

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 421

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO ATTORNEY'S FEES AND COSTS; AMENDING SECTION 12-117, IDAHO
2 CODE, TO CLARIFY WHEN ATTORNEY'S FEES, WITNESS FEES AND EXPENSES MAY BE
3 AWARDED IN CERTAIN INSTANCES AND TO INCLUDE A DEFINITION; DECLARING AN
4 EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 12-117, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 12-117. ATTORNEY'S FEES, WITNESS FEES AND EXPENSES AWARDED IN CERTAIN
10 INSTANCES. (1) Unless otherwise provided by statute, in any administrative
11 proceeding or civil judicial proceeding involving as adverse parties a state
12 agency, a city, a county or other taxing district or political subdivision
13 and a person, the state agency or political subdivision or the court, as the
14 case may be, shall award the prevailing party reasonable attorney's fees,
15 witness fees and other reasonable expenses, if the court it finds that the
16 nonprevailing party against whom the judgment is rendered acted without a
17 reasonable basis in fact or law.

18 (2) If the prevailing party is awarded a partial judgment and the court
19 finds the party against whom partial judgment is rendered acted without a
20 reasonable basis in fact or law, the court shall allow the prevailing party's
21 attorney's fees, witness fees and expenses in an amount which reflects
22 the person's partial recovery a party to an administrative proceeding or
23 to a civil judicial proceeding prevails on a portion of the case, and the
24 state agency or political subdivision or the court, as the case may be,
25 finds that the nonprevailing party acted without a reasonable basis in
26 fact or law with respect to that portion of the case, it shall award the
27 partially prevailing party reasonable attorney's fees, witness fees and
28 other reasonable expenses with respect to that portion of the case on which
29 it prevailed.

30 (3) Expenses awarded against a state agency, ~~city, county or other~~
31 ~~taxing district or political subdivision~~ pursuant to this section shall
32 be paid from funds in the regular operating budget of the state agency,
33 ~~the city, the county or the taxing district or political subdivision~~. If
34 sufficient funds are not available in the budget of the state agency, the
35 expenses shall be considered a claim governed by the provisions of section
36 67-2018, Idaho Code. If sufficient funds are not available in the budget
37 of the ~~city, county or taxing district~~ political subdivision, the expenses
38 shall be considered a claim pursuant to chapter 9, title 6, Idaho Code. Every
39 state agency, ~~city, county or taxing district~~ political subdivision against
40 which litigation expenses have been awarded under this act shall, at the time
41 of submission of its proposed budget, submit a report to the governmental

1 body which appropriates its funds in which the amount of expenses awarded and
2 paid under this act during the fiscal year is stated.

3 (4) For the purposes of this section:

4 (a) "Person" shall mean any individual, partnership, corporation,
5 association or any other private organization;

6 (b) "Political subdivision" shall mean a city, a county or any taxing
7 district.

8 (c) "State agency" shall mean any agency as defined in section 67-5201,
9 Idaho Code.

10 (5) If the amount pleaded in an action by a person is two thousand five
11 hundred dollars (\$2,500) or less, the person must satisfy the requirements
12 of section 12-120, Idaho Code, as well as the requirements of this section
13 before he or she may recover attorney's fees, witness fees or expenses
14 pursuant to this section.

15 SECTION 2. An emergency existing therefor, which emergency is hereby
16 declared to exist, this act shall be in full force and effect on and after its
17 passage and approval, and retroactively to May 31, 2009 and shall apply to
18 all cases filed and pending as of June 1, 2009.