

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"Law requiring railroads to negotiate with cities may impact Sixth Street Embankment negotiations," The Jersey Journal, 1-20-09.

LAW/RWH

[Second Reprint]

ASSEMBLY, No. 3120

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED SEPTEMBER 15, 2008

Sponsored by:

Assemblyman L. HARVEY SMITH

District 31 (Hudson)

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

Assemblyman JOSEPH VAS

District 19 (Middlesex)

Co-Sponsored by:

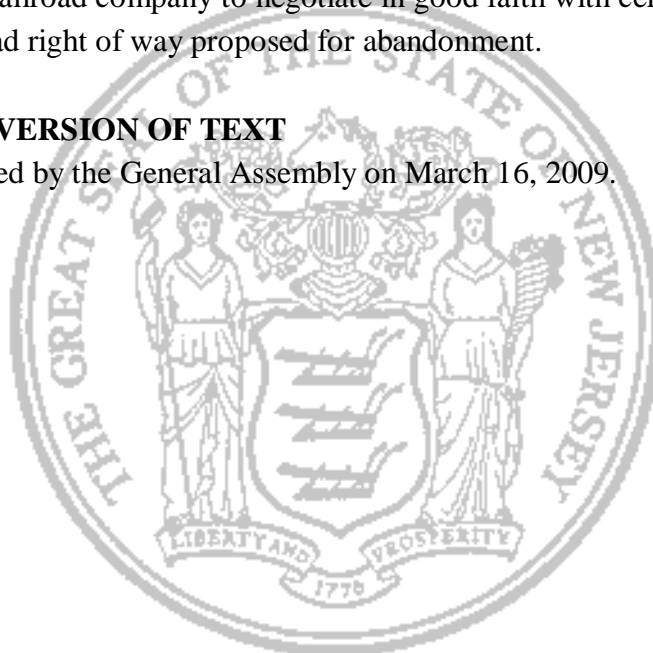
Assemblywoman Quigley, Senators Sacco, Stack and Buono

SYNOPSIS

Requires railroad company to negotiate in good faith with certain entities for sale of railroad right of way proposed for abandonment.

CURRENT VERSION OF TEXT

As amended by the General Assembly on March 16, 2009.



(Sponsorship Updated As Of: 1/12/2010)

1 AN ACT concerning railroad rights of way and amending P.L.1967,
2 c.282.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 1 of P.L.1967, c.282 (C.48:12-125.1) is amended to
8 read as follows:

9 ¹1.¹ a. In order to permit the State and its political subdivisions
10 to receive notice of, and be afforded an opportunity to acquire, by
11 purchase or condemnation, railroad rights of way proposed to be
12 abandoned, any railroad company which makes application to the
13 **[Interstate Commerce Commission]** Surface Transportation Board
14 for authority to abandon any part of its right of way on which
15 passenger or freight services are operated, or to abandon, sell, or
16 lease any of its right of way over which services have previously
17 been ²**[abandoned]** authorized for abandonment² and title to such
18 right of way currently remains with the railroad shall, within 10
19 days of making such application, serve notice thereof upon the
20 State and upon each county and municipality in which any part of
21 the right of way proposed for abandonment is located.

22 ²b.² No sale or conveyance of any part of such right of way shall
23 thereafter be made to any ²**[person]** entity² other than the State, **[a]**
24 or ²**[such]** ^aa county or municipality, for a period of 90 days from
25 the date of approval by the **[Interstate Commerce Commission]**
26 Surface Transportation Board of the application for abandonment or
27 from the date of service of the notice ²**[in]** required by subsection
28 a. of² this section ²**[required]**², whichever occurs later, unless prior
29 thereto each governmental ²**[agency]** entity² entitled to such notice
30 shall have filed with the railroad company ²a² written disclaimer of
31 interest in acquiring all or any part of said right of way ²during the
32 time period in which a railroad company is restricted from selling
33 or conveying any part of a right of way pursuant to this subsection².

