Senate Engrossed House Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-seventh Legislature
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CHAPTER 334

HOUSE BILL 2477

AN ACT

AMENDING SECTIONS 41-1505.06 AND 41-1505.07, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 10, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1505.09; MAKING AN APPROPRIATION; RELATING TO THE DEPARTMENT OF COMMERCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 41-1505.06, Arizona Revised Statutes, is amended to read:

41-1505.06. Powers and duties; services; confidential information; annual report; liability

A. The commission has the following powers and duties:

1. Develop comprehensive long-range strategic economic plans for this state and submit them to the director.

2. Assist the department in the coordination of the independent efforts of all state and local agencies involved in economic planning and economic development.

3. Develop and annually update a ten-year strategic economic plan for submission to the director.

4. Adopt resolutions and act on such resolutions.

5. Either directly or indirectly, provide financial assistance to businesses locating or expanding within this state. The value of the assistance provided shall not exceed fifty per cent of the estimated total increase in tax revenues accruing to this state and its political subdivisions as a direct or indirect result of the location, retention or expansion of such business as determined by the department.

6. Accept gifts, grants or loans and enter into contracts or other transactions with any federal or state agency, municipality, private organization or other source.

7. Adopt and use a seal.

8. Purchase, acquire or hold by grant, gift, devise, lease or otherwise real or personal property or interests in real or personal property.

9. Improve, employ or use any real or personal property or interests in any real or personal property purchased, acquired or held for purposes of this article.

10. Sell, convey, lease, exchange, transfer or otherwise dispose of any of its property or any interest in its property, wherever situated.

11. Adopt rules necessary to carry out its duties.

B. The commission shall utilize the services of employees of the department. The times and conditions of the use of such employees shall be determined by the chairman of the commission.

C. The commission may utilize the services of professionals in the field of economic development under contractual arrangements as deemed appropriate. Such contracts shall be entered into in accordance with chapter 23 of this title.

~~D. Any information submitted to or compiled by the commission in connection with its work that concerns the identity, background, financial status, marketing plans or trade secrets or any other proprietary information related to persons, firms, associations, partnerships, agencies, corporations or other entities is exempt from the provisions of title 39, chapter 1,~~

~~article 2 and deemed confidential and is not subject to disclosure except to the extent that the person or organization that provided the information and to whom the information relates consents to the disclosure.~~

~~E.~~ D. On or before the conclusion of each calendar quarter the commission shall report to the governor, the president of the senate and the speaker of the house of representatives on the activities of the commission. The report shall include a detailed accounting of any expenditures made from the ~~fund~~ FUNDS established ~~pursuant to section~~ BY SECTIONS 41-1505.09 AND 41-1505.10.

~~F.~~ E. A member or any person acting on behalf of the commission through the execution of any contracts, commitments or agreements issued pursuant to the work of the commission is not personally liable under the contracts, commitments or agreements. A member or any person acting on behalf of the commission is not personally liable for damages or injury resulting from the performance of commission duties.

~~G.~~ F. Any contract or agreement made in violation of this section is void and does not give rise to any action against the commission.

G. NOTWITHSTANDING ANY OTHER LAW, INFORMATION REGARDING ASSISTANCE PROVIDED BY THE COMMISSION SHALL BE PUBLIC RECORD, EXCEPT FOR TRADE SECRETS OR OTHER INFORMATION EXEMPTED PURSUANT TO SECTION 41-1505.07, SUBSECTION J.

Sec. 2. Section 41-1505.07, Arizona Revised Statutes, is amended to read:

41-1505.07. <u>Eligibility for economic development assistance; definitions</u>

A. The commission shall establish business incentives and assistance procedures for use by the department in evaluating the retention, expansion or location of businesses and other qualified projects within this state for the purpose of providing assistance in excess of one million dollars.

B. The provision of assistance to a business or other qualified project pursuant to this section is contingent on a finding by the commission that the retention, expansion or location of the business or other qualified project is clearly in the best interests of this state. This finding shall be contained in a resolution adopted by the commission. The resolution shall state that the retention, expansion or location of the business or other qualified project under consideration is clearly in the best interests of this state and shall set forth the evidence and reasons supporting this finding, including:

1. The estimated value of the annual tax revenue accruing to this state and its political subdivisions as a direct or indirect result of the location or expansion of such business or other qualified project.

2. The public benefit of the business or project from the retained or increased employment base.

3. The extent to which the economic development from the business or project raises the standard of living of persons affected by the business or

project, increases free enterprise growth and increases the quality of life in this state through the actions of business, government and the community.

4. The ratio of economic benefit from wages paid and capital investment made by the business or project to the amount of assistance given by this state.

5. The contribution to the growth of existing businesses and creation of new businesses and business clusters that the business or project will enhance.

6. Whether the business or project will pay wages equal to or in excess of the latest available median income in the political subdivision in which such business locates and will provide its employees with benefits such as health care, retirement, child care, educational reimbursements and training.

7. The percentage of the products or services the company will export outside of this state over the first five years of operation.

8. In the case of a business location or expansion, the number and percentage of the new jobs to be created by the company to be filled by residents of this state in the first five years of operation and, in the case of a business retention, the number of jobs retained in this state.

C. Before assistance is provided the commission shall conduct or review a credibly prepared cost benefit analysis of the project to include:

1. Information on direct and indirect public and private costs.

2. Negative effects from the business or project, and the assumptions on which the information is based.

3. An analysis of the impact of the assistance on state revenues and expenditures, and the assumptions on which that analysis is based.

D. In the case of a business retention or expansion, the total value of the assistance provided pursuant to this section shall not exceed fifty per cent of the estimated increase in tax revenues received by this state and its political subdivisions as a direct or indirect result of the retention, expansion or location of the business or other qualified project as set forth in the resolution required under this section. In the case of a business retention, the total value of the assistance provided pursuant to this section shall not exceed fifty per cent of the estimated retention of tax revenues received by this state and its political subdivisions as a direct or indirect result of the retention of the business or other qualified project as set forth in the resolution required under this section.

E. The department shall develop an application process and necessary application forms for use in considering the provision of assistance for the retention, expansion or location of a business or other qualified project within this state. The application and the department's recommendation as to whether assistance should be provided shall be forwarded to the commission. The commission shall act on all applications forwarded by the department.

F. The department shall accept all applications requesting assistance as set forth in this section. The application developed pursuant to subsection E of this section shall be sufficient to provide for the determinations of both the department and the commission as required under this section.

G. If the business or project does not meet all of the criteria established in subsection B of this section, the commission may give assistance to the business or project but only after stating in the resolution for assistance its reasons for waiving the criteria that are not met.

H. A business or project that receives assistance shall enter into a memorandum of understanding with this state through the commission. The memorandum shall contain performance standards the business or project is expected to meet within the first five years after assistance is received. The business or project shall submit a report no less than annually of its performance in achieving the standards to the commission. The memorandum shall contain provisions that allow the state, through the commission, to stop, readjust or recapture all or part of the assistance given to the company either in full or in part on noncompliance with the terms of the memorandum.

I. In awarding assistance, the commission shall consider whether the assistance would have a negative impact on other Arizona businesses.

~~J. Any information provided pursuant to an application submitted in accordance with this section is not a public record under title 39, chapter 1, article 2, shall be treated as confidential information and shall not be released without the express consent of the agency completing the application.~~

J. ANY INFORMATION SUBMITTED TO OR COMPILED BY THE COMMISSION IN CONNECTION WITH ITS WORK, INCLUDING ALL INFORMATION CONCERNING THE AWARD OF GRANT MONIES, IS SUBJECT TO TITLE 39, CHAPTER 1, ARTICLE 2, EXCEPT THAT AN APPLICANT MAY SHOW THAT SPECIFIC INFORMATION MEETS EITHER OF THE FOLLOWING:

1. IF MADE PUBLIC, THE INFORMATION WOULD DIVULGE THE APPLICANT'S TRADE SECRETS AS DEFINED IN SECTION 44-401.

2. THE SPECIFIC INFORMATION IS LIKELY TO CAUSE SUBSTANTIAL HARM TO THE APPLICANT'S COMPETITIVE POSITION.

K. This section shall not apply to economic development assistance provided for in sections 41-1508, 41-1514.02 and 41-1532.

L. This section applies to a business or other qualified project where the commission provides assistance in excess of one million dollars.

M. For purposes of this section:

1. "Assistance" means loans, grants, loan guarantees or interest rate subsidies. Assistance also means anything of value or any service for a business arranged for or provided for by referral of the commission including job training, tax incentives, improvements or other services.

2. "Business or other qualified project" means a private, for-profit enterprise engaged in manufacturing, research and development, office or distribution activities, a research project submitted by the Arizona board of regents or its authorized representative, or any project sponsored on behalf of a qualified activity by this state, its political subdivisions, public or private universities in this state, tribal governments or economic development agencies.

Sec. 3. Title 41, chapter 10, article 1, Arizona Revised Statutes, is amended by adding section 41-1505.09, to read:

41-1505.09. Arizona twenty-first century competitive initiative fund; purpose; administration

A. THE ARIZONA TWENTY-FIRST CENTURY COMPETITIVE INITIATIVE FUND IS ESTABLISHED TO BE ADMINISTERED BY THE COMMERCE AND ECONOMIC DEVELOPMENT COMMISSION. THE FUND CONSISTS OF MONIES APPROPRIATED BY THE LEGISLATURE, EARNINGS FROM THE FUND AND GIFTS OR GRANTS DONATED OR GIVEN TO THE FUND. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION AND SHALL BE USED AS PRESCRIBED BY THIS SECTION. THE ARIZONA TWENTY-FIRST CENTURY COMPETITIVE INITIATIVE FUND IS EXEMPT FROM SECTION 41-1505.06, SUBSECTION A, PARAGRAPH 5, SECTION 41-1505.06, SUBSECTION G AND SECTION 41-1505.07.

