

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TENTH LEGISLATURE  
4

5 **Legislative Document**

**No. 2046**

6  
7 S. P. 902

In Senate, March 2, 1982

Approved for introduction by the Legislative Council pursuant to Joint Rule 26.

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

8 MAY M. ROSS, Secretary of the Senate  
Presented by Senator Pierce of Kennebec.

Cosponsors: Senator Perkins of Hancock, Representative Livesay of Brunswick and Senator Clark of Cumberland.

9  
10 STATE OF MAINE  
11

12 IN THE YEAR OF OUR LORD  
13 NINETEEN HUNDRED AND EIGHTY-TWO  
14

15 AN ACT to Provide Equal Access to Justice.  
16

17 Be it enacted by the People of the State of Maine as follows:

18 Sec. 1. 5 MRSA §9065 is enacted to read:

19 §9065. Costs and fees of parties

20 1. Intent and purpose. The Legislature finds that  
21 certain individuals, partnerships, corporations and labor  
22 and other organizations may be deterred from seeking review  
23 of, or defending against, unreasonable governmental action  
24 because of the expense involved in securing the vindication  
25 of their rights in administrative proceedings. The Legis-  
26 lature further finds that, because of the greater resources  
27 and expertise of the State Government, the standard for an  
28 award of fees against the State should be different from the  
29 standard governing an award against a private litigant in  
30 certain situations.

31 It is the purpose of this section:

1 A. To diminish the deterrent effect of seeking review  
2 of, or defending against, unreasonable governmental action  
3 by providing in special situations, an award of  
4 attorney fees, expert witness fees and other costs  
5 against the State; and

6 B. To insure the applicability in actions by or  
7 against the State of the common law and statutory  
8 exceptions to the "American rule" respecting the award  
9 of attorney fees.

10 2. Definitions. As used in this section, unless the  
11 context otherwise indicates, the following terms have the  
12 following meanings.

13 A. "Adjudicatory proceeding" means any proceeding sub-  
14 ject to this subchapter except a proceeding for the  
15 purposes of establishing or fixing a rate or for the  
16 purposes of granting or renewing a license.

17 B. "Fees and other expenses" means the reasonable  
18 expenses of expert witnesses, the cost of any study,  
19 analysis, engineering report, test or project which is  
20 found by the presiding officer of the agency to be  
21 reasonably necessary for the preparation of the party's  
22 case, the cost of the party's personal absence from  
23 business at an hourly rate, reasonable attorney or  
24 agent fees and other reasonable and necessary costs  
25 directly related to the party's case. The amount of  
26 fees awarded under this section shall be based upon  
27 prevailing market rates for the kind and quality of the  
28 services furnished, except that:

29 (1) No expert may be compensated at a rate in  
30 excess of the highest rate or compensation for  
31 experts paid by the agency involved; and

32 (2) Attorney fees may not be awarded in excess of  
33 \$70 per hour unless the agency determines that an  
34 increase in the cost of living or special factors,  
35 such as the limited availability of qualified  
36 attorneys for the proceedings involved, justifies  
37 a higher fee.

38 C. "Party" means a person whose legal rights, duties  
39 or privileges are at issue, but excludes any individual  
40 whose net worth exceeded \$1,000,000 at the time the ad-  
41 judication was initiated and any sole owner of an unin-  
42 corporated business or any partnership, corporation,

1 association, including a cooperative association as de-  
2 defined in the Agricultural Marketing Act, United States  
3 Code, Title 12, Section 1141j, Paragraph (a) or orga-  
4 nization whose net worth exceeded \$5,000,000 at the  
5 time the adjudication was initiated.

6 3. Costs and fees of parties. Any agency that con-  
7 ducts an adjudicatory proceeding subject to this section  
8 shall award, to a party with a direct and personal interest  
9 other than the State, fees and other expenses incurred by  
10 that party in connection with that proceeding, unless the  
11 presiding officer finds that the position of the agency as a  
12 party to the proceedings was substantially justified or that  
13 special circumstances make an award unjust. The award shall  
14 be made at the conclusion of any adjudicatory proceeding,  
15 including, but not limited to, conclusions by a decision, an  
16 informal disposition or termination of the proceeding by the  
17 State. The presiding officer of the agency may reduce the  
18 amount to be awarded, or deny an award, to the extent that  
19 the private party during the course of the proceedings  
20 engaged in conduct which unduly and unreasonably protracted  
21 the final resolution of the matter in controversy. The  
22 decision of the presiding officer under this section shall  
23 be made a part of the record and shall include written find-  
24 ings and conclusions and the reason or basis for the find-  
25 ings and conclusions.

26 4. Procedures. Any agency authorized to conduct an  
27 adjudicatory proceeding shall by rule establish uniform  
28 procedures for the submission and consideration of applica-  
29 tions for an award under this section.

