

WORKING DRAFT

SENATE FILE NO. _____

Eminent domain.

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

A BILL

for

1 AN ACT relating to eminent domain; defining public use;
2 providing for judicial review of regulatory agency action
3 pertaining to eminent domain; providing for award of
4 attorney fees in certain situations; providing that eminent
5 domain shall be used as a last resort subject to specified
6 conditions; clarifying public utilities under condemnation
7 proceedings; making conforming amendments; and providing
8 for an effective date.

9

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

11

12 **Section 1.** W.S. 1-26-517 and 1-26-714 are created to
13 read:

14

15 **1-26-517. Jury trial; litigation expenses.**

1

2 (a) A condemnee may request a jury trial for:

3

4 (i) A determination as to whether there is a
5 public interest in the project pursuant to W.S.
6 1-26-504(a)(i);

7

8 (ii) A determination as to whether the project
9 will have the greatest public good and the least private
10 injury pursuant to W.S. 1-26-504(a)(ii);

11

12 (iii) A determination as to whether the property
13 is necessary for the project pursuant to W.S.
14 1-26-504(a)(iii);

15

16 (iv) A determination as to whether there is a
17 reasonable alternative to a taking pursuant to W.S.
18 1-26-504(a)(ii)(J);

19

20 (v) A determination as to whether the private or
21 governmental condemnor negotiated in good faith before
22 filing the condemnation action;

23

24 (vi) A determination as to whether just

1 compensation was offered as part of the good faith
2 negotiations and any action by condemnor that causes any
3 loss to condemnee is provided for.

4
5 (b) The condemnor shall reimburse the condemnee for
6 all negotiation, litigation and appellate expenses,
7 including appraisals, reasonable attorney fees and costs,
8 if:

9
10 (i) The ultimate court or jury award for the
11 taking exceeds by fifteen percent (15%) of the last written
12 offer given by the condemnor to the condemnee prior to
13 filing the condemnation action; and

14
15 (ii) The condemnor fails to negotiate in good
16 faith.

17
18 **1-26-714. Compensation for disruption of operation;**
19 **restoration; weed control.**

20
21 (a) The condemnor shall pay the condemnee a sum of
22 money or other compensation equal to the amount of damages
23 sustained by the condemnee for:

1 (i) Damages caused by the disruption of the land
2 management operation;

3

4 (ii) The cost of restoration of the surface
5 affected by the condemnor's operations, as closely as
6 reasonably practicable, to the condition that existed prior
7 to the condemnor's operations, or as otherwise agreed to in
8 writing by the condemnor and condemnee, including:

9

10 (A) The cost of surface restoration;

11

12 (B) The cost of reseeding and establishing
13 native vegetation on the project area and land disturbed by
14 the condemnor's operations;

15

16 (C) The cost of weed control on the project
17 area and land disturbed by the condemnor for three (3)
18 years following operations, excluding the cost of noxious
19 weeds.

20

21 **Section 2.** W.S. 1-26-502(a) by creating a new
22 paragraph (vi) and by renumbering (vi) as (vii), 1-26-503
23 by creating new subsections (c) and (d), 1-26-504
24 (a)(intro), (ii), (b) and by creating new subsections (c)

1 through (e), 1-26-505 by creating a new subsection (c),
2 1-26-506(a)(intro) and by creating new subsections (c)
3 through (h) and by renumbering (c) as (j), 1-26-507(c),
4 1-26-508(a) and (b)(intro), 1-26-509 by creating new
5 subsections (c) through (h), 1-26-510(b), 1-26-512(a) and
6 (b)(iii) and by creating a new paragraph (iv), 1-26-515,
7 1-26-701 by creating new subsections (d) through (f),
8 1-26-702, 1-26-704(a) by creating a new paragraph (iii) and
9 (b)(intro), 1-26-709(a) and (b), 1-26-810(a)(i), 1-26-814,
10 1-26-815 by creating new subsections (d) and (e),
11 15-1-103(a)(xxxv), 24-9-101(a) and 37-1-101(a) by creating
12 a new paragraph (vii) are amended to read:

13

14 **1-26-502. Definitions.**

15

16 (a) As used in this act:

17

18 (vi) "Public use" means the possession,
19 occupation and enjoyment of the land by the general public
20 or by a public entity. "Public use" shall not include the
21 taking of private property by a governmental entity for the
22 benefit of another private individual or private entity nor
23 shall it include lands acquired primarily for:

24

1 (A) Economic development;

2

3 (B) Industrial development;

4

5 (C) An increase to the tax base;

6

7 (D) An increase to tax revenues;

8

9 (E) An increase in employment;

10

11 (F) An increase in general economic health.

