

SENATE FILE NO. SF0103

Eminent domain revisions.

Sponsored by: Senator(s) Schiffer and Hanes and
 Representative(s) Landon

A BILL

for

1 AN ACT relating to eminent domain; allowing for judicial
 2 review of regulatory agency action pertaining to eminent
 3 domain; providing for the award of attorneys fees in
 4 certain situations; providing that eminent domain shall be
 5 used as a last resort subject to specified conditions; and
 6 providing for an effective date.

7

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

9

10 **Section 1.** W.S. 1-26-504(b), 1-26-506(a)(intro) and
 11 by creating a new subsection (d), 1-26-509 by creating new
 12 subsections (c) and (d), 1-26-702(b) and by creating new
 13 subsections (c) and (d) and 1-26-815 by creating a new
 14 subsection (d) are amended to read:

15

16 **1-26-504. Requirements to exercise eminent domain.**

1

2 (b) ~~Findings of the public service commission, the~~
3 ~~interstate commerce commission and other federal and state~~
4 ~~agencies with appropriate jurisdiction are prima facie~~
5 ~~valid relative to determinations under subsection (a) of~~
6 ~~this section if the findings were made in accordance with~~
7 ~~law with notice to condemnees who are parties to the~~
8 ~~condemnation action and are final with no appeals from the~~
9 ~~determinations pending~~ Findings of the appropriate
10 regulatory agency under subsection (a) of this section are
11 subject to legal review as to whether the requirements of
12 W.S. 1-26-815(d) have been met.

13

14 **1-26-506. Entry prior to condemnation action.**

15

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

23

24 (d) No significant surface disturbing activities may

1 occur during entry under this section.

2

3 **1-26-509. Negotiations; scope of efforts to purchase.**

4

5 (c) A condemnee is entitled to a jury trial on the
6 issues of:

7

8 (i) Whether the private or governmental
9 condemnor negotiated in good faith before filing the
10 condemnation action;

11

12 (ii) Whether the taking is consistent with the
13 greatest public good and least private injury test; and

14

15 (iii) Whether the condemnor can show necessity
16 for the taking.

17

18 (d) A private condemnor is required to reimburse the
19 landowner for attorney fees if the ultimate jury award for
20 the taking exceeds the last written offer given to the
21 landowner prior to filing the condemnation action.

22

23 **1-26-702. Compensation for taking.**

24

1 (b) If there is a partial taking of property, the
2 measure of compensation ~~is the greater of the value of the~~
3 ~~property rights taken or the amount by which the fair~~
4 ~~market value of the entire property immediately before the~~
5 ~~taking exceeds the fair market value of the remainder~~
6 ~~immediately after the taking.~~ shall be the greater of:

7
8 (i) The amount paid for comparable rights under
9 good faith contracts entered into by informed and willing
10 parties;

11
12 (ii) The amount by which the fair market value
13 of the entire property immediately before the taking
14 exceeds the fair market value of the remainder immediately
15 after the taking; or

16
17 (iii) In the case of a perpetual easement, a
18 capitalized annual lease payment for the use of the land.

19
20 (c) As a basis for an opinion as to value, a
21 valuation witness may consider:

22
23 (i) The value of any lease or contract made in
24 good faith that included all or part of the property being

1 valued; or

2

3 (ii) The actual or reasonable net rental income
4 attributable to the property when used for its highest and
5 best use capitalized at a fair and reasonable rate.

6

7 (d) In the case of a private condemnor, the last
8 offer to the landowner before a condemnation action is
9 filed must be at the least equal to the amount determined
10 by an appraisal by a licensed real estate appraiser and, in
11 the case of a partial taking, the licensed appraiser must
12 determine not only the before and after value of the entire
13 property but also what comparable rights have been sold or
14 leased for.

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 minimize project
23 costs, simplify federal or state permitting, or improve
24 ease and convenience of access for the private condemnor.

1 A private condemnor under subsection (a) of this section
2 shall bear the burden of proving by a preponderance of the
3 evidence that condemnation is being used as a last resort.

4

5 **Section 3.** This act is effective July 1, 2006.

6

7

(END)