

REFERENCE TITLE: toll roads; conversion; prohibition

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1109

Introduced by
Senator Mendez: Representative Salman

AN ACT

AMENDING SECTIONS 28-6803 AND 28-7705, ARIZONA REVISED STATUTES; RELATING TO TOLL ROADS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-6803, Arizona Revised Statutes, is amended to
3 read:

4 28-6803. Application approval or rejection; effective date;
5 franchise term and reversion

6 A. If it appears to the board of supervisors that the public
7 interest will be promoted by the application provided in section 28-6802,
8 it may grant the application in whole or in part or as revised.

9 B. The board of supervisors shall not grant an application if
10 ~~either~~ ANY OF THE FOLLOWING APPLIES:

11 1. The highway commission files with the board of supervisors a
12 written statement that the proposed toll road will interfere with an
13 existing or proposed state highway or state route.

14 2. The proposed toll road will interfere with an existing or
15 contemplated county highway.

16 3. THE PROPOSED TOLL ROAD WILL BE CONVERTED FROM A PUBLICLY FUNDED
17 OR MAINTAINED STREET OR HIGHWAY.

18 C. An order granting an application is not effective until a copy
19 of the order and an engineer's plat of the road approved in writing by the
20 board of supervisors is filed with the county recorder within thirty days
21 after the date the order is made.

22 D. A franchise for a toll road shall not be granted for a term of
23 more than ten years, subject to the right of extension for one additional
24 period of not more than ten years.

25 E. On expiration or forfeiture of a toll road franchise:

26 1. The ownership and all rights and privileges appurtenant to the
27 ownership vest in the county or counties in which it is located.

28 2. The board of supervisors may declare it a free highway or
29 collect tolls.

30 Sec. 2. Section 28-7705, Arizona Revised Statutes, is amended to
31 read:

32 28-7705. Public-private partnership agreements

33 A. In any public-private partnership or other agreement for any
34 eligible facility under this chapter, the department may include
35 provisions that:

36 1. Authorize the department or the private partner to establish and
37 collect user charges, tolls, fares, rents, advertising and sponsorship
38 charges, service charges or similar charges, including provisions that:

39 (a) Specify technology to be used in the facility.

40 (b) Establish circumstances under which the department may receive
41 all or a share of revenues from such charges.

42 (c) Govern enforcement of tolls, including provisions for use of
43 cameras or other mechanisms to ensure that users have paid tolls that are
44 due and provisions that allow the private partner access to relevant
45 databases for enforcement purposes. Misuse of the data contained in the

1 databases, including negligence in securing the data properly, shall
2 result in a civil penalty of \$10,000 for each violation. Civil penalties
3 collected pursuant to this subdivision shall be deposited in the state
4 general fund.

5 (d) Authorize the department to continue or cease collection of
6 user charges, tolls, fares or similar charges after the end of the term of
7 the agreement.

8 2. Allow for payments to be made by this state to the private
9 partner, including availability payments or performance based payments.

10 3. Allow the department to accept payments of monies and share
11 revenues with the private partner.

12 4. Address how the partners will share management of the risks of
13 the project.

14 5. Specify how the partners will share the costs of development of
15 the project.

16 6. Allocate financial responsibility for cost overruns.

17 7. Establish the damages to be assessed for nonperformance.

18 8. Establish performance criteria or incentives, or both.

19 9. Address the acquisition of rights-of-way and other property
20 interests that may be required, including provisions that address the
21 exercise of eminent domain as provided in section 28-7709. This state
22 shall not relinquish its power of eminent domain authority to the private
23 partner.

24 10. Establish recordkeeping, accounting and auditing standards to
25 be used for the project.

26 11. For a project that reverts to public ownership, address
27 responsibility for reconstruction or renovations that are required in
28 order for a facility to meet all applicable government standards on
29 reversion of the facility to this state.

30 12. Provide for patrolling and law enforcement on public
31 facilities.

32 13. Identify any department specifications that must be satisfied,
33 including provisions allowing the private partner to request and receive
34 authorization to deviate from the specifications on making a showing
35 satisfactory to the department.

36 14. Require a private partner to provide performance and payment
37 bonds, parent company guarantees, letters of credit or other acceptable
38 forms of security or a combination of any of these, the penal sum or
39 amount of which may be less than one hundred percent of the value of the
40 contract involved based on the department's determination, made on a
41 facility-by-facility basis, of what is required to adequately protect this
42 state.

43 15. Authorize the private partner in any concession agreement to
44 establish and collect user charges, tolls, fares, rents, advertising and
45 sponsorship charges, service charges or similar charges to cover its costs

1 and provide for a reasonable rate of return on the private partner's
2 investment, including provisions such as the following:

3 (a) The charges may be collected directly by the private partner or
4 by a third party engaged for that purpose.

5 (b) A formula for the adjustment of user charges, tolls, fares,
6 rents, advertising and sponsorship charges, service charges or similar
7 charges during the term of the agreement.

