

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2736

AN ACT

AMENDING SECTIONS 12-1116, 12-1123, 12-1124, 12-1126 AND 12-1130, ARIZONA
REVISED STATUTES; RELATING TO EMINENT DOMAIN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 12-1116, Arizona Revised Statutes, is amended to
3 read:
4 12-1116. Actions for condemnation; immediate possession; money
5 deposit
6 A. All actions for condemnation shall be brought as other civil
7 actions in the superior court in the county in which the property is located
8 except that, at least twenty days before filing an action for condemnation of
9 property or any interest in property, the plaintiff shall deliver to the
10 property owner of record and as a courtesy to the sole lessee of record, if
11 applicable, according to the records of the county recorder in the county in
12 which the property is located:
13 1. A written offer to purchase the property or interest in the
14 property and to pay just compensation for the property or interest in the
15 property and for any compensable damages to any remaining property. The
16 offer must constitute the plaintiff's estimate of just compensation. The
17 offer may be made subject to any lessees of record or any lessees who may
18 claim a compensable interest. The offer does not impose an obligation on the
19 plaintiff to provide a written offer to purchase the lessee's interest.
20 2. One or more appraisals that support the amount of the proposed
21 compensation. ALL APPRAISALS SHALL INCLUDE THE PROPERTY'S GOOD WILL VALUE.
22 B. Except for special taxing districts formed pursuant to title 48,
23 chapter 17, if no lease is recorded or if more than one lease is recorded for
24 the property with the county recorder of the county in which the property is
25 located, at least twenty days before filing an action for condemnation of
26 property or any interest in property, the plaintiff shall provide notice of
27 the offer and appraisal to the party having a plain and obvious commercial
28 ownership or operational interest in substantial improvements on the property
29 by posting the notice in plain sight at the property that may be subject to
30 condemnation.
31 C. For special taxing districts formed pursuant to title 48, chapter
32 17, if more than one lease is recorded for the property with the county
33 recorder of the county in which the property is located, at least twenty days
34 before filing an action for condemnation of property or any interest in
35 property, the plaintiff shall provide notice of the offer and appraisal by
36 delivering to all property interest holders of record the notice that an
37 offer has been made and an appraisal has been conducted. The notice does not
38 apply to lessees of record if the lease or other written agreement governing
39 the interest holder's rights in the property provides that the property
40 interest holder would not be entitled to condemnation proceeds.
41 D. If a lessee that is not noted in the record of the county recorder
42 and THAT has a commercial ownership or operational interest in substantial
43 improvements on the property requests a copy of the offer and appraisal the
44 plaintiff shall promptly comply with the request on presentation of
45 documentation by the lessee of the lessee's interest in the property.

1 E. At the time of filing the complaint, or at any time after filing
2 the complaint, the plaintiff may apply to the court for an order permitting
3 the plaintiff to take possession of and use the property sought to be
4 condemned for the purpose prayed for.

5 F. The superior court may waive the requirements of subsection A, B, C
6 or D of this section if the court determines that the plaintiff will suffer
7 immediate and irreparable harm that outweighs the property owner's or
8 lessee's interest.

9 G. On filing the application, the court shall set a time for a
10 hearing. Notice shall be served on the parties in interest by personal
11 service within the state, or by publication if without the state, in any
12 manner as the court directs.

13 H. On the day of the hearing, if it appears that the use for which the
14 property is sought to be condemned is a necessary use, the court shall
15 receive evidence as to the probable damages to each owner, possessor or
16 person having an interest in each parcel of land sought to be condemned and
17 of any unpaid property taxes that have been levied, including penalties and
18 interest, on the property sought to be condemned and may direct that on a
19 deposit of money, on direct payment to each owner, possessor or person having
20 an interest in each parcel, or if the condemnor is the state or a county,
21 city, town or political subdivision of this state, on posting a bond in a
22 form to be approved by the court, the plaintiff shall be let into the
23 possession and full use of the parcels of land, as described in the order,
24 for the purposes specified in the order.

