

Paseneaux

11

95 LSO - 0400

#1

## HOUSE BILL

0171

HOUSE BILL 0171

T1

HB0171FT02

AN ACT to create W.S. 9-5-301 through 9-5-305 relating to administration of government; providing for agency evaluation with respect to regulatory takings of property as specified; providing definitions; providing guidelines to establish a taking; requiring certain specified procedures; declaring a purpose; and providing for an effective date.

Introduced by:

## HOUSE ACTION ON HOUSE BILL

1/12 ☒ Introduced  
Aye \_\_\_ No \_\_\_ Ex \_\_\_ Ab \_\_\_  
☒ Read First Time and Ref. to  
Committee No. 1  
☐ Failed Introduction  
Aye \_\_\_ No \_\_\_ Ex \_\_\_ Ab \_\_\_  
1 Returned from Committee No. \_\_\_  
with Recommendation:  
☐ Do Pass; ☐ Amend & Do  
Pass; ☐ Do Not Pass;  
☐ W/O Recomm; ☐ Re-Refer to  
Committee No. \_\_\_  
1/12 Re-referred to Committee No. 5  
1/25 Returned from Committee No. 5  
with Recommendation:  
☒ Do Pass; ☐ Amend & Do  
Pass; ☐ Do Not Pass;  
☐ W/O Recomm; ☐ Re-Refer to  
Committee No. \_\_\_  
1/31 Considered in Comm. of Whole  
☒ Amended  
☒ Recommended Do Pass  
☐ Failed Comm. of Whole  
☐ Indefinitely Postponed  
☐ Other: \_\_\_  
2/1 Read Second Time  
☒ Amended  
☒ Do Pass  
☐ Do Not Pass  
☐ Accelerated to 3rd Rdg.  
2/2 Read Third Time  
☒ Amended  
☐ Passed ☒ Failed  
Aye 27 No 33 Ex 0 Ab 0  
☒ Held for Reconsideration  
2/3 Motion to Reconsider  
☒ Passed ☐ Failed  
Aye 33 No 27 Ex 0 Ab 0  
2/3 Third Reading Vote  
(On Reconsideration)  
☒ Passed ☐ Failed  
Aye 32 No 28 Ex 0 Ab 0  
2/3 Sent to Senate (No Amendments)  
2/3 Sent to LSO for Engrossing  
2/3 ENGROSSED  
2/6 Sent to Senate

## SENATE ACTION ON HOUSE BILL

2/6 Received. Read First Time.  
Referred to Committee No. 1  
2/6 Returned from Committee No. 1  
with Recommendation:  
☐ Do Pass; ☐ Amend & Do  
Pass; ☐ Do Not Pass;  
☐ W/O Recomm; ☒ Re-Refer to  
Committee No. 5  
2/7 Re-referred to Committee No. \_\_\_  
Returned from Committee No. 5  
with Recommendation:  
☒ Do Pass; ☐ Amend & Do  
Pass; ☐ Do Not Pass;  
☐ W/O Recomm; ☐ Re-Refer to  
Committee No. \_\_\_  
2/15 Considered in Comm. of Whole  
☐ Amended  
☒ Recommended Do Pass  
☐ Failed Comm. of Whole  
☐ Indefinitely Postponed  
☐ Other: \_\_\_  
2/16 Read Second Time  
☐ Amended  
☒ Do Pass  
☐ Do Not Pass  
☐ Accelerated to 3rd Rdg.  
2/17 Read Third Time  
☐ Amended  
☒ Passed ☐ Failed  
Aye 21 No 9 Ex 0 Ab 0  
☐ Held for Reconsideration  
1 Motion to Reconsider  
☐ Passed ☐ Failed  
Aye \_\_\_ No \_\_\_ Ex \_\_\_ Ab \_\_\_  
1 Third Reading Vote  
(On Reconsideration)  
☐ Passed ☐ Failed  
Aye \_\_\_ No \_\_\_ Ex \_\_\_ Ab \_\_\_  
1 Sent to House  
2/17 Sent for Enrolling  
HEA No. 65  
2/20 Signed by Speaker  
2/20 Signed by President  
2/22 Approved by Governor  
Chapter No. 113

1995

STATE OF WYOMING

95LSO-0400.01

HOUSE BILL NO. 0171

Taxpayer Protection Act.

Sponsored by: Representative(s) PASENEAUX, ANDERSON, BAKER, BATY, BEBOUT, BETTS, DEVIN, EYRE, HAGEMAN, MOORE, PHILP, SIMONS and STARK and Senator(s) BARTON, GEIS, GILBERTZ, GRIEVE, MEIER and TWIFORD

A BILL

for

1 AN ACT to create W.S. 9-5-301 through 9-5-307 relating to  
2 administration of government; providing for administration  
3 and compensation for regulatory takings of property as  
4 specified; providing definitions; providing guidelines to  
5 establish a taking; requiring certain specified procedures  
6 and compensation; declaring a policy and purpose; and pro-  
7 viding for an effective date.

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

9 Section 1. W.S. 9-5-301 through 9-5-307 are created  
10 to read:

=====  
LEGEND: Underlined = New text added to existing statutes  
Stricken = Text deleted from existing statutes  
=====

- 1 -  
**NO SIGNIFICANT FISCAL OR  
PERSONNEL IMPACT AT STATE LEVEL**

HB 171

1 ARTICLE 3

2 REGULATORY TAKINGS

3 9-5-301. SHORT TITLE. This act shall be known and may  
4 be cited as the "Wyoming Regulatory Takings Act."

