GHAZ96146

House Engrossed Senate Bill

FILED

Jane Dee Hull
Secretary of State

State of Arizona
Senate
Forty-second Legislature
Second Regular Session
1996

CHAPTER 133

SENATE BILL 1291

AN ACT

AMENDING SECTIONS 37-101, 37-212, 37-214 AND 37-251, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTION 37-335.05, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 37, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, AS SECTION 37-239; AMENDING SECTION 37-239, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; REPEALING SECTION 37-281.06, ARIZONA REVISED STATUTES; REPEALING TITLE 37, CHAPTER 2, ARTICLE 5.2, ARIZONA REVISED STATUTES; RELATING TO STATE LAND.

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

Section 1. Section 37-101, Arizona Revised Statutes, is amended to read:

37-101. Definitions

In this title, unless the context otherwise requires:

1. "Agricultural lands" means lands which are used or can be used principally for raising crops, fruits, grains and similar ranch products.

2. "Amortized value" means the value for improvements established pursuant to section 37-281.02, subsection G.

3. "Commercial lands" means lands which can be used principally for business, institutional, religious, charitable, governmental or recreational purposes, or any general purpose other than agricultural, grazing, mining, oil, homesite or rights-of-way.

4. "Commissioner" means the state land commissioner.

5. "Community identity package" means a design theme including such elements as architecture, landscape, lighting, street furniture, walls and signage.

6. "Department" means the state land department.

7. "Grazing lands" means lands which can be used only for the ranging of animals.

8. "Holding lease" means a commercial lease issued solely to grant a limited use leasehold interest in state land in anticipation of future development.

9. "Homesite lands" means lands which are suitable for residential purposes.

10. "Improvements" means anything permanent in character which is the result of labor or capital expended by the lessee or his predecessors in interest on state land in its reclamation or development, and the appropriation of water thereon, and which has enhanced the value of the land.

11. "Infrastructure" means facilities or amenities, such as streets, utilities, landscaping and open space, which are constructed or located on state lands and which are intended to benefit more than the land on which they are immediately located by enhancing the development potential and value of the state lands impacted by the facility or amenities.

12. "Leapfrog development" means the development of lands in a manner requiring the extension of public facilities and services from their existing terminal point through intervening undeveloped areas that are scheduled for development at a later time, according to the plans of the local governing body having jurisdiction for the area and which is responsible for the provision of these facilities and services.

13. "Leased school or university land" means school or university land for which a lease has been issued by the state, or the territory of Arizona, under which the lessee retains rights.

14. "Master developer" means a person who assumes, as a condition of a land disposition, the responsibilities prescribed by the department for infrastructure or community identity package amenities, or both, ~~and~~ OR for implementing ~~the~~ A development plan containing a master plan area.

15. "Participation contract" means a contract arising out of a ~~lease or~~ sale~~, or both,~~ together with other rights and obligations in trust lands ~~obtained by a master developer~~ whereby the department receives a share of the ~~master developer's~~ revenues generated by subsequent sales~~, lease assignments or subleases~~ OR LEASES.

16. "Section of land" means an area of land consisting of six hundred forty acres.

17. "State lands" means any land owned or held in trust, or otherwise, by the state, including leased school or university land.

18. "Urban lands" means any state lands which are adjoining existing commercially or homesite developed lands and which are either:

(a) Within the corporate boundaries of a city or town.

(b) Adjacent to the corporate boundaries of a city or town.

(c) Lands for which the designation as urban lands is requested pursuant to section 37-331.01.

19. "Urban sprawl" means the development of lands in a manner requiring the extension of public facilities and services on the periphery of an existing urbanized area where such extension is not provided for in the existing plans of the local governing body having the responsibility for the provision of these facilities and services to the lands in question.

Sec. 2. Section 37-212, Arizona Revised Statutes, is amended to read:

37-212. Classification of lands selected; reclassification

A. The commissioner shall promptly classify all lands selected as provided in article 1 of this chapter.

B. In classifying state lands, the commissioner shall maintain in the offices of the department plats, maps or books containing the description of lands and disclosing:

1. Lands suitable for agricultural purposes.

2. Lands suitable for grazing purposes.

3. Lands suitable for homesite purposes.

4. Lands suitable for commercial purposes.

5. Lands containing timber, stone, or other products which may become valuable.

6. Lands which may become agricultural lands by expenditure of a reasonable amount for development of water thereon.

7. Lands within the boundaries of any school district which may, within the discretion of the governing board of the applicable school district within which the lands are located and within the discretion of the commissioner, become adaptable to public educational purposes, provided such lands shall not exceed sixty acres for school buildings and grounds.