12

13 ~~(vi)~~ (vii) "This act" means W.S. 1-26-501 through
14 1-26-817.

15

16 **1-26-503. Public use required; other acquisitions.**

17

18 (c) Public interest and necessity for purposes of
19 eminent domain shall be determined by the appropriate
20 public entity.

21

22 (d) The condemnation of property by a private person
23 or entity shall require the condemnor to prove any issues
24 by clear and convincing evidence.

1

2 **1-26-504. Requirements to exercise eminent domain.**

3

4 (a) Except as otherwise provided by law, the power of
5 eminent domain may be exercised to acquire property for a
6 ~~proposed~~ public use only if all of the following are
7 established:

8

9 (ii) The project is planned ~~or~~ and located in
10 the manner determined by good faith negotiations that will
11 be most compatible with the greatest public good and the
12 least private injury; ~~and by:~~

13

14 (A) Keeping the project in an existing
15 corridor or an existing contractual access if available;

16

17 (B) Requiring utilization of federal lands
18 and state lands before condemning private lands for the
19 project;

20

21 (C) Limiting the term of the project on
22 private lands to be no longer than the term for similarly
23 involved federal lands or state lands or limited to the
24 term of the project, whichever is shorter;

1

2

3

(D) Allowing condemnation only as a last resort after good faith negotiations have failed;

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(E) Requiring the burden of proving compliance with all condemnation proceedings to be on the condemnor;

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(F) Requiring a public or private entity to provide notice to any potential condemnee immediately following any action that may involve condemnation of private lands, including:

(I) Authorizing any studies affecting private lands;

(II) Authorizing any surveys on private lands;

(III) Requesting funding from any state agency or the state of Wyoming to cover any costs of the project.

1 (G) Requiring a showing of no reasonable
2 alternatives to the proposed project location.

3
4 (b) Findings of the public service commission, the
5 interstate commerce commission and other federal and state
6 agencies with appropriate jurisdiction are ~~prima facie~~
7 ~~valid relative to determinations under subsection (a) of~~
8 ~~this section if the findings were made in accordance with~~
9 ~~law with notice to condemnees who are parties to the~~
10 ~~condemnation action and are final with no appeals from the~~
11 ~~determinations pending~~ subject to legal review pursuant to
12 W.S. 1-26-815(d).

13
14 (c) The right of condemnation under this section
15 shall be available only as a last resort for the conduct of
16 business which provides a public benefit and shall not be
17 permissible in order to:

18
19 (i) Simplify federal or state permitting; or

20
21 (ii) Improve the ease and convenience of access
22 for the condemnor.

23
24 (d) A condemnor shall bear the burden of proving by

1 clear and convincing evidence that condemnation is being
2 used as a last resort.

3
4 **1-26-505. Condemnation of property devoted to a**
5 **public use.**

6
7 (c) The use of property acquired shall be limited to
8 the original designated public use. Any other use of the
9 easement shall be negotiated separately.

10
11 **1-26-506. Entry prior to condemnation action.**

12
13 (a) A condemnor and its agents and employees may
14 enter upon real property and make surveys, examinations,
15 photographs, tests, soundings, borings and samplings, or
16 engage in other activities solely for the ~~purpose~~ purposes
17 of appraising the property or determining whether it is
18 suitable and within the power of the condemnor to condemn
19 and only if the entry is:

20
21 (c) Except as provided in W.S. 1-26-511, an action to
22 enter property shall not be maintained over timely
23 objection by the condemnee unless the condemnor made a good

1 faith effort to acquire access to enter the property before
2 commencing the action.

3
4 (d) Negotiations conducted in substantial compliance
5 with W.S. 1-26-509 are evidence of "good faith" under
6 subsection (c) of this section.

