

which was section 8 in the original printed bill, was prepared for the purpose of inserting the adjective 'food' in two different places preceding the word 'fish', thereby more specifically identifying the subject matter of certain provisions as 'food fish'.

"In the preparation of this bill, the draftsman inadvertently substituted the words 'catch fees' for the word 'tax' in the first proviso to the second paragraph of section 6. The present law provides for privilege fees to be imposed upon canneries who process certain fish. This tax is imposed by RCW 75.32.030. The proviso in the original statute which was sought to be amended by section 6 of this bill, exempts from that privilege tax dealers in frozen fish. By erroneously changing the word 'tax' to 'catch fee,' the proviso now purports to exempt dealers in frozen fish from the catch fee imposed by RCW 75.32.070. That tax is, of course, inapplicable to such dealers. The proviso is therefore erroneously worded and would have an erroneous application.

"For this reason section 6 of House Bill No. 322 is vetoed and the remainder of the bill is approved."

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## CHAPTER 213.

[ H. B. 148. ]

### EMINENT DOMAIN BY STATE.

AN ACT relating to eminent domain by the state, and revising and amending section 4, chapter 74, Laws of 1891, as amended by section 1, chapter 98, Laws of 1925 extraordinary session, and as amended by section 1, chapter 177, Laws of 1951, and RCW 8.04.070, 8.04.080, 8.04.090 and 8.04.100, and adding a new section to chapter 8.04 RCW.

*Be it enacted by the Legislature of the State of Washington:*

Amendment.

SECTION 1. Section 4, chapter 74, Laws of 1891, as amended by section 1, chapter 98, Laws of 1925 extraordinary session, and as amended by section 1, chapter 177, Laws of 1951 (heretofore divided and codified as RCW 8.04.070, 8.04.080, 8.04.090 and 8.04.100) is divided and amended as set forth in sections 2 through 5 of this act.

Enacted  
without  
amendment.

SEC. 2. (RCW 8.04.070) At the time and place appointed for hearing the petition, or to which the hearing may have been adjourned, if the court has satisfactory proof that all parties interested in the lands, real estate, premises or other property described in the petition have been duly served with the

notice, and is further satisfied by competent proof that the contemplated use for which the lands, real estate, premises, or other property are sought to be appropriated is really necessary for the public use of the state, it shall make and enter an order, to be recorded in the minutes of the court, and which order shall be final unless review thereof to the supreme court of the state is taken within five days after entry thereof, adjudicating that the contemplated use for which the lands, real estate, premises or other property are sought to be appropriated is really a public use of the state.

Order adjudicating use is public use. Review.

SEC. 3. (RCW 8.04.080) The order shall direct that determination be had of the compensation and damages to be paid all parties interested in the land, real estate, premises or other property sought to be appropriated for the taking and appropriation thereof, together with the injury, if any, caused by such taking and appropriation to the remainder of the lands, real estate, premises, or other property from which the same is to be taken and appropriated after offsetting against any and all such compensation and damages the special benefits, if any, accruing to such remainder by reason of the appropriation and the use by the state of the lands, real estate, premises, and other property described in the petition. The determination shall be made within thirty days after the entry of such order, before a jury if trial by jury is demanded at the hearing either by the petitioner or by the respondents, otherwise by the court sitting without a jury. If no regular venire has been called so as to be available to serve within such time on application of the petitioner at the hearing, the court may by its order continue such determination to the next regular jury term if a regular venire will be called within sixty days, otherwise the court shall call a special jury within said sixty days and direct the sheriff to summon, from the citizens of the county

Amendment. Direct determination of compensation and damages.

Damages offset by special benefits.

Determination due date.

Trial by jury.

Special jury.

Consent to lesser number of jurors.

Costs of special jury.

in which the lands, real estate, premises, or other property sought to be appropriated are situated, as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the petitioner and respondents both consent to a less number of jurors (such number to be not less than three), and such consent is entered by the clerk in the minutes of such hearing. In any third class county or lesser classification, the costs of such special jury for the trial of such condemnation cases only shall be borne by the state.

Certificate of requirement of immediate possession.

Continuing tender.

State auditor issues warrant.

Court order granting immediate possession.

