

State of Arizona  
Senate  
Forty-sixth Legislature  
Second Regular Session  
2004

CHAPTER 250

# SENATE BILL 1197

AN ACT

AMENDING SECTIONS 12-1113, 12-1116 AND 12-1129, ARIZONA REVISED STATUTES;  
RELATING TO CONDEMNATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-1113, Arizona Revised Statutes, is amended to  
3 read:

4 12-1113. Estates in land subject to condemnation

5 The interests, estates and rights in lands subject to be taken for  
6 public use, are:

7 1. A fee simple, when taken for public buildings or grounds or for  
8 permanent buildings, for use in connection with a right of way, or for an  
9 outlet for the flow or a place for the deposit of tailings or refuse from a  
10 mine or for irrigating ditches. A LEASEHOLD INTEREST IN A BUILDING MAY BE  
11 TAKEN IN FEE TITLE OR EASEMENT ONLY IF THE UNDERLYING PROPERTY IS TAKEN.

12 2. An easement when taken for any use other than those set forth in  
13 paragraph 1.

14 3. A right of entry upon ON and occupation of lands, and the right to  
15 take therefrom FROM THE LANDS earth, gravel, stone, trees and timber  
16 necessary for a public use.

17 4. A use in the water of a stream, river or spring.

18 Sec. 2. Section 12-1116, Arizona Revised Statutes, is amended to read:

19 12-1116. Actions for condemnation; immediate possession; money  
20 deposit

21 A. All actions for condemnation shall be brought as other civil  
22 actions in the superior court in the county in which the property is located  
23 except that, at least twenty days before filing an action for condemnation  
24 of property or any interest in property, the plaintiff shall deliver to the  
25 property owner of record and AS A COURTESY TO the sole lessee of record, if  
26 applicable, according to the records of the county recorder in the county in  
27 which the property is located:

28 1. A written offer to purchase the property or interest in the  
29 property and to pay just compensation for the property or interest in the  
30 property and for any compensable damages to any remaining property. The  
31 offer must constitute the plaintiff's estimate of just compensation. THE  
32 OFFER MAY BE MADE SUBJECT TO ANY LESSEES OF RECORD OR ANY LESSEES WHO MAY  
33 CLAIM A COMPENSABLE INTEREST. THE OFFER DOES NOT IMPOSE AN OBLIGATION ON THE  
34 PLAINTIFF TO PROVIDE A WRITTEN OFFER TO PURCHASE THE LESSEE'S INTEREST.

35 2. One or more appraisals that support the amount of the proposed  
36 compensation.

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

1 C. For special taxing districts formed pursuant to title 48, chapter  
2 17, if more than one lease is recorded for the property with the county  
3 recorder of the county in which the property is located, at least twenty days  
4 before filing an action for condemnation of property or any interest in  
5 property, the plaintiff shall provide notice of the offer and appraisal by  
6 delivering to all property interest holders of record the notice that an  
7 offer has been made and an appraisal has been conducted. THE NOTICE DOES NOT  
8 APPLY TO LESSEES OF RECORD IF THE LEASE OR OTHER WRITTEN AGREEMENT GOVERNING  
9 THE INTEREST HOLDER'S RIGHTS IN THE PROPERTY PROVIDES THAT THE PROPERTY  
10 INTEREST HOLDER WOULD NOT BE ENTITLED TO CONDEMNATION PROCEEDS.

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

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

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

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

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

40 I. The plaintiff may deposit the money or bond with the clerk of the  
41 court or the state treasurer. The money or bond may be held for the use and  
42 benefit of each person having an interest in each parcel of land sought to  
43 be condemned, subject to final judgment after trial of the action, and may  
44 be held also as a fund to pay any further damages and costs recovered in the  
45 proceedings and any unpaid property taxes that were levied as of the date of

1 the order for immediate possession, including penalties and interest, on the  
2 property sought to be condemned, as well as all damages sustained by the  
3 defendant if for any cause the property is not finally taken for public  
4 use. The deposit of the money or bond shall not discharge the plaintiff from  
5 liability to maintain the fund in full, but it shall remain deposited for all  
6 accidents, defalcations or other contingencies, as between the parties to the  
7 proceedings, at the risk of the plaintiff, until the compensation or damage  
8 is finally settled by judicial determination, and the court awards such part  
9 of the money or bond as shall be determined to the defendant, or until the  
10 clerk or the state treasurer is ordered by the court to disburse it. The  
11 clerk of the court or the state treasurer is liable to the plaintiff for the  
12 deposit or bond if it is lost or abstracted.

