

HOUSE BILL NO. \_\_\_\_\_

Eminent domain-2.

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

A BILL

for

1 AN ACT relating to eminent domain; establishing reclamation  
2 and restoration requirements; defining public use and  
3 public necessity; requiring notice; providing compensation  
4 for entry prior to condemnation; requiring surveys to be  
5 provided to condemnee; providing measurements for good  
6 faith negotiations; providing for mediation or arbitration;  
7 providing for determinations for fair market value;  
8 limiting condemnation authority in urban renewal;  
9 eliminating the maximum amount on relocation expenses; and  
10 providing for an effective date.

11

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

13

14 **Section 1.** W.S. 1-26-714 is created to read:

15

16 **1-26-714. Reclamation and restoration.**

1

2 (a) A condemnor who acquires a property right or  
3 interest of less than fee simple title in any land shall be  
4 responsible for reclamation on such land and for  
5 restoration of the land and any improvements thereon to the  
6 fullest extent practicable.

7

8 (b) Reclamation and restoration shall include but not  
9 be limited to, grading to the natural contour, replacement  
10 of topsoil, the planting and establishment of appropriate  
11 ground cover and control of weeds resulting from  
12 condemnor's disturbance, as follows:

13

14 (i) In the case of a growing crop for which  
15 compensation has been paid, a ground cover shall be  
16 required only if requested by the condemnee;

17

18 (ii) In the case of grazing lands, native  
19 grasses and forbes previously growing on the disturbed land  
20 shall be reseeded and established unless the establishment  
21 of alternative beneficial nonnative plants are agreed to by  
22 the parties.

23

1           (c) The responsibility of the condemnor under this  
2 section shall include the following:

3

4           (i) Damages caused by the condemnor, its  
5 successors or its agents during entry prior to condemnation  
6 as authorized by W.S. 1-26-506 and 1-26-507;

7

8           (ii) Damages caused by the condemnor, its  
9 successors or its agents during construction of the project  
10 under the condemnation;

11

12           (iii) Damages caused by the condemnor, its  
13 successors or its agents subsequent to the construction and  
14 during the use of the property during the time of the  
15 condemnor's possession;

16

17           (iv) Damages caused by the condemnor, its  
18 successors or its agents in the removal of any facilities  
19 or improvements on the property at the termination of the  
20 authorized use.

21

22           (d) Nothing herein shall preclude the condemnor and  
23 the condemnee from agreeing to compensation in lieu of the  
24 obligations provided in this section.

1

2           **Section 2.** W.S. 1-26-502(a) by creating a new  
3 paragraph (vi) and by renumbering (vi) as (vii), 1-26-504  
4 by creating new subsections (c) and (d), 1-26-506(a)(i),  
5 (iii), by creating a new paragraph (iv) and by creating a  
6 new subsection (d), 1-26-509(b)(intro), (ii) and by  
7 creating new subsections (c) through (f), 1-26-510,  
8 1-26-511(a)(iii), 1-26-704(a) by creating a new paragraph  
9 (iii), 1-26-706(a)(iii), 1-26-801 by creating a new  
10 subsection (c), 15-1-103(a)(xxxv), 15-9-133(a) and (c) and  
11 16-7-103(a)(iv) are amended to read:

12

13           **1-26-502. Definitions.**

14

15           (a) As used in this act:

16

17                   (vi) "Public necessity" means reasonably  
18 convenient or useful to the public;

19

20                   ~~(vi)~~ (vii) "This act" means W.S. 1-26-501 through  
21 1-26-817.

22

23           **1-26-504. Requirements to exercise eminent domain.**

24

1       (c) Any private entity exercising its right of  
2 eminent domain under this article shall provide specific  
3 written notice by certified mail, return receipt requested,  
4 to all property owners of record at the time any material  
5 action is taken to obtain for the project any necessary  
6 federal or state permits, federal or state rights-of-ways,  
7 or absent federal or state actions affecting the project,  
8 at the earliest time possible as part of its responsibility  
9 to engage in good faith negotiations.

10  
11       (d) Any public entity exercising its right of eminent  
12 domain under this article shall provide specific written  
13 notice to all property owners of record that the project  
14 will traverse, by certified mail return receipt requested,  
15 at the time any public funds are expended to perform  
16 studies, surveys or other material actions that can  
17 potentially impact the private property owner.