8. Lands suitable for exchange.

9. Urban lands suitable for urban planning.

10. Lands suitable for self-contained community site planning.

11. Urban lands consistent with a development or secondary plan.

12. Lands suitable for multipurpose use.

C. The commissioner may reclassify lands when he determines that reclassification is in the best interest of the trust and of the state. The intended use of the reclassified land shall be consistent with the development or secondary plan and zoning of the local governmental authority unless the commissioner determines that this will be detrimental to the interests of the trust. If the commissioner so determines, a written statement of the reasons for the determination shall be prepared and provided to the local governmental authority having jurisdiction for the area in which the lands are located. The local governmental authority shall have thirty days from the receipt of this statement to appeal the commissioner's decision

to the board of appeals as provided in section 37-214. If no development or secondary plan or zoning has been adopted for the area in which the lands are located, the commissioner may reclassify the lands. Notice of such reclassification shall be provided to the local governmental authority.

D. Classification of urban lands as suitable for urban planning or for self-contained community site planning shall not cause an existing lease to be terminated under section 37-290, and such classification shall be accomplished pursuant to the requirements of ~~articles~~ ARTICLE 5.1 ~~and 5.2~~ of this chapter.

Sec. 3. Section 37-214, Arizona Revised Statutes, is amended to read:

37-214. Board of appeals; sale or lease of state lands; approval; sale preference; appeal

A. The board of appeals shall, before approving the sale or lease of, or a participation contract for, lands classified for commercial or homesite purposes after the completion of the planning process pursuant to article 5.1 ~~or 5.2~~ of this chapter, review the report submitted by the commissioner pursuant to section 37-335, subsection F~~,~~ or section ~~37-335.05, 37-339.03 or 37-339.05~~ 37-239, SUBSECTION C, regarding the proposed sale, lease or participation contract. A majority vote of a quorum of the board is required for the adoption of the report. Upon the adoption of the report the proposed sale or lease shall be approved. The board shall act within one hundred twenty days after receiving the report.

B. Land classified as suitable for commercial or homesite purposes after completing the planning process pursuant to article 5.1 ~~or 5.2~~ of this chapter shall not be leased for a term greater than five years unless the board determines that such lease will result in obtaining a higher benefit to the trust than would result if the land were sold. No lease shall be renewed unless the board determines that such lease will result in obtaining a higher benefit to the trust than would result if the land were sold. In making this determination, the board shall consider the sales price, the investment earnings potential, the state and local tax revenues obtainable once the land has been sold, the role of trust earnings in the financing of the activities of the beneficiaries, the potential earnings available through the lease or exchange of the lands in question, and the potential long-term appreciation of the land, as well as all other factors deemed relevant by the board.

C. A final decision of the board may be appealed by the commissioner or by any person adversely affected by the decision pursuant to title 12, chapter 7, article 6. If no appeal is taken within thirty-five days of the decision, the decision of the board shall be final and conclusive.

Sec. 4. Section 37-335.05, Arizona Revised Statutes, is transferred and renumbered for placement in title 37, chapter 2, article 3, Arizona Revised Statutes, as section 37-239, and, as so renumbered, is amended to read:

37-239. Participation contracts; planning and disposition proposals

A. The commissioner may enter into ~~a~~ participation ~~contract with a master developer of urban lands that are subject to a plan approved pursuant to this article~~ CONTRACTS.

B. ~~In addition to any other required factors,~~ Before recommending ~~a~~ ANY participation contract to the board of appeals, the commissioner shall consider and report on:

1. The methodology for determining any reimbursable infrastructure costs.

2. An analysis of the state trust revenue to be derived from the proposed participation contract.

3. The historical trends in land values in the area by types of proposed land uses.

4. An analysis of the financial feasibility of the planned development's proposed build-out schedule.

5. An evaluation of the potential economic risks and benefits to the trust arising from the participation contract.

6. An analysis of the economic and financial impact, and other factors determined by the commissioner, regarding alternative dispositions or no disposition of the ~~urban~~ lands.

