



# El Dorado

## Holdings, Inc.

Agenda Item #6

March 24, 2010

Jerry Colangelo  
JDM Partners  
2400 E. Arizona Biltmore Circle Building 2, Suite 1270  
Phoenix, AZ 85016

Dear Jerry,

I am transmitting the attached information to you that concerns some legislation that was passed in 2008 in Arizona. The legislation was HB 2156 in 2008, which targets rail companies in Arizona. It has been brought to our attention that this new legislation has had the effect of putting a "chill" on activities being contemplated by railroad companies in Arizona.

It is our understanding that this legislation is causing the railroads to question future investments in Arizona. For example, as the Port of Punta Colonet in Mexico moves forward, if we expect to be able to capitalize on the economic development opportunities in Arizona, it will require significant involvement and coordination with Union Pacific and BNSF. This type of legislation does not send the message that Arizona is well suited to take the lead in this type of economic development strategy.

The legislation was based upon some concerns regarding the process by which railroad companies determine their routes and rail project locations. Because there was a concern that railroad companies made such decisions without public oversight, this legislation requires ADOT to hold public meetings to review any proposed actions by rail companies that involve the identification of a rail route or the site of a major rail project. In order to fund this review, the legislation allows ADOT to establish a Railroad Review Fund. The railroad companies are the funding source for this Railroad Review Fund.

There are no actual "teeth" in this legislation, it only requires that ADOT conduct these public meetings to seek input, but there is no process or requirement that the railroad companies amend their plans based on the public input. There was legislation in a prior session, vetoed by then Governor Napolitano, which would have given Corporation Commission oversight on these railroad decisions. It is our understanding that the veto was based on the fact that the State has no authority to oversee the railroads in this capacity.

I believe that the legislation should be reviewed for the following reasons:

1. This type of legislation sends a negative message to the rail industry and attempts to introduce a public oversight component to their private business decisions.
2. The process identified in this legislation provides a public forum for the introduction of comments that may have no impact on the railroad's business decisions. In essence it gives a false sense of entitlement to people attending these meetings.
3. It places ADOT in the unenviable position of conducting these meetings and acting as the lead agency responsible for addressing these comments without any authority to implement the comments heard at the meeting.
4. In the current environment, the State should carefully consider any legislation that would prevent or delay private investments that would have positive benefits to the State economy.

As a business leader and a member of the Governor's Commerce Advisory Council, I would like your thoughts on the appropriateness of this legislation and to determine if there is a need to amend or repeal it.

Next week, I am meeting with the Arizona Chamber of Commerce, who I will also discuss this question with.

Sincerely,



Mike Ingram

Copy: Carol Colombo  
Don Brandt  
Don Cardon  
Paul Johnson  
Jim Pederson  
Bill Post  
Margie Emmerman  
Eric Anderson



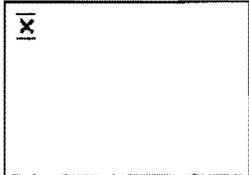
Forty-eighth Legislature - Second Regular Session

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Assigned to TRANS



AS PASSED BY THE SENATE

**ARIZONA STATE SENATE**  
*Forty-eighth Legislature, Second Regular Session*

**AMENDED**  
FACT SHEET FOR H.B. 2156

[railroad sites; review](#)  
**(NOW: [railroad projects; review](#))**

Purpose

An emergency measure, retroactive to January 1, 2008, that requires a railroad that has identified potential sites for a major rail project to provide the Arizona Department of Transportation (ADOT) with specified information and requires ADOT to review the proposed major rail project. Establishes the Railroad Review Fund (Fund) and requires the Director of ADOT to establish a Freight Advisory Council.

Background

Arizona Revised Statutes (A.R.S.) § 40-809 governs the specific powers of railroad corporations (railroad). Under this section, railroads are permitted, among other allowances, to: 1) make surveys and select routes for railroad and telegraph lines; 2) lay out the railroad, which is prohibited from exceeding 200 feet in width, and construct and maintain it with single or double track; 3) construct the railroad and telegraph lines across, along or upon any stream of water, water-course, street or highway, or across any railway, canal, ditch or flume; 4) cross, intersect or unite the railroad with any other railroad; 5) take lands and materials to be used in the construction and maintenance of railroad and telegraph lines in the manner provided by law relating to eminent domain in the event such lands and materials cannot be obtained by agreement with the owners thereof; 6) transport persons and property on their railroad; and 7) regulate the speed of locomotives or other machinery used on the railroad, and establish, execute and enforce all useful regulations for management of their trains and business.

The Surface Transportation Board (STB) was created in the Interstate Commerce Commission Termination Act of 1995 and is the successor agency to the Interstate Commerce Commission. The STB is an economic regulatory agency that Congress has charged with the fundamental mission of resolving railroad rate and service disputes and reviewing proposed railroad mergers. The STB is decisionally independent, although it is administratively affiliated with the U.S. Department of Transportation. Under U.S.C. § 10501 (b)(2), the STB has jurisdiction over railroad rate and service issues and rail restructuring transactions, including mergers, line sales, line construction and line abandonment.

The fiscal impact associated with this proposed legislation is unknown.

