

REFERENCE TITLE: just compensation; payment; tax credit

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HB 2319

Introduced by
Representative Farnsworth

AN ACT

AMENDING TITLE 12, CHAPTER 8, ARTICLE 2.1, ARIZONA REVISED STATUTES, BY
ADDING SECTION 12-1134.01; RELATING TO THE PRIVATE PROPERTY RIGHTS PROTECTION
ACT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Subject to the requirements of article IV, part 1, section
3 1, Constitution of Arizona, title 12, chapter 8, article 2.1, Arizona Revised
4 Statutes, is amended by adding section 12-1134.01, to read:

5 12-1134.01. Diminution in value: tax credit for just
6 compensation

7 A. NOTWITHSTANDING ANY LAW TO THE CONTRARY, IF THE EXISTING RIGHTS TO
8 USE, DIVIDE, SELL OR POSSESS PRIVATE REAL PROPERTY ARE REDUCED BY THE
9 ENACTMENT OR APPLICABILITY OF ANY LAND USE LAW ENACTED AFTER THE DATE THE
10 PROPERTY IS TRANSFERRED TO THE OWNER AND THAT ACTION REDUCES THE FAIR MARKET
11 VALUE OF THE PROPERTY, THE OWNER MAY WAIVE THE OWNER'S RIGHT TO JUST
12 COMPENSATION PURSUANT TO SECTION 12-1134 AND IS ENTITLED TO A CREDIT AGAINST
13 THE OWNER'S TAX LIABILITY ASSESSED PURSUANT TO TITLE 43, CHAPTER 10, 11, 13
14 OR 14 IN AN AMOUNT THAT IS EQUAL TO THE JUST COMPENSATION.

15 B. WITH RESPECT TO ANY COUNTY, CITY OR TOWN THAT ENACTED THE LAND USE
16 LAW FOR WHICH A CREDIT HAS BEEN CLAIMED PURSUANT TO THIS SECTION, THE STATE
17 TREASURER SHALL:

18 1. WITHHOLD FROM THE DISTRIBUTION OF MONIES PURSUANT TO SECTION
19 42-5029 TO THE AFFECTED COUNTY, CITY OR TOWN THE RESPECTIVE AGGREGATE AMOUNT
20 OF CREDITS CLAIMED UNDER THIS SECTION.

21 2. CREDIT MONIES WITHHELD PURSUANT TO THIS SUBSECTION TO THE STATE
22 GENERAL FUND AS PROVIDED BY SECTION 42-5029, SUBSECTION D, PARAGRAPH 4.

23 C. WITH RESPECT TO ANY POLITICAL SUBDIVISION OF THIS STATE OTHER THAN
24 THOSE IDENTIFIED IN SUBSECTION B OF THIS SECTION OR ANY STATE AGENCY THAT
25 ENACTED OR ADOPTED THE LAND USE LAW FOR WHICH A CREDIT HAS BEEN CLAIMED
26 PURSUANT TO THIS SECTION, THE STATE TREASURER SHALL:

27 1. WITHHOLD FROM THE DISTRIBUTION OF MONIES FROM THE GENERAL FUND TO
28 THE AFFECTED POLITICAL SUBDIVISION OR STATE AGENCY THE RESPECTIVE AGGREGATE
29 AMOUNT OF CREDITS CLAIMED UNDER THIS SECTION.

30 2. CREDIT MONIES WITHHELD PURSUANT TO THIS SUBSECTION TO THE STATE
31 GENERAL FUND.

32 D. THIS SECTION DOES NOT APPLY TO LAND USE LAWS THAT:

33 1. LIMIT OR PROHIBIT A USE OR DIVISION OF REAL PROPERTY FOR THE
34 PROTECTION OF THE PUBLIC'S HEALTH AND SAFETY, INCLUDING RULES AND REGULATIONS
35 RELATING TO FIRE AND BUILDING CODES, HEALTH AND SANITATION, TRANSPORTATION OR
36 TRAFFIC CONTROL, SOLID OR HAZARDOUS WASTE AND POLLUTION CONTROL.

37 2. LIMIT OR PROHIBIT THE USE OR DIVISION OF REAL PROPERTY COMMONLY AND
38 HISTORICALLY RECOGNIZED AS A PUBLIC NUISANCE UNDER COMMON LAW.

39 3. ARE REQUIRED BY FEDERAL LAW.

40 4. LIMIT OR PROHIBIT THE USE OR DIVISION OF A PROPERTY FOR THE PURPOSE
41 OF HOUSING SEX OFFENDERS, SELLING ILLEGAL DRUGS OR LIQUOR CONTROL OR
42 PORNOGRAPHY, OBSCENITY, NUDE OR TOPLESS DANCING AND OTHER ADULT ORIENTED
43 BUSINESSES IF THE LAND USE LAWS ARE CONSISTENT WITH THE CONSTITUTIONS OF THIS
44 STATE AND THE UNITED STATES.