34 ²**[b.]** ^{c.}² During the period of 90 days in which a railroad
35 company is prohibited from selling or conveying any part of a right
36 of way pursuant to subsection ²**[a.]** ^{b.}² of this section, such railroad
37 company shall negotiate in good faith for the sale or conveyance of
38 the right of way with the State, or with any municipality or county
39 in which the right of way proposed for abandonment is located and
40 which expresses ²written² interest in acquiring such right of way.

41 ²**[c.]** ^{d.}² Any sale or conveyance of a right of way made after
42 the expiration of the foregoing 90-day period to any ²**[person]**

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ATR committee amendments adopted January 26, 2009.

²Assembly floor amendments adopted March 16, 2009.

1 entity,² other than the State or a county or municipality in which
2 any part of the right of way proposed for abandonment is located,
3 shall be subject to the right of first refusal by any of the foregoing
4 governmental entities ²[which shall have] , provided that the
5 governmental entity has² made an offer to purchase such right of
6 way during the 90-day period and which offer was refused by the
7 railroad company. ²The governmental entity shall have no less than
8 90 days from either the date of receipt from the railroad company of
9 an offer to purchase the right of way by an entity, other than one of
10 the foregoing governmental entities, or any other contract setting
11 forth the terms and conditions governing the sale to which this right
12 of first refusal is applicable or the effective date of abandonment as
13 authorized by the Surface Transportation Board, including the
14 expiration of any stays, whichever occurs later, to exercise this right
15 of first refusal.² Upon exercising this right of first refusal, the
16 governmental entity shall purchase the right of way for the same
17 amount agreed upon between the railroad company ¹and¹ the person
18 to whom the company attempted to sell or convey such right of way
19 ²pursuant to this subsection² .

20 ²[d.] e.² Any sale or conveyance made in violation of **[this act]**
21 P.L.1967, c.282 (C.48:12-125.1 et seq.) shall be void.

22 As used in this act "right of way" means the roadbed of a line of
23 railroad, not exceeding 100 feet in width, as measured horizontally
24 at the elevation of the base of the rail, including the full
25 embankment or excavated area, with slopes, slope ditches, retaining
26 walls, or foundations necessary to provide a width not to exceed
27 100 feet at the base of rail, but not including tracks, appurtenances,
28 ballast nor any structures or buildings erected thereon.

29 (cf: P.L.1967, c.282, s.1)

30

31 2. This act shall take effect immediately.

ASSEMBLY, No. 3120

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED SEPTEMBER 15, 2008

Sponsored by:

Assemblyman L. HARVEY SMITH

District 31 (Hudson)

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

SYNOPSIS

Requires railroad company to negotiate in good faith with certain entities for sale of railroad right of way proposed for abandonment.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning railroad rights of way and amending P.L.1967,
2 c.282.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1967, c.282 (C.48:12-125.1) is amended to
8 read as follows:

9 a. In order to permit the State and its political subdivisions to
10 receive notice of, and be afforded an opportunity to acquire, by
11 purchase or condemnation, railroad rights of way proposed to be
12 abandoned, any railroad company which makes application to the
13 **[Interstate Commerce Commission]** Surface Transportation Board
14 for authority to abandon any part of its right of way on which
15 passenger or freight services are operated, or to abandon, sell, or
16 lease any of its right of way over which services have previously
17 been abandoned and title to such right of way currently remains
18 with the railroad shall, within 10 days of making such application,
19 serve notice thereof upon the State and upon each county and
20 municipality in which any part of the right of way proposed for
21 abandonment is located. No sale or conveyance of any part of such
22 right of way shall thereafter be made to any person other than the
23 State, **[a]** or such county or municipality, for a period of 90 days
24 from the date of approval by the **[Interstate Commerce**
25 **Commission]** Surface Transportation Board of the application for
26 abandonment or from the date of service of the notice in this section
27 required, whichever occurs later, unless prior thereto each
28 governmental agency entitled to such notice shall have filed with
29 the railroad company written disclaimer of interest in acquiring all
30 or any part of said right of way.

