

SENATE BILL NO. 392

INTRODUCED BY S. FITZPATRICK

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

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

**NEW SECTION. Section 1. Equal application of court costs.** (1) Unless the context requires otherwise, a court or administrative agency that issues a final order in an action pursuant to ~~this title~~Title 82, chapter 4, part 2, may award the prevailing party reasonable costs of litigation, including filing fees, attorney fees, and witness costs.

(2) In awarding costs pursuant to this section, the court or administrative agency may not consider the identity of any party, including but not limited to a permittee, permit applicant, agency, public interest litigant, or other party to an action. The party requesting costs bears the burden of proof and persuasion.

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

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

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

**"82-4-251. Noncompliance -- suspension of permits.** (1) If it is determined on the basis of an inspection that the permittee is or that any condition or practice exists in violation of any requirement of this part or any permit condition required by this part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, the director of the department or an authorized representative shall immediately order cessation of the operation or the portion of the operation relevant to the condition, practice, or violation. The cessation order remains in effect until the director or an authorized representative determines that the