

REFERENCE TITLE: eminent domain; relocation assistance

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SB 1366

Introduced by
Senators Gray C, Pearce R: Gould

AN ACT

AMENDING SECTIONS 11-961, 11-962, 11-974 AND 28-6993, ARIZONA REVISED STATUTES; AMENDING TITLE 11, CHAPTER 7, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-975; AMENDING TITLE 28, CHAPTER 20, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 28-7104 AND 28-7105; REPEALING TITLE 28, CHAPTER 20, ARTICLE 7, ARIZONA REVISED STATUTES; RELATING TO RELOCATION ASSISTANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 11-961, Arizona Revised Statutes, is amended to
3 read:

4 11-961. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Acquiring agency" means the state, any department, agency, board
7 or commission of the state, counties, school districts, cities, towns, all
8 municipal corporations, ~~and any other political subdivision of the state,~~
9 ~~except the department of transportation~~ AND ANY OTHER PERSON OR ENTITY WITH
10 THE POWER OF EMINENT DOMAIN.

11 2. "Business" means any lawful activity, excepting a farm operation,
12 conducted primarily by or for any of the following:

13 (a) For the purchase, sale, lease and rental of personal and real
14 property and for the manufacture, processing or marketing of products,
15 commodities or any other personal property.

16 (b) For the sale of services to the public.

17 (c) By a nonprofit corporation.

18 (d) Solely for the purposes of section 11-963, for assisting in the
19 purchase, sale, resale, manufacture, processing or marketing of products,
20 commodities, personal property or services by the erection and maintenance of
21 an outdoor advertising display or displays, whether or not such display or
22 displays are located on the premises on which any of the above activities are
23 conducted.

24 3. "Comparable replacement dwelling" means a dwelling that is all of
25 the following:

26 (a) Decent, safe and sanitary.

27 (b) Adequate in size to accommodate the occupants.

28 (c) Within the financial means of the displaced person.

29 (d) Functionally equivalent.

30 (e) In an area which is not subject to unreasonably adverse
31 environmental conditions.

32 (f) In a location which is generally not less desirable than the
33 location of the displaced person's dwelling with respect to public utilities,
34 facilities, services and the displaced person's place of employment.

35 4. "Displaced person" means:

36 (a) A person who moves from real property or moves his personal
37 property from real property either:

38 (i) As a direct result of a written notice of intent to acquire, the
39 initiation of negotiations for or the acquisition of such real property in
40 whole or in part for a program or project undertaken by a displacing agency.

41 (ii) On which the person is a residential tenant or conducts a farm
42 operation or a business, and the move is a direct result of rehabilitation,
43 demolition or other displacing activity as the lead agency prescribes under a
44 program or project undertaken by a displacing agency, if the displacing
45 agency determines that the displacement is permanent.

1 (b) Solely for the purposes of section 11-962 and section 11-963,
2 subsections A and B, a person who moves from real property or moves his
3 personal property from real property either:

4 (i) As a direct result of a written notice of intent to acquire or the
5 acquisition of other real property, in whole or in part, on which the person
6 conducts a business or farm operation, for a program or project undertaken by
7 a displacing agency.

8 (ii) As a direct result of rehabilitation, demolition or other
9 displacing activity as the lead agency prescribes, of other real property on
10 which the person conducts a business or a farm operation, under a program or
11 project undertaken by a displacing agency, if the displacing agency
12 determines that the displacement is permanent.

13 Displaced person does not include a person who has been determined, according
14 to criteria established by the lead agency, as not having been displaced,
15 including persons either unlawfully occupying the displacement property or
16 occupying the property for the purpose of obtaining assistance under this
17 article or, in any case in which the displacing agency acquires property for
18 a program or project, a person, other than a person who was an occupant of
19 the property at the time it was acquired, who occupies the property on a
20 rental basis for a short term or a period subject to termination when the
21 property is needed for the program or project.

