

ENROLLED ACT NO. 81, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

AN ACT relating to eminent domain; establishing reclamation and restoration requirements; defining public purpose; requiring notice; requiring surveys to be provided to condemnee; providing measurements for good faith negotiations; providing for mediation or arbitration; providing for determinations for fair market value; providing a presumption; limiting condemnation authority in urban renewal; eliminating the maximum amount on relocation expenses; and providing for an effective date.

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

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

1-26-714. Reclamation and restoration.

(a) A condemnor who acquires a property right or interest of less than fee simple title in any land shall be responsible for reclamation on such land and for restoration of the land and any improvements thereon. The reclamation and restoration shall return the property and improvements to the condition existing prior to the condemnation to the extent that reasonably can be accomplished.

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

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

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

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

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

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

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

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

(v) Restoration and reclamation shall begin as soon as reasonably possible after completion of project construction, unless otherwise agreed to by the condemnor and the condemnee.

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

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Section 2. W.S. 1-26-504 by creating a new subsection (c), 1-26-506(a)(i), (iii) and by creating a new subsection (d), 1-26-509(b)(intro), (ii) and by creating new subsections (c) through (h), 1-26-510, 1-26-511(a)(iii), 1-26-704(a) by creating a new paragraph (iii) and by creating a new subsection (d), 1-26-706(a)(iii), 1-26-801 by creating new subsections (c) and (d), 15-1-103(a)(xxxv), 15-9-133(a) and (c) and 16-7-103(a)(iv) are amended to read:

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

(c) When a public entity determines that there is a reasonable probability of locating a particular public project on specifically identifiable private property and that the project is expected to be completed within two (2) years of that determination, the public entity shall provide written notice of the intention to consider the location and construction of the project to the owner as shown on the records of the county assessor. The notice shall include a description of the public interest and necessity of the proposed project. The public entity shall provide an opportunity for the private property owners to consult and confer with representatives of the public entity regarding the project.

1-26-506. Entry prior to condemnation action.

(a) A condemnor and its agents and employees may enter upon real property and make surveys, examinations, photographs, tests, soundings, borings and samplings, or engage in other activities for the purpose of appraising the property or determining whether it is suitable and within the power of the condemnor to condemn if the entry is:

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

(iii) Accomplished peaceably and without inflicting substantial injury to land, crops, improvements, livestock or current business operations.

(d) Subject to applicable confidentiality restrictions under federal or state law, the results of survey information acquired from the property sought related to threatened and endangered species, cultural resources and archeological resources shall be made available to the condemnee upon request.

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

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

(ii) The extent, term or nature of the property interest or other right to be acquired;

(c) Good faith negotiation shall include, but not be limited to, written notice of the following:

(i) To the extent reasonably known at the time, the proposed project, the land proposed to be condemned, plan of work, operations and facilities in a manner sufficient to enable the condemnee to evaluate the effect

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of the proposed project, plan of work, operations and facilities on the condemnee's use of the land;

(ii) The name, address, telephone number and, if available, facsimile number and electronic mail address of the condemnor and his designee, if any;

(iii) An initial written settlement offer that shall include:

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

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

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

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

(E) An offer to acquire the property sought, allowing the condemnee up to sixty-five (65) days from the date the initial written offer was sent via certified mail to respond or make a counter-offer in writing; and

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(F) A written notice that the condemnee is under no obligation to accept the initial written offer but if the condemnee fails to respond to the initial written offer the right to object to the good faith of the condemnor may be waived under W.S. 1-26-510(a), that the condemnor and the condemnee are obligated to negotiate in good faith for the purchase of the property sought, that formal legal proceedings may be initiated if negotiations fail and that the condemnee has a right to seek advice from an attorney, real estate appraiser, or any other person of his choice during the negotiations and any subsequent legal proceedings.

(iv) A written response from the condemnor to any counter-offer made in writing by the condemnee to the initial written offer pursuant to subparagraph (iii)(E) of this subsection.

(d) The written notice required under subsection (c) of this section shall be given to the condemnee of record as shown on the records in the county assessor's office at the time, no less than ninety (90) days prior to commencement of a condemnation action.

