

CONCURRED IN.

APRIL 11, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

APRIL 17, 1991

REPORTED CORRECTLY ENROLLED.

APRIL 19, 1991

SIGNED BY PRESIDENT.

APRIL 18, 1991

SIGNED BY SPEAKER.

APRIL 19, 1991

DELIVERED TO GOVERNOR.

APRIL 20, 1991

RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

APRIL 22, 1991

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 23, 1991

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

APRIL 24, 1991

THIRD READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE HOUSE

APRIL 24, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

House BILL NO. *233*
INTRODUCED BY *Barbara E. Roney Ferguson*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A FIRST RIGHT OF PURCHASE OF RAILROAD RIGHT-OF-WAY LAND TO LEASEHOLDERS OF THE LAND, TO LANDOWNERS ADJACENT TO THE LAND, OR TO A PERSON OR ENTITY WHO WISHES TO PURCHASE THE LAND FOR PUBLIC RECREATIONAL USE; REQUIRING THE PUBLIC SERVICE COMMISSION TO ADOPT RULES TO IMPLEMENT THE RIGHT; AND AMENDING SECTION 69-14-553, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] requires the public service commission to adopt rules establishing the procedure for resolution of disputes between railroads selling right-of-way land and leaseholders of the land, landowners adjacent to the land, or other persons or entities wishing to exercise their first right of purchase granted by this bill. It is intended that the commission may further define terms as necessary to implement the purpose of this bill. The commission shall adopt rules promoting the purchase and maintenance of right-of-way land for public recreational use. The commission shall prescribe the procedure to be followed by the parties after negotiations between the parties fail and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

after application to the commission for resolution of the dispute. The commission shall provide for the use of independent appraisers and the submission of appraisals. Rules must be adopted before October 1, 1992.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in

[sections 1 through 3], the following definitions apply:

(1) "Commission" means the public service commission established in 2-15-2602.

(2) "Fair market value" means:

(a) the price negotiated between the parties under [section 2]; or

(b) the total appraised value of the land minus the appraised value of any leasehold improvements, as determined by independent appraisers.

(3) "Leaseholder" means a person who holds a lease or permit with respect to land within a railroad right-of-way and who has constructed or owns improvements on the land that have an appraised value of \$15,000 or more.

(4) "Prospective buyer" means the leaseholder, the landowner adjacent to the railroad right-of-way land being offered for sale, or a person or entity offering to purchase the land for a public recreational purpose.

(5) "Railroad" means a railroad corporation, its



1 trustee or successor in interest, or a nonrailroad-holding
2 corporation that owns controlling interest in a railroad.

3 (6) "Right-of-way" means land owned by a railroad that
4 is contiguous to the tracks of the railroad and not farther
5 than 300 feet from the centerline of the tracks.

6 NEW SECTION. Section 2. First right to purchase --
7 negotiation process -- exception. (1) A railroad may not
8 sell or offer for sale an interest in right-of-way land
9 unless it first extends to each leaseholder a written offer
10 to sell the leased land to the leaseholder at fair market
11 value. If there is no leaseholder, the railroad shall extend
12 the written offer to the landowner adjacent to the
13 right-of-way land being offered for sale and to persons or
14 entities proposing to maintain the right-of-way land for
15 public recreational use. Prospective buyers shall respond to
16 the offer within 60 days of receipt of the written offer,
17 and the railroad shall negotiate in good faith with a
18 prospective buyer for a period not exceeding 90 days
19 following the prospective buyer's response.

20 (2) After the 90-day negotiation period, either party
21 may file a notice of dispute with the commission under
22 [section 3]. The land may not be sold to a party other than
23 the prospective buyer during the response-and-negotiation
24 period or while a dispute is pending before the commission.

25 (3) This section does not apply to the sale of an

1 entire operating railroad line by one operating railroad to
2 another entity for the purpose of operating a railroad.

3 NEW SECTION. Section 3. Dispute resolution --
4 rulemaking -- judicial review. (1) A railroad or a
5 prospective buyer may apply to the commission to resolve a
6 dispute concerning fair market value or other terms arising
7 from negotiations under [section 2].

8 (2) The commission shall adopt rules to implement
9 [sections 1 through 3]. The rules must establish a procedure
10 to resolve disputes and provide for the use of independent
11 appraisers.

12 (3) A final decision of the commission may be reviewed
13 by the district court for any county in which the land is
14 located. The scope of judicial review is limited to a
15 determination of whether substantial evidence exists to
16 support the decision of the commission.

17 Section 4. Section 69-14-553, MCA, is amended to read:

18 "69-14-553. Acquisition and transfer of real estate.
19 Any--such A railroad corporation may acquire by purchase or
20 gift any lands land in the vicinity of its road or through
21 which the same road may pass, so far as may be if the land
22 is convenient or necessary to secure the right-of-way or
23 such--as--may--be if the land is granted to aid in the
24 construction of such the road and, except as provided in
25 [sections 1 through 3], may convey the same land in such any

LC 0900/01

1 manner as the directors may prescribe. All deeds and
2 conveyances made by such the corporation ~~shall~~ must be
3 signed by the president, under, the seal of the corporation."

4 NEW SECTION. **Section 5.** Codification instruction.
5 [Sections 1 through 3] are intended to be codified as an
6 integral part of Title 69, chapter 14, and the provisions of
7 Title 69, chapter 14, apply to [sections 1 through 3].

-End-

APPROVED BY COMM. ON NATURAL RESOURCES

HOUSE BILL NO. 233

INTRODUCED BY BARDANOUE, RANEY, JERGESON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A FIRST RIGHT OF PURCHASE OF RAILROAD--RIGHT-OF-WAY LEASED LAND TO LEASEHOLDERS OF THE LAND,--TO--LANDOWNERS-ADJACENT-TO-THE LAND,--OR-TO-A-PERSON-OR-ENTITY-WHO-WISHES--TO--PURCHASE--THE LAND--FOR--PUBLIC--RECREATIONAL--USE,--REQUIRING--THE-PUBLIC SERVICE-COMMISSION-TO-ADOPT-RULES--TO--IMPLEMENT--THE--RIGHT WITHIN 300 FEET OF A RAILROAD RIGHT-OF-WAY; AND AMENDING SECTION 69-14-553, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT-OF-INTENT

A-statement-of-intent-is-required-for-this-bill--because {section--3}-requires-the-public-service-commission-to-adopt rules-establishing-the-procedure-for-resolution-of--disputes between-railroads-selling-right-of-way-land-and-leaseholders of--the--land,--landowners--adjacent--to--the-land,--or-other persons-or-entities-wishing-to-exercise-their-first-right-of purchase-granted-by-this-bill.--It--is--intended--that--the commission---may---further---define---terms---as---necessary--to implement-the-purpose-of-this-bill.--The--commission--shall adopt--rules--promoting--the--purchase--and--maintenance--of right-of-way---land---for---public---recreational--use.--The

~~commission-shall-prescribe-the-procedure-to-be--followed--by the--parties-after-negotiations-between-the-parties-fail-and after-application-to-the-commission-for--resolution--of--the dispute.--The--commission--shall--provide--for--the--use--of independent--appraisers--and--the--submission-of-appraisals. Rules-must-be-adopted-before-October-17,1992.~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through--3 AND 2], the following definitions apply:

{1}--"Commission"--means-the--public--service--commission established-in-2-15-2602.