22 5. "Displacing agency" means the state or state agency, ~~except the~~
23 ~~department of transportation~~ and any political subdivision or person carrying
24 out a program or project with federal financial assistance, or with the
25 approval of the governing body of the acquiring agency, state or local
26 financial assistance, which causes a person to be a displaced person.

27 6. "Farm operation" means any activity conducted primarily for the
28 production of one or more agricultural products or commodities for sale and
29 home use, and customarily producing such products or commodities in
30 sufficient quantity to be capable of contributing materially to the
31 operator's support.

32 7. "Federal financial assistance" means a grant, loan or contribution
33 in any form whatsoever provided by the United States to an acquiring agency,
34 except any federal guarantee or insurance, and any interest reduction payment
35 to a person in connection with the purchase and occupancy of a residence by
36 that person.

37 8. "Initiation of negotiations" means the delivery of the initial
38 written offer by the acquiring agency to the owner or the owner's
39 representative to purchase real property for a project for the amount
40 determined to be proper compensation or other actions to serve this purpose
41 as determined by the lead agency.

42 9. "Lead agency" means the acquiring agency except as required by
43 federal law.

44 10. "Mortgage" means such classes of liens as are commonly given to
45 secure advances on, or the unpaid purchase price of, real property, under the

1 laws of the state in which the real property is located, together with the
2 credit instruments, if any, secured thereby.

3 11. "Person" means any individual, family, partnership, corporation or
4 association.

5 12. "Small business" means a business as defined in paragraph 2 of this
6 section ~~and~~ if the number of employees of the business at the affected site
7 is five hundred or less.

8 Sec. 2. Section 11-962, Arizona Revised Statutes, is amended to read:

9 11-962. Relocation assistance and advisory services;
10 definitions

11 A. Programs or projects undertaken by an acquiring agency shall be
12 planned in a manner that ~~both~~:

13 1. Recognizes, **DETERMINES AND ESTIMATES**, at an early stage in the
14 planning of the programs or projects and before the commencement of any
15 actions ~~which~~ **THAT** will cause displacements, the **RISKS AND** problems
16 associated with the displacement of individuals, families, businesses and
17 farm operations.

18 2. Provides for the resolution of **RISKS AND** problems in order to
19 minimize adverse impacts on displaced persons and to expedite program or
20 project advancement and completion.

21 **3. ENSURES THAT DISPLACED PERSONS BENEFIT MORE FROM THE PROGRAM OR**
22 **PROJECT THAN THE GENERALIZED PUBLIC BENEFITS FROM THE PROGRAM OR PROJECT.**

23 B. An acquiring agency ~~may~~ **SHALL** provide that the relocation
24 assistance **AND COMPETENT** advisory services described in subsection C are made
25 available to all persons displaced by the agency. If the agency determines
26 that a person occupying property ~~which~~ **THAT** is immediately adjacent to the
27 property where the displacing activity occurs is caused substantial economic
28 injury as a result of the activity, the agency ~~may~~ **SHALL** make **RELOCATION**
29 **ASSISTANCE AND** advisory services available to the person.

30 C. The relocation assistance **AND** advisory services provided by
31 subsection B shall include such measures, facilities or services necessary or
32 appropriate to:

33 1. Determine and make timely recommendations on the **SOCIAL AND**
34 **ECONOMIC RISKS ASSOCIATED WITH THE DISPLACEMENT OF PERSONS AND THE** needs and
35 preferences of displaced persons for relocation assistance **AND PROVIDE A**
36 **DISPLACEMENT ACTION PLAN DESIGNED TO MITIGATE THESE RISKS.**

37 2. Provide current and continuing information on the availability,
38 sales prices, **FINANCING OPTIONS** and rental charges of comparable replacement
39 dwellings for displaced homeowners and tenants and suitable locations for
40 businesses and farm operations.

41 3. Assist a person who is displaced from a business or farm operation
42 in obtaining and becoming established in a suitable replacement location.

43 4. Supply information concerning federal, state and local programs
44 ~~which~~ **THAT** may be of assistance to displaced persons and **PROVIDE** technical
45 assistance to those persons in applying for assistance through the programs.