31 b. During the period of 90 days in which a railroad company is
32 prohibited from selling or conveying any part of a right of way
33 pursuant to subsection a. of this section, such railroad company
34 shall negotiate in good faith for the sale or conveyance of the right
35 of way with the State, or with any municipality or county in which
36 the right of way proposed for abandonment is located and which
37 expresses interest in acquiring such right of way.

38 c. Any sale or conveyance of a right of way made after the
39 expiration of the foregoing 90-day period to any person other than
40 the State or a county or municipality in which any part of the right
41 of way proposed for abandonment is located shall be subject to the
42 right of first refusal by any of the foregoing governmental entities
43 which shall have made an offer to purchase such right of way
44 during the 90-day period and which offer was refused by the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 railroad company. Upon exercising this right of first refusal, the
2 governmental entity shall purchase the right of way for the same
3 amount agreed upon between the railroad company the person to
4 whom the company attempted to sell or convey such right of way.

5 d. Any sale or conveyance made in violation of **[this act]**
6 P.L.1967, c.282 (C.48:12-125.1 et seq.) shall be void.

7 As used in this act "right of way" means the roadbed of a line of
8 railroad, not exceeding 100 feet in width, as measured horizontally
9 at the elevation of the base of the rail, including the full
10 embankment or excavated area, with slopes, slope ditches, retaining
11 walls, or foundations necessary to provide a width not to exceed
12 100 feet at the base of rail, but not including tracks, appurtenances,
13 ballast nor any structures or buildings erected thereon.

14 (cf: P.L.1967, c.282, s.1)

15

16 2. This act shall take effect immediately.

17

18

19

STATEMENT

20

21 Current law prohibits the sale or conveyance of any part of a
22 railroad right of way proposed for abandonment to any person,
23 other than the State or a county or a municipality in which the right
24 of way is located, for a period of 90 days from the date the Surface
25 Transportation Board approves such abandonment, or from the date
26 upon which the company serves notice of its intent to abandon,
27 whichever occurs later. This bill would strengthen the existing
28 statute by requiring the railroad company to negotiate in good faith
29 with the State or any such county or municipality that desires to
30 acquire the right of way proposed for abandonment. The bill also
31 provides any of the foregoing governmental entities with the right
32 of first refusal of any sale made to any other person after the end of
33 the 90-day period, provided that such governmental entity made an
34 offer to purchase the right of way prior to the expiration of the 90-
35 day period. Upon exercising the right of first refusal, the
36 governmental entity would be required to purchase the right of way
37 for an amount equal to that which is agreed upon between the
38 railroad company and the person to whom the company attempted
39 to sell the right of way.

ASSEMBLY TRANSPORTATION, PUBLIC WORKS AND
INDEPENDENT AUTHORITIES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3120

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 26, 2009

The Assembly Transportation, Public Works and Independent Authorities Committee reports favorably and with amendments Assembly Bill No. 3120.

Current law prohibits the sale or conveyance of any part of a railroad right of way proposed for abandonment to any person, other than the State or a county or a municipality in which the right of way is located, for a period of 90 days from the date the federal Surface Transportation Board approves such abandonment, or from the date upon which the company serves notice of its intent to abandon, whichever occurs later.

As reported, this bill would strengthen the existing statute by requiring the railroad company to negotiate in good faith with the State or any such county or municipality that desires to acquire the right of way proposed for abandonment.

The bill also provides any of the foregoing governmental entities with the right of first refusal of any sale made to any other person after the end of the 90-day period, provided that such governmental entity made an offer to purchase the right of way prior to the expiration of the 90-day period. Upon exercising the right of first refusal, the governmental entity would be required to purchase the right of way for an amount equal to that which is agreed upon between the railroad company and the person to whom the company attempted to sell the right of way.