~~C. Subsequent sales, lease assignments and subleases of state land subject to a participation contract shall be based on the criteria and the phasing and disposition plan included in the participation contract and the formula for determining the amount of revenue to the trust as a result of the subsequent sale, lease assignment or sublease.~~

~~D. The preferred right granted to a lessee by section 37-335, subsection C applies to a participation contract only if it does not involve a sale.~~

~~E. The participation contract shall prescribe rights and remedies in the case of default, including rights to cure, forfeiture and other appropriate remedies.~~

C. EACH PARTICIPATION CONTRACT SHALL:

1. PROVIDE THAT SUBSEQUENT SALES OR LEASES OF STATE LAND THAT ARE SUBJECT TO A PARTICIPATION CONTRACT SHALL BE BASED ON THE CRITERIA AND THE PHASING AND DISPOSITION PLAN INCLUDED IN THE PARTICIPATION CONTRACT AND THE FORMULA FOR DETERMINING THE AMOUNT OF REVENUE TO THE TRUST AS A RESULT OF THE SUBSEQUENT SALE OR LEASE.

2. PRESCRIBE RIGHTS AND REMEDIES IN THE CASE OF DEFAULT INCLUDING RIGHTS TO CURE, FORFEITURE AND OTHER APPROPRIATE REMEDIES.

~~F.~~ D. This state's share of the revenues from the sale of land under a participation contract shall be transferred to the state treasurer for deposit in the appropriate perpetual fund~~, and only the share of the revenues from the lease of land under a participation contract may be used~~.

E. A PARTICIPATION CONTRACT ON LANDS THAT DO NOT HAVE A DEVELOPMENT PLAN APPROVED BY THE COMMISSIONER MAY REQUIRE THE SUCCESSFUL BIDDER TO PLAN AND ZONE PROPERTY AFTER THE AUCTION. BEFORE AUCTIONING A CONTRACT REQUIRING PLANNING AND ZONING, THE COMMISSIONER SHALL SOLICIT PLANNING AND DISPOSITION PROPOSALS, THROUGH ADVERTISEMENT FOR AT LEAST FIVE CONSECUTIVE DAYS IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE LANDS ARE LOCATED, OR IF THERE IS NO DAILY NEWSPAPER OF GENERAL CIRCULATION IN THAT COUNTY, THE ADVERTISEMENT SHALL BE PUBLISHED AS MANY TIMES WITHIN A THIRTY-DAY PERIOD AS THE NEWSPAPER IS PUBLISHED BUT NOT MORE THAN FIVE TIMES. THE COMMISSIONER MAY REQUIRE INFORMATION REGARDING THE PROJECTED PLANNING AND ZONING, THE ESTIMATED COSTS OF THE PLANNING AND ZONING AND THE FINANCIAL FEASIBILITY OF THE PROPOSAL. THE PROPOSALS SHALL ALSO CONTAIN PROPOSED PARTICIPATION PAYMENTS. THE COMMISSIONER MAY PROVIDE THAT SOME OF THE INFORMATION THAT IS CONTAINED IN THE PROPOSALS WILL REMAIN CONFIDENTIAL, IF THE INFORMATION IS PROPRIETARY, UNTIL THE COMMISSIONER RECOMMENDS A CONTRACT TO THE BOARD OF APPEALS. AFTER THE PROPOSALS ARE RECEIVED, THE COMMISSIONER MAY CONDUCT PREAUCTION CONFERENCES REGARDING THE PROPOSALS. THE COMMISSIONER MAY THEN AUCTION A PARTICIPATION CONTRACT THAT, AT THE COMMISSIONER'S OPTION, MAY INCORPORATE INFORMATION THAT WAS ACQUIRED THROUGH THE PROPOSAL PROCESS. A PARTICIPATION CONTRACT THAT IS ENTERED INTO PURSUANT TO THIS SUBSECTION SHALL:

1. REQUIRE THE SUCCESSFUL BIDDER TO PAY A NONREFUNDABLE DOWN PAYMENT OF AT LEAST TWO AND ONE-HALF PER CENT OF THE MINIMUM BID FOR THE PROPERTY, PLUS THE REQUIRED FEES PRESCRIBED IN SECTION 37-108, BY CASHIER'S CHECK AT THE TIME OF THE AUCTION. THE DOWN PAYMENT DOES NOT INCLUDE PARTICIPATION PAYMENTS.