{2}{1} "Fair market value" means:

(a) the price negotiated between the parties under [section 2]; or

(b) the total appraised value of the land minus--the appraised-value-of-any-leasehold-improvements, as determined by independent--appraisers A CERTIFIED APPRAISAL UNDER [SECTION 2].

{3}{2} "Leaseholder" means a person who holds a lease or permit with respect to land within ADJACENT TO a railroad right-of-way and who has constructed or owns improvements BUILDINGS on the land that have an appraised value of \$15,000 \$5,000 or more.



1 (4)--"Prospective--buyer"--means--the--leaseholder,--the
2 landowner--adjacent--to--the--railroad--right--of--way--land--being
3 offered--for--sale--or--a--person--or--entity--offering--to--purchase
4 the--land--for--a--public--recreational--purpose;

5 (5)--"Railroad"--means--a--railroad--corporation,--its
6 trustee--or--successor--in--interest,--or--a--nonrailroad--holding
7 corporation--that--owns--controlling--interest--in--a--railroad;

8 (6)(3) "Right-of-way" means land owned by UPON WHICH a
9 railroad that--is--contiguous--to--the--tracks--of--the--railroad
10 and--not--farther--than--300--feet--from--the--centerline--of--the
11 tracks HAS OR HAS HAD TRACKS.

12 NEW SECTION. Section 2. First right to purchase --
13 negotiation process -- exception. (1) A-railroad-may-not
14 sell-or-offer-for-sale--an--interest--in--right-of-way--land
15 unless--it--first--extends--to--each--leaseholder--a--written--offer
16 to--sell--the--leased--land--to--the--leaseholder--at--fair--market
17 value--if--there--is--no--leaseholder,--the--railroad--shall--extend
18 the--written--offer--to--the--landowner--adjacent--to--the
19 right-of-way--land--being--offered--for--sale--and--to--persons--or
20 entities--proposing--to--maintain--the--right-of-way--land--for
21 public--recreational--use--Prospective-buyers--shall--respond--to
22 the--offer--within--60--days--of--receipt--of--the--written--offer,
23 and--the--railroad--shall--negotiate--in--good--faith--with--a
24 prospective--buyer--for--a--period--not--exceeding--90--days
25 following--the--prospective--buyer's--response;

1 (2)--After--the--90--day--negotiation--period,--either--party
2 may--file--a--notice--of--dispute--with--the--commission--under
3 {section-3}.--The--land--may--not--be--sold--to--a--party--other--than
4 the--prospective--buyer--during--the--response--and--negotiation
5 period--or--while--a--dispute--is--pending--before--the--commission.
6 A PERSON OR ENTITY THAT HAS A LEASEHOLD SITE BETWEEN A POINT
7 8.5 FEET FROM THE CENTERLINE OF THE TRACK NEAREST THE EDGE
8 OF THE RIGHT-OF-WAY AND 300 FEET OF THE TRACK CENTERLINE AND
9 THAT USES THE LEASEHOLD FOR TRANSPORTATION, REGARDLESS OF
10 THE STATUS OF TRAIN OPERATIONS, HAS A RIGHT OF FIRST REFUSAL
11 TO PURCHASE THE LAND IN THE EVENT THE OWNER SEEKS TO SELL
12 THE LAND OR TRANSFER THE LEASEHOLD ESTATE.

13 (2) THE OWNER OF THE LAND MAY NOT SELL OR OFFER FOR
14 SALE AN INTEREST IN THE LEASED LAND OR DISPOSSESS THE
15 LEASEHOLDER FOR REASONS OTHER THAN NONPAYMENT OF THE LEASE
16 UNLESS HE FIRST EXTENDS TO THE LEASEHOLDER A WRITTEN OFFER
17 TO SELL THE LEASED LAND TO THE LEASEHOLDER AT FAIR MARKET
18 VALUE. THE LEASEHOLDER SHALL RESPOND TO THE OFFER WITHIN 60
19 DAYS OF RECEIPT OF THE OFFER.

20 (3) THE OWNER SHALL NEGOTIATE IN GOOD FAITH WITH THE
21 LEASEHOLDER FOR A PERIOD NOT TO EXCEED 90 DAYS FOLLOWING THE
22 LEASEHOLDER'S RESPONSE TO THE WRITTEN OFFER PROVIDED FOR IN
23 SUBSECTION (2). THE LAND MAY NOT BE SOLD OR TRANSFERRED
24 DURING THE RESPONSE AND NEGOTIATION PERIODS.

25 (4) (A) IF THE OWNER AND THE LEASEHOLDER CANNOT AGREE

1 ON THE FAIR MARKET VALUE OF THE LAND, THEY SHALL APPOINT A
2 CERTIFIED APPRAISER TO ESTABLISH THE FAIR MARKET VALUE OF
3 THE LAND.

4 (B) IN THE EVENT THAT THE OWNER AND LEASEHOLDER CANNOT
5 AGREE ON AN APPRAISER, EACH SHALL APPOINT A CERTIFIED
6 APPRAISER WHO SHALL MAKE AN INDEPENDENT APPRAISAL. IF THE
7 APPRAISALS ARE WITHIN 5% OF EACH OTHER, THE AVERAGE OF THE
8 TWO APPRAISALS MUST CONSTITUTE THE FAIR MARKET VALUE.

9 (C) IF THE TWO APPRAISALS DIFFER BY MORE THAN 5%, THE
10 TWO APPRAISERS MUST APPOINT A THIRD CERTIFIED APPRAISER
11 WHOSE APPRAISAL MUST ESTABLISH THE FAIR MARKET VALUE OF THE
12 LAND.

