

IN THE SENATE

SENATE BILL NO. 1039

BY TRANSPORTATION COMMITTEE

AN ACT

1 RELATING TO EMINENT DOMAIN; AMENDING SECTION 7-711, IDAHO CODE, TO PROVIDE
2 THAT PROPERTY VALUE SHOULD BE ASSESSED BY THE TRIER OF FACT, TO CLARIFY
3 CRITERIA FOR ASSESSMENT OF PROPERTY VALUE AND TO MAKE TECHNICAL CORREC-
4 TIONS.
5

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

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

9 7-711. ASSESSMENT OF DAMAGES. The court, jury or referee must hear
10 such legal testimony as may be offered by any of the parties to the proceed-
11 ings, and thereupon the jury, or the court or referee if the jury is waived,
12 must ascertain and assess:

13 1. The value of the property sought to be condemned, including, but
14 not limited to, the highest and best use of the property thereof, the access
15 available to the property, and all other facts relating to value, and all im-
16 provements thereon pertaining to the realty, and of each and every separate
17 estate or interest therein; if it consists of different parcels, the value
18 of each parcel and each estate or interest therein shall be separately as-
19 essed. For purposes of ascertaining the value of the property, the minimum
20 amount for damages shall be the greater of the assessed value for property
21 tax purposes unless the court, jury or referee finds the property has been
22 altered substantially, or the plaintiff's highest prelitigation appraisal.
23 The value of the property shall not include any increase or decrease in value
24 that is attributable to the following: (a) the project for which the prop-
25 erty is sought to be condemned; (b) the proceeding in which the property is
26 sought to be condemned; or (c) preliminary action of the plaintiff or another
27 government agency taken in anticipation of a condemnation proceeding.

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

1 for damages pursuant to subsections ~~(1.)~~ and ~~(2.)~~(a) of this section ~~7-711,~~
 2 ~~Idaho Code.~~

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

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

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

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

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

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

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

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

49 6. If the property sought to be condemned is private real property ac-
 50 tively devoted to agriculture, the damages which will accrue because of the

1 costs, if any, of farming around electrical transmission line structure(s)
2 for a transmission line with a capacity in excess of two hundred thirty (230)
3 kilovolts. If the property sought to be condemned has been the subject of a
4 previous condemnation proceeding or proceedings for electrical transmis-
5 sion line structure(s) and at the time of condemnation the field holds other
6 electrical transmission line structure(s), such evidence of costs referred
7 to above may also include the cumulative effects, if any, of conducting farm-
8 ing operations around other electrical transmission line structure(s) in
9 the same field, whether such structure(s) are of the condemner or not.