

House Bill 3497

Sponsored by Representative KOMP, Senators GIROD, MONROE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes court to award attorney fees and costs in favor of state agency that is prevailing party in proceeding on judicial review of agency action.

A BILL FOR AN ACT

Relating to attorney fees for judicial review of agency actions; amending ORS 183.497.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 183.497 is amended to read:

183.497. (1) In a judicial proceeding designated under subsection (2) of this section the court:

(a) May, in its discretion, *[allow a petitioner]* **award a prevailing party** reasonable attorney fees and costs *[if the court finds in favor of the petitioner]*.

(b) Shall *[allow]* **award** a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner and determines that the state agency acted without a reasonable basis in fact or in law; but the court may withhold all or part of the attorney fees from any *[allowance]* **award** to a petitioner if the court finds that the state agency has proved that its action was substantially justified or that special circumstances exist that make the *[allowance]* **award** of all or part of the attorney fees unjust.

(2) The provisions of subsection (1) of this section apply to an administrative or judicial proceeding brought by a petitioner against a state agency, as defined in ORS 291.002, for:

(a) Judicial review of a final order as provided in ORS 183.480 to 183.484;

(b) Judicial review of a declaratory ruling provided in ORS 183.410; or

(c) A judicial determination of the validity of a rule as provided in ORS 183.400.

(3) *[Amounts allowed under this section for]* Reasonable attorney fees and costs **awarded to a petitioner under this section** shall be paid from funds available to the state agency whose final order, declaratory ruling or rule was reviewed by the court.

22

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.