

**ESHB 2016** - H AMD TO H AMD (H-4496.4/08) **1067**  
By Representative Orcutt

**NOT ADOPTED 2/13/2008**

1 On page 2, beginning on line 13, strike all of section 3 and  
2 insert the following:

3 "NEW SECTION. **Sec. 3.** A new section is added to chapter 8.25  
4 RCW to read as follows:

5 When real property is acquired through condemnation or under  
6 the threat of condemnation, the owner of the property may retain an  
7 option to repurchase the property or to receive proceeds from the  
8 sale of the property in accordance with this section. If the owner  
9 elects to retain such an option, it shall be a part of the purchase  
10 and sale agreement or other agreement for the transfer of the  
11 property to the acquiring entity. In addition, the option should  
12 be recorded in the real property records of the county where the  
13 property is located. Failure to so record the option will have  
14 the same effect as failure to record any other interest in real  
15 property. In any condemnation proceeding to determine just  
16 compensation for the taking of property in which the owner has  
17 retained an option to repurchase or to receive proceeds from the  
18 sale of the property, the amount of just compensation to be paid  
19 shall be reduced by the value of the option. No option shall be  
20 provided if the amount of just compensation paid by the acquiring  
21 entity is not reduced by the value of the option.

22 (1) Any entity seeking to acquire real property through  
23 condemnation or under the threat of condemnation must notify the  
24 owner in writing of the right under this section to retain a  
25 repurchase option or an option to receive proceeds from the sale of  
26 the property. The notice must be given:

27 (a) In the case of the state or other entity operating under  
28 the procedures of chapter 8.04 RCW, with the notice given under RCW  
29 8.04.020;

1 (b) In the case of a county or other entity operating under the  
2 procedures of chapter 8.08 RCW, with the notice given under RCW  
3 8.08.030;

4 (c) In the case of a city, town, or other entity operating  
5 under the procedures of chapter 8.12 RCW, with the summons served  
6 under RCW 8.12.070;

7 (d) In the case of a school district or other entity operating  
8 under the procedures of chapter 8.16 RCW, with the notice given  
9 under RCW 8.16.030;

10 (e) In the case of a corporation or other entity operating  
11 under the procedures of chapter 8.20 RCW, with the notice given  
12 under RCW 8.20.020; and

13 (f) In the case of any other entity, with the service of  
14 process commencing the action for condemnation.

15 (2) If real property that was transferred to an acquiring  
16 entity through or under the threat of condemnation has not been or  
17 will not be put to use for a public purpose within five years after  
18 the date the property was transferred to the acquiring entity, the  
19 acquiring entity must provide a written notice to a former owner  
20 who elected to retain a repurchase option in the property or an  
21 option to receive proceeds from the sale of the property certifying  
22 that the acquiring entity is making reasonable progress towards the  
23 project for which the property was condemned. The acquiring entity  
24 must provide the written notice no later than five years, and no  
25 sooner than four years, after the date the property was transferred  
26 to the acquiring entity.

27 (3) If, within seven years after the date real property was  
28 transferred to an acquiring entity through or under the threat of  
29 condemnation, the acquiring entity determines that all or a portion  
30 of the property or an interest in the property is no longer  
31 necessary for a public purpose and should be sold, a former owner  
32 who elected to retain a repurchase option or an option to receive  
33 proceeds may exercise that option in accordance with this section.  
34 "Former owner" means the person or persons from whom the acquiring  
35 entity acquired title or that person's or those persons' successors  
36 or assigns to the property or property interest that is subject to  
37 the repurchase right or right to receive proceeds.

38 (a) At least ninety days prior to the date on which the  
39 acquiring entity will announce a public process for property

1 disposition or, if the sale is to be negotiated, at least ninety  
2 days prior to the date on which a purchase and sale agreement or  
3 similar document is to be signed, the acquiring entity shall (i)  
4 publish notice of its determination to sell the property or a  
5 portion of the property in a legal newspaper of general circulation  
6 in the area where the property to be sold is located, (ii) describe  
7 generally any easements, other restrictions, or reserved rights the  
8 acquiring entity intends to retain upon sale, and (iii) mail notice  
9 of the determination to the former owner of the property at the  
10 former owner's last known address or to a forwarding address if  
11 that owner has provided the acquiring entity with a forwarding  
12 address.

