

NATURAL RESOURCES, INFRASTRUCTURE AND PUBLIC DEBT

SENATE AMENDMENTS TO S.B. 1136

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 32-2181.02, Arizona Revised Statutes, is amended
3 to read:

4 32-2181.02. Exempt sales and leases

5 A. The following are exempt under this article:

6 1. The sale or lease in bulk of six or more lots, parcels or
7 fractional interests to one buyer in one transaction.

8 2. The sale or lease of lots or parcels of one hundred sixty acres or
9 more.

10 B. The following are exempt from section 32-2181, subsection A and
11 section 32-2183, subsection A:

12 1. The sale or lease of parcels, lots, units or spaces that are zoned
13 and restricted to commercial or industrial uses.

14 2. The sale or lease of lots or parcels located in a single platted
15 subdivision by a subdivider if:

16 (a) A public report has been issued within the past two years pursuant
17 to this article on the subdivision lots or parcels.

18 (b) The subdivision meets all current requirements otherwise required
19 of a subdivision under this article.

20 (c) The method of sale or lease of lots or parcels meets all current
21 requirements under this article.

22 (d) The lots or parcels are included on a recorded subdivision plat
23 that is approved by a municipal or county government.

24 (e) All roads within the subdivision, all utilities to the lots or
25 parcels being offered for sale or lease and all other required improvements
26 within the subdivision, other than a residence to be built, are complete,
27 paid for and free of any blanket encumbrances.

28 (f) The roads, utilities or other improvements are not complete, but
29 the completion of all improvements is assured pursuant to section 32-2183,
30 subsection ~~D~~ F.

1 (g) Except for matters relating to ownership, there have been no
2 material changes to the information set forth in the most recent public
3 report issued for the subdivision lots that would require an amendment to the
4 public report.

5 (h) No owner of a ten per cent or greater interest, subdivider,
6 director, partner, agent, officer or developer of the subdivision has:

7 (i) Been convicted of a felony or any crime involving theft,
8 dishonesty, violence against another person, fraud or real estate, regardless
9 of whether the convictions were subsequently expunged.

10 (ii) Had a civil judgment entered against the person in a case
11 involving allegations of misrepresentation, fraud, breach of fiduciary duty,
12 misappropriation, dishonesty or, if the subject matter involved real
13 property, securities or investments.

14 (iii) Had a business or professional license, including a real estate
15 license, denied, suspended or revoked or voluntarily surrendered a business
16 or professional license during the course of an investigative or disciplinary
17 proceeding or other disciplinary action taken in this state or any other
18 state.

19 (i) The sale of the subdivided lands violates no laws or ordinances of
20 any governmental authority.

21 (j) Before the buyer's or lessee's execution of a purchase contract or
22 lease, the subdivider has provided the buyer or lessee with a copy of the
23 most recent public report on the lot and has taken a receipt from the buyer
24 for the copy.

25 (k) The subdivider has provided to the buyer or lessee, along with the
26 public report, a signed statement that the subdivider has reviewed and is in
27 compliance with the terms of the exemption provided in this paragraph.

28 (l) Before sale or lease, the subdivider has notified the
29 commissioner, on a form provided by the department, of the subdivider's
30 intent to sell or lease lots or parcels pursuant to this paragraph. The
31 notice shall include:

32 (i) The name, address and telephone number of the subdivider.

1 (ii) The name, address and telephone number of any real estate broker
2 retained by the subdivider to make sales or leases of the lots.

3 (iii) The name and location of the subdivision.

4 (iv) The most recent subdivision public report reference number on the
5 lots.

6 (v) The completion status of subdivision improvements.

7 3. The conveyance to a person who previously conveyed the lot to a
8 home builder for the purpose of constructing a dwelling for the person.

9 4. The sale or lease by a person of individual lots or parcels that
10 were separately acquired by the person from different persons and that were
11 not acquired for the purpose of development if:

12 (a) The lots or parcels are not located in a platted subdivision.

13 (b) Each lot or parcel bears the same legal description that it bore
14 when the lot or parcel was acquired by the person.

15 (c) The seller or lessor is in compliance with all other applicable
16 state and local government requirements.

17 5. The sale of an improved lot in a subdivision that is located
18 outside of this state if:

19 (a) The subdivision is located within the United States and the sale
20 is exempt from the interstate land sales full disclosure act (P.L. 90-448; 82
21 Stat. 590; 15 United States Code sections 1701 through 1720).

22 (b) The subdivider is required by the state where the subdivision is
23 located to deliver a public report or equivalent disclosure document to
24 prospective purchasers and the subdivider delivers the report or equivalent
25 disclosure document.