13 (D) IF THE LEASEHOLDER FAILS TO CLOSE THE PURCHASE OF
14 THE LEASEHOLD ESTATE FOR ANY REASON WITHIN 45 DAYS AFTER THE
15 FAIR MARKET VALUE OF THE LAND HAS BEEN ESTABLISHED BY THE
16 APPRAISAL PROCESS PROVIDED FOR IN THIS SECTION, THE RIGHT OF
17 FIRST REFUSAL IS EXTINGUISHED AND THE OWNER IS FREE TO
18 TRANSFER THE PROPERTY TO A PERSON OR ENTITY OTHER THAN THE
19 LEASEHOLDER.

20 (E) THE OWNER MAY TRANSFER A TITLE UNDER THIS SECTION
21 BY QUITCLAIM DEED RATHER THAN WARRANTY DEED.

22 {3}{5} This section does not apply to the sale of an
23 entire operating railroad line by one operating railroad to
24 another entity for the purpose of operating a railroad.

25 NEW-SECTION--Section-3--Dispute-----resolution-----

1 rulemaking-----judicial--review--{1}--A--railroad--or--a
2 prospective-buyer-may-apply-to-the-commission-to--resolve--a
3 dispute--concerning-fair-market-value-or-other-terms-arising
4 from-negotiations-under-~~{section-2}~~.

5 {2}--The--commission--shall--adopt--rules--to--implement
6 ~~{sections-1-through-3}~~.--The-rules-must-establish-a-procedure
7 to-resolve-disputes-and-provide-for-the-use--of--independent
8 appraisers.

9 {3}--A--final-decision-of-the-commission-may-be-reviewed
10 by-the-district-court-for-any-county-in-which--the--land--is
11 located.--The-scope--of--judicial--review--is--limited-to-a
12 determination-of--whether--substantial--evidence--exists--to
13 support-the-decision-of-the-commission.

14 **Section 3.** Section 69-14-553, MCA, is amended to read:
15 "69-14-553. Acquisition and transfer of real estate.
16 Any such A railroad corporation may acquire by purchase or
17 gift any lands land in the vicinity of its road or through
18 which the same road may pass, so-far-as-may-be if the land
19 is convenient or necessary to secure the right-of-way or
20 such-as-may-be if the land is granted to aid in the
21 construction of such the road and, except as provided in
22 [sections 1 through-3 AND 2], may convey the same land in
23 such any manner as the directors may prescribe. All deeds
24 and conveyances made by such the corporation shall must be
25 signed by the president, under the seal of the corporation."

1 NEW SECTION. Section 4. Codification instruction.
2 [Sections 1 through-3 AND 2] are intended to be codified as
3 an integral part of Title 69, chapter 14, and the provisions
4 of Title 69, chapter 14, apply to [sections 1 through-3 AND
5 2].

6 NEW SECTION. SECTION 5. COORDINATION INSTRUCTION. IF
7 [THIS ACT] IS PASSED AND APPROVED AND HOUSE BILL NO. 924
8 FAILS TO BE PASSED AND APPROVED, THEN THIS BILL IS VOID.

9 NEW SECTION. SECTION 6. SEVERABILITY. IF A PART OF
10 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
11 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
12 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
13 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
14 SEVERABLE FROM THE INVALID APPLICATIONS.

15 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS
16 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

HOUSE BILL NO. 233

INTRODUCED BY BARDANOUE, RANEY, JERGESON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A FIRST RIGHT OF PURCHASE OF RAILROAD RIGHT-OF-WAY LEASED LAND TO LEASEHOLDERS OF THE LAND, TO LANDOWNERS ADJACENT TO THE LAND, OR TO A PERSON OR ENTITY WHO WISHES TO PURCHASE THE LAND FOR PUBLIC RECREATIONAL USE; REQUIRING THE PUBLIC SERVICE COMMISSION TO ADOPT RULES TO IMPLEMENT THE RIGHT WITHIN 300 FEET OF A RAILROAD RIGHT-OF-WAY; AND AMENDING SECTION 69-14-553, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] requires the public service commission to adopt rules establishing the procedure for resolution of disputes between railroads selling right-of-way land and leaseholders of the land, landowners adjacent to the land, or other persons or entities wishing to exercise their first right of purchase granted by this bill; it is intended that the commission may further define terms as necessary to implement the purpose of this bill. The commission shall adopt rules promoting the purchase and maintenance of right-of-way land for public recreational use. The

commission shall prescribe the procedure to be followed by the parties after negotiations between the parties fail and after application to the commission for resolution of the dispute. The commission shall provide for the use of independent appraisers and the submission of appraisals. Rules must be adopted before October 1, 1992.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in

[sections 1 through 3 AND 2], the following definitions apply:

{1} "Commission" means the public service commission established in 2-15-2602.

{2}(1) "Fair market value" means:

(a) the price negotiated between the parties under [section 2]; or

(b) the total appraised value of the land minus the appraised value of any leasehold improvements, as determined by independent appraisers A CERTIFIED APPRAISAL UNDER [SECTION 2].

{3}(2) "Leaseholder" means a person who holds a lease or permit with respect to land within ADJACENT TO a railroad right-of-way and who has constructed or owns improvements BUILDINGS on the land that have an appraised value of \$15,000 \$5,000 or more.



1 {4}--"Prospective--buyer"--means--the--leaseholder,--the
 2 landowner--adjacent--to--the--railroad--right-of-way--land--being
 3 offered--for--sale,--or--a--person--or--entity--offering--to--purchase
 4 the--land--for--a--public--recreational--purpose;

5 {5}--"Railroad"--means--a--railroad--corporation,--its
 6 trustee--or--successor--in--interest,--or--a--nonrailroad--holding
 7 corporation--that--owns--controlling--interest--in--a--railroad;

8 {6}{3} "Right-of-way" means land owned by UPON WHICH a
 9 railroad that--is--contiguous--to--the--tracks--of--the--railroad
 10 and--not--farther--than--300--feet--from--the--centerline--of--the
 11 tracks HAS OR HAS HAD TRACKS.

