
HOUSE BILL 2218

State of Washington

60th Legislature

2007 Regular Session

By Representatives Orcutt, Haler, Hailey, Ahern, Pearson, Roach, Newhouse, Hinkle, Kristiansen, Warnick, Kretz, Ericksen, Condotta and Chandler

Read first time 02/13/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to the rights of former owners in real property
2 that has been acquired through eminent domain; amending RCW 35.80A.030,
3 36.68.010, 47.52.050, 53.25.040, 79.36.330, 80.28.230, and 80.40.030;
4 and adding a new section to chapter 8.25 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 8.25 RCW
7 to read as follows:

8 When real property that has been acquired through condemnation or
9 under the threat of condemnation is to be sold by the condemnor within
10 ten years after the condemnation or sale under threat of condemnation,
11 the owner from whom the property was acquired has the rights granted
12 under this section to repurchase the property or to receive proceeds
13 from the sale of the property.

14 (1) An entity seeking to acquire real property through condemnation
15 or under the threat of condemnation must notify the owner in writing of
16 the rights granted under this section. The notice must be given:

17 (a) In the case of the state or other entity operating under the
18 procedures of chapter 8.04 RCW, with the notice given under RCW
19 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 under
5 the procedures of chapter 8.12 RCW, with the summons served under RCW
6 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 under
9 RCW 8.16.030;

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

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

15 (2) At least ninety days prior to the date on which the acquiring
16 entity will announce a public process for property disposition or, if
17 the sale is to be negotiated, at least ninety days prior to the date on
18 which a purchase and sale agreement or similar document is to be
19 signed, the acquiring entity shall (a) publish notice of its
20 determination to sell the property or a portion of the property in a
21 legal newspaper of general circulation in the area where the property
22 to be sold is located, (b) describe generally any easements, other
23 restrictions, or reserved rights the acquiring entity intends to retain
24 upon sale, and (c) mail notice of the determination to the former owner
25 of the property at the former owner's last known address or to a
26 forwarding address if that owner has provided the acquiring entity with
27 a forwarding address.

28 (3) The former owner shall notify the acquiring entity in writing
29 within thirty days of the date of notice provided under subsection (2)
30 of this section whether the former owner intends to exercise a right
31 granted by this section. Upon receipt of notice from the former owner,
32 the acquiring entity shall, unless it already has a completed current
33 independent appraisal for the property, immediately arrange for an
34 independent appraisal to determine the fair market value of the
35 property or portion of property subject to repurchase, adjusted to
36 reflect the value of any physical changes to the property, such as
37 improvements or removal of structures. Within thirty days of receipt
38 of the former owner's notice of intent or following the acquiring

1 entity's receipt of the appraisal, the acquiring entity shall provide
2 the former owner with a written copy of the appraisal. All costs of
3 appraisal shall be paid by the acquiring entity. If the former owner
4 does not provide timely written notice to the acquiring entity of the
5 intent to exercise a right granted under this section, all rights under
6 this section are extinguished and the acquiring entity is relieved of
7 any further obligation under this section.

8 (4) Within thirty days of the date the acquiring entity provides a
9 written copy of the appraisal to the former owner under subsection (3)
10 of this section, the former owner shall notify the acquiring entity
11 whether the former owner wishes to repurchase the property or to
12 receive the proceeds from the sale of the property. If the former
13 owner does not provide timely written notice to the acquiring entity
14 indicating which right granted under this section the former owner
15 intends to exercise, all rights under this section are extinguished and
16 the acquiring entity is relieved of any further obligation under this
17 section.

18 (5) The price to be paid by the former owner, or the amount of
19 proceeds to be received by the former owner, shall be determined as
20 follows:

21 (a) In the case of a decision to repurchase, the price shall be an
22 amount equal to the compensation received from the acquiring entity
23 when the property or portion of property was condemned or sold under
24 threat of condemnation, with interest accrued at the market rate, and
25 with the amount adjusted to reflect the value of any physical changes
26 to the property, such as improvements or removal of structures, as
27 determined by the independent appraisal;

28 (b) In the case of a decision to receive sale proceeds, the amount
29 of proceeds shall be the difference between the price at which the
30 property is sold and the amount of the compensation received from the
31 acquiring entity when the property was condemned or sold under threat
32 of condemnation, with interest accrued at the market rate, and with the
33 amount adjusted to reflect the value of any physical changes to the
34 property, such as improvements or removal of structures, as determined
35 by the independent appraisal.

