

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 535, As Amended

BY LOCAL GOVERNMENT COMMITTEE

AN ACT

RELATING TO ATTORNEY'S FEES, WITNESS FEES AND EXPENSES AWARDED IN CERTAIN INSTANCES; AMENDING SECTION 12-117, IDAHO CODE, TO REVISE WHEN ATTORNEY'S FEES, WITNESS FEES AND EXPENSES MAY BE AWARDED AND TO REVISE DEFINITIONS.

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

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

12-117. ATTORNEY'S FEES, WITNESS FEES AND EXPENSES AWARDED IN CERTAIN INSTANCES. (1) Unless otherwise provided by statute, in any administrative proceeding or civil judicial proceeding involving as adverse parties a state agency, a city, a county or other taxing district a public health district established pursuant to sections 39-408 and 39-409, Idaho Code, or a political subdivision and a person, the state agency, public health district, political subdivision or the court, as the case may be, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if the court it finds that the nonprevailing party against whom the judgment is rendered acted without a reasonable basis in fact or law, provided however, that this section shall not apply to allow an award of attorney's fees against a defendant in a regulatory enforcement action or proceeding affecting a professional license or otherwise seeking civil fines or penalties.

(2) If the prevailing party is awarded a partial judgment and the court finds the party against whom partial judgment is rendered acted without a reasonable basis in fact or law, the court shall allow the prevailing party's attorney's fees, witness fees and expenses in an amount which reflects the person's partial recovery.

(3) Expenses awarded against a state agency, city, county or other taxing district pursuant to this section shall be paid from funds in the regular operating budget of the state agency, the city, the county or the taxing district. If sufficient funds are not available in the budget of the state agency, the expenses shall be considered a claim governed by the provisions of section 67-2018, Idaho Code. If sufficient funds are not available in the budget of the city, county or taxing district, the expenses shall be considered a claim pursuant to chapter 9, title 6, Idaho Code. Every state agency, city, county or taxing district against which litigation expenses have been awarded under this act shall, at the time of submission of its proposed budget, submit a report to the governmental body which appropriates its funds in which the amount of expenses awarded and paid under this act during the fiscal year is stated.

(4) ~~For the purposes of this section:~~ In any civil judicial proceeding involving as adverse parties a governmental entity and another governmental

1 entity, the court shall award the prevailing party reasonable attorney's
2 fees, witness fees and other reasonable expenses. For purposes of this
3 subsection (4), the term "governmental entity" means any state agency, city,
4 county or other taxing district.

5 (5) For the purposes of this section:

6 (a) "Person" ~~shall~~ means any individual, partnership, corporation,
7 association or any other private organization~~+~~.

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

10 ~~(56)~~ 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.