

Senate Engrossed House Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
Second Regular Session  
2010

CHAPTER 123

# **HOUSE BILL 2146**

AN ACT

AMENDING SECTIONS 37-284, 37-290, 37-291 AND 37-322.01, ARIZONA REVISED  
STATUTES; RELATING TO STATE TRUST LANDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 37-284, Arizona Revised Statutes, is amended to  
3 read:

4 37-284. Conflicting short-term lease applications; preference  
5 rights

6 A. A conflicting application for an existing lease for a term of not  
7 more than ten years shall be filed at least two hundred seventy days but not  
8 more than one year before the expiration date on the lease. THE CONFLICTING  
9 APPLICATION MUST BE ACCOMPANIED BY A LIST OF NONREMOVABLE IMPROVEMENTS ON THE  
10 LEASED LANDS ON FILE WITH THE DEPARTMENT, INCLUDING FENCES. THE CONFLICTING  
11 APPLICANT MUST POST A SURETY BOND OR OTHER FORM OF SECURITY IN THE AMOUNT OF  
12 TWO THOUSAND FIVE HUNDRED DOLLARS OR TWENTY PER CENT OF THE RENTAL PAYMENTS  
13 OVER THE TERM OF THE CURRENT LEASE, WHICHEVER IS GREATER. THE DEPARTMENT  
14 SHALL CALCULATE THE AMOUNT OF THE SECURITY WITHIN THIRTY DAYS AFTER RECEIVING  
15 THE CONFLICTING APPLICATION, AND THE CONFLICTING APPLICANT MUST POST THE  
16 SECURITY WITHIN THIRTY DAYS AFTER THE DEPARTMENT DETERMINES THE AMOUNT. IF  
17 THE CONFLICTING APPLICANT IS UNSUCCESSFUL OR WITHDRAWS THE APPLICATION, THE  
18 DEPARTMENT SHALL RETURN THE SECURITY TO THE APPLICANT. IF THE CONFLICTING  
19 APPLICANT IS SUCCESSFUL, THE SECURITY SHALL BE APPLIED AGAINST THE VALUE OF  
20 THE NONREMOVABLE IMPROVEMENTS.

21 B. When the department receives a conflicting application, the  
22 department shall give the existing lessee thirty days' notice to file an  
23 application for renewal pursuant to this section.

24 ~~B.~~ C. If two or more applicants apply to lease the same land for a  
25 term of not more than ten years, the department shall approve the application  
26 of the one who, after investigation or hearing, appears to have the best  
27 right and equity to the lease. The order of filing shall not be a  
28 controlling factor in deciding who is entitled to the lease. If it appears  
29 that none of the applicants has any right or equities superior to those of  
30 another that would outweigh an offer of additional rent, and if it is in the  
31 best interest of the trust, the department ~~may~~, at a stated time and after  
32 due notice to all applicants, MAY receive bids submitted in accordance with  
33 rules of the department. If one of the competing applicants is the existing  
34 lessee who has a preferred right of renewal pursuant to section 37-291, the  
35 department ~~may~~ SHALL extend the preferred right of renewal to the existing  
36 lessee if the existing lessee offers a bid matching the highest bid. The  
37 department shall approve the application of the bidder who in all respects is  
38 eligible to receive a lease upon the land and will pay the highest annual  
39 rental, or the department ~~may~~ reject all bids.

40 ~~C.~~ D. Before the department issues a lease to the successful bidder,  
41 the successful bidder shall pay one full year of rent and, unless all parties  
42 agree to an extended payment schedule, the appraised value of any  
43 nonremovable improvements pursuant to section 37-322.01. If the successful  
44 bidder does not pay one full year of rent or the value of any nonremovable  
45 improvements within thirty days after the department requests payment, the

1 department may offer the lease to the next best bidder. A lease that is  
2 issued pursuant to this section shall require the lessee to pay annual rent  
3 that is equal to the amount of annual rent bid, unless a reappraisal or  
4 rental adjustment requires a higher amount.

5 ~~D.~~ E. Any person residing upon contiguous land for which the person  
6 has an allowed United States homestead entry or for which the person has  
7 received a patent from the United States upon a homestead entry ~~shall~~, upon  
8 application, SHALL have a preferred right to lease the amount of contiguous  
9 state land necessary for personal use.

10 ~~E.~~ F. Any person lawfully occupying any lands, the title to which is  
11 acquired by the state by operation of law, shall have a preference right to  
12 lease the occupied land provided application to do so is made within thirty  
13 days from and after written notice by the department to such occupant of the  
14 acquisition of title.

15 Sec. 2. Section 37-290, Arizona Revised Statutes, is amended to read:

16 37-290. Cancellation of lease on reclassification of lands;  
17 preferred right to lease reclassified land; refund of  
18 advance rental payments

19 A. Upon reclassification of state lands, whether upon application for  
20 reclassification or upon initiation by the commissioner, notice of the  
21 decision shall be served upon all interested parties of record in the  
22 department. If no appeal from the reclassification is taken as provided for  
23 by law, or if the decision of the commissioner is upheld on appeal, any lease  
24 upon the land reclassified shall be automatically cancelled, ~~and the land~~  
25 ~~offered for lease in the same manner as if it had not been previously leased.~~  
26 ON THE ISSUANCE OF A NEW LEASE OR AT THE TIME OF AUCTION, WHICHEVER OCCURS  
27 FIRST.

28 B. ~~A lessee, or~~ An applicant for renewal of a lease ~~at the time of the~~  
29 ~~notice of the reclassification~~ shall have a preferred right to lease the  
30 reclassified land at the reappraised rental thereof for a term not longer  
31 than ten years as determined by the department. The preferred right to lease  
32 does not extend to a lessee who has not substantially complied with the terms  
33 of ~~his~~ THE lease or who has not placed the land to the use prescribed in the  
34 lease during the term of the lease or within the time prescribed in the  
35 lease, except when that action was excused for good cause by written  
36 authorization by the department.

37 C. Upon cancellation of the lease of reclassified lands, if the land  
38 as reclassified is leased to a person other than the existing lessee or  
39 applicant for a renewal lease, the unused pro rata of an advance rental  
40 payment made by the existing lessee shall be refunded to such lessee, and the  
41 lessee shall be protected in improvements on the land owned by the lessee in  
42 the same manner as provided in section 37-322.01.

1           Sec. 3. Section 37-291, Arizona Revised Statutes, is amended to read:  
2           37-291. Preferred rights to renewal of lease; exceptions;  
3                           notification

4           A. Upon application to the state land department not less than thirty  
5 days nor more than one year before the expiration of a lease of state lands,  
6 the lessee, if ~~he is~~ a bona fide resident of the state or legally authorized  
7 to transact business in this state, shall have a preferred right to renewal,  
8 bearing even date with the expiration of the old lease, for a term not longer  
9 than ten years, as determined by the department, at a reappraised rental.

10           B. The preferred right of renewal shall not extend to a lessee who has  
11 not substantially complied with the terms of ~~his~~ THE lease or who has not  
12 placed the land to the use prescribed in the lease during its term or within  
13 the time prescribed, unless for good cause the failure to perform was given  
14 written authorization by the department. If the department determines the  
15 continued leasing of the land is not in the best interest of the state trust,  
16 the lease shall not be renewed.

17           C. Not later than ninety days before the expiration of a lease, the  
18 department shall:

19           1. Notify the lessee by mail of the pending expiration, enclosing an  
20 application to renew the lease.

21           2. Send a copy of the notice to any parties who have registered with  
22 the department as mortgagees or other lienholders of the lessee's interest by  
23 certified mail, return receipt requested.

24           D. IF THE EXISTING LEASE IS NOT RENEWED AND THE EXISTING LESSEE IS IN  
25 SUBSTANTIAL COMPLIANCE WITH THE TERMS OF THE LEASE AND THERE IS NO NEW LESSEE  
26 OR BUYER FOR THE LAND WITHIN NINETY DAYS AFTER THE LEASE TERMINATION, THE  
27 COMMISSIONER MUST SIGN AN AGREEMENT TO REIMBURSE THE FORMER LESSEE FOR THE  
28 IMPROVEMENTS ON THE LANDS AS PROVIDED BY SECTION 37-322.01.

29           Sec. 4. Section 37-322.01, Arizona Revised Statutes, is amended to  
30 read:

31           37-322.01. Reimbursement by succeeding lessee of lands not  
32                           subject to auction for nonremovable improvements;  
33                           failure to pay; penalty

34           A. A lessee of state lands that are not subject to lease by auction  
35 shall be reimbursed by a succeeding lessee for improvements placed on the  
36 lands which are not removable.