36 (6) The acquiring entity may reject a notice of intent under
37 subsection (3) of this section that is received from a person claiming

1 to be a successor or assignee that is not accompanied by evidence
2 sufficient to demonstrate that the person is the successor or assignee
3 of the person from whom the acquiring entity acquired title.

4 (7) The obligations imposed on an acquiring entity in this section
5 are in addition to any provided by law for the surplusage or sale of
6 public property to private parties. Nothing in this section precludes
7 an acquiring entity from retaining the property and determining not to
8 surplus and sell the property.

9 **Sec. 2.** RCW 35.80A.030 and 1989 c 271 s 241 are each amended to
10 read as follows:

11 A county, city, or town may dispose of real property acquired
12 pursuant to this section to private persons only under such reasonable,
13 competitive procedures as it shall prescribe. The county, city, or
14 town may accept such proposals as it deems to be in the public interest
15 and in furtherance of the purposes of this chapter. Thereafter, the
16 county, city, or town may execute and deliver contracts, deeds, leases,
17 and other instruments of transfer. This section is subject to and
18 operates only to the extent its application is not inconsistent with
19 the operation of section 1 of this act with respect to property
20 acquired through or under the threat of condemnation.

21 **Sec. 3.** RCW 36.68.010 and 1963 c 4 s 36.68.010 are each amended to
22 read as follows:

23 Counties may establish park and playground systems for public
24 recreational purposes and for such purposes shall have the power to
25 acquire lands, buildings and other facilities by gift, purchase, lease,
26 devise, bequest and condemnation. A county may lease or sell any park
27 property, buildings or facilities surplus to its needs, or no longer
28 suitable for park purposes: PROVIDED, That such park property shall be
29 subject to the requirements and provisions of notice, hearing, bid or
30 intergovernmental transfer as provided in chapter 36.34 RCW: PROVIDED
31 FURTHER, That nothing in this section shall be construed as authorizing
32 any county to sell any property which such county acquired by
33 condemnation for park or playground or other public recreational
34 purposes on or after January 1, 1960, until held for five years or more
35 after such acquisition: PROVIDED FURTHER, That funds acquired from the
36 lease or sale of any park property, buildings or facilities shall be

1 placed in the park and recreation fund to be used for capital purposes.
2 This section is subject to and operates only to the extent its
3 application is not inconsistent with the operation of section 1 of this
4 act with respect to property acquired through or under the threat of
5 condemnation.

6 **Sec. 4.** RCW 47.52.050 and 1971 ex.s. c 39 s 1 are each amended to
7 read as follows:

8 (1) For the purpose of this chapter the highway authorities of the
9 state, counties and incorporated cities and towns, respectively, or in
10 cooperation one with the other, may acquire private or public property
11 and property rights for limited access facilities and service roads,
12 including rights of access, air, view and light, by gift, devise,
13 purchase, or condemnation, in the same manner as such authorities are
14 now or hereafter may be authorized by law to acquire property or
15 property rights in connection with highways and streets within their
16 respective jurisdictions. Except as otherwise provided in subsection
17 (2) of this section all property rights acquired under the provisions
18 of this chapter shall be in fee simple. In the acquisition of property
19 or property rights for any limited access facility or portion thereof,
20 or for any service road in connection therewith, the state, county,
21 incorporated city and town authority may, in its discretion, acquire an
22 entire lot, block or tract of land, if by so doing the interest of the
23 public will be best served, even though said entire lot, block or tract
24 is not immediately needed for the limited access facility. This
25 subsection is subject to and operates only to the extent its
26 application is not inconsistent with the operation of section 1 of this
27 act with respect to property acquired through or under the threat of
28 condemnation.