1 5. Provide other **COMPETENT** advisory services to displaced persons to
2 minimize hardships to those persons in adjusting to relocation.

3 D. The acquiring agency shall coordinate, **PROVIDE AND FINANCE**
4 relocation activities performed by the agency with other federal, state or
5 local governmental actions in the community ~~which~~ **THAT** could affect the
6 efficient and effective delivery of relocation assistance and related
7 services.

8 E. If an acquiring agency acquires property for a program or project,
9 a person who occupies the property on a rental basis for a short term or a
10 period subject to termination when the property is needed for the program or
11 project is eligible for advisory services to the extent determined ~~by the~~
12 ~~displacing agency~~ **PURSUANT TO SUBSECTIONS A, B AND C.**

13 **F. THE ACQUIRING AGENCY SHALL HIRE AN INDEPENDENT RISK ASSESSING AGENT**
14 **TO PREPARE A PUBLIC REPORT THAT INCLUDES ESTIMATES OF THE RISKS THAT ARE**
15 **RECOGNIZED AND DETERMINED PURSUANT TO SUBSECTION A OF THIS SECTION. THE**
16 **REPORT SHALL BE PROVIDED, WITHIN THIRTY DAYS OF ITS COMPLETION, TO ANY**
17 **DISPLACED PERSON.**

18 **G. FOR THE PURPOSES OF THIS SECTION:**

19 1. "LIVELIHOOD" MEANS THE CAPABILITIES, ASSETS, INCLUDING HUMAN,
20 NATURAL, HEALTH, PHYSICAL, FINANCIAL AND SOCIAL RESOURCES, LOCATIONAL
21 ADVANTAGES AND ACTIVITIES REQUIRED FOR A MEANS OF LIVING.

22 2. "RISK" INCLUDES THE REPLACEMENT COST OF REESTABLISHING LOST
23 PROPERTY, BUSINESS AND LIVELIHOODS DISRUPTED BY THE PROJECT.

24 Sec. 3. Section 11-974, Arizona Revised Statutes, is amended to read:

25 11-974. Applicability of article

26 ~~A.~~ This article shall apply to all acquiring, displacing or lead
27 agencies when real property or improvements thereon are acquired or are to be
28 acquired for a project ~~for which federal financial assistance is to defray~~
29 ~~all, or part of, the costs of such project~~ **WITHOUT REGARD TO THE SOURCE OF**
30 **MONIES FOR THE PROJECT.**

31 ~~B. In addition to the requirements of subsection A of this section and~~
32 ~~notwithstanding section 11-961, paragraph 5, the provisions of sections~~
33 ~~11-963 and 11-964 shall apply to any acquiring, displacing or lead agency~~
34 ~~without action of the governing or legislative body even if no federal~~
35 ~~financial assistance is used to defray all or part of the costs of such~~
36 ~~project.~~

37 ~~C. Except as provided in subsection B of this section, the provisions~~
38 ~~of this article may apply and be utilized by any acquiring, displacing or~~
39 ~~lead agency by action of the governing or legislative body thereof when no~~
40 ~~federal financial assistance is used to defray the costs of such project.~~

41 Sec. 4. Title 11, chapter 7, article 4, Arizona Revised Statutes, is
42 amended by adding section 11-975, to read:

43 11-975. Acquired property; maintenance

44 **A DISPLACING AGENCY SHALL MAINTAIN REAL PROPERTY THAT IS ACQUIRED BY**
45 **THE DISPLACING AGENCY IN CARRYING OUT A PROGRAM OR PROJECT AND THAT IS NOT**

1 SCHEDULED FOR IMMEDIATE REHABILITATION OR DEMOLITION IN A MANNER CONSISTENT
2 WITH PROTECTING AND MAINTAINING SURROUNDING PROPERTY VALUES.