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

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

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

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

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

6 2. To the amount of direct payment to any owner, occupant or possessor  
7 of any parcel.

8 3. To the payment of money deposited with the clerk of the court or  
9 the state treasurer to any owner, occupant or possessor of any parcel.

10 4. For the release of any bond on payment to any owner, occupant or  
11 possessor of any parcel.

12 N. A person in interest for whom a deposit has been made pursuant to  
13 stipulation for the person's withdrawal is entitled to interest on the amount  
14 that the person is allowed to withdraw from the date the order for immediate  
15 possession is signed by the court pursuant to subsection C of this section  
16 until the date of withdrawal. This person is also entitled to interest on  
17 that portion of the final judgment, exclusive of costs allowed by the court,  
18 that exceeds the amount that is deposited for the person's withdrawal from  
19 the date the order for immediate possession is signed by the court until the  
20 judgment is paid. If the amount that is withdrawn by any defendant exceeds  
21 the amount of the final judgment awarded the defendant inclusive of costs  
22 allowed by the court and any unpaid property taxes that were levied as of the  
23 date of the order for immediate possession, including penalties and interest,  
24 on the property sought to be condemned, the defendant withdrawing the funds  
25 immediately shall repay to the plaintiff the excess, with legal interest from  
26 the date of withdrawal to the date of repayment, except that the amount that  
27 is necessary to pay any unpaid property taxes that were levied as of the date  
28 of the order for immediate possession, including penalties and interest, on  
29 the property shall be paid to the county treasurer of the county in which the  
30 property sought to be condemned is located.

31 O. Any stipulation that is made or any evidence that is introduced  
32 pursuant to this section shall not be introduced in evidence or used to the  
33 prejudice of any party in interest on the trial of the action.

34 Sec. 3. Section 12-1129, Arizona Revised Statutes, is amended to read:  
35 12-1129. Dismissal of condemnation action; litigation expenses

36 A. If a plaintiff causes a condemnation action under this article to  
37 be dismissed without prejudice before payment of the compensation and damages  
38 awarded the defendant by the court or jury, the plaintiff shall not initiate  
39 any eminent domain proceeding with respect to the same property for the same  
40 or a related project for at least two years after the date of the verdict or  
41 judgment.

1           B. The court having jurisdiction of a condemnation action under this  
2 article shall award the owner with any right to, title to or interest in the  
3 property that is the subject of the action an amount that will reimburse the  
4 owner for the owner's reasonable costs, disbursements and expenses, including  
5 reasonable attorney, appraisal and engineering fees, actually incurred  
6 because of the condemnation proceeding if any of the following occurs:

7           1. The final judgment is that the plaintiff cannot acquire the real  
8 property by condemnation.

9           2. The proceeding is abandoned or ~~dismissed~~ on a motion by the  
10 plaintiff.

11           3. THE PROCEEDING IS DISMISSED ON A MOTION BY THE PLAINTIFF BECAUSE  
12 THE PARTIES HAVE AGREED TO SETTLE THE MATTER OUT OF COURT, IN WHICH CASE BOTH  
13 PARTIES SHALL PAY THEIR OWN COSTS, DISBURSEMENTS AND EXPENSES, INCLUDING  
14 REASONABLE ATTORNEY, APPRAISAL AND ENGINEERING FEES UNLESS OTHERWISE  
15 SPECIFIED BY THE PARTIES IN THE SETTLEMENT AGREEMENT.

~~APPROVED BY THE GOVERNOR MAY 19, 2004.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 19, 2004.~~

Passed the House May 5, 2004,

by the following vote: 45 Ayes,

13 Nays, 2 Not Voting

Jack Elah  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

Passed the Senate February 19, 2004,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Bennett  
President of the Senate

Cherine Bellenton  
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

**S.B. 1197**

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS  
AND FINAL PASSAGE

Passed the Senate May 13, 2004,

by the following vote: 22 Ayes,

4 Nays, 4 Not Voting

[Signature]  
President of the Senate  
[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

13<sup>th</sup> day of May, 2004,

at 1:22 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this 19 day of

May, 2004,

at 1<sup>00</sup> o'clock P. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 19 day of May, 2004,

at 2:52 o'clock P. M.

[Signature]  
Secretary of State