5 9-5-302. DEFINITIONS.

6 (a) As used in this act:

7 (i) "Constitutional implications" means relating  
8 to the unconstitutional interference of private property  
9 rights;

10 (ii) "Government agency" means the state of  
11 Wyoming and any officer, agency, board, commission,  
12 department or similar body of the executive branch of  
13 state government;

14 (iii) "Governmental action" or "action":

15 (A) Means:

16 (I) Proposed rules and emergency rules  
17 by a state agency that if adopted and enforced may limit  
18 the use of private property;

19 (II) Proposed or implemented licensing

1 or permitting conditions, requirements or limitations to  
2 the use of private property;

3 (III) Required dedications or  
4 exactions from owners of private property by a state  
5 agency.

6 (B) Does not include:

7 (I) Activity in which the power of  
8 eminent domain is exercised formally;

9 (II) Repealing rules discontinuing  
10 governmental programs or amending rules in a manner that  
11 lessens interference with the use of private property;

12 (III) Law enforcement activity involv-  
13 ing seizure or forfeiture of private property for viola-  
14 tions of law or as evidence in criminal proceedings;

15 (IV) Orders that are authorized by  
16 statute, that are issued by a state agency or a court of  
17 law and that were the result of a violation of state law.

18 (iv) "Policies or actions that have constitu-  
19 tional implications" means current or proposed regula-  
20 tions, resolutions, proposed stated legislation or other

1 government agency policy statements that, if implemented  
2 or enacted, could effect a taking or deprive a person of  
3 property without due process of law, such as policies,  
4 regulations, orders or agreements that propose or imple-  
5 ment licensing, permitting or condition requirements or  
6 limitations on private property use, or that require dedi-  
7 cations or exactions from owners of private property.

8 "Policies that have constitutional implications" does not  
9 include actions in which the power of eminent domain is  
10 formally exercised or law enforcement actions involving  
11 seizure of property for forfeiture or as evidence in crim-  
12 inal proceedings;

13 (v) "Private property" means any real or per-  
14 sonal property protected by amendments V and XIV of the  
15 constitution of the United States or article 1, section 33  
16 of the constitution of the state of Wyoming;

17 (vi) "Taking" means an uncompensated damaging or  
18 deprivation of private property in violation of the state  
19 or federal constitution;

20 (vii) "This act" means W.S. 9-5-301 through  
21 9-5-307.

22 9-5-303. GUIDELINES FOR DETERMINING TAKINGS.

1           (a) The attorney general shall develop a checklist  
2 and guidelines by October 1, 1995, to assist government  
3 agencies in the identification and evaluation of policies  
4 that have constitutional implications including policies  
5 that may result in a taking. The attorney general shall  
6 review and update the checklist and guidelines at least on  
7 an annual basis to maintain consistency with changes in  
8 the law.

9           (b) In formulating the guidelines, the attorney gen-  
10 eral shall observe the following principles:

11           (i) State agencies shall be sensitive to, antic-  
12 ipate and account for the obligations imposed by the fifth  
13 and fourteenth amendments of the constitution of the  
14 United States and article 1, section 33 of the constitu-  
15 tion of Wyoming in planning and carrying out governmental  
16 actions to avoid imposing unanticipated or undue addi-  
17 tional burdens on the public treasury;

18           (ii) Governmental actions that are taken by  
19 state agencies and that result in a physical invasion or  
20 occupancy of private property and actions that affect  
21 value or use may constitute a taking of private property;

22           (iii) Governmental action may amount to a taking

1 even though the action constitutes less than a complete  
2 deprivation of all use or value or of all separate and  
3 distinct interests in the same private property or the  
4 action is only temporary in nature;

5 (iv) State agencies whose governmental actions  
6 are specifically to protect public health and safety are  
7 ordinarily given broader latitude by courts before their  
8 actions are considered to be takings. However, the mere  
9 assertion of a public health and safety purpose is insuf-  
10 ficient to avoid a taking. Therefore, actions that are  
11 purportedly to protect the public health and safety shall  
12 be:

13 (A) Taken only in response to real and sub-  
14 stantial threats to public health and safety;

15 (B) Designed to advance significantly the  
16 health and safety purpose; and

17 (C) No greater than necessary to achieve  
18 the health and safety purpose.

19 (v) Although normal governmental processes do  
20 not ordinarily constitute takings, undue delays in deci-  
21 sion making that interfere with private property use carry

1 a risk of being held to be a taking. In addition, a delay  
2 in processing may increase significantly the size of com-  
3 pensation due if a constitutional taking is later found to  
4 have occurred;

5 (vi) The constitutional protections against tak-  
6 ing private property are self-executing and require com-  
7 pensation regardless of whether the underlying authority  
8 for the action contemplated a taking or authorized the  
9 payment of compensation.

10 9-5-304. IMPACT ASSESSMENT.

11 (a) Commencing January 1, 1996, each government  
12 agency proposing or implementing policies that have con-  
13 stitutional implications shall designate a person or per-  
14 sons in the agency to be responsible for ensuring compli-  
15 ance with the provisions of this act. Each agency policy  
16 that has constitutional implications shall be submitted to  
17 the designated person for review.