3 Sec. 5. Section 28-6993, Arizona Revised Statutes, is amended to read:
4 28-6993. State highway fund; authorized uses

5 A. Except as provided in subsection B of this section and section
6 28-6538, the state highway fund shall be used for any of the following
7 purposes in strict conformity with and subject to the budget as provided by
8 this section and by sections 28-6997 through 28-7003:

9 1. To pay salaries, wages, necessary travel expenses and other
10 expenses of officers and employees of the department and the incidental
11 office expenses, including telegraph, telephone, postal and express charges
12 and printing, stationery and advertising expenses.

13 2. To pay for both:

14 (a) Equipment, supplies, machines, tools, department offices and
15 laboratories established by the department.

16 (b) The construction and repair of buildings or yards of the
17 department.

18 3. To pay the cost of both:

19 (a) Engineering, construction, improvement and maintenance of state
20 highways and parts of highways forming state routes.

21 (b) Highways under cooperative agreements with the United States that
22 are entered into pursuant to this chapter and an act of Congress providing
23 for the construction of rural post roads.

24 4. To pay land damages incurred by reason of establishing, opening,
25 altering, relocating, widening or abandoning portions of a state route or
26 state highway.

27 5. To reimburse the department revolving account.

28 6. To pay premiums on authorized indemnity bonds and on compensation
29 insurance under the workers' compensation act.

30 7. To defray lawful expenses and costs required to administer and
31 carry out the intent, purposes and provisions of this title, including
32 repayment of obligations entered into pursuant to this title, payment of
33 interest on obligations entered into pursuant to this title, repayment of
34 loans and other financial assistance, including repayment of advances and
35 interest on advances made to the department pursuant to section 28-7677, and
36 payment of all other obligations and expenses of the board and department
37 pursuant to chapter 21 of this title.

38 8. To pay lawful bills and charges incurred by the state engineer.

39 9. To acquire, construct or improve entry roads to state parks or
40 roads within state parks.

41 10. To acquire, construct or improve entry roads to state prisons.

42 11. To pay the cost of relocating a utility facility pursuant to
43 section ~~28-7156~~ 28-7105.

44 12. For the purposes provided in subsections C, D and E of this section
45 and sections 28-1143, 28-2353 and 28-3003.

1 B. For each fiscal year, the department of transportation shall
2 allocate and transfer monies in the state highway fund to the department of
3 public safety for funding a portion of highway patrol costs in eight
4 installments in each of the first eight months of a fiscal year that do not
5 exceed ten million dollars.

6 C. Subject to legislative appropriation, the department may use the
7 monies in the state highway fund as prescribed in section 28-6991, paragraph
8 12 to carry out the duties imposed by this title for registration or titling
9 of vehicles, to operate joint title, registration and driver licensing
10 offices, to cover the administrative costs of issuing the air quality
11 compliance sticker, modifying the year validating tab and issuing the
12 windshield sticker and to cover expenses and costs in issuing special plates
13 pursuant to sections 28-2404, 28-2412 through 28-2434 and 28-2514.

14 D. The department shall use monies deposited in the state highway fund
15 pursuant to chapter 5, article 5 of this title only as prescribed by that
16 article.

17 E. Monies deposited in the state highway fund pursuant to section
18 28-2269 shall be used only as prescribed by that section.

19 F. Monies deposited in the state highway fund pursuant to section
20 28-710, subsection D, paragraph 2 shall only be used for state highway work
21 zone traffic control devices.

22 G. The department may exchange monies distributed to the state highway
23 fund pursuant to section 28-6538, subsection A, paragraph 1 for local
24 government surface transportation program federal monies suballocated to
25 councils of government and metropolitan planning organizations if the local
26 government scheduled to receive the federal monies concurs. An exchange of
27 state highway fund monies pursuant to this subsection shall be in an amount
28 that is at least equal to ninety per cent of the federal obligation authority
29 that exists in the project for which the exchange is proposed.

