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1996

FILED

**Jane Dee Hull
Secretary of State**

CHAPTER 59

SENATE BILL 1070

AN ACT

AMENDING SECTIONS 28-1865 AND 28-1907, ARIZONA REVISED STATUTES; RELATING TO DISPOSAL OF TRANSPORTATION PROPERTY.

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

Section 1. Section 28-1865, Arizona Revised Statutes, is amended to read:

28-1865. Purchase, sale or condemnation of land for transportation purposes; definition

A. The director, in the name of the state, may acquire, either in fee or a lesser estate or interest, real property which the director considers necessary for transportation purposes, by purchase, donation, dedication, exchange, condemnation or other lawful means, with monies from the state highway fund or any other monies appropriated to the department. Property acquired for such purpose shall include lands or any interest in the lands considered necessary for rights-of-way or campsites, roadside rest areas, water or material needed in the construction, improvement or maintenance of state highways, airports, runways or taxiways or other property under the jurisdiction, possession or control of the department, for spoil banks, rock quarries, gravel pits, sand or earth borrow pits, for rights-of-way to the place where material required in the construction, improvement or maintenance of state highways, airports, runways or taxiways may be located, for offices, shops, maintenance camps, storage yards, inspection or weighing stations or radio transmitter or repeater stations and for rights-of-way for access to any such location.

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1 B. If a part of a parcel of land is to be taken for transportation
2 purposes and the remainder is to be left in such shape or condition as to be
3 of little value to its owner or to give rise to claims or litigation
4 concerning severance or other damage, the director may acquire the whole
5 parcel by any means provided in subsection A and the remainder may be sold
6 or may be exchanged for other property needed for transportation purposes.

7 C. This state may exercise the right of eminent domain for such
8 purposes, and the court in which the action is pending shall give the action
9 precedence over other civil actions. If property which is devoted to or held
10 for some public use other than existing street, highway or airport uses for
11 which the power of eminent domain might be exercised is to be taken for such
12 transportation purposes, the director may, with the consent of the person or
13 agency in charge of such public use, purchase real property or an interest
14 in the property to be exchanged with such person or agency for the real
15 property to be taken for transportation purposes. This section does not
16 limit the authorization to the department to acquire, other than by exchange,
17 property for such purposes or to acquire directly, by condemnation, purchase
18 or otherwise, without such exchange, property held for some other public use
19 by any lawful means set forth in subsection A.

20 D. The authority conferred by this section to acquire real property
21 for transportation purposes includes authority to acquire for future needs
22 provided the transportation board has an adopted and approved state route
23 plan or airport site location showing a reasonable need for such property.
24 The director is authorized to lease ~~or let~~ at fair rental value OR FOR FAIR
25 CONSIDERATION ALLOW THE USE OF any ~~lands~~ LAND, IMPROVEMENT OR PORTION OF LAND
26 OR IMPROVEMENT which ~~are~~ IS held for transportation purposes and ~~are~~ IS not
27 presently needed for such purposes on such terms and conditions as the
28 director may fix and to maintain and care for such property in order to
29 secure rent from the property on terms consistent with this section. Rents
30 received from property acquired shall be deposited in the state highway fund,
31 except that twenty-four per cent of all rent received shall be deposited in
32 the highway properties fund in the state treasury, which fund shall be
33 established by the state treasurer. Net income received from rentals under
34 this section shall be credited to the budgetary item from which the property
35 was acquired.

36 E. If it is determined by the director that any rental revenue
37 collected under the provisions of this section represents overpayment or
38 payment in duplicate, the director may authorize the refund of such
39 overpayment or payment in duplicate from the highway properties fund and the
40 state highway fund.

41 F. The department of administration shall, not later than the first
42 day of November next following the close of any fiscal year, pay the rents
43 deposited in the highway properties fund to the county assessor in the county
44 in which such real property is situated. The director of the department of