18 (b) Using the checklist and guidelines prepared pur-  
19 suant to W.S. 9-5-303, the designated person shall prepare  
20 a constitutional impact assessment which includes an anal-  
21 ysis of at least the following elements:



1           (ii) A description of how the policy affects pri-  
2 vate property including the likelihood that the policy  
3 could result in a taking or deprive a person of property  
4 without due process of law;

5           (ii) Alternatives to the policy that would ful-  
6 fill the government agency's legal obligations but that  
7 would reduce the impact on the private property owner and  
8 the risk of a taking; and

9           (iii) An estimate of the financial cost to the  
10 government agency for compensation and a source of payment  
11 within the agency's budget.

12       (c) In addition to the guidelines prepared under W.S.  
13 9-5-303 and this section, each state agency shall adhere,  
14 to the extent permitted by law, to the following criteria  
15 if implementing or enforcing governmental actions that  
16 have constitutional taking implications:

17           (i) If an agency requires a person to obtain a  
18 permit for a specific use of private property, any condi-  
19 tions imposed on issuing the permit shall directly relate  
20 to the purpose for which the permit is issued, shall sub-  
21 stantially advance that purpose and shall be expressly  
22 authorized by law;

1           (ii) Any restriction imposed on the use of pri-  
2 vate property shall be proportionate to the extent the use  
3 contributes to the overall problem that the restriction is  
4 to redress;

5           (iii) If an action involves a permitting process  
6 or any other decision making process that will interfere  
7 with, or otherwise prohibit, the use of private property  
8 pending the completion of the process, the duration of the  
9 process shall be kept to the minimum necessary;

10           (iv) Before taking an action restricting private  
11 property use for the protection of public health or  
12 safety, the state agency, in internal deliberative docu-  
13 ments, shall:

14                   (A) Clearly identify, with specificity, the  
15 public health or safety risk created by the private prop-  
16 erty use;

17                   (B) Establish that the action substantially  
18 advances the purpose of protecting public health and  
19 safety against the specifically identified risk;

20                   (C) Establish that the restrictions imposed  
21 on the private property are proportionate to the extent

1 the use contributes to the overall risk;

2 (D) Estimate the potential cost to the gov-  
3 ernment if a court determines that the action constitutes  
4 a constitutional taking.

5 (d) If there is an immediate threat to health and  
6 safety that constitutes an emergency and requires an imme-  
7 diate response, the analysis required by subsection (b) of  
8 this section may be made when the response is completed.

9 (e) Prior to implementing policies that have consti-  
10 tutional implications, a copy of the constitutional impact  
11 assessment shall be submitted to the agency director and  
12 appropriate financial management authority.

13 (f) Any award made to an owner of private property  
14 from a government agency for a taking or other unconstitu-  
15 tional interference with the use of private property,  
16 including any award of reasonable costs and attorneys'  
17 fees, shall come from the agency's existing budget unless  
18 the agency had previously disclosed an estimate of the  
19 costs to the appropriate financial management authority  
20 and funds were included in the budget for that purpose.

21 9-5-305. TAKING; COSTS AND FEES. Owners of a property

1 interest, who successfully establish that a policy or  
2 action that has constitutional implications is an uncon-  
3 stitutional taking or violation of due process, shall be  
4 awarded reasonable costs and attorneys' fees incurred in  
5 establishing their claim. The remedies provided by this  
6 act are in addition to any other remedies provided by law.

7 9-5-306. VALUE OF PROPERTY. The effect of policies or  
8 actions that have constitutional implications on the fair  
9 market value of affected property shall be reflected in  
10 the assessed valuation of that property for taxes, levies  
11 and similar purposes.

12 9-5-307. DECLARATION OF POLICY AND PURPOSE.

13 (a) The legislature hereby finds and declares that:

14 (i) Article 1, section 33 of the constitution of  
15 the state of Wyoming and amendments V and XIV of the con-  
16 stitution of the United States provide that no person  
17 shall be deprived of property without due process of law  
18 and no private property shall be taken or damaged for pub-  
19 lic use without just compensation having first been made.  
20 Recent decisions by the United States supreme court have  
21 established the criteria and tests to be used for deter-  
22 mining when a taking of private property or violation of

1 due process has occurred. These criteria should be care-  
2 fully evaluated by governmental bodies whose actions  
3 affect private property so as to assure proper protection  
4 of constitutionally guaranteed property rights and reduce  
5 the burdens and uncertainty forced upon citizens, local  
6 governments and the state by lengthy and costly litigation  
7 to settle private property issues through the judicial  
8 process;

9 (ii) The purpose of this act is to establish an  
10 orderly, consistent process that better enables governmen-  
11 tal bodies to evaluate whether proposed regulatory or  
12 administrative actions may result in a taking of private  
13 property or violation of due process. It is not the pur-  
14 pose of this act to expand or reduce the scope of private  
15 property protections provided in the state and federal  
16 constitutions.