COMMITTEE AMENDMENTS

The committee made technical amendments to put the bill's subdivisions in proper form and to correct a typographical error.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3120

with Assembly Floor Amendments
(Proposed by Assemblyman SMITH)

ADOPTED: MARCH 16, 2009

This amendment clarifies that the State law concerning abandonment of railroad rights of way applies to instances where the federal Surface Transportation Board (STB) has authorized abandonment but that railroad has not taken all steps necessary to see that abandonment to fruition in addition to instances where that railroad is currently making application to the STB.

The amendment clarifies that the written disclaimer of interest in acquiring a right of way that may be filed by a governmental entity is to be filed during the time period in which a railroad company is restricted from selling or conveying any part of a right of way pursuant to this subsection.

Finally, the amendment provides a right of first refusal for 90 days following a railroad's notice to a governmental entity of an offer to purchase a right of way by a nongovernmental entity. Such right of first refusal is applicable only when a governmental entity has made an offer to purchase the railroad right of way within the preceding 90 days after the STB has authorized abandonment of that right of way.

This amendment also makes various technical changes to the lettering of the bill to account for new subsections and makes changes to correct grammar and punctuation.

SENATE, No. 2538

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 2, 2009

Sponsored by:

Senator NICHOLAS J. SACCO

District 32 (Bergen and Hudson)

Senator BRIAN P. STACK

District 33 (Hudson)

SYNOPSIS

Requires railroad company to negotiate in good faith with certain entities for sale of railroad right of way proposed for abandonment.

CURRENT VERSION OF TEXT

As introduced.



S2538 SACCO, STACK

2

1 AN ACT concerning railroad rights of way and amending P.L.1967,
2 c.282.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1967, c.282 (C.48:12-125.1) is amended to
8 read as follows:

9 1. a. In order to permit the State and its political subdivisions to
10 receive notice of, and be afforded an opportunity to acquire, by
11 purchase or condemnation, railroad rights of way proposed to be
12 abandoned, any railroad company which makes application to the
13 **[Interstate Commerce Commission]** Surface Transportation Board
14 for authority to abandon any part of its right of way on which
15 passenger or freight services are operated, or to abandon, sell, or
16 lease any of its right of way over which services have previously
17 been abandoned and title to such right of way currently remains
18 with the railroad shall, within 10 days of making such application,
19 serve notice thereof upon the State and upon each county and
20 municipality in which any part of the right of way proposed for
21 abandonment is located. No sale or conveyance of any part of such
22 right of way shall thereafter be made to any person other than the
23 State, **[a]** or such county or municipality, for a period of 90 days
24 from the date of approval by the **[Interstate Commerce**
25 **Commission]** Surface Transportation Board of the application for
26 abandonment or from the date of service of the notice in this section
27 required, whichever occurs later, unless prior thereto each
28 governmental agency entitled to such notice shall have filed with
29 the railroad company written disclaimer of interest in acquiring all
30 or any part of said right of way.

31 b. During the period of 90 days in which a railroad company is
32 prohibited from selling or conveying any part of a right of way
33 pursuant to subsection a. of this section, such railroad company
34 shall negotiate in good faith for the sale or conveyance of the right
35 of way with the State, or with any municipality or county in which
36 the right of way proposed for abandonment is located and which
37 expresses interest in acquiring such right of way.

38 c. Any sale or conveyance of a right of way made after the
39 expiration of the foregoing 90-day period to any person other than
40 the State or a county or municipality in which any part of the right
41 of way proposed for abandonment is located shall be subject to the
42 right of first refusal by any of the foregoing governmental entities
43 which shall have made an offer to purchase such right of way
44 during the 90-day period and which offer was refused by the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 railroad company. Upon exercising this right of first refusal, the
2 governmental entity shall purchase the right of way for the same
3 amount agreed upon between the railroad company and the person
4 to whom the company attempted to sell or convey such right of
5 way.

6 d. Any sale or conveyance made in violation of [this act]
7 P.L.1967, c.282 (C.48:12-125.1 et seq.) shall be void.