1 transportation shall certify to the department of administration the amount
2 of such rentals attributable to each county and shall notify each county of
3 the rental and location of each piece of rental property for which rents are
4 deposited in the fund. The county assessor shall distribute any payment
5 received by him pursuant to this section to the county, to each revenue
6 district for which the county assesses and collects real property taxes or
7 assessments and to every other taxing agency within the county in which the
8 property is situated. The amount distributable to the county and each such
9 revenue district or other taxing agency shall be proportionate to the ratio
10 which the amount of the taxes and assessments of each on similar real
11 property similarly situated within that part of the county embracing the
12 smallest in area of the revenue districts or other taxing agencies other than
13 the county, levied for the fiscal year next preceding, bears to the combined
14 amount of the taxes and assessments of all such districts and agencies,
15 including the county, on such property levied for that year. The county
16 assessor shall determine and certify the amounts distributable to the board
17 of supervisors, which shall order the distribution. Any money distributed
18 pursuant to this section to any county, revenue district or other taxing
19 agency shall be deposited to the credit of the same fund as any taxes or
20 assessments on any taxable similar real property similarly situated. If a
21 county receives a payment pursuant to this section in the amount of
22 twenty-five dollars or less in respect to any parcel of leased property, all
23 of such payment shall be distributed to the county for deposit in the county
24 general fund. The money received by the respective jurisdictions under this
25 section may be expended by them for any proper public purpose not prohibited
26 by the state constitution.

27 G. The director may dispose of real property or any right, title or
28 interest in the real property if he determines that it is no longer needed
29 or used for transportation purposes. The director may, after the
30 establishment, laying out, substantial completion of a transportation
31 improvement or abolishment of a transportation improvement by formal action
32 of the transportation board, convey out any such real property or any
33 interest in the real property which was acquired pursuant to this section and
34 which he determines is no longer necessary for state transportation purposes.
35 Except as provided in subsection N, the director may convey the real property
36 to any agency of the federal government, this state or any county, city or
37 town of this state without the necessity of a public sale if he considers
38 such a conveyance to be in the public interest and if the real property is
39 to be used for such a specific public purpose. The agency shall pay the
40 department for such a conveyance based on an appraisal within six months of
41 the date of conveyance establishing the fair market value of the property to
42 be conveyed. If the property conveyed is to be used for a specific highway
43 purpose, the agency shall reimburse the department for its expenditures for
44 the property. The director may convey other marketable property to the

1 highest responsible bidder at a public auction or by direct sale or exchange
2 after at least thirty days' notice in a newspaper of general circulation in
3 the county in which the property is located. If the director elects to
4 convey property by a direct sale or exchange, and receives more than one
5 offer before the termination of the thirty-day notice period, the director
6 shall sell the property at public auction. At least one fee appraisal or one
7 in-house appraisal is required for property that is offered to the public and
8 the property shall not be offered or conveyed for less than or the amount of
9 the low appraisal. Such sale may be made for cash or on terms of not less
10 than twenty per cent down with the balance payable in annual installments for
11 ten years, the unpaid balance to bear interest at a rate determined by the
12 director. The director may, ~~after one appraisal,~~ dispose of property by
13 quitclaim deed to adjacent property owners or the underlying fee owner if the
14 property has no market value or a market value of one thousand dollars or
15 less without a public auction or thirty-day notice period. The director may
16 execute all deeds or conveyances necessary to convey any real property or
17 interest in the real property to be conveyed under the provisions of this
18 section and shall sell any real property or interest in real property for the
19 highest responsible bid, direct sale price, or the appraised market value of
20 the property, as applicable. The director may assess a fee for the costs of
21 preparing and executing any conveyance under this subsection. The director
22 may insert in any such deed or conveyance such conditions, covenants,
23 exceptions and reservations as the director deems to be in the public
24 interest or may convey in fee simple absolute. It is conclusively presumed
25 in favor of any purchaser for value and without notice of any real property
26 or interest in the real property conveyed pursuant to this section that the
27 department acted within its lawful authority in acquiring the property, and
28 that the director acted within his lawful authority in executing any deed,
29 conveyance or lease authorized by this section.

30 H. The director shall provide notice within thirty days after the
31 close of escrow to the county assessor and to the county treasurer of any
32 property disposed of and quitclaimed pursuant to subsection G. Proper notice
33 shall include the legal description of property being conveyed, the name and
34 address of the new property owner and legal description of the conveyed
35 property and the name and address of the person or persons who are identified
36 as the correct responsible recipients of the property tax bill. The director
37 may contract with a licensed real estate broker to assist in any disposition
38 of property under subsection G and pay the licensed real estate broker from
39 proceeds received under subsection G unless the broker is the purchaser or
40 lessee or the purchaser is another governmental agency.

