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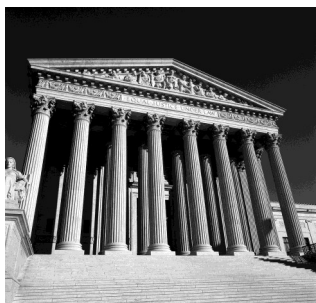
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ITD's Proposes HB 48 to Reduce Property Owners Chances of Reimbursement for Costs and Attorneys Fees



Recently the Attorney General's office appeared before the Transportation Committee in the House of Representatives and asked the legislators to introduce three bills that the Idaho Department of Transportation would like to have passed. The purpose of two of these bills is to reduce the amounts of just compensation that ITD and other government agencies may have to pay for property that it condemns in the State of Idaho.

The first bill being proposed is House Bill 48 to make it more difficult for property owners to obtain reimbursement for their attorneys fees and costs when involved in a condemnation case. ITD's proposed bill reads as follows:

“AMENDING SECTION 7-718

- (2) Reasonable and necessary costs and attorney fees may be allowed in condemnation and inverse condemnation proceedings, but only if the judgment awarded to the plaintiff, as a result of trial, exceeds by ten percent (10%) or more, the highest written offer of settlement submitted by the acquiring agency to the owner at least thirty (30) days prior to trial.”

Existing law requires the condemnor to make it's best offer 90

days before trial, the rationale being that the owner can avoid the costs of litigation by taking it at that point if it's a fair offer. In practice, the condemnor waits until 90 days before trial and asks the Court to order the owner to disclose valuation opinions (thereby incurring costs) as much as 6 months before trial.

This has become an area ripe for abuse as condemnors force property owners to incur costs and then try to make offers that leave property owners responsible for large cost bills if they are accepted, but risking no reimbursement of costs and fees if the owner is not successful at trial in establishing the just compensation is higher than the offer.

HB 54: Interest Rate Paid to Property Owners Decreased

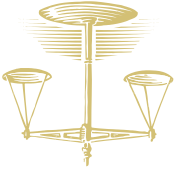
ITD seeks to reduce the statutory rate of interest from 12% to 8% on amounts ITD is required to pay to property owner. Interest only accrues on the amount that the judge or jury determines is owed

in excess of what the government deposits with the Court at the beginning of the case, and provides an incentive for the government to assess just compensation accurately at the outset of the case.

For example, if the government determines just compensation is \$100,000 and pays that amount into Court, they never pay any interest if the just compensation is determined to be \$100,000 or less. The

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HB 54: Interest Rate Paid to Property Owners Decreased

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“Interest rates compensate the property owner for the often two year delay in payment of just compensation.”

government can also choose to deposit an additional amount with the Court to avoid interest if it desires to hedge against interest, so the agency could deposit \$120,000 and if the judgment was \$110,000 then no interest would be paid and the condemnor would get a refund of \$10,000. If the judgment is \$150,000, and the government has paid only \$100,000 into Court, interest

at 12% is owed under current law for the \$50,000 difference only, and it runs from the date the lawsuit was filed until the date the judgment assessing just compensation is entered.

The existing statutes (I.C. § 7-712 and § 28-22-104) have been in place for many years and we suspect the only reason ITD wants to change it is that they have been frequently low in their assessment

of just compensation and so have had to pay some large sums of interest. However, this interest compensates property owners for the often two year delay in payment of just compensation for the taking of their land. The 12% rate applies to several other types of cases by statute as well; why should owners in condemnation be singled out for less interest?