

CHAPTER 176

PUBLIC UTILITIES

HOUSE BILL 96-1278

BY REPRESENTATIVES Taylor, Chlouber, George, Kaufman, Lamm, and Schwarz;
also SENATORS Wattenberg, Linkhart, and R. Powers.

AN ACT

CONCERNING THE CREATION OF A STATEWIDE POLICY REGARDING RAILROADS, AND, IN CONNECTION THEREWITH, MAKING PROVISIONS FOR ABANDONMENT AND DISPOSAL OF RIGHTS-OF-WAY, AND DIRECTING THE TRANSPORTATION LEGISLATION REVIEW COMMITTEE TO ANALYZE RAILROAD RIGHTS-OF-WAY ABANDONMENT AND DISPOSAL.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 20 of title 40, Colorado Revised Statutes, 1993 Repl. Vol., is amended BY THE ADDITION OF A NEW PART to read:

**PART 2
ABANDONMENT OF RAILROAD RIGHTS-OF-WAY**

40-20-201. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE ABANDONMENT OF RAILROAD RIGHTS-OF-WAY AND THE RESULTING LOSS OF RAILROAD SERVICE, COMPETITION, AND ESTABLISHED TRANSPORTATION CORRIDORS TO PERSONS AND BUSINESSES ALONG THOSE ABANDONED RIGHTS-OF-WAY ADVERSELY AFFECTS THE PEOPLE AND THE ECONOMY OF THIS STATE. THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT ABANDONMENT OF RAILROAD RIGHTS-OF-WAY AND THEIR SALE OR REVERSION TO PRIVATE OWNERS, THE DISMANTLING AND SALVAGE OF THE LINES, AND PRIVATE DEVELOPMENT THREATENS FUTURE USE OF THOSE ESTABLISHED TRANSPORTATION CORRIDORS FOR COMMUTER RAIL SERVICE, PASSENGER AND FREIGHT RAIL SERVICE, RELIEF FOR OVERBURDENED HIGHWAY CORRIDORS, TRAILS, OR OTHER PUBLIC PURPOSES.

(2) IT IS THE INTENT OF THIS PART 2 TO ESTABLISH A MECHANISM FOR THE STATE TO INVESTIGATE THE IMPACT THAT THE ABANDONMENT AND DISPOSAL OF RIGHTS-OF-WAY HAS ON THE STATE AND TO ADOPT A POLICY FOR THE TREATMENT OF

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

RIGHT-OF-WAY ABANDONMENT AND DISPOSAL DESIGNED TO ENCOURAGE CONTINUED USE OF EXISTING RAIL LINES, PRESERVE LINES AND RIGHTS-OF-WAY THAT HAVE BEEN OR ARE PROPOSED TO BE ABANDONED OR DISPOSED OF, AND TO PROMOTE THE USE OF ABANDONED OR DISPOSED OF RIGHTS-OF-WAY FOR PUBLIC PURPOSES.

40-20-202. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ABANDONED" MEANS A RAIL LINE OR RIGHT-OF-WAY WITH RESPECT TO WHICH THE SURFACE TRANSPORTATION BOARD OR OTHER RESPONSIBLE FEDERAL REGULATORY AGENCY HAS PERMITTED DISCONTINUANCE OF RAIL SERVICE OR THERE IS A PENDING APPLICATION BY A RAILROAD BEFORE SUCH AGENCY TO PERMIT DISCONTINUANCE OF RAIL SERVICE.

(2) "COMMITTEE" MEANS THE TRANSPORTATION LEGISLATION REVIEW COMMITTEE CREATED BY SECTION 43-2-145, C.R.S.

(3) "DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION.

(4) "DISPOSAL" MEANS THE SALE, EXCHANGE, OR OTHER TRANSFER OF A REAL PROPERTY INTEREST IN ANY RAILROAD RIGHT-OF-WAY, OR SALE, EXCHANGE, OR OTHER TRANSFER OF OWNERSHIP OF A RAIL LINE, TRACK, OR FIXTURE LOCATED UPON OR ALONG SUCH RIGHT-OF-WAY.