7
8 (e) Survey information acquired from the property
9 constitutes an interest in real property for which the
10 condemnor shall deposit cash or other security with the
11 court before entry. The clerk of court shall invest any
12 cash deposit in any legal interest bearing investment and
13 the interest earnings shall accrue to the account of the
14 condemnor. Unless sooner disbursed by court order, the
15 cash or other security shall be retained on deposit for six
16 (6) months following termination of the entry. The court
17 for good cause may extend the period of retention.

18
19 (f) Survey information acquired from the property
20 constitutes an interest in real property for which the
21 court in determining due compensation may authorize a lump-
22 sum payment, an annual installment or amortization payment
23 to continue for a definite period of time as determined by
24 the court.

1

2 (g) Survey information regarding threatened and
3 endangered species, cultural resources, archeological
4 resources or environmental resources shall not be obtained
5 from private property without the express written consent
6 of the property owner. Any survey information obtained
7 under this section and any subsequent reports regarding
8 survey information obtained under this section shall be
9 provided to the property owner.

10

11 (h) No significant surface disturbing activities may
12 occur during entry under this section.

13

14 (j) Any action by condemnor that causes any loss to
15 condemnee is compensable.

16

17 ~~(e)~~(k) The condemnor is liable under W.S. 1-26-508
18 for damages resulting from activities authorized by this
19 section and for a reasonable trespass fee to access lands
20 for survey work.

21

22 **1-26-507. Entry prior to condemnation action; court**
23 **orders.**

24

1 (c) An order permitting entry under subsection (b) of
2 this section shall include a determination by the court of
3 the amount, if any, that will fairly compensate the owner
4 or any other person in lawful possession or physical
5 occupancy of the property for the use of the property, for
6 any restrictions on the use of the property and for damages
7 for physical injury to the property and for substantial
8 interference with its possession or use, found likely to be
9 caused by the entry and activities authorized by the order
10 and shall require the condemnor to deposit cash or other
11 security with the court before entry. The clerk of court
12 shall invest any cash deposit in any legal interest bearing
13 investment and the interest earnings shall accrue to the
14 account of the condemnor. Unless sooner disbursed by court
15 order, the cash or other security shall be retained on
16 deposit for six (6) months following termination of the
17 entry. The court for good cause may extend the period of
18 retention.

19

20 **1-26-508. Entry prior to condemnation action;**
21 **damages.**

22

23 (a) A condemnor is liable for the use of the
24 property, any restrictions on the use of the property and

1 physical injury to, and for substantial interference with
2 possession or use of, property caused by his entry and
3 activities upon the property. This liability may be
4 enforced in a civil action against the condemnor or by
5 application to the court as provided by subsection (c) of
6 this section unless voluntarily paid by the condemnor.

7
8 (b) In an action or other proceeding for recovery of
9 damages relating to the use of the property, any
10 restrictions on the use of the property and other damages
11 under this section, the prevailing party shall be allowed
12 his costs. In addition, the court shall award the condemnee
13 his litigation expenses incurred in any proceeding under
14 W.S. 1-26-507 if it finds that the condemnor:

15
16 **1-26-509. Negotiations; scope of efforts to purchase.**

17
18 (c) Good faith negotiations shall be exhausted before
19 condemnation may be initiated.

20
21 (d) Consideration of good faith negotiations shall
22 include:

23
24 (i) Whether the condemnor has initiated any

1 meaningful negotiations with the condemnee;

2

3 (ii) Whether the condemnor has done more than
4 inform the condemnee the property will be taken by eminent
5 domain if the condemnee does not accept the condemnor's
6 offer;

7

8 (iii) Whether the condemnor has maintained
9 continual and ongoing discussions without any unreasonable
10 lapses in the negotiating period;

11

12 (iv) Whether the condemnor filed condemnation
13 proceedings before negotiating with landowner;

14

15 (v) Whether the condemnor has made any material
16 or substantial misrepresentation of the project;

17

18 (vi) Whether the condemnor filed condemnation in
19 order to meet a deadline;

20

21 (vii) Whether the condemnor has given the same
22 considerations to private landowners as he has given to
23 federal and state landowners;

24

1 (viii) Whether the condemnor has provided a
2 certified appraisal to the landowner.