30 5. Appeal. Any party dissatisfied with the fee deter-  
31 mination by the agency may appeal to the Superior Court to  
32 review the merits of the underlying decision of the agency  
33 determination. If the court grants the petition, it may  
34 modify the determination of the agency if it finds that the  
35 failure to make an award, or the calculation of the amount  
36 of the award, was not substantially justified based upon a  
37 de novo of the record.

38 6. Payment of fees. Notwithstanding any other stat-  
39 ute, the fees and other expenses awarded under this section  
40 shall be paid by the agency from any sums available to the  
41 agency, except that no amounts shall be appropriated to any  
42 agency specifically for the purpose of paying fees and other  
43 expenses awarded under this section.

1           7. Report. The Secretary of State shall report annu-  
2 ally to the Legislature on the amount of fees and other  
3 expenses awarded during the preceding fiscal year pursuant  
4 to this section. The report shall describe the number,  
5 nature and amount of the awards, the claims involved in the  
6 controversy and any other relevant information which may aid  
7 the Legislature in evaluating the scope and impact of the  
8 awards. Each agency shall provide the Secretary of State  
9 with such information as he deems necessary to comply with  
10 the requirements of this subsection.

11           Sec. 2. 14 MRSA §1502-B is enacted to read:

12           §1502-B. Costs to the State

13           1. Intent and purpose. The Legislature finds that  
14 certain individuals, partnerships, corporations, labor and  
15 other organizations may be deterred from seeking review of,  
16 or defending against, unreasonable governmental action  
17 because of the expense involved in securing the vindication  
18 of their rights in civil actions. The Legislature further  
19 finds that, because of the greater resources and expertise  
20 of the State Government, the standard for an award of fees  
21 against the State should be different from the standard gov-  
22 erning an award against a private litigant in certain situa-  
23 tions.

24           It is the purpose of this section:

25           A. To diminish the deterrent effect seeking review of,  
26 or defending against, unreasonable governmental action  
27 by providing in special situations, an award of attor-  
28 ney fees, expert witness fees and other costs against  
29 the State; and

30           B. To insure the applicability in actions by or  
31 against the State of the common law and statutory  
32 exception to the "American rule" respecting the award  
33 of attorney fees.

34           2. Definition. As used in this section, unless the  
35 context otherwise indicates, "fees and other expenses" means  
36 the reasonable expenses of expert witnesses, the cost of any  
37 study, analysis, engineering report, test or project which  
38 is found by the court to be reasonably necessary for the  
39 preparation of the party's case, the cost of the party's  
40 personal absence from business at an hourly rate, reasonable  
41 attorney fees and other reasonable and necessary costs  
42 related to the party's case. The amount of fees awarded

1 under this section shall be based upon prevailing market  
2 rates for the kind and quality of the services furnished,  
3 except that:

4 A. No expert may be compensated at a rate in excess of  
5 the highest rate of compensation for experts paid by  
6 the United States; and

7 B. Attorney fees may not be awarded in excess of \$70  
8 per hour unless the court determines that an increase  
9 in the cost of living or special factors, such as the  
10 limited availability of qualified attorneys for the  
11 proceedings involved, justifies a higher fee.

12 3. Award of fees and expenses. In addition to any  
13 costs which may be awarded pursuant to any other authority  
14 and except as otherwise specifically provided by statute, a  
15 court shall award fees and other expenses to any party other  
16 than the State which in any civil action, other than cases  
17 sounding in tort, brought by the State in any court having  
18 jurisdiction of that action, unless the court finds that the  
19 position of the State was substantially justified or that  
20 special circumstances make an award unjust. The court, in  
21 its discretion, may reduce the amount to be awarded pursuant  
22 to this section or deny an award, to the extent that the  
23 private party, during the course of the proceedings engaged  
24 in conduct which unduly and unreasonably protracted the  
25 final resolution of the matter in controversy. A party  
26 seeking an award of the fees and other expenses shall,  
27 within 30 days of final judgment in the action, submit to  
28 the court an application which provides evidence of the  
29 party's eligibility for the award and the amount sought,  
30 including an itemized statement from attorneys and experts  
31 stating the actual time expended in representing such party  
32 and the rate at which fees were computed.

33 A. "Party" means any individual whose net worth is  
34 less than \$1,000,000 at the time the civil action was  
35 filed, any sole owner of an unincorporated business, or  
36 any partnership, corporation, association, including a  
37 cooperative association as defined in the Agricultural  
38 Marketing Act, United States Code, Title 12, Section  
39 1141j, Paragraph (a), or organization whose net worth  
40 was less than \$5,000,000 at the time the civil action  
41 was filed.

42 B. "State" includes any department, agency or other  
43 organization and any official of the United States act-  
44 ing in his official capacity.



1 against the business was substantially justified or special  
2 circumstances make the award unjust.

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