

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

FILED SENATE  
Apr 4, 2017  
S.B. 613  
PRINCIPAL CLERK

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SENATE BILL DRS45378-ML-78 (02/08)

Short Title: Attorney's Fees & Costs/State Prevails. (Public)

Sponsors: Senators McInnis and Tucker (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW ATTORNEY'S FEES WHEN THE STATE IS THE PREVAILING PARTY IN CERTAIN CIVIL ACTIONS AND CLARIFY AND STANDARDIZE THE REQUIREMENTS TO AWARD ATTORNEY'S FEES IN ACTIONS INVOLVING THE STATE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 6-19.1 reads as rewritten:

"§ 6-19.1. ~~Attorney's fees to parties appealing or defending against agency decision in certain actions involving the State.~~

(a) Prevailing Party Is Not the State. – In any civil action, other than an adjudication for the purpose of establishing or fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of law, unless the prevailing party is the State, the court may, in its discretion, allow the prevailing party to recover reasonable attorney's fees, including attorney's fees applicable to the administrative review portion of the case, in contested cases arising under Article 3 of Chapter 150B, to be taxed as court costs against the appropriate agency of the State if:

- (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and
- (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust. ~~The party shall petition for the attorney's fees within 30 days following final disposition of the case. The petition shall be supported by an affidavit setting forth the basis for the request.~~

Nothing in this ~~section-subsection~~ shall be deemed to authorize the assessment of attorney's fees for the administrative review portion of the case in contested cases arising under Article 9 of Chapter 131E of the General Statutes.

~~Nothing in this section grants permission to bring an action against an agency otherwise immune from suit or gives a right to bring an action to a party who otherwise lacks standing to bring the action.~~

Any attorney's fees assessed against an agency of the State under this ~~section-subsection~~ shall be charged against the operating expenses of the agency and shall not be reimbursed from any other source.

...

(c) Prevailing Party Is the State. – In any civil action or other proceeding, the court must allow the State to recover reasonable attorney's fees and costs if the State is the prevailing party and the claim or issue involves one or both of the following:



1           (1)    Contesting the State's ability to construct transportation improvements.

2           (2)    Seeking relief based on environmental impact.

3           Reasonable attorney's fees include attorney's fees applicable to any administrative portion  
4 of the case. The attorney's fees must be taxed as court costs against any law firm seeking relief  
5 against the State. Contracts between the law firm and named parties in the action to reimburse  
6 the law firm for attorney's fees are valid and enforceable. Law firms may avoid liability under  
7 this subsection if the named parties post a bond for the payment of attorney's fees and costs in  
8 an amount determined by the presiding judge. Upon motion of either party, the presiding judge  
9 may adjust the amount of the required bond at reasonable times.

10          (d)    Petition and Award. – The prevailing party must petition for the attorney's fees  
11 within 30 days following final disposition of the case. The petition must be supported by an  
12 affidavit setting forth the basis for the request. When the presiding judge determines that an  
13 award of attorney's fees is to be made under this section, the judge must issue a written order  
14 including the factual basis and amount of attorney's fees to be awarded.

15          (e)    No Grant of Jurisdiction. – Nothing in this section grants permission to bring an  
16 action against the State when otherwise immune from suit or gives a right to bring an action to  
17 a party who otherwise lacks standing to bring the action.

18          (f)    Definitions. – The following definitions apply in this section:

19               (1)    Law firm. – Any entity or individual providing legal services in the action  
20               against the State.

21               (2)    State. – The State and its agencies as defined in G.S. 150B-2(1a)."

22          **SECTION 2.** This section becomes effective September 1, 2017, and applies to all  
23 actions or other proceedings filed on or after that date.