

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.