

HOUSE BILL NO. HB0124

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 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:

1 (iii) Due to ~~conditions not caused by or under~~
2 ~~the control of the condemnor~~ 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 condemnor 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~~

~~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

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)