Provisions

*Railroad Project Information*

1. Requires a railroad, if a railroad has identified a route or site or identifies a preferred alternative route or site for a major rail project, to provide ADOT a full disclosure of information as to any alternative sites or routes the railroad has examined and a full disclosure of the following assessment information:
  - a) the nature of the project, including the infrastructure required and the anticipated scope of activity to be associated with the project once it is operational.
  - b) whether the project is consistent with local government comprehensive and general plans and any state or federal resource management plans.
  - c) whether prime and unique agricultural land areas will be affected or are designated as important by state, local or tribal agencies.
  - d) an evaluation of the impact, proximity, availability and access to state parks and environmentally sensitive areas.
  - e) whether local groundwater resources, wells or river allocations will be used, including any possible subsidence problem, the availability of potable water for the project, whether the project has a water adequacy report, if applicable, or service agreement from a municipality or private water company or whether the project will be providing a new water system and treatment facilities.
  - f) an evaluation of the area for depth to groundwater from the land surface.
  - g) an evaluation of the area for on-site groundwater seepage or springs that may indicate potential drainage problems or impacts to the groundwater source, including evidence of impoundment of water on the project area and whether the project will significantly add to an impervious land surface and increase demands on drainage facilities.
  - h) an evaluation of the project for potential impacts to any groundwater source, surface water source or water delivery system.
  - i) whether there is adequate road access, capacity and design, and whether the project will contribute to congestion at intersections or cause visual obstructions of traffic or transportation corridors.
  - j) whether the project is within an attainment area or a non-attainment area for which the U.S. Environmental Protection Agency has approved the state implementation plan and whether the project will include air pollutant concentrations.
  - k) the maximum noise level for the closest sensitive noise receptor.
  - l) an evaluation of the potential exposure to hazards from the project, including the transportation, storage or other accommodation of pesticides, sanitary and toxic waste, toxic chemicals, radioactive materials, explosives, flammable or fire prone materials.
  - m) the amount of any additional costs the railroad may incur if the proposed rail project is moved to an alternative location.

*Railroad Project Review*

2. Prohibits the railroad from commencing any eminent domain proceeding with respect to a project until after ADOT completes its review process.
3. Requires ADOT to begin its review immediately after the railroad submits the disclosure and assessment of information.
4. Allows ADOT to contract with a consultant or consultants to assist in its review.
5. Requires ADOT to hold at least one, and not more than three, public hearings within 120 days after receiving the information required from the railroad.
6. Requires ADOT to record public comments on the project and to forward the comments to any federal, state or local regulatory bodies that may have oversight on the project.
7. Specifies that all information received by ADOT from any source relating to a rail project is public record.
8. Requires the hearing and review process to be completed by ADOT within 120 days after receiving the information from the railroad.
9. Specifies that the review process is not subject to administrative appeal.

10. Specifies that the review process does not apply if the potential or identified sites or routes are for a mutual rail project evidenced by a writing between the railroad and this state including any adopted state or regional transportation plan.
11. Specifies that this state is not liable for any actions taken in compliance with the review process.

*Railroad Review Fund (Fund)*

12. Allows ADOT to assess and collect fees from the proponent of the railroad project for the purpose of reviewing information provided by the railroad.
13. Establishes the Fund consisting of fees collected by ADOT for reviewing information provided by the railroad and requires ADOT to administer the Fund.
14. Specifies that monies in the Fund are continuously appropriated to ADOT and do not revert to the state General Fund.
15. Allows the Director of ADOT, in determining the amount of the fees, to consider factors including the cost of consultants, the review process and hearings.
16. Requires ADOT to refund any unused portion of collected fees to the railroad.

*Freight Advisory Council*

17. Requires the Director of ADOT to establish a Freight Advisory Council to advise the Director of ADOT regarding freight systems issues, infrastructure and planning in this state.

*Miscellaneous*

18. Defines "critical infrastructure" as any infrastructure that if damaged or impacted would weaken or threaten the integrity of homeland security in this state or the U.S. in whole or in part.
19. Defines "major rail project" as a substantial project by a railroad to build or relocate any rail yard, rail switching facility or railroad tracks and does not include routine rail maintenance, upgrade or repair projects or the addition of spurs to serve existing or new customers.
20. Defines "mutual rail project" as a rail project, including a light or commuter rail project, in which this state is involved through an adopted state or regional transportation plan in the planning, preparation and construction through the use of state resources.
21. Specifies that aside from state land sale or lease processes, the mere sale or lease of state trust or sovereign land alone does not constitute a mutual rail project unless the sale or lease is part of a rail project in which this state is involved through an adopted state or regional transportation plan in the planning preparation and construction though the use of state resources and that rail project is specifically for a light rail or commuter rail line.
22. Applies retroactively, from and after January 1, 2008, to any identified route or site and any identified preferred alternative route or site for a major rail project.
23. Becomes effective on signature of the Governor, if the emergency clause is enacted.

Amendments Adopted by Committee of the Whole

1. Outlines the information a railroad must provide to ADOT.
2. Modifies the time frame in which ADOT must hold a public hearing to review information provided by a railroad.
3. Expands the definition of "mutual rail project."

4. Requires the Director of ADOT to establish a Freight Advisory Council.
5. Prescribes a retroactive effective date.

House Action

Senate Action

CMMA	2/26/08	DPA/SE	8-0-0-2-0	TRANS	4/1/08	DP	4-0-1-0
3 <sup>rd</sup> Read	3/24/08		42-15-3-0	3 <sup>rd</sup> Read	6/23/08		18-6-6-0

Prepared by Senate Research  
June 23, 2008  
RD/ac

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.