



2011 ASSEMBLY BILL 223

August 18, 2011 - Introduced by Representatives MURSAU, HONADEL, SPANBAUER, WYNN, KNILANS, JACQUE, BROOKS, KUGLITSCH and STROEBEL, cosponsored by Senators GROTHMAN, TAYLOR, LASEE and HOLPERIN. Referred to Committee on Judiciary and Ethics.

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

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. 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

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November 20, 1985, when interpreting these provisions governing costs to prevailing parties.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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) (e)~~ 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 (1) of the statutes is repealed.

7 **SECTION 3.** 227.485 (2) (b), (c) and (d) of the statutes are repealed.

8 **SECTION 4.** 227.485 (3) of the statutes is amended to read:

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

16 **SECTION 5.** 227.485 (6) of the statutes is amended to read:

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

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1 appropriate, award costs related to that proceeding under s. 814.245, regardless of
2 who petitions for judicial review. In addition, the court on review may modify the
3 order for payment of costs in the final decision under sub. (5).

4 **SECTION 6.** 227.485 (7) of the statutes is repealed.

5 **SECTION 7.** 814.245 (1) of the statutes is repealed.

6 **SECTION 8.** 814.245 (2) (a), (b) and (c) of the statutes are repealed.

7 **SECTION 9.** 814.245 (3) of the statutes is amended to read:

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

15 **SECTION 10.** 814.245 (8) of the statutes is repealed.

16 **SECTION 11. Initial applicability.**

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

22 **SECTION 12. Effective date.**

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

25 (END)