

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 emi-
nent 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 de-
partment, 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 reason-
able costs, disbursements, and expenses, including reasonable attorney,
appraisal, and engineering fees, actually incurred because of the condemna-
tion 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, disburse-
ments, 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 judg-
ment the court shall award such sum as will in the opinion of the court
reimburse such defendant property owner for his reasonable costs, disburse-
ments 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 de-
termine 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 amend-
ment was made;

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

1 (3) Whether the department, political subdivision or agency and the de-
2 fendant property owner each acted reasonably in negotiations after ser-
3 vice of the summons and prior to such amendment; and/or

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

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

10 If the department, political subdivision or agency and the defendant
11 property owner agree to an amendment as part of a settlement agreement or
12 resolution of a particular issue or claim, the department, political subdi-
13 vision or agency is not required to pay the defendant property owner's costs
14 incurred relating to said amendment, unless the parties agree to such pay-
15 ment as part of the settlement or resolution of a particular issue or claim.