

By Ms. Swift, petition (accompanied by bill, Senate, No. 796) of Jane M. Swift, Robert A. Antonioni, Brian P. Lees, Robert A. Havern and the Associated Industries of Massachusetts, by Karen Cutter Capeless, vice president and senior counsel, for legislation relative to awarding fees and costs to small businesses. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Three.

AN ACT RELATIVE TO AWARDING FEES AND COSTS TO SMALL BUSINESSES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 14 of chapter 30A of the General Laws, as appearing
2 in the 1990 Official Edition, is hereby amended by adding at the
3 end thereof the following paragraph: —

4 (8) The court may award to the prevailing party a judgment
5 for costs incurred in appealing the decision of the agency, if the
6 court finds that —

7 (a) the action of the commonwealth was not substantially
8 justified; or,

9 (b) the agency acted in bad faith.

10 The court may not award costs under this section in an amount
11 greater than required to reimburse the prevailing party for the
12 costs incurred by said party with respect to the action.

13 In addition to costs awarded under this section the court may
14 award fees and other expenses to the prevailing party other than
15 the commonwealth or its agencies. The agency against which such
16 an award is ordered shall be liable to the same extent that a private
17 party would be liable under the law.

18 The court is not required to make an award this section if it
19 finds that special circumstances exist which make such an award
20 unjust.

21 A party seeking an award for fees and other expenses under
22 this section shall, not later than thirty days after final judgment,
23 submit to the court an application which provides evidence of

24 eligibility for an award under this section and which specifies the
25 amount sought. If the amount sought includes an attorneys' fee
26 or fees for an expert, the application must include an itemized
27 statement for such fees indicating the actual time expended in
28 representing the party and the rate at which the fees were
29 computed.

30 The agency over which the party in question prevails shall pay
31 the fees and other expenses awarded under this section from the
32 moneys appropriated to that agency.

33 Each agency paying fees or other expenses awarded under this
34 section shall report annually to the house and senate committees
35 on ways and means the amount of fees and other expenses paid
36 during the preceding fiscal year. In its report, the agency shall
37 describe the number, nature and amount of the awards, the claims
38 involved in the controversy, and any other relevant information
39 which might aid in evaluating the scope and impact of the awards.

40 For the purposes of this section, the term "party" shall mean
41 an individual, partnership, corporation, association, or public or
42 private organization other than an agency, but shall not include —

43 (1) a sole proprietorship, partnership, or corporation which is
44 not in compliance with the standards for small business as defined
45 in chapter four hundred and thirty-four of the acts of nineteen
46 hundred and seventy-six; or

47 (2) an association or organization whose net worth exceeded
48 five million dollars at the time the action was commenced.