

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

# HOUSE BILL 2228

AN ACT

AMENDING SECTIONS 28-7671, 28-7674 AND 28-7676, ARIZONA REVISED STATUTES;  
RELATING TO THE HIGHWAY EXPANSION AND EXTENSION LOAN PROGRAM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 28-7671, Arizona Revised Statutes, is amended to  
3 read:  
4 ~~28-7671.~~ Definitions  
5 In this article, unless the context otherwise requires:  
6 1. "Advisory committee" means the highway expansion and extension loan  
7 program advisory committee established by section 28-7672.  
8 2. "Eligible HIGHWAY project" means a highway project that is both:  
9 (a) On the federal aid system, national highway system or state route  
10 or state highway system.  
11 (b) Included in either:  
12 (i) The department's state highway construction plan.  
13 (ii) The transportation improvement plan of a regional association of  
14 governments.  
15 3. "ELIGIBLE TRANSIT CAPITAL PROJECT" MEANS LAND, BUILDINGS OR MOTOR  
16 VEHICLES OR A COMBINATION OF LAND, BUILDINGS AND MOTOR VEHICLES THAT IS PART  
17 OF THE FEDERAL TRANSIT ADMINISTRATION'S RURAL PUBLIC TRANSPORTATION PROGRAM  
18 FOR ELIGIBLE ENTITIES LISTED IN SECTION 28-7676 WITH POPULATIONS OF LESS THAN  
19 FIFTY THOUSAND PERSONS AND THAT IS INCLUDED IN THE TRANSPORTATION IMPROVEMENT  
20 PLAN OF A REGIONAL ASSOCIATION OF GOVERNMENTS.  
21 ~~3-~~ 4. "Federal SIB act" means section 350 of the national highway  
22 system designation act of 1995 (P.L. 104-59; 109 Stat. 618), any regulations  
23 adopted pursuant to that section and any other provisions of federal law  
24 providing for state infrastructure banks, infrastructure credit programs and  
25 other grant programs for highway purposes and any regulations adopted  
26 pursuant to those laws.  
27 ~~4-~~ 5. "Fund" means the highway expansion and extension loan program  
28 fund established by section 28-7674.  
29 ~~5-~~ 6. "Indian tribe" means any Indian tribe, band, group or community  
30 that is recognized by the United States secretary of the interior and that  
31 exercises governmental authority within the limits of any Indian reservation  
32 under the jurisdiction of the United States government, notwithstanding the  
33 issuance of any patent and including rights-of-way running through the  
34 reservation.  
35 ~~6-~~ 7. "Loan repayment agreement" means one or more loan agreements,  
36 instruments or other agreements providing for repayment of a loan or other  
37 financial assistance and entered into by this state or its agencies,  
38 including the department, or a political subdivision or Indian tribe.  
39 ~~7-~~ 8. "Political subdivision" means a county, city, town or special  
40 taxing district authorized by law to construct an eligible project.  
41 ~~8-~~ 9. "SIB cooperative agreement" means a cooperative agreement or  
42 agreements entered into by the Arizona department of transportation with the  
43 United States department of transportation pursuant to this article and the  
44 federal SIB act.

1           Sec. 2. Section 28-7674, Arizona Revised Statutes, is amended to read:  
2           28-7674. Highway expansion and extension loan program fund

3           A. The highway expansion and extension loan program fund is  
4 established. The fund constitutes a state infrastructure bank under the  
5 federal SIB act. The state treasurer shall receive in trust, hold and  
6 disburse monies in the fund solely for the purposes authorized by this  
7 article. The department shall administer the fund as a continuing  
8 appropriation in accordance with this article and the federal SIB act. Monies  
9 in the fund are exempt from the provisions of section 35-190 relating to  
10 lapsing of appropriations.

11           B. The fund consists of:

12           1. Monies appropriated by the legislature.

13           2. Monies derived from board funding obligations delivered pursuant to  
14 section 28-7678. These monies shall be separately accounted for and  
15 invested.

16           3. Monies designated for deposit in the fund by the transportation  
17 board, a state agency or a political subdivision.

18           4. Monies received from the United States government under SIB  
19 cooperative agreements, including capitalization grants.

20           5. Monies received from political subdivisions, Indian tribes or this  
21 state or its agencies pursuant to agreements entered into pursuant to this  
22 article.

23           6. Interest and other income received from investing monies in the  
24 fund.

25           7. Gifts, grants, donations or other amounts received from any public  
26 or private source for deposit in the fund.

27           C. The board may use monies in the fund for the following purposes in  
28 connection with providing financial assistance under this article:

29           1. Making eligible project loans or providing other financial  
30 assistance to political subdivisions, Indian tribes and this state or its  
31 agencies under section 28-7676.

