

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 508

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO EMINENT DOMAIN; AMENDING SECTION 7-711, IDAHO CODE, TO REVISE  
2 PROVISIONS REGARDING THE ASSESSMENT OF CERTAIN DAMAGES AND TO MAKE  
3 TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.  
4

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

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

8 7-711. ASSESSMENT OF DAMAGES. The court, jury or referee must hear  
9 such legal testimony as may be offered by any of the parties to the proceed-  
10 ings, and thereupon must ascertain and assess:

11 1. The value of the property sought to be condemned, and all improve-  
12 ments thereon pertaining to the realty, and of each and every separate estate  
13 or interest therein; if it consists of different parcels, the value of each  
14 parcel and each estate or interest therein shall be separately assessed. For  
15 purposes of ascertaining the value of the property, the minimum amount for  
16 damages shall be the greater of the assessed value for property tax purposes  
17 unless the court, jury or referee finds the property has been altered sub-  
18 stantially, or the plaintiff's highest prelitigation appraisal.

19 2. If the property sought to be condemned constitutes only a part of a  
20 larger parcel: (a) the damages which will accrue to the portion not sought to  
21 be condemned, by reason of its severance from the portion sought to be con-  
22 demned, and the construction of the improvement in the manner proposed by the  
23 plaintiff; and (b) the damages to any business qualifying under this subsec-  
24 tion having more than five (5) years' standing which the taking of a portion  
25 of the property and the construction of the improvement in the manner pro-  
26 posed by the plaintiff may reasonably cause, including but not limited to the  
27 following: the cost of relocating the business and its facilities and im-  
28 provements within the property remaining after the taking; the cost of re-  
29 locating or modifying the principal access to the business if reasonably re-  
30 quired to maintain safe ingress and egress to the business; and lost busi-  
31 ness profits resulting from the taking or from the relocation of the business  
32 and its facilities and improvements. The business must be owned by the party  
33 whose lands are being condemned or be located upon adjoining lands owned or  
34 held by such party. Business damages for business losses or diminished prof-  
35 its under this subsection shall not be awarded if the loss can reasonably be  
36 prevented by a relocation of the business or by taking steps that a reason-  
37 ably prudent person under similar conditions as the owner would take, or for  
38 damages caused by temporary business interruption that occurs during and is  
39 solely due to the construction of the improvement in the manner proposed by  
40 the plaintiff; and provided further that compensation for business damages  
41 shall not be duplicated in the compensation otherwise awarded to the prop-  
42 erty owner for damages pursuant to subsections ~~(1)~~ and ~~(2)~~ (a) of this sec-

1 tion 7-711, Idaho Code. A business owner seeking damages that qualify under  
2 this subsection shall not be required to pursue compensation under the high-  
3 way relocation assistance act, chapter 20, title 40, Idaho Code.

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

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

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

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

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

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

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

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

1           6. If the property sought to be condemned is private real property ac-  
2 tively devoted to agriculture, the damages which will accrue because of the  
3 costs, if any, of farming around electrical transmission line structure(s)  
4 for a transmission line with a capacity in excess of two hundred thirty (230)  
5 kilovolts. If the property sought to be condemned has been the subject of  
6 a previous condemnation proceeding or proceedings for electrical transmis-  
7 sion line structure(s) and at the time of condemnation the field holds other  
8 electrical transmission line structure(s), such evidence of costs referred  
9 to above in this section may also include the cumulative effects, if any,  
10 of conducting farming operations around other electrical transmission line  
11 structure(s) in the same field, whether such structure(s) are of the condem-  
12 ner or not.

13           SECTION 2. An emergency existing therefor, which emergency is hereby  
14 declared to exist, this act shall be in full force and effect on and after its  
15 passage and approval.