12 NEW SECTION. Section 2. First right to purchase --
 13 negotiation process -- exception. (1) A railroad may not
 14 sell or offer for sale an interest in right-of-way land
 15 unless it first extends to each leaseholder a written offer
 16 to sell the leased land to the leaseholder at fair market
 17 value. If there is no leaseholder, the railroad shall extend
 18 the written offer to the landowner adjacent to the
 19 right-of-way land being offered for sale and to persons or
 20 entities proposing to maintain the right-of-way land for
 21 public recreational use. Prospective buyers shall respond to
 22 the offer within 60 days of receipt of the written offer,
 23 and the railroad shall negotiate in good faith with a
 24 prospective buyer for a period not exceeding 90 days
 25 following the prospective buyer's response;

1 {2}--After the 90-day negotiation period, either party
 2 may file a notice of dispute with the commission under
 3 {section 3}. The land may not be sold to a party other than
 4 the prospective buyer during the response and negotiation
 5 period or while a dispute is pending before the commission.
 6 A PERSON OR ENTITY THAT HAS A LEASEHOLD SITE BETWEEN A POINT
 7 8.5 FEET FROM THE CENTERLINE OF THE TRACK NEAREST THE EDGE
 8 OF THE RIGHT-OF-WAY AND 300 FEET OF THE TRACK CENTERLINE AND
 9 THAT USES THE LEASEHOLD FOR TRANSPORTATION, REGARDLESS OF
 10 THE STATUS OF TRAIN OPERATIONS, HAS A RIGHT OF FIRST REFUSAL
 11 TO PURCHASE THE LAND IN THE EVENT THE OWNER SEEKS TO SELL
 12 THE LAND OR TRANSFER THE LEASEHOLD ESTATE.

13 (2) THE OWNER OF THE LAND MAY NOT SELL OR OFFER FOR
 14 SALE AN INTEREST IN THE LEASED LAND OR DISPOSSESS THE
 15 LEASEHOLDER FOR REASONS OTHER THAN NONPAYMENT OF THE LEASE
 16 UNLESS HE FIRST EXTENDS TO THE LEASEHOLDER A WRITTEN OFFER
 17 TO SELL THE LEASED LAND TO THE LEASEHOLDER AT FAIR MARKET
 18 VALUE. THE LEASEHOLDER SHALL RESPOND TO THE OFFER WITHIN 60
 19 DAYS OF RECEIPT OF THE OFFER.

20 (3) THE OWNER SHALL NEGOTIATE IN GOOD FAITH WITH THE
 21 LEASEHOLDER FOR A PERIOD NOT TO EXCEED 90 DAYS FOLLOWING THE
 22 LEASEHOLDER'S RESPONSE TO THE WRITTEN OFFER PROVIDED FOR IN
 23 SUBSECTION (2). THE LAND MAY NOT BE SOLD OR TRANSFERRED
 24 DURING THE RESPONSE AND NEGOTIATION PERIODS.

25 (4) (A) IF THE OWNER AND THE LEASEHOLDER CANNOT AGREE

1 ON THE FAIR MARKET VALUE OF THE LAND, THEY SHALL APPOINT A
 2 CERTIFIED APPRAISER TO ESTABLISH THE FAIR MARKET VALUE OF
 3 THE LAND.

4 (B) IN THE EVENT THAT THE OWNER AND LEASEHOLDER CANNOT
 5 AGREE ON AN APPRAISER, EACH SHALL APPOINT A CERTIFIED
 6 APPRAISER WHO SHALL MAKE AN INDEPENDENT APPRAISAL. IF THE
 7 APPRAISALS ARE WITHIN 5% OF EACH OTHER, THE AVERAGE OF THE
 8 TWO APPRAISALS MUST CONSTITUTE THE FAIR MARKET VALUE.

9 (C) IF THE TWO APPRAISALS DIFFER BY MORE THAN 5%, THE
 10 TWO APPRAISERS MUST APPOINT A THIRD CERTIFIED APPRAISER
 11 WHOSE APPRAISAL MUST ESTABLISH THE FAIR MARKET VALUE OF THE
 12 LAND.

13 (D) IF THE LEASEHOLDER FAILS TO CLOSE THE PURCHASE OF
 14 THE LEASEHOLD ESTATE FOR ANY REASON WITHIN 45 DAYS AFTER THE
 15 FAIR MARKET VALUE OF THE LAND HAS BEEN ESTABLISHED BY THE
 16 APPRAISAL PROCESS PROVIDED FOR IN THIS SECTION, THE RIGHT OF
 17 FIRST REFUSAL IS EXTINGUISHED AND THE OWNER IS FREE TO
 18 TRANSFER THE PROPERTY TO A PERSON OR ENTITY OTHER THAN THE
 19 LEASEHOLDER.

20 (E) THE OWNER MAY TRANSFER A TITLE UNDER THIS SECTION
 21 BY QUITCLAIM DEED RATHER THAN WARRANTY DEED.

22 {3}{5} This section does not apply to the sale of an
 23 entire operating railroad line by one operating railroad to
 24 another entity for the purpose of operating a railroad.

25 NEW-SECTION:--Section-3:--Dispute-----resolution-----

1 ~~rulemaking-----judicial--review--{1}--A--railroad--or--a~~
 2 ~~prospective-buyer-may-apply-to-the-commission-to--resolve--a~~
 3 ~~dispute--concerning-fair-market-value-or-other-terms-arising~~
 4 ~~from-negotiations-under-{section-2}:~~

5 ~~{2}--The--commission--shall--adopt--rules--to--implement~~
 6 ~~{sections-1-through-3}:-The-rules-must-establish-a-procedure~~
 7 ~~to-resolve-disputes-and-provide-for-the-use--of--independent~~
 8 ~~appraisers:~~

9 ~~{3}--A--final-decision-of-the-commission-may-be-reviewed~~
 10 ~~by-the-district-court-for-any-county-in-which--the--land--is~~
 11 ~~located--The--scope--of--judicial--review--is--limited-to-a~~
 12 ~~determination-of--whether--substantial--evidence--exists--to~~
 13 ~~support-the-decision-of-the-commission:~~

14 **Section 3.** Section 69-14-553, MCA, is amended to read:
 15 "69-14-553. Acquisition and transfer of real estate.
 16 Any such A railroad corporation may acquire by purchase or
 17 gift any lands land in the vicinity of its road or through
 18 which the same road may pass, so far as may be if the land
 19 is convenient or necessary to secure the right-of-way or
 20 such as may be if the land is granted to aid in the
 21 construction of such the road and, except as provided in
 22 [sections 1 through-3 AND 2], may convey the same land in
 23 such any manner as the directors may prescribe. All deeds
 24 and conveyances made by such the corporation ~~shall~~ must be
 25 signed by the president, under the seal of the corporation."

1 NEW SECTION. Section 4. Codification instruction.
2 [Sections 1 through-3 AND 2] are intended to be codified as
3 an integral part of Title 69, chapter 14, and the provisions
4 of Title 69, chapter 14, apply to [sections 1 through-3 AND
5 2].