(e) The condemnor shall send by certified mail, return receipt requested, a notice of final offer at least fifteen (15) days prior to commencing a condemnation action.

(f) A condemnee shall make reasonable and diligent efforts to negotiate in good faith with the condemnor including a timely written response to the written offer identified in subparagraph (c)(iii)(E) of this section, specifying areas of disagreement.

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(g) The condemnor shall reimburse the condemnee for all reasonable litigation expenses if a court finds the condemnor failed to negotiate in good faith as required under subsections (b) through (e) of this section or to comply with W.S. 1-26-504(a)(ii) and (iii).

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

1-26-510. Preliminary efforts to purchase.

(a) Except as provided in W.S. 1-26-511, an action to condemn property may not be maintained over timely objection by the condemnee unless the condemnor made a good faith effort to acquire the property by purchase before commencing the action. A condemnee may not object to the good faith of the condemnor if the condemnee has failed to respond to an initial written offer as provided in W.S. 1-26-509(c)(iii)(E) and the condemnor has met the requirements of W.S. 1-26-509(c).

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

1-26-511. Purchase efforts waived or excused.

(a) A condemnor's failure or inability substantially to comply with W.S. 1-26-509 and 1-26-510 does not bar the

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maintenance of a condemnation action, notwithstanding timely objection, if:

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

1-26-704. Fair market value defined.

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

(iii) The determination of fair market value shall use generally accepted appraisal techniques and may include:

(A) The value determined by appraisal of the property performed by a certified appraiser;

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

(C) Values paid for transactions of comparable type, size and location by other companies in arms length transactions for comparable transactions on the same or similar property.

(d) In determining fair market value under this section, no terms or conditions of an agreement containing a confidentiality provision shall be required to be disclosed unless the release of such information is compelled by lawful discovery, upon a finding that the information sought is relevant to a claim or defense of any

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party in the eminent domain action. The court shall ensure that any such information required to be disclosed remains confidential. The provision of this subsection shall not apply if the information is contained in a document recorded in the county clerk's office or has otherwise been made public.

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

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

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

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

(c) As used in and for purposes of this section only, "public purpose" means the possession, occupation and enjoyment of the land by a public entity. "Public purpose" shall not include the taking of private property by a public entity for the purpose of transferring the property to another private individual or private entity except in the case of condemnation for the purpose of protecting the public health and safety, in which event the public entity may transfer the condemned property for value to a private individual or entity. However, nothing in this section shall restrict or impair the right or authority of the Wyoming pipeline authority or the Wyoming infrastructure authority to transfer property condemned by the authority to another public or private entity insofar as the transfer is consistent with the statutory purposes or duties of:

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(i) The Wyoming pipeline authority acting pursuant to W.S. 37-5-102, as to pipelines as defined in W.S. 37-5-202(a)(iv); or

(ii) The Wyoming infrastructure authority acting pursuant to W.S. 37-5-303, as to facilities as defined in W.S. 37-5-302(a)(iii).

(d) If a public entity acquires property in fee simple title under this chapter but fails to make substantial use of the property for a period of ten (10) years, there is a presumption that the property is no longer needed for a public purpose and the previous owner or his successor may apply to the court to request that the property be returned to the previous owner or his successor upon repayment of the amount originally received for the property in the condemnation action. A public entity may rebut the presumption created under this subsection by showing good cause for the delay in using the property.

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 by W.S. 1-26-801(c);

15-9-133. Exercise of powers; delegation and scope thereof; exceptions.

(a) A municipality may itself exercise its urban renewal powers as specified in this chapter, ~~or if the local governing body by resolution determines it to be in~~

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~~the public interest, may elect to have the urban renewal agency created by W.S. 15-9-134 exercise the powers. If the local governing body authorizes the urban renewal agency to exercise the powers, the agency is vested with all of the urban renewal powers in the same manner as the municipality except as provided in subsection (b) of this section. If the local governing body does not authorize the agency to exercise the urban renewal powers, the municipality may exercise them through a board or commission. The board or commission has all the powers of an urban renewal agency or a board or commission.~~

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

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

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

(iv) Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria to be established by the agency. ~~not to exceed ten thousand dollars (\$10,000.00).~~

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk