



STATE OF ARIZONA

JANET NAPOLITANO  
GOVERNOR

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June 27, 2008

The Honorable Jim Weiers  
Speaker of the House  
Arizona House of Representatives  
1700 West Washington  
Phoenix, Arizona 85007

Re: House Bill 2156; Railroad Projects; Review

Dear Speaker Weiers:

I am signing House Bill 2156, the bill that requires railroad companies to provide the Arizona Department of Transportation and the affected communities notice and an opportunity to hold public hearings about plans to build a new route or site in a community before the railroad companies may invoke their eminent domain powers.

House Bill 2156 does not give Arizona the power to prevent a railroad company from building a new route or site. It only requires (i) disclosure of the project and a description of the effects of the project on the local groundwater, road access and road congestion, environmentally sensitive areas, agricultural areas, noise levels and other issues related to collateral effects on the local community; (ii) a maximum of three public hearings so the local community may comment on the project; and (iii) reimbursement of some fees the State may incur in its review of the project. In addition, the State must conduct its review of the disclosure materials and hold the public hearings all within 120 days of the railroad's submission of the disclosure materials.

Last July 2, 2007, I vetoed House Bill 2020, a bill that also required railroad companies to provide disclosure to the community affected by new rail routes. In my veto message, I noted that railroads are regulated primarily at the federal level and that House Bill 2020 raised issues regarding federal pre-emption. The sponsors of House Bill 2156 have made changes to the bill to address those issues. House Bill 2156 is a different bill than last year's House Bill 2020 in significant ways.

The railroad companies that have resisted this bill have claimed that they have great concern over the effects of their projects on local communities and an even greater desire to work with communities to address those effects. Yet, the railroad companies have shown

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little genuine interest in the multiple opportunities legislators have offered to work out alternative arrangements to House Bill 2156. Time has run out. Arizona will proceed to provide its affected citizens with the information necessary to understand the effects of a new railroad route in their communities.

For all the reasons described in this letter, I am signing House Bill 2156 into law.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet Napolitano', with a long horizontal flourish extending to the right.

Janet Napolitano  
Governor

JN:LK

cc: The Honorable Timothy S. Bee  
The Honorable Jonathan Paton

Senate Engrossed House Bill

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

CHAPTER 284

**HOUSE BILL 2156**

AN ACT

AMENDING TITLE 28, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 29; RELATING  
TO RAILROAD PROJECT REVIEW.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 28, Arizona Revised Statutes, is amended by adding  
3 chapter 29, to read:

4 CHAPTER 29

5 RAILROAD PROJECT REVIEW

6 ARTICLE 1. GENERAL PROVISIONS

7 28-9401. Major rail project; review; fee; fund; hearing;  
8 exception; definitions

9 A. IF A RAILROAD HAS IDENTIFIED A ROUTE OR SITE OR IDENTIFIES A  
10 PREFERRED ALTERNATIVE ROUTE OR SITE FOR A MAJOR RAIL PROJECT, THE RAILROAD  
11 SHALL PROVIDE TO THE DEPARTMENT A FULL DISCLOSURE OF INFORMATION AS TO ANY  
12 ALTERNATIVE SITES OR ROUTES THE RAILROAD HAS EXAMINED AND A FULL DISCLOSURE  
13 OF THE FOLLOWING INFORMATION:

14 1. THE NATURE OF THE PROJECT, INCLUDING THE INFRASTRUCTURE REQUIRED  
15 AND THE ANTICIPATED SCOPE OF ACTIVITY TO BE ASSOCIATED WITH THE PROJECT ONCE  
16 IT IS OPERATIONAL.

17 2. WHETHER THE PROJECT IS CONSISTENT WITH LOCAL GOVERNMENT  
18 COMPREHENSIVE AND GENERAL PLANS AND ANY STATE OR FEDERAL RESOURCE MANAGEMENT  
19 PLANS.

20 3. WHETHER PRIME AND UNIQUE AGRICULTURAL LAND AREAS WILL BE AFFECTED  
21 OR ARE DESIGNATED AS IMPORTANT BY STATE, LOCAL OR TRIBAL AGENCIES.

22 4. AN EVALUATION FOR COMPATIBLE LAND USE DUE TO OPPOSING FUNCTIONAL  
23 NEEDS OR ENCROACHMENT TENDENCIES.

24 5. AN EVALUATION OF THE IMPACT, PROXIMITY, AVAILABILITY AND ACCESS TO  
25 STATE PARKS OR ENVIRONMENTALLY SENSITIVE AREAS.

26 6. WHETHER LOCAL GROUNDWATER RESOURCES, WELLS OR RIVER ALLOCATIONS  
27 WILL BE USED, INCLUDING ANY POSSIBLE SUBSIDENCE PROBLEM, THE AVAILABILITY OF  
28 POTABLE WATER FOR THE PROJECT, WHETHER THE PROJECT HAS A WATER ADEQUACY  
29 REPORT, IF APPLICABLE, OR SERVICE AGREEMENT FROM A MUNICIPALITY OR PRIVATE  
30 WATER COMPANY OR WHETHER THE PROJECT WILL BE PROVIDING A NEW WATER SYSTEM AND  
31 TREATMENT FACILITIES.

32 7. AN EVALUATION OF THE AREA FOR DEPTH TO GROUNDWATER FROM THE LAND  
33 SURFACE.

34 8. AN EVALUATION OF THE AREA FOR ON-SITE GROUNDWATER SEEPAGE OR  
35 SPRINGS THAT MAY INDICATE POTENTIAL DRAINAGE PROBLEMS OR IMPACTS TO THE  
36 GROUNDWATER SOURCE, INCLUDING EVIDENCE OF IMPOUNDMENT OF WATER ON THE PROJECT  
37 AREA AND WHETHER THE PROJECT WILL SIGNIFICANTLY ADD TO AN IMPERVIOUS LAND  
38 SURFACE AND INCREASE DEMANDS ON DRAINAGE FACILITIES.

39 9. AN EVALUATION OF THE PROJECT FOR POTENTIAL IMPACTS TO ANY  
40 GROUNDWATER SOURCE, SURFACE WATER SOURCE OR WATER DELIVERY SYSTEM.

41 10. WHETHER THERE IS ADEQUATE ROAD ACCESS, CAPACITY AND DESIGN, AND  
42 WHETHER THE PROJECT WILL CONTRIBUTE TO CONGESTION AT INTERSECTIONS OR CAUSE  
43 VISUAL OBSTRUCTIONS OF TRAFFIC OR TRANSPORTATION CORRIDORS.

1           11. WHETHER THE PROJECT IS WITHIN AN ATTAINMENT AREA OR A NONATTAINMENT  
2 AREA FOR WHICH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HAS APPROVED  
3 THE STATE IMPLEMENTATION PLAN AND WHETHER THE PROJECT WILL INDUCE AIR  
4 POLLUTANT CONCENTRATIONS.

5           12. THE MAXIMUM NOISE LEVEL FOR THE CLOSEST SENSITIVE NOISE RECEPTOR.  
6           13. AN EVALUATION OF THE POTENTIAL EXPOSURE TO HAZARDS FROM THE  
7 PROJECT, INCLUDING THE TRANSPORTATION, STORAGE OR OTHER ACCOMMODATION OF  
8 PESTICIDES, SANITARY AND TOXIC WASTE, TOXIC CHEMICALS, RADIOACTIVE MATERIALS,  
9 EXPLOSIVES, FLAMMABLE OR FIRE PRONE MATERIALS.

10           14. THE AMOUNT OF ANY ADDITIONAL COSTS THE RAILROAD MAY INCUR IF THE  
11 PROPOSED RAIL PROJECT IS MOVED TO AN ALTERNATIVE LOCATION.

12           B. THE RAILROAD SHALL NOT COMMENCE ANY EMINENT DOMAIN PROCEEDING WITH  
13 RESPECT TO A MAJOR RAIL PROJECT UNTIL AFTER THE REVIEW PROCESS PROVIDED FOR  
14 IN THIS SECTION IS COMPLETED. THE DEPARTMENT SHALL BEGIN A REVIEW OF THE  
15 PROJECT IMMEDIATELY AFTER THE RAILROAD SUBMITS THE NOTICE WITH THE DISCLOSURE  
16 AND ASSESSMENT OF INFORMATION REQUIRED BY THIS SECTION.

17           C. THE DEPARTMENT MAY CONTRACT WITH A CONSULTANT OR CONSULTANTS TO  
18 ASSIST IN ITS REVIEW OF THE INFORMATION PROVIDED BY THE RAILROAD.

19           D. THE DEPARTMENT SHALL HOLD AT LEAST ONE, AND NOT MORE THAN THREE,  
20 PUBLIC HEARINGS WITHIN ONE HUNDRED TWENTY DAYS AFTER RECEIVING THE  
21 INFORMATION REQUIRED BY THIS SECTION FROM THE RAILROAD AND SHALL RECORD  
22 PUBLIC COMMENTS ON THE PROPOSED RAIL PROJECT. THE DEPARTMENT SHALL FORWARD  
23 THE COMMENTS TO ANY FEDERAL, STATE OR LOCAL REGULATORY BODIES THAT MAY HAVE  
24 OVERSIGHT ON THE PROPOSED PROJECT. ALL INFORMATION RECEIVED BY THE  
25 DEPARTMENT FROM ANY SOURCE RELATING TO A RAIL PROJECT IS A PUBLIC RECORD  
26 PURSUANT TO ANY STATE OR FEDERAL LAW AS REQUIRED OR AS NECESSARY.

27           E. THE HEARING AND REVIEW PROCESS SHALL BE COMPLETED BY THE DEPARTMENT  
28 WITHIN ONE HUNDRED TWENTY DAYS AFTER RECEIVING THE INFORMATION FROM THE  
29 RAILROAD PURSUANT TO SUBSECTION A. THE REVIEW PROCESS IS NOT SUBJECT TO  
30 ADMINISTRATIVE APPEAL.

31           F. THE DEPARTMENT MAY ASSESS AND COLLECT FEES FROM THE PROPONENT OF  
32 THE RAILROAD PROJECT FOR THE PURPOSES OF THIS SECTION. THE RAILROAD REVIEW  
33 FUND IS ESTABLISHED CONSISTING OF FEES COLLECTED BY THE DEPARTMENT PURSUANT  
34 TO THIS SUBSECTION. THE DEPARTMENT SHALL ADMINISTER THE FUND. MONIES IN THE  
35 FUND ARE CONTINUOUSLY APPROPRIATED TO THE DEPARTMENT FOR THE PURPOSES OF THIS  
36 SECTION AND DO NOT REVERT TO THE STATE GENERAL FUND PURSUANT TO SECTION  
37 35-190. IN DETERMINING THE AMOUNT OF THE FEES, THE DIRECTOR MAY CONSIDER  
38 FACTORS INCLUDING THE COST OF CONSULTANTS, THE REVIEW PROCESS AND HEARINGS.  
39 THE DEPARTMENT SHALL REFUND TO THE RAILROAD ANY UNUSED PORTION OF THE FEES  
40 COLLECTED.

41           G. THIS SECTION DOES NOT APPLY IF THE POTENTIAL OR IDENTIFIED SITES OR  
42 ROUTES ARE FOR A MUTUAL RAIL PROJECT EVIDENCED BY A WRITING BETWEEN THE  
43 RAILROAD AND THIS STATE INCLUDING ANY ADOPTED STATE OR REGIONAL  
44 TRANSPORTATION PLAN.

1 H. THIS STATE IS NOT LIABLE FOR ANY ACTIONS TAKEN IN COMPLIANCE WITH  
2 THIS SECTION.

3 I. FOR THE PURPOSES OF THIS SECTION:

4 1. "CRITICAL INFRASTRUCTURE" MEANS ANY INFRASTRUCTURE THAT IF DAMAGED  
5 OR IMPACTED WOULD WEAKEN OR THREATEN THE INTEGRITY OF HOMELAND SECURITY IN  
6 THIS STATE OR THE UNITED STATES IN WHOLE OR IN PART.

7 2. "MAJOR RAIL PROJECT" MEANS A SUBSTANTIAL PROJECT BY A RAILROAD TO  
8 BUILD OR RELOCATE ANY RAIL YARD, RAIL SWITCHING FACILITY OR RAILROAD TRACKS.  
9 MAJOR RAIL PROJECT DOES NOT INCLUDE ROUTINE RAIL MAINTENANCE, UPGRADE OR  
10 REPAIR PROJECTS OR THE ADDITION OF SPURS TO SERVE EXISTING OR NEW CUSTOMERS.

11 3. "MUTUAL RAIL PROJECT" MEANS A RAIL PROJECT, INCLUDING A LIGHT RAIL  
12 OR COMMUTER RAIL PROJECT, IN WHICH THIS STATE IS INVOLVED THROUGH AN ADOPTED  
13 STATE OR REGIONAL TRANSPORTATION PLAN IN THE PLANNING, PREPARATION AND  
14 CONSTRUCTION THROUGH THE USE OF STATE RESOURCES. NOTWITHSTANDING STATE LAND  
15 SALE OR LEASE PROCESSES, THE MERE SALE OR LEASE OF STATE TRUST OR SOVEREIGN  
16 LAND ALONE DOES NOT CONSTITUTE A MUTUAL RAIL PROJECT UNLESS THE SALE OR LEASE  
17 IS PART OF A RAIL PROJECT IN WHICH THIS STATE IS INVOLVED THROUGH AN ADOPTED  
18 STATE OR REGIONAL TRANSPORTATION PLAN IN THE PLANNING, PREPARATION AND  
19 CONSTRUCTION THROUGH THE USE OF STATE RESOURCES AND THAT RAIL PROJECT IS  
20 SPECIFICALLY FOR A LIGHT RAIL OR COMMUTER RAIL LINE.

21 28-9402. Freight advisory council

22 THE DIRECTOR SHALL ESTABLISH A FREIGHT ADVISORY COUNCIL TO ADVISE THE  
23 DIRECTOR REGARDING FREIGHT SYSTEMS ISSUES, INFRASTRUCTURE AND PLANNING IN  
24 THIS STATE.

25 Sec. 2. Retroactivity

26 This act applies retroactively to any identified route or site and any  
27 identified preferred alternative route or site for a major rail project as  
28 defined in section 28-9401, Arizona Revised Statutes, as added by this act,  
29 to from and after December 31, 2007.

30 Sec. 3. Emergency

31 This act is an emergency measure that is necessary to preserve the  
32 public peace, health or safety and is operative immediately as provided by  
33 law.

**NOT ENACTED**

APPROVED BY THE GOVERNOR JUNE 27, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 27, 2008.