House Engrossed Senate Bill

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

CHAPTER 182

# SENATE BILL 1123

AN ACT

AMENDING SECTIONS 28-401, 28-7653, 28-7654, 28-7655, 28-7656, 28-7657, 28-7658 AND 42-5032, ARIZONA REVISED STATUTES; PROVIDING FOR CONDITIONAL ENACTMENT; RELATING TO BRIDGE CONSTRUCTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 28-401, Arizona Revised Statutes, is amended to read:

28-401. Intergovernmental agreements

A. The department may contract under title 11, chapter 7, article 3 with a state public agency in this state or any other state if the general welfare of this state will be promoted and protected and if not in conflict with any other law.

B. The director shall enter into agreements on behalf of this state with political subdivisions or Indian tribes for the improvement or maintenance of state routes or for the joint improvement or maintenance of state routes.

C. The department may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 with a county with a population of more than two million persons ~~according to the most recent United States decennial census~~ for the construction, design, acquisition and attendant acquisition costs of a county highway bridge to provide direct access to commercial, residential and recreational facilities. The agreement shall:

1. Contain the commitment of the county to pay other monies for the purpose of financing the bridge.

2. State the responsibilities of each party with regard to planning, designing, constructing, owning and maintaining the bridge.

3. Provide that payment for the costs of the bridge shall be made from contributions from the parties to the agreement and other contributors before the use of state transaction privilege tax distributions.

D. THE DEPARTMENT MAY ENTER INTO AN INTERGOVERNMENTAL AGREEMENT PURSUANT TO TITLE 11, CHAPTER 7, ARTICLE 3 WITH A COUNTY WITH A POPULATION OF MORE THAN TWO MILLION PERSONS FOR THE DESIGN, RECONSTRUCTION AND IMPROVEMENT COSTS OF A COUNTY HIGHWAY APPROACHING AND TRAVERSING A BRIDGE CONSTRUCTED PURSUANT TO SUBSECTION C OF THIS SECTION. THE AGREEMENT SHALL:

1. CONTAIN THE COMMITMENT OF THE COUNTY TO PAY OTHER MONIES FOR THE PURPOSE OF FINANCING THE HIGHWAY IMPROVEMENTS.

2. STATE THE RESPONSIBILITIES OF EACH PARTY WITH REGARD TO PLANNING, DESIGNING, CONSTRUCTING, OWNING AND MAINTAINING THE HIGHWAY.

3. PROVIDE THAT PAYMENT FOR THE COSTS SHALL BE MADE FROM CONTRIBUTIONS FROM THE PARTIES TO THE AGREEMENT AND OTHER CONTRIBUTORS BEFORE THE USE OF STATE TRANSACTION PRIVILEGE TAX DISTRIBUTIONS.

4. PROVIDE FOR REIMBURSEMENT TO THE STATE GENERAL FUND OF THE AMOUNT OF HIGHWAY IMPROVEMENT REVENUES PAID TO THE HIGHWAY IMPROVEMENT INTEREST FUND OR REDEMPTION FUND UNDER SECTION 28-7656, SUBSECTION B ON THE VOLUNTARY CONVEYANCE OF A MAJORITY OWNERSHIP INTEREST IN A SPORTS ENTERTAINMENT FACILITY AS PRESCRIBED BY SECTION 42-5032, SUBSECTION B.

5. CONTAIN THE REPRESENTATION OF THE COUNTY THAT IT HAS THE LEGALLY BINDING ASSURANCE OF THE OWNER OF A SPORTS ENTERTAINMENT FACILITY AS DEFINED IN SECTION 42-5032, SUBSECTION E, THAT THE OWNER WILL REIMBURSE THE COUNTY

FOR ANY AND ALL EXPENSE THE COUNTY MAY INCUR UNDER SUBSECTION D, PARAGRAPH 4 OF THIS SECTION AND SECTION 42-5032, SUBSECTION B.

6. BE SUBMITTED TO THE JOINT LEGISLATIVE BUDGET COMMITTEE FOR ITS REVIEW BEFORE THE EXECUTION OF THE AGREEMENT.

~~D.~~ E. The department may enter into agreements with Indian tribes to provide a method or formula to refund taxes paid on exempt motor fuel purchases or use pursuant to this title. For the purposes of this subsection, "motor fuel" has the same meaning prescribed in section 28-5601.

