

**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.

3

4 (b) The condemnor shall reimburse the condemnee for  
5 all negotiation, litigation and appellate expenses,  
6 including appraisals, reasonable attorney fees and costs,  
7 if:

8

9 (i) The ultimate court or jury award for the  
10 taking exceeds the last written offer given by the  
11 condemnor to the condemnee prior to filing the condemnation  
12 action;

13

14 (ii) The condemnor fails to negotiate in good  
15 faith; or

16

17 (iii) The condemnor dismisses the condemnation  
18 action prior to final judgment.

19

20 **1-26-714. Compensation for disruption of operation;**  
21 **restoration; weed control.**

22

1           (a) The condemnor shall pay the condemnee a sum of  
2 money or other compensation equal to the amount of damages  
3 sustained by the condemnee for:

4

5           (i) Damages caused by the disruption of the land  
6 management operation;

7

8           (ii) The cost of restoration of the surface  
9 affected by the condemnor's operations, as closely as  
10 reasonably practicable, to the condition that existed prior  
11 to the condemnor's operations, or as otherwise agreed to in  
12 writing by the condemnor and condemnee, including:

13

14           (A) The cost of surface restoration;

15

16           (B) The cost of reseeding and establishing  
17 native vegetation on the project area and land disturbed by  
18 the condemnor's operations;

19

20           (C) The cost of weed control on the project  
21 area and land disturbed by the condemnor's operations.

22

23           **Section 2.** W.S. 1-26-502(a) by creating a new  
24 paragraph (vi) and by renumbering (vi) as (vii), 1-26-503

1 by creating new subsections (c) and (d), 1-26-504  
2 (a)(intro), (ii), (b) and by creating new subsections (c)  
3 through (e), 1-26-505 by creating a new subsection (c),  
4 1-26-506(a)(intro) and by creating new subsections (c)  
5 through (h) and by renumbering (c) as (j), 1-26-507(c),  
6 1-26-508(a) and (b)(intro), 1-26-509 by creating new  
7 subsections (c) through (h), 1-26-510(b), 1-26-512(a) and  
8 (b)(iii) and by creating a new paragraph (iv), 1-26-515,  
9 1-26-701 by creating new subsections (d) through (f),  
10 1-26-702, 1-26-704(a) by creating a new paragraph (iii) and  
11 (b)(intro), 1-26-709(a) and (b), 1-26-810(a)(i), 1-26-814,  
12 1-26-815 by creating new subsections (d) and (e),  
13 15-1-103(a)(xxxv), 24-9-101(a) and 37-1-101(a) by creating  
14 a new paragraph (vii) are amended to read:

15

16 **1-26-502. Definitions.**

17

18 (a) As used in this act:

19

20 (vi) "Public use" means the possession,  
21 occupation and enjoyment of the land by the general public  
22 or by a public entity. "Public use" shall not include the  
23 taking of private property by a governmental entity for the

1 benefit of another private individual or private entity nor  
2 shall it include lands acquired primarily for:

3

4 (A) Economic development;

5

6 (B) Industrial development;

7

8 (C) An increase to the tax base;

9

10 (D) An increase to tax revenues;

11

12 (E) An increase in employment;

13

14 (F) An increase in general economic health.

15

16 ~~(vi)~~ (vii) "This act" means W.S. 1-26-501 through  
17 1-26-817.

18

19 **1-26-503. Public use required; other acquisitions.**

20

21 (c) Public interest and necessity for purposes of  
22 eminent domain shall be determined by the appropriate  
23 public entity.

24

1       (d) The condemnation of property by a private person  
2 or entity shall require the condemnor to prove any issues  
3 by clear and convincing evidence.

4  
5       **1-26-504. Requirements to exercise eminent domain.**

6  
7       (a) Except as otherwise provided by law, the power of  
8 eminent domain may be exercised to acquire property for a  
9 ~~proposed~~public use only if all of the following are  
10 established:

11  
12           (ii) The project is planned ~~or~~and located in  
13 the manner determined by good faith negotiations that will  
14 be most compatible with the greatest public good and the  
15 least private injury; ~~and~~by:

16  
17                   (A) Keeping the project in an existing  
18 corridor;

19  
20                   (B) Requiring utilization of federal lands  
21 and state lands before condemning private lands for the  
22 project;

23

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

5  
6                   (D) Allowing condemnation only as a last  
7 resort after good faith negotiations have failed;

8  
9                   (E) Requiring the burden of proving  
10 compliance with all condemnation proceedings to be on the  
11 condemnor;

12  
13                   (F) Requiring a public entity to provide  
14 notice to any potential condemnee immediately following any  
15 action that may involve condemnation of private lands,  
16 including:

17  
18                   (I) Authorizing any studies affecting  
19 private lands;

20  
21                   (II) Authorizing any surveys on  
22 private lands;

23



1                   (III) Requesting funding from any  
2 state agency or the state of Wyoming to cover any costs of  
3 the project.

