

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 104

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO ASSESSMENT OF DAMAGES IN EMINENT DOMAIN ACTIONS; AMENDING SEC-
2 TION 7-711, IDAHO CODE, TO REVISE THE ASSESSMENT OF DAMAGES IN EMINENT
3 DOMAIN ACTIONS WHERE THE PLAINTIFF CHANGES THE PLANS FOR ANY PROPOSED
4 PROJECT AFTER MAKING THE LANDOWNER AN INITIAL OFFER TO PURCHASE AND THE
5 LANDOWNER INCURS CERTAIN COSTS, TO PROVIDE FOR AN EXCEPTION AND TO MAKE
6 TECHNICAL CORRECTIONS.
7

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

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

11 7-711. ASSESSMENT OF DAMAGES. The court, jury or referee must hear
12 such legal testimony as may be offered by any of the parties to the proceed-
13 ings, and thereupon must ascertain and assess:

14 1. The value of the property sought to be condemned, and all improve-
15 ments thereon pertaining to the realty, and of each and every separate estate
16 or interest therein; if it consists of different parcels, the value of each
17 parcel and each estate or interest therein shall be separately assessed. For
18 purposes of ascertaining the value of the property, the minimum amount for
19 damages shall be the greater of the assessed value for property tax purposes
20 unless the court, jury or referee finds the property has been altered sub-
21 stantially, or the plaintiff's highest prelitigation appraisal.

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

39 (i) If the business owner intends to claim business damages under this
40 subsection, the owner, as defendant, must submit a written business
41 damage claim to the plaintiff within ninety (90) days after service of
42 the summons and complaint for condemnation. The plaintiff's initial

1 offer letter or accompanying information must expressly inform the de-
2 fendant of its rights under this subsection, and must further inform the
3 defendant of its right to consult with an attorney.

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

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

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

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

30 3. Separately, how much the portion not sought to be condemned, and each
31 estate or interest therein, will be specially and directly benefited, if at
32 all, by the construction of the improvement proposed by the plaintiff; and if
33 the benefit shall be equal to the damages assessed, under subsection 2. of
34 this section, the owner of the parcel shall be allowed no compensation except
35 the value of the portion taken; but if the benefit shall be less than the dam-
36 ages so assessed, the former shall be deducted from the latter, and the re-
37 mainder shall be the only damages allowed in addition to the value.

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

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

43 6. If the property sought to be condemned is private real property ac-
44 tively devoted to agriculture, the damages which will accrue because of the
45 costs, if any, of farming around electrical transmission line structure(s)
46 for a transmission line with a capacity in excess of two hundred thirty (230)
47 kilovolts. If the property sought to be condemned has been the subject of
48 a previous condemnation proceeding or proceedings for electrical transmis-
49 sion line structure(s) and at the time of condemnation the field holds other
50 electrical transmission line structure(s), such evidence of costs referred

1 to ~~above~~ in this subsection may also include the cumulative effects, if any,
2 of conducting farming operations around other electrical transmission line
3 structure(s) in the same field, whether such structure(s) are of the condem-
4 ner or not.

5 7. If the plaintiff changes the plans for any proposed project after
6 making the landowner an initial offer to purchase, pursuant to section
7 7-711A(10), Idaho Code, and the landowner incurs additional legal, ap-
8 praisal, engineering or similar costs directly related to defending the
9 condemnation action, or in the evaluation of subsequent offers before any
10 action is filed, the plaintiff shall be liable for all such reasonable
11 landowner costs in evaluating the project changes, regardless of whether
12 the matter proceeds to trial or is settled prior to trial by the condemning
13 authority, except in a case of a landowner requested plan change prior to
14 filing the condemnation action or a minor plan change that does not signifi-
15 cantly affect a property or the damages thereto.