

HOUSE BILL 509

Introduced by Bardanouve, et al.

| | |
|------|--|
| 1/31 | Introduced |
| 2/01 | Referred to Agriculture, Livestock & Irrig. |
| 2/01 | Fiscal Note Requested |
| 2/07 | Fiscal Note Received |
| 2/08 | Fiscal Note Printed |
| 2/13 | Hearing |
| 2/18 | Committee Report--Bill Passed as Amended |
| 2/21 | 2nd Reading Do Pass Motion Failed |
| 2/21 | Segregated From Committee of the Whole Report |
| 2/21 | 2nd Reading Passed as Amended |
| 2/22 | 3rd Reading Failed |

1 ~~HOUSE~~ BILL NO. 509
2 INTRODUCED BY Bauman NATHC HARR
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A FIRST RIGHT
5 TO LEASEHOLDERS OF RAILROAD RIGHT-OF-WAY PROPERTY TO
6 PURCHASE THE PROPERTY; REQUIRING THE PUBLIC SERVICE
7 COMMISSION TO ADOPT RULES TO IMPLEMENT THE RIGHT; AND
8 AMENDING SECTION 69-14-553, MCA."

9
10 STATEMENT OF INTENT

11 A statement of intent is required for this bill because
12 it requires the public service commission to adopt rules
13 establishing the procedure for resolution of disputes
14 between railroads selling right-of-way property and
15 leaseholders of the property wishing to exercise their first
16 right to purchase granted by this bill. It is intended that
17 the commission may further define terms as necessary in
18 implementing the purpose of this bill. The commission shall
19 prescribe the procedure to be followed by the parties upon
20 failure of negotiations between the parties and application
21 to the commission for resolution of the dispute. The
22 commission shall provide for the engagement of independent
23 appraisers and the submission of appraisals. Rules must be
24 adopted within 1 year from [the effective date of this act].
25

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

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

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

6 (2) "Fair market value" means:

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

9 (b) the total appraised value of the property minus
10 the appraised value of any leasehold improvements, as
11 determined by independent appraisers; or

12 (c) the price contained in a bona fide offer from an
13 independent third party.

14 (3) "Leaseholder" means a person who holds a lease,
15 license, or permit with respect to property within a
16 railroad right-of-way and who has constructed or who owns
17 improvements on the property with an appraised value of
18 \$7,500 or more.

19 (4) "Railroad" means a railroad corporation, its
20 trustee or successor in interest, or a nonrailroad holding
21 corporation that owns controlling interest in a railroad.

22 (5) "Right-of-way" means real property owned by a
23 railroad that is contiguous to the tracks of the railroad.

24 NEW SECTION. **Section 2. First right to purchase --**
25 negotiation period. (1) A railroad may not sell or offer for

1 sale an interest in right-of-way property unless it first
 2 extends to each leaseholder with respect to the property a
 3 written offer to sell that interest at fair market value.
 4 Leaseholders shall respond to the offer within 60 days of
 5 receipt of the written offer, and the railroad shall
 6 negotiate in good faith with an interested leaseholder for a
 7 period not exceeding 90 days following the leaseholder's
 8 response.

9 (2) After the 90-day negotiation period, either party
 10 may file a notice of dispute with the commission under
 11 [section 3]. The property may not be sold to a party other
 12 than the leaseholder during the response and negotiation
 13 periods or while a dispute is pending before the commission.

14 (3) This section does not apply to sale of an entire
 15 operating railroad line by one operating railroad to another
 16 for the purpose of operating a railroad.

17 NEW SECTION. **Section 3.** Dispute resolution --
 18 rulemaking. (1) A railroad or leaseholder may apply to the
 19 commission to resolve a dispute concerning fair market value
 20 or other terms arising from negotiations under [section 2].

21 (2) The commission shall adopt rules to implement
 22 [sections 1 through 3]. The rules must establish a
 23 procedure to resolve disputes and provide for the use of
 24 independent appraisers.