2. REQUIRE AN ADDITIONAL PAYMENT TO BE MADE WITHIN THIRTY DAYS IF THE AMOUNT BID FOR THE LAND EXCEEDS THE MINIMUM BID, SO THAT THE TOTAL DOWN PAYMENT, INCLUDING THE DOWN PAYMENT PAID ON THE DATE OF THE SALE, WILL EQUAL THE REQUIRED PERCENTAGE DOWN PAYMENT OF THE TOTAL AMOUNT BID. THE ADDITIONAL PAYMENT DOES NOT INCLUDE PARTICIPATION PAYMENTS.

3. REQUIRE THE SUCCESSFUL BIDDER TO POST WITHIN THIRTY DAYS AFTER THE AUCTION A SURETY BOND OR ANOTHER FORM OF COLLATERAL THAT THE COMMISSIONER CONSIDERS TO BE SUFFICIENT TO COVER THE COSTS OF PERFORMING THE REQUIRED PLANNING AND ZONING.

4. PROVIDE FOR THE FORFEITURE OF THE CONTRACT AND ANY ACCOMPANYING CERTIFICATE OF PURCHASE OR LEASE IF THE SUCCESSFUL BIDDER FAILS TO PROVIDE THE REQUIRED COLLATERAL.

5. DESCRIBE THE LAND TO BE PLANNED AND ZONED, WHICH MAY INCLUDE LAND THAT IS RETAINED BY THE DEPARTMENT AND NOT AUCTIONED WITH THE CONTRACT.

6. CONTAIN GUIDELINES FOR EXPECTED PLANNING AND ZONING AND TIME FRAMES FOR THE PLANNING AND ZONING CONSISTENT WITH THE GUIDELINES.

7. PROVIDE FOR THE FORFEITURE OF THE CONTRACT AND ANY ACCOMPANYING CERTIFICATE OF PURCHASE OR LEASE IF THE SUCCESSFUL BIDDER FAILS TO ACCOMPLISH

THE PLANNING AND ZONING WITHIN THE PRESCRIBED TIME, UNLESS EXTENDED IN WRITING BY THE COMMISSIONER BASED ON GOOD CAUSE SHOWN.

8. REQUIRE AT LEAST TEN PER CENT OF THE TOTAL PURCHASE PRICE TO BE PAID BY THE TIME THE PLANNING AND ZONING ARE COMPLETED, UNLESS EXTENDED IN WRITING BY THE COMMISSIONER BASED ON GOOD CAUSE SHOWN.

9. PROVIDE FOR ABSOLUTE APPROVAL AUTHORITY BY THE COMMISSIONER OF ANY PLANNING AND ZONING ACTIONS.

10. DENY THE SUCCESSFUL BIDDER THE RIGHT TO PHYSICALLY DEVELOP THE PROPERTY, INCLUDING GRADING OR LEVELING, UNTIL AT LEAST TEN PER CENT OF THE PURCHASE PRICE HAS BEEN PAID.

11. DENY THE ISSUANCE OF PARTIAL PATENTS FOR THE PROPERTY UNTIL AT LEAST TEN PER CENT OF THE PURCHASE PRICE HAS BEEN PAID AND THE REQUIREMENTS OF SECTION 37-251 HAVE BEEN MET.

12. CONTAIN SUCH OTHER TERMS THAT THE COMMISSIONER CONSIDERS TO BE NECESSARY OR APPROPRIATE.

Sec. 5. Section 37-251, Arizona Revised Statutes, is amended to read:

37-251. Issuance of patents for state lands

A. Upon filing the certificate of purchase, together with evidence of full payment of principal and interest, for the entire tract of land sold, the department shall issue to the purchaser a patent under the seal of the state, signed by the governor and countersigned by the secretary of state.

B. On application by the purchaser a patent for less than the entire tract may be issued to the purchaser if the commissioner finds that it is in the best interest of the applicable trust, subject to the following:

1. The parcel to be patented ~~shall~~ MAY consist of one ~~contiguous piece~~ OR MORE PIECES of land, described either by metes and bounds or by legal subdivision.

