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ASSEMBLY BILL NO. 255—ASSEMBLYMAN HANSEN

MARCH 11, 2015

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Referred to Committee on Commerce and Labor

SUMMARY—Provides for the award of certain costs, fees and expenses to prevailing parties in actions before the Occupational Safety and Health Review Board under certain circumstances. (BDR 53-1027)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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AN ACT relating to occupational safety; providing for the award of certain costs, fees and expenses to prevailing parties in actions before the Occupational Safety and Health Review Board under certain circumstances; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law authorizes the Division of Industrial Relations of the Department  
2 of Business and Industry to prosecute, defend and maintain actions in the name of  
3 the Division for the enforcement of provisions relating to occupational safety and  
4 health. (NRS 618.525) **Sections 6-8** of this bill provide, under certain  
5 circumstances, for certain costs, fees and expenses to be awarded to the prevailing  
6 party in actions or proceedings before the Occupational Safety and Health Review  
7 Board that are brought by or against the Division or in an action for judicial review  
8 before a court. **Section 9** of this bill provides that if the Division appeals an award  
9 of costs, fees or expenses made to a prevailing party and the award is affirmed in  
10 whole or in part, the Division must pay interest on the amount that is affirmed.  
11 **Section 10** of this bill generally requires a final award of costs, fees and expenses  
12 made to a prevailing party to be paid from the Fund for Insurance Premiums.  
13 **Section 10** further provides that payment of such an award must be approved by the  
14 Attorney General if the amount of the award is less than the amount specified by  
15 regulation or policy of the State Board of Examiners; for larger awards, payment  
16 must be approved by the State Board of Examiners. **Section 11** of this bill provides  
17 that the provisions in the bill must not be construed to prohibit the Division from  
18 agreeing to settle a claim for costs, fees and expenses.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1       **Section 1.** Chapter 618 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 11, inclusive, of this  
3 act.

4       **Sec. 2.** *As used in sections 2 to 11, inclusive, of this act,*  
5 *unless the context otherwise requires, the words and terms defined*  
6 *in sections 3, 4 and 5 of this act have the meanings ascribed to*  
7 *them in those sections.*

8       **Sec. 3.** *“Expenses” means the reasonable cost of any study,*  
9 *analysis, engineering report, test or project which is determined by*  
10 *the Board or a court to have been necessary for the preparation of*  
11 *a party’s case.*

12       **Sec. 4.** *“Fees” means the reasonable fees of attorneys,*  
13 *persons representing a party before the Board and expert*  
14 *witnesses.*

15       **Sec. 5.** *“Party” means:*

16       1. *A natural person, other than an employee or officer of the*  
17 *Division, who, at the time an action or proceeding by or against*  
18 *the Division was filed, did not have a net worth in excess of*  
19 *\$2,000,000; or*

20       2. *A corporation, partnership, proprietorship, limited-liability*  
21 *company, business association, joint venture, limited-liability*  
22 *partnership or other business entity or organization who, at the*  
23 *time an action or proceeding by or against the Division was filed,*  
24 *did not have a net worth in excess of \$7,000,000 and did not have*  
25 *more than 500 employees.*

26       **Sec. 6.** *In any action or proceeding before the Board brought*  
27 *by or against the Division or an employee or officer of the Division*  
28 *acting in his or her official capacity, or in any action for judicial*  
29 *review before a court, the prevailing party must be awarded costs,*  
30 *which must be limited to reimbursing, in whole or in part, the*  
31 *costs incurred by the prevailing party in prosecuting or defending*  
32 *the action or proceeding.*

33       **Sec. 7.** 1. *Except as otherwise provided in subsection 2 and*  
34 *only upon application by the prevailing party pursuant to*  
35 *subsection 3, in any action or proceeding before the Board*  
36 *brought by or against the Division or an employee or officer of the*  
37 *Division acting in his or her official capacity, or in any action for*  
38 *judicial review before a court, the prevailing party must be*  
39 *awarded fees and expenses incurred by the prevailing party in*  
40 *prosecuting or defending the action or proceeding.*

41       2. *An award of fees and expenses must not be made to a*  
42 *prevailing party if the Board or the court, as applicable,*



1 *determines that the position of the Division was substantially*  
2 *justified or that the existence of special circumstances would make*  
3 *the award unjust.*