B. ON NOTICE FROM THE COMMISSION, THE STATE TREASURER MAY INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313. THE STATE TREASURER SHALL CREDIT MONIES EARNED FROM INVESTMENTS TO THE FUND.

C. THE COMMISSION SHALL ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH A NONPROFIT CORPORATION TO USE MONIES IN THE FUND IN ORDER TO:

1. BUILD AND STRENGTHEN MEDICAL, SCIENTIFIC AND ENGINEERING RESEARCH PROGRAMS AND INFRASTRUCTURE IN AREAS OF GREATEST STRATEGIC VALUE TO THIS STATE'S COMPETITIVENESS IN THE GLOBAL ECONOMY WITH AN EMPHASIS IN BIOSCIENCE.

2. ACTIVELY ENGAGE SCIENTIFIC RESEARCH, ACADEMIC AND MEDICAL INSTITUTIONS THAT REPRESENT BOTH THE PUBLIC AND PRIVATE SECTORS ON A WORLDWIDE BASIS.

D. IN ORDER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE COMMISSION PURSUANT TO SUBSECTION C OF THIS SECTION, A NONPROFIT CORPORATION SHALL:

1. BE A STATEWIDE NONPROFIT CORPORATION THAT IS INCORPORATED IN THIS STATE AND THAT IS QUALIFIED UNDER SECTION 501(C)(3) OF THE UNITED STATES INTERNAL REVENUE CODE.

2. AGREE ON A QUARTERLY BASIS TO REPORT ON INVESTMENTS MADE AND AGREE ON AN ANNUAL BASIS TO REPORT ON MEASURABLE OBJECTIVES AND OTHER FUNDS LEVERAGED WITH STATE INVESTMENTS.

3. IDENTIFY AND DOCUMENT PRIVATE OR PHILANTHROPIC INVESTMENTS THAT ARE EQUIVALENT TO FIFTY MILLION DOLLARS OR MORE IN FISCAL YEAR 2005-2006. FOR FISCAL YEAR 2006-2007, THE NONPROFIT CORPORATION SHALL PROVIDE FUNDING TO ACHIEVE THE GOALS PRESCRIBED IN SUBSECTION C OF THIS SECTION IN AN AMOUNT EQUAL TO OR GREATER THAN THE FINANCIAL ASSISTANCE PROVIDED BY THIS STATE.

E. THE COMMISSION SHALL SUBMIT THE MEMORANDUM OF UNDERSTANDING WITH THE NONPROFIT CORPORATION TO THE JOINT LEGISLATIVE BUDGET COMMITTEE FOR REVIEW BEFORE EXPENDING ANY APPROPRIATED STATE MONIES. THE INITIAL SUBMISSION SHALL INCLUDE PROVISIONS THAT ADDRESS HOW THE NONPROFIT CORPORATION ACCOUNTS FOR THE APPLICATION AND INVESTMENT OF MONIES PURSUANT TO SUBSECTION C OF THIS SECTION, THE DOCUMENTATION OF INVESTMENTS MADE IN WHOLE OR IN PART THROUGH FUNDING PURSUANT TO THIS SECTION AND THE PREPARATION AND FILING OF ANNUAL AUDITS OF THE FUND WITH THE AUDITOR GENERAL. THE INITIAL SUBMISSION SHALL ALSO INCLUDE PERFORMANCE MEASURES TO EVALUATE THE EFFECTIVENESS OF THE PROGRAM AND RECOMMENDATIONS PERTAINING TO PROSPECTIVE REPAYMENT TO THE FUND BY SCIENTIFIC, RESEARCH, ACADEMIC AND MEDICAL INSTITUTIONS OF A PORTION OF THE INCOME DERIVED FROM TECHNOLOGY OR INTELLECTUAL PROPERTY CREATED OR DEVELOPED IN WHOLE OR IN PART THROUGH FUNDING PURSUANT TO THIS SECTION. THE JOINT LEGISLATIVE BUDGET COMMITTEE SHALL REVIEW EXPENDITURES FROM THE FUND AT LEAST QUARTERLY, INCLUDING ANY CHANGES TO THE MEMORANDUM OF UNDERSTANDING, BUT MAY CHOOSE LESS FREQUENT REVIEWS.

Sec. 4. Appropriation; Arizona twenty-first century competitive initiative fund; exemption

A. The sum of $35,000,000 is appropriated from the state general fund in fiscal year 2005-2006 to the Arizona twenty-first century competitive initiative fund established by section 41-1505.09, Arizona Revised Statutes, as added by this act, and is appropriated from that fund to the commerce and economic development commission for the purposes prescribed in this act.

B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

APPROVED BY THE GOVERNOR JUNE 21, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 21, 2006.