2. A patent shall not be issued for less than one-fourth of the tract sold or less than ten acres, whichever is smaller, except that:

(a) If the original tract is less than forty acres, a patent may be issued for parcels of not less than five acres each.

(b) In the case of a right-of-way the actual parcel needed for the right-of-way may be patented.

3. Before any parcel less than the entire tract is patented the department shall determine that the remaining lands are of equal or greater value per acre than those to be patented AND THAT THE REMAINING LANDS HAVE DEVELOPMENT POTENTIAL INDEPENDENT OF THE ACREAGE THAT IS BEING PATENTED. Before patenting, the commissioner shall require to be paid an amount, on the lands to be patented, in excess of the purchase price per acre of the entire tract until the total price of the entire tract has been paid. In establishing the amount to be paid for the partial patent the commissioner shall take into account the amount of the down payment made on the entire tract. Nothing in this paragraph shall affect previously issued certificates of purchase.

4. When paid, the partial purchase price shall be credited on the total purchase price stated in the certificate of purchase. The department may issue a supplement to the certificate of purchase deleting the land patented and reducing the amount of each of the remaining annual installments to that amount which, when all installments are paid in full, will discharge the entire unpaid balance due on the original certificate of purchase.

C. Any land patented under this section is subject to existing valid rights-of-way.

D. If the purchaser has died, and the land described has been sold and confirmed by order of court, the patent shall be issued to the purchaser to whom confirmation of sale was made. If the estate of the deceased person is distributed by order of the court, the patent shall be issued to the heirs of the deceased person, or to the person to whom the lands are distributed. Patents issued to a deceased person shall inure to the benefit of the heirs or assigns of the deceased person.

E. If an assignment of the certificate of purchase has been filed with and approved by the department, the patent shall be issued to the assignee, and if proper evidence of a transfer of the certificate by operation of law is filed with the department, the patent shall be issued to the transferee.

F. A record of all patents issued shall be kept in the records of the department.

Sec. 6. Repeal

A. Section 37-281.06, Arizona Revised Statutes, is repealed.

B. Title 37, chapter 2, article 5.2, Arizona Revised Statutes, is repealed.

Sec. 7. Preexisting commercial holding leases; conditions; term

A. Commercial holding leases that were issued before the effective date of this act:

1. Remain in effect to the end of their respective terms.

2. May be granted additional five-year renewals, at the discretion of the state land commissioner, and pursuant to this section.

B. On application by a current holding lease lessee to renew a holding lease, the state land department shall either deny the application or publish notice of intent to renew the holding lease. The notice shall:

1. State the general location of the land.

2. Be published for at least five consecutive days in a newspaper of general circulation in the county in which the leased lands are located. If there is no daily newspaper of general circulation in that county, the required notice shall be published as many times within a thirty-day period as the newspaper is published, but not more than five times.

3. State that the minimum bid for the lease and a full description of the land will be available for inspection at the department.

C. At least thirty days after completion of the required published notice the commissioner shall conduct a public auction in the same manner as

described in section 37-238, Arizona Revised Statutes, if, during that period of time, the commissioner receives notice in writing of a request for an auction, stating that the person writing the request intends to bid at that auction. The department shall notify those persons of the date, time and location of the auction and a description of the auction procedures.

D. If an auction is held under subsection C of this section, the commissioner shall issue the lease to a person exercising rights under section 37-290 or 37-291, Arizona Revised Statutes, or, if there is no person who exercises such rights, to the highest bidder. The highest rent bid at auction constitutes the initial rent under the renewed holding lease.

E. The commissioner shall conduct an appraisal to establish the minimum bid for the leasehold interest before publishing the notice described in subsection B of this section, but in no event may the commissioner lease the land for less than three dollars per acre.

F. The commissioner may collect the actual cost of legal advertising pursuant to section 37-108, Arizona Revised Statutes, from an applicant before publishing the notice of intent to renew a holding lease. If an auction is held pursuant to this section and the applicant is not the successful bidder, the successful bidder shall reimburse the applicant for the actual cost of legal advertising.

APPROVED BY THE GOVERNOR APRIL 9, 1996.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 1996