~~Indicates Matter Stricken~~

Indicates New Matter

RECALLED

May 20, 2009

**S. 186**

Introduced by Senators McConnell and Campsen

S. Printed 5/20/09--H.

Read the first time March 24, 2009.

**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 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 a statutory or constitutional mandate 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 personally 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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