26 6. The sale of an improved lot in a subdivision located in this state
27 where five or more sales were previously made by the seller if:

28 (a) The sale is the seller's first or second sale in the subdivision
29 within the previous twelve month period.

30 (b) The subdivision is located within the corporate limits of a town
31 or city.

32 (c) Electricity and telephone service are complete and available to
33 the improved lot.

1 (d) Water and sewage service is complete and available to the improved
2 lot.

3 (e) Streets and roads located outside of the subdivision provide
4 permanent access to the subdivision and are complete and maintained by the
5 county, town or city, or by a legally created and operational property
6 owners' association.

7 (f) Streets within the subdivision are dedicated, provide permanent
8 access to the lot, are complete to town or city standards and are maintained
9 by the town or city or, in the case of private streets, a legally created and
10 operational property owners' association accepts the responsibility of
11 perpetual maintenance.

12 (g) All subdivision common area improvements, including landscaping,
13 recreational facilities and other jointly used and maintained improvements,
14 are complete and maintained by a legally created and operational property
15 owners' association.

16 (h) The purchaser's down payment, earnest money, deposit or other
17 advanced money is placed and held in a neutral escrow depository in this
18 state until escrow closes and the deed is delivered to the purchaser.

19 (i) Within the previous twelve months the seller has not had an
20 ownership interest in more than two lots in the subdivision, including an
21 interest by option, an agreement for sale, a beneficial interest under a
22 trust or a purchase contract.

23 C. Nothing in this section shall be construed to increase, decrease or
24 otherwise affect any rights or powers granted the commissioner under this
25 chapter.

26 D. This section does not apply to lands on which the commissioner has
27 issued orders pursuant to sections 32-2154 and 32-2157 and section 32-2183,
28 subsection ~~M~~ unless the commissioner has issued a public report on those
29 lands subsequent to the date of the orders.

30 E. Nothing in this section shall be construed to increase, to decrease
31 or to otherwise affect any rights or powers granted to political subdivisions
32 of this state with respect to their jurisdictions.

1 Sec. 2. Section 32-2183, Arizona Revised Statutes, is amended to read:

2 32-2183. Subdivision public reports; denial of issuance;
3 unlawful sales; voidable sale or lease; order
4 prohibiting sale or lease; investigations; hearings;
5 summary orders

6 A. Upon examination of a subdivision, the commissioner, unless there
7 are grounds for denial, shall issue to the subdivider a public report
8 authorizing the sale or lease in this state of the lots, parcels or
9 fractional interests within the subdivision. The report shall contain the
10 data obtained in accordance with section 32-2181 and any other information
11 which the commissioner determines is necessary to implement the purposes of
12 this article. If any of the lots, parcels or fractional interests within the
13 subdivision are located within territory in the vicinity of a military
14 airport or ancillary military facility as defined in section 28-8461, under a
15 military training route as delineated in the military training route map
16 prepared pursuant to section 37-102, under restricted air space as delineated
17 in the restricted air space map prepared pursuant to section 37-102 or
18 contained in the military electronics range as delineated in the military
19 electronics range map prepared pursuant to section 37-102, the report shall
20 include, in bold twelve point font block letters on the first page of the
21 report, the statements required pursuant to section 28-8484, subsection A,
22 section 32-2183.05 or section 32-2183.06 and, if the department has been
23 provided a map prepared pursuant to section 28-8484, subsection B or section
24 37-102, the report shall include a copy of the map. The military airport
25 report requirements do not require the amendment or reissuance of any public
26 report issued on or before December 31, 2001 or on or before December 31 of
27 the year in which the lots, parcels or fractional interests within a
28 subdivision become territory in the vicinity of a military airport or
29 ancillary military facility. The military training route report requirements
30 do not require the amendment or reissuance of any public report issued on or
31 before December 31, 2004. The restricted air space report requirements do
32 not require the amendment or reissuance of any public report issued on or
33 before December 31, 2006. The military electronics range report requirements

1 do not require the amendment or reissuance of any public report issued on or
2 before December 31, 2008. The commissioner shall require the subdivider to
3 reproduce the report, make the report available to each prospective customer
4 and furnish each buyer or lessee with a copy before the buyer or lessee signs
5 any offer to purchase or lease, taking a receipt therefor.

6 B. This section shall not be construed to require a public report
7 issued sixty or fewer days prior to the filing of the military electronics
8 range map prepared pursuant to section 37-102 to meet the military
9 electronics range notification requirements of this section.