4  
5                   (G) Requiring a showing of no reasonable  
6 alternatives to the proposed project location.

7  
8           (b) Findings of the public service commission, the  
9 interstate commerce commission and other federal and state  
10 agencies with appropriate jurisdiction are ~~prima facie~~  
11 ~~valid relative to determinations under subsection (a) of~~  
12 ~~this section if the findings were made in accordance with~~  
13 ~~law with notice to condemnees who are parties to the~~  
14 ~~condemnation action and are final with no appeals from the~~  
15 ~~determinations pending~~ subject to legal review pursuant to  
16 W.S. 1-26-815(d).

17  
18           (c) The right of condemnation under this section  
19 shall be available only as a last resort for the conduct of  
20 business which provides a public benefit and shall not be  
21 permissible in order to:

22  
23                   (i) Minimize project costs;  
24

1                   (ii) Simplify federal or state permitting; or

2

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

5

6                   (d) A condemnor shall bear the burden of proving by  
7 clear and convincing evidence that condemnation is being  
8 used as a last resort.

9

10           **1-26-505. Condemnation of property devoted to a**  
11 **public use.**

12

13                   (c) The use of property acquired shall be limited to  
14 the original designated public use. Any other use of the  
15 easement shall be negotiated separately.

16

17           **1-26-506. Entry prior to condemnation action.**

18

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

1 suitable and within the power of the condemnor to condemn  
2 and only if the entry is:

3

4 (c) Except as provided in W.S. 1-26-511, an action to  
5 enter property shall not be maintained over timely  
6 objection by the condemnee unless the condemnor made a good  
7 faith effort to acquire access to enter the property before  
8 commencing the action.

9

10 (d) Negotiations conducted in substantial compliance  
11 with W.S. 1-26-509 are evidence of "good faith" under  
12 subsection (c) of this section.

13

14 (e) Survey information acquired from the property  
15 constitutes an interest in real property for which the  
16 condemnor shall deposit cash or other security with the  
17 court before entry. The clerk of court shall invest any  
18 cash deposit in any legal interest bearing investment and  
19 the interest earnings shall accrue to the account of the  
20 condemnor. Unless sooner disbursed by court order, the  
21 cash or other security shall be retained on deposit for six  
22 (6) months following termination of the entry. The court  
23 for good cause may extend the period of retention.

24

1       (f) Survey information acquired from the property  
2 constitutes an interest in real property for which the  
3 court in determining due compensation may authorize a lump-  
4 sum payment, an annual installment or amortization payment  
5 to continue for a definite period of time as determined by  
6 the court.

7  
8       (g) Survey information regarding threatened and  
9 endangered species, cultural resources, archeological  
10 resources or environmental resources shall not be obtained  
11 from private property without the express written consent  
12 of the property owner. Any survey information obtained  
13 under this section and any subsequent reports regarding  
14 survey information obtained under this section shall be  
15 provided to the property owner.

16  
17       (h) No significant surface disturbing activities may  
18 occur during entry under this section.

19  
20       ~~(e)~~(j) The condemnor is liable under W.S. 1-26-508  
21 for damages resulting from activities authorized by this  
22 section and for a reasonable trespass fee to access lands  
23 for survey work.

24

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

3

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

22

23           **1-26-508. Entry prior to condemnation action;**  
24 **damages.**

1

2 (a) A condemnor is liable for the use of the  
3 property, any restrictions on the use of the property and  
4 physical injury to, and for substantial interference with  
5 possession or use of, property caused by his entry and  
6 activities upon the property. This liability may be  
7 enforced in a civil action against the condemnor or by  
8 application to the court as provided by subsection (c) of  
9 this section unless voluntarily paid by the condemnor.

