

**WORKING DRAFT**

SENATE FILE NO. \_\_\_\_\_

Regulatory Takings Act-amendments.

Sponsored by: Joint Agriculture, Public Lands and Water  
Resources Interim Committee

A BILL

for

1 AN ACT relating to the Wyoming Regulatory Takings Act;  
2 modifying definitions; providing for an advocate's office;  
3 specifying duties and responsibilities of the advocate;  
4 authorizing positions; requiring compensation for takings  
5 as specified; creating an account; providing  
6 appropriations; and providing for an effective date.

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8 *Be It Enacted by the Legislature of the State of Wyoming:*

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10 **Section 1.** W.S. 9-5-306 through 9-5-308 are created  
11 to read:

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13 **9-5-306. Advocate for private property rights.**

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1           (a)    An advocate office is established in the office  
2 of the governor to represent the interests of private  
3 property owners in proceedings involving governmental  
4 action.

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6           (b)    The governor shall appoint the advocate who shall  
7 serve at the pleasure of the governor. The advocate may  
8 employ persons who shall be subject to the Wyoming  
9 personnel rules. The advocate may contract for special  
10 services as necessary for the proper and efficient  
11 operation of this office.

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13           **9-5-307. Powers and duties of the advocate.**

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15           (a)    The advocate may:

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17               (i)    Research, study and analyze issues that  
18 involve, relate to or may involve a taking;

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20               (ii)   Prepare and present briefs and arguments,  
21 intervene or appear on behalf of private property owners in  
22 general or on behalf of specific private property owners in  
23 any judicial, legislative or administrative hearing or  
24 proceeding;

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(iii) Advise private property owners on issues involving or relating to a taking.

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(b) The advocate shall:

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(i) Notwithstanding the provisions of W.S. 9-5-306 or subsection (a) of this section, only represent the interests of record title owners of residential, small business, and agricultural properties before any state agency, the legislature and any court;

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(ii) Receive complaints and inquiries from private property owners regarding a taking;

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(iii) Within thirty (30) days after the end of each calendar quarter, submit a report to the governor and the agriculture, public lands and water resources joint interim committee describing the activities and accomplishments of the office.

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(c) The advocate's office shall record all contacts by private property owners with regard to alleged takings to determine general concerns of private property owners.

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**9-5-308.Compensation.**

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(a) The governor's office shall compensate owners of private property for the property's diminished value for any taking.

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(c) A claim shall be settled only if the taking claimed was caused by a government agency as might entitle the claimant to a judgment.

1 (d) Any person whose claim is rejected or who is  
2 unsatisfied with the settlement offered may commence an  
3 action in the appropriate court.

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5 (e) There is created a private property takings  
6 compensation account within the earmarked revenue fund.  
7 The account shall be in such amount as the legislature  
8 determines to be reasonably sufficient to meet anticipated  
9 claims. Appropriations to the account shall not lapse at  
10 the end of any fiscal period. Monies appropriated by the  
11 legislature shall be expended by the governor's office for  
12 the purpose of paying claims pursuant to this act.

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14 **Section 2.** W.S. 9-5-302(a)(i), (v), (vi), by creating  
15 a new paragraph (vii) and 9-5-305 are amended to read:

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17 **9-5-302. Definitions.**

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19 (a) As used in this act:

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21 (i) "Constitutional implications" means the  
22 unconstitutional taking of private property as determined  
23 by the attorney general in light of current case law or a  
24 taking as defined by paragraph (v) of this subsection;

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(v) "Taking" means ~~an uncompensated~~ a taking of private property ~~in violation of the state or federal constitution;~~ by a government agency that diminishes the value of the property by at least [## percent (##%)] OR [#### dollars (\$####.##)];

\*\*\* STAFF COMMENTS \*\*\*

The committee should decide whether the diminished value should be a percentage or a dollar amount and how much. Further, the Committee should recognize that encompassing any "taking" would include zoning laws and perhaps activities such as construction projects preventing traffic or parking in front of a business. Thus, the committee should also decide if the "taking" has to be permanent.

(vi) "Small business" means a corporation, partnership, limited liability company, sole proprietorship or individual operating a business for profit with not more than ## (##) employees, including employees employed by any subsidiary or affiliated corporation.

\*\*\* STAFF COMMENTS \*\*\*

The committee should determine the number of employees that constitute a small business. Arizona uses one hundred but that seems large for Wyoming.

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~~(vi)~~ (vii) "This act" means W.S. 9-5-301 through ~~9-5-305.~~ 9-5-308;

**9-5-305. Declaration of purpose.**

The purpose of this act is to establish an orderly, consistent process that better enables governmental bodies to evaluate whether proposed regulatory or administrative actions may result in a taking of private property or violation of due process and to provide compensation when a taking has occurred. ~~It is not the purpose of this act to expand or reduce the scope of private property protections provided in the state and federal constitutions.~~

**Section 3.** (a) There is appropriated \$##### from the general fund to the governor's office to implement the purposes of this act.

(b) The governor's office is authorized two (2) additional full time positions to implement the purposes of this act.

1           (c)    There is appropriated \$##### from the general  
2 fund to the private property takings compensation account  
3 to implement the purposes of this act.

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5           **Section 4.** This act is effective July 1, 2003.

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(END)