

IDAHO DATA CENTER PUBLIC GUIDE · GUIDE 10

PROPERTY RIGHTS AND POWER LINES

Eminent Domain in Idaho, and What BAAJA Would Change

Who can take Idaho land today, how the process works, and how a federal permitting bill now in the House would let power line developers condemn rights-of-way in federal court.

Jeff A. Pierson

jeffapierson.com · jeffapierson.substack.com

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AT A GLANCE

Who can take your land now, and who would get the power next

Eminent domain is the power to take private property for public use, with payment. In Idaho the state, counties, cities, highway and irrigation districts, and private companies building power lines, gas pipelines, canals and mines can all use it. Idaho's rules come from Article I, Section 14 of the state constitution and Title 7, Chapter 7 of the Idaho Code. Owners get good-faith negotiation, at least 30 days to answer an offer, a case in district court and a chance at attorney fees if the award beats the last offer by 10 percent. For big power lines, Congress is close to moving part of that decision to Washington. The Senate passed the Bipartisan American Affordability and Jobs Act (BAAJA) 62–33 on Nov. 19, 2026. If the House agrees and the President signs, a developer of a line rated 230 kilovolts or more that an Idaho agency denies, or sits on for a year, could get a federal permit and condemn a right-of-way in federal court, state school land included. The landowner protections Farm Bureau pushed for were blocked on the Senate floor. Both Idaho senators voted yes. The House has not voted.

62–33
Senate vote passing BAAJA, Nov. 19, 2026. The House still has to vote.

230 kV
line rating at which BAAJA's federal permit and condemnation power would start

1 year
how long a state can sit on a line before FERC can step in, today and under BAAJA

10%
how far an Idaho award must beat the last offer before a judge may order your attorney fees paid

Inside this guide

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How to read the labels

LAW means what a constitution, statute or court ruling says. BILL means text one chamber of Congress has passed; it is not law. RECORD means votes, filings and official statements. MY READ means my reading, labeled so you can check it.

HOW THIS GUIDE WAS CHECKED

Idaho statutes and the Idaho Constitution were read at legislature.idaho.gov on Nov. 22, 2026, and federal statutes in the U.S. Code. BAAJA's provisions come from the Congressional Research Service, the Bipartisan Policy Center, the American Farm Bureau Federation and law firm summaries of the Senate-adopted substitute (S.Amdt. 6883); an enrolled text had not been printed when this was written. Votes come from Senate roll calls. This is public education about the law, not legal advice about any particular property.

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PART 01

What eminent domain is

The Fifth Amendment says private property shall not be "taken for public use, without just compensation." Idaho's Constitution says it this way: "Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor."[1]

Idaho's version reaches further than most. The same section declares a list of uses public by definition: reservoirs and ditches for irrigation, drainage, mine roads and tunnels, and "any other use necessary to the complete development of the material resources of the state." That is frontier language written for water and mining, and it still gives irrigators and miners a constitutional footing to condemn.

Kelo, and Idaho's answer

In Kelo v. City of New London (2005), the U.S. Supreme Court ruled 5–4 that a city could take homes and turn the land over to private developers for economic development.[2] Idaho answered the next year with House Bill 555, which added Idaho Code § 7-701A.[3] It bars a taking that is "merely a pretext" for handing land to a private party, bars takings for economic development, and bars takings for trails that don't run beside a road. Urban renewal can still condemn, but only property proven by clear and convincing evidence to be dangerously run down, and only through a board of elected officials. Water projects and uses the constitution names are exempt from the economic development ban. A court may freely review the reasons for any taking.[4]

Voters were offered more that November. Proposition 2 would have tightened the economic development ban and paid owners for regulatory takings. It failed.[5] Idaho's statute has stayed largely as passed in 2006, with amendments in 2015 and 2021.

One federal ruling changed where owners can sue. Since Knick v. Township of Scott (2019), an owner can bring a federal takings claim straight to federal court instead of losing first in state court.[6]

> **TWO KINDS OF TAKING**
>
> Condemnation is the formal kind. The government, or a company that holds the power, files a case to take land or an easement and pay for it.
>
> Inverse condemnation is the owner's lawsuit when government takes or damages property without filing, such as flooding a field or cutting off access. Limits on use, like zoning, are a separate fight under Idaho's Regulatory Takings Act (Guide 3).

[1] Idaho Const. art. I, § 14; U.S. Const. amend. V.

[2] Kelo v. City of New London, 545 U.S. 469 (2005).

[3] Idaho H.B. 555 (2006), adding Idaho Code § 7-701A (2006 Sess. Laws ch. 96); statement of purpose RS 15561.

