

**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:

24

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.**

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6

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

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

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

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

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

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

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

(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.

24



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.**

23

24

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;

24

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;

23

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;

1

2 (ii) Simplify federal or state permitting; or

3

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

6

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

11

12 **15-1-103. General powers of governing bodies.**

13

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

15

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

20

21 **24-9-101. Petition; initial hearing; appointment of**  
22 **viewers and appraisers; bond; rules.**

23



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)**