6 NEW SECTION. SECTION 5. COORDINATION INSTRUCTION. IF
7 [THIS ACT] IS PASSED AND APPROVED AND HOUSE BILL NO. 924
8 FAILS TO BE PASSED AND APPROVED, THEN THIS BILL IS VOID.

9 NEW SECTION. SECTION 6. SEVERABILITY. IF A PART OF
10 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
11 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
12 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
13 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
14 SEVERABLE FROM THE INVALID APPLICATIONS.

15 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS
16 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 233 (third reading copy -- blue), respectfully report that House Bill No. 233 be amended and as so amended be concurred in:

1. Title, line 5.

Following: "WAY"

Insert: "OR THE RIGHT TO MATCH A COMPETING LEASE OFFER FOR"

2. Title, line 10.

Following: "RIGHT-OF-WAY;"

Insert: "REQUIRING COMPENSATION TO THE LESSEE IF THE LEASE IS TERMINATED;"

3. Page 3, line 12.

Following: "purchase"

Insert: "or match offer -- lease preference"

4. Page 4, line 13.

Following: line 12

Insert: "(2) The leaseholder of a leasehold site described in subsection (1) must be given the opportunity to match a competing lease offer upon expiration of an existing lease. If the leaseholder matches the new lease offer, the lease must be given to the leaseholder. When a person other than the current leaseholder becomes the lessee of a leasehold site described in subsection (1) or the lease is terminated by the lessor for reasons other than nonpayment of the lease, the lessor or new lessee shall compensate the former leaseholder for the fair market value of improvements made by the former leaseholder."

Renumber: subsequent subsections

5. Page 4, line 23.

Following: "SUBSECTION"

Strike: "(2)"

Insert: "(3)"

Signed: Lawrence G. Stimatz
Lawrence G. Stimatz, Chairman

MA 4-2-91
Amd. Coord.

SB 4-2
Sec. of Senate

SENATE
HB 233

HOUSE BILL NO. 233

INTRODUCED BY BARDANOUVE, RANEY, JERGESON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A FIRST RIGHT OF PURCHASE OF RAILROAD RIGHT-OF-WAY OR THE RIGHT TO MATCH A COMPETING LEASE OFFER FOR LEASED LAND TO LEASEHOLDERS OF THE LAND, TO LANDOWNERS ADJACENT TO THE LAND, OR TO A PERSON OR ENTITY WHO WISHES TO PURCHASE THE LAND FOR PUBLIC RECREATIONAL USE; REQUIRING THE PUBLIC SERVICE COMMISSION TO ADOPT RULES TO IMPLEMENT THE RIGHT WITHIN 300 FEET OF A RAILROAD RIGHT-OF-WAY; REQUIRING COMPENSATION TO THE LESSEE IF THE LEASE IS TERMINATED; AND AMENDING SECTION 69-14-553, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] requires the public service commission to adopt rules establishing the procedure for resolution of disputes between railroads selling right-of-way land and leaseholders of the land, landowners adjacent to the land, or other persons or entities wishing to exercise their first right of purchase granted by this bill. It is intended that the commission may further define terms as necessary to implement the purpose of this bill. The commission shall adopt rules promoting the purchase and maintenance of

right-of-way land for public recreational use. The commission shall prescribe the procedure to be followed by the parties after negotiations between the parties fail and after application to the commission for resolution of the dispute. The commission shall provide for the use of independent appraisers and the submission of appraisals. Rules must be adopted before October 17, 1992.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in

[sections 1 through 3 AND 2], the following definitions apply:

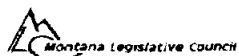
(1) "Commission" means the public service commission established in 2-15-2602.

(2)(1) "Fair market value" means:

(a) the price negotiated between the parties under [section 2]; or

(b) the total appraised value of the land minus the appraised value of any leasehold improvements, as determined by independent appraisers A CERTIFIED APPRAISAL UNDER [SECTION 2].

(3)(2) "Leaseholder" means a person who holds a lease or permit with respect to land within ADJACENT TO a railroad right-of-way and who has constructed or owns improvements BUILDINGS on the land that have an appraised value of



1 \$15,000 \$5,000 or more.

2 (4) "Prospective buyer" means the leaseholder, the
3 landowner adjacent to the railroad right-of-way land being
4 offered for sale, or a person or entity offering to purchase
5 the land for a public recreational purpose.

6 (5) "Railroad" means a railroad corporation, its
7 trustee or successor-in-interest, or a nonrailroad holding
8 corporation that owns controlling interest in a railroad.

9 (6)(3) "Right-of-way" means land owned by UPON WHICH a
10 railroad that is contiguous to the tracks of the railroad
11 and not farther than 300 feet from the centerline of the
12 tracks HAS OR HAS HAD TRACKS.

13 NEW SECTION. Section 2. First right to purchase OR
14 MATCH OFFER -- LEASE PREFERENCE -- negotiation process --
15 exception. (1) A railroad may not sell or offer for sale an
16 interest in right-of-way land unless it first extends to
17 each leaseholder a written offer to sell the leased land to
18 the leaseholder at fair market value. If there is no
19 leaseholder, the railroad shall extend the written offer to
20 the landowner adjacent to the right-of-way land being
21 offered for sale and to persons or entities proposing to
22 maintain the right-of-way land for public recreational use.
23 Prospective buyers shall respond to the offer within 60 days
24 of receipt of the written offer, and the railroad shall
25 negotiate in good faith with a prospective buyer for a

1 period not exceeding 90 days following the prospective
2 buyer's response.

3 (2) After the 90-day negotiation period, either party
4 may file a notice of dispute with the commission under
5 (section 3). The land may not be sold to a party other than
6 the prospective buyer during the response and negotiation
7 period or while a dispute is pending before the commission.

8 A PERSON OR ENTITY THAT HAS A LEASEHOLD SITE BETWEEN A POINT
9 8.5 FEET FROM THE CENTERLINE OF THE TRACK NEAREST THE EDGE
10 OF THE RIGHT-OF-WAY AND 300 FEET OF THE TRACK CENTERLINE AND
11 THAT USES THE LEASEHOLD FOR TRANSPORTATION, REGARDLESS OF
12 THE STATUS OF TRAIN OPERATIONS, HAS A RIGHT OF FIRST REFUSAL
13 TO PURCHASE THE LAND IN THE EVENT THE OWNER SEEKS TO SELL
14 THE LAND OR TRANSFER THE LEASEHOLD ESTATE.