[4] Idaho Code § 7-701A(2), (3), (5), read at legislature.idaho.gov, Nov. 22, 2026.

[5] Institute for Justice, Idaho eminent domain law page and 2007 50-state report card; Idaho Secretary of State, 2006 Proposition 2.

[6] Knick v. Township of Scott, 588 U.S. 180 (2019).

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PART 02

Who can take land in Idaho

Idaho Code § 7-701 lists the uses. A public body or a private company carrying out one of them can ask a court to condemn.[7] Shortened, the list looks like this:

Use	Who usually uses it
Public buildings and grounds, roads, streets	The state, counties, cities, school and highway districts
Canals, ditches, reservoirs, drainage	Irrigation districts, canal companies, cities
Railroads, bridges, wharves	Railroads
Mine roads, tunnels, ditches, dumps	Mining companies
A byroad from a highway to a home or farm	A landowner with no access
Telephone lines; city sewers; cemeteries	Phone companies, cities, cemetery districts
Gas and petroleum pipelines	Pipeline companies
Electric lines and power plants	Utilities, including Idaho Power and electric co-ops
Snow fences	Highway agencies

The electric entry is the one that touches data centers. It covers "electric distribution and transmission lines" and plants that generate power. A data center building is not on the list, and § 7-701A bars taking land for economic development, so a county can't condemn a farm and hand it to a data center developer. The utility serving that data center can condemn for the line. (MY READ)

Lawmakers have looked at narrowing the electric entry. House Bill 167 in 2025 would have allowed condemnation for power projects only if at least 75 percent of the electricity is offered for sale in Idaho at Idaho market rates. It went to House State Affairs and never came out.[8]

In March 2026 both chambers adopted House Concurrent Resolution 32 by voice vote. It says transmission built in Idaho must show "a clear, measurable, and durable net benefit to Idaho ratepayers," and that eminent domain "should be strictly limited to the purposes allowable under Idaho law."[9] A concurrent resolution states the Legislature's view. It changes no statute and binds no federal agency.

PART 03

How a taking works in Idaho

The steps are the same whether the condemner is the Idaho Transportation Department or a power company.

[7] Idaho Code § 7-701, read at legislature.idaho.gov, Nov. 22, 2026.

[8] Idaho H.B. 167 (2025), bill history (referred to House State Affairs, Feb. 7, 2025).

[9] Idaho H.C.R. 32 (2026), text and history: adopted by House Mar. 16 and Senate Mar. 25, 2026, voice votes.

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Step	What Idaho law requires
1. First contact	When a state or local government unit, or a public utility, sets out to buy land outright (in fee simple), it must hand or mail the owner an advice-of-rights form. The statute doesn't require the form for an easement, which is how most power lines are bought. The form says the land can be taken only for a public use authorized by Idaho law, only if necessary, and where it causes "the least private injury," and that the condemner "must negotiate with the property owner in good faith." Without the form, the law presumes any sale wasn't voluntary.[10]
2. The offer	At least 30 days to answer the first offer. A case filed in violation of that is void. You can see the condemner's appraisals and hire your own appraiser and attorney.
3. Before filing	The use must be authorized and the taking necessary. Land already in public use can be taken only for a more necessary public use. A line over 230 kV across private farm ground needs a public meeting first, on 10 days' notice.[11]
4. The case	Filed in state district court, which decides the right to take and the compensation.[12]
5. Early possession	The condemner can ask for possession before trial. The judge first decides whether it has the power, whether the use is authorized and necessary, and whether it tried in good faith to buy. The court then sets compensation, the condemner deposits it, and the owner may draw it out.[13]
6. Trial	A judge, jury or referee sets the final award.

What you can be paid

- **The land taken.** Valued at its highest and best use. The award can't be less than the greater of the land's property tax assessed value or the condemner's highest appraisal made before the case.[14]
- **Severance damages.** When only part of a parcel is taken, the loss in value to what's left. A farm split by a tower line can lose more than the strip under it. Any "special and direct" benefit the project brings the remainder gets subtracted.
- **Business damages.** When part of a parcel is taken, lost value of a business more than five years old, on the land or next door, if moving or reasonable steps couldn't prevent it. The claim must go out in writing by certified mail within 90 days after you're served. Miss it without good reason and the court must strike it.
- **Attorney fees.** If the final award beats the condemner's last timely offer by 10 percent or more, the court may order the condemner to pay your reasonable costs and attorney fees.

