
ENGROSSED SUBSTITUTE SENATE BILL 5768

State of Washington

52nd Legislature

1991 Regular Session

By Senate Committee on Agriculture & Water Resources (originally sponsored by Senators Hayner, Barr, Newhouse and Anderson).

Read first time March 4, 1991.

1 AN ACT Relating to railroad rights of way; and adding a new chapter
2 to Title 81 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that railroads
5 have historically enjoyed the protection and benefit of governmental
6 assistance, including land grants and condemnation authority, to serve
7 the public good. The legislature further finds it is beneficial to the
8 welfare of the people and commerce of the state of Washington,
9 especially the agricultural segment of the state, that a railroad, when
10 leasing, licensing, or otherwise permitting persons to occupy land
11 previously serviced by the railroad, or when dealing with its abandoned
12 rights of way, do so in a manner that is fair to the occupant of such
13 property.

1 NEW SECTION. **Sec. 2.** As used in this chapter, unless
2 specifically defined otherwise or unless the context requires
3 otherwise:

4 (1) "Adjoining real property" means real property owned by a
5 railroad adjoining an abandoned railroad right of way, and previously
6 was served by the right of way, and that is subject to a lease, permit,
7 or similar possessory rights, or having leasehold improvements, on the
8 property.

9 (2) "Disposal" means the sale, lease, exchange, or other
10 disposition of adjoining real property formerly served by the abandoned
11 right of way.

12 (3) "Fair market rental value" means the rental value a willing
13 lessee would pay a willing lessor, with such value not including the
14 enhancement value of leasehold improvements owned by the occupant.

15 (4) "Fair market value" means the price a willing buyer would pay
16 a willing seller, with such value not including the enhancement value
17 of leasehold improvements owned by the occupant.

18 (5) "Occupant" means a person or entity occupying adjoining real
19 property under a lease, license, or permit, or owning leasehold
20 improvements on the property.

21 (6) "Railroad" means a railroad or "railroad company" as defined in
22 RCW 81.04.010. Railroad also means any trustee or any affiliated
23 entity or subsidiary of the railroad which holds adjoining real
24 property formerly owned by the railroad.

25 (7) "Right of first refusal" means the right to purchase or lease
26 adjoining real property at its fair market value before sale or lease
27 to any other person or entity.

1 NEW SECTION. **Sec. 3.** If adjoining real property is offered
2 for disposal the railroad or an affiliated entity must extend to the
3 occupant of said property a right of first refusal.

4 A person or entity entitled to a right of first refusal shall be
5 given a written offer by the railroad to sell such property at its fair
6 market value. The offer shall contain the legal description, the
7 rights to be conveyed, and the price and terms of sale. The offer
8 shall also contain the following statement: "You have a right of first
9 refusal pursuant to section 3 of this act to accept, decline or appeal
10 the reasonableness of this offer by so notifying the railroad within
11 sixty days, and thirty days thereafter to file a notice of appeal to
12 the board of equalization in the county in which the land is located."
13 The recipient of the offer shall respond in writing within sixty days,
14 either accepting, declining, or giving notice of its intent to appeal
15 the offer to sell.

16 NEW SECTION. **Sec. 4.** In the event the holder of a right of
17 first refusal appeals the reasonableness of the railroad's offer to
18 sell, the offeree shall have the right to have the fair market value
19 determined by the board of equalization of the county in which the
20 property is located. Within thirty days after its notice of intent to
21 appeal, the holder of the right of first refusal shall file an appeal
22 with the board of equalization and the issue of fair market value shall
23 be resolved either in accordance with the procedures and regulations of
24 the board, or the board may hire an independent appraiser with no
25 financial connections with either party to establish the fair market
26 value. The costs of the appraisal shall be divided equally between the
27 seller and the purchaser, and collected by the county at the time the
28 sale of the property is recorded with the county.

1 Subject to such appeal rights as may exist in law, the decision and
2 order of the board of equalization shall be binding upon the parties,
3 provided, however, that either the railroad or the occupant may
4 withdraw from the sale by giving written notice to the other party
5 within fifteen days after issuance of the final order. Such a
6 withdrawal by a railroad shall not eliminate rights of first refusal to
7 persons or entities as provided for in this chapter.

8 NEW SECTION. **Sec. 5.** A charge for leaseholds, licenses,
9 permits, or other similar possessory rights for real property adjoining
10 abandoned railroad rights of way shall be just, reasonable, and
11 nondiscriminatory. A renewal or extension of an existing lease,
12 permit, or license shall contain the following statement, prominently
13 displayed: "You have the right to appeal the reasonableness of the
14 rental payment pursuant to section 5 of this act by notifying the
15 railroad of your intent to appeal within thirty days after the payment
16 is due, and thereafter, within thirty days of your notice of intent to
17 appeal, by appealing to the board of equalization in the county where
18 the property is located."

19 NEW SECTION. **Sec. 6.** In the event a holder of leasehold
20 rights, licenses, permits, or similar possessory rights for real
21 property adjoining abandoned railroad rights of way cannot agree with
22 the railroad upon the fair market rental or other similar charges, a
23 yearly fair market rental value shall be presumed to be twelve percent
24 of the fair market assessed value as provided in the most recent tax
25 assessment prepared by the tax assessor in the county in which the
26 property is located. Such value shall be deemed the fair market rental
27 value unless either party gives written notice to the other within
28 thirty days after the date payment is due of its intent to appeal the

1 fair market rental value of the property and unless such party
2 thereafter appeals to the board of equalization within thirty days
3 after the notice of its intent to appeal.

4 The board of equalization shall determine the fair market rental
5 value of the property by hiring a person with expertise on determining
6 fair market rental value of property. The cost establishing this
7 determination shall be paid by the party making the appeal. The fair
8 market rental value established by the board of equalization shall be
9 applied from the date of the notice of intent to appeal and any balance
10 due resulting from the determination shall be paid in full within
11 thirty days of that determination.

12 The decision and order of the board of equalization is binding upon
13 the parties on the issue of fair market rental value or other like
14 charges, subject only to such appeal rights as may exist in law.

15 NEW SECTION. **Sec. 7.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act shall
20 constitute a new chapter in Title 81 RCW.