

LEGISLATIVE BILL 435

Approved by the Governor March 18, 2002

Introduced by Agriculture Committee: Dierks, 40, Chairperson; Burling, 33; Cunningham, 18; Schrock, 38; Vrtiska, 1

AN ACT relating to agricultural tenants; to amend section 75-109, Revised Statutes Supplement, 2000; to adopt the Agricultural Suppliers Lease Protection Act; to change powers of the Public Service Commission; to harmonize provisions; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 8 of this act shall be known and may be cited as the Agricultural Suppliers Lease Protection Act.

Sec. 2. The Legislature finds that agricultural production in this state is highly dependent upon businesses providing inputs for agricultural producers and markets for agricultural commodities which have historically located on lands owned and served by railroads. It is vital to the continued prosperity of agriculture that such businesses maintain reasonable access to rail service and maintain reasonable terms of tenancy upon land owned by railroads or their successors in interest. The Legislature also finds that agribusiness leaseholders' substantial investments in structures and improvements unique to their rail location, as well as dependency on rail access, place them at a disadvantage in negotiating lease renewals. The Legislature further finds that given the substantial investment in structures and improvements made by agribusiness leaseholders, it is equitable that such agribusiness leaseholders have a right of first refusal to purchase the land they lease, should it be offered for sale. The purpose of the Agricultural Suppliers Lease Protection Act is to establish a system for fair resolution of lease disputes that may arise between railroad property owners or their successors and agribusiness tenants and to guard against unreasonable lease renewal terms or unjust lease termination.

Sec. 3. For purposes of the Agricultural Suppliers Lease Protection Act:

(1) Agricultural tenant means any public warehouse licensee as defined in section 88-526, any livestock auction market as defined in section 54-1158, or any other persons primarily engaged in the sale or distribution of fertilizer or agricultural chemicals or farm implements, machinery, or equipment occupying railroad land owned or controlled by a railroad or its grantee or successor in interest;

(2) Fair market lease rate means the lease rate of comparable commercial properties adjusted according to accepted appraisal standards which may include, but are not necessarily limited to, lease terms, market conditions, location, physical characteristics, economic characteristics stipulated in the lease, and nonrealty components or, in the absence of comparability, the lease rate as determined by comparable rates of return realized on the lease of other commercial property in proximity to the lease site;

(3) Good faith means honesty in fact in the conduct of the transaction concerned;

(4) Lease means any agreement between a railroad and a tenant under the terms of which a tenant occupies the surface of railroad land;

(5) Railroad land means any land acquired by a railroad in strips for right-of-way and any parcel or tract acquired by a railroad adjacent to its right-of-way to aid in the construction, maintenance, and accommodation of its railway and which is occupied pursuant to a lease by a tenant who owns substantial improvements thereon;

(6) Substantial improvements means buildings or other structures or fixtures to structures that are permanent in nature and includes equipment that is affixed to real property or structures; and

(7) Successor in interest includes any agent, successor, assignee, trustee, receiver, or other person acquiring interests or rights in railroad land, including, but not limited to, the owner or holder of any servient estate or right of reversion relating to railroad land.

Sec. 4. (1) Except when an owner of railroad land has received a bona fide third-party offer to lease the property that the owner desires to accept, at the expiration of an existing lease, the agricultural tenant shall be given the opportunity to renew the lease at fair market lease rate. If a bona fide third-party offer has been made to lease the property that the owner desires to accept, then the agricultural tenant shall be given first

opportunity for a period of thirty days after receipt of written notice of such third-party offer to renew the lease at a rate that is substantially equal in value to the third-party offer.

(2) All controversies regarding application and reasonableness of lease terms and conditions or fair market lease rate arising between a railroad or its successor in interest and an agricultural tenant who is the owner, lessee, or licensee of a substantial improvement situated on railroad land owned or controlled by the railroad or its successor in interest shall be resolved by negotiation or by Department of Agriculture action.

(3) The parties shall first negotiate in good faith to resolve any controversy. If any such controversy is not resolved within sixty days after notification is given to an agricultural tenant by a railroad or its successor in interest that it wishes to (a) renew a lease upon new terms, (b) terminate a lease, (c) not renew a lease upon the expiration of a current lease, or (d) change the terms of an existing lease, then either party may file a complaint with the department setting forth facts upon which such complaint is based.

(4) The department, after reasonable notice to the parties, shall hear and determine all matters in controversy and make such order as the facts of the controversy warrant. In conducting its hearing, the department shall have those powers granted to it under the Administrative Procedure Act. Any person shall have the right to appeal from such order in accordance with the act.

Sec. 5. (1) (a) Except when an owner of railroad land has received a bona fide third-party offer to purchase the property that the owner desires to accept, if a railroad or its successor in interest wishes to sell or offer to sell property leased to an agricultural tenant upon which substantial improvements owned by the agricultural tenant are located, then, except when the sale or offer to sell is made to a purchaser who is a common carrier who intends to operate a railroad on railroad right-of-way adjacent to the leased property for the public benefit or a purchaser who intends to use the railroad land for interim trail use under the National Trails System Act, 16 U.S.C. 1243, as such act existed on the effective date of this act, the railroad or its successor in interest shall first extend to the agricultural tenant a written offer to sell the railroad land to the agricultural tenant at fair market value.