> **EXAMPLE · THE 10 PERCENT LINE**
>
> A utility's last offer for a 150-foot easement across a pivot field is $40,000. A jury awards $45,000, which is 12.5 percent more, so the judge may make the utility pay your attorney fees. At $43,000 the award is 7.5 percent higher, and you likely pay your own. Sample numbers. That line moves a lot of settlements.

[10] Idaho Code § 7-711A (advice of rights form; good faith; 30-day response; 10 percent fee rule).

[11] Idaho Code § 7-704.

[12] Idaho Code §§ 7-706, 7-707.

[13] Idaho Code § 7-721.

[14] Idaho Code § 7-711.

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PART 04

Federal eminent domain today

Federal agencies condemn in federal court. Under the Declaration of Taking Act, title can pass as soon as the government deposits its estimate of value, with the final amount fought out later.[15] Federal and federally funded projects must also follow the Uniform Relocation Act of 1970: an appraisal, a written offer no lower than the approved appraisal, and moving help for people displaced.[16]

Gas pipelines

Since 1947 the Natural Gas Act has let a company holding a FERC certificate for an interstate gas pipeline condemn rights-of-way in federal or state court when it can't buy them.[17] In PennEast Pipeline Co. v. New Jersey (2021), the Supreme Court ruled 5–4 that this power reaches land a state owns.[18] That pipeline model is what BAAJA borrows for power lines.

Power lines: a federal fallback that has never been used

Power lines have stayed a state matter. In Idaho, the PUC decides whether Idaho Power needs a line (Guide 1), counties rule on land use, and the company condemns under Idaho law. Congress added a federal fallback in 2005, Section 216 of the Federal Power Act.[19]

Today FERC can permit an interstate line only inside a National Interest Electric Transmission Corridor designated by the Department of Energy. It can act when a state lacks authority to site the line, when the developer can't qualify for a state permit, or when a state agency hasn't decided within a year, has attached conditions that make the line unworkable, or has said no.[20] The "said no" trigger came in 2021, after a federal appeals court ruled in 2009 that the original law let a state block a line by denying it.[21]

A permit holder that can't buy a right-of-way may condemn it in federal district court or state court. FERC must first find the developer made good-faith efforts to engage landowners early. The right-of-way can be used only for the line, and compensation is fair market value plus severance damages. Federal court practice must follow state practice "as nearly as practicable." The power does not reach land owned by the United States or a state.[22] FERC has never issued one of these permits.[23]

[15] 40 U.S.C. § 3114 (Declaration of Taking Act).

[16] 42 U.S.C. § 4601 and following (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), § 4651.

[17] 15 U.S.C. § 717f(h) (Natural Gas Act § 7(h), added 1947).

[18] PennEast Pipeline Co. v. New Jersey, 594 U.S. 482 (2021).

[19] 16 U.S.C. § 824p (Federal Power Act § 216), added by the Energy Policy Act of 2005.

[20] 16 U.S.C. § 824p(b)(1); Congressional Research Service, Insight IN12746, Oct. 14, 2026.

[21] Piedmont Environmental Council v. FERC, 558 F.3d 304 (4th Cir. 2009); Infrastructure Investment and Jobs Act of 2021, § 40105; FERC Order No. 1977 (May 13, 2024).

[22] 16 U.S.C. § 824p(e), (f).

[23] American Farm Bureau Federation, "Senate Permitting Bill Needs Additional Protections for Agriculture," Market Intel, Nov. 9, 2026.

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PART 05

What BAAJA would change

BAAJA started as Senate Bill 5653, introduced Sept. 30, 2026. The Senate adopted a substitute, Amendment 6883, on Nov. 18 by 69–27 and passed the bill Nov. 19 by 62–33, as new text for H.R. 2347, a bill the House had passed in a different form. Because the Senate replaced the whole text, the House has to vote again, and no House vote was scheduled as of Nov. 22. Sens. Mike Crapo and Jim Risch voted yes on final passage.[24] It is a bill, not a law.

Issue	Today (LAW)	Senate-passed BAAJA (BILL)
Where FERC can permit	Only inside DOE-designated national corridors	Most of the country; the corridor requirement is repealed; Texas's ERCOT grid stays exempt[25]
Which lines	Interstate lines inside a corridor	Lines rated 230 kV or more (advanced-conductor projects can qualify below that), plus lower-voltage pieces needed to connect them
When FERC steps in	State lacks authority, a year passes with no decision, or the state denies or sets unworkable conditions	Same triggers
State-owned land	Can't be condemned under § 216	Federal permit and condemnation power reach state-owned land[26]
Landowner voice	A reasonable chance for owners and others to be heard	A 45-day comment period, and FERC must also "take into account input from affected landowners"
Lawsuits over environmental review	Six years under general federal law	150 days; a flawed review generally goes back to the agency while the permit stays in effect[27]
Upgrades in existing rights-of-way	Federal environmental review applies	Exempt, up to a quarter mile past the existing right-of-way