13 (b) If the former owner notifies the acquiring entity in  
14 writing within thirty days of the date of notice provided under (a)  
15 of this subsection that the former owner intends to exercise the  
16 repurchase right or the right to receive proceeds granted by this  
17 section, the acquiring entity shall, unless it already has a  
18 completed current independent appraisal for the property,  
19 immediately arrange for an independent appraisal to determine the  
20 fair market value of the property or portion of property subject to  
21 repurchase or to the right to receive proceeds, adjusted to reflect  
22 the value of any physical changes to the property, such as  
23 improvements or removal of structures. Within thirty days of  
24 receipt of the former owner's notice of intent to exercise the  
25 repurchase right or right to receive proceeds, or following the  
26 acquiring entity's receipt of the appraisal, the acquiring entity  
27 shall provide the former owner with a written copy of the  
28 appraisal. All costs of appraisal shall be paid by the acquiring  
29 entity. If the former owner does not provide timely written notice  
30 to the acquiring entity of the intent to exercise a repurchase  
31 right or the right to receive proceeds, that right is extinguished  
32 and the acquiring entity is relieved of any further obligation  
33 under this section.

34 (c) Within thirty days of the date the acquiring entity  
35 provides a written copy of the appraisal to the former owner under  
36 (b) of this subsection, the former owner shall notify the acquiring  
37 entity whether the former owner wishes to repurchase the property  
38 or receive proceeds from the sale of the property.

1 (d) The former owner may exercise the repurchase right granted  
2 by this section by delivering to the acquiring entity earnest money  
3 or a deposit in a form determined by the acquiring entity in an  
4 amount equal to five percent of the appraised value, together with  
5 a written promise to pay, within thirty days, the following:

6 (i) The lesser of (A) the appraised value less the earnest  
7 money or deposit, or (B) an amount equal to the compensation  
8 received from the acquiring entity when the property or portion of  
9 property was condemned or sold under threat of condemnation, with  
10 interest accrued at the market rate, and with the amount adjusted  
11 to reflect the value of any physical changes to the property, such  
12 as improvements or removal of structures, as determined by the  
13 independent appraisal, less the earnest money or deposit; and

14 (ii) All required fees and costs otherwise required for the  
15 transfer of real property.

16 (e) Upon receipt of the full payment required in (d) of this  
17 subsection, the acquiring entity shall transfer title to the former  
18 owner, subject to any easements, other restrictions, or reserved  
19 rights retained by the acquiring entity. If the former owner fails  
20 to complete the sale, the earnest money or deposit is forfeited to  
21 the acquiring entity, the former owner's repurchase right is  
22 extinguished, and the acquiring entity is relieved of any further  
23 obligation under this section.

24 (f) In the event that the acquiring entity and the former owner  
25 cannot agree on the amount of compensation paid for a portion of  
26 the property under (d)(i)(B) of this subsection, the acquiring  
27 entity and the former owner shall each arrange for an independent  
28 appraisal of the just compensation allocation to the portion of the  
29 property to be sold. If the acquiring entity and the former owner  
30 cannot then agree on the amount, either party may initiate a  
31 lawsuit to determine the amount, or they may agree to binding  
32 arbitration in which case the appraisals shall be submitted to a  
33 third, independent appraiser. The third appraiser shall sit as an  
34 arbitrator and determine the amount of just compensation under  
35 (d)(i)(B) of this subsection. The arbitrator's decision shall be  
36 final and binding. The acquiring entity and former owner shall bear  
37 their own costs and fees, and pay equally the costs and fees of the  
38 arbitrator.

1 (g) If the former owner elects to receive the proceeds of the  
2 sale of the property, the amount of proceeds shall be the  
3 difference between: (i) the price at which the property is sold;  
4 and (ii) the amount of the compensation received from the acquiring  
5 entity when the property was condemned or sold under threat of  
6 condemnation, with interest accrued at the market rate, and with  
7 the amount adjusted to reflect the value of any physical changes to  
8 the property, such as improvements or removal of structures, as  
9 determined by the independent appraisal.

10 (4) The acquiring entity may reject a notice of intent under  
11 subsection (3)(b) of this section received from a person claiming  
12 to be a successor or assignee that is not accompanied by evidence  
13 sufficient to demonstrate that the person is the successor or  
14 assignee of the person from whom the acquiring entity acquired  
15 title.

16 (5) The obligations imposed on an acquiring entity in this  
17 section are in addition to any provided by law for the surplusizing  
18 or sale of public property to private parties. Nothing in this  
19 section precludes an acquiring entity from retaining the property  
20 and determining not to surplus and sell the property."

**EFFECT:** Provides that an owner of condemned property may elect to retain the right to receive proceeds from the sale of the condemned property if the condemned property is sold within 7 years. Requires the former owner to elect between the right to receive proceeds or the right to repurchase the property (which is currently provided for in the striking amendment).

Provides that the amount of proceeds is the difference between: (a) the price at which the property is sold; and (b) the amount of the compensation received from the acquiring entity when the property was condemned, with interest accrued at the market rate, and with the amount adjusted to reflect the value of any physical changes to the property.