25 I. The plaintiff may deposit the money or bond with the clerk of the
26 court or the state treasurer. The money or bond may be held for the use and
27 benefit of each person having an interest in each parcel of land sought to be
28 condemned, subject to final judgment after trial of the action, and may be
29 held also as a fund to pay any further damages, **INCLUDING ANY PROPERTY TAXES**
30 **THAT MAY HAVE BEEN PAID DURING THE CONDEMNATION PROCESS**, and costs recovered
31 in the proceedings and any unpaid property taxes that were levied as of the
32 date of the order for immediate possession, including penalties and interest,
33 on the property sought to be condemned, as well as all damages sustained by
34 the defendant if for any cause the property is not finally taken for public
35 use. The deposit of the money or bond shall not discharge the plaintiff from
36 liability to maintain the fund in full, but it shall remain deposited for all
37 accidents, defalcations or other contingencies, as between the parties to the
38 proceedings, at the risk of the plaintiff, until the compensation or damage
39 is finally settled by judicial determination, and the court awards such part
40 of the money or bond as shall be determined to the defendant, or until the
41 clerk or the state treasurer is ordered by the court to disburse it. The
42 clerk of the court or the state treasurer is liable to the plaintiff for the
43 deposit or bond if it is lost or abstracted.

44 J. If the plaintiff elects to deposit the money or bond in the state
45 treasury, the state treasurer shall receive the money or bond and return a

1 receipt for the money or bond to the court, and the state treasurer shall
2 safely keep the deposit in a special fund to be entered on the state
3 treasurer's books as the condemnation fund. The state treasurer shall invest
4 and divest monies in the condemnation fund as provided by section 35-313, and
5 monies earned from investment shall be credited to the fund. The state
6 treasurer shall disburse the money deposited and, if necessary, convert the
7 investments to cash for the purpose of making the disbursements or forfeit
8 the bond as the court may direct pursuant to its judgment. After
9 satisfaction of the judgment in a condemnation action and payment of any
10 unpaid property taxes that were levied as of the date of the order for
11 immediate possession, including penalties and interest, on the property
12 sought to be condemned, the excess, if any, of the deposit made regarding the
13 action, including monies earned by the investment and reinvestment of the
14 deposit, shall be returned by the state treasurer to the plaintiff by a
15 warrant that the department of administration shall issue upon direction of
16 the state treasurer after having received a certified copy of the judgment
17 and without regard to provisions requiring the filing of a claim against the
18 state. Any monies remaining in the condemnation fund at the end of the
19 fiscal year do not revert to the state general fund.

20 K. If the plaintiff elects to deposit the money or bond with the clerk
21 of the court, the clerk shall receive the money or bond and return a receipt
22 for the money or bond to the court, and the clerk is liable to the plaintiff
23 if the money or bond is lost or abstracted. The clerk shall disburse the
24 money or forfeit the bond as the court may direct pursuant to its
25 judgment. Any money remaining in a deposit after the judgment of the court
26 and all unpaid property taxes that were levied as of the date of the order
27 for immediate possession, including penalties and interest, have been fully
28 paid shall be returned by the clerk to the plaintiff.

29 L. On application by any party, the court may order that money
30 deposited with the clerk of the court or the state treasurer be paid to any
31 owner, possessor or person having an interest in any parcel.

32 M. Subject to court approval, the parties may also stipulate any of
33 the following with any owner, occupant or possessor of any parcel:

34 1. To the amount of money that the plaintiff may deposit with the
35 clerk of the court or with the state treasurer for any owner, occupant or
36 possessor of any parcel.

37 2. To the amount of direct payment to any owner, occupant or possessor
38 of any parcel.

39 3. To the payment of money deposited with the clerk of the court or
40 the state treasurer to any owner, occupant or possessor of any parcel.

41 4. For the release of any bond on payment to any owner, occupant or
42 possessor of any parcel.