3
4 (e) In the event the landowner disagrees with the
5 certified appraisal provided by the condemnor pursuant to
6 paragraph (d)(viii), the landowner may provide his own
7 certified appraisal, at the landowner's expense.

8
9 (f) If the two (2) appraisals conducted under
10 subsections (d) and (e) of this section do not differ by
11 more than ten percent (10%), the property value shall be
12 the higher of the two (2) appraisals.

13
14 (g) If the two (2) appraisals conducted under
15 subsections (d) and (e) of this section differ by more than
16 ten percent (10%), the two (2) certified appraisers used to
17 determine the values under subsections (d) and (e) of this
18 section shall pick a third certified appraiser who shall
19 provide a certified appraisal and the property value shall
20 be the average of the two (2) highest appraisals. The
21 appraisal determined pursuant to this subsection shall be
22 paid for by the party whose initial appraisal most differs
23 from the average of the three (3) appraisals.

1 (h) At any time in the negotiation, at the request of
2 either party and upon mutual agreement, dispute resolution
3 processes including mediation or arbitration may be
4 employed or the informal procedures for resolving disputes
5 established pursuant to W.S. 11-41-101 through 11-41-110
6 may be requested through the Wyoming agriculture and
7 natural resource mediation board.

8
9 **1-26-510. Preliminary efforts to purchase.**

10
11 (b) Negotiations conducted in substantial compliance
12 with W.S. 1-26-509 ~~(b)(i) through (vi)~~ are ~~prima facie~~
13 evidence of "good faith" under subsection (a) of this
14 section but can be subject to mediation or binding
15 arbitration as agreed to by the parties pursuant to W.S.
16 1-26-509.

17
18 **1-26-512. Contents of authorization.**

19
20 (a) A public entity may not commence a condemnation
21 action until it has first adopted a written resolution in
22 substantial conformity with this section, authorizing
23 commencement and prosecution of the action. The
24 authorization may be amended or rescinded at any time

1 before or after commencement of the condemnation action but
2 if rescinded the public entity shall pay the litigation,
3 negotiation and appellate expenses, including appraisals,
4 reasonable attorney fees and costs, of the condemnee.

5
6 (b) In addition to other requirements imposed by law,
7 the condemnation authorization required by subsection (a)
8 of this section shall include:

9
10 (iii) A declaration that a taking of the
11 described property is necessary and appropriate for the
12 proposed public use;.

13
14 (iv) A declaration that the condemnor has
15 exhausted all sources of federal lands and state lands
16 before condemning private lands.

17
18 **1-26-515. Abandonment, nonuse or new use.**

19
20 (a) Upon abandonment, and except for a national
21 emergency, nonuse for a period of ~~ten (10)~~ two (2) years,
22 or transfer or attempted transfer to a use where the
23 transferee could not have condemned for the new use, or
24 where the new use is not identical to the original use and

1 new damages to the landowner whose property was condemned
2 for the original use will occur, any easement authorized
3 under this act terminates and the easement reverts to the
4 landowner. No liability, environmental or otherwise, shall
5 be transferred to the landowner by abandonment.

6
7 (b) Condemnation authority granted to a public entity
8 shall be limited to the use by the public entity and its
9 successors and shall not be transferable to a private
10 entity.

11
12 (c) Condemnation authority granted to a private
13 entity shall be limited to the use by the private entity
14 and its successors and shall not be transferable to a
15 public entity.

16
17 **1-26-701. Compensation standards.**

18
19 Changes to Section 701 were deleted with it being kept
20 as a placeholder for discussion at the next meeting.

21
22 **1-26-702. Compensation for taking.**

1 Changes to Section 702 were deleted with it being kept
2 as a placeholder for discussion at the next meeting.

3
4 **1-26-704. Fair market value defined.**

5
6 (a) Except as provided in subsection (b) of this
7 section:

8
9 (iii) The determination of fair market value may
10 include:

11
12 (A) The value determined by a certified
13 appraisal of the property;

14
15 (B) The values of other easements on the
16 same property;

17
18 (C) The amounts paid by the condemnor for
19 other portions of the proposed easement;

20
21 (D) Values of similar easements purchased
22 by other companies in arms length transactions for similar
23 properties;

1 (E) Consideration of aesthetic value of the
2 property;

3

4 (F) Consideration of the value the proposed
5 easement takes away from remaining property.

