

HOUSE BILL REPORT

ESHB 2716

As Passed House:
February 12, 2010

Title: An act relating to providing a right of first repurchase for surplus transportation property.

Brief Description: Providing a right of first repurchase for surplus transportation property.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Shea, Condotta, Orcutt, Klippert, Johnson, McCune, Angel, Rodne, Kristiansen, Roach, Schmick, Fagan, Hasegawa, Pearson, Campbell and Warnick).

Brief History:

Committee Activity:

Transportation: 1/26/10, 2/8/10 [DPS].

Floor Activity:

Passed House: 2/12/10, 94-3.

Brief Summary of Engrossed Substitute Bill

- Provides a right of repurchase, subject to certain restrictions, to property owners whose properties were originally acquired through condemnation by the Washington State Department of Transportation and are later declared surplus properties.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 26 members: Representatives Clibborn, Chair; Roach, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Armstrong, Campbell, Dickerson, Driscoll, Eddy, Ericksen, Finn, Flannigan, Johnson, Klippert, Kristiansen, Moeller, Morris, Nealey, Rolfes, Sells, Shea, Simpson, Springer, Takko, Upthegrove, Williams and Wood.

Minority Report: Without recommendation. Signed by 1 member: Representative Liias, Vice Chair.

Staff: David Munnecke (786-7315).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

The Washington State Department of Transportation (WSDOT) often acquires land in anticipation of constructing highway or transportation projects. When these properties owned by the state are no longer needed for future transportation projects, state law specifies a process for the WSDOT to dispose of this surplus property.

If the WSDOT determines that any real property is no longer needed for transportation purposes, the WSDOT can sell the property or exchange it for other land at fair market value to the following entities or persons: (1) any other state agency; (2) the city or county where the property is situated; (3) any other municipal corporation; (4) regional transit authorities under chapter 81.112 RCW; (5) the former owner of the property from whom the state acquired title; (6) if the property is used as a residence, to the tenant of the property, so long as the tenant has lived there at least six months and paid rent on time; (7) any abutting property owner, unless there is more than one interested abutting property owner, in which case an auction procedure applies; (8) any other person, through written solicitation of bids; (9) any other owner of real property, where that property is required for transportation purposes; (10) if it is residential property, any non-profit organization dedicated to affordable housing, as further specified in state law; or (11) a federally recognized Indian tribe within whose reservation boundaries the property is located.

State law does not specify which of these entities or persons has priority to acquire the WSDOT's surplus property, and also grants the WSDOT the authority to sell real property through an auction so long as it provides two weeks public notice. The proceeds from the sale of surplus properties under either procedure must be deposited into the Motor Vehicle Fund.

Pursuant to legislative direction in the 2007-09 Omnibus Transportation Appropriations Act, the WSDOT has evaluated its inventory of properties and determined that over 200 properties are surplus and should be made available for sale.

Summary of Engrossed Substitute Bill:

A former property owner whose property or interest in a property was originally acquired through condemnation within the previous 10 years by the WSDOT has a right of repurchase for that property if the WSDOT determines that the property is no longer necessary for a transportation purpose and should be sold as a surplus property. A former property owner is defined as the person or entity from whom the WSDOT acquired title.

The WSDOT is required to mail notice at least 90 days prior to the planned sale of a surplus property to the former owner's last known address or forwarding address, which must be the correct address in order for the right of repurchase to survive. If the former owner notifies the WSDOT within 30 days of the date of the notice of the former owner's intent to repurchase the property, the WSDOT must sell the property to the former owner at fair market value without listing the property for sale to other owners. If the former owner does not provide timely notice of intent to repurchase, or if the sale to the former owner is not completed within six months of the notice from the former owner, the right of repurchase is extinguished.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2010.

Staff Summary of Public Testimony:

(In support) This is an often debated topic, but it seems only fair that the person who originally owned the property should have a right to repurchase the property if it is sold as surplus.

The Attorney General Task Force was formed in 2006 to look at the use of eminent domain in Washington. This bill does not come out of that task force, but it concerns an issue the task force discussed. This bill is made more important by the fact that the proposals that did come out of the task force have not yet been acted on by the committees to which they were assigned. While the bill does not have a time limitation, it does have procedural limitations in that surplus properties can only be sold to the former owner or any of their descendants that can be found.

The passage of this bill would implement an important reform to the eminent domain process in Washington, by allowing individuals to repurchase their property if it was no longer needed for a transportation purpose and was declared surplus by the WSDOT. This bill would make the process fairer by treating property owners with respect and dignity. Even when all aspects of the eminent domain process are followed, it is extremely disruptive for the owner of the property, and this bill would provide the former owner with some measure of solace.

Eminent domain is one of the most powerful tools granted to governments, and it can be used to do good or it can be used for destruction. Without a right of first refusal on the part of the former property owner, there is less of a check on the use of this power. Limiting the power of eminent domain in this fashion allows for a reconnection with the emotional ties inherent in a property. There is no ethical upside to denying individuals a right of first refusal.

(Neutral) House Bill 2734 allows for direct sale to a particular entity, and House Bill 2716 would grant the former owner a right to purchase a property before it can be sold to such an entity. The WSDOT has historically been a reactive seller of property rather than a proactive seller of property, so it has usually been approached by individuals who are interested in purchasing a property and then begins the surplus property process.

(Opposed) None.

Persons Testifying: (In support) Representative Shea, prime sponsor; William Maurer, Institute for Justice; and Steve Hammond, Citizens' Alliance for Property Rights.

(Neutral) Mike Palazzo, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying: None.