10 C. A public report issued sixty-one or more days after the filing of
11 the military electronics range map prepared pursuant to section 37-102 shall
12 meet all of the requirements of subsection A of this section.

13 D. Notwithstanding subsection A of this section, a subdivider may
14 elect to prepare a final public report for use in the sale of improved lots
15 as defined in section 32-2101, as follows:

16 1. The subdivider shall prepare the public report and provide a copy
17 of the report to the commissioner with the submission of the notification
18 required by sections 32-2181 and 32-2184 and shall comply with all other
19 requirements of this article.

20 2. An initial filing fee of five hundred dollars or an amended filing
21 fee of two hundred fifty dollars shall accompany the notification required by
22 paragraph 1 of this subsection.

23 3. The department shall assign a registration number to each
24 notification and public report submitted pursuant to this subsection and
25 shall maintain a database of all of these submissions. The subdivider shall
26 place the number on each public report.

27 4. On receipt of the notification and public report, the department
28 shall review and issue within ten business days either a certification that
29 the notification and public report are administratively complete or a denial
30 letter if it appears that the application or project is not in compliance
31 with all legal requirements, that the applicant has a background of
32 violations of state or federal law or that the applicant or project presents
33 an unnecessary risk of harm to the public. If the commissioner has received

1 the notification and public report but has not issued a certification or a
2 denial letter within ten business days pursuant to this paragraph, the
3 notification and public report are administratively complete.

4 5. A subdivider may commence sales or leasing activities as permitted
5 under this article after obtaining a certificate of administrative
6 completeness from the commissioner.

7 6. Before or after the commissioner issues a certificate of
8 administrative completeness or, if applicable, after the notification and
9 public report are deemed to be administratively complete pursuant to
10 paragraph 4 of this subsection, the department may examine any public report,
11 subdivision or applicant that has applied for or received the certificate.
12 If the commissioner determines that the subdivider or subdivision is not in
13 compliance with any requirement of state law or that grounds exist under this
14 chapter to suspend, deny or revoke a public report, the commissioner may
15 commence an administrative action under section 32-2154 or 32-2157. If the
16 subdivider immediately corrects the deficiency and comes into full compliance
17 with state law, the commissioner shall vacate any action that the
18 commissioner may have commenced pursuant to section 32-2154 or 32-2157.

19 7. The department shall provide forms and guidelines for the
20 submission of the notification and public report pursuant to this section.

21 E. The commissioner may suspend, revoke or deny issuance of a public
22 report on any of the following grounds:

23 1. Failure to comply with this article or the rules of the
24 commissioner pertaining to this article.

25 2. The sale or lease would constitute misrepresentation to or deceit
26 or fraud of the purchasers or lessees.

27 3. Inability to deliver title or other interest contracted for.

28 4. Inability to demonstrate that adequate financial or other
29 arrangements acceptable to the commissioner have been made for completion of
30 all streets, sewers, electric, gas and water utilities, drainage and flood
31 control facilities, community and recreational facilities and other
32 improvements included in the offering.

1 5. Failure to make a showing that the lots, parcels or fractional
2 interests can be used for the purpose for which they are offered.

3 6. The owner, agent, subdivider, officer, director or partner,
4 subdivider trust beneficiary holding ten per cent or more direct or indirect
5 beneficial interest or, if a corporation, any stockholder owning ten per cent
6 or more of the stock in the corporation has:

7 (a) Been convicted of a felony or misdemeanor involving fraud or
8 dishonesty or involving conduct of any business or a transaction in real
9 estate, cemetery property, time-share intervals or membership camping
10 campgrounds or contracts.

11 (b) Been permanently or temporarily enjoined by order, judgment or
12 decree from engaging in or continuing any conduct or practice in connection
13 with the sale or purchase of real estate or cemetery property, time-share
14 intervals, membership camping contracts or campgrounds, or securities or
15 involving consumer fraud or the racketeering laws of this state.

16 (c) Had an administrative order entered against him by a real estate
17 regulatory agency or security regulatory agency.

18 (d) Had an adverse decision or judgment entered against him involving
19 fraud or dishonesty or involving the conduct of any business or transaction
20 in real estate, cemetery property, time-share intervals or membership camping
21 campgrounds or contracts.

22 (e) Disregarded or violated this chapter or the rules of the
23 commissioner pertaining to this chapter.

24 (f) Controlled an entity to which subdivision (b), (c), (d) or (e)
25 applies.

26 7. Procurement or an attempt to procure a public report by fraud,
27 misrepresentation or deceit or by filing an application for a public report
28 that is materially false or misleading.