25 (3) A final decision of the commission may be reviewed

1 by the district court for any county in which the property
 2 is located. The scope of judicial review is limited to a
 3 determination of whether substantial evidence exists to
 4 support the decision of the commission.

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

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

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB509, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB509 would provide a first right to leaseholders of railroad right-of-way property to purchase the property and require the Public Service Commission to adopt rules to implement the right.

ASSUMPTIONS:

1. The Public Service Commission will adopt rules at a cost of approximately \$400.
2. No commission funds would be required for the independent appraisers because the parties to each dispute would be assessed the cost.
3. The number of potential hearings is undeterminable at this time. It is projected that each hearing would cost approximately \$365 (per diem, travel and a court reporter, assuming a one day hearing and two days for at least one commissioner and two staff members).
4. For purposes of this fiscal note, it is assumed there will be one hearing in FY91.
5. Fees on regulated companies are paid into the general fund and all appropriations for the PSC are from the general fund pursuant to 69-1-402, MCA.

FISCAL IMPACT:Expenditures:

| | Current | FY90 | | Current | FY91 | |
|-----------------|---------|----------|------------|---------|----------|------------|
| | Law | Proposed | Difference | Law | Proposed | Difference |
| PSC | -0- | Law | | -0- | Law | |
| Operating Costs | -0- | \$400 | \$400 | -0- | \$365 | \$365 |

Funding:

| | | | | | | |
|--------------|-----|-------|-------|-----|-------|-------|
| General Fund | -0- | \$400 | \$400 | -0- | \$365 | \$365 |
|--------------|-----|-------|-------|-----|-------|-------|

Ray Shackelford

2/7/89

RAY SHACKELFORD, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Bardanoue

2/08/89

FRANCIS BARDANOUVE, PRIMARY SPONSOR DATE
Fiscal Note for HB509, as introduced

HB 509

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION

HOUSE BILL NO. 509

INTRODUCED BY BARDANOUE, NATHE, HARP

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A FIRST RIGHT TO LEASEHOLDERS OF RAILROAD RIGHT-OF-WAY PROPERTY LAND OR TO LANDOWNERS ADJACENT TO RAILROAD RIGHT-OF-WAY LAND TO PURCHASE THE PROPERTY LAND; 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 it requires the public service commission to adopt rules establishing the procedure for resolution of disputes between railroads selling right-of-way property LAND and leaseholders of the property LAND OR LANDOWNERS ADJACENT TO THE LAND wishing to exercise their first right to purchase granted by this bill. It is intended that the commission may further define terms as necessary in implementing the purpose of this bill. The commission shall prescribe the procedure to be followed by the parties upon failure of negotiations between the parties and application to the commission for resolution of the dispute. The commission shall provide for the engagement of independent appraisers and the submission of appraisals. Rules must be adopted

within 1 year from [the effective date of this act].

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];

(b) the total appraised value of the property LAND minus the appraised value of any leasehold improvements, as determined by independent appraisers; or

~~(c) the price contained in a bona fide offer from an independent third party.~~

(3) "Leaseholder" means a person who holds a lease, license, or permit OR PERMIT with respect to property LAND within a railroad right-of-way and who has constructed or who owns improvements on the property LAND with an appraised value of \$7,500 \$15,000 or more.

(4) "PROSPECTIVE BUYER" MEANS THE LEASEHOLDER OR THE LANDOWNER ADJACENT TO THE RAILROAD RIGHT-OF-WAY LAND BEING OFFERED FOR SALE.

~~(4)~~ (5) "Railroad" means a railroad corporation, its trustee or successor in interest, or a nonrailroad holding

1 corporation that owns controlling interest in a railroad.

2 {5}{6} "Right-of-way" means ~~real-property~~ LAND owned
3 by a railroad that is contiguous to the tracks of the
4 railroad.