18  
19       **1-26-506. Entry prior to condemnation action.**

20  
21       (a) A condemnor and its agents and employees may  
22 enter upon real property and make surveys, examinations,  
23 photographs, tests, soundings, borings and samplings, or  
24 engage in other activities for the purpose of appraising

1 the property or determining whether it is suitable and  
2 within the power of the condemnor to condemn if the entry  
3 is:

4  
5 (i) Preceded by prior notice to ~~and written~~  
6 ~~authorization from the owner or his agent~~ the condemnee  
7 specifying the particular activity to be undertaken and the  
8 proposed use and potential recipient of the data thereby  
9 obtained and the condemnee has been given fifteen (15) days  
10 to grant written authorization;

11  
12 (iii) Accomplished peaceably and without  
13 inflicting substantial injury ~~to~~ to land, crops,  
14 improvements, livestock or current business operations;

15  
16 (iv) Paid for by reasonable compensation, as  
17 established through good faith negotiations by both  
18 parties.

19  
20 (d) Subject to applicable confidentiality  
21 restrictions under federal or state law, the results of  
22 survey information acquired from the property sought  
23 related to threatened and endangered species, cultural

1 resources and archeological resources shall be made  
2 available to the condemnee upon request.

3  
4 **1-26-509. Negotiations; scope of efforts to purchase.**

5  
6 (b) In attempting to acquire the property by purchase  
7 under W.S. 1-26-510, the condemnor, acting within the scope  
8 of its powers and to the extent not otherwise forbidden by  
9 law, ~~may~~shall negotiate in good faith and may contract  
10 with respect to:

11  
12 (ii) The extent or nature of the property  
13 interest or other right to be acquired;

14  
15 (c) Proof of good faith negotiation shall require  
16 evidence that:

17  
18 (i) The condemnor gave notice to the condemnee  
19 of the proposed project, including a description of the  
20 public interest and necessity;

21  
22 (ii) Notice was given, to the condemnee of  
23 record at the time, as early in the development of the  
24 proposed project as a determination has been made to

1 acquire the property, but not less than sixty (60) days  
2 prior to commencement of a condemnation action.

3

4 (d) In addition to the standards of good faith set  
5 forth in subsections (b) and (c) of this section, a  
6 condemnor shall demonstrate its good faith by:

7

8 (i) Making an initial written offer at least  
9 sixty (60) days prior to commencing a condemnation action.

10 The offer shall include:

11

12 (A) A description of the general location  
13 and extent of the property sought, with sufficient detail  
14 for reasonable identification;

15

16 (B) An offer that, at the condemnee's  
17 request, a representative of the condemnor will tour the  
18 property sought with the condemnee or the condemnee's  
19 representative at a mutually agreeable time prior to the  
20 deadline for the condemnee's response to the written  
21 initial offer to discuss issues related to the property  
22 sought and the initial offer;

23



1                   (C) An estimate of the fair market value of  
2 the property sought and the general basis for such  
3 estimate;

4  
5                   (D) A discussion of the reclamation planned  
6 by the condemnor for the property disturbed by the  
7 condemnor's project;

8  
9                   (E) An offer to acquire the property  
10 sought, allowing the condemnee at least thirty (30) days  
11 from the date of the initial written offer to respond in  
12 writing; and

13  
14                   (F) A notice that the condemnee is under no  
15 obligation to accept the initial written offer, that the  
16 condemnor and the condemnee are obligated to negotiate in  
17 good faith for the purchase of the property sought, that  
18 formal legal proceedings may be initiated if negotiations  
19 fail and that the condemnee has a right to seek advice from  
20 an attorney, real estate appraiser, or any other person of  
21 his choice during the negotiations and any subsequent legal  
22 proceedings.

23

1           (ii) Sending by certified mail, return receipt  
2 requested, a notice of final offer at least fifteen (15)  
3 days prior to commencing a condemnation action.

4  
5           (e) A condemnee shall make reasonable and diligent  
6 efforts to negotiate in good faith with the condemnor  
7 including a timely written response to the written offer  
8 identified in subparagraph (d)(i)(E) of this section,  
9 specifying areas of disagreement.

10  
11           (f) At any time in the negotiation, at the request of  
12 either party and upon mutual agreement, dispute resolution  
13 processes including mediation or arbitration may be  
14 employed or the informal procedures for resolving disputes  
15 established pursuant to W.S. 11-41-101 through 11-41-110  
16 may be requested through the Wyoming agriculture and  
17 natural resource mediation board.

18  
19           **1-26-510. Preliminary efforts to purchase.**

20  
21           (a) Except as provided in W.S. 1-26-511, an action to  
22 condemn property may not be maintained over timely  
23 objection by the condemnee unless the condemnor made a good  
24 faith effort to acquire the property by purchase before

1 commencing the action. A condemnee may not object to the  
2 good faith of an offer by the condemnor if the condemnee  
3 has failed to respond to an initial written offer as  
4 provided in W.S. 1-26-509(d)(i)(E).

