

SENATE BILL NO. 38

INTRODUCED BY G. HERTZ

BY REQUEST OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS TO PROHIBIT ATTORNEY FEE AWARDS AGAINST A GOVERNMENT ENTITY RELATING TO LEGISLATIVE VETO OVERRIDES; PROHIBITING ATTORNEY FEES AGAINST A GOVERNMENT ENTITY WHEN THE RESULT OF A LEGISLATIVE VETO OVERRIDE POLL DOES NOT RESULT IN AN OVERRIDE OF A VETO; AMENDING SECTION 25-10-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-10-711, MCA, is amended to read:

"25-10-711. Award of costs against governmental-government entity when suit or defense is frivolous or pursued in bad faith -- award of costs related to legislative veto override poll. (1) In any civil action brought by or against the state, a political subdivision, or an agency of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs enumerated in 25-10-201 and reasonable attorney fees as determined by the court if:

- (a) the opposing party prevails against the state, political subdivision, or agency; and
- (b) the court finds that the claim or defense of the state, political subdivision, or agency that brought or defended the action was frivolous or pursued in bad faith.

(2) In an action in which a party seeks a writ of mandamus to compel a legislative veto override poll and the result of the poll does not override the veto, the opposing party is not considered to have prevailed. This subsection applies to an award of costs against a government entity even if a court finds that the defense was frivolous or pursued in bad faith.

(2)(3) Costs may be granted pursuant to subsection (1) notwithstanding any other provision of the law to the contrary."

