

WYOMING STATUTES  
TITLE ONE  
CHAPTER 26 - EMINENT DOMAIN

(Articles 1-4 repealed.)

ARTICLE 5 - GENERALLY

1-26-501. Short title.

(a) This act shall be cited as the "Wyoming Eminent Domain Act".

(b) Except as otherwise specifically provided by statute, the power of eminent domain may be exercised only as provided by this act and the Wyoming Rules of Civil Procedure to the extent the Rules of Civil Procedure do not conflict with this act.

1-26-502. Definitions.

(a) As used in this act:

(i) "Condemn" means to take property under the power of eminent domain;

(ii) "Condemnee" means a person who has or claims an interest in property that is the subject of a prospective or pending condemnation action;

(iii) "Condemnor" means a person empowered to condemn;

(iv) "Litigation expenses" means the reasonable costs, disbursements and expenses, including attorney, appraisal and engineering fees, associated with a condemnation proceeding;

(v) "Public entity" means the state of Wyoming and its agencies, municipalities, counties, school districts, political subdivisions and special districts;

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

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

(a) Nothing in this act requires that the power of eminent domain be exercised to acquire property. Whether property necessary for public use is to be acquired by purchase, other means or by eminent domain is a decision left to the discretion of the person authorized to acquire the property.

(b) Subject to any other statute relating to the acquisition of property, any person or public entity authorized to acquire property for a particular use by eminent domain may also acquire the property for the use by grant, purchase, lease, gift, devise, contract or other means.

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

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

(i) The public interest and necessity require the project or the use of eminent domain is authorized by the Wyoming Constitution;

(ii) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and

(iii) The property sought to be acquired is necessary for the project.

(b) Findings of the public service commission, the interstate commerce commission and other federal and state agencies with appropriate jurisdiction are prima facie valid relative to determinations under subsection (a) of this section if the findings were made in accordance with law with notice to condemnees who are parties to the condemnation action and are final with no appeals from the determinations pending.

1-26-505. Condemnation of property devoted to a public use.

(a) If a proposed use cannot be obtained under W.S. 1-26-813, any condemnor may exercise the power of eminent domain to acquire property appropriated to public use if the proposed use will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future. The burden of proving that a proposed use will not unreasonably interfere with or impair the continuance of the existing public use is on the prospective condemnor.

(b) Where property is taken under subsection (a) of this section, the parties shall attempt to make an agreement determining the conditions upon which the property is taken and the manner and extent of its use by each of the parties. Except as otherwise provided by law, if the parties are unable to agree, the court shall fix the terms and conditions upon which the property is taken and the manner and extent of its use by each of the parties.

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:

(i) Preceded by prior notice to and written authorization from the owner or his agent;

(ii) Undertaken during reasonable hours, normally during daylight;

(iii) Accomplished peaceably and without inflicting substantial injury.

(b) The entry and activities authorized by this section do not constitute a trespass.

(c) The condemnor is liable under W.S. 1-26-508 for damages resulting from activities authorized by this section.

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

(a) If reasonable efforts to accomplish a lawful entry or to perform authorized activities upon real property under W.S. 1-26-506 have been obstructed or denied the condemnor may apply to the district court for an order permitting entry.

(b) Unless after notice and hearing good cause to the contrary is shown, the court shall make its order permitting and describing the purpose of the entry and setting forth the nature and scope of activities the court determines are reasonably necessary and authorized to be made upon the property. In addition to requiring a deposit under subsection (c) of this section, the order shall include terms and conditions with respect to the time, place and manner of entry and authorized activities upon the property which will facilitate the purpose of the entry and minimize damage, hardship and burden to the parties.

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

(d) After notice and hearing the court may modify an order under subsection (c) of this section. If a deposit is required or the amount required to be deposited is increased by an order of modification, the court shall specify the time within which the required amount must be deposited and may direct that any further entry or specified activities or studies under the order modified be stayed until the required deposit has been made.

