

House Engrossed Senate Bill
toll roads; conversion; prohibition

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SENATE BILL 1340

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. THIS PARAGRAPH DOES NOT APPLY IF THE
18 APPLICANT IS AN AIRPORT AS DEFINED IN SECTION 28-8461.

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

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

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

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

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

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

33 28-7705. Public-private partnership agreements

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

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

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

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

43 (c) Govern enforcement of tolls, including provisions for use of
44 cameras or other mechanisms to ensure that users have paid tolls that are

1 due and provisions that allow the private partner access to relevant
2 databases for enforcement purposes. Misuse of the data contained in the
3 databases, including negligence in securing the data properly, shall
4 result in a civil penalty of \$10,000 for each violation. Civil penalties
5 collected pursuant to this subdivision shall be deposited in the state
6 general fund.

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

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

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

14 4. Address how the partners will share management of the risks of
15 the project.

16 5. Specify how the partners will share the costs of development of
17 the project.

18 6. Allocate financial responsibility for cost overruns.

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

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

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

26 10. Establish recordkeeping, accounting and auditing standards to
27 be used for the project.

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

32 12. Provide for patrolling and law enforcement on public
33 facilities.

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

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

1 15. Authorize the private partner in any concession agreement to
2 establish and collect user charges, tolls, fares, rents, advertising and
3 sponsorship charges, service charges or similar charges to cover its costs
4 and provide for a reasonable rate of return on the private partner's
5 investment, including provisions such as the following:

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

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

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

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

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

18 (i) General purpose toll lanes.

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

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

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

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

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

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

41 B. Notwithstanding any other law, the department may enter into
42 agreements, whether a concession agreement or other form of agreement,
43 with any private partner that includes provisions described in subsection

1 A of this section. Agreements may be for a term not to exceed fifty years
2 but may be extended for additional terms.

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

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

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

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

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

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

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

1 the unsuccessful proposers. Notwithstanding the other provisions of this
2 subsection, an unsuccessful short list proposer may elect to waive the
3 stipulated fee. If an unsuccessful short list proposer elects to waive
4 the stipulated fee, the department may not use ideas and information
5 contained in the proposer's proposal, except that this restriction does
6 not prevent the department from using any idea or information if the idea
7 or information is also included in a proposal of a short list proposer
8 that accepts the stipulated fee.

9 J. THE DEPARTMENT MAY NOT ENTER INTO AN AGREEMENT THAT ALLOWS THE
10 CONVERSION OF AN EXISTING PUBLICLY FUNDED OR MAINTAINED STREET OR HIGHWAY
11 TO A TOLL ROAD, INCLUDING A CONVERSION FOR THE PURPOSE OF IMPLEMENTING A
12 VARIETY OF TRAFFIC MANAGEMENT STRATEGIES LISTED IN SUBSECTION A, PARAGRAPH
13 15, SUBDIVISION (e) OF THIS SECTION.