43 N. A person in interest for whom a deposit has been made pursuant to
44 stipulation for the person's withdrawal is entitled to interest on the amount
45 that the person is allowed to withdraw from the date the order for immediate

1 possession is signed by the court pursuant to subsection C of this section
2 until the date of withdrawal. This person is also entitled to interest on
3 that portion of the final judgment, exclusive of costs allowed by the court,
4 that exceeds the amount that is deposited for the person's withdrawal from
5 the date the order for immediate possession is signed by the court until the
6 judgment is paid. If the amount that is withdrawn by any defendant exceeds
7 the amount of the final judgment awarded the defendant inclusive of costs
8 allowed by the court and any unpaid property taxes that were levied as of the
9 date of the order for immediate possession, including penalties and interest,
10 on the property sought to be condemned, the defendant withdrawing the funds
11 immediately shall repay to the plaintiff the excess, with legal interest from
12 the date of withdrawal to the date of repayment, except that the amount that
13 is necessary to pay any unpaid property taxes that were levied as of the date
14 of the order for immediate possession, including penalties and interest, on
15 the property shall be paid to the county treasurer of the county in which the
16 property sought to be condemned is located.

17 O. Any stipulation that is made or any evidence that is introduced
18 pursuant to this section shall not be introduced in evidence or used to the
19 prejudice of any party in interest on the trial of the action.

20 Sec. 2. Section 12-1123, Arizona Revised Statutes, is amended to read:

21 12-1123. Accrual of right to compensation and damages;
22 limitation

23 A. For the purpose of assessing compensation and damages, the right to
24 compensation and damages shall be deemed to accrue at the date of the
25 summons, and its actual value at that date shall be the measure of
26 compensation and damages.

27 B. If there is an order for immediate possession before the final
28 judgment, the compensation and damages awarded shall draw interest from the
29 date the order is entered by the court. If the defendant is allowed to
30 withdraw money deposited by the plaintiff pursuant to section 12-1116,
31 subsection M, the defendant is entitled to interest on the money that the
32 defendant is allowed to withdraw from the date the order for immediate
33 possession is signed by the court until the date of the withdrawal.

34 C. No improvements placed upon the property subsequent to the date of
35 service of the summons shall be included in the assessment of compensation or
36 damages.

37 D. If an order is made letting THE plaintiff into possession before
38 the recording of the final order of condemnation, the plaintiff shall record
39 the order in the office of the county recorder of the county or counties in
40 which the property is located and on the recording so much of the defendant's
41 property as is affected by the order shall immediately be granted tax-exempt
42 status for future tax rolls and any unpaid property taxes that have been
43 levied, including penalties and interest, on the property shall be paid to
44 the county treasurer in the county in which the property is located pursuant
45 to section 12-1116. IF THE PROPERTY SOUGHT TO BE CONDEMNED IS NONREVENUE

1 PRODUCING, COMPENSATION SHALL INCLUDE A REFUND OF ANY PROPERTY TAXES THAT THE
2 PROPERTY OWNER MAY HAVE PAID DURING THE CONDEMNATION PROCESS.

3 Sec. 3. Section 12-1124, Arizona Revised Statutes, is amended to read:
4 12-1124. Payment of compensation; effect of failure to pay

5 Payment of compensation and damages may be made to a defendant or
6 defendants entitled thereto, or the money may be deposited in court and
7 distributed to the defendant or defendants entitled thereto. IF THE PROPERTY
8 CONDEMNED IS NONREVENUE PRODUCING, COMPENSATION SHALL INCLUDE A REFUND OF ANY
9 PROPERTY TAXES THAT THE PROPERTY OWNER MAY HAVE PAID DURING THE CONDEMNATION
10 PROCESS. At the time the money is paid or deposited, all unpaid property
11 taxes ~~which~~ THAT were levied as of the date of the order for immediate
12 possession, including penalties and interest, AND that are due on the
13 property condemned shall be paid to the county treasurer in the county in
14 which the condemned property is located. If the money is not so paid or
15 deposited, the defendant or defendants or the county treasurer may have
16 execution as in civil actions, and if the money cannot be collected on
17 execution, the court, upon a showing to that effect, shall set aside and
18 annul the entire proceedings, and restore possession of the property to THE
19 defendant or defendants, if possession has been taken by THE plaintiff.

