

1 SENATE BILL NO. 392

2 INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DETERMINATION OF COURT COSTS FOR COAL  
5 MINE RECLAMATION; AMENDING SECTIONS 82-4-251 AND 82-4-252, MCA; AND PROVIDING AN  
6 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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10 NEW SECTION. Section 1. Equal application of court costs. (1) Unless the context requires  
11 otherwise, a court or administrative agency that issues a final order in an action pursuant to this title TITLE 82,  
12 CHAPTER 4, PART 2, may award ~~the prevailing party, upon a finding that the party made a substantial~~  
13 contribution to a full and fair determination of the issues, reasonable costs of litigation, including filing fees,  
14 attorney fees, and witness costs, to any party who:

15 (a) initiates or participates in the proceeding;

16 (b) prevails in whole or in part of the proceeding; and

17 (c) achieves at least some degree of success on the merits of the proceeding.

18 (2) In awarding costs pursuant to this section, the court or administrative agency may not consider  
19 the identity of any party, including but not limited to a permittee, permit applicant, agency, public interest litigant,  
20 or other party to an action. The party requesting costs bears the burden of proof and persuasion. Costs may not  
21 be awarded against an intervenor-permittee unless the party requesting costs demonstrates the intervenor-  
22 permittee participated in a proceeding in bad faith and for the purpose of harassing or embarrassing the party  
23 requesting costs.

24 (3) This section supersedes prior rulings pursuant to the private attorney general doctrine.

25 (4) The provisions of this section apply equally to all parties in an action pursuant to this part.

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27 **Section 2.** Section 82-4-251, MCA, is amended to read:

28 **"82-4-251. Noncompliance -- suspension of permits.** (1) If it is determined on the basis of an