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

(a) A condemnor is liable for physical injury to, and for substantial interference with possession or use of, property caused by his entry and activities upon the property.

This liability may be enforced in a civil action against the condemnor or by application to the court as provided by subsection (c) of this section unless voluntarily paid by the condemnor.

(b) In an action or other proceeding for recovery of damages under this section, the prevailing party shall be allowed his costs. In addition, the court shall award the condemnee his litigation expenses incurred in any proceeding under W.S. 1-26-507 if it finds that the condemnor:

(i) Entered the property unlawfully;

(ii) Entered upon the property lawfully but thereafter engaged in activities upon the property which caused significant damage to the property not reasonably necessary to the purposes of the entry; or

(iii) Failed substantially to comply with an order made under W.S. 1-26-507.

(c) If funds are on deposit under W.S. 1-26-507, the owner or other person entitled to damages under subsection (a) of this section may apply to the court for an award of the amount he is entitled to recover. The court shall determine the amount and award it to the person entitled thereto and direct that its payment be made out of the money on deposit. If the amount on deposit is insufficient to pay the full amount, the court shall enter judgment against the condemnor for the unpaid portion.

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

(a) A condemnor shall make reasonable and diligent efforts to acquire property by good faith negotiation.

(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 negotiate and contract with respect to:

(i) Any element of valuation or damages recognized by law as relevant to the amount of just compensation payable for the property;

(ii) The extent or nature of the property interest to be acquired;

(iii) The quantity, location or boundary of the property;

(iv) The acquisition, removal, relocation or disposition of improvements upon the property and of personal property not sought to be taken;

(v) The date of proposed entry and physical dispossession;

(vi) The time and method of payment of agreed compensation or other

amounts authorized by law; and

(vii) Any other terms or conditions deemed appropriate by either of the parties.

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.

(b) Negotiations conducted in substantial compliance with W.S. 1-26-509(b)(i) through (vi) are prima facie evidence of "good faith" 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 maintenance of a condemnation action, notwithstanding timely objection, if:

(i) Compliance is waived by written agreement between the property owner and the condemnor;

(ii) One (1) or more of the owners of the property is unknown, cannot with reasonable diligence be contacted, is incapable of contracting and has no legal representative, or owns an interest which cannot be acquired by contract; or

(iii) Due to conditions not caused by or under the control of the condemnor, there is a compelling need to avoid the delay in commencing the action which compliance would require.

1-26-512. Contents of authorization.

(a) A public entity may not commence a condemnation action until it has first adopted a written resolution in substantial conformity with this section, authorizing commencement and prosecution of the action. The authorization may be amended or rescinded at any time before or after commencement of the condemnation action but if rescinded the public entity shall pay the litigation expenses of the condemnee.

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

(i) A general statement of the proposed public use for which the property is to be taken and a reference to the specific statute that authorizes the taking of the property by the condemnor;

(ii) A description of the general location and extent of the property to be taken, with sufficient detail for reasonable identification; and

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

1-26-513. Deposit at commencement of action.

(a) At the time of commencing an eminent domain proceeding the condemnor shall deposit in court an amount equal to the condemnor's last offer of settlement prior to the action. Upon motion of the condemnee and following a hearing if the amount originally deposited is clearly inadequate, the court shall order the condemnor to make an additional deposit. The clerk of court shall invest the deposit in any legal interest bearing investment and interest earnings shall accrue to the account of the condemnor.

(b) The court may waive the requirement of a deposit for a public entity if the public entity is financially or legally unable to post the deposit but the public entity may not obtain possession of the property prior to judgment until the appropriate deposit is made.

(c) The condemnee may withdraw any portion of the deposit prior to final judgment which the court determines is not subject to claims of mortgagees and other claimants. The amount withdrawn constitutes a lien against the property of the condemnee and the condemnee is liable to the condemnor for any amount withdrawn which exceeds the final judgment in the action. If the condemnee withdraws any portion of the deposit prior to judgment, he waives all defenses to the action except the right to contest the amount to be awarded and the condemnor is entitled to immediate possession of the property subject to the court's determination of a reasonable period during which the condemnee can remove improvements and take other actions authorized by the court.

