

# House Amendment 5128

## Amendment Text

PAG LIN

1 1 Amend [House File 452](#) as follows:  
1 2 #1. Page 1, by striking lines 3 through 34 and  
1 3 inserting the following:  
1 4 "NEW SUBSECTION. 4. AWARD OF ATTORNEY FEES AND  
1 5 COSTS.  
1 6 a. For the purposes of this subsection, unless the  
1 7 context otherwise requires:  
1 8 (1) "Eligible party" means a party in a proceeding  
1 9 before the appeal board that is a sole proprietorship,  
1 10 partnership, corporation, association, unit or  
1 11 division of government, or public or private  
1 12 organization with a net worth of not more than seven  
1 13 million dollars and not more than five hundred  
1 14 employees, a cooperative association or charitable  
1 15 organization with no more than five hundred employees,  
1 16 or an individual with a net worth of not more than two  
1 17 million dollars.  
1 18 (2) "Prevailing party" means an eligible party  
1 19 which establishes that the party has substantially  
1 20 prevailed with the amount in controversy or has  
1 21 substantially prevailed with respect to the most  
1 22 significant issue or set of issues presented and has  
1 23 established that another party's position was not  
1 24 substantially justified. The determination as to  
1 25 whether a party is a prevailing party is to be  
1 26 determined in accordance with chapter 17A.  
1 27 b. The appeal board may award a prevailing party  
1 28 in an administrative hearing reasonable litigation  
1 29 costs not to exceed twenty-five thousand dollars per  
1 30 contested case by the appeal board based on the  
1 31 following:  
1 32 (1) The reasonable expenses of expert witnesses.  
1 33 (2) The reasonable costs of studies, reports, and  
1 34 tests.  
1 35 (3) The reasonable fees of attorneys.  
1 36 However, litigation costs do not include any costs  
1 37 prior to the filing of a notice of contest pursuant to  
1 38 this section.  
1 39 c. The appeal board, in its discretion, may reduce  
1 40 or deny the amount to be awarded pursuant to this  
1 41 subsection to the extent the prevailing party during  
1 42 the course of the proceedings engaged in conduct which  
1 43 unduly and unreasonably protracted the final  
1 44 resolution of the matter in controversy. An award  
1 45 shall not be made in the case of a settlement or for  
1 46 issues which have been settled.  
1 47 d. A party seeking an award of litigation costs  
1 48 shall, within thirty days of a final adjudication,  
1 49 submit to the appeal board an application which shows  
1 50 the applicant is a prevailing party and is eligible to  
2 1 receive an award under this subsection, and the amount  
2 2 sought, including an itemized statement from any  
2 3 attorney, agent, or expert witness representing or  
2 4 appearing in behalf of the applicant stating the  
2 5 actual time expended and the rate at which fees and  
2 6 other expenses were computed. The applicant shall  
2 7 also allege that the position of the opposing party

2 8 was not substantially justified. When a party appeals  
2 9 the underlying merits of an adversary adjudication, no  
2 10 decision on an application for litigation costs in  
2 11 connection with the adversary adjudication shall be  
2 12 made under this subsection until a final and  
2 13 unreviewable decision is rendered by the board or a  
2 14 court on the appeal or until the underlying merits of  
2 15 the case have been finally determined pursuant to the  
2 16 appeal.

2 17 e. The decision of the appeal board to award  
2 18 litigation costs shall provide reasons for the award  
2 19 made, and is subject to appeal in accordance with  
2 20 section 17A.15."

2 21 #2. Title page, by striking lines 3 and 4 and  
2 22 inserting the following: "under the law."

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2 26 COMMITTEE ON LABOR AND

2 27 INDUSTRIAL RELATIONS

2 28 TYRRELL of Iowa, Chairperson

2 29 HF 452.201 76

2 30 ec/jj