20 Sec. 4. Section 12-1126, Arizona Revised Statutes, is amended to read:
21 12-1126. Final order of condemnation; recording; vesting of
22 property

23 A. When the final judgment has been satisfied, ALL PROPERTY TAXES THAT
24 THE PROPERTY OWNER PAID DURING THE CONDEMNATION PROCESS HAVE BEEN REFUNDED TO
25 THE PROPERTY OWNER and all unpaid property taxes ~~which~~ THAT were levied as of
26 the date of the order for immediate possession, including penalties and
27 interest, on the property that is the subject of the condemnation action have
28 been paid, the court shall make a final order of condemnation, describing the
29 property condemned and the purposes of the condemnation. THE COURT SHALL
30 MAKE THE FINAL ORDER OF CONDEMNATION WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE
31 COMMENCEMENT OF THE CONDEMNATION ACTION.

32 B. A copy of the order shall be recorded in the office of the county
33 recorder of the county or counties in which the property is located, and
34 thereupon the property described shall vest in THE plaintiff for the purposes
35 therein specified.

36 Sec. 5. Section 12-1130, Arizona Revised Statutes, is amended to read:
37 12-1130. Fees and expenses; appraisal; relocation benefits

38 A. In a proposed condemnation action if ~~an owner-occupant of a~~
39 ~~residential~~ property OWNER disagrees with the offer and appraisal, the
40 ~~owner-occupant~~ OWNER may obtain a second appraisal from ~~an~~ A STATE LICENSED
41 OR STATE CERTIFIED appraiser. ~~who is on the approved list that is maintained~~
42 ~~by the governmental entity and~~ The governmental entity shall pay for the
43 second appraisal IF THE OWNER'S APPRAISAL EXCEEDS THE GOVERNMENTAL ENTITY'S
44 APPRAISAL BY TEN PER CENT OR MORE.

1 B. Before filing an eminent domain action, the governmental entity
2 shall provide to the ~~owner-occupant~~ OWNER all appraisals of the property that
3 the governmental entity obtains.

4 C. Any governmental entity that acquires ~~owner-occupied residential~~
5 property by condemnation or threat of condemnation shall provide the
6 ~~owner-occupant~~ OWNER with a determination of relocation benefits in an amount
7 that allows the ~~owner-occupant~~ OWNER to purchase a comparable replacement
8 dwelling as provided under applicable relocation law. IF THE OWNER IS A
9 BUSINESS AND THE OWNER RELOCATES THE BUSINESS WITHIN ONE YEAR AFTER
10 CONDEMNATION, THE GOVERNMENTAL ENTITY SHALL NOT CHARGE ANY FEES RELATED TO
11 THE OWNER'S RELOCATION COSTS, INCLUDING PERMIT FEES.

12 D. In a condemnation action to acquire ~~owner-occupied residential~~
13 property, the court may award fees and other expenses to any party other than
14 this state or a city, town or county or any other political subdivision of
15 this state, EXCEPT THAT THE COURT SHALL AWARD FEES AND OTHER EXPENSES TO ANY
16 PARTY OTHER THAN THIS STATE OR A CITY, TOWN OR COUNTY OR ANY OTHER POLITICAL
17 SUBDIVISION OF THIS STATE IF THE OWNER'S APPRAISAL EXCEEDS THE GOVERNMENTAL
18 ENTITY'S APPRAISAL BY TEN PER CENT OR MORE. In making the determination, the
19 court may consider the amount of the difference between the final offer and
20 the compensation awarded, the percentage of the difference between the final
21 offer and the award, WHETHER THE OWNER'S APPRAISAL EXCEEDS THE GOVERNMENTAL
22 ENTITY'S APPRAISAL BY TEN PER CENT OR MORE and any other factors the court
23 deems appropriate. For the purposes of this subsection, "fees and other
24 expenses" means the reasonable expenses of expert witnesses, the reasonable
25 cost of any study, analysis, engineering report, test or project that the
26 court finds to be directly related to and necessary for the presentation of
27 the party's case and reasonable and necessary attorney fees.

28 ~~E. This section does not apply to actions for acquisition of property~~
29 ~~for public safety, transportation, flood control or utility purposes.~~

30 E. A GOVERNMENTAL ENTITY MAY NOT SELL, LEASE OR OTHERWISE TRANSFER
31 REAL PROPERTY IT ACQUIRES THROUGH EMINENT DOMAIN FOR A PERIOD OF TEN YEARS
32 FOLLOWING ITS ACQUISITION.