

HOUSE BILL 79

By Lamberth

AN ACT to amend Tennessee Code Annotated, Section 4-5-325 and Section 63-1-144, relative to payment of expenses incurred during proceedings related to contested cases.

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

SECTION 1. Tennessee Code Annotated, Section 4-5-325, is amended by deleting the section and substituting instead the following:

(a)

(1) When a state agency issues a notice to a person, local governmental entity, board, or commission for the violation of a rule or statute and the notice results in a contested case hearing, at the conclusion of the contested case hearing, the hearing officer or administrative law judge may order the agency to pay to the party issued the notice the reasonable expenses incurred because of the notice, including a reasonable attorney's fee if the following conditions are satisfied:

(A) The party issued the notice substantially prevails on the merits of all of the allegations in the notice; and

(B) The hearing officer or administrative law judge finds that the state agency issued the notice to harass, cause unnecessary delay, or cause needless expense to the party issued the notice.

(2) If the hearing officer or administrative law judge finds that the state agency issued the notice to harass, cause unnecessary delay, or cause needless

expense pursuant to subdivision (a)(1)(B), then the officer or judge shall set forth in a written order the facts upon which that determination is based.

(b) If a final decision in a contested case hearing results in the party issued the notice seeking judicial review pursuant to § 4-5-322, then the judge, at the conclusion of the hearing, may make the same findings and enter the same order as permitted the hearing officer or administrative law judge pursuant to subsection (a).

(c) For purposes of this section, "notice" means the document required by § 4-5-307(b).

SECTION 2. Tennessee Code Annotated, Section 63-1-144, is amended by adding the following as a new subsection (c):

(c) In addition to the authority contained in this section, when a party seeks judicial review of the agency decision in accordance with § 4-5-322 or the chancery court decision in accordance with § 4-5-323, the court, or the board, committee, or council if the matter is remanded to the agency, upon finding that a sanction of the certificate or license holder is appropriate, may require the license or certificate holder to pay the actual and reasonable costs incurred by the division or agency for the judicial review, including costs for the time, travel, and lodging of the office of the attorney general, court reporter and transcript costs, and court costs. The order must reflect the maximum amount owed by the license or certificate holder for the judicial review.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.