(5) "RIGHT-OF-WAY" MEANS ANY REAL PROPERTY, OR ANY INTEREST IN REAL PROPERTY, THAT IS OR HAS BEEN OWNED BY A RAILROAD COMPANY AS THE SITE, OR IS ADJACENT TO THE SITE, OF AN EXISTING OR FORMER RAIL LINE. "RIGHT-OF-WAY" INCLUDES ANY FIXTURES TO THE REAL PROPERTY THAT MAY BE USED OR ARE USEABLE TO CONTINUE RAIL SERVICE SUCH AS RAILROAD TRACKS.

40-20-203. Transportation legislation review committee - study of railroad rights-of-way abandonment and disposal. (1) IN ADDITION TO ANY OTHER DUTIES, THE TRANSPORTATION LEGISLATION REVIEW COMMITTEE SHALL CONSIDER RAILROAD RIGHTS-OF-WAY ABANDONMENT AND DISPOSAL ISSUES.

(2) THE ISSUES TO BE ADDRESSED BY THE COMMITTEE SHALL INCLUDE BUT SHALL NOT BE LIMITED TO:

(a) THE DETERMINATION OF WHAT BENEFIT, IF ANY, THE CREATION OF A RAILROAD ABANDONMENT AND DISPOSAL POLICY WOULD PROVIDE FOR THE STATE OF COLORADO;

(b) THE INVESTIGATION AND RECOMMENDATION OF ALTERNATIVE METHODS TO PRESERVE ABANDONED RIGHTS-OF-WAY FOR CONTINUED USE AS TRANSPORTATION CORRIDORS FOR FREIGHT OR PASSENGER TRANSPORTATION SERVICES. SUCH ALTERNATIVE METHODS TO BE STUDIED SHALL INCLUDE BUT SHALL NOT BE LIMITED TO:

(1) THE ESTABLISHMENT OF A STATE RAIL BANK TO ALLOW THE STATE TO ACQUIRE THE ABANDONED RIGHTS-OF-WAY.

(II) THE EXCHANGE OF REAL PROPERTY OWNED BY THE STATE FOR ALL OR A PORTION OF THE RIGHTS-OF-WAY TO BE ABANDONED OR DISPOSED OF.

(III) THE CREATION OF INCENTIVES FOR PRIVATE PERSONS OR COMPANIES TO ACQUIRE THE ABANDONED RIGHTS-OF-WAY AND OPERATE A PASSENGER OR FREIGHT RAILROAD OR TRANSPORTATION SERVICE.

(IV) THE ALTERNATIVE PUBLIC USES OF THE RIGHTS-OF-WAY THAT WOULD BE MOST BENEFICIAL TO THE CITIZENS OF COLORADO SUCH AS COMMUTER RAIL SERVICES, TRAILS, PRESERVATION AS AN HISTORIC LANDMARK, OR OTHER PUBLIC PURPOSE.

(V) THE CREATION OF PROCEDURES REQUIRING THE NOTIFICATION OF THE STATE OF ANY APPLICATION FOR ABANDONMENT FILED WITH THE SURFACE TRANSPORTATION BOARD OR OTHER RESPONSIBLE FEDERAL REGULATORY AGENCY AND ALLOWING THE DIRECTOR TO ACT ON BEHALF OF THE STATE IN ANY SUCH ABANDONMENT PROCEEDING HELD BEFORE THE SURFACE TRANSPORTATION BOARD OR OTHER RESPONSIBLE FEDERAL REGULATORY AGENCY.

(VI) FOR PURPOSES OF PUBLIC TRANSPORTATION OR PUBLIC RECREATION, CONSIDER THE FEASIBILITY OF, AND POSSIBLE FUNDING SOURCES FOR, ACQUISITION OF REAL PROPERTY OR ANY INTEREST IN REAL PROPERTY OF RAILROAD RIGHTS-OF-WAY OR RAIL LINES THAT HAVE BEEN OR ARE ABOUT TO BE ABANDONED AND SUBJECT TO DISPOSAL. SUCH RIGHTS-OF-WAY OR RAIL LINES TO BE CONSIDERED INCLUDE BUT ARE NOT LIMITED TO THOSE RUNNING FROM SAGE TO CANON CITY AND THE ASPEN BRANCH.