4 3. *A party seeking an award of fees and expenses must,*  
5 *within 30 days after the decision of the Board or the court, as*  
6 *applicable, submit to the Board or the court an application for*  
7 *such fees and expenses indicating:*

8 (a) *That the party is a prevailing party, together with a*  
9 *statement verifying the net worth of the party and, if applicable,*  
10 *the number of employees the party has;*

11 (b) *That the position of the Division was not substantially*  
12 *justified; and*

13 (c) *The amount sought, including an itemized statement*  
14 *provided by an attorney, the person who represented the party*  
15 *before the Board or the court or any expert witness who*  
16 *represented or appeared on behalf of the party that shows the*  
17 *actual time expended and the rate at which the requested fees and*  
18 *expenses were computed.*

19 4. *Any fees awarded pursuant to this section must be based*  
20 *upon the prevailing market rate for the type and quality of the*  
21 *service provided, except that:*

22 (a) *No expert witness may be compensated at a rate higher*  
23 *than the highest rate of compensation paid by the Division for an*  
24 *expert witness; and*

25 (b) *No attorney or person representing the party before the*  
26 *Board or the court may be compensated at a rate higher than \$200*  
27 *per hour unless the Board or the court, as applicable, determines*  
28 *that an increase in the cost of living or other special factor,*  
29 *including, without limitation, the availability of qualified attorneys*  
30 *or representatives, justifies a higher fee.*

31 5. *Whether or not the position of the Division was*  
32 *substantially justified must be determined on the basis of the*  
33 *record of the action or proceeding as a whole, including any*  
34 *administrative record concerning the action or inaction by the*  
35 *Division upon which the matter in controversy was based.*

36 6. *The Board or the court, as applicable, may reduce or deny*  
37 *any amount to be awarded pursuant to this section if a*  
38 *determination is made that the prevailing party engaged in*  
39 *conduct during the course of the action or proceeding which*  
40 *unduly and unreasonably extended the final resolution of the*  
41 *matter in controversy.*

42 7. *As used in this section:*

43 (a) *“Decision” means a final disposition or order issued by the*  
44 *Board or the court, including an order of settlement, whether or*  
45 *not appealable.*



1 (b) "Position" includes:

2 (1) The alleged action or inaction of the Division which  
3 gave rise to the matter in controversy; and

4 (2) The legal or factual theory asserted by the Division  
5 upon which the Division prosecuted or defended the matter in  
6 controversy.

7 **Sec. 8. 1.** *If, in any action or in any proceeding for judicial  
8 review of an adjudication brought by the Division, the demand by  
9 the Division is substantially in excess of the judgment ultimately  
10 obtained by the Division and is unreasonable when compared with  
11 such judgment under the facts and circumstances of the case, the  
12 party who prosecuted or defended the action or proceeding against  
13 the Division shall be deemed to be the prevailing party and the  
14 Board or the court, as applicable, shall award to that prevailing  
15 party the costs, fees and expenses incurred in defending against  
16 the excessive demand made by the Division unless:*

17 (a) *The prevailing party has committed a willful violation of  
18 law;*

19 (b) *The prevailing party has acted in bad faith; or*

20 (c) *Special circumstances make an award unjust.*

21 2. *A prevailing party seeking an award pursuant to this  
22 section must submit to the Board or the court, as applicable, an  
23 application for such an award in the same time and manner as an  
24 application filed pursuant to section 7 of this act.*

25 **Sec. 9.** *If the Division appeals an award of costs, fees or  
26 expenses made to a prevailing party and the award is affirmed in  
27 whole or in part, the Division must pay interest, computed at the  
28 rate established pursuant to NRS 17.130, on the amount of the  
29 award as affirmed from the date of the initial award to the date of  
30 the final decree of affirmance.*

31 **Sec. 10. 1.** *Within 10 business days after:*

32 (a) *An award of costs, fees and expenses made pursuant to  
33 section 6, 7 or 8 of this act is upheld by a reviewing court, in whole  
34 or in part, and further review is not timely sought or is not  
35 available under applicable law; or*

36 (b) *When any time allowed by applicable law for seeking such  
37 a review expires without review having been timely sought,*