41 I. The director may at any time prior to payment of the compensation
42 and damages awarded the defendants by the court or jury abandon the
43 proceedings and cause the action to be dismissed without prejudice. The

1 court may require that reasonable attorneys' fees, expert witness fees and
2 costs be paid as a condition of dismissal.

3 J. The director shall justify each acquisition or disposal of real
4 property WITH AN ESTIMATED VALUE OVER TWO THOUSAND FIVE HUNDRED DOLLARS under
5 this section by at least one appraisal report in sufficient scope to document
6 and justify the economic basis for the acquisition or disposal. THE DIRECTOR
7 MAY ACQUIRE OR DISPOSE OF REAL PROPERTY VALUED AT TWO THOUSAND FIVE HUNDRED
8 DOLLARS OR LESS AFTER THE VALUE HAS BEEN ESTIMATED AND JUSTIFIED BY A MARKET
9 ANALYSIS BASED ON COMPARABLE SALES.

10 K. This section does not limit the provisions of any other section,
11 each of which is a distinct and separate authorization.

12 L. In acquiring property for transportation purposes pursuant to this
13 section, when determining the market value of the property to be taken and
14 the market value of the remainder, if any, in the before condition, a
15 decrease or increase in the market value of the real property prior to the
16 date of valuation caused by the public project for which the property is to
17 be acquired or by the likelihood that the property would be acquired for the
18 project shall be disregarded.

19 M. Before filing a condemnation action to acquire property for
20 transportation purposes pursuant to this section, the department shall obtain
21 one or more appraisals which estimate the amount of just compensation for the
22 proposed taking and damaging of the property. The department's initial offer
23 of just compensation to the aggregate of those persons with an interest in
24 the property shall not be less than the lowest of the appraisals prepared by
25 or for the department. At any time after the department has filed a
26 condemnation action, it shall, on request, promptly provide to any person in
27 interest a copy of the appraisal of the property on which the department's
28 most recent offer was based.

29 N. If property is acquired for transportation purposes by agreement
30 of the parties prior to the filing of a condemnation action or by stipulation
31 prior to judgment in the condemnation action, the deed transferring the
32 property shall contain a provision authorizing the original owner or his
33 heirs to repurchase the property if the director determines that the property
34 is no longer needed or used for transportation purposes at a purchase price
35 equal to the price paid by the department to acquire the property plus
36 interest calculated for each month or portion thereof that the department
37 owns the land as provided for in this subsection. The right of repurchase
38 shall expire on the earlier of eight years following the date of recording
39 of the deed to the property from the original owner or ninety days following
40 the director's determination that the property is no longer needed or used
41 for transportation purposes. The interest to be paid if the property is
42 repurchased shall be simple interest computed at the prime rate charged by
43 banks on short-term business loans as determined for publication in the
44 bulletin of the board of governors of the federal reserve system as of the

1 first day of the month. If the director determines that the property is no
2 longer needed or used for transportation purposes and the deed transferring
3 the property contains a provision for repurchase and the right of repurchase
4 has not expired, the director shall offer the property to the original owner
5 or his heirs at a price determined pursuant to this subsection. If the
6 original owner or his heirs accept the offer within ninety days after the
7 director determines that the property is no longer needed or used for
8 transportation purposes, the director shall issue a quitclaim deed to the
9 property upon payment of the price. A quitclaim deed issued under this
10 subsection or any deed or other document evidencing abandonment or sale by
11 the director creates a presumption of compliance with the requirements of
12 this section relating to the right of repurchase of the property by the
13 original owner or his heirs, and constitutes conclusive evidence of meeting
14 these requirements in favor of purchasers and encumbrancers for value and
15 without actual notice. Knowledge of the grantor shall not be imputed to the
16 grantee.

17 O. For the purposes of this section, "market value" means the most
18 probable price estimated in terms of cash in United States dollars or
19 comparable market financial arrangements which the property would bring if
20 exposed for sale in the open market, with reasonable time allowed in which
21 to find a purchaser, buying with knowledge of all of the uses and purposes
22 to which it was adapted and for which it was capable.

23 Sec. 2. Section 28-1907, Arizona Revised Statutes, is amended to read:
24 28-1907. Extinguishment of easements

25 If a STATE, city or county owns no title to a roadway but holds
26 right-of-way easements only, such easements may be extinguished by the
27 governing body's resolution.

APPROVED BY THE GOVERNOR APRIL 1, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 1, 1996