29 (2) The highway authorities of the state, counties, and
30 incorporated cities and towns may acquire by gift, devise, purchase, or
31 condemnation a three dimensional air space corridor in fee simple over
32 or below the surface of the ground, together with such other property
33 in fee simple and other property rights as are needed for the
34 construction and operation of a limited access highway facility, but
35 only if the acquiring authority finds that the proposal will not:

36 (a) impair traffic safety on the highway or interfere with the free
37 flow of traffic; or

1 (b) permit occupancy or use of the air space above or below the
2 highway which is hazardous to the operation of the highway.

3 **Sec. 5.** RCW 53.25.040 and 1989 c 167 s 1 are each amended to read
4 as follows:

5 (1) A port commission may, after a public hearing thereon, of which
6 at least ten days' notice shall be published in a newspaper of general
7 circulation in the port district, create industrial development
8 districts within the district and define the boundaries thereof, if it
9 finds that the creation of the industrial development district is
10 proper and desirable in establishing and developing a system of harbor
11 improvements and industrial development in the port district.

12 (2) The boundaries of an industrial development district created by
13 subsection (1) of this section may be revised from time to time by
14 resolution of the port commission, to delete land area therefrom, if
15 the land area to be deleted was acquired by the port district with its
16 own funds or by gift or transfer other than pursuant to RCW 53.25.050
17 or 53.25.060.

18 As to any land area to be deleted under this subsection that was
19 acquired or improved by the port district with funds obtained through
20 RCW 53.36.100, the port district shall deposit funds equal to the fair
21 market value of the lands and improvements into the fund for future use
22 described in RCW 53.36.100 and such funds shall be thereafter subject
23 to RCW 53.36.100. The fair market value of the land and improvements
24 shall be determined as of the effective date of the port commission
25 action deleting the land from the industrial development district and
26 shall be determined by an average of at least two independent
27 appraisals by professionally designated real estate appraisers as
28 defined in RCW 74.46.020 or licensed real estate brokers. The funds
29 shall be deposited into the fund for future use described in RCW
30 53.36.100 within ninety days of the effective date of the port
31 commission action deleting the land area from the industrial district.
32 Land areas deleted from an industrial development district under this
33 subsection shall not be further subject to the provisions of this
34 chapter. This subsection shall apply to presently existing and future
35 industrial development districts. Land areas deleted from an
36 industrial development district under this subsection that were
37 included within such district for less than two years, if the port

1 district acquired the land through condemnation or as a consequence of
2 threatened condemnation, shall be offered for sale, for cash, at the
3 appraised price, to the former owner of the property from whom the
4 district obtained title. Such offer shall be made by certified or
5 registered letter to the last known address of the former owner. The
6 letter shall include the appraised price of the property and notice
7 that the former owner must respond in writing within thirty days or
8 lose the right to purchase. If this right to purchase is exercised,
9 the sale shall be closed by midnight of the sixtieth day, including
10 nonbusiness days, following close of the thirty-day period. This
11 section is subject to and operates only to the extent its application
12 is not inconsistent with the operation of section 1 of this act with
13 respect to property acquired through or under the threat of
14 condemnation.

15 **Sec. 6.** RCW 79.36.330 and 2004 c 199 s 217 are each amended to
16 read as follows:

17 In the event the department should determine that the property
18 interests acquired under the authority of this chapter are no longer
19 necessary for the purposes for which they were acquired, the department
20 shall dispose of the same in the following manner, when in the
21 discretion of the department it is to the best interests of the state
22 of Washington to do so, except that property purchased with educational
23 funds or held in trust for educational purposes shall be sold only in
24 the same manner as are state lands:

25 (1) Where the state property necessitating the acquisition of
26 private property interests for access purposes under authority of this
27 chapter is sold or exchanged, the acquired property interests may be
28 sold or exchanged as an appurtenance of the state property when it is
29 determined by the department that sale or exchange of the state
30 property and acquired property interests as one parcel is in the best
31 interests of the state.