(c) THE COMMITTEE IS AUTHORIZED TO INVESTIGATE AND PROVIDE RECOMMENDATIONS REGARDING THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF RAILROAD CROSSINGS TO SAFEGUARD AND PROMOTE PUBLIC HEALTH AND SAFETY.

(d) THE COMMITTEE SHALL MEET AS NECESSARY WITH REPRESENTATIVES FROM RAILROAD COMPANIES, CUSTOMARY USERS OF RAILROAD PASSENGER SERVICES, CUSTOMARY USERS OF RAILROAD FREIGHT SERVICES, THE COLORADO HISTORICAL SOCIETY OR A SIMILAR ORGANIZATION, AND THE EXECUTIVE DIRECTOR AND STAFF OF THE DEPARTMENT OF TRANSPORTATION AS NECESSARY TO FORM A BALANCED VIEW OF THE ISSUE OF RAILROAD RIGHTS-OF-WAY ABANDONMENT AND DISPOSAL AND SHALL PROVIDE OPPORTUNITIES FOR THE PRESENTATION OF TESTIMONY OF EXPERTS AND OTHER INTERESTED INDIVIDUALS.

(e) THE COMMITTEE SHALL INVESTIGATE APPLICABLE FEDERAL STATUTES AND RULES THAT AFFECT OR MAY AFFECT THE STATE'S USE, ACQUISITION, OR REGULATION OF THE ABANDONED OR DISPOSED OF RAILROAD RIGHTS-OF-WAY.

(f) THE COMMITTEE SHALL PROVIDE A FINAL REPORT WITH RECOMMENDATIONS FOR LEGISLATION CONCERNING A STATEWIDE POLICY FOR THE PRESERVATION OF THE USE OF ABANDONED RIGHTS-OF-WAY AS TRANSPORTATION CORRIDORS TO THE GENERAL ASSEMBLY ON OR BEFORE JANUARY 1, 1997.

40-20-204. Right of first refusal. (1) ALL RAILROAD RIGHTS-OF-WAY WITHIN THE STATE THAT ARE ABANDONED OR ARE PROPOSED TO BE ABANDONED THAT ARE

OFFERED FOR SALE OR BY ANY OTHER METHOD OF DISPOSAL BY ANY RAILROAD COMPANY AFTER THE EFFECTIVE DATE OF THIS ACT SHALL BE OFFERED FOR SALE TO THE STATE OF COLORADO IN THE FIRST INSTANCE. THE STATE SHALL HAVE A RIGHT, ACTING THROUGH THE DIRECTOR WITH APPROVAL BY THE TRANSPORTATION COMMISSION, CREATED PURSUANT TO SECTION 43-1-106 C.R.S., TO MATCH ANY VERIFIABLE BONA FIDE OFFER MADE FOR SUCH RIGHTS-OF-WAY WITHIN THE LIMITS OF FUNDS AVAILABLE FOR THIS PURPOSE. NO PROPERTY OWNER SHALL DISPOSE OF ANY RIGHT-OF-WAY ABANDONED OR PROPOSED TO BE ABANDONED WITHOUT HAVING FIRST OBTAINED FROM THE DIRECTOR A RELEASE OF THE STATE'S PREFERENTIAL RIGHTS SET FORTH IN THIS SECTION. IN THE EVENT THAT THE DIRECTOR DOES NOT EXERCISE ANY RIGHT OF THE STATE TO MATCH AN OFFER PURSUANT TO THIS SECTION, THE DIRECTOR MAY ALLOW ANOTHER DEPARTMENT OF STATE GOVERNMENT, A METROPOLITAN OR REGIONAL TRANSPORTATION AUTHORITY, OR A COUNTY, CITY, TOWN, VILLAGE, OR COMBINATION THEREOF IN WHICH THE PROPERTY OR A PORTION OF THE PROPERTY IS LOCATED TO EXERCISE THE RIGHT OF THE STATE THROUGH THE DIRECTOR.