(b) If a bona fide third-party offer that a railroad or its successor in interest desires to accept has been made to purchase property leased to an agricultural tenant upon which substantial improvements owned by the agricultural tenant are located, the railroad or its successor in interest shall first extend to the agricultural tenant a written offer to sell the railroad land at a price that is substantially equal in value to such third-party offer of purchase. If the agricultural tenant does not accept such written offer within thirty days after receipt of the offer, then the railroad or its successor in interest may sell the property to the third party, and such third party is not bound under this section.

(2) The agricultural tenant shall have thirty days after a written offer made to the agricultural tenant pursuant to subdivision (1) (a) of this section to give written notice of either (a) acceptance of the offer to sell and of the offerer's determination of fair market value or (b) acceptance of the offer to sell and rejection of the offerer's determination of fair market value in which case the parties shall negotiate the fair market value and, if the parties cannot agree, the agricultural tenant shall have sixty days after the agricultural tenant gives notice of rejection to file a complaint with the Department of Agriculture seeking determination of fair market value.

(3) The Department of Agriculture, after reasonable notice to the parties, shall hear and determine the fair market value of the land offered for sale and make such order as the facts of the controversy warrant. In conducting its hearing, the department shall have those powers granted it under the Administrative Procedure Act. Any person shall have the right to appeal from such order in accordance with the act.

(4) If the agricultural tenant fails to give timely notice or to file a timely complaint under subsection (2) of this section or fails to complete the purchase of the railroad land within sixty days after the fair market value has been accepted by the agricultural tenant or determined by the department, unless the delay in completing the purchase is attributable to the railroad or its successor in interest, the railroad or its successor in interest may sell or offer to sell the railroad land to any purchaser and such purchaser shall not be bound by this section. If the railroad land is sold to a purchaser which will use the railroad land for railroad operating purposes or for interim trail use as described in subdivision (1) (a) of this section, then the purchaser shall be bound by all of the provisions of the Agricultural Suppliers Lease Protection Act.

Sec. 6. (1) The Department of Agriculture, in consultation with the parties, may employ the services of a certified general real estate appraiser when determination of fair market value is a matter in controversy or relevant to the hearing and determination of the matter in controversy.

(2) All costs incurred by the department hearing and determining all matters in controversy pursuant to the Agricultural Suppliers Lease Protection Act shall be paid equally by the parties.

Sec. 7. (1) The Agricultural Suppliers Lease Protection Act shall not apply to any valid lease entered into prior to the effective date of this act or any renewal or extension thereof on the same terms and conditions, but the provisions of the act shall apply to and govern any renewal or extension of such lease on any different terms or conditions or any material modifications of any such lease effected on or after the effective date of this act.

(2) Any party having a right of first refusal or right of renewal under the Agricultural Suppliers Lease Protection Act shall be barred from making any subsequent claim to possession or title to the railroad land if it fails to bring an action asserting that it has been denied its right of first refusal or right of renewal in violation of the act within six months after the date of a lease or after the expiration of a lease or sale by the railroad to a party other than the agricultural tenant.

Sec. 8. The Agricultural Suppliers Lease Protection Cash Fund is created. All funds collected by the Department of Agriculture under the Agricultural Suppliers Lease Protection Act shall be remitted to the State Treasurer for credit to the fund. The fund shall be used by the department to aid in defraying the expenses of administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 9. Section 75-109, Revised Statutes Supplement, 2000, is amended to read:

75-109. (1) Except as provided in the Agricultural Suppliers Lease Protection Act and sections 19-4603, 86-803, and 86-808, the commission shall regulate and exercise general control as provided by law over all common and contract carriers engaged in the transportation of freight or passengers for hire or furnishing telecommunications services for hire in Nebraska intrastate commerce.

(2) The commission is authorized to do all things reasonably necessary and appropriate to implement the federal Telecommunications Act of 1996, Public Law 104-104, including 47 U.S.C. 251 et seq., as such sections existed on the effective date of this act, including section 252 of the act which establishes specific procedures for negotiation and arbitration of interconnection agreements between telecommunications companies. Interconnection agreements approved by the commission pursuant to section 252 of the act may contain such enforcement mechanisms and procedures that the commission determines to be consistent with the establishment of fair competition in Nebraska telecommunications markets. In addition, the commission may administratively fine pursuant to section 75-156 any person who violates any enforcement mechanism or procedure established pursuant to this subsection. The authority granted to the commission pursuant to this subsection shall be broadly construed in a manner consistent with the federal Telecommunications Act of 1996.

Sec. 10. Original section 75-109, Revised Statutes Supplement, 2000, is repealed.