32 (2) If the acquired property interests are not sold or exchanged as
33 provided in subsection (1) of this section, the department shall notify
34 the person or persons from whom the property interest was acquired,
35 stating that the property interests are to be sold, and that the person
36 or persons shall have the right to purchase the same at the appraised
37 price. The notice shall be given by registered letter or certified

1 mail, return receipt requested, mailed to the last known address of the
2 person or persons. If the address of the person or persons is unknown,
3 the notice shall be published twice in an official newspaper of general
4 circulation in the county where the lands or a portion thereof is
5 located. The second notice shall be published not less than ten nor
6 more than thirty days after the notice is first published. The person
7 or persons shall have thirty days after receipt of the registered
8 letter or five days after the last date of publication, as the case may
9 be, to notify the department, in writing, of their intent to purchase
10 the offered property interest. The purchaser shall include with his or
11 her notice of intention to purchase, cash payment, certified check, or
12 money order in an amount not less than one-third of the appraised
13 price. No instrument conveying property interests shall issue from the
14 department until the full price of the property is received by the
15 department. All costs of publication required under this section shall
16 be added to the appraised price and collected by the department upon
17 sale of the property interests.

18 (3) If the property interests are not sold or exchanged as provided
19 in subsections (1) and (2) of this section, the department shall notify
20 the owners of land abutting the property interests in the same manner
21 as provided in subsection (2) of this section and their notice of
22 intent to purchase shall be given in the manner and in accordance with
23 the same time limits as are set forth in subsection (2) of this
24 section. However, if more than one abutting owner gives notice of
25 intent to purchase the property interests, the department shall
26 apportion them in relation to the lineal footage bordering each side of
27 the property interests to be sold, and apportion the costs to the
28 interested purchasers in relation thereto. Further, no sale is
29 authorized by this section unless the department is satisfied that the
30 amounts to be received from the several purchasers will equal or exceed
31 the appraised price of the entire parcel plus any costs of publishing
32 notices.

33 (4) If no sale or exchange is consummated as provided in
34 subsections (1) through (3) of this section, the department shall sell
35 the properties in the same manner as state lands are sold.

36 (5) Any disposal of property interests authorized by this chapter
37 shall be subject to any existing rights previously granted by the
38 department.

1 (6) This section is subject to and operates only to the extent its
2 application is not inconsistent with the operation of section 1 of this
3 act with respect to property acquired through or under the threat of
4 condemnation.

5 **Sec. 7.** RCW 80.28.230 and 1961 c 14 s 80.28.230 are each amended
6 to read as follows:

7 Any property or interest acquired as provided in RCW 80.28.220
8 shall be used exclusively for the purposes for which it was acquired:
9 PROVIDED, HOWEVER, That if any such property be sold or otherwise
10 disposed of by said corporations, such sale or disposition shall be by
11 public sale or disposition and advertised in the manner of public sales
12 in the county where such property is located. This section is subject
13 to and operates only to the extent its application is not inconsistent
14 with the operation of section 1 of this act with respect to property
15 acquired through or under the threat of condemnation.

16 **Sec. 8.** RCW 80.40.030 and 1963 c 201 s 4 are each amended to read
17 as follows:

18 Any natural gas company having received an order under RCW
19 80.40.040 shall have the right of eminent domain to be exercised in the
20 manner provided in and subject to the provisions of chapter 8.20 RCW to
21 acquire for its use for the underground storage of natural gas any
22 underground reservoir, as well as such other property or interests in
23 property as may be required to adequately maintain and utilize the
24 underground reservoir for the underground storage of natural gas,
25 including easements and rights of way for access to and egress from the
26 underground storage reservoir. The right of eminent domain granted
27 hereby shall apply to property or property interests held in private
28 ownership, provided condemnor has exercised good faith in negotiations
29 for private sale or lease. No property shall be taken or damaged until
30 the compensation to be made therefor shall have been ascertained and
31 paid. Any property or interest therein so acquired by any natural gas
32 company shall be used exclusively for the purposes for which it was
33 acquired. Any decree of appropriation hereunder shall define and limit
34 the rights condemned and shall provide for the reversion of such rights
35 to the defendant or defendants or their successors in interest upon
36 abandonment of the underground storage project. Good faith exploration

1 work or development work relative to the storage reservoir is
2 conclusive evidence that its use has not been abandoned. The court may
3 include in such decree such other relevant conditions, covenants and
4 restrictions as it may deem fair and equitable. This section is
5 subject to and operates only to the extent its application is not
6 inconsistent with the operation of section 1 of this act with respect
7 to property acquired through or under the threat of condemnation.

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