

HOUSE BILL No. 4134

February 7, 1991, Introduced by Reps. Allen, DeMars, Hertel, Hoekman, Randall, Strand, Willis Bullard, Johnson, Knight, Owen, Jondahl, Muxlow and Ostling and referred to the Committee on Transportation.

A bill to amend section 6 of Act No. 303 of the Public Acts of 1921, entitled as amended

"An act to regulate charges of common carriers for leases of railroad property or property under control of railroad companies to be used for sites for elevators, warehouses, ice houses, buying stations, flour mills, coal sheds, or other buildings used for receiving, storing, or manufacturing any article of commerce to be transported over the rails of common carriers; to provide for the powers and duties of certain state agencies; and to provide for the regulation of the disposition of certain interests in real property,"

as added by Act No. 85 of the Public Acts of 1984, being section 469.356 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 6 of Act No. 303 of the Public Acts of
2 1921, as added by Act No. 85 of the Public Acts of 1984, being
3 section 469.356 of the Michigan Compiled Laws, is amended to read
4 as follows:

1 Sec. 6. (1) If a railroad company, or its trustee or
2 successor in interest, has an interest in real property adjacent
3 to a right of way approved for abandonment within this state
4 which is not necessary for the operation of rail services over
5 the right of way, which adjacent real property has leasehold
6 improvements upon it, or if a railroad company, or its trustee or
7 successor in interest, seeks to convey under any other circum-
8 stances its interest in real property adjacent to a right of way,
9 which adjacent real property has leasehold improvements upon it,
10 the railroad company, trustee, or successor in interest first
11 shall extend a written offer to sell that real property at fair
12 market value to a person or entity holding a lease, license, or
13 permit or owning leasehold improvements on that adjacent real
14 property. The offer shall contain the legal description of the
15 property; the real property rights to be conveyed by the seller;
16 and proof of a good and marketable title to such rights, the cost
17 of which shall be paid by the offeror. A person or entity hold-
18 ing a lease, license, or permit or owning leasehold improvements
19 on such real property shall respond to the written offer within
20 60 days after receipt of the offer to sell. If the person or
21 entity holding a lease, license, or permit or owning leasehold
22 improvements on the adjacent real property also owns leasehold
23 improvements on the right of way approved for such abandonment,
24 the railroad company or its trustee or successor in interest
25 shall include that portion of the right of way which the lease-
26 hold improvements are on in its written offer of sale under this

1 subsection, if that portion of the right of way is not necessary
2 for the operation of rail services.

3 (2) IF A RAILROAD COMPANY, OR ITS TRUSTEE OR SUCCESSOR IN
4 INTEREST, IS A LESSOR OF REAL PROPERTY ADJACENT TO A RIGHT OF WAY
5 WITHIN THIS STATE WHICH IS NOT NECESSARY FOR THE OPERATION OF
6 RAIL SERVICES OVER THE RIGHT OF WAY, WHICH ADJACENT REAL PROPERTY
7 HAS LEASEHOLD IMPROVEMENTS UPON IT, AND SUBSECTION (1) DOES NOT
8 APPLY, THE RAILROAD COMPANY, TRUSTEE, OR SUCCESSOR IN INTEREST
9 FIRST BEFORE MAKING ANY OTHER DISPOSITION OR USE OF THE REAL
10 PROPERTY SHALL EXTEND A WRITTEN OFFER TO LEASE THAT REAL PROPERTY
11 AT FAIR MARKET VALUE TO A PERSON OR ENTITY HOLDING A LEASE,
12 LICENSE, OR PERMIT OR OWNING LEASEHOLD IMPROVEMENTS ON THAT ADJA-
13 CENT REAL PROPERTY. THE OFFER SHALL CONTAIN THE LEGAL DESCRIP-
14 TION OF THE PROPERTY; THE REAL PROPERTY RIGHTS TO BE LEASED BY
15 THE LESSOR; AND THE FINANCIAL TERMS AND NUMBER OF MONTHS OR YEARS
16 OF THE LEASEHOLD. A PERSON OR ENTITY HOLDING A LEASE, LICENSE,
17 OR PERMIT OR OWNING LEASEHOLD IMPROVEMENTS ON THE REAL PROPERTY
18 SHALL RESPOND TO THE WRITTEN OFFER WITHIN 60 DAYS AFTER RECEIPT
19 OF THE OFFER. IF THE PERSON OR ENTITY HOLDING A LEASE, LICENSE,
20 OR PERMIT OR OWNING LEASEHOLD IMPROVEMENTS ON THE ADJACENT REAL
21 PROPERTY ALSO OWNS LEASEHOLD IMPROVEMENTS ON THE RIGHT OF WAY,
22 THE RAILROAD COMPANY OR ITS TRUSTEE OR SUCCESSOR IN INTEREST
23 SHALL INCLUDE THAT PORTION OF THE RIGHT OF WAY WHICH THE LEASE-
24 HOLD IMPROVEMENTS ARE ON IN ITS WRITTEN OFFER TO LEASE UNDER THIS
25 SUBSECTION, IF THAT PORTION OF THE RIGHT OF WAY IS NOT NECESSARY
26 FOR THE OPERATION OF RAIL SERVICES. IF THE PARTIES DISAGREE
27 CONCERNING THE PRICE OF A LEASE UNDER THIS SUBSECTION, THEY MAY,