17 Section 2. This act is effective July 1, 1995.

18 (END)

## THE LEGISLATURE OF THE STATE OF WYOMING

## House of Representatives

Cheyenne, January 24, 19 95

Mr. Speaker:

Your Committee No. 5 on AGRICULTURE, PUBLIC LANDS & WATER RESOURCES  
 to whom was referred House Bill No. 0171  
 respectfully reports same back to the House with the recommendation that it

DO PASS

<u>AYES</u>	<u>NOES</u>	<u>EXCUSED</u>
-------------	-------------	----------------

Anderson	Morrow	0
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Diercks	Selby	
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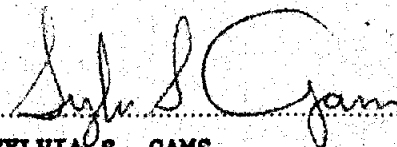
Eyre

Huckfeldt

- Moore

Philp

Gams



SYLVIA S. GAMS

Chairman

AMENDMENT LIST

DATE 1/31 BILL NO. HB171 Circle One: COW 2nd 3rd

HB171 HWO1 / A c

AMENDMENT LIST

DATE 2/1 BILL NO. HB 171 Circle One: COW 2nd 3rd

HB 171 H 201/A

HB 171 H 202/A



## AMENDMENT LIST

DATE 2/2 BILL NO. HB171 Circle One: COW 2nd 3rd

HB171 H301/A

HB171 H302/W

HB171 H303/AC

HB171 H304/WC

HB171 H305/W

## THE LEGISLATURE OF THE STATE OF WYOMING

Senate

Cheyenne, February 14, 1995

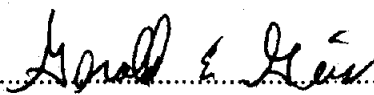
Mr. President:

Your Committee No. 5 on AGRICULTURE, PUBLIC LANDS & WATER RESOURCES  
to whom was referred HB No. 0171 (ENGROSSED)

respectfully reports same back to the Senate with the recommendation that

it DO PASS.

AYES: Senators Geis, Barton, Cathcart, Maxfield, Meier

  
GERALD E. GEIS Chairman

AMENDMENT LIST

DATE 2-15-95 BILL NO. HB 171 Circle One: COW 2nd 3rd

HB 0171 SWD1/FE shifted

AMENDMENT LIST

DATE 2-16-95 BILL NO. H.B. 171 Circle One: COW 2nd 3rd

H.B. 01715201/FE Maxfield

5202/FE Maxfield

5203/FE Cathcart

AMENDMENT LIST

DATE 2-17-95 BILL NO. HB 171 Circle One: COW 2nd 3rd

HB 0171 5301/FE Phillips

5303/FE Phillips

5304/WE Phillips

5305/FE Grodenough

# SENATE ROLL CALL - FIFTY-THIRD WYOMING LEGISLATURE

Date 2-17-95 Bill # HB 171 Intro        3rd Rdg X Concur        Rules/Susp       

Other Action:        JCC#       

Moved by:        Seconded by:       

	Ayes	Noes	Excused	Absent	Conflict
APPLEGATE	✓	✓			
BARTON	✓				
CAMERON		✓			
CATHCART	✓				
COE	✓				
<del>EDDINS</del>					
ENZI	✓				
GEIS	✓				
GILBERTZ	✓				
GOODENOUGH		✓			
GRIEVE	✓				
HARRIS		✓			
HAWKS	✓				
KINNISON		✓			
KUNZ	✓				
LARSON	✓				
LAWLER	✓				
MAXFIELD	✓				
MEIER	✓				
MILLER	✓				
PECK	✓				
PHILLIPS		✓			
PICARD	✓	✓			
PREVEDEL		✓			
SARCLETTI	✓				
SCHIFFER		✓			
SCOTT	✓				
TWIFORD	✓				
VINICH		✓			
ZIMMERMAN	✓				
MR. PRESIDENT	✓				

PRESENT        AYES 21  
 NOES 9  
 EXCUSED         
 ABSENT         
 CONFLICT         
 TOTAL 30

Passed X  
 Failed

2 In the Parady, et al, third reading amendment  
3 (HB0171H303/A), after 9-5-303(b)(vii)  
4 insert the following paragraph and renumber  
5 as necessary:

6 "(viii) Except as otherwise provided by law, no  
7 claim for compensation under this act shall be allowed for a  
8 governmental taking of property under this act unless the  
9 taking has reduced the value of the property by at least  
10 fifty percent (50%)." This paragraph does not in any way  
11 limit claims for compensation for government takings as pro-  
12 vided for in law prior to July 1, 1995.". SELBY

1 HB0171H304/ W (CORRECTED COPY) C

2 Page 7-line 9 Delete "." insert ";".


3 Page 7-After line 9 Insert:

4 "(vii) Except as otherwise provided by law, no  
5 claim for compensation under this act shall be allowed for a  
6 governmental taking of property under this act unless the  
7 taking has reduced the value of the property by at least  
8 fifty percent (50%). This paragraph does not in any way  
9 limit claims for compensation for government takings as pro-  
10 vided for in law prior to July 1, 1995."

