

REFERENCE TITLE: public construction; business losses; compensation

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2594

Introduced by
Representative Allen

AN ACT

AMENDING TITLE 11, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9;
RELATING TO PUBLIC CONSTRUCTION LIABILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 11, chapter 7, Arizona Revised Statutes, is amended
3 by adding article 9, to read:

4 ARTICLE 9. PUBLIC CONSTRUCTION LIABILITY

5 11-1061. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "BUSINESS LOSSES" MEANS A REDUCTION IN BUSINESS BY AN OWNER
8 RESULTING FROM PUBLIC CONSTRUCTION THAT CONTINUES FOR A PERIOD OF MORE THAN
9 TEN MONTHS OR THAT PERMANENTLY REDUCES AN OWNER'S BUSINESS ACTIVITY.

10 2. "OWNER" MEANS A PRIVATE BUSINESS PERSON OR ENTITY THAT HAS A LEGAL
11 OR EQUITABLE TITLE OR TENANCY TO BUSINESS PROPERTY.

12 3. "PUBLIC CONSTRUCTION" MEANS CONSTRUCTION OR REPAIR ACTIVITIES THAT
13 ARE CONDUCTED BY OR AUTHORIZED BY THIS STATE OR A COUNTY, CITY, TOWN OR OTHER
14 POLITICAL SUBDIVISION OF THIS STATE OR BY ANY AGENCY OF THIS STATE OR A
15 COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

16 4. "PUBLIC ENTITY" INCLUDES THIS STATE OR A COUNTY, CITY, TOWN OR
17 OTHER POLITICAL SUBDIVISION OF THIS STATE OR ANY AGENCY OR DEPARTMENT OF THIS
18 STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

19 11-1062. Public construction; business losses; burden of proof;
20 applicability

21 A. IF PUBLIC CONSTRUCTION RESULTS IN BUSINESS LOSSES, AN OWNER MAY
22 RECOVER DAMAGES OF UP TO THREE YEARS OF LOSSES AS COMPENSATION.

23 B. THE OWNER MAY INITIATE PROCEEDINGS FOR THE BUSINESS LOSSES BY
24 SERVING THE APPROPRIATE PUBLIC ENTITY WITH A NOTICE OF CLAIM BY CERTIFIED
25 MAIL, RETURN RECEIPT REQUESTED, WITHIN SIXTY DAYS AFTER A TEN-MONTH PERIOD OF
26 REDUCTION IN BUSINESS RESULTING FROM PUBLIC CONSTRUCTION OR WITHIN SIXTY DAYS
27 AFTER COMPLETION OF THE CONSTRUCTION THAT PERMANENTLY REDUCES THE OWNER'S
28 BUSINESS ACTIVITY.

29 C. IF THE PUBLIC ENTITY AND OWNER DO NOT SETTLE THE MATTER OR AGREE TO
30 PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION, THE OWNER HAS THE BURDEN OF
31 PROOF IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDINGS TO SHOW THAT THE PUBLIC
32 CONSTRUCTION RESULTED IN BUSINESS LOSSES AND THE AMOUNT OF COMPENSATION DUE
33 TO THE OWNER, IF ANY. THE AMOUNT OF COMPENSATORY DAMAGES IS LIMITED TO THREE
34 YEARS OF BUSINESS LOSSES, IF PROVEN BY THE OWNER.

35 D. THIS ARTICLE DOES NOT APPLY TO PUBLIC CONSTRUCTION BY A PUBLIC
36 ENTITY TO PREVENT A TANGIBLE HARM TO THE HEALTH AND SAFETY OF THE PUBLIC OR A
37 GRAVE AND IMMEDIATE THREAT TO LIFE OR PROPERTY.