

Introduced by Senator Anderson

February 24, 2012

An act to amend Section 1021.5 of, and to add Section 1029.2 to, the Code of Civil Procedure, relating to attorney's fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1556, as introduced, Anderson. Civil procedure: attorney's fees.

Existing law authorizes a court, upon motion, to award attorney's fees to a successful party against public entities in any action that has resulted in the enforcement of an important right affecting the public interest, if certain conditions are met, but does not authorize an award of attorney's fees in favor of a public entity, except in limited circumstances.

This bill would instead authorize the award of attorney's fees in those actions both against, and in favor of, public entities unless both parties mutually agree to forego the recovery of attorney's fees, as specified. This bill would also, notwithstanding any other law, entitle a city, county, or city and county that prevails in a civil action that provides for attorney's fees and costs to those reasonable attorney's fees, in addition to other costs, unless the parties stipulate to forego the recovery of attorney's fees.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1021.5 of the Code of Civil Procedure
- 2 is amended to read:

1 1021.5. (a) Upon motion, a court may award ~~attorneys'~~
 2 *attorney's* fees to a successful party against one or more opposing
 3 parties in any action ~~which~~ *that* has resulted in the enforcement of
 4 an important right affecting the public interest if ~~(a) a the court~~
 5 *finds that all of the following apply:*

6 (1) A significant benefit, whether pecuniary or nonpecuniary,
 7 has been conferred on the general public or a large class of persons;
 8 ~~(b) the.~~

9 (2) *The necessity and financial burden of private enforcement,*
 10 *or of enforcement by one public entity against another public entity,*
 11 ~~are such as to make the award appropriate, and (c) such.~~

12 (3) *Attorney's* fees should not, in the interest of justice, be paid
 13 out of the recovery, if any. ~~With~~

14 *With* respect to actions involving public entities, this section
 15 applies to *both* allowances against, ~~but not and~~ in favor of, public
 16 entities, and no claim shall be required to be filed therefor, ~~unless~~
 17 ~~one or more successful parties and one or more opposing parties~~
 18 ~~are public entities, in which case no claim shall be required to be~~
 19 ~~filed therefor~~ under Part 3 (commencing with Section 900) of
 20 Division 3.6 of Title 1 of the Government Code.

21 ~~Attorneys'~~

22 (4) *Attorney's* fees awarded to a public entity pursuant to this
 23 section shall not be increased or decreased by a multiplier based
 24 upon extrinsic circumstances, as discussed in *Serrano v. Priest*, 20
 25 Cal. 3d 25, 49.

26 (b) *Except as provided in subdivision (c), in any action that a*
 27 *city, county, or city and county is a party, and if any party has*
 28 *alleged in the prayer of its pleading an entitlement to recover*
 29 *attorney's fees pursuant to this section, the court shall award*
 30 *reasonable attorney's fees to the city, county, or city and county,*
 31 *and against the opposing party, if the court finds that both of the*
 32 *following apply:*

33 (1) *The city, county, or city and county is the prevailing party.*

34 (2) *If the opposing party prevailed, the court would have*
 35 *awarded attorney's fees under this section.*

36 (c) *If, prior to judgment, the parties mutually agree to forego*
 37 *the recovery of attorney's fees by written stipulation, the court*
 38 *shall not award any attorney's fees to either party.*

39 (d) *A party may not recover attorney's fees pursuant to this*
 40 *section unless the party has alleged in the prayer of its pleading*

1 *an entitlement to recover attorney's fees pursuant to this section.*
2 *A pleading may not be amended to include or remove an allegation*
3 *of entitlement to recover attorney's fees pursuant to this section*
4 *after 30 days, absent written stipulation of the parties.*

5 SEC. 2. Section 1029.2 is added to the Code of Civil Procedure,
6 to read:

7 1029.2. (a) Notwithstanding any other law, in any action in
8 which a city, county, or city and county is a party, and that action
9 is pursuant to statute that specifically provides that attorney's fees
10 and costs shall be awarded to one of the parties or to the prevailing
11 party, the party who is determined to be the party prevailing shall
12 be entitled to reasonable attorney's fees, in addition to other costs
13 unless the parties, prior to judgment, mutually agree to forego the
14 recovery of attorney's fees by written stipulation.

15 (b) This section applies to any action filed on or after January
16 1, 2013.