1-26-514. Interest taken; due compensation.

(a) In the case of public entities the court may grant an easement or fee simple title to the public entity if necessary for the purpose for which the land was condemned. In cases not involving public entities, following determination of due compensation the court shall enter an order granting an easement to the condemnor which shall not include any claim, interest or property in or to the underlying minerals or mineral estate except for subsurface support.

(b) The court in determining due compensation may authorize a lump-sum payment or an annual installment or amortization payment to continue throughout the term of the easement.

1-26-515. Abandonment, nonuse or new use.

Upon abandonment, nonuse for a period of ten (10) years, or transfer or attempted

transfer to a use where the transferee could not have condemned for the new use, or where the new use is not identical to the original use and new damages to the landowner whose property was condemned for the original use will occur, any easement authorized under this act terminates.

1-26-516. Action for inverse condemnation.

When a person possessing the power of condemnation takes possession of or damages land in which he has no interest, or substantially diminishes the use or value of land, due to activities on adjoining land without the authorization of the owner of the land or before filing an action of condemnation, the owner of the land may file an action in district court seeking damages for the taking or damage and shall be granted litigation expenses if damages are awarded to the owner.

#### ARTICLE 6 - INFORMAL PROCEDURE FOR DISPUTES INVOLVING LIMITED AMOUNTS

1-26-601. Informal claims procedure authorized.

This article applies whenever only the amount of compensation is in dispute and the total compensation demanded by any condemnee is less than twenty thousand dollars (\$20,000.00), excluding interest and costs, or the difference between the latest offer of the condemnor and the latest demand by any condemnee is less than five thousand dollars (\$5,000.00). The supreme court may adopt rules governing proceedings under this article.

1-26-602. Request for informal procedure.

A party may file with the court a written request that the issue of the amount of compensation be determined under this article, identifying the property and setting forth the amount of the condemnor's latest offer and the condemnee's latest demand for compensation.

1-26-603. Hearing.

(a) If the court determines that the request should be granted, it shall hold a hearing upon reasonable notice to the parties to determine compensation.

(b) The court shall proceed without a jury and in an informal manner. The parties may present oral and documentary proof and may argue in support of their respective positions but the rules of evidence need not be followed. Neither party is required to offer the opinion of an expert or to be represented by an attorney. Unless demanded by a party and at his own expense, a record of testimony received at the hearing need not be kept.

(c) Costs shall be claimed and taxed as in other condemnation actions. Upon entry of judgment, the clerk shall serve upon the parties a copy of the judgment with notice of its entry, together with instructions as to the procedure for demanding a retrial.

1-26-604. Demand for retrial.

(a) Either party, within thirty (30) days after entry of the judgment, may reject the judgment and file a written demand for trial. The action shall be restored to the docket of the court as though proceedings under this article had not occurred.

(b) If the condemnor files a demand under subsection (a) of this section and ultimately obtains a judgment no more favorable to him, the court may require him to pay, in addition to costs, the condemnee's litigation expenses incurred after the demand was filed.

## ARTICLE 7 - COMPENSATION

1-26-701. Compensation standards.

(a) An owner of property or an interest in property taken by eminent domain is entitled to compensation determined under the standards prescribed by W.S. 1-26-701 through 1-26-713.

(b) Unless otherwise provided by law, the right to compensation accrues upon the date of possession by the condemnor.

(c) Except as specifically provided by W.S. 1-26-701 through 1-26-713, compensation, damages, or other relief to which a person is otherwise entitled under this act or other law are not affected, but duplication of payment is not permitted.

1-26-702. Compensation for taking.

(a) Except as provided in subsection (b) of this section, the measure of compensation for a taking of property is its fair market value determined under W.S. 1-26-704 as of the date of valuation.

