

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

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 (EMERGENCY NOT ENACTED)

31 Sec. 3. Emergency

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