38 ↪ *the Division shall give written notice of the award, and the  
39 name and address of the party entitled to payment of the award, to  
40 the Attorney General.*

41 2. *The State Board of Examiners shall prescribe by  
42 regulation or policy:*

43 (a) *The maximum amount of an award that may be approved  
44 for payment by the Attorney General; and*



1 (b) *The procedure to be used by the Attorney General to*  
2 *approve payment of an award.*

3 3. *If the Attorney General is authorized pursuant to*  
4 *subsection 2 to approve payment of an award, the Attorney*  
5 *General shall approve payment of the award.*

6 4. *If the Attorney General is not authorized pursuant to*  
7 *subsection 2 to approve payment of an award, the Attorney*  
8 *General shall investigate the award and submit a report of*  
9 *findings to the State Board of Examiners concerning the award.*

10 5. *Upon receiving a report of findings pursuant to subsection*  
11 *4, the State Board of Examiners shall approve payment of the*  
12 *award.*

13 6. *Upon approval of payment of an award pursuant to this*  
14 *section, the State Controller shall draw a warrant for payment of*  
15 *the award. Except as otherwise provided in NRS 353.264, the State*  
16 *Treasurer shall pay the award from the Fund for Insurance*  
17 *Premiums.*

18 **Sec. 11.** *The provisions of sections 2 to 11, inclusive, of this*  
19 *act must not be construed to prohibit the Division from agreeing at*  
20 *any time to settle the claim of a party for costs, fees and expenses*  
21 *incurred in any action or proceeding governed by those sections.*  
22 *Any claim that is so resolved must be paid by the Division.*

23 **Sec. 12.** NRS 18.010 is hereby amended to read as follows:

24 18.010 1. The compensation of an attorney and counselor for  
25 his or her services is governed by agreement, express or implied,  
26 which is not restrained by law.

27 2. In addition to the cases where an allowance is authorized by  
28 specific statute ~~§~~ *and except as otherwise provided in sections 6*  
29 *and 7 of this act*, the court may make an allowance of attorney's  
30 fees to a prevailing party:

31 (a) When the prevailing party has not recovered more than  
32 \$20,000; or

33 (b) Without regard to the recovery sought, when the court finds  
34 that the claim, counterclaim, cross-claim or third-party complaint or  
35 defense of the opposing party was brought or maintained without  
36 reasonable ground or to harass the prevailing party. The court shall  
37 liberally construe the provisions of this paragraph in favor of  
38 awarding attorney's fees in all appropriate situations. It is the intent  
39 of the Legislature that the court award attorney's fees pursuant to  
40 this paragraph and impose sanctions pursuant to Rule 11 of the  
41 Nevada Rules of Civil Procedure in all appropriate situations to  
42 punish for and deter frivolous or vexatious claims and defenses  
43 because such claims and defenses overburden limited judicial  
44 resources, hinder the timely resolution of meritorious claims and



1 increase the costs of engaging in business and providing  
2 professional services to the public.

3 3. In awarding attorney's fees, the court may pronounce its  
4 decision on the fees at the conclusion of the trial or special  
5 proceeding without written motion and with or without presentation  
6 of additional evidence.

7 4. Subsections 2 and 3 do not apply to any action arising out of  
8 a written instrument or agreement which entitles the prevailing party  
9 to an award of reasonable attorney's fees.

10 **Sec. 13.** NRS 18.050 is hereby amended to read as follows:

11 18.050 Except as limited by this section ~~H~~ *and except as*  
12 *otherwise provided in sections 6 and 7 of this act*, in other actions  
13 in the district court, part or all of the prevailing party's costs may be  
14 allowed and may be apportioned between the parties, or on the same  
15 or adverse sides. If, in the judgment of the court, the plaintiff  
16 believes he or she was justified in bringing the action in the district  
17 court, and the plaintiff recovers at least \$700 in money or damages,  
18 or personal property of that value, the court may allow the plaintiff  
19 part or all of his or her costs.

20 **Sec. 14.** NRS 331.187 is hereby amended to read as follows:

21 331.187 1. There is created in the State Treasury the Fund for  
22 Insurance Premiums as an internal service fund to be maintained for  
23 use by the Risk Management Division of the Department of  
24 Administration and the Attorney General.

