

TITLE 58  
PUBLIC LANDS

CHAPTER 11  
REAL PROPERTY ACQUISITION

58-1101. SHORT TITLE. This act shall be known as the "Idaho Real Property Acquisition Act of 1971."

[58-1101, added 1971, ch. 158, sec. 1, p. 774.]

58-1102. DEFINITIONS. As used in this act:

(a) "Owner" means any individual, family, business, corporation, partnership, association, or farm operation having any right, title or interest in property which is acquired, condemned, or sought to be acquired or condemned by a department or an agency as defined in this act.

(b) "Department" means the division of highways of the department of transportation of the state of Idaho.

(c) "Political subdivision" means any local unit or agency of government of the state of Idaho, and includes but is not limited to good roads districts, highway districts, cities and counties.

(d) "Agency" means any department, agency or instrumentality of the state of Idaho or of any political subdivision thereof which is financed in whole or in part by funds furnished by the federal government and which is authorized by the laws of the state of Idaho to acquire property by eminent domain.

(e) "Business" means any lawful activity, excepting a farm operation, conducted primarily for the purchase, sale, resale, lease and rental of personal property and real property, and for the manufacture, processing or marketing of products, commodities, or any other personal property; or for the sale of services to the public; or by a nonprofit organization or corporation.

(f) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

[58-1102, added 1971, ch. 158, sec. 2, p. 774.]

58-1103. ACQUISITION OF IMPROVEMENTS ADVERSELY AFFECTED BY USE OF REAL PROPERTY ACQUIRED -- RIGHTS OF TENANTS -- ALTERNATE MODES OF PAYMENT -- RIGHTS UNDER OTHER LAWS SAVED. (a) Notwithstanding any other provision of the laws of this state, if the department, a political subdivision, or an agency acquires any interest in real property, it may acquire at least an equal interest in all buildings, structures, or other improvements located on the real property so acquired and which it determines will be adversely affected by the use to which such real property will be put.

(b) For the purpose of determining just compensation to be paid for any building, structure, or other improvement acquired under subsection (a) of this section, such building, structure, or other improvement may be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant as against the owner of any other interest in the real

property, to remove such building, structure, or improvement at the expiration of his term.

(c) The tenant may be paid the greater of (1) the fair market value of the building, structure, or improvement which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or (2) the fair market value of the building, structure, or improvement when its removal is considered in the appraisal.

(d) Payment under subsection (b) or (c) of this section shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration of any such payment, the tenant shall assign, transfer, and release to the department, political subdivision, or agency all his right, title, and interest in and to such improvements.

(e) Nothing contained in subsections (b), (c), or (d) of this section shall be construed to deprive the tenant of any rights to reject payment under subsections (b), (c), or (d) of this section and to obtain payment for such property interest in accordance with applicable law.

[58-1103, added 1971, ch. 158, sec. 3, p. 774.]

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.

[58-1104, added 1971, ch. 158, sec. 4, p. 774; am. 2014, ch. 269, sec. 1, p. 673.]

58-1105. ACTION BY OWNER FOR TAKING OF PROPERTY -- AWARD OF EXPENSES OF LITIGATION. Should an owner of real property be required to bring an action against the department, a political subdivision, or an agency for the taking of real property by such department, political subdivision, or agency, and prevail in such action, the court may award, or the department, political subdivision, or agency may pay, the plaintiff such sum as will in the opinion of the court or the department, political subdivision, or agency reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the proceeding.

[58-1105, added 1971, ch. 158, sec. 5, p. 774.]

58-1106. OWNER LEFT WITH UNECONOMIC OR LANDLOCKED REMNANT -- ACQUISITION OF WHOLE TRACT. When the acquisition of real property by the department, political subdivision, or agency would leave the owner with an uneconomic remnant or a landlocked tract of land, the department, political subdivision, or agency may acquire by purchase or eminent domain the uneconomic remnant, the landlocked tract, or the whole of the real property affected by the acquisition.

[58-1106, added 1971, ch. 158, sec. 6, p. 774.]