

HB 2096 -1 STAFF MEASURE SUMMARY

House Committee On Judiciary

Prepared By: Channa Newell, Counsel

Meeting Dates: 3/4, 4/3

WHAT THE MEASURE DOES:

Modifies standards for awarding attorney fees in contested case hearings or appeals of decisions involving the Oregon Government Ethics Commission. Allows for partial awards or withholding of attorney fee awards if the court finds the Commission proved its actions were substantially justified or special circumstances make an award of attorney fees unjust. Makes award of attorney fees mandatory when petitioner prevails and court finds Commission acted without a reasonable basis in fact or law. Takes effect 91 days sine die.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Removes mandatory award of attorney fees to petitioner when court finds in favor of petitioner and that commission acted without a reasonable basis. Allows reasonable attorney fees if court finds in favor of petitioner.

BACKGROUND:

The Oregon Government Ethics Commission was created by initiative petition in 1974. It regulates areas such as disclosure of conflicts of interest and financial considerations of public officials, lobbyist regulation, and gifting. Currently, in a contested case hearing or appeal of decision, a person who prevails against the Commission is awarded attorney fees at the conclusion of the contested case or appeal. Other Oregon agencies have a different process for awards of attorney fees. Under the Oregon Administrative Procedures Act, when a petitioner prevails in an action against a state agency on the validity of rule or agency order, the court may award attorney fees. See ORS 183.497(1). The court must award attorney fees if it finds the agency acted without reasonable basis in fact or law, and may reduce or deny attorney fee awards if the state agency has proved that its action was substantially justified or that special circumstances exist that make the allowance of all or part of the attorney fees unjust.

House Bill 2096 mirrors the award of attorney fee process found in the Administrative Procedures Act for attorney fee awards against the Commission. It allows attorney fees in whole or in part upon a prevailing action. It requires a court to award attorney fees and costs if the court finds the Commission acted without reasonable basis in fact or law. Under the measure, a court may withhold attorney fee awards in whole or in part from a prevailing party if the court finds that the Commission proved that its actions were substantially justified or that special circumstances exist that would make an award of attorney fees unjust.