29 8. Failure of the declaration for a condominium created pursuant to
30 title 33, chapter 9, article 2 to comply with the requirements of section
31 33-1215 or failure of the plat for the condominium to comply with the
32 requirements of section 33-1219. The commissioner may require an applicant
33 for a public report to submit a notarized statement signed by the subdivider

1 or an engineer or attorney licensed to practice in this state certifying that
2 the condominium plat and declaration of condominium are in compliance with
3 the requirements of sections 33-1215 and 33-1219. If the notarized statement
4 is provided, the commissioner is entitled to rely on this statement.

5 9. Failure of any blanket encumbrance or valid supplementary agreement
6 executed by the holder of the blanket encumbrance to contain provisions that
7 enable the purchaser to acquire title to a lot or parcel free of the lien of
8 the blanket encumbrance, on completion of all payments and performance of all
9 of the terms and provisions required to be made or performed by the purchaser
10 under the real estate sales contract by which the purchaser has acquired the
11 lot or parcel. The subdivider shall file copies of documents acceptable to
12 the commissioner containing these provisions with the commissioner before the
13 sale of any subdivision lot or parcel subject to a blanket encumbrance.

14 10. Failure to demonstrate permanent access to the subdivision lots or
15 parcels.

16 11. The use of the lots presents an unreasonable health risk.

17 F. It is unlawful for a subdivider to sell any lot in a subdivision
18 unless one of the following occurs:

19 1. All proposed or promised subdivision improvements are completed.

20 2. The completion of all proposed or promised subdivision improvements
21 is assured by financial arrangements acceptable to the commissioner. The
22 financial arrangements may be made in phases for common community and
23 recreation facilities required by a municipality or county as a stipulation
24 for approval of a plan for a master planned community.

25 3. The municipal or county government agrees to prohibit occupancy and
26 the subdivider agrees not to close escrow for lots in the subdivision until
27 all proposed or promised subdivision improvements are completed.

28 4. The municipal or county government enters into an assurance
29 agreement with any trustee not to convey lots until improvements are
30 completed within the portion of the subdivision containing these lots, if the
31 improvements can be used and maintained separately from the improvements
32 required for the entire subdivision plat. The agreement shall be recorded in
33 the county in which the subdivision is located.

1 G. If the subdivision is within an active management area, as defined
2 in section 45-402, the commissioner shall deny issuance of a public report or
3 the use of any exemption pursuant to section 32-2181.02, subsection B unless
4 the subdivider has been issued a certificate of assured water supply by the
5 director of water resources and has paid all applicable fees pursuant to
6 sections 48-3772 and 48-3774.01, or unless the subdivider has obtained a
7 written commitment of water service for the subdivision from a city, town or
8 private water company designated as having an assured water supply by the
9 director of water resources pursuant to section 45-576 or is exempt from the
10 requirement pursuant to section 45-576.

11 H. In areas outside of active management areas, if the subdivision is
12 located in a county that has adopted the provision authorized by section
13 11-806.01, subsection F or in a city or town that has enacted an ordinance
14 pursuant to section 9-463.01, subsection 0, the commissioner shall deny
15 issuance of a public report or the use of any exemption pursuant to section
16 32-2181.02, subsection B unless one of the following applies:

17 1. The director of water resources has reported pursuant to section
18 45-108 that the subdivision has an adequate water supply.

19 2. The subdivider has obtained a written commitment of water service
20 for the subdivision from a city, town or private water company designated as
21 having an adequate water supply by the director of water resources pursuant
22 to section 45-108.

23 3. The plat was approved pursuant to an exemption authorized by
24 section 9-463.01, subsection K, pursuant to an exemption authorized by
25 section 11-806.01, subsection G, paragraph 1, pursuant to an exemption
26 granted by the director of water resources under section 45-108.02 and the
27 exemption has not expired or pursuant to an exemption granted by the director
28 of water resources under section 45-108.03.

29 4. The subdivision received final plat approval from the city, town or
30 county before the requirement for an adequate water supply became effective
31 in the city, town or county, and there have been no material changes to the
32 plat since the final plat approval. If changes were made to the plat after
33 the final plat approval, the director of water resources shall determine

1 whether the changes are material pursuant to the rules adopted by the
2 director to implement section 45-108.

3 I. A subdivider shall not sell or lease or offer for sale or lease in
4 this state any lots, parcels or fractional interests in a subdivision without
5 first obtaining a public report from the commissioner except as provided in
6 section 32-2181.01 or 32-2181.02. Unless exempt, the sale or lease of
7 subdivided lands prior to issuance of the public report or failure to deliver
8 the public report to the purchaser or lessee shall render the sale or lease
9 rescindable by the purchaser or lessee. An action by the purchaser or lessee
10 to rescind the transaction shall be brought within three years of the date of
11 execution of the purchase or lease agreement by the purchaser or lessee. In
12 any rescission action, the prevailing party is entitled to reasonable
13 attorney fees as determined by the court.