SEC. 4. (RCW 8.04.090) In case the state shall require immediate possession and use of the property sought to be condemned, and an order of necessity shall have been granted, and no review has been taken therefrom, the attorney general may stipulate with respondents in accordance with the provisions of this section and RCW 8.04.092 and 8.04.093 for an order of immediate possession and use, and file with the clerk of the court wherein the action is pending, a certificate of the state's requirement of immediate possession and use of the land, which shall state the amount of money offered to the respondents and shall further state that such offer constitutes a continuing tender of such amount. The attorney general shall file a copy of the certificate with the state auditor, who forthwith shall issue and deliver to him a warrant payable to the order of the clerk of the court wherein the action is pending in a sum sufficient to pay the amount offered, which shall forthwith be paid into the registry of the court. The court without further notice to respondent shall enter an order granting to the state the immediate possession and use of the property described in the order of necessity, which order shall bind the petitioner to pay the full amount of any final judgment of compensation and damages which may thereafter be awarded for the taking and appropriation of the

lands, real estate, premises, or other property described in the petition and for the injury, if any, to the remainder of the lands, real estate, premises, or other property from which they are to be taken by reason of such taking and appropriation, after offsetting against any and all such compensation and damages the special benefits, if any, accruing to such remainder by reason of the appropriation and use by the state of the lands, real estate, premises, or other property described in the petition. The moneys paid into court may at any time after entry of the order of immediate possession, be withdrawn by respondents, by order of the court, as their interests shall appear.

Moneys withdrawn by order of court.

SEC. 5. (RCW 8.04.100) At the time of fixing the date for trial by jury in any case the court may, on application of the petitioner, order that any one or more condemnation cases then pending before the court and requiring determination by a jury of the compensation and damages as aforesaid be consolidated and tried before one and the same jury but with a separate award to be made in each case. If necessary, the sheriff, under direction of the court or judge thereof, shall summon as many qualified persons as may be required to complete the jury from citizens of the county where such lands, real estate, premises or other property sought to be appropriated are situated.

Enacted without amendment.

Consolidating condemnation cases.

SEC. 6. In proceedings for the condemnation of property under any of the provisions of Title 8, RCW, wherein the condemnee has recovered a judgment which is at least twenty-five percent in excess of the final offer of the condemnor, the condemnee shall be entitled to a reasonable attorney's fee to be awarded by the court.

Vetoed.

Passed the House March 10, 1955.

Passed the Senate March 10, 1955.

Approved by the Governor March 16, 1955, with the exception of Section 6, which is vetoed.

Note: Excerpt of Governor's Veto Message reads as follows:

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"This provision would authorize the award of reasonable attorney's fees to the condemnee in an eminent domain proceeding in any case where the condemnee received at least 25% in excess of the final amount offered by the condemnor. It should be noticed that this provision applies to any condemnation whether by the state or any other condemning authority or corporation. It would also apply to the condemnation of private ways of necessity by landlocked individuals.

"I have no objection to the principle that every property owner should be entitled to receive fair compensation, not only for his property but for any unusual expense to which he may be put in such proceedings. However, a provision such as this may, under some circumstances, encourage unnecessary litigation when the acquisition could actually have been settled by negotiation.

"The provision lends itself readily to the suggestion that a land owner should not settle the matter by negotiation too readily, nor be particularly cooperative, since nothing could be lost by taking the matter to court. At the present time, the state is anticipating the construction of a rather extensive highway project in the Tacoma-Seattle-Everett area. This particular project is being financed by a bond issue of large magnitude. Any measure which could delay or prolong property acquisition on this project could add tremendously to the interest and financing charges accruing on the bonds. Even a slight delay would add costs far out of proportion to the benefits accruing to the condemnee under this provision. Furthermore, many of the courts are so burdened that calendars are running several months behind current filings. Any tendency to increase this burden would have a detrimental effect upon the efficient operation of our courts. If the measure actually had the effect of increasing litigation, it would undoubtedly be necessary to increase the number of judges and court personnel appreciably to take care of the additional burden.

"I believe that the risk of the detrimental effect which may occur under present circumstances, far outweighs the beneficial effects, if any, to the condemnee. For this reason, section 6 is vetoed and the remainder of the bill is approved."