

REFERENCE TITLE: eminent domain; disclosure; violation

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

SB 1365

Introduced by
Senators Gray C, Pearce R: Allen S, Gould, Harper

AN ACT

AMENDING SECTIONS 12-1116 AND 12-1122, 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 ONE HUNDRED twenty days before filing an action for
9 condemnation of property or any interest in property, the plaintiff shall
10 deliver to the property owner of record and as a courtesy to the sole lessee
11 of record, if applicable, according to the records of the county recorder in
12 the county in 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. FOR
20 THE PURPOSES OF THIS PARAGRAPH, "JUST COMPENSATION" INCLUDES THE COST OF
21 RELOCATION AND THE COSTS OF REESTABLISHING LOST PROPERTY, BUSINESS AND
22 LIVELIHOODS.

23 2. One or more appraisals that support the amount of the proposed
24 compensation.

25 3. FULL DISCLOSURE IN WRITING REGARDING THE FINAL PROJECT, INCLUDING
26 THE IDENTIFICATION OF ALL ASPECTS OF THE WORK THAT MUST BE PERFORMED TO
27 COMPLETE THE PROJECT AND A RISK ASSESSMENT THAT IS PREPARED BY AN INDEPENDENT
28 RISK ASSESSING AGENT. FOR THE PURPOSES OF THIS PARAGRAPH, "RISK" INCLUDES
29 THE REPLACEMENT COSTS OF REESTABLISHING LOST PROPERTY, BUSINESS AND
30 LIVELIHOODS DISRUPTED BY THE CONDEMNATION.

31 B. Except for special taxing districts formed pursuant to title 48,
32 chapter 17, if no lease is recorded or if more than one lease is recorded for
33 the property with the county recorder of the county in which the property is
34 located, at least twenty days before filing an action for condemnation of
35 property or any interest in property, the plaintiff shall provide notice of
36 the offer and appraisal to the party having a plain and obvious commercial
37 ownership or operational interest in substantial improvements on the property
38 by posting the notice in plain sight at the property that may be subject to
39 condemnation.

40 C. For special taxing districts formed pursuant to title 48, chapter
41 17, if more than one lease is recorded for the property with the county
42 recorder of the county in which the property is located, at least twenty days
43 before filing an action for condemnation of property or any interest in
44 property, the plaintiff shall provide notice of the offer and appraisal by
45 delivering to all property interest holders of record the notice that an

1 offer has been made and an appraisal has been conducted. The notice does not
2 apply to lessees of record if the lease or other written agreement governing
3 the interest holder's rights in the property provides that the property
4 interest holder would not be entitled to condemnation proceeds.

5 D. If a lessee that is not noted in the record of the county recorder
6 and has a commercial ownership or operational interest in substantial
7 improvements on the property requests a copy of the offer and appraisal the
8 plaintiff shall promptly comply with the request on presentation of
9 documentation by the lessee of the lessee's interest in the property.

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

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

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

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

34 I. The plaintiff may deposit the money or bond with the clerk of the
35 court or the state treasurer. The money or bond may be held for the use and
36 benefit of each person having an interest in each parcel of land sought to be
37 condemned, subject to final judgment after trial of the action, and may be
38 held also as a fund to pay any further damages and costs recovered in the
39 proceedings and any unpaid property taxes that were levied as of the date of
40 the order for immediate possession, including penalties and interest, on the
41 property sought to be condemned, as well as all damages sustained by the
42 defendant if for any cause the property is not finally taken for public use.
43 The deposit of the money or bond shall not discharge the plaintiff from
44 liability to maintain the fund in full, but it shall remain deposited for all
45 accidents, defalcations or other contingencies, as between the parties to the

1 proceedings, at the risk of the plaintiff, until the compensation or damage
2 is finally settled by judicial determination, and the court awards such part
3 of the money or bond as shall be determined to the defendant, or until the
4 clerk or the state treasurer is ordered by the court to disburse it. The
5 clerk of the court or the state treasurer is liable to the plaintiff for the
6 deposit or bond if it is lost or abstracted.

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

28 K. If the plaintiff elects to deposit the money or bond with the clerk
29 of the court, the clerk shall receive the money or bond and return a receipt
30 for the money or bond to the court, and the clerk is liable to the plaintiff
31 if the money or bond is lost or abstracted. The clerk shall disburse the
32 money or forfeit the bond as the court may direct pursuant to its judgment.
33 Any money remaining in a deposit after the judgment of the court and all
34 unpaid property taxes that were levied as of the date of the order for
35 immediate possession, including penalties and interest, have been fully paid
36 shall be returned by the clerk to the plaintiff.

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

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

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

~~equal to the damages assessed under paragraph 2 of this subsection, the owner of the parcel shall be allowed no compensation except for the value of the portion taken, but if the benefit is less than the damages so assessed, the benefit shall be deducted from the damages, and the remainder shall be the only damages allowed in addition to the value.~~

~~4.~~ 3. If the property sought to be condemned is for a railroad, the cost of good and sufficient fences along the line of the railroad, and the cost of cattle guards where fences may cross the line of the railroad.

B. As far as practicable, compensation shall be assessed for each source of damage separately.

C. Value shall be determined by ascertaining the most probable price estimated in terms of cash in United States dollars or comparable market financial arrangements that the property would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all of the uses and purposes to which it was adapted and for which it was capable.

D. For the purpose of assessing compensation and damages with respect to property sought to be condemned by this state for transportation purposes, in addition to subsections A and B of this section, the court or a jury shall assess compensation and damages pursuant to sections 28-7091 and 28-7097.