15 (2) THE LEASEHOLDER OF A LEASEHOLD SITE DESCRIBED IN
16 SUBSECTION (1) MUST BE GIVEN THE OPPORTUNITY TO MATCH A
17 COMPETING LEASE OFFER UPON EXPIRATION OF AN EXISTING LEASE.
18 IF THE LEASEHOLDER MATCHES THE NEW LEASE OFFER, THE LEASE
19 MUST BE GIVEN TO THE LEASEHOLDER. WHEN A PERSON OTHER THAN
20 THE CURRENT LEASEHOLDER BECOMES THE LESSEE OF A LEASEHOLD
21 SITE DESCRIBED IN SUBSECTION (1) OR THE LEASE IS TERMINATED
22 BY THE LESSOR FOR REASONS OTHER THAN NONPAYMENT OF THE
23 LEASE, THE LESSOR OR NEW LESSEE SHALL COMPENSATE THE FORMER
24 LEASEHOLDER FOR THE FAIR MARKET VALUE OF IMPROVEMENTS MADE
25 BY THE FORMER LEASEHOLDER.

1 {2}(3) THE OWNER OF THE LAND MAY NOT SELL OR OFFER FOR
 2 SALE AN INTEREST IN THE LEASED LAND OR DISPOSSESS THE
 3 LEASEHOLDER FOR REASONS OTHER THAN NONPAYMENT OF THE LEASE
 4 UNLESS HE FIRST EXTENDS TO THE LEASEHOLDER A WRITTEN OFFER
 5 TO SELL THE LEASED LAND TO THE LEASEHOLDER AT FAIR MARKET
 6 VALUE. THE LEASEHOLDER SHALL RESPOND TO THE OFFER WITHIN 60
 7 DAYS OF RECEIPT OF THE OFFER.

8 {3}(4) THE OWNER SHALL NEGOTIATE IN GOOD FAITH WITH THE
 9 LEASEHOLDER FOR A PERIOD NOT TO EXCEED 90 DAYS FOLLOWING THE
 10 LEASEHOLDER'S RESPONSE TO THE WRITTEN OFFER PROVIDED FOR IN
 11 SUBSECTION {2} (3). THE LAND MAY NOT BE SOLD OR TRANSFERRED
 12 DURING THE RESPONSE AND NEGOTIATION PERIODS.

13 {4}(5) (A) IF THE OWNER AND THE LEASEHOLDER CANNOT
 14 AGREE ON THE FAIR MARKET VALUE OF THE LAND, THEY SHALL
 15 APPOINT A CERTIFIED APPRAISER TO ESTABLISH THE FAIR MARKET
 16 VALUE OF THE LAND.

17 (B) IN THE EVENT THAT THE OWNER AND LEASEHOLDER CANNOT
 18 AGREE ON AN APPRAISER, EACH SHALL APPOINT A CERTIFIED
 19 APPRAISER WHO SHALL MAKE AN INDEPENDENT APPRAISAL. IF THE
 20 APPRAISALS ARE WITHIN 5% OF EACH OTHER, THE AVERAGE OF THE
 21 TWO APPRAISALS MUST CONSTITUTE THE FAIR MARKET VALUE.

22 (C) IF THE TWO APPRAISALS DIFFER BY MORE THAN 5%, THE
 23 TWO APPRAISERS MUST APPOINT A THIRD CERTIFIED APPRAISER
 24 WHOSE APPRAISAL MUST ESTABLISH THE FAIR MARKET VALUE OF THE
 25 LAND.

1 (D) IF THE LEASEHOLDER FAILS TO CLOSE THE PURCHASE OF
 2 THE LEASEHOLD ESTATE FOR ANY REASON WITHIN 45 DAYS AFTER THE
 3 FAIR MARKET VALUE OF THE LAND HAS BEEN ESTABLISHED BY THE
 4 APPRAISAL PROCESS PROVIDED FOR IN THIS SECTION, THE RIGHT OF
 5 FIRST REFUSAL IS EXTINGUISHED AND THE OWNER IS FREE TO
 6 TRANSFER THE PROPERTY TO A PERSON OR ENTITY OTHER THAN THE
 7 LEASEHOLDER.

8 (E) THE OWNER MAY TRANSFER A TITLE UNDER THIS SECTION
 9 BY QUITCLAIM DEED RATHER THAN WARRANTY DEED.

10 {3}{5}(6) This section does not apply to the sale of an
 11 entire operating railroad line by one operating railroad to
 12 another entity for the purpose of operating a railroad.

13 ~~NEW-SECTION:--Section-3--Dispute-----resolution-----~~
 14 ~~rulemaking-----judicial--review--(1)--A--railroad--or--a~~
 15 ~~prospective--buyer--may--apply--to--the--commission--to--resolve--a~~
 16 ~~dispute--concerning--fair--market--value--or--other--terms--arising~~
 17 ~~from--negotiations--under--(section-2)--~~

18 ~~{2}--The--commission--shall--adopt--rules--to--implement~~
 19 ~~{sections-1-through-3}--The--rules--must--establish--a--procedure~~
 20 ~~to--resolve--disputes--and--provide--for--the--use--of--independent~~
 21 ~~appraisers--~~

22 ~~{3}--A--final--decision--of--the--commission--may--be--reviewed~~
 23 ~~by--the--district--court--for--any--county--in--which--the--land--is~~
 24 ~~located--The--scope--of--judicial--review--is--limited--to--a~~
 25 ~~determination--of--whether--substantial--evidence--exists--to~~

1 ~~support the decision of the commission.~~

2 **Section 3.** Section 69-14-553, MCA, is amended to read:

3 "69-14-553. Acquisition and transfer of real estate.

4 ~~Any--such~~ A railroad corporation may acquire by purchase or
5 gift any ~~lands~~ land in the vicinity of its road or through
6 which the ~~same road~~ may pass, ~~so far as may be~~ if the land
7 is convenient or necessary to secure the right-of-way or
8 ~~such--as--may--be~~ if the land is granted to aid in the
9 construction of ~~such the~~ road and, ~~except as provided in~~
10 ~~[sections 1 through--3 AND 2]~~, may convey the same land in
11 ~~such~~ any manner as the directors may prescribe. All deeds
12 and conveyances made by ~~such the~~ corporation shall ~~must~~ be
13 signed by the president, under the seal of the corporation."

14 NEW SECTION. Section 4. Codification instruction.
15 [Sections 1 through-3 AND 2] are intended to be codified as
16 an integral part of Title 69, chapter 14, and the provisions
17 of Title 69, chapter 14, apply to [sections 1 through-3 AND
18 2].

19 NEW SECTION. SECTION 5. COORDINATION INSTRUCTION. IF
20 [THIS ACT] IS PASSED AND APPROVED AND HOUSE BILL NO. 924
21 FAILS TO BE PASSED AND APPROVED, THEN THIS BILL IS VOID.