What the Senate left out

The landowner fixes didn′t make it. A late managers′ package, Amendment 7030, would have added notice to landowners, land restoration requirements and standards for how developers deal with families in a line′s path. Farm Bureau credited Sens. John Thune, Eric Schmitt, Josh Hawley and Jerry Moran for it. When Sen. Shelley Moore Capito asked to add it on the night of Nov. 19, Sen. Jeff Merkley objected, and the bill passed without it.[28] Farm Bureau, which had gone neutral on the bill because of those changes, said the next day it was ″disappointed″ the Senate didn′t take them up.[29]

Hawley′s own four proposals got no vote: pay of at least 150 percent of fair market value, two years for a state to decide instead of one, discretion for FERC to turn a permit down, and a 765 kV

[24] U.S. Senate roll call votes 267 (Nov. 18, 2026) and 270 (Nov. 19, 2026); Bommarito LLC, "BAAJA Passes the Senate, 62-33," Nov. 2026; More Than Just Parks bill tracker, Nov. 20, 2026.

[25] Congressional Research Service, Insight IN12746, "The Bipartisan American Affordability and Jobs Act of 2026 and FERC's Backstop Siting Authority," Oct. 14, 2026.

[26] Bipartisan Policy Center, "Explaining the Senate Permitting Bill," Nov. 2026; White & Case, "Senate permitting bill bolsters data center provisions," Nov. 2026.

[27] Center for Climate and Energy Solutions, "Comprehensive Summary of the Bipartisan American Affordability and Jobs Act," Nov. 2026, §§ 1110, 2101, 2102, 2103.

[28] U.S. Senate Daily Press Gallery floor log, Nov. 19, 2026, as reported by Energy News Beat; American Farm Bureau Federation, "Farm Bureau Sees Progress on the Bipartisan American Affordability and Jobs Act," Nov. 19, 2026.

[29] American Farm Bureau Federation, "Farmers Disappointed in Lack of Landowner Improvements in Permitting Bill," Nov. 20, 2026.

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threshold instead of 230. He voted no. "Legislation that threatens to take farmers' land is legislation I won't support," he said.[30]

Farm Bureau's Nov. 9 analysis lists what the passed text still lacks: no direct written notice to each landowner, no help with appraisal or legal costs, no direction to avoid productive farmland or prefer existing corridors and public land, and no restoration standards for farm ground. A federal permit, it warned, "could also let developers bypass state landowner protections."[31]

WHAT BAAJA DOESN'T TOUCH

Idaho's own eminent domain statutes, and condemnation by the Idaho Transportation Department, counties, cities and irrigation districts. Gas pipeline condemnation under the Natural Gas Act. It gives no one power to condemn land for a data center building. (MY READ, from the summaries cited here.)

On data centers, the substitute tells FERC to make them pay the full added cost of grid upgrades built for them.[32]

PART 06

What it would mean for Idaho landowners

Idaho sits between the Northwest and the desert Southwest, and big lines such as Boardman to Hemingway already reach into it. Today those lines go through the Idaho PUC, county permits and Idaho condemnation court. Under BAAJA, a developer of a line rated 230 kV or more that an Idaho agency turned down, or didn't decide within a year, could go to FERC instead. Which Idaho protections would follow it is the open question. (MY READ)

Idaho protection	Would it follow a federal permit? (MY READ)
Advice-of-rights form, good-faith negotiation, 30 days to answer (§ 7-711A)	Unclear, and the form is limited even now: it's required only for outright purchases, not easements. The statute binds state and local governments and public utilities. A merchant developer condemning under federal law could argue it doesn't apply. Section 216 does require FERC to find good-faith engagement with landowners.
Attorney fees at 10 percent over the last offer (§ 7-711A)	Unclear. Federal courts follow state procedure, and fee-shifting is often treated as more than procedure. Farm Bureau lists state attorney-fee rules among the protections a federal permit could bypass.
Business damages (§ 7-711)	Unlikely. Section 216 pays fair market value plus severance damages.
Public meeting before condemning for a line over 230 kV across farm ground (§ 7-704)	Unlikely for a case brought under federal law in federal court.
State endowment land	New exposure. Today it can't be condemned under § 216. Under BAAJA it could be.