~~E.~~ F. The department may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 that obligates the department to indemnify and defend a city, town, county, flood control district, irrigation district or agricultural improvement district or any other political subdivision or governmental agency against claims of liability for injuries, losses or damages incurred in any way as a result of the acts or omissions of the department, including acts, errors, omissions or mistakes of any person for which the department may be liable, and arising out of the construction, operation or maintenance of department projects or facilities or use of department projects or facilities. A city, town, county, flood control district, irrigation district or agricultural improvement district or any other political subdivision or governmental agency may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 that obligates such an entity to indemnify and defend the department against claims of liability for injuries, losses or damages incurred in any way as a result of the acts or omissions of such entity, including acts, errors, omissions or mistakes of any person for which the entity may be liable, and arising out of the construction, operation or maintenance of projects or facilities or use of projects or facilities. Any indemnification pursuant to an intergovernmental agreement must be approved by state risk management in the department of administration.

Sec. 2. Section 28-7653, Arizona Revised Statutes, is amended to read:

28-7653. <u>Bonds secured by bridge construction revenues; bonds secured by highway improvement revenues</u>

A. If a majority of the members of the county board of supervisors authorizes the issuance of bonds SECURED BY BRIDGE CONSTRUCTION REVENUES by resolution dated before July 1, 1998, the county may issue the bonds so authorized in the manner provided in this article. The bonds SECURED BY BRIDGE CONSTRUCTION REVENUES may be authorized in an aggregate principal amount of not more than five million dollars.

B. IF A MAJORITY OF THE MEMBERS OF THE COUNTY BOARD OF SUPERVISORS AUTHORIZES THE ISSUANCE OF BONDS SECURED BY HIGHWAY IMPROVEMENT REVENUES BY RESOLUTION DATED BEFORE DECEMBER 31, 2004, THE COUNTY MAY ISSUE THE BONDS SO AUTHORIZED IN THE MANNER PROVIDED IN THIS ARTICLE. BONDS SECURED BY HIGHWAY IMPROVEMENT REVENUES MAY BE AUTHORIZED IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN FIVE MILLION DOLLARS.

C. ALL PROCEEDS, REVENUES, ACCOUNTING AND PAYMENTS WITH RESPECT TO BONDS SECURED BY BRIDGE CONSTRUCTION REVENUES PURSUANT TO THIS ARTICLE SHALL BE CONDUCTED AND MAINTAINED SEPARATELY FROM THOSE WITH RESPECT TO BONDS SECURED BY HIGHWAY IMPROVEMENT REVENUES PURSUANT TO THIS ARTICLE.

~~B.~~ D. ~~The~~ Bonds ISSUED PURSUANT TO THIS ARTICLE shall not be considered to be a debt of the county or the state within any constitutional or statutory debt limit.

~~C.~~ E. When ~~the~~ bonds ISSUED PURSUANT TO THIS ARTICLE are sold, a schedule shall be filed with the county treasurer showing the amounts of principal and interest to be paid at each principal and interest payment date.

~~D.~~ F. The county shall pledge all or any part of the bridge construction revenues to be received and the county's rights in the BRIDGE CONSTRUCTION intergovernmental agreement to the payment of an amount of the bonds SECURED BY BRIDGE CONSTRUCTION REVENUES. THE COUNTY SHALL PLEDGE ALL OR ANY PART OF THE HIGHWAY IMPROVEMENT REVENUES TO BE RECEIVED AND THE COUNTY'S RIGHTS IN THE HIGHWAY IMPROVEMENT INTERGOVERNMENTAL AGREEMENT TO THE PAYMENT OF AN AMOUNT OF THE BONDS SECURED BY HIGHWAY IMPROVEMENT REVENUES. ~~This pledge constitutes~~ THE PLEDGES CONSTITUTE an irrevocable assignment to the officer charged with paying the APPLICABLE bonds that is binding on the county. No notice of the assignment need be filed or recorded and no public notice of any nature is required to make the pledge effective against any person claiming an interest in the bridge construction revenues OR HIGHWAY IMPROVEMENT REVENUES, AS APPLICABLE, except a holder of the bonds. On receipt of any payment of bridge construction revenues OR HIGHWAY IMPROVEMENT REVENUES, the county treasurer shall cause a sufficient portion of the amount received to be deposited in the BRIDGE CONSTRUCTION redemption fund and interest fund, OR THE HIGHWAY IMPROVEMENT REDEMPTION FUND OR INTEREST FUND, established under section 28-7656 pertaining to the APPLICABLE bonds.