14 J. ON AN INTERNET ADVERTISEMENT THAT ADVERTISES A SPECIFIC LOT OR
15 PARCEL OF A SUBDIVIDER, THE SUBDIVIDER SHALL INCLUDE A DISCLOSURE STATING
16 THAT "A PUBLIC REPORT IS AVAILABLE AT THE STATE REAL ESTATE DEPARTMENT".

17 ~~J.~~ K. Any applicant objecting to the denial of a public report,
18 within thirty days after receipt of the order of denial, may file a written
19 request for a hearing. The commissioner shall hold the hearing within twenty
20 days after receipt of the request for a hearing unless the party requesting
21 the hearing has requested a postponement. If the hearing is not held within
22 twenty days after a request for a hearing is received, plus the period of any
23 postponement, or if a proposed decision is not rendered within forty-five
24 days after submission, the order of denial shall be rescinded and a public
25 report issued.

26 ~~K.~~ L. On the commissioner's own motion, or when the commissioner has
27 received a complaint and has satisfactory evidence that the subdivider or the
28 subdivider's agent is violating this article or the rules of the commissioner
29 or has engaged in any unlawful practice as defined in section 44-1522 with
30 respect to the sale of subdivided lands or deviated from the provisions of
31 the public report, the commissioner may investigate the subdivision project
32 and examine the books and records of the subdivider. For the purpose of
33 examination, the subdivider shall keep and maintain records of all sales

1 transactions and funds received by the subdivider pursuant to the sales
2 transactions and shall make them accessible to the commissioner upon
3 reasonable notice and demand.

4 ~~L.~~ M. On the commissioner's own motion, or when the commissioner has
5 received a complaint and has satisfactory evidence that any person has
6 violated this article or the rules of the commissioner or has engaged in any
7 unlawful practice as defined in section 44-1522 with respect to the sale of
8 subdivided lands or deviated from the provisions of the public report or
9 special order of exemption, or has been indicted for fraud or against whom an
10 information for fraud has been filed or has been convicted of a felony,
11 before or after the commissioner issues the public report as provided in
12 subsection A of this section, the commissioner may conduct an investigation
13 of the matter, issue a summary order as provided in section 32-2157, or hold
14 a public hearing and, after the hearing, may issue the order or orders the
15 commissioner deems necessary to protect the public interest and ensure
16 compliance with the law, rules or public report or the commissioner may bring
17 action in any court of competent jurisdiction against the person to enjoin
18 the person from continuing the violation or engaging in or doing any act or
19 acts in furtherance of the violation. The court may make orders or
20 judgments, including the appointment of a receiver, necessary to prevent the
21 use or employment by a person of any unlawful practices, or which may be
22 necessary to restore to any person in interest any monies or property, real
23 or personal, that may have been acquired by means of any practice in this
24 article declared to be unlawful.

25 ~~M.~~ N. When it appears to the commissioner that a person has engaged
26 in or is engaging in a practice declared to be unlawful by this article and
27 that the person is concealing assets or self or has made arrangements to
28 conceal assets or is about to leave the state, the commissioner may apply to
29 the superior court, ex parte, for an order appointing a receiver of the
30 assets of the person or for a writ of ne exeat, or both.

31 ~~N.~~ O. The court, on receipt of an application for the appointment of
32 a receiver or for a writ of ne exeat, or both, shall examine the verified
33 application of the commissioner and other evidence that the commissioner may

1 present the court. If satisfied that the interests of the public require the
2 appointment of a receiver or the issuance of a writ of ne exeat without
3 notice, the court shall issue an order appointing the receiver or issue the
4 writ, or both. If the court determines that the interests of the public will
5 not be harmed by the giving of notice, the court shall set a time for a
6 hearing and require notice be given as the court deems satisfactory.

7 ~~0.~~ P. If the court appoints a receiver without notice, the court
8 shall further direct that a copy of the order appointing a receiver be served
9 on the person engaged in or engaging in a practice declared to be unlawful
10 under this article by delivering the order to the last address of the person
11 that is on file with the state real estate department. The order shall
12 inform the person that the person has the right to request a hearing within
13 ten days of the date of the order and, if requested, the hearing shall be
14 held within thirty days from the date of the order."

15 Amend title to conform

1136jn
01/29/2010
8:55 AM
C: mu