The state land change cuts both ways. Routing lines across state land could spare some private farms. It also takes away the Land Board's power to refuse or to set its own terms for land held in trust, mostly for public schools. (MY READ)

[30] Bommarito LLC, Nov. 2026, listing Sen. Hawley's four proposals announced Nov. 11, 2026; KZRG / Missouri Independent, Nov. 20, 2026 (quote).

[31] American Farm Bureau Federation, "Senate Permitting Bill Needs Additional Protections for Agriculture," Market Intel, Nov. 9, 2026.

[32] White & Case, Nov. 2026 (data center cost responsibility under the substitute).

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And one year is short in Idaho. A contested line that needs a PUC case and permits from two or three counties can run past a year with nobody stalling. (MY READ)

PART 07

What you can do

WHERE I STAND

Taking land should stay rare, local and costly for the one doing the taking. Idaho's statutes aren't perfect, but they give a farmer a notice of rights, a judge close to home, business damages and a shot at attorney fees. A federal permit shouldn't strip those away. If Congress wants a federal backstop, it should carry Idaho's protections with it: direct notice to every owner, pay above market value, two years for the state to act, and no federal condemnation for lines built to feed private data centers.

Before the House votes

- **Call Idaho's two U.S. House members.** Rep. Mike Simpson (2nd District) and Rep. Russ Fulcher (1st District). Ask whether they will vote for BAAJA without the Amendment 7030 landowner protections.
- **Name the fixes.** Direct written notice to every landowner, two years for a state to decide, and compensation above fair market value.
- **Ask Sens. Crapo and Risch** what they will do if the House changes the bill and it comes back to the Senate.

If someone wants an easement across your land

- **Ask in writing** whether they claim the power of eminent domain, and under which law, Idaho or federal.
- **Ask for every appraisal and the advice-of-rights form.** The law requires the form only for outright purchases, but ask anyway. You have at least 30 days to answer the first offer under Idaho law.
- **Get your own appraisal** that counts damage to the rest of the farm: pivots, drainage, fencing and field access.
- **Running a business on the land?** Mark 90 days from service of a condemnation complaint. That's the deadline for a business damage claim.
- **Keep every offer.** The last timely offer sets the 10 percent line for attorney fees.

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PART 08

Words to know

Backstop siting. FERC's power under Federal Power Act § 216 to permit a power line when a state won't or can't.

Condemnation. The court case that takes property by eminent domain.

Easement or right-of-way. A right to use a strip of someone else's land, such as for a power line, while the owner keeps title.

Eminent domain. The power to take private property for public use, with just compensation.

Fair market value. What a willing buyer would pay a willing seller, neither forced to deal.

Highest and best use. The most valuable legal and realistic use of the land, which sets its value.

Inverse condemnation. An owner's lawsuit for property taken or damaged without a condemnation case.

Just compensation. The payment the Constitution requires for a taking.

Kilovolt (kV). A thousand volts. Big transmission lines run at 230, 345, 500 or 765 kV.

National Interest Electric Transmission Corridor. An area the Department of Energy designates where FERC's backstop applies today. BAAJA repeals the requirement.

Possession pending trial. Letting the condemner use the land before trial after it deposits court-set compensation.

Severance damages. The loss in value to the land left over after part is taken.

Where to look it up

Idaho Legislature legislature.idaho.gov Idaho Code Title 7, Chapter 7, and Idaho Constitution Art. I, § 14.

Congress.gov congress.gov H.R. 2347 and S. 5653 (119th Congress): text, amendments and actions.

U.S. Senate votes senate.gov Roll calls 257 through 270 on BAAJA, Nov. 2026.

Federal Energy Regulatory Commission ferc.gov Backstop siting rules (Order No. 1977) and any permit applications.

Idaho Public Utilities Commission puc.idaho.gov Idaho Power line and plant cases.

Revision history

Revision	Date	What changed
v1	Nov. 22, 2026	First public edition. Idaho law checked against the Idaho Code and Constitution; federal law against the U.S. Code; BAAJA against CRS, Bipartisan Policy Center, Farm Bureau and law firm summaries of the Senate-adopted substitute and Senate roll calls; ChatGPT used as a second-opinion checker; its six wording corrections applied (fee-simple limit on the rights form, partial-taking limit on business damages, 7-701A exceptions, H.B. 167 wording, advanced-conductor exception, 45-day comment period). Version and date stamp on every page.

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PART 09

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Short citations appear as footnotes on each page. Full references follow. Information is current as of November 22, 2026.

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White & Case. (2026, Nov.). Senate permitting bill bolsters data center provisions, moves to full vote.

Jeff A. Pierson

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