(b) If there is a partial taking of property, the measure of compensation is the greater of the value of the property rights taken or the amount by which the fair market value of the entire property immediately before the taking exceeds the fair market value of the remainder immediately after the taking.

1-26-703. Date of valuation.

The date of valuation is the date upon which the condemnation action was commenced.

1-26-704. Fair market value defined.

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



(i) The fair market value of property for which there is a relevant market is the price which would be agreed to by an informed seller who is willing but not obligated to sell, and an informed buyer who is willing but not obligated to buy;

(ii) The fair market value of property for which there is no relevant market is its value as determined by any method of valuation that is just and equitable.

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

(i) The property is devoted to and is needed by the owner in order to continue in good faith its actual use to perform a public function, or to render nonprofit educational, religious, charitable or eleemosynary services; and

(ii) The facilities or services are available to the general public.

(c) The cost of functional replacement under subsection (b) of this section includes:

(i) The cost of a functionally equivalent site;

(ii) The cost of relocating and rehabilitating improvements taken, or if relocation and rehabilitation is impracticable, the cost of providing improvements of substantially comparable character and of the same or equal utility; and

(iii) The cost of betterments and enlargements required by law or by current construction and utilization standards for similar facilities.

#### 1-26-705. Effect of condemnation action on value.

(a) The fair market value of the property taken, or of the entire property if there is a partial taking, does not include an increase or decrease in value before the date of valuation that is caused by:

(i) The proposed improvement or project for which the property is taken;

(ii) The reasonable likelihood that the property would be acquired for that improvement or project; or

(iii) The condemnation action in which the property is taken.

(b) If, before completion of the project as originally adopted, the project is expanded or changed to require the taking of additional property, the fair market value of the additional property does not include a decrease in value before the date of valuation, but does include an increase in value before the date on which it became reasonably

likely that the expansion or change in the scope of the project would occur, if the decrease or increase is caused by any of the factors described in subsection (a) of this section.

(c) Notwithstanding subsections (a) and (b) of this section, a decrease in value before the date of valuation which is caused by physical deterioration of the property within the reasonable control of the property owner, and by his unjustified neglect, may be considered in determining fair market value.

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:

(i) Impairment of the use of his other property caused by the condemnation;  
and

(ii) The increase in damage to his property by the general public which could reasonably be expected to occur as a result of the proposed actions of the condemnor;

(iii) Any work to be performed under an agreement between the parties.

1-26-707. Special assessment proceedings excluded.

If there is a partial taking of property and special assessments or charges are imposed upon the remainder to pay for all or part of the project, the increase in value of the remainder, if any, caused by the project shall be considered in determining its value after the partial taking only to the extent the increase exceeds the amount of the special assessments or charges.

1-26-708. Use by defendant; risk of loss.

(a) Unless the court otherwise directs, the condemnee may use the property sought to be taken for any lawful purpose before the date on which the condemnor is authorized to take possession.

(b) Thereafter, the condemnee may use the property only for any purpose or use which is not inconsistent with the estate taken by the condemnor. The uses authorized by subsection (a) of this section include any normal work on the property and the planting, cultivation and removal of crops.

(c) The compensation awarded the condemnee shall include an amount sufficient to compensate for loss caused by any temporary restriction or limitation imposed by the court upon his right to use the property under subsection (a) of this section.

1-26-709. Compensation for growing crops and improvements.

(a) The compensation for crops growing on the property on the date of valuation is the higher of the current fair market value of the crops in place, assuming the right to bring them to maturity and to harvest them, or the amount by which the existence of the crops enhances the fair market value of the property.

(b) The compensation for an interest in improvements is the higher of the fair market value of the improvements, assuming their immediate removal from the property, or the amount by which the existence of the improvements enhances the fair market value of the property.

(c) If improvements are destroyed, removed or damaged by the condemnee after the date of valuation, the amount of compensation shall be adjusted to reflect the extent to which the fair market value of the property has thereby been reduced.