8 (c) For an agreement that does not include a formula described in
9 subdivision (b) of this paragraph, provisions regulating the private
10 partner's return on investment.

11 (d) A maximum multiplier that may be applied to the difference
12 between passenger and commercial vehicle user charges, tolls, fares or
13 similar charges.

14 (e) A variety of traffic management strategies, including:

15 (i) General purpose toll lanes.

16 (ii) High occupancy vehicle lanes where single or low occupancy
17 vehicles may use higher occupancy vehicle lanes by paying a toll.

18 (iii) Lanes or facilities in which the tolls may vary during the
19 course of the day or week or according to levels of congestion anticipated
20 or experienced.

21 (iv) Combinations of, or variations on, items (i), (ii) and (iii)
22 of this subdivision, or other strategies the department determines are
23 appropriate on a facility-by-facility basis.

24 (v) Mechanisms for notice to drivers of an upcoming facility and
25 options to pay user charges, tolls, fares or similar charges at the
26 facility location.

27 16. Specify remedies available and dispute resolution procedures,
28 including the right of the private partner to institute legal proceedings
29 to obtain an enforceable judgment or award against the department in the
30 event of a default by the department and procedures for use of dispute
31 review boards, mediation, facilitated negotiation, arbitration and other
32 alternative dispute resolution procedures.

33 17. Allow the department to acquire real property that is needed
34 for and related to eligible facilities, including acquisition by exchange
35 for other real property that is owned by the department. An acquisition
36 pursuant to this paragraph is exempt from chapter 20, articles 6 and 8 of
37 this title.

38 B. Notwithstanding any other law, the department may enter into
39 agreements, whether a concession agreement or other form of agreement,
40 with any private partner that includes provisions described in subsection
41 A of this section. Agreements may be for a term not to exceed fifty years
42 but may be extended for additional terms.

43 C. The department may approve any request from another unit of
44 government to develop an eligible facility in a manner similar to that
45 used by the department under this chapter.

1 D. Notwithstanding any other law, agreements under this chapter
2 that are properly developed, operated or held by a private partner under a
3 concession agreement pursuant to this chapter are exempt from all state
4 and local ad valorem and property taxes that otherwise might be
5 applicable.

6 E. The agreement shall contain a provision by which the private
7 partner expressly agrees that it is prohibited from seeking injunctive or
8 other equitable relief to delay, prevent or otherwise hinder the
9 department or any jurisdiction from developing, constructing or
10 maintaining any facility that was planned and that would or might impact
11 the revenue that the private partner would or might derive from the
12 facility developed under the agreement, except that the agreement may
13 provide for reasonable compensation to the private partner for the adverse
14 effect on toll revenues or other user fee revenues resulting from
15 development, construction and maintenance of an unplanned revenue
16 impacting facility.

17 F. The agreement shall contain a provision that prohibits photo
18 traffic enforcement of chapter 3, article 6 of this title on toll lanes.

19 G. Any foreign private entity that enters into an agreement with
20 the department pursuant to this section must provide satisfactory evidence
21 to the board that the foreign entity is in compliance with the
22 requirements of title 10, chapter 38.

23 H. The agreement shall contain a provision that all public-private
24 partnerships are subject to chapter 20, article 3 of this title.

25 I. The department shall award a stipulated fee equal to four-tenths
26 of one percent of the department's estimated cost of design and
27 construction to each short list responsible proposer that provides a
28 responsive, but unsuccessful proposal. If the department does not award
29 a contract, all responsive proposers shall receive the stipulated fee. If
30 the department cancels the contract before reviewing the technical
31 proposals, the department shall award each design-builder on the short
32 list a stipulated fee equal to four-tenths of one percent of the
33 department's estimated cost of design and construction. The department
34 shall pay the stipulated fee to each proposer within ninety days after the
35 award of the contract or the decision not to award a contract. In
36 consideration for paying the stipulated fee, the department may use any
37 ideas or information contained in the proposals in connection with any
38 contract awarded for the project, or in connection with a subsequent
39 procurement, without any obligation to pay any additional compensation to
40 the unsuccessful proposers. Notwithstanding the other provisions of this
41 subsection, an unsuccessful short list proposer may elect to waive the
42 stipulated fee. If an unsuccessful short list proposer elects to waive
43 the stipulated fee, the department may not use ideas and information
44 contained in the proposer's proposal, except that this restriction does
45 not prevent the department from using any idea or information if the idea

1 or information is also included in a proposal of a short list proposer
2 that accepts the stipulated fee.

3 J. THE DEPARTMENT MAY NOT ENTER INTO AN AGREEMENT THAT ALLOWS THE
4 CONVERSION OF AN EXISTING PUBLICLY FUNDED OR MAINTAINED STREET OR HIGHWAY
5 TO A TOLL ROAD, INCLUDING A CONVERSION FOR THE PURPOSE OF IMPLEMENTING A
6 VARIETY OF TRAFFIC MANAGEMENT STRATEGIES LISTED IN SUBSECTION A, PARAGRAPH
7 15, SUBDIVISION (e) OF THIS SECTION.