6

7 (b) The fair market value of property ~~owned by an~~
8 ~~entity organized and operated upon a nonprofit basis~~ is
9 deemed to be not less than the reasonable cost of
10 functional replacement. ~~if the following conditions exist:~~

11

12 **1-26-709. Compensation for growing crops and**
13 **improvements.**

14

15 (a) The compensation for crops growing on the
16 property on the date of valuation is the higher of the
17 current fair market value of the crops in place, assuming
18 the right to bring them to maturity and to harvest them, ~~or~~
19 the amount by which the existence of the crops enhances the
20 fair market value of the property or the cost to replace
21 the crop lost.

22

23 (b) The compensation for an interest in improvements
24 is the higher of the fair market value of the improvements,

1 assuming their immediate removal from the property, ~~or~~ the
2 amount by which the existence of the improvements enhances
3 the fair market value of the property or the cost to
4 replace the improvement lost.

5
6 **1-26-810. Powers of railroad companies relative to**
7 **condemnation generally.**

8
9 (a) Any railroad company organized under the laws of
10 this state, the laws of the United States or which has been
11 duly organized under the laws of any other state and has
12 filed copies of its articles of incorporation with the
13 secretary of state in this state as required by law is
14 authorized to:

15
16 (i) Exercise the power of eminent domain to
17 acquire rights-of-way for railroad tracks and easements for
18 offices, depots and other appurtenant facilities related
19 directly to the operation of the railroad upon
20 demonstration that the proposed route has the least affect
21 on private property within reason of the geographic
22 limitation of the proposed route;

1 **1-26-814. Right of eminent domain granted; petroleum**
2 **or other pipeline companies; purposes.**

3
4 Whenever any utility or any petroleum or other pipeline
5 company, authorized to do business in this state, has not
6 acquired by gift or purchase any land, real estate or claim
7 required for the construction, maintenance and operation of
8 their facilities and appurtenances or which may be affected
9 by any operation connected with the construction or
10 maintenance of the same, the utility or company has the
11 right of eminent domain and may condemn the easement
12 required by the utility or company, but only as a last
13 resort for the conduct of business with a demonstrated
14 public use as provided pursuant to W.S. 1-26-503(c).

15
16 **1-26-815. Right of eminent domain granted; ways of**
17 **necessity for authorized businesses; purposes; extent.**

18
19 (d) The right of condemnation under this section for
20 private condemnors shall be available only as a last resort
21 for the conduct of business which provides a public benefit
22 and shall not be permissible in order to:

23
24 (i) Minimize project costs;

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(ii) Simplify federal or state permitting; or

(iii) Improve ease and convenience of access for
the private condemnor.

(e) Any person, association, company or corporation
condemning property under subsection (a) of this section
shall bear the burden of proving by clear and convincing
evidence that condemnation is being used as a last resort.

15-1-103. General powers of governing bodies.

(a) The governing bodies of all cities and towns may:

(xxxv) Exercise the power of eminent domain and
take property for public use within and without the city
limits for any necessary or authorized public purpose as
defined pursuant to W.S. 1-26-502(a)(vi);

**24-9-101. Petition; initial hearing; appointment of
viewers and appraisers; bond; rules.**

1 (a) Notwithstanding W.S. 1-26-502(a)(vi), any person
2 whose land has no outlet to, nor connection with a public
3 road, may file an application in writing with the board of
4 county commissioners in the county where his land is
5 located for a private road leading from his land to some
6 convenient public road. The application shall contain the
7 following information:

8
9 **37-1-101. Definitions.**

10
11 (a) As used in chapters 1, 2, 3 and 12 of this title:

12
13 (vii) For purposes of condemnation, any person
14 included under paragraph (vi) of this section shall be
15 regarded as a "public utility" regardless of whether he
16 provides retail service.

17
18 **Section 3.** W.S. 1-26-504(b), 1-26-506(b), and
19 1-26-704(b)(i) and (ii) are repealed.

20
21 **Section 4.** This act is effective July 1, 2007.

22
23 **(END)**