22 NEW SECTION. SECTION 6. SEVERABILITY. IF A PART OF
23 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
24 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
25 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART

1 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE

2 SEVERABLE FROM THE INVALID APPLICATIONS.

3 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS

4 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

GOVERNOR'S AMENDMENTS TO
HOUSE BILL 233
(REFERENCE COPY, AS AMENDED)
April 20, 1991

1. Page 2, line 18.
Following: "value"
Strike: "of the land"
2. Page 4, line 11.
Following: "FOR"
Strike: "TRANSPORTATION"
Insert: "transporting grain, seed or related agricultural
input commodities"
3. Page 4, line 22.
Following: "NONPAYMENT"
Insert: "or other material breach"
4. Page 5, line 3.
Following: "NONPAYMENT"
Insert: "or other material breach"
5. Page 5, line 14.
Following: "VALUE"
Strike: "OF THE LAND"
6. Page 5, line 16.
Following: "VALUE"
Strike: "OF THE LAND"
7. Page 5, line 24 and 25.
Following: "VALUE"
Strike: "OF THE LAND"

*Gov. Amend.
HB 233*

HOUSE BILL NO. 233

INTRODUCED BY BARDANOUE, RANEY, JERGESON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A FIRST RIGHT OF PURCHASE OF RAILROAD RIGHT-OF-WAY OR THE RIGHT TO MATCH A COMPETING LEASE OFFER FOR LEASED LAND TO LEASEHOLDERS OF THE LAND, TO LANDOWNERS ADJACENT TO THE LAND, OR TO A PERSON OR ENTITY WHO WISHES TO PURCHASE THE LAND FOR PUBLIC RECREATIONAL USE, REQUIRING THE PUBLIC SERVICE COMMISSION TO ADOPT RULES TO IMPLEMENT THE RIGHT WITHIN 300 FEET OF A RAILROAD RIGHT-OF-WAY; REQUIRING COMPENSATION TO THE LESSEE IF THE LEASE IS TERMINATED; AND AMENDING SECTION 69-14-553, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because ~~section 3~~ requires the public service commission to adopt rules establishing the procedure for resolution of disputes between railroads selling right-of-way land and leaseholders of the land, landowners adjacent to the land, or other persons or entities wishing to exercise their first right of purchase granted by this bill. It is intended that the commission may further define terms as necessary to implement the purpose of this bill. The commission shall adopt rules promoting the purchase and maintenance of

~~right-of-way land for public recreational use. The commission shall prescribe the procedure to be followed by the parties after negotiations between the parties fail and after application to the commission for resolution of the dispute. The commission shall provide for the use of independent appraisers and the submission of appraisals. Rules must be adopted before October 17, 1992.~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 3 AND 2], the following definitions apply:

~~{1}~~ "Commission" means the public service commission established in 2-15-2682.

~~{2}~~{1} "Fair market value" means:

(a) the price negotiated between the parties under [section 2]; or

(b) the total appraised value of the land minus the appraised value of any leasehold improvements, as determined by independent appraisers A CERTIFIED APPRAISAL UNDER [SECTION 2].

~~{3}~~{2} "Leaseholder" means a person who holds a lease or permit with respect to land within ADJACENT TO a railroad right-of-way and who has constructed or owns improvements BUILDINGS on the land that have an appraised value of

1 ~~15,000~~ \$5,000 or more.

2 {4}--"Prospective buyer"--means--the--leaseholder,--the
3 landowner--adjacent--to--the--railroad--right--of--way--land--being
4 offered--for--sale,--or--a--person--or--entity--offering--to--purchase
5 the--land--for--a--public--recreational--purpose.

6 {5}--"Railroad"---means---a--railroad--corporation,--its
7 trustee--or--successor--in--interest,--or--a--nonrailroad--holding
8 corporation--that--owns--controlling--interest--in--a--railroad.

9 {6}{3} "Right-of-way" means land owned by UPON WHICH a
10 railroad that is contiguous to the tracks of the railroad
11 and not farther than 300 feet from the centerline of the
12 tracks HAS OR HAS HAD TRACKS.

13 NEW SECTION. Section 2. First right to purchase OR
14 MATCH OFFER -- LEASE PREFERENCE -- negotiation process --
15 exception. (1) A railroad may not sell or offer for sale an
16 interest in right-of-way land unless it first extends to
17 each leaseholder a written offer to sell the leased land to
18 the leaseholder at fair market value. If there is no
19 leaseholder, the railroad shall extend the written offer to
20 the landowner adjacent to the right-of-way land being
21 offered for sale and to persons or entities proposing to
22 maintain the right-of-way land for public recreational use.
23 Prospective buyers shall respond to the offer within 60 days
24 of receipt of the written offer, and the railroad shall
25 negotiate in good faith with a prospective buyer for a

1 period not exceeding 90 days following the prospective
2 buyer's response.

3 {2}--After--the--90--day--negotiation--period,--either--party
4 may--file--a--notice--of--dispute--with--the--commission--under
5 {section--3}.--The--land--may--not--be--sold--to--a--party--other--than
6 the--prospective--buyer--during--the--response--and--negotiation
7 period--or--while--a--dispute--is--pending--before--the--commission.
8 A PERSON OR ENTITY THAT HAS A LEASEHOLD SITE BETWEEN A POINT
9 8.5 FEET FROM THE CENTERLINE OF THE TRACK NEAREST THE EDGE
10 OF THE RIGHT-OF-WAY AND 300 FEET OF THE TRACK CENTERLINE AND
11 THAT USES THE LEASEHOLD FOR TRANSPORTATION TRANSPORTING
12 GRAIN, SEED, OR RELATED AGRICULTURAL INPUT COMMODITIES,
13 REGARDLESS OF THE STATUS OF TRAIN OPERATIONS, HAS A RIGHT OF
14 FIRST REFUSAL TO PURCHASE THE LAND IN THE EVENT THE OWNER
15 SEEKS TO SELL THE LAND OR TRANSFER THE LEASEHOLD ESTATE.