11 Renumber as necessary. SELBY

2-12 Page 1



- 1 HB0171H202/ *A deleted by H303/AC*
- 2 Page 2-lines 7 through 9 Delete.
- 3 Page 4-line 13 Delete "any real or per-".
- 4 Page 4-line 14 Delete "sonal".
- 5 Page 5-lines 11 through 17 Delete.
- 6 Page 7-line 4 Delete ";" insert ".".
- 7 Page 7-lines 5 through 9 Delete.
- 8 Renumber as necessary. BEBOUT
- 

1 HB0171H302/ *W*

*C*

2 Page 1-line 8 Delete. BOWRON

1 HB0171HW01/ AC - Deleted by H201/A (CORRECTED COPY)

2 Page 2-line 2 Delete "REGULATORY TAKINGS" insert  
3 "TAXPAYER PROTECTION ACT".

4 Page 2-line 4 Delete "Regulatory Takings" insert  
5 "Taxpayer Protection". BEBOUT

W

2 ✓ Delete the Bebout second reading amendment (HB0171H202/A)  
3 and further amend as follows:

4 ✓ Page 1-lines 1 through 10 Delete.

5 ✓ Pages 2 through 12 Delete entirely and insert:

6 "AN ACT to create W.S. 9-5-301 through 9-5-305 relating to  
7 administration of government; providing for agency evalua-  
8 tion with respect to regulatory takings of property as spec-  
9 ified; providing definitions; providing guidelines to estab-  
10 lish a taking; requiring certain specified procedures;  
11 declaring a purpose; and providing for an effective date.

12 Be It Enacted by the Legislature of the State of Wyoming:

13 Section 1. W.S. 9-5-301 through 9-5-305 are created to  
14 read:

15 ARTICLE 3

16 REGULATORY TAKINGS

17 9-5-301. SHORT TITLE. This act shall be known and may  
18 be cited as the "Wyoming Regulatory Takings Act."

19 9-5-302. DEFINITIONS.

20 (a) As used in this act:

21 (i) "Constitutional implications" means the  
22 unconstitutional taking of private property as determined by  
23 the attorney general in light of current case law;

24 (ii) "Government agency" means the state of  
25 Wyoming and any officer, agency, board, commission, depart-  
26 ment or similar body of the executive branch of state gov-  
27 ernment;

28 (iii) "Governmental action" or "action":

29 (A) Means:

30 (I) Proposed rules by a state agency  
31 that if adopted and enforced may limit the use of private  
32 property;

33 (II) Required dedications or  
34 exactions from owners of private property by a state agency.

35 (B) Does not include:

36 (I) Activity in which the power of  
37 eminent domain is exercised formally;

38 (II) Repealing rules discontinuing  
39 governmental programs or amending rules in a manner that  
40 lessens interference with the use of private property;

1 (III) Law enforcement activity  
2 involving seizure or forfeiture of private property for  
3 violations of law or as evidence in criminal proceedings;

4 (IV) Orders that are authorized by  
5 statute, that are issued by a state agency or a court of law  
6 and that were the result of a violation of state law;

7 (V) Actions necessary to maintain or  
8 protect public health and safety.

9 (iv) "Private property" means property protected  
10 by amendments V and XIV of the constitution of the United  
11 States or article 1, section 33 of the constitution of the  
12 state of Wyoming;

13 (v) "Taking" means an uncompensated taking of  
14 private property in violation of the state or federal con-  
15 stitution;

16 (vi) "This act" means W.S. 9-5-301 through  
17 9-5-305.

18 9-5-303. GUIDELINES AND CHECKLIST FOR ASSESSMENT OF  
19 TAKINGS.

20 (a) The attorney general shall develop guidelines and  
21 a checklist by October 1, 1995, to assist government agen-  
22 cies in the identification and evaluation of actions that  
23 have constitutional implications that may result in a tak-  
24 ing. The attorney general shall review and update the  
25 checklist and guidelines to maintain consistency with  
26 changes in the law.

27 (b) In formulating the guidelines and checklist, the  
28 attorney general shall consider the following:

29 (i) A description of how the action or regula-  
30 tion affects private property;

31 (ii) The likelihood that the action or regula-  
32 tion may constitute a taking;

33 (iii) The statutory purpose to be served by the  
34 action or regulation;

35 (iv) Whether the action or regulation advances  
36 that purpose;

37 (v) Whether the restriction imposed is propor-  
38 tionate to the overall problem;

39 (vi) An estimate of the agency's financial lia-  
40 bility should the action or regulation be held to constitute  
41 a taking of private property;

42 (vii) Alternatives considered by the agency, or  
43 proposed by the public, which would reduce the impact of the  
44 regulation upon private property;

1 (viii) Any other relevant criteria as may be  
2 determined by the attorney general.

3 9-5-304. AGENCY RESPONSIBLE TO EVALUATE TAKINGS.

4 (a) The agency shall use the guidelines and checklist  
5 prepared pursuant to W.S. 9-5-303 to evaluate proposed  
6 administrative actions or regulations that may have consti-  
7 tutional implications.

8 (b) In addition to the guidelines prepared under W.S.  
9 9-5-303, state agencies shall consider the following crite-  
10 ria in their actions:

11 (i) If an agency requires a person to obtain a  
12 permit for a specific use of private property, conditions  
13 imposed on issuing the permit shall directly relate to the  
14 purpose for which the permit is issued and shall substan-  
15 tially advance that purpose;

16 (ii) Any other relevant information as may be  
17 determined by the agency.