(d) Crops or improvements that are first placed upon the property after the date of valuation shall be excluded from consideration in determining the amount of the award, except that the award shall be adjusted to include the reasonable and necessary cost of providing improvements required by law and improvements necessary to protect life or property as authorized by the court.

1-26-710. Compensation for divided interests.

The amount of compensation for the taking of property in which divided interests exist is based upon the fair market value of the property considered as a whole.

1-26-711. Taking of leasehold interest.

(a) If all or part of the property taken includes a leasehold interest, the effect of the condemnation action upon the rights and obligations of the parties to the lease is governed by the provisions of the lease, and in the absence of applicable provisions in the lease, by this section.

(b) If there is a partial taking and the part of the property taken includes a leasehold interest that extends to the remainder, the court may determine that:

(i) The lease terminates as to the part of the property taken but remains in force as to the remainder, in which case the rent reserved in the lease is extinguished to the extent it is affected by the taking; or

(ii) The lease terminates as to both the part taken and the remainder, if the part taken is essential to the purposes of the lease or the remainder is no longer suitable for the purpose of the lease.

(c) The termination or partial termination of a lease under this section shall occur

at the earlier of the date on which, under an order of the court, the condemnor is permitted to take possession of the property, or the date on which title to the property is transferred to the condemnor.

(d) This section does not affect or impair a lessee's right to compensation if his leasehold interest is taken in whole or in part.

#### 1-26-712. Acquisition of property subject to lien.

Notwithstanding the provisions of an agreement, if any, relating to a lien encumbering the property neither the condemnor nor condemnee is liable to the lienholder for any penalty for prepayment of the debt secured by the lien, and the amount awarded by the judgment to the lienholder shall not include any penalty therefor.

#### 1-26-713. Loss of goodwill.

(a) In addition to fair market value determined under W.S. 1-26-704, the owner of a business conducted on the property taken, or on the remainder if there is a partial taking, shall be compensated for loss of goodwill only if the owner proves that the loss:

(i) Is caused by the taking of the property or the injury to the remainder;

(ii) Cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill;

(iii) Will not be included in relocation payments under W.S. 16-7-101 through 16-7-121; and

(iv) Will not be duplicated in the compensation awarded to the owner.

(b) Within the meaning of this section, "goodwill" consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality and any other circumstances resulting in probable retention of old or acquisition of new patronage.

### ARTICLE 8 - POWER OF EMINENT DOMAIN GRANTED

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

(a) The state or any county or municipal corporation may purchase or acquire by condemnation any real estate including streets, alleys or public highways, as sites for public buildings or for any other necessary public purpose. Proceedings in condemnation shall be conducted in the name of the state, county or municipal corporation and by the attorney general when for the state, the county attorney when for the county and the

municipal attorney when for a municipal corporation.

(b) In carrying out responsibilities under P.L. 95-604, the state may purchase or acquire by condemnation any real estate or radioactive materials if determined necessary to stabilize and control uranium mill tailings in a safe and environmentally sound manner. Proceedings in condemnation shall be as provided by this act.

1-26-802. Proceedings by water companies and incorporated cities or towns.

Any water company or incorporated city or town of this state may acquire by purchase, grant or condemnation any land, real estate, claim, easement or right-of-way required for or that may be affected by the construction, operation or maintenance of any waterworks.

1-26-803. Municipal streets and alleys; utility mains or pipes; tax levy.

Any incorporated city or town in Wyoming may use or authorize the use of its streets and alleys by others, and may obtain by purchase, grant or condemnation in the manner provided by law all necessary lands for the construction, laying and operating of mains or pipes for sewers, gas or water for the use of the cities and towns, and for that purpose to have the power to levy a tax within the constitutional limits upon all personal and real property within the corporate limits of the cities and towns.

1-26-804. Acquisition of public utility plants by cities and towns.