10

11 (b) In an action or other proceeding for recovery of  
12 damages relating to the use of the property, any  
13 restrictions on the use of the property and other damages  
14 under this section, the prevailing party shall be allowed  
15 his costs. In addition, the court shall award the condemnee  
16 his litigation expenses incurred in any proceeding under  
17 W.S. 1-26-507 if it finds that the condemnor:

18

19 **1-26-509. Negotiations; scope of efforts to purchase.**

20

21 (c) Good faith negotiations shall be exhausted before  
22 condemnation may be initiated.

23

24 (d) Consideration of good faith negotiations shall

1 include:

2

3 (i) Whether the condemnor has initiated any  
4 meaningful negotiations with the condemnee;

5

6 (ii) Whether the condemnor has done more than  
7 inform the condemnee the property will be taken by eminent  
8 domain if the condemnee does not accept the condemnor's  
9 offer;

10

11 (iii) Whether the condemnor has maintained  
12 continual and ongoing discussions without any unreasonable  
13 lapses in the negotiating period;

14

15 (iv) Whether the condemnor filed condemnation  
16 proceedings before negotiating with landowner;

17

18 (v) Whether the condemnor has made any material  
19 or substantial misrepresentation of the project;

20

21 (vi) Whether the condemnor filed condemnation in  
22 order to meet a deadline;

23

24 (vii) Whether the condemnor has given the same

1 considerations to private landowners as he has given to  
2 federal and state landowners;

3

4 (viii) Whether the condemnor has provided a  
5 certified appraisal to the landowner.

6

7 (e) In the event the landowner disagrees with the  
8 certified appraisal provided by the condemnor pursuant to  
9 paragraph (d)(viii), the landowner may provide his own  
10 certified appraisal, at the landowner's expense.

11

12 (f) If the two (2) appraisals conducted under  
13 subsections (d) and (e) of this section do not differ by  
14 more than ten percent (10%), the property value shall be  
15 the higher of the two (2) appraisals.

16

17 (g) If the two (2) appraisals conducted under  
18 subsections (d) and (e) of this section differ by more than  
19 ten percent (10%), the two (2) certified appraisers used to  
20 determine the values under subsections (d) and (e) of this  
21 section shall pick a third certified appraiser who shall  
22 provide a certified appraisal and the property value shall  
23 be the average of the two (2) highest appraisals. The  
24 appraisal determined pursuant to this subsection shall be



1 paid for by the party whose initial appraisal most differs  
2 from the average of the three (3) appraisals.

3  
4 (h) At any time in the negotiation, at the request of  
5 either party and upon mutual agreement, dispute resolution  
6 processes including mediation or arbitration may be  
7 employed or the informal procedures for resolving disputes  
8 established pursuant to W.S. 11-41-101 through 11-41-110  
9 may be requested through the Wyoming agriculture and  
10 natural resource mediation board.

11  
12 **1-26-510. Preliminary efforts to purchase.**

13  
14 (b) Negotiations conducted in substantial compliance  
15 with W.S. 1-26-509 ~~(b) (i) through (vi)~~ are ~~prima facie~~  
16 evidence of "good faith" under subsection (a) of this  
17 section but can be subject to mediation or binding  
18 arbitration as agreed to by the parties pursuant to W.S.  
19 1-26-509.

20  
21 **1-26-512. Contents of authorization.**

22  
23 (a) A public entity may not commence a condemnation  
24 action until it has first adopted a written resolution in

1 substantial conformity with this section, authorizing  
2 commencement and prosecution of the action. The  
3 authorization may be amended or rescinded at any time  
4 before or after commencement of the condemnation action but  
5 if rescinded the public entity shall pay the litigation,  
6 negotiation and appellate expenses, including appraisals,  
7 reasonable attorney fees and costs, of the condemnee.

8  
9 (b) In addition to other requirements imposed by law,  
10 the condemnation authorization required by subsection (a)  
11 of this section shall include:

12  
13 (iii) A declaration that a taking of the  
14 described property is necessary and appropriate for the  
15 proposed public use;  
16

17 (iv) A declaration that the condemnor has  
18 exhausted all sources of federal lands and state lands  
19 before condemning private lands.