~~E.~~ G. No BRIDGE CONSTRUCTION bondholder may claim a preference as to source of payment over any other BRIDGE CONSTRUCTION bondholder of the same series. NO HIGHWAY IMPROVEMENT BONDHOLDER MAY CLAIM A PREFERENCE AS TO SOURCE OF PAYMENT OVER ANY OTHER HIGHWAY IMPROVEMENT BONDHOLDER OF THE SAME SERIES.

Sec. 3. Section 28-7654, Arizona Revised Statutes, is amended to read:

28-7654. Issuance of bonds

A. The county board of supervisors is authorized to issue bonds secured by a pledge of bridge construction revenues.

B. THE COUNTY BOARD OF SUPERVISORS IS AUTHORIZED TO ISSUE BONDS SECURED BY A PLEDGE OF HIGHWAY IMPROVEMENT REVENUES.

~~B.~~ C. ~~The~~ ANY bonds ISSUED PURSUANT TO THIS ARTICLE may be issued in one or more series, bear the dates, be payable in the medium of payment and at the places, bear the rates of interest, including variable rates, carry the registration privileges and prior redemption provisions, be executed in the manner, contain the other terms, covenants and conditions and be in the

form the board of supervisors prescribes. The bonds shall be sold at, above or below par in the manner as the board of supervisors determines.

Sec. 4. Section 28-7655, Arizona Revised Statutes, is amended to read:

28-7655. Characteristics of bonds

The bonds issued under this article:

1. Are fully negotiable within the meaning and for all purposes provided by title 47.

2. Are payable only according to their terms from bridge construction revenues OR HIGHWAY IMPROVEMENT REVENUES, AS APPLICABLE, and are not general, special or other obligations of the issuing county or this state. The bonds do not constitute a legal debt of this state and are not enforceable against this state. Payment of the bonds shall not be made from any monies other than those allowed to be pledged.

Sec. 5. Section 28-7656, Arizona Revised Statutes, is amended to read:

28-7656. Interest fund; redemption fund

A. The treasurer of the county issuing ~~the~~ bonds SECURED BY BRIDGE CONSTRUCTION REVENUES shall establish an interest fund and a redemption fund for paying the bonds. The treasurer shall deposit into the funds bridge construction revenues in amounts sufficient to pay the interest and principal of the bonds as they mature. The funds shall be used solely to pay principal and interest on the bonds.

B. THE TREASURER OF THE COUNTY ISSUING BONDS SECURED BY HIGHWAY IMPROVEMENT REVENUES SHALL ESTABLISH AN INTEREST FUND AND A REDEMPTION FUND FOR PAYING THE BONDS. THE TREASURER SHALL DEPOSIT INTO THE FUNDS HIGHWAY IMPROVEMENT REVENUES IN AMOUNTS SUFFICIENT TO PAY THE INTEREST AND PRINCIPAL OF THE BONDS AS THEY MATURE. THE FUNDS SHALL BE USED SOLELY TO PAY THE PRINCIPAL AND INTEREST ON THE BONDS.

C. THE FUNDS UNDER SUBSECTIONS A AND B SHALL BE ESTABLISHED AND MAINTAINED SEPARATELY AND USED EXCLUSIVELY FOR THE RESPECTIVE PURPOSES FOR WHICH THEY ARE ESTABLISHED.

Sec. 6. Section 28-7657, Arizona Revised Statutes, is amended to read:

28-7657. Pledge of revenues to secure debt instruments

A. Notwithstanding any other provision of this article, a county that receives bridge construction revenues may pledge, by separate covenant included in the resolution authorizing the issuance of ~~any~~ BRIDGE CONSTRUCTION REVENUE bonds under this article or obligations it may incur, future receipts of the revenues to the payment of the BRIDGE CONSTRUCTION REVENUE bonds or to the costs of the bridge. The pledge may be included in the resolution authorizing the issuance of the bonds.

~~B.~~ The resolution authorizing THE ISSUANCE OF the bonds may also authorize assigning bridge construction revenues to a trustee or paying agent to secure the bonds.

B. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A COUNTY THAT RECEIVES HIGHWAY IMPROVEMENT REVENUES MAY PLEDGE, BY SEPARATE COVENANT INCLUDED IN THE RESOLUTION AUTHORIZING THE ISSUANCE OF HIGHWAY IMPROVEMENT

REVENUE BONDS UNDER THIS ARTICLE OR OBLIGATIONS IT MAY INCUR, FUTURE RECEIPTS OF THE REVENUES TO THE PAYMENT OF THE HIGHWAY IMPROVEMENT REVENUE BONDS OR TO THE COSTS OF THE HIGHWAY IMPROVEMENTS. THE PLEDGE MAY BE INCLUDED IN THE RESOLUTION AUTHORIZING THE ISSUANCE OF THE BONDS. THE RESOLUTION AUTHORIZING THE ISSUANCE OF THE BONDS MAY ALSO AUTHORIZE ASSIGNING HIGHWAY IMPROVEMENT REVENUES TO A TRUSTEE OR PAYING AGENT TO SECURE THE BONDS.

Sec. 7. Section 28-7658, Arizona Revised Statutes, is amended to read:

28-7658. Agreement of state

A. This state pledges to and agrees with the holders of the bonds SECURED BY BRIDGE CONSTRUCTION REVENUES AND HIGHWAY IMPROVEMENT REVENUES that it will not limit, alter or impair the rights vested in a county under this article to receive bridge construction revenues OR HIGHWAY IMPROVEMENT REVENUES, AS APPLICABLE, AND AS necessary to produce sufficient revenue to fulfill the terms of any intergovernmental agreements made with the county, or in any way impair the rights and remedies of the bondholders to receive ~~bridge construction~~ THE NECESSARY revenues, until all THE APPLICABLE bonds issued under this article~~,~~ are fully met and discharged.

B. The county may include this pledge and undertaking in its resolutions and indentures securing the bonds under this article.

Sec. 8. Section 42-5032, Arizona Revised Statutes, is amended to read:

42-5032. Distribution of bridge construction revenues to county; definitions

A. ~~Through June 30, 2010,~~ If, by June 30, 1998, the department of transportation enters into an intergovernmental agreement pursuant to section 28-401, SUBSECTION C or section 28-7652, SUBSECTION A for the construction of a bridge, the state treasurer shall pay each month, beginning from and after June 30, 1998 THROUGH JUNE 30, 2010, pursuant to section 42-5029, subsection D, paragraph 4, one-twelfth of the amount determined under THIS subsection ~~B of this section~~ to a county that issues bonds pursuant to title 28, chapter 21, article 4 or enters into an intergovernmental agreement pursuant to section 28-401, SUBSECTION C.

~~B.~~ The amount to be paid under THIS subsection ~~A of this section~~ is the amount of state transaction privilege tax revenues received each calendar year, up to four hundred sixteen thousand six hundred sixty-seven dollars, from TAXPAYERS DESCRIBED IN SUBSECTION C OF THIS SECTION.

B. IF, BY DECEMBER 30, 2004, THE DEPARTMENT OF TRANSPORTATION ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT PURSUANT TO SECTION 28-401, SUBSECTION D OR SECTION 28-7652, SUBSECTION B FOR THE DESIGN, RECONSTRUCTION AND IMPROVEMENT OF A COUNTY HIGHWAY APPROACHING AND TRAVERSING A BRIDGE FINANCED PURSUANT TO SUBSECTION A OF THIS SECTION, THE STATE TREASURER SHALL PAY EACH MONTH, BEGINNING FROM AND AFTER JUNE 30, 2007 THROUGH JUNE 30, 2019, PURSUANT TO SECTION 42-5029, SUBSECTION D, PARAGRAPH 4, ONE-TWELFTH OF THE AMOUNT DETERMINED UNDER THIS SUBSECTION TO A COUNTY THAT ISSUES BONDS PURSUANT TO TITLE 28, CHAPTER 21, ARTICLE 4 OR ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT PURSUANT TO SECTION 28-401, SUBSECTION D. THE AMOUNT TO BE PAID UNDER THIS