8 As used in this act "right of way" means the roadbed of a line of
9 railroad, not exceeding 100 feet in width, as measured horizontally
10 at the elevation of the base of the rail, including the full
11 embankment or excavated area, with slopes, slope ditches, retaining
12 walls, or foundations necessary to provide a width not to exceed
13 100 feet at the base of rail, but not including tracks, appurtenances,
14 ballast nor any structures or buildings erected thereon.
15 (cf: P.L.1967, c.282, s.1)

16
17 2. This act shall take effect immediately.

18

19

20

STATEMENT

21

22 Current law prohibits the sale or conveyance of any part of a
23 railroad right of way proposed for abandonment to any person,
24 other than the State or a county or a municipality in which the right
25 of way is located, for a period of 90 days from the date the Surface
26 Transportation Board approves such abandonment, or from the date
27 upon which the company serves notice of its intent to abandon,
28 whichever occurs later.

29 This bill would strengthen the existing statute by requiring the
30 railroad company to negotiate in good faith with the State or any
31 such county or municipality that desires to acquire the right of way
32 proposed for abandonment.

33 The bill also provides any of the foregoing governmental entities
34 with the right of first refusal of any sale made to any other person
35 after the end of the 90-day period, provided that such governmental
36 entity made an offer to purchase the right of way prior to the
37 expiration of the 90-day period. Upon exercising the right of first
38 refusal, the governmental entity would be required to purchase the
39 right of way for an amount equal to that which is agreed upon
40 between the railroad company and the person to whom the company
41 attempted to sell the right of way.

SENATE TRANSPORTATION COMMITTEE

STATEMENT TO

SENATE, No. 2538

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 11, 2009

The Senate Transportation Committee reports favorably Senate Bill No. 2538 with committee amendments.

Current law prohibits the sale or conveyance of any part of a railroad right of way proposed for abandonment to any person other than the State or a county or municipality in which the right of way is located, for a period of 90 days from the date the federal Surface Transportation Board approves such abandonment or from the date upon which the railroad company serves notice of its intent to abandon, whichever occurs later.

The amended bill clarifies that the current law applies to instances where the Surface Transportation Board has authorized abandonment but that the railroad company has not taken all steps necessary to see the abandonments to fruition in addition to instances where that railroad company is currently making application to the board. This bill requires the railroad company to negotiate in good faith with the State or any county or municipality that desires to acquire the right of way proposed for abandonment.

During the 90-day period in which a sale or conveyance of a right of way is otherwise prohibited, a sale or conveyance is permitted if each county, municipality, or the State ("governmental entities") entitled to notice from the railroad company files with the railroad company a written disclaimer of interest within that 90-day period.

During the 90-day period, the railroad company is required to negotiate in good faith with the governmental entities which have expressed a written interest in acquiring the right of way proposed for abandonment. The governmental entities have the right of first refusal after the 90-day period, provided they have made an offer to purchase the right of way during the 90-day period and the offer was refused.

Upon exercising the right of first refusal, the governmental entity is required to purchase the right of way for an amount equal to that which is agreed upon by the railroad company and the person to whom the railroad company attempted to sell the right of way.

The committee amended the bill to clarify that the current law applies to instances where the Surface Transportation Board has authorized abandonment but the railroad company has not taken all

steps necessary to see the abandonment to fruition in addition to instances in which the railroad company is currently making application to the board.

The amendments clarify that the written disclaimer of interest in acquiring a right of way that may be filed by a governmental entity is to be filed during the time period in which a railroad company is restricted from selling or conveying any part of a right of way.

Finally, the amendments provide a right of first refusal for 90 days following a railroad company's notice to a governmental entity of an offer to purchase a right of way by a nongovernmental entity. Such right of first refusal is applicable only when a governmental entity has made an offer to purchase the railroad right of way within the preceding 90 days after the board has authorized abandonment of that right of way.

With these amendments this bill is identical to A-3120(2R).