

IN THE SENATE

SENATE BILL NO. 1332

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO ATTORNEY'S FEES, WITNESS FEES AND EXPENSES AWARDED IN CERTAIN
2 INSTANCES; AMENDING SECTION 12-117, IDAHO CODE, TO REVISE WHEN ATTOR-
3 NEY'S FEES, WITNESS FEES AND EXPENSES MAY BE AWARDED, TO REVISE DEFINI-
4 TIONS, TO DEFINE A TERM AND TO MAKE A TECHNICAL CORRECTION; AND DECLAR-
5 ING AN EMERGENCY.
6

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

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

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

18 (2) If a party to an ~~administrative proceeding or to a civil judicial~~
19 proceeding prevails on a portion of the case, and the state agency or po-
20 litical subdivision or the court hearing the proceeding, as the case may be
21 including on appeal, finds that the nonprevailing party acted without a rea-
22 sonable basis in fact or law with respect to that portion of the case, it
23 shall award the partially prevailing party reasonable attorney's fees, wit-
24 ness fees and other reasonable expenses with respect to that portion of the
25 case on which it prevailed.

26 (3) Expenses awarded against a state agency or political subdivision
27 pursuant to this section shall be paid from funds in the regular operating
28 budget of the state agency or political subdivision. If sufficient funds are
29 not available in the budget of the state agency, the expenses shall be con-
30 sidered a claim governed by the provisions of section 67-2018, Idaho Code.
31 If sufficient funds are not available in the budget of the political subdi-
32 vision, the expenses shall be considered a claim pursuant to chapter 9, ti-
33 tle 6, Idaho Code. Every state agency or political subdivision against which
34 litigation expenses have been awarded under this act shall, at the time of
35 submission of its proposed budget, submit a report to the governmental body
36 which appropriates its funds in which the amount of expenses awarded and paid
37 under this act during the fiscal year is stated.

38 (4) ~~For the purposes of this section:~~ In any civil judicial proceeding
39 involving as adverse parties a governmental entity and another governmen-
40 tal entity, the court shall award the prevailing party reasonable attorney's
41 fees, witness fees and other reasonable expenses. For purposes of this sub-

1 section, "governmental entity" means any state agency or political subdivi-
 2 sion.

3 (5) For purposes of this section:

4 (a) "Person" shall means any individual, partnership, limited liabil-
 5 ity partnership, corporation, limited liability company, association
 6 or any other private organization;

7 (b) "Political subdivision" shall means a city, a county, ~~or~~ any taxing
 8 district- or a health district;

9 (c) "Proceeding" means any administrative proceeding, administrative
 10 judicial proceeding, civil judicial proceeding or petition for judi-
 11 cial review or any appeal from any administrative proceeding, adminis-
 12 trative judicial proceeding, civil judicial proceeding or petition for
 13 judicial review.

14 (d) "State agency" shall means any agency as defined in section
 15 67-5201, Idaho Code.

16 (~~5~~6) If the amount pleaded in an action by a person is ~~two~~ twenty-five
 17 thousand ~~five hundred~~ dollars (\$~~2,500~~25,000) or less, the person must sat-
 18 isfy the requirements of section 12-120, Idaho Code, as well as the require-
 19 ments of this section before he or she may recover attorney's fees, witness
 20 fees or expenses pursuant to this section.

21 SECTION 2. An emergency existing therefor, which emergency is hereby
 22 declared to exist, this act shall be in full force and effect on and after its
 23 passage and approval.