(2) IF THE ABANDONED RIGHT-OF-WAY IS SUBJECT TO A REVERTER CLAUSE IN THE DEED THAT CONVEYED SUCH RIGHT-OF-WAY TO THE RAILROAD COMPANY AND IS TO REVERT BACK TO THE CURRENT OWNERS OF THE PROPERTY ADJOINING SUCH RIGHT-OF-WAY UPON ABANDONMENT BY THE RAILROAD COMPANY, THE STATE SHALL NOT EXERCISE ANY PREFERENTIAL RIGHTS AS SET FORTH IN THIS SECTION FOR ANY PURPOSE OTHER THAN THE OPERATION AND MAINTENANCE OF PASSENGER OR FREIGHT RAIL SERVICE WITHOUT THE CONSENT OF THE PROPERTY OWNER.

(3) WHENEVER A RAILROAD COMPANY INTENDS TO DISPOSE OF SUCH RIGHTS-OF-WAY, IT SHALL NOTIFY THE DIRECTOR OF ITS INTENTION IN WRITING. UPON RECEIPT OF THE NOTIFICATION, THE DIRECTOR SHALL INFORM THE APPROPRIATE DEPARTMENTS OF STATE GOVERNMENT, EVERY METROPOLITAN OR REGIONAL TRANSPORTATION AUTHORITY, AND EVERY COUNTY, CITY, TOWN, AND VILLAGE IN WHICH THE PROPERTY OR A PORTION OF THE PROPERTY IS LOCATED, OF THE INTENTION OF THE RAILROAD COMPANY TO DISPOSE OF SUCH RIGHTS-OF-WAY. ANY DEPARTMENT OF STATE GOVERNMENT, METROPOLITAN OR REGIONAL TRANSPORTATION AUTHORITY, COUNTY, CITY, TOWN, AND VILLAGE INTENDING TO EXERCISE A RIGHT OF THE STATE PURSUANT TO THIS SECTION SHALL NOTIFY THE DIRECTOR OF ITS INTEREST WITHIN NINETY DAYS OF RECEIVING NOTICE FROM THE DIRECTOR. WITHIN A REASONABLE TIME, NOT TO EXCEED ONE HUNDRED TWENTY DAYS AFTER RECEIPT OF NOTIFICATION BY THE RAILROAD COMPANY, THE DIRECTOR SHALL NOTIFY THE PROPERTY OWNER IN WRITING WHETHER THE DIRECTOR INTENDS TO EXERCISE A RIGHT OF FIRST REFUSAL. THE STATE SHALL EXERCISE OR RELEASE ANY RIGHT GRANTED PURSUANT TO THIS SECTION WITHIN ONE HUNDRED EIGHTY DAYS OF RECEIPT OF THE NOTICE. IF THE DIRECTOR NOTIFIES THE PROPERTY OWNER THAT THE DIRECTOR DOES NOT INTEND TO EXERCISE A RIGHT OF THE STATE PURSUANT TO THIS SECTION, THE DIRECTOR SHALL GRANT A RELEASE OF THE STATE'S PREFERENTIAL RIGHTS SET FORTH IN THIS SECTION.

(4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE AUTHORITY OF THE STATE OR POLITICAL SUBDIVISION OF THE STATE TO EXERCISE ITS RIGHT TO CONDEMN ANY RIGHTS-OF-WAY. NOTHING IN THIS SECTION SHALL BE MORE RESTRICTIVE THAN APPLICABLE FEDERAL LAW.

40-20-205. Intervention in abandonment proceeding. THE DIRECTOR MAY,

AFTER CONSULTATION WITH AND DIRECTION FROM THE COMMITTEE, INTERVENE IN A PROCEEDING OF THE SURFACE TRANSPORTATION BOARD ON THE ISSUE OF SUITABILITY FOR A PUBLIC USE OF A RIGHT-OF-WAY PROPOSED TO BE ABANDONED IF THE DIRECTOR DETERMINES THAT THE RIGHT-OF-WAY COULD BE USED FOR A PUBLIC PURPOSE.

40-20-206. Repeal. THIS PART 2 IS REPEALED, EFFECTIVE JULY 1, 1997.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 23, 1996