1 BEFORE APPLYING TO THE STATE TAX COMMISSION FOR RESOLUTION OF THE
2 DISPUTE UNDER SUBSECTION (3), AGREE TO SUBMIT THEIR DIFFERENCES
3 TO AN INDEPENDENT APPRAISER SELECTED BY THE STATE TAX
4 COMMISSION. THE APPRAISER SHALL MAKE A DETERMINATION OF THE FAIR
5 MARKET LEASE VALUE OF THE PROPERTY AND OTHER FINANCIAL TERMS OF
6 THE LEASE THAT ARE IN DISPUTE WITHIN 60 DAYS AFTER THE DATE OF
7 SELECTION. THE COSTS OF THE APPRAISAL SHALL BE DIVIDED EQUALLY
8 BETWEEN THE PARTIES. A PARTY WHO IS DISSATISFIED WITH THE DECISION
9 OF THE APPRAISER MAY APPLY TO THE STATE TAX COMMISSION AS
10 PROVIDED IN THIS SECTION WITHIN 30 DAYS AFTER THE DATE OF THE
11 APPRAISER'S DECISION. A DECISION OF AN APPRAISER ESTABLISHING
12 THE PRICE AND OTHER FINANCIAL TERMS OF A LEASE THAT IS NOT
13 APPEALED TO THE STATE TAX COMMISSION SHALL BE BINDING ON THE PARTIES
14 AS TO THAT LEASE AND ANY SUCCESSOR LEASES FOR A PERIOD
15 BEGINNING ON THE PROPOSED EFFECTIVE DATE OF THE WRITTEN OFFER TO
16 LEASE BY THE LESSOR THAT GAVE RISE TO THE DISPUTE AND THROUGH THE
17 DATE ENDING 18 MONTHS AFTER THE DATE OF THE DECISION OF THE
18 APPRAISER. THE CIRCUIT COURT SHALL HAVE JURISDICTION TO ENFORCE
19 A BINDING APPRAISER'S DECISION UNDER THIS SUBSECTION.

20 (3) ~~-(2)-~~ If the parties disagree concerning the price or
21 other terms of the sale UNDER SUBSECTION (1) OR THE LEASE UNDER
22 SUBSECTION (2), either party may apply to the state tax commission
23 to resolve the disagreement. The application shall be made
24 within 60 days after the railroad company, trustee, or successor
25 in interest has received the written response, EXCEPT AS PROVIDED
26 IN SUBSECTION (2).

1 (4) ~~-(3)-~~ The state tax commission shall provide a hearing
2 on the disagreement pursuant to chapter 4 of the administrative
3 procedures act of 1969, Act No. 306 of the Public Acts of ~~+979-~~
4 1969, being sections 24.271 to 24.287 of the Michigan Compiled
5 Laws, and subsection ~~-(4)-~~ (5). Within 90 days after the dispute
6 is filed, the STATE TAX commission shall make a determination of
7 the fair market value of the property and other terms of the sale
8 OR LEASE which were in dispute.

9 (5) ~~-(4)-~~ The decision and order of the STATE TAX commission
10 under subsection ~~-(3)-~~ (4) shall be binding on the parties. A
11 DECISION AND ORDER OF THE STATE TAX COMMISSION UNDER
12 SUBSECTION (4) ESTABLISHING THE PRICE OR OTHER TERMS OF A LEASE
13 SHALL BE BINDING ON THE PARTIES AS TO THAT LEASE AND ANY SUCCES-
14 SOR LEASES FOR A PERIOD BEGINNING ON THE PROPOSED EFFECTIVE DATE
15 OF THE WRITTEN OFFER TO LEASE BY THE LESSOR THAT GAVE RISE TO THE
16 DISPUTE AND THROUGH THE DATE ENDING 18 MONTHS AFTER THE DATE OF
17 THE STATE TAX COMMISSION'S DECISION AND ORDER. The decision and
18 order issued by the STATE TAX commission under this section shall
19 establish just and equitable terms of THE sale OR LEASE. In
20 determining the fair market value of the real property, the STATE
21 TAX commission shall obtain 3 independent appraisals as follows:

22 (a) Each party shall select 1 appraiser and the cost of an
23 appraisal under this subdivision shall be paid by the party for
24 whom the appraisal is prepared.

25 (b) The STATE TAX commission shall appoint a third appraiser
26 and the cost of this appraisal shall be divided equally between
27 the parties.

1 ~~(5) This section shall not apply to a railroad company, or~~
2 ~~its trustee or successor in interest, which is certified as a~~
3 ~~common carrier by the interstate commerce commission.~~