18 9-5-305. DECLARATION OF PURPOSE. The purpose of this  
19 act is to establish an orderly, consistent process that bet-  
20 ter enables governmental bodies to evaluate whether proposed  
21 regulatory or administrative actions may result in a taking  
22 of private property or violation of due process. It is not  
23 the purpose of this act to expand or reduce the scope of  
24 private property protections provided in the state and fed-  
25 eral constitutions.

26 Section 2. This act is effective July 1,  
27 1995.". PARADY, LUTHI, BEBOUT

1 HB0171H301/ A

2 ~~A~~ Page 10-line<sup>s</sup> 13 through 20 Delete. TEMPEST

C

1 HB0171H201/ A

2 ~~X~~ Delete the Bebout committee of the whole amendment  
3 (HB0171HW01/AC) and further amend as fol-  
4 lows:

5 ~~X~~ Page 1-Above line 1 In the catch title, delete "Taxpayer  
6 Protection" and insert "Regulatory  
7 Takings". NAGEL



1995

STATE OF WYOMING

95LSO-0400.ENG

HOUSE BILL NO. 0171

Regulatory Takings Act.

Sponsored by: Representative(s) PASENEAUX, ANDERSON, BAKER, BATY, BEBOUT, BETTS, DEVIN, EYRE, HAGEMAN, MOORE, PHILP, SIMONS, LUTHI and STARK and Senator(s) BARTON, GEIS, GILBERTZ, GRIEVE, MEIER and TWIFORD

## A BILL

for

1 AN ACT to create W.S. 9-5-301 through 9-5-305 relating to  
2 administration of government; providing for agency evalua-  
3 tion with respect to regulatory takings of property as  
4 specified; providing definitions; providing guidelines to  
5 establish a taking; requiring certain specified proce-  
6 dures; declaring a purpose; and providing for an effective  
7 date.

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

9 Section 1. W.S. 9-5-301 through 9-5-305 are created  
10 to read:

=====

LEGEND: Underlined = New text added to existing statutes  
Stricken = Text deleted from existing statutes

=====

1

## ARTICLE 3

2

## REGULATORY TAKINGS

3

9-5-301. SHORT TITLE. This act shall be known and may  
4 be cited as the "Wyoming Regulatory Takings Act."

5

9-5-302. DEFINITIONS.

6

(a) As used in this act:

7

(i) "Constitutional implications" means the  
8 unconstitutional taking of private property as determined  
9 by the attorney general in light of current case law;

10

(ii) "Government agency" means the state of  
11 Wyoming and any officer, agency, board, commission,  
12 department or similar body of the executive branch of  
13 state government;

14

(iii) "Governmental action" or "action":

15

(A) Means:

16

(I) Proposed rules by a state agency  
17 that if adopted and enforced may limit the use of private  
18 property;

19

(II) Required dedications or exactions

1 from owners of private property by a state agency.

2 (B) Does not include:

3 (I) Activity in which the power of  
4 eminent domain is exercised formally;

5 (II) Repealing rules discontinuing  
6 governmental programs or amending rules in a manner that  
7 lessens interference with the use of private property;

8 (III) Law enforcement activity involv-  
9 ing seizure or forfeiture of private property for viola-  
10 tions of law or as evidence in criminal proceedings;

11 (IV) Orders that are authorized by  
12 statute, that are issued by a state agency or a court of  
13 law and that were the result of a violation of state law;

14 (V) Actions necessary to maintain or  
15 protect public health and safety.

16 (iv) "Private property" means property protected  
17 by amendments V and XIV of the constitution of the United  
18 States or article 1, section 33 of the constitution of the  
19 state of Wyoming;

20 (v) "Taking" means an uncompensated taking of

1 private property in violation of the state or federal con-  
2 stitution;

3 (vi) "This act" means W.S. 9-5-301 through  
4 9-5-305.

5 9-5-303. GUIDELINES AND CHECKLIST FOR ASSESSMENT OF  
6 TAKINGS.

7 (a) The attorney general shall develop guidelines and  
8 a checklist by October 1, 1995, to assist government agen-  
9 cies in the identification and evaluation of actions that  
10 have constitutional implications that may result in a tak-  
11 ing. The attorney general shall review and update the  
12 checklist and guidelines to maintain consistency with  
13 changes in the law.

14 (b) In formulating the guidelines and checklist, the  
15 attorney general shall consider the following:

16 (i) A description of how the action or regula-  
17 tion affects private property;

18 (ii) The likelihood that the action or regula-  
19 tion may constitute a taking;

20 (iii) The statutory purpose to be served by the

1 action or regulation;

2 (iv) Whether the action or regulation advances  
3 that purpose;

4 (v) Whether the restriction imposed is propor-  
5 tionate to the overall problem;

6 (vi) An estimate of the agency's financial lia-  
7 bility should the action or regulation be held to consti-  
8 tute a taking of private property;

9 (vii) Alternatives considered by the agency, or  
10 proposed by the public, which would reduce the impact of  
11 the regulation upon private property;

12 (viii) Any other relevant criteria as may be  
13 determined by the attorney general.

14 9-5-304. AGENCY RESPONSIBLE TO EVALUATE TAKINGS.

15 (a) The agency shall use the guidelines and checklist  
16 prepared pursuant to W.S. 9-5-303 to evaluate proposed  
17 administrative actions or regulations that may have con-  
18 stitutional implications.