16 (2) THE LEASEHOLDER OF A LEASEHOLD SITE DESCRIBED IN
17 SUBSECTION (1) MUST BE GIVEN THE OPPORTUNITY TO MATCH A
18 COMPETING LEASE OFFER UPON EXPIRATION OF AN EXISTING LEASE.
19 IF THE LEASEHOLDER MATCHES THE NEW LEASE OFFER, THE LEASE
20 MUST BE GIVEN TO THE LEASEHOLDER. WHEN A PERSON OTHER THAN
21 THE CURRENT LEASEHOLDER BECOMES THE LESSEE OF A LEASEHOLD
22 SITE DESCRIBED IN SUBSECTION (1) OR THE LEASE IS TERMINATED
23 BY THE LESSOR FOR REASONS OTHER THAN NONPAYMENT OR OTHER
24 MATERIAL BREACH OF THE LEASE, THE LESSOR OR NEW LESSEE SHALL
25 COMPENSATE THE FORMER LEASEHOLDER FOR THE FAIR MARKET VALUE

1 OF IMPROVEMENTS MADE BY THE FORMER LEASEHOLDER.

2 {2}(3) THE OWNER OF THE LAND MAY NOT SELL OR OFFER FOR
3 SALE AN INTEREST IN THE LEASED LAND OR DISPOSSESS THE
4 LEASEHOLDER FOR REASONS OTHER THAN NONPAYMENT OR OTHER
5 MATERIAL BREACH OF THE LEASE UNLESS HE FIRST EXTENDS TO THE
6 LEASEHOLDER A WRITTEN OFFER TO SELL THE LEASED LAND TO THE
7 LEASEHOLDER AT FAIR MARKET VALUE. THE LEASEHOLDER SHALL
8 RESPOND TO THE OFFER WITHIN 60 DAYS OF RECEIPT OF THE OFFER.

9 {3}(4) THE OWNER SHALL NEGOTIATE IN GOOD FAITH WITH THE
10 LEASEHOLDER FOR A PERIOD NOT TO EXCEED 90 DAYS FOLLOWING THE
11 LEASEHOLDER'S RESPONSE TO THE WRITTEN OFFER PROVIDED FOR IN
12 SUBSECTION {2} (3). THE LAND MAY NOT BE SOLD OR TRANSFERRED
13 DURING THE RESPONSE AND NEGOTIATION PERIODS.

14 {4}(5) (A) IF THE OWNER AND THE LEASEHOLDER CANNOT
15 AGREE ON THE FAIR MARKET VALUE OF--THE--LAND, THEY SHALL
16 APPOINT A CERTIFIED APPRAISER TO ESTABLISH THE FAIR MARKET
17 VALUE OF--THE--LAND.

18 {B} IN THE EVENT THAT THE OWNER AND LEASEHOLDER CANNOT
19 AGREE ON AN APPRAISER, EACH SHALL APPOINT A CERTIFIED
20 APPRAISER WHO SHALL MAKE AN INDEPENDENT APPRAISAL. IF THE
21 APPRAISALS ARE WITHIN 5% OF EACH OTHER, THE AVERAGE OF THE
22 TWO APPRAISALS MUST CONSTITUTE THE FAIR MARKET VALUE.

23 {C} IF THE TWO APPRAISALS DIFFER BY MORE THAN 5%, THE
24 TWO APPRAISERS MUST APPOINT A THIRD CERTIFIED APPRAISER
25 WHOSE APPRAISAL MUST ESTABLISH THE FAIR MARKET VALUE OF--THE

1 LAND.

2 {D} IF THE LEASEHOLDER FAILS TO CLOSE THE PURCHASE OF
3 THE LEASEHOLD ESTATE FOR ANY REASON WITHIN 45 DAYS AFTER THE
4 FAIR MARKET VALUE OF THE LAND HAS BEEN ESTABLISHED BY THE
5 APPRAISAL PROCESS PROVIDED FOR IN THIS SECTION, THE RIGHT OF
6 FIRST REFUSAL IS EXTINGUISHED AND THE OWNER IS FREE TO
7 TRANSFER THE PROPERTY TO A PERSON OR ENTITY OTHER THAN THE
8 LEASEHOLDER.

9 {E} THE OWNER MAY TRANSFER A TITLE UNDER THIS SECTION
10 BY QUITCLAIM DEED RATHER THAN WARRANTY DEED.

11 {3}{5}(6) This section does not apply to the sale of an
12 entire operating railroad line by one operating railroad to
13 another entity for the purpose of operating a railroad.

14 ~~NEW-SECTION:--Section-3--Dispute-----resolution-----~~
15 ~~rulemaking-----judicial--review--{1}--A--railroad--or---a~~
16 ~~prospective--buyer--may--apply--to--the--commission--to--resolve--a~~
17 ~~dispute--concerning--fair--market--value--or--other--terms--arising~~
18 ~~from--negotiations--under--{section-2}.~~

19 {2}--The--commission--shall--adopt--rules--to--implement
20 {sections-1-through-3}--The--rules--must--establish--a--procedure
21 to--resolve--disputes--and--provide--for--the--use--of--independent
22 appraisers.

23 {3}--A--final--decision--of--the--commission--may--be--reviewed
24 by--the--district--court--for--any--county--in--which--the--land--is
25 located.--The--scope--of--judicial--review--is--limited--to--a

1 ~~determination--of--whether--substantial--evidence--exists--to~~
2 ~~support--the--decision--of--the--commission:~~

3 **Section 3.** Section 69-14-553, MCA, is amended to read:

4 "69-14-553. Acquisition and transfer of real estate.
5 Any--such A railroad corporation may acquire by purchase or
6 gift any ~~lands~~ land in the vicinity of its road or through
7 which the ~~same road~~ may pass, ~~so far as may be~~ if the land
8 is convenient or necessary to secure the right-of-way or
9 ~~such--as--may--be~~ if the land is granted to aid in the
10 construction of ~~such the~~ road and, except as provided in
11 [sections 1 through--3 AND 2], may convey the ~~same land~~ in
12 such any manner as the directors may prescribe. All deeds
13 and conveyances made by ~~such the~~ corporation ~~shall~~ must be
14 signed by the president, under the seal of the corporation."

15 NEW SECTION. Section 4. Codification instruction.
16 [Sections 1 through-3 AND 2] are intended to be codified as
17 an integral part of Title 69, chapter 14, and the provisions
18 of Title 69, chapter 14, apply to [sections 1 through-3 AND
19 2].

20 NEW SECTION. SECTION 5. COORDINATION INSTRUCTION. IF
21 [THIS ACT] IS PASSED AND APPROVED AND HOUSE BILL NO. 924
22 FAILS TO BE PASSED AND APPROVED, THEN THIS BILL IS VOID.

23 NEW SECTION. SECTION 6. SEVERABILITY. IF A PART OF
24 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
25 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS

1 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
2 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
3 SEVERABLE FROM THE INVALID APPLICATIONS.
4 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS
5 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-