20  
21 **1-26-515. Abandonment, nonuse or new use.**

22  
23 (a) Upon abandonment, and except for a national  
24 emergency, nonuse for a period of ~~ten (10)~~ two (2) years,

1 or transfer or attempted transfer to a use where the  
2 transferee could not have condemned for the new use, or  
3 where the new use is not identical to the original use and  
4 new damages to the landowner whose property was condemned  
5 for the original use will occur, any easement authorized  
6 under this act terminates and the easement reverts to the  
7 landowner.

8  
9 (b) Condemnation authority granted to a public entity  
10 shall be limited to the use by the public entity and its  
11 successors and shall not be transferable to a private  
12 entity.

13  
14 (c) Condemnation authority granted to a private  
15 entity shall be limited to the use by the private entity  
16 and its successors and shall not be transferable to a  
17 public entity.

18  
19 **1-26-701. Compensation standards.**

20  
21 (d) The condemnee shall be compensated for full loss  
22 of use of land and resulting damages.

23  
24 (e) The method of payment shall be determined by the

1 condemnee and may be:

2

3 (i) A lump sum payment of treble damages as  
4 determined pursuant to W.S. 1-26-509(f) or (g);

5

6 (ii) An amortized payment of the treble damages  
7 lump sum amount determined in paragraph (i) of this  
8 subsection, including interest equal to prime plus one  
9 percent (1%), determined at the time of the taking, over  
10 any term designated by the condemnee not to exceed thirty  
11 (30) years;

12

13 (iii) An annual payment initially calculated by  
14 amortizing the treble damages lump sum amount determined in  
15 paragraph (i) of this subsection, over a term of thirty  
16 (30) years, including interest equal to prime plus one  
17 percent (1%). The payment shall be adjusted annually in  
18 proportion to the consumer price index and payment shall  
19 continue for the life of the easement. The payment shall  
20 be appurtenant to and run with the land.

21

22 (f) The condemnor shall pay the condemnee the full  
23 lump sum payment before the condemnor shall be allowed  
24 access to the property or the condemnor shall timely pay

1 the condemnee the amortized payments to avoid termination  
2 of access to the property.

3  
4 **1-26-702. Compensation for taking.**

5  
6 (a) Except as provided in subsection (b) of this  
7 section, the measure of compensation for a taking of  
8 property is ~~its~~ three (3) times the fair market value  
9 determined under W.S. 1-26-704 as of the date of valuation.

10  
11 (b) If there is a partial taking of property, the  
12 measure of compensation ~~is the greater of the value of the~~  
13 ~~property rights taken or the amount by which the fair~~  
14 ~~market value of the entire property immediately before the~~  
15 ~~taking exceeds the fair market value of the remainder~~  
16 ~~immediately after the taking.~~ shall be the greater of:

17  
18 (i) The amount paid for comparable rights under  
19 good faith contracts entered into by informed and willing  
20 parties;

21  
22 (ii) Three (3) times the amount by which the  
23 fair market value of the entire property immediately before  
24 the taking exceeds the fair market value of the remainder

1 immediately after the taking; or

2

3 (iii) In the case of a perpetual easement, a  
4 capitalized annual lease payment for the use of the land,  
5 which shall include a reasonable annual cost of living  
6 increase.

7

8 (c) As a basis for an opinion as to value, a  
9 valuation witness may consider:

10

11 (i) The value of any lease or contract made in  
12 good faith that included all or part of the property being  
13 valued;

14

15 (ii) The value of any lease or contract made in  
16 good faith that includes all or a part of the same project  
17 being considered; or

18

19 (iii) The actual or reasonable net rental income  
20 attributable to the property when used for its highest and  
21 best use capitalized at a fair and reasonable rate.

22

23 (d) In the case of a private condemnor, the last  
24 offer to the landowner before a condemnation action is

1 filed shall be at the least equal to the amount determined  
2 by an appraisal by a certified real estate appraiser and,  
3 in the case of a partial taking, the certified appraiser  
4 shall determine not only the before and after value of the  
5 entire property but also what comparable rights have been  
6 sold or leased for.

7  
8 (e) The condemnor shall reimburse the condemnee for  
9 all negotiation, litigation and appellate expenses,  
10 including appraisals, reasonable attorney fees and costs  
11 pursuant to W.S. 1-26-517(b).