30 Sec. 6. Title 28, chapter 20, article 6, Arizona Revised Statutes, is
31 amended by adding sections 28-7104 and 28-7105, to read:

32 28-7104. Negotiation and purchase of property for future
33 transportation facilities

34 THE DEPARTMENT MAY NEGOTIATE AND PURCHASE AT A PRICE MUTUALLY
35 ACCEPTABLE TO THE PROPERTY OWNER AND THE DEPARTMENT PROPERTY THAT IS EXPECTED
36 TO BE NEEDED FOR FUTURE TRANSPORTATION FACILITIES. THIS SECTION APPLIES ONLY
37 TO QUALIFIED ADVANCE ACQUISITIONS OF PROPERTIES THAT ARE LOCATED WITHIN
38 PROJECTS FOR WHICH, AT THE TIME OF THE PURCHASE, CONSTRUCTION IS NOT
39 SCHEDULED IN THE FIVE YEAR TRANSPORTATION FACILITIES CONSTRUCTION PROGRAM
40 PROVIDED FOR IN ARTICLE 3 OF THIS CHAPTER.

41 28-7105. Utility relocation; cost reimbursement

42 A. THE DIRECTOR MAY AUTHORIZE THE REIMBURSEMENT TO A CITY, TOWN OR
43 COUNTY FOR THE COST OF LABOR, EQUIPMENT, MATERIALS, PRELIMINARY ENGINEERING
44 AND RIGHT-OF-WAY PURCHASE REQUIRED TO ADJUST OR RELOCATE A UTILITY FACILITY
45 IF ALL OF THE FOLLOWING APPLY:

1 1. AN EXISTING CITY, TOWN OR COUNTY PUBLIC HIGHWAY OR STREET IS
2 ESTABLISHED AS A STATE HIGHWAY.

3 2. AT THE TIME THE HIGHWAY OR STREET IS ESTABLISHED AS A STATE
4 HIGHWAY, A UTILITY FACILITY BELONGING TO A CITY, TOWN OR COUNTY EXISTS WITHIN
5 THE RIGHT-OF-WAY OF THE HIGHWAY OR STREET.

6 3. IT BECOMES NECESSARY TO ADJUST OR RELOCATE THE UTILITY FACILITY DUE
7 TO MODIFICATION OR IMPROVEMENT OF THE STATE HIGHWAY.

8 B. THE DIRECTOR SHALL DETERMINE THE PAYMENT FOR LABOR, EQUIPMENT AND
9 MATERIALS. THE COST OF RELOCATION SHALL NOT EXCEED THE VALUE OF THE
10 SUBSTITUTE UTILITY FACILITY. THE DIRECTOR SHALL BASE THE DETERMINATION OF
11 THE VALUE OF A SUBSTITUTE UTILITY FACILITY ON THE COSTS FOR REPLACEMENT OF A
12 LIKE FACILITY. COSTS OF RELOCATION SHALL EXCLUDE ANY BETTERMENTS OR
13 INCREASES IN THE SIZE OR CAPACITY BEYOND THOSE OF THE EXISTING UTILITY
14 FACILITY.

15 C. THIS SECTION DOES NOT APPLY TO A CITY, TOWN OR COUNTY UTILITY
16 FACILITY THAT IS OWNED BY THE CITY, TOWN OR COUNTY AND THAT EXISTS WITHIN THE
17 HIGHWAY OR STREET RIGHT-OF-WAY BY VIRTUE OF ANY PERMIT, FRANCHISE OR OTHER
18 REVOCABLE AUTHORITY GRANTED BY THE DEPARTMENT, UNLESS THE AUTHORITY WAS
19 PREVIOUSLY GRANTED AS PART OF AN ADJUSTMENT OR RELOCATION PURSUANT TO THIS
20 SECTION.

21 D. ONCE ESTABLISHED PURSUANT TO A RELOCATION PRESCRIBED BY THIS
22 SECTION, A CITY'S, TOWN'S OR COUNTY'S RIGHTS REMAIN WITH THE APPLICABLE CITY,
23 TOWN OR COUNTY FOR WHICH THE RELOCATION OCCURRED.

24 Sec. 7. Repeal

25 Title 28, chapter 20, article 7, Arizona Revised Statutes, is repealed.