5  
6 (b) Negotiations conducted in substantial compliance  
7 with W.S. ~~1-26-509(b)(i) through (vi)~~ 1-26-509(b) through  
8 (d) are prima facie evidence of "good faith" by the  
9 condemnor under subsection (a) of this section.

10  
11 (c) The condemnor shall reimburse the condemnee for  
12 all litigation expenses if a court or jury finds the  
13 condemnor failed to negotiate in good faith or if the  
14 condemnor unilaterally dismisses the condemnation action  
15 prior to final judgment.

16  
17 **1-26-511. Purchase efforts waived or excused.**

18  
19 (a) A condemnor's failure or inability substantially  
20 to comply with W.S. 1-26-509 and 1-26-510 does not bar the  
21 maintenance of a condemnation action, notwithstanding  
22 timely objection, if:

23

1 (iii) Due to ~~conditions not caused by or under~~  
2 ~~the control of the condemner~~ an emergency affecting public  
3 health or safety, there is a compelling need to avoid the  
4 delay in commencing the action which compliance would  
5 require.

6  
7 **1-26-704. Fair market value defined.**

8  
9 (a) Except as provided in subsection (b) of this  
10 section:

11  
12 (iii) The determination of fair market value may  
13 include:

14  
15 (A) The value determined by a certified  
16 appraisal of the property;

17  
18 (B) The price paid for other comparable  
19 easements or leases of comparable type, size and location  
20 on the same property;

21  
22 (C) The amounts paid by the condemner for  
23 other portions of the proposed project of comparable type,  
24 size and location;

1

2 (D) Values paid for transactions of  
3 comparable type, size and location by other companies in  
4 arms length transactions for comparable transactions on the  
5 same property;

6

7 (E) The actual or reasonable net rental  
8 income attributable to the property when used for its  
9 highest and best use capitalized at fair and reasonable  
10 rates.

11

12 **1-26-706. Compensation to reflect project as planned.**

13

14 (a) If there is a partial taking of property, the  
15 fair market value of the remainder on the valuation date  
16 shall reflect increases or decreases in value caused by the  
17 proposed project including:

18

19 (iii) Any work to be performed under an  
20 agreement between the parties or pursuant to W.S. 1-26-714.

21

22 **1-26-801. Authority of state, counties and municipal**  
23 **corporations to acquire by condemnation proceedings;**  
24 **uranium mill tailings; public purpose.**

25

1       (c) For purposes of this article, "public purpose"  
2 means the possession, occupation and enjoyment of the land  
3 by the general public or by a public entity. "Public  
4 purpose" shall not include the taking of private property  
5 by a public entity for the purpose of transferring the  
6 property to another private individual or private entity.

7  
8       **15-1-103. General powers of governing bodies.**

9  
10       (a) The governing bodies of all cities and towns may:

11  
12               (xxxv) Exercise the power of eminent domain and  
13 take property for public use within and without the city  
14 limits for any necessary or authorized public purpose as  
15 defined by W.S. 1-26-801(c);

16  
17       **15-9-133. Exercise of powers; delegation and scope**  
18 **thereof; exceptions.**

19  
20       (a) A municipality may itself exercise its urban  
21 renewal powers as specified in this chapter, ~~or if the~~  
22 ~~local governing body by resolution determines it to be in~~  
23 ~~the public interest, may elect to have the urban renewal~~  
24 ~~agency created by W.S. 15-9-134 exercise the powers. If~~

1 ~~the local governing body authorizes the urban renewal~~  
2 ~~agency to exercise the powers, the agency is vested with~~  
3 ~~all of the urban renewal powers in the same manner as the~~  
4 ~~municipality except as provided in subsection (b) of this~~  
5 ~~section. If the local governing body does not authorize the~~  
6 ~~agency to exercise the urban renewal powers, the~~  
7 ~~municipality may exercise them through a board or~~  
8 ~~commission. The board or commission has all the powers of~~  
9 ~~an urban renewal agency or a board or commission.~~

10  
11 (c) A municipality, ~~by resolution, may~~ shall not  
12 delegate to an urban renewal agency or a board or  
13 commission, the power to acquire by condemnation real  
14 property within the boundaries of an urban renewal area.

15  
16 **16-7-103. Relocation payments to displaced persons.**

17  
18 (a) Whenever a program or project to be undertaken by  
19 a displacing agency will result in the displacement of any  
20 person, the displacing agency shall provide for the payment  
21 to the displaced person of:

22  
23 (iv) Actual reasonable expenses necessary to  
24 reestablish a displaced farm, nonprofit organization or

1 small business at its new site, in accordance with criteria  
2 to be established by the agency. ~~not to exceed ten thousand~~  
3 ~~dollars (\$10,000.00).~~

4

5 **Section 3.** This act is effective July 1, 2007.

6

7

(END)