LEGISLATURE OF THE STATE OF IDAHO

Sixty-second Legislature Second Regular Session - 2014

IN THE SENATE

SENATE BILL NO. 1309, As Amended

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO EMINENT DOMAIN PROCEEDINGS; AMENDING SECTION 58-1104, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO THE AWARD OF CERTAIN COSTS.

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

SECTION 1. That Section 58-1104, Idaho Code, be, and the same is hereby amended to read as follows:

58-1104. UNSUCCESSFUL OR ABANDONED EMINENT DOMAIN PROCEEDING -- AWARD OF LITIGATION EXPENSE. (a) Should the court having jurisdiction of an eminent domain proceeding brought by the department, a political subdivision, or an agency seeking condemnation of an owner's property render judgment that the department, political subdivision, or agency may not acquire the property by condemnation or should the proceeding be abandoned by the department, political subdivision, or agency, the court may award or the department, political subdivision, or agency may pay the owner of the real property such sum as will in the opinion of the court or the department, political subdivision, or agency reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceeding.

(b) Should the department, political subdivision or agency amend the project after filing the condemnation complaint and service of the summons and the defendant property owner has actually incurred costs, disbursements, expenses and/or attorney's fees thereafter directly relating to factual or legal issues or damage claims that are rendered moot by such amendment, then upon motion by the defendant property owner prior to judgment the court shall award such sum as will in the opinion of the court reimburse such defendant property owner for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and expert fees, actually incurred for generating the evidence rendered moot by reason of the amendment. The parties may stipulate that the factual or legal issues or damage claims are rendered moot by such amendment, or the court may determine such upon submission of affidavits by the parties. Factors for the court to consider demonstrating that the property owner incurred costs that are directly related include, but are not limited to:

(1) Communications, or lack thereof, between the defendant property owner and the department, political subdivision or agency identifying the issues or claims rendered moot or requesting modifications to the project after service of the summons and prior to the time such amendment was made;

(2) Disclosure by the defendant property owner of expert reports, letters or opinions after service of the summons and prior to the time the amendment was made;

(3) Whether the department, political subdivision or agency and the defendant property owner each acted reasonably in negotiations after service of the summons and prior to such amendment; and/or

(4) Whether the claimed costs, disbursements and expenses actually caused the amendment.

Any costs, fees or expenses awarded by the court on such motion shall be paid by the department, political subdivision or agency within sixty (60) days after the court rules on the motion and prior to the conclusion of the case.

If the department, political subdivision or agency and the defendant property owner agree to an amendment as part of a settlement agreement or resolution of a particular issue or claim, the department, political subdivision or agency is not required to pay the defendant property owner's costs incurred relating to said amendment, unless the parties agree to such payment as part of the settlement or resolution of a particular issue or claim.