Any incorporated city or town of this state may acquire by condemnation, purchase or gift the franchise and the plant, facilities, equipment and property of any person or entity owning or operating in the city or town a franchise and plant, facilities, equipment or other property used or intended for the purpose of supplying or furnishing to the public of the city or town any public utility service mentioned in W.S. 1-26-805.

1-26-805. Acquisition of public utility plants by cities and towns; definition of facilities which may be acquired.

For the purposes of W.S. 1-26-804 through 1-26-809 "public utility service" means and includes communication or transmission of intelligence or messages by telephone service; electricity for light, heat, power and like purposes; natural or artificial gas for heat, light, power and like purposes; steam for heat, power and like purposes; or water for municipal, domestic, agricultural, irrigation, manufacturing and like purposes, including surface water drainage in accordance with W.S. 16-10-103.

1-26-806. Acquisition of public utility plants by cities and towns; purpose of acquisition; ownership or operation.

The purpose for which the franchise and plant, facilities, equipment or other property may be acquired is for municipal ownership or operation of the business by the city or town, which right is hereby given to any incorporated city or town.

1-26-807. Acquisition of other property for public utility service.

Any incorporated city or town of this state has the further right to acquire by condemnation, purchase or gift any real estate or other property, public or private, whether within or outside the corporate limits of the city or town, for rights-of-way, sites, buildings or other purposes connected with or necessary to carry on the business of municipal ownership or operation of any public utility service, or to secure outside connections for any public utility service.

1-26-808. Election in cities and towns on question of acquisition.

No city or town shall acquire the franchise or the plant, facilities, equipment or other property of any person or entity for the purpose of supplying or furnishing to the public of the city or town any public utility service unless authorized at an election. The election shall be held as provided by law for the submission of a bond issue under the Political Subdivision Bond Election Law, W.S. 22-21-101 through 22-21-112.

1-26-809. Determination of value of franchise to be acquired.

In determining the value of the franchise, consideration shall be given to the total amount paid for the franchise for the entire term of the franchise and deductions made proportioned on the unexpired term of the franchise.

1-26-810. Powers of railroad companies relative to condemnation generally.

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

(i) Exercise the power of eminent domain to acquire rights-of-way for railroad tracks and easements for offices, depots and other appurtenant facilities related directly to the operation of the railroad;

(ii) Take, hold and appropriate a right-of-way over adjacent lands sufficient to enable the corporation to construct and repair its road upon the line of its location or relocation thereof; and

(iii) Acquire a right to conduct water by aqueducts and to make appropriate drains.

(b) Any land taken, appropriated and held otherwise than by the consent of the owner shall not exceed two hundred (200) feet in width unless greater width is necessary for excavations, embankments, depositing waste earth or for construction of other appurtenant facilities necessary for the operation of the railroad.

1-26-811. Crossing public highways; privileges and duties.

(a) A railroad company may raise or lower any county road or other public highway for the purpose of having its railroad pass over or under the road or highway. Repair or reconstruction of roads or highways shall be expeditiously completed.

(b) While engaged in raising or lowering any county road or other public highway or in making any other alteration which may obstruct the public way, a railroad company shall provide and maintain suitable temporary ways to enable travelers to avoid or pass obstructions.

1-26-812. Constructing, maintaining, abandoning or closing crossings.

(a) When any person owns land on both sides of any railroad, the company owning the railroad shall construct and maintain reasonably adequate means of crossing the railroad.

(b) No railroad shall abandon, close or fail to maintain any public highway crossing unless in accordance with the provisions of W.S. 37-10-102.

(c) No railroad shall abandon, close or fail to maintain any other existing crossing which has been maintained or recognized by the railroad for more than five (5) years prior to the effective date of this act without:

(i) Providing written notice of its intended action to every person owning lands adjacent to the crossing;

(ii) Advertising its intended action in a newspaper of general circulation in the county of the crossing; and

(iii) No sooner than three (3) weeks after providing the notice required, holding a meeting open to all persons at which it shall explain and at which persons shall be permitted to express their views on the intended action.

