

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 47

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

RELATING TO EMINENT DOMAIN; AMENDING SECTION 7-711, IDAHO CODE, TO REVISE PROVISIONS RELATING TO DETERMINING FAIR MARKET VALUE OF CERTAIN PROPERTIES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 7-711, Idaho Code, be, and the same is hereby amended to read as follows:

7-711. ASSESSMENT OF DAMAGES. The court, jury or referee must hear such legal testimony as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

1. The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed. For purposes of ascertaining the value of the property, the minimum amount for damages shall be the greater of the assessed value for property tax purposes unless the court, jury or referee finds the property has been altered substantially, or the plaintiff's highest prelitigation appraisal.

2. If the property sought to be condemned constitutes only a part of a larger parcel: (a) the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff; and (b) the damages to any business qualifying under this subsection having more than five (5) years' standing which the taking of a portion of the property and the construction of the improvement in the manner proposed by the plaintiff may reasonably cause. The business must be owned by the party whose lands are being condemned or be located upon adjoining lands owned or held by such party. Business damages under this subsection shall not be awarded if the loss can reasonably be prevented by a relocation of the business or by taking steps that a reasonably prudent person would take, or for damages caused by temporary business interruption due to construction; and provided further that compensation for business damages shall not be duplicated in the compensation otherwise awarded to the property owner for damages pursuant to subsections ~~(1)~~ and ~~(2)~~(a) of this section. ~~7-711, Idaho Code.~~

(i) If the business owner intends to claim business damages under this subsection, the owner, as defendant, must submit a written business damage claim to the plaintiff within ninety (90) days after service of the summons and complaint for condemnation. The plaintiff's initial offer letter or accompanying information must expressly inform the defendant of its rights under this subsection, and must further inform the defendant of its right to consult with an attorney.

1 (ii) The defendant's written claim must be sent to the plaintiff by certified mail, return
 2 receipt requested. Absent a showing of a good faith justification for the failure to submit
 3 a business damage claim within ninety (90) days, or an agreed extension by the parties,
 4 the court shall strike the defendant's claim for business damages in any condemnation
 5 proceeding.

6 (iii) The business damage claim must include an explanation of the nature, extent, and
 7 monetary amount of such claimed damages and must be prepared by the owner, a certified
 8 public accountant, or a business damage expert familiar with the nature of the operations
 9 of the defendant's business. The defendant shall also provide the plaintiff with copies of
 10 the defendant's business records that substantiate the good faith offer to settle the business
 11 damage claim. The business damage claim must be clearly segregated from the claim for
 12 property damages pursuant to subsections ~~(1)~~ and ~~(2)~~(a) of this section. ~~7-711, Idaho~~
 13 ~~Code.~~

14 (iv) As used in this subsection, the term "business records" includes, but is not limited
 15 to, copies of federal and state income tax returns, state sales tax returns, balance sheets,
 16 and profit and loss statements for the five (5) years preceding which are attributable to the
 17 business operation on the property to be acquired, and other records relied upon by the
 18 business owner that substantiate the business damage claim.

19 (v) The plaintiff's good faith in failing to offer compensation for business damages shall
 20 not be contested at a possession hearing held pursuant to section 7-721, Idaho Code, if the
 21 defendant has not given notice of its intent to claim business damages prior to the date of
 22 filing of the motion that initiates the proceeding under that section.

23 3. Separately, how much the portion not sought to be condemned, and each estate
 24 or interest therein, will be specially and directly benefited, if at all, by the construction of
 25 the improvement proposed by the plaintiff; and if the benefit shall be equal to the damages
 26 assessed, under subsection 2. of this section, the owner of the parcel shall be allowed no
 27 compensation except the value of the portion taken; but if the benefit shall be less than the
 28 damages so assessed, the former shall be deducted from the latter, and the remainder shall be
 29 the only damages allowed in addition to the value.

30 4. If the property sought to be condemned be for a railroad, the cost of good and
 31 sufficient fences along the line of such railroad, and the cost of cattle guards where fences
 32 may cross the line of such railroad.

33 5. As far as practicable, compensation must be assessed for each source of damages
 34 separately.

35 6. If the property sought to be condemned is private real property actively devoted to
 36 agriculture, the damages which will accrue because of the costs, if any, of farming around
 37 electrical transmission line structure(s) for a transmission line with a capacity in excess of two
 38 hundred thirty (230) kilovolts. If the property sought to be condemned has been the subject of
 39 a previous condemnation proceeding or proceedings for electrical transmission line structure(s)
 40 and at the time of condemnation the field holds other electrical transmission line structure(s),
 41 such evidence of costs referred to above may also include the cumulative effects, if any, of
 42 conducting farming operations around other electrical transmission line structure(s) in the same
 43 field, whether such structure(s) are of the condemner or not.

44 7. In determining the fair market value of the property sought to be condemned, or of
 45 the entire property if there is a partial taking, a decrease or increase in the market value of
 46 the property before the date of valuation that is caused by: (a) the proposed improvement or

1 project for which the property is taken; (b) the reasonable likelihood that the property would be
2 acquired for that improvement or project; or (c) the condemnation action in which the property
3 is taken, shall be disregarded.