1.13 (3) transcript costs and court reporter fees;

1.14 (4) expert witness fees;

1.15 (5) the reasonable cost of any study, analysis, engineering report, survey, appraisal,
1.16 test, or project;

1.17 (6) photocopying and printing costs;

1.18 (7) postage and delivery costs; and

1.19 (8) service of process fees.

1.20 Subd. 3. Fees. "Fees" means the reasonable attorney fees or reasonable fees charged
1.21 by a person not an attorney who is authorized by law or rule to represent the party and
1.22 may include reasonable charges by the party, the party's employee, or agent. The amount
1.23 of fees must be based upon prevailing market rates for the kind and quality of the services

2.1 furnished. In a court action, an expert witness may not be compensated at a rate in excess
 2.2 of the highest rate of compensation for expert witnesses paid by the state.

2.3 Subd. 4. **Municipality.** "Municipality" means a home rule charter or statutory city,
 2.4 county, town, school district, political subdivision, or agency of local government. The
 2.5 term also includes the Metropolitan Council or a board or agency created under chapter
 2.6 473.

2.7 Subd. 5. **Party.** (a) Except as modified by paragraph (b), "party" means a person
 2.8 named or admitted as a party, or seeking and entitled to be admitted as a party, in a court
 2.9 action, and who is:

2.10 (1) an unincorporated business, partnership, corporation, association, or organization,
 2.11 having not more than 500 employees at the time the civil action was filed; and

2.12 (2) an unincorporated business, partnership, corporation, association, or organization
 2.13 whose annual revenues did not exceed \$7,000,000 at the time the civil action was filed.

2.14 (b) "Party" also includes a partner, officer, shareholder, member, or owner of an
 2.15 entity described in paragraph (a), clauses (1) and (2). The term does not include a party in
 2.16 a civil action brought by or against the municipality in connection with the granting or
 2.17 denying of a liquor license.

2.18 Subd. 6. **Substantially justified.** "Substantially justified" means that the
 2.19 municipality's position had a reasonable basis in law and fact, based on the totality of the
 2.20 circumstances before and during the litigation.

2.21 **Sec. 2. [471.422] FEES AND EXPENSES; CIVIL ACTION INVOLVING**
 2.22 **MUNICIPALITY.**

2.23 (a) The court shall award fees and other expenses to a prevailing party in a civil
 2.24 action unless special circumstances make an award unjust, provided that:

2.25 (1) the action is a civil action other than a tort action;

2.26 (2) the municipality's orders or total cost of compliance with the orders is in an
 2.27 amount of \$10,000 or more;

2.28 (3) the prevailing party is not the municipality; and

2.29 (4) the position of the municipality was not substantially justified.

2.30 (b) A party seeking an award of fees and other expenses shall, within 30 days of
 2.31 final judgment in the action, submit to the court an application of fees and other expenses
 2.32 that shows that the party is a prevailing party and is eligible to receive an award, and the
 2.33 amount sought, including an itemized statement from any attorney or expert witness
 2.34 representing or appearing on behalf of the party stating the actual time expended and the

3.1 rate at which fees and other expenses were computed. The party shall also allege that the
3.2 position of the municipality was not substantially justified.

3.3 (c) The court may reduce the amount to be awarded under this section, or deny an
3.4 award, to the extent that the prevailing party during the proceedings engaged in conduct
3.5 that unduly and unreasonably protracted the final resolution of the matter in controversy.

3.6 (d) This section does not preclude a party from recovering costs, disbursements,
3.7 fees, and expenses under other applicable law.

3.8 **Sec. 3. [471.423] PAYMENT OF COSTS AND FEES.**

3.9 A judgment against a municipality in a civil action for fees and expenses under
3.10 section 471.422 must be paid from funds of the municipality.

3.11 **Sec. 4. EFFECTIVE DATE; APPLICATION.**

3.12 This act is effective August 1, 2010, and applies to civil actions commenced on or
3.13 after that date.