5 NEW SECTION. Section 2. First right to purchase --
6 negotiation period. (1) A railroad may not sell or offer for
7 sale an interest in right-of-way property LAND unless it
8 first extends to each leaseholder with respect to the
9 property LAND THAT THE LEASEHOLDER LEASES a written offer to
10 sell that interest at fair market value. IF THERE IS NO
11 LEASEHOLDER, THE RAILROAD SHALL EXTEND THE WRITTEN OFFER TO
12 THE LANDOWNER ADJACENT TO THE RIGHT-OF-WAY LAND BEING
13 OFFERED FOR SALE. ~~Leaseholders~~ PROSPECTIVE BUYERS shall
14 respond to the offer within 60 days of receipt of the
15 written offer, and the railroad shall negotiate in good
16 faith with ~~an-interested-leaseholder~~ A PROSPECTIVE BUYER for
17 a period not exceeding 90 days following the leaseholder's
18 response.

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

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

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

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

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

12 (3) A final decision of the commission may be reviewed
13 by the district court for any county in which the property
14 LAND is located. The scope of judicial review is limited to
15 a 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~~ that is
22 convenient or necessary to secure the right-of-way or ~~such~~
23 ~~as-may-be~~ that is granted to aid in the construction of ~~such~~
24 the road and, except as provided in [sections 1 through 3],
25 may convey the same land in such any manner as the directors

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

-End-

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STATEMENT OF INTENT

A statement of intent is required for this bill because it requires the public service commission to adopt rules establishing the procedure for resolution of disputes between railroads selling right-of-way property LAND and leaseholders of the property LAND, OR LANDOWNERS ADJACENT TO THE LAND, OR OTHER PERSON OR ENTITY wishing to exercise their first right to purchase granted by this bill. It is intended that the commission may further define terms as necessary in implementing the purpose of this bill. THE COMMISSION SHALL ADOPT RULES PROMOTING THE PURCHASE AND MAINTENANCE OF RIGHT-OF-WAY FOR PUBLIC RECREATIONAL USE. The commission shall prescribe the procedure to be followed by the parties upon failure of negotiations between the parties

and application to the commission for resolution of the dispute. The commission shall provide for the engagement of independent appraisers and the submission of appraisals. Rules must be adopted within 1 year from [the effective date of this act].

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1 LANDOWNER ADJACENT TO THE RAILROAD RIGHT-OF-WAY LAND BEING
 2 OFFERED FOR SALE, OR A PERSON OR ENTITY OFFERING TO PURCHASE
 3 THE LAND FOR PUBLIC RECREATIONAL PURPOSES.

4 ~~(4)~~(5) "Railroad" means a railroad corporation, its
 5 trustee or successor in interest, or a nonrailroad holding
 6 corporation that owns controlling interest in a railroad.

7 ~~(5)~~(6) "Right-of-way" means ~~real-property~~ LAND owned
 8 by a railroad that is contiguous to the tracks of the
 9 railroad AND NOT FURTHER THAN 300 FEET FROM THE CENTERLINE
 10 OF THE TRACKS.

11 NEW SECTION. Section 2. First right to purchase --
 12 negotiation period. (1) A railroad may not sell or offer for
 13 sale an interest in right-of-way property LAND unless it
 14 first extends to each leaseholder with respect to the
 15 property LAND THAT THE LEASEHOLDER LEASES a written offer to
 16 sell that interest at fair market value. IF THERE IS NO
 17 LEASEHOLDER, THE RAILROAD SHALL EXTEND THE WRITTEN OFFER TO
 18 THE LANDOWNER ADJACENT TO THE RIGHT-OF-WAY LAND BEING
 19 OFFERED FOR SALE AND TO PERSONS OR ENTITIES PROPOSING TO
 20 MAINTAIN THE RIGHT-OF-WAY PROPERTY FOR PUBLIC RECREATIONAL
 21 USE. Leaseholders PROSPECTIVE BUYERS shall respond to the
 22 offer within 60 days of receipt of the written offer, and
 23 the railroad shall negotiate in good faith with an
 24 interested--leaseholder A PROSPECTIVE BUYER for a period not
 25 exceeding 90 days following the leaseholder's response.

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 2 may file a notice of dispute with the commission under
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5 ~~as-may-be~~ that is granted to aid in the construction of ~~such~~
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-End-