25 2. Each state agency shall deposit in the Fund:

26 (a) An amount equal to its insurance premium and other charges  
27 for potential liability, self-insured claims, other than self-insured tort  
28 claims, and administrative expenses, as determined by the Risk  
29 Management Division; and

30 (b) An amount for self-insured tort claims and expenses related  
31 to those claims, as determined by the Attorney General.

32 3. Each county shall deposit in the Fund an assessment for the  
33 employees of the district court of that county, excluding district  
34 judges, unless the county enters into a written agreement with the  
35 Attorney General to:

36 (a) Hold the State of Nevada harmless and assume liability and  
37 costs of defense for the employees of the district court;

38 (b) Reimburse the State of Nevada for any liability and costs of  
39 defense that the State of Nevada incurs for the employees of the  
40 district court; or

41 (c) Include the employees of the district court under the county's  
42 own insurance or other coverage.

43 4. Expenditures from the Fund must be made by the Risk  
44 Management Division or the Attorney General to an insurer for  
45 premiums of state agencies as they become due or for deductibles,



1 self-insured property and tort claims or claims pursuant to NRS  
2 41.0349 **H or to a party for an award pursuant to section 10 of this**  
3 **act.** If the money in the Fund is insufficient to pay a tort claim **H or**  
4 **award,** it must be paid from the Reserve for Statutory Contingency  
5 Account.

6 5. As used in this section:

7 (a) "Assessment" means an amount determined by the Risk  
8 Management Division and the Attorney General to be equal to the  
9 share of a county for:

- 10 (1) Applicable insurance premiums;  
11 (2) Other charges for potential liability and tort claims; and  
12 (3) Expenses related to tort claims.

13 (b) "State agency" includes, without limitation, a part-time or  
14 full-time board, commission or similar body of the State which is  
15 created by law.

16 **Sec. 15.** NRS 353.264 is hereby amended to read as follows:

17 353.264 1. The Reserve for Statutory Contingency Account  
18 is hereby created in the State General Fund.

19 2. The State Board of Examiners shall administer the Reserve  
20 for Statutory Contingency Account. The money in the Account must  
21 be expended only for:

22 (a) The payment of claims which are obligations of the State  
23 pursuant to NRS 41.03435, 41.0347, 621.025, 176.485, 179.310,  
24 212.040, 212.050, 212.070, 281.174, 282.290, 282.315, 288.203,  
25 293.253, 293.405, 353.120, 353.262, 412.154 and 475.235;

26 (b) The payment of claims which are obligations of the State  
27 pursuant to:

28 (1) Chapter 472 of NRS arising from operations of the  
29 Division of Forestry of the State Department of Conservation and  
30 Natural Resources directly involving the protection of life and  
31 property; and

32 (2) NRS 7.155, 34.750, 176A.640, 179.225 and 213.153,  
33 ↪ except that claims may be approved for the respective purposes  
34 listed in this paragraph only when the money otherwise appropriated  
35 for those purposes has been exhausted;

36 (c) The payment of claims which are obligations of the State  
37 pursuant to NRS 41.0349 and 41.037, **and section 10 of this act,** but  
38 only to the extent that the money in the Fund for Insurance  
39 Premiums is insufficient to pay the claims; and

40 (d) The payment of claims which are obligations of the State  
41 pursuant to NRS 535.030 arising from remedial actions taken by the  
42 State Engineer when the condition of a dam becomes dangerous to  
43 the safety of life or property.

44 3. The State Board of Examiners may authorize its Clerk or a  
45 person designated by the Clerk, under such circumstances as it



1 deems appropriate, to approve, on behalf of the Board, the payment  
2 of claims from the Reserve for Statutory Contingency Account. For  
3 the purpose of exercising any authority granted to the Clerk of the  
4 State Board of Examiners or to the person designated by the Clerk  
5 pursuant to this subsection, any statutory reference to the State  
6 Board of Examiners relating to such a claim shall be deemed to refer  
7 to the Clerk of the Board or the person designated by the Clerk.

8 **Sec. 16.** The amendatory provisions of this act apply to actions  
9 or proceedings which are pending or which have not yet been  
10 commenced as of the effective date of this act.

11 **Sec. 17.** This act becomes effective upon passage and  
12 approval.

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