12  
13 **1-26-704. Fair market value defined.**

14  
15 (a) Except as provided in subsection (b) of this  
16 section:

17  
18 (iii) The determination of fair market value may  
19 include:

20  
21 (A) The value determined by a certified  
22 appraisal of the property;

23

1 (B) The values of other easements on the  
2 same property;

3

4 (C) The amounts paid by the condemnee for  
5 other portions of the proposed easement;

6

7 (D) Values of similar easements purchased  
8 by other companies in arms length transactions for similar  
9 properties;

10

11 (E) Consideration of aesthetic value of the  
12 property;

13

14 (F) Consideration of the value the proposed  
15 easement takes away from remaining property.

16

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

21

22 **1-26-709. Compensation for growing crops and**  
23 **improvements.**

24



1           (a) The compensation for crops growing on the  
2 property on the date of valuation is the higher of the  
3 current fair market value of the crops in place, assuming  
4 the right to bring them to maturity and to harvest them, ~~or~~  
5 the amount by which the existence of the crops enhances the  
6 fair market value of the property or the cost to replace  
7 the crop lost.

8  
9           (b) The compensation for an interest in improvements  
10 is the higher of the fair market value of the improvements,  
11 assuming their immediate removal from the property, ~~or~~ the  
12 amount by which the existence of the improvements enhances  
13 the fair market value of the property or the cost to  
14 replace the improvement lost.

15  
16           **1-26-810. Powers of railroad companies relative to**  
17 **condemnation generally.**

18  
19           (a) Any railroad company organized under the laws of  
20 this state, the laws of the United States or which has been  
21 duly organized under the laws of any other state and has  
22 filed copies of its articles of incorporation with the  
23 secretary of state in this state as required by law is  
24 authorized to:

1

2 (i) Exercise the power of eminent domain to  
3 acquire rights-of-way for railroad tracks and easements for  
4 offices, depots and other appurtenant facilities related  
5 directly to the operation of the railroad upon  
6 demonstration that the proposed route has the least affect  
7 on private property within reason of the geographic  
8 limitation of the proposed route;

9

10 **1-26-814. Right of eminent domain granted; petroleum**  
11 **or other pipeline companies; purposes.**

12

13 Whenever any utility or any petroleum or other pipeline  
14 company, authorized to do business in this state, has not  
15 acquired by gift or purchase any land, real estate or claim  
16 required for the construction, maintenance and operation of  
17 their facilities and appurtenances or which may be affected  
18 by any operation connected with the construction or  
19 maintenance of the same, the utility or company has the  
20 right of eminent domain and may condemn the easement  
21 required by the utility or company, but only as a last  
22 resort for the conduct of business with a demonstrated  
23 public use as provided pursuant to W.S. 1-26-503(c).

24

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

3  
4           (d) The right of condemnation under this section for  
5 private condemners shall be available only as a last resort  
6 for the conduct of business which provides a public benefit  
7 and shall not be permissible in order to:

8  
9           (i) Minimize project costs;

10  
11           (ii) Simplify federal or state permitting; or

12  
13           (iii) Improve ease and convenience of access for  
14 the private condemnor.

15  
16           (e) Any person, association, company or corporation  
17 condemning property under subsection (a) of this section  
18 shall bear the burden of proving by clear and convincing  
19 evidence that condemnation is being used as a last resort.

20  
21           **15-1-103. General powers of governing bodies.**

22  
23           (a) The governing bodies of all cities and towns may:

24

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

5

6           **24-9-101. Petition; initial hearing; appointment of**  
7 **viewers and appraisers; bond; rules.**

8

9           (a) Notwithstanding W.S. 1-26-502(a)(vi), any person  
10 whose land has no outlet to, nor connection with a public  
11 road, may file an application in writing with the board of  
12 county commissioners in the county where his land is  
13 located for a private road leading from his land to some  
14 convenient public road. The application shall contain the  
15 following information:

16

17           **37-1-101. Definitions.**

18

19           (a) As used in chapters 1, 2, 3 and 12 of this title:

20

21           (vii) For purposes of condemnation, any person  
22 included under paragraph (vi) of this section shall be  
23 regarded as a "public utility" regardless of whether he  
24 provides retail service.

1

2           **Section 3.** W.S. 1-26-504(b), 1-26-506(b), and  
3 1-26-704(b) (i) and (ii) are repealed.

4

5           **Section 4.** This act is effective July 1, 2007.

6

7

**(END)**