SUBSECTION IS THE AMOUNT OF STATE TRANSACTION PRIVILEGE TAX REVENUES RECEIVED EACH CALENDAR YEAR, UP TO FOUR HUNDRED SIXTEEN THOUSAND SIX HUNDRED SIXTY-SEVEN DOLLARS, FROM TAXPAYERS DESCRIBED IN SUBSECTION C OF THIS SECTION. IF AN OWNER OF A SPORTS ENTERTAINMENT FACILITY DESCRIBED IN THIS SECTION VOLUNTARILY CONVEYS A MAJORITY OWNERSHIP INTEREST IN THE FACILITY TO ANOTHER ENTITY OR OWNER ON OR BEFORE JUNE 30, 2014, THE COUNTY MUST REIMBURSE THE STATE GENERAL FUND THE AMOUNT PAID TO THE COUNTY PURSUANT TO THIS SUBSECTION THROUGH THE DATE OF THE CONVEYANCE, EITHER BY WITHHOLDING TRANSACTION PRIVILEGE TAX REVENUES OTHERWISE PAYABLE TO THE COUNTY UNDER SECTION 42-5029, SUBSECTION D OR AS OTHERWISE PROVIDED BY THE INTERGOVERNMENTAL AGREEMENT ENTERED INTO PURSUANT TO SECTION 28-401, SUBSECTION D. THE REIMBURSEMENT OF MONIES TO THE STATE GENERAL FUND PURSUANT TO THIS SUBSECTION DOES NOT AFFECT THE CONTINUING PAYMENT OF HIGHWAY IMPROVEMENT REVENUES TO THE HIGHWAY IMPROVEMENT INTEREST FUND OR THE REDEMPTION FUND UNDER SECTION 28-7656, SUBSECTION B. FOR THE PURPOSES OF THIS SUBSECTION, A CONVEYANCE OCCURS ON THE DATE A TRANSFER OF OWNERSHIP OR AN OPTION TO ACQUIRE OWNERSHIP BECOMES IRREVOCABLE.

C. THIS SECTION APPLIES WITH RESPECT TO TRANSACTION PRIVILEGE TAX REVENUES COLLECTED FROM all persons conducting business under any business classification under this article at a sports entertainment facility, destination resort or retail center that ~~both~~ COMPLIES WITH ALL OF THE FOLLOWING:

1. Produces a total of at least six hundred thousand dollars each year in transaction privilege tax revenues to this state pursuant to this article.

2. Will acquire direct county highway access EITHER:

(a) Across a river by the bridge constructed.

(b) BY WAY OF THE COUNTY HIGHWAY BEING WIDENED AND IMPROVED.

3. PRODUCES AT LEAST NINE HUNDRED THOUSAND DOLLARS IN EACH OF THE YEARS 2007 THROUGH 2011 IN TRANSACTION PRIVILEGE TAX REVENUES TO THIS STATE.

~~C.~~ D. The department shall report the amount under ~~subsection~~ SUBSECTIONS A AND B of this section to the state treasurer on or before March 31 of each year for payment for the following fiscal year.

~~D.~~ E. For purposes of this section:

1. "Destination resort" means a person engaged in businesses classified under both the transient lodging classification and the amusement classification that provides on-site recreational facilities such as a golf course, tennis courts or a riding stable.

2. "Retail center" means a complex consisting of at least two businesses classified under the retail classification.

3. "Sports entertainment facility" means a complex located on at least three hundred acres that requires a ticket for admission for viewing a sporting event.

1 Sec. 9. Conditional enactment; notice
2 A. This act does not become effective unless a sports facility, as
3 defined by section 42-5032, Arizona Revised Statutes, is selected as the site
4 of an additional major national sporting event by December 31, 2004.
5 B. On or before December 31, 2004, the director of the department of
6 revenue shall notify the director of the legislative council whether this
7 condition occurred.

APPROVED BY THE GOVERNOR MAY 3, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 3, 2004.

Passed the House April 20, 20 04,

by the following vote: 55 Ayes,

1 Nays, 4 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate March 1, 20 04,

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

Ken Bennett
President of the Senate

Charmin Billington
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

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

S.B. 1123

**SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE**

Passed the Senate April 27, 2004,

by the following vote: 20 Ayes,

5 Nays, 5 Not Voting

President of the Senate

Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF GOVERNOR**

This Bill was received by the Governor this

27th day of April, 2004,

at 1 o'clock P. M.

Secretary to the Governor

Approved this 3 day of

May, 2004,

at 2:40 o'clock P. M.

Governor of Arizona

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

This Bill was received by the Secretary of State

this 3 day of May, 2004,

at 3:57 o'clock P M.

Secretary of State

S.B. 1123