

REFERENCE TITLE: attorney fees; zoning challenges

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2283

Introduced by
Representatives Sinema: Gallardo, Lopes, Lujan, Meza, Prezelski, Tom

AN ACT

AMENDING TITLE 12, CHAPTER 3, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-353; RELATING TO ATTORNEY FEES AND COSTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Title 12, chapter 3, article 5, Arizona Revised Statutes,
3 is amended by adding section 12-353, to read:
4 12-353. Zoning challenges; attorney fees; expenses; definition
5 A. IN ANY CIVIL ACTION COMMENCED BY A BIG BOX RETAILER TO CHALLENGE
6 THE VALIDITY OR APPLICATION OF AN ORDINANCE, RULE, REGULATION OR INITIATIVE
7 MEASURE REGULATING ZONING THAT WAS ADOPTED BY ANY LOCAL GOVERNMENT ENTITY,
8 THE COURT SHALL AWARD ATTORNEY FEES AND OTHER LITIGATION EXPENSES TO A LOCAL
9 GOVERNMENT ENTITY IF ALL OF THE FOLLOWING APPLY:
10 1. THE LOCAL GOVERNMENT ENTITY IS THE PREVAILING PARTY.
11 2. THE FINANCIAL RESOURCES AVAILABLE TO THE LOCAL GOVERNMENT ENTITY TO
12 DEFEND THE ACTION, EXCLUDING THE ABILITY TO INCREASE TAXES, ARE LESS THAN
13 ONE-THIRD OF THE FINANCIAL RESOURCES AVAILABLE TO THE BIG BOX RETAILER TO
14 COMMENCE AND MAINTAIN THE ACTION.
15 3. THE BIG BOX RETAILER COMMENCED OR MAINTAINED THE ACTION TO CAUSE
16 THE LOCAL GOVERNMENT ENTITY TO ABANDON ITS ZONING DECISION BECAUSE OF THE
17 RETAILER'S SUBSTANTIALLY GREATER FINANCIAL RESOURCES TO CONDUCT THE
18 LITIGATION.
19 4. IN THE FIVE YEARS PRECEDING THE FILING OF THE CURRENT ACTION, THE
20 BIG BOX RETAILER HAS A HISTORY OF EITHER OF THE FOLLOWING:
21 (a) COMMENCING OR MAINTAINING AN ACTION FOR THE PURPOSE OF CAUSING THE
22 LOCAL GOVERNMENT ENTITY TO ABANDON ITS ZONING DECISION BECAUSE OF THE
23 RETAILER'S SUBSTANTIALLY GREATER FINANCIAL RESOURCES TO CONDUCT THE
24 LITIGATION.
25 (b) REPEATEDLY BEING SANCTIONED OR FINED FOR IMPROPER CONDUCT IN
26 LITIGATION OR A VIOLATION OF A COURT ORDER.
27 B. FOR THE PURPOSES OF THIS SECTION, "BIG BOX RETAILER" MEANS A
28 BUSINESS ESTABLISHMENT THAT HAS MORE THAN ONE HUNDRED THOUSAND SQUARE FEET OF
29 GROSS BUILDABLE AREA AND THAT WILL GENERATE SALES OR USE TAX REVENUE BUT DOES
30 NOT INCLUDE A PERSON WHOSE PRIMARY BUSINESS ACTIVITY IS AS A MOTOR VEHICLE
31 DEALER AS DEFINED IN SECTION 28-4301.
32 Sec. 2. Applicability
33 Section 12-353, Arizona Revised Statutes, as added by this act, applies
34 to litigation that is filed or pending on or after January 1, 2008.