(d) Any railroad violating subsection (c) of this section shall not be entitled to assert any of the powers provided by W.S. 1-26-810 over any lands which are part of or are adjacent to the crossing, until the railroad has reconstructed the crossing abandoned, closed or not maintained in violation of subsection (c) of this section.

(e) In any action involving the abandonment, closing or maintenance of a railroad crossing which has been maintained or recognized by the railroad for more than five (5) years prior to the effective date of this act, the railroad shall not be entitled to assert any of the powers provided by W.S. 1-26-810 over any lands which are part of or are adjacent to the crossing unless the railroad establishes by a preponderance of the evidence:

(i) The closing or abandonment of the crossing is justified by either financial or safety considerations;

(ii) There exists reasonable alternative means of access to all property served by the crossing; and

(iii) That it has complied with the provisions of this section and the Wyoming Eminent Domain Act.

(f) Nothing in this section shall be construed as limiting or prohibiting any person from maintaining any other action at law for a railroad's failure to maintain a crossing, or abandonment or closing of a crossing.

1-26-813. Right-of-way along public ways granted; permission necessary for new lines.

Corporations authorized to do business in this state for the purpose of constructing, maintaining and operating a public utility may set their fixtures and facilities along, across or under any of the public roads, streets and waters of this state in such manner as not to inconvenience the public in their use. Any public utility desiring to install its facilities in any city shall first attempt to obtain consent from the city council. A person shall first obtain permission from the state transportation commission or the board of county commissioners in the county where the construction is contemplated before entering upon any state highway or county road for the purpose of commencing the construction.

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

Whenever any utility or any petroleum or other pipeline company, authorized to do business in this state, has not acquired by gift or purchase any land, real estate or claim required for the construction, maintenance and operation of their facilities and appurtenances or which may be affected by any operation connected with the construction or maintenance of the same, the utility or company has the right of eminent domain and may condemn the easement required by the utility or company.

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

(a) Any person, association, company or corporation authorized to do business in this state may appropriate by condemnation a way of necessity over, across or on so much of the lands or real property of others as necessary for the location, construction, maintenance and use of reservoirs, drains, flumes, ditches including return flow and wastewater ditches, underground water pipelines, pumping stations and other necessary appurtenances, canals, electric power transmission lines and distribution systems, railroad trackage, sidings, spur tracks, tramways, roads or mine truck haul roads required in the



course of their business for agricultural, mining, exploration drilling and production of oil and gas, milling, electric power transmission and distribution, domestic, municipal or sanitary purposes, or for the transportation of coal from any coal mine or railroad line or for the transportation of oil and gas from any well.

(b) The right of condemnation may be exercised for the purpose of:

(i) Acquiring, enlarging or relocating ways of necessity; and

(ii) Acquiring easements or rights-of-way over adjacent lands sufficient to enable the owner of the way of necessity to construct, repair, maintain and use the structures, roads or facilities for which the way of necessity is acquired.

(c) A way of necessity acquired hereunder shall not exceed one hundred (100) feet in width on each side of the outer sides or marginal lines of the reservoir, drain, ditch, underground water pipeline, canal, flume, power transmission line or distribution system, railroad trackage, siding or tramway unless a greater width is necessary for excavation, embankment or deposit of waste from excavation. In no case may the area appropriated exceed that actually necessary for the purpose of use for which a way of necessity is authorized.

1-26-816. Condemnation and certificate of public necessity and convenience.

No person shall institute a condemnation proceeding relating to any facility for which a certificate of public necessity and convenience is required until the certificate has been issued.

1-26-817. Reservation of right to establish crossings.

Any condemnation order entered shall in all cases reserve to the owner or occupant of any real property through, over or across which any right-of-way is acquired the right to establish suitable crossings connecting his or their lands on either side of the right-of-way, at any point or points which may be selected by the owner or occupant. The ditch, canal, drain, flume or other irrigation works shall be protected at the crossings by the construction and maintenance of a suitable bridge or viaduct at the expense of the owner or occupant.