37           B. If the retiring lessee and the new lessee do not agree upon the  
38 value of the improvements, or if there is no amortized value established for  
39 the improvements, either party may file with the state land department an  
40 application for appraisal of the improvements. If a lease is granted  
41 pursuant to section 37-284, a request for an appraisal shall be made more  
42 than ninety days before the expiration of the lease. Thereafter an appraisal  
43 of the improvements shall be made pursuant to section 37-322. FOR  
44 AGRICULTURAL AND GRAZING LEASES, THE APPRAISER SHALL CONSIDER THE FOLLOWING  
45 IN DETERMINING THE VALUE OF THE IMPROVEMENTS:

- 1           1. THE IMPACT TO SURROUNDING STATE LAND.
- 2           2. REPLACEMENT COST MINUS PHYSICAL AND FUNCTIONAL OBSOLESCENCE AS IT
- 3 RELATES TO AGRICULTURE AND GRAZING.
- 4           3. ANY OTHER FACTORS THAT THE COMMISSIONER DETERMINES TO BE RELEVANT.
- 5           C. Upon making the appraisal, the department shall give notice of the
- 6 amount by certified mail to each person interested in the appraisal. The
- 7 notice shall require that the new lessee pay to the department for the prior
- 8 lessee the entire amount of the appraisal before issuance of the lease unless
- 9 all parties agree to an extended payment schedule. If the improvements were
- 10 placed on state lands subject to a commercial lease and if the commissioner
- 11 determines that the value of the improvements is so great that it inhibits
- 12 the commissioner's ability to lease the property at fair market value, the
- 13 commissioner may require reimbursement of the improvements pursuant to a
- 14 payment schedule of not more than five years.
- 15           D. If the improvements are not paid for as agreed in an extended
- 16 payment schedule, the succeeding lessee shall not be permitted to sell,
- 17 assign or transfer his lease nor sell, assign or remove any improvements
- 18 whatever from the land until the entire amount of the appraised value of the
- 19 improvements has been paid. Upon default the succeeding lessee shall be
- 20 subject to the same penalties and liabilities as provided by section 37-288
- 21 for failure to pay rents, including a cancellation of the lease.

APPROVED BY THE GOVERNOR APRIL 23, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2010.

Passed the House March 11, 2010

Passed the Senate April 12, 2010

by the following vote: 41 Ayes,

by the following vote: 19 Ayes,

16 Nays, 2 Not Voting

10 Nays, 1 Not Voting

[Signature]  
Speaker of the House  
1 vacancy  
1 pro Tempore

[Signature]  
President of the Senate

[Signature]  
Chief Clerk of the House

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

           day of           , 20    

at            o'clock            M.

            
Secretary to the Governor

Approved this            day of

at            o'clock            M.

            
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this            day of           , 20    

at            o'clock            M.

            
Secretary of State

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 20, 2010,

by the following vote: 38 Ayes,

17 Nays, 5 Not Voting



Speaker of the House



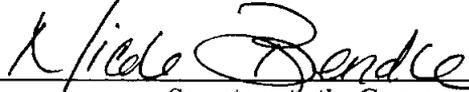
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

20 day of April, 2010,

at 4:40 o'clock P. M.

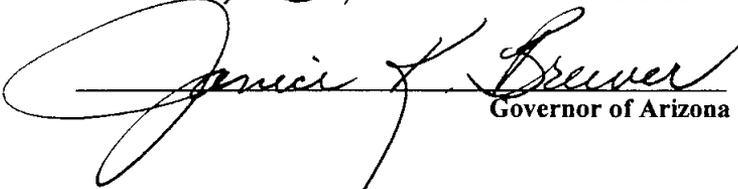


Secretary to the Governor

Approved this 23<sup>rd</sup> day of

April, 2010,

at 4:34 o'clock P. M.



Governor of Arizona

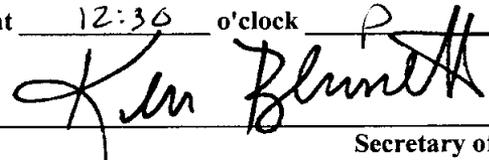
H.B. 2146

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 26<sup>th</sup> day of April, 2010,

at 12:30 o'clock P. M.



Secretary of State