19 (b) In addition to the guidelines prepared under W.S.  
20 9-5-303, state agencies shall consider the following cri-



Page 2-line 17

Delete "limit the use" insert "constitute a taking". PHILLIPS

*T. Davis*

*Phillips*

- Page 4-line 14 After "(b)" delete balance of line and insert "Pursuant to the attorney general's guidelines and checklist and in evaluating an action or regulation that may result in taking of private property, a state agency".
- Page 4-line 15 Delete "attorney general".
- Page 5-line 13 Delete "determined" insert "specified"; before "." insert "to the state agency".  
PHILLIPS

*Done**failed*



Page 1-line 1      Delete "9-5-305" insert "9-5-304".  
Page 1-line 5      After ";" delete balance of line.  
Page 1-line 6      Delete "dures;".  
Page 1-line 9      Delete "9-5-305" insert "9-5-304".  
Page 4-line 4      Delete "9-5-305" insert "9-5-304".  
Page 5-lines 14 through 20      Delete.  
Page 6-lines 1 through 8      Delete and renumber as necessary.  
                                 PHILLIPS

*Dave*

Page 3-line 9      After "seizure" delete "or" insert "and";  
delete "for viola-" insert "after conviction and pursuant to applicable law;".

Page 3-line 10      Delete.    GOODENOUGH

*MB*

*San Jose*

Page 5-line 20 Delete "the following cri-".

Page 6-lines 1 through 6 Delete.

Page 6-line 7 Delete line through "other" insert "such".  
MAXFIELD

*Done*

HB0171S202/FE

TO ENGROSSED COPY

Page 4-line 20 Delete and renumber as necessary.

Page 5-lines 1 through 5 Delete. MAXFIELD

*Done*

*Done*

HB0171SW01/FE

TO ENGROSSED COPY

Page 3-line 15 Delete "safety" insert "welfare". SCHIFFER

Me

**HOUSE ROLL CALL - FIFTY-THIRD WYOMING LEGISLATURE**

Date 2-2-75 Bill # HB 171 Intro        3rd Rdg        Concur        Rules/Susp       

Other Action: #31714-303/c JCC# \_\_\_\_\_

Moved by: Parody Seconded by: Bebout

Ayes	Noes	Excused	Absent	Conflict		Ayes	Noes	Excused	Absent	Conflict	
✓					ANDERSON		✓				MORROW
✓					BADGETT	✓					NAGEL
✓					BAKER		✓				NELSON
✓	✓				BARKER	✓					PARADY
✓					BATY	✓					PARK
✓					BEBOUT	✓					PASENEAUX
	✓				BENSEL	✓					PERKINS
	✓				BETTS	✓					PHILP
	✓				BOSWELL	✓					REED
	✓				BOWRON	✓					ROSE
✓					BURNS		✓				RYCKMAN
✓					CASE	✓					SELBY
✓					DEVIN	✓					SESSIONS
✓					DEWITT	✓					SHIPPY
✓					DIERCKS	✓					SHREVE
✓					ERB	✓					SIMONS
✓					EYRE	✓					STAFFORD
✓					GAMS	✓					STARK
✓					HAGEMAN		✓				TAYLOR-HORTON
✓					HANES		✓				TEMPEST
	✓				HARRISON	✓					TIPTON
✓					HINCHEY		✓				TOMASSI
✓					HINES	✓					WASSERBURGER
✓					HUCKFELDT	✓					WILLFORD
✓					JOHNSON		✓				WOOLDRIDGE
✓					LAW		✓				ZANETTI
✓					LUTHI	✓					MR. SPEAKER
✓					MACMILLAN	AYES <u>44</u> NOES <u>16</u> EXCUSED _____ ABSENT _____ CONFLICT _____ TOTAL <u>60</u> LESS					PRESENT _____  <div style="border: 1px solid black; padding: 5px; width: fit-content;">             Passed <u>✓</u>               Failed _____           </div>
					MARTON						
	✓				MASSIE						
✓					MCCONIGLEY						
✓					MCMURTREY						
✓	✓				MOCKLER						
✓					MOORE						

5

Date 2-2-95 Bill # HB 171 Intro      3rd Rdg ✓ Concur      Rules/Susp     

**Other Action:** \_\_\_\_\_ **JCC#** \_\_\_\_\_

**Moved by:** \_\_\_\_\_ **Seconded by:** \_\_\_\_\_

Ayes	Noes	Excused	Absent	Conflict		Ayes	Noes	Excused	Absent	Conflict	
✓					ANDERSON		✓				MORROW
	✓				BADGETT	✓					NAGEL
✓					BAKER		✓				NELSON
	✓				BARKER	✓					PARADY
✓					BATY	✓					PARK
✓					BEBOUT	✓					PASENEAUX
	✓				BENSEL	✓	✓				PERKINS
	✓				BETTS	✓					PHILP
	✓				BOSWELL	✓					REED
	✓				BOWRON		✓				ROSE
	✓				BURNS		✓				RYCKMAN
	✓				CASE		✓				SELBY
	✓				DEVIN		✓				SESSIONS
✓					DEWITT		✓				SHIPPY
✓					DIERCKS	✓					SHREVE
✓					ERB	✓					SIMONS
✓					EYRE	✓					STAFFORD
✓					GAMS	✓					STARK
✓					HAGEMAN		✓				TAYLOR-HORTON
	✓				HANES		✓				TEMPEST
	✓				HARRISON		✓				TIPTON
✓	✓				HINCHEY		✓				TOMASSI
✓					HINES		✓				WASSERBURGER
✓					HUCKFELDT	✓					WILLFORD
	✓				JOHNSON		✓				WOOLDRIDGE
	✓				LAW		✓				ZANETTI
✓					LUTHI	✓	✓				MR. SPEAKER
	✓				MACMILLAN	AYES <u>27</u> PRESENT _____ NOES <u>33</u> EXCUSED _____ ABSENT _____ CONFLICT _____ TOTAL <u>60</u> LESS					
					MARTIN						
	✓				MASSIE	<div>             Passed _____              Failed <u>✓</u> </div>					
	✓				MCCONIGLEY						
✓					MCMURTREY						
	✓				MOCKLER						
✓					MOORE						