1 5. ESTABLISH LOCATIONS FOR UTILITY FACILITIES.
2 6. DO NOT DIRECTLY REGULATE AN OWNER'S LAND.
3 7. WERE ENACTED BEFORE DECEMBER 7, 2006.
4 E. IN ANY CHALLENGE TO A CREDIT CLAIMED PURSUANT TO THIS SECTION, THIS
5 STATE OR THE POLITICAL SUBDIVISION OF THIS STATE THAT ENACTED THE LAND USE
6 LAW HAS THE BURDEN OF DEMONSTRATING THAT THE LAND USE LAW IS EXEMPT PURSUANT
7 TO SUBSECTION D OF THIS SECTION OR THAT THE AMOUNT OF THE CREDIT CLAIMED IS
8 UNREASONABLE.
9 F. THE OWNER SHALL NOT BE REQUIRED TO FIRST SUBMIT A LAND USE
10 APPLICATION TO REMOVE, MODIFY, VARY OR OTHERWISE ALTER THE APPLICATION OF THE
11 LAND USE LAW TO THE OWNER'S PROPERTY AS A PREREQUISITE TO DEMANDING OR
12 RECEIVING JUST COMPENSATION IN THE FORM OF A CREDIT PURSUANT TO THIS SECTION.
13 G. IF A LAND USE LAW CONTINUES TO APPLY TO PRIVATE REAL PROPERTY MORE
14 THAN SIXTY DAYS AFTER THE OWNER OF THE PROPERTY MAKES A WRITTEN DEMAND IN A
15 SPECIFIC AMOUNT FOR JUST COMPENSATION IN THE FORM OF A CREDIT TO THIS STATE
16 OR THE POLITICAL SUBDIVISION OF THIS STATE THAT ENACTED THE LAND USE LAW, THE
17 OWNER IS ENTITLED TO JUST COMPENSATION IN THE FORM OF A CREDIT PURSUANT TO
18 THIS SECTION, UNLESS THIS STATE OR THE POLITICAL SUBDIVISION OF THIS STATE
19 AND THE OWNER REACH AN AGREEMENT ON THE AMOUNT OF JUST COMPENSATION TO BE
20 PAID, OR UNLESS THIS STATE OR THE POLITICAL SUBDIVISION OF THIS STATE AMENDS,
21 REPEALS OR ISSUES TO THE LANDOWNER A BINDING WAIVER OF ENFORCEMENT OF THE
22 LAND USE LAW ON THE OWNER'S SPECIFIC PARCEL.
23 H. ANY DEMAND FOR LANDOWNER RELIEF OR ANY WAIVER THAT IS GRANTED IN
24 LIEU OF COMPENSATION RUNS WITH THE LAND.
25 I. ANY CLAIM FOR JUST COMPENSATION IN THE FORM OF A CREDIT PURSUANT TO
26 THIS SECTION BASED ON DIMINUTION IN VALUE MUST BE MADE OR IS FOREVER BARRED
27 WITHIN THREE YEARS AFTER THE EFFECTIVE DATE OF THE LAND USE LAW, OR THE FIRST
28 DATE THE REDUCTION OF THE EXISTING RIGHTS TO USE, DIVIDE, SELL OR POSSESS
29 PROPERTY APPLIES TO THE OWNER'S PARCEL, WHICHEVER IS LATER.
30 J. IF THE AMOUNT OF THE CREDIT UNDER THIS SECTION EXCEEDS THE AMOUNT
31 THAT MAY BE APPLIED FOR THE TAXABLE YEAR, THE AMOUNT OF THE CREDIT NOT USED
32 AS AN OFFSET AGAINST THE TAX LIABILITY FOR THAT TAXABLE YEAR MAY BE CARRIED
33 FORWARD AS A CREDIT AGAINST UP TO TEN CONSECUTIVE SUBSEQUENT TAXABLE YEARS,
34 BUT NOT EXCEEDING THE OWNER'S TAX LIABILITY IN EACH SUBSEQUENT TAXABLE YEAR.
35 K. EXCEPT FOR THE RIGHTS UNDER SECTION 12-1134 THAT ARE WAIVED AND
36 COMPROMISED AFTER CLAIMING A CREDIT PURSUANT TO THIS SECTION, THE REMEDY
37 UNDER THIS SECTION IS IN ADDITION TO ANY OTHER REMEDY UNDER THE LAWS AND
38 CONSTITUTION OF THIS STATE OR THE UNITED STATES AND DOES NOT MODIFY OR
39 REPLACE ANY OTHER REMEDY.
40 L. THIS SECTION DOES NOT PROHIBIT THIS STATE OR ANY POLITICAL
41 SUBDIVISION OF THIS STATE FROM REACHING AN AGREEMENT WITH A PRIVATE PROPERTY
42 OWNER TO WAIVE A CLAIM FOR DIMINUTION IN VALUE REGARDING ANY PROPOSED ACTION
43 BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE OR ACTION REQUESTED BY
44 THE PROPERTY OWNER.

1 Sec. 2. Requirements for enactment: three-fourths vote
2 Pursuant to article IV, part 1, section 1, Constitution of Arizona,
3 section 12-1134.01, Arizona Revised Statutes, as added by this act, is
4 effective only on the affirmative vote of at least three-fourths of the
5 members of each house of the legislature.