~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 4, 2009

**S. 186**

Introduced by Senators McConnell and Campsen

S. Printed 3/4/09--S.

Read the first time January 13, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 186) to amend Section 15‑77‑300, Code of Laws of South Carolina, 1976, relating to allowance of attorney’s fees in state‑initiated actions, so as to, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill as and if amended, page 1, by striking line 30 in its entirety and inserting:

/ substantial justification in pressing its claim /

Amend the bill further, as and if amended, page 1, by striking lines 35‑36 in their entirety and inserting:

/ claim against the party if the agency follows a statutory or constitutional mandate that has not been invalidated by a court of competent /

Amend the bill further, as and if amended, page 2, by striking line 3 in its entirety and inserting:

/ (5) the customary legal fees for similar services; and

(6) whether the results were so exceptional that the case deserves an enhanced lodestar analysis. /

Renumber sections to conform.

Amend title to conform.

LARRY A. MARTIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

See Below

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

See Below

**EXPLANATION OF IMPACT:**

The Judicial Department indicates this bill would have a minimal impact on the General Fund of the State, which can be absorbed by the agency at the current level of funding. The additional time requirement placed upon the judge in the determination of what a reasonable rate would be for the attorney’s fee will increase the time in the disposition of the case and therefore add to the overall time case processing in the Court of Common Pleas.

*According to State Budget and Control Board legal staff this bill will serve to limit attorney fees shifted to the taxpayer pursuant to Section 15-77-300. As a result, this bill should result in a savings in state funds. Although the savings is not readily determinable it could be significant.*

**SPECIAL NOTES:**

*The italicized portion of this impact indicates the items that have been revised. For this impact, the revised constitutes information that was not available in the original impact.*

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SECTION 15‑77‑300, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ALLOWANCE OF ATTORNEY’S FEES IN STATE‑INITIATED ACTIONS, SO AS TO LIMIT THE FEE TO A REASONABLE TIME EXPENDED AT A REASONABLE RATE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 15‑77‑300 of the 1976 Code is amended to read:

“Section 15‑77‑300. (A) In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney’s fees to be taxed as court costs against the appropriate agency if:

(1) ~~The~~ the court finds that the agency acted without substantial justification, in law and fact, in pressing its claim against the party; and

(2) ~~The~~ the court finds that there are no special circumstances that would make the award of attorney’s fees unjust.

The agency is presumed to be substantially justified in pressing its claim against the party if the agency follows the mandate of state law that has not been invalidated by a court of competent jurisdiction.

(B) Attorney’s fees allowed pursuant to subsection (A) must be limited to a reasonable time expended at a reasonable rate. Factors to be applied in determining a reasonable rate include:

(1) the nature, extent, and difficulty of the case;

(2) the time devoted;

(3) the professional standing of counsel;

(4) the beneficial results obtained; and

(5) the customary legal fees for similar services.

The judge must make specific written findings regarding each factor listed above in making the award of attorney’s fees. However, in no event shall a prevailing party be allowed to shift attorney’s fees pursuant to this section that exceed the fees the party has contracted to pay counsel for work on the litigation. The provisions of this subsection do not apply to an attorney’s fees award paid to an attorney representing a landowner in a condemnation proceeding as provided for in Sections 28-2-510 or 57-5-320.

(C) The provisions of this section do not apply to civil actions relating to the establishment of public utility rates, disciplinary actions by state licensing boards, habeas corpus or post conviction relief actions, child support actions, except as otherwise provided for herein, and child abuse and neglect actions.”

SECTION 2. This act takes effect upon approval by the Governor.

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