# HOUSE ROLL CALL - FIFTY-THIRD WYOMING LEGISLATURE

Date 3-3-75 Bill # HB 171 Intro \_\_\_\_\_ 3rd Rdg \_\_\_\_\_ Concur \_\_\_\_\_ Rules/Susp \_\_\_\_\_

Other Action: Motion to Reconsider Vote on 3rd Reading JCC# \_\_\_\_\_

Moved by: Hinchey Seconded by: \_\_\_\_\_

Ayes	Noes	Excused	Absent	Conflict		Ayes	Noes	Excused	Absent	Conflict	
✓					ANDERSON		✓				MORROW
	✓				BADGETT		✓				NAGEL
✓					BAKER		✓				NELSON
	✓				BARKER	✓					PARADY
✓					BATY	✓					PARK
✓					BEBOUT	✓					PASENEAUX
	✓				BENSEL	✓					PERKINS
✓					BETTS	✓					PHILP
	✓				BOSWELL	✓					REED
	✓				BOWRON	✓					ROSE
	✓				BURNS		✓				RYCKMAN
✓					CASE		✓				SELBY
	✓				DEVIN		✓				SESSIONS
✓					DEWITT	✓					SHIPPY
✓					DIERCKS	✓					SHREVE
✓					ERB	✓					SIMONS
✓					EYRE	✓					STAFFORD
✓					GAMS	✓					STARK
✓					HAGEMAN		✓				TAYLOR-HORTON
	✓				HANES		✓				TEMPEST
✓					HARRISON	✓					TIPTON
✓					HINCHEY		✓				TOMASSI
	✓				HINES		✓				WASSERBURGER
✓					HUCKFELDT	✓					WILLFORD
	✓				JOHNSON		✓				WOOLDRIDGE
	✓				LAW		✓				ZANETTI
✓					LUTHI	✓					MR. SPEAKER
	✓				MACMILLAN	<div> <div>AYES <u>33</u> PRESENT _____</div> <div>NOES <u>27</u></div> <div>EXCUSED _____</div> <div>ABSENT _____</div> <div>CONFLICT _____</div> <div>TOTAL <u>60</u></div> <div>LESS _____</div> </div>					
					MARTON						
	✓				MASSIE						
	✓				MCCONIGLEY						
✓					MCMURTREY						
	✓				MOCKLER						
✓					MOORE	<div> <div>Passed _____</div> <div>Failed _____</div> </div>					

**HOUSE ROLL CALL - FIFTY-THIRD WYOMING LEGISLATURE**

Date 2-3-95 Bill # 119171 Intro      3rd Rdg ☒ Concur      Rules/Susp     

Other Action: 3rd Reading Vote on Reconsideration JCC# \_\_\_\_\_

**Moved by: \_\_\_\_\_ Seconded by: \_\_\_\_\_**

Ayes	Noes	Excused	Absent	Conflict		Ayes	Noes	Excused	Absent	Conflict	
✓					ANDERSON		✓				MORROW
	✓				BADGETT		✓				NAGEL
✓					BAKER		✓				NELSON
	✓				BARKER	✓					PARADY
✓					BATY	✓					PARK
✓					BEBOUT	✓					PASENEAUX
	✓				BENSEL	✓					PERKINS
✓					BETTS	✓					PHILP
	✓				BOSWELL	✓					REED
	✓				BOWRON	✓					ROSE
	✓				BURNS		✓				RYCKMAN
	✓				CASE		✓				SELBY
	✓				DEVIN		✓				SESSIONS
✓					DEWITT	✓					SHIPPY
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✓					EYRE	✓					STAFFORD
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✓					HAGEMAN		✓				TAYLOR-HORTON
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✓					HINES		✓				WASSERBURGER
✓					HUCKFELDT	✓					WILLFORD
	✓				JOHNSON		✓				WOOLDRIDGE
	✓				LAW		✓				ZANETTI
✓					LUTHI	✓					MR. SPEAKER
	✓				MACMILLAN	AYES <u>30</u> PRESENT _____					
					MARTON						
	✓				MASSIE	NOES <u>28</u>					
	✓				MCCONIGLEY	EXCUSED _____					
✓					MCMURTREY	ABSENT _____					
	✓				MOCKLER	CONFLICT _____					
✓					MOORE	TOTAL <u>60</u>					
						LESS _____					
Passed <u>✓</u>											
Failed _____											