

Limitation of other consequential damages is valid unless it is established that the limitation is unconscionable.

Passed the House February 8, 1974.
Passed the Senate February 7, 1974.
Approved by the Governor February 16, 1974.
Filed in Office of Secretary of State February 16, 1974.

CHAPTER 79

[House Bill No. 102]

PROPERTY CONDEMNATION AWARDS--

SPECIAL BENEFITS SET-OFF--

LIEN--FEES

AN ACT Relating to property condemnation for highway, road, or street purposes; adding new sections to chapter 8.25 RCW; and declaring an emergency.

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

NEW SECTION. Section 1. It is the purpose of this 1974 act to provide procedures whereby more just and equitable results are accomplished when real property has been condemned for a highway, road, or street and an award made which is subject to a setoff for benefits inuring to the condemnee's remaining land.

NEW SECTION. Sec. 2. Whenever land, real estate, premises or other property is to be taken or damaged for a highway, road, or street and the amount offered as just compensation includes a setoff in recognition of special benefits accruing to a remainder portion of the property the property owner shall elect one of the following options:

(1) Trial on the question of just compensation which shall finally determine the amount of just compensation; or

(2) Acceptance of the offered amount as a final determination of just compensation; or

(3) Demand the full amount of the fair market value of any property taken plus the amount of damages if any caused by such acquisition to a remainder of the property without offsetting the amount of any special benefits accruing to a remainder of the property as those several amounts are agreed to by the parties; or

(4) Demand a trial before a jury unless jury be waived to establish the fair market value of any property taken and the amount of damages if any caused by such acquisition to a remainder of the property without offsetting the amount of any special benefits accruing to a remainder of the property.

The selection of the option set forth in subsections (3) or (4) of this section is subject to the consent by the property owner

to the creation and recording of a lien against the remainder in the amount of the fair market value of any property taken plus the amount of damages caused by such acquisition to the remainder of the property without offsetting the amount of any special benefits accruing to a remainder of the property, plus interest as it accrues.

NEW SECTION. Sec. 3. A lien established as provided in section 2 of this 1974 act shall be satisfied or released by:

(1) Agreement between the parties to that effect; or
(2) Payment of the lien amount plus interest at the rate of five percent per annum; or

(3) Payment of the amount of offsetting special benefits as established pursuant to section 2(3) of this 1974 act plus interest at the rate of five percent per annum within four years of the date of acquisition; or

(4) Satisfaction of a judgment lien entered as a result of a trial before a jury unless jury be waived to establish the change in value of the remainder of the original parcel because of the construction of the project involved: PROVIDED, That if the result of the trial is to find no special benefits then the lien is extinguished by operation of law. Trial may be had on the petition of any party to the superior court of the county wherein the subject remainder lies after notice of intent to try the matter of special benefits has been served on all persons having an interest in the subject remainder. Such notice shall be filed with the clerk of the superior court and personally served upon all persons having an interest in the subject remainder. Filing a notice of intent to try the matter of special benefits shall be accompanied by a fee in the amount paid when filing a petition in condemnation.

(5) Upon expiration of six years time from the date of acquisition without commencement of proceedings to foreclose the lien or try the matter of special benefits to the remainder of the property, the lien shall terminate by operation of law.

NEW SECTION. Sec. 4. A judgment entered as a result of a trial on the matter of special benefits shall not exceed the previously established sum of (1) the fair market value of any property taken; (2) the amount of damages if any to a remainder of the property, without offsetting against either of them the amount of any special benefits accruing to a remainder of the property; (3) the interest at five percent per annum accrued thereon to the date of entry of the judgment.

NEW SECTION. Sec. 5. Attorney fees and expert witness fees of the condemnee may be allowed by the attorney general or other attorney representing a condemnor to the extent provided in RCW 8.25.070 and shall be awarded by the court as authorized by this

section to the extent provided in RCW 8.25.070 for trial and trial preparation: (1) in the event a trial is held as authorized by section 2 of this 1974 act except the judgment awarded to the condemnor must exceed by ten percent or more the highest written offer in settlement of the issue to be determined by trial submitted by the condemnor to those condemnees appearing in the action at least thirty days prior to commencement of the trial; (2) in the event of a trial on the matter of special benefits as authorized by section 3(4) of this 1974 act except the judgment awarded to the condemnor must be no more than ninety percent of the lowest written offer in settlement submitted by the condemnor to the condemnees appearing in the action at least thirty days prior to commencement of the trial on the matter of special benefits.

NEW SECTION. Sec. 6. A condemnor may foreclose the lien authorized by section 2 of this 1974 act by bringing an action and applying for summary judgment pursuant to civil rule 56 and may execute first upon the remainder property but such proceedings shall not be commenced before five years time has passed from the date of acquisition by the condemnor. A property owner may stay proceedings to enforce the lien authorized by section 2 of the 1974 act by commencement of an action to try the matter of special benefits.

NEW SECTION. Sec. 7. Sections 1 through 7 of this 1974 act shall be added to chapter 8.25 RCW.

NEW SECTION. Sec. 8. This 1974 act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House February 11, 1974.
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CHAPTER 80
[House Bill No. 289]
STATE HIGHWAYS—
SPECIFIC INFORMATION PANELS—
BUSINESS SIGNS

AN ACT Relating to outdoor advertising; amending section 2, chapter 96, Laws of 1961 as amended by section 1, chapter 62, Laws of 1971 ex. sess. and RCW 47.42.020; and adding new sections to chapter 96, Laws of 1961 and to chapter 47.42 RCW.

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