32           2. Subsidizing interest rates.

33           3. Providing other forms and methods of financial assistance that are  
34 approved by the board and, to the extent required by the federal SIB act, by  
35 the United States secretary of transportation and that relate to the eligible  
36 project with respect to which the assistance is being provided.

37           4. Paying the costs to administer the fund, except that no more than  
38 the percentage of the aggregate of federal capitalization grants pursuant to  
39 the federal SIB act may be used to pay these costs. Monies from other  
40 sources may be used without limit to pay these costs.

41           D. EXCEPT FOR MONIES RECEIVED PURSUANT TO SUBSECTION B, PARAGRAPH 4 OF  
42 THIS SECTION, UP TO TEN MILLION DOLLARS OF THE MONIES IN THE FUND MAY BE USED  
43 FOR TRANSIT CAPITAL PROJECTS AS DEFINED IN SECTION 28-7671 IN MUNICIPALITIES  
44 WITH A POPULATION OF LESS THAN FIFTY THOUSAND PERSONS.

1           ~~D.~~ E. On notice from the board, the state treasurer shall invest and  
2 divest monies in the fund as provided by section 35-313, and monies earned  
3 from investment shall be credited to the fund.

4           ~~E.~~ F. The board shall use the monies and other assets in the fund  
5 solely for the purposes authorized by this article.

6           ~~F.~~ G. The board may establish any accounts or subaccounts in the fund  
7 as it determines are necessary or appropriate to carry out the purposes of  
8 this article.

9           ~~G.~~ H. All proceeds of capitalization grants received from the United  
10 States pursuant to the federal SIB act and title 23, United States Code,  
11 shall be deposited in the fund and shall be used only to make loans or  
12 provide other financial assistance to political subdivisions, Indian tribes  
13 and this state or its agencies to design, construct, acquire right-of-way  
14 for, restore or rebuild eligible projects, for the purposes prescribed in  
15 subsection C of this section or for any other purposes permitted by the  
16 federal SIB act and title 23, United States Code.

17           Sec. 3. Section 28-7676, Arizona Revised Statutes, is amended to read:  
18 28-7676. Eligible project loans and other financial assistance

19           A. A political subdivision or this state or its agencies, including  
20 the department, may apply to the transportation board for any loan or other  
21 financial assistance from the fund to support an eligible project.

22           B. An Indian tribe may apply to the board for any loan or other  
23 financial assistance from the fund to support an eligible project that the  
24 board determines provides substantial public benefits.

25           C. Through December 31, 2004, of the total amount of monies and other  
26 assets in the fund, the board shall provide loans and other financial  
27 assistance for use as follows:

28           1. Fifty per cent in counties with a population of one million two  
29 hundred thousand or more persons according to the most recent United States  
30 decennial census.

31           2. Twenty-five per cent in counties with a population of five hundred  
32 thousand or more but less than one million two hundred thousand persons  
33 according to the most recent United States decennial census.

34           3. Twenty-five per cent in counties with a population of less than  
35 five hundred thousand persons according to the most recent United States  
36 decennial census.

37           D. The percentages prescribed in subsection C of this section apply  
38 over the prescribed time period and are not yearly allocations but do not  
39 apply to loans made by the board before August 6, 1999.

40           E. In compliance with any applicable federal requirements, the  
41 board shall:

42           1. Approve, disapprove or modify the simplified application form and  
43 guidelines developed by the advisory committee.

44           2. Prescribe a simplified procedure to apply for and approve financial  
45 assistance.

1           3. Consider at least the following in selecting which eligible  
2 projects shall receive financial assistance:

3           (a) Economic benefits.

4           (b) Mobility.

5           (c) Air quality.

6           (d) Safety.

7           (e) How quickly the applicant proposes to repay the loan.

8           (f) The ability of the applicant to repay a loan according to the  
9 terms and conditions established by this section.

10          (g) The availability of assistance for projects located in smaller  
11 cities and towns and rural areas.

12          4. Give a preference of up to twenty per cent to eligible projects  
13 that include local, federal or private financial participation in  
14 accelerating the project. This preference shall be commensurate with the  
15 level of local, federal or private financial participation. The greater the  
16 percentage of local, federal or private financial participation is to the  
17 total cost of the project, the greater the preference that shall be given to  
18 the project.

19          F. The board may take any of the actions prescribed in subsection E of  
20 this section by resolution.

21          G. The board may impose conditions the board deems necessary to ensure  
22 that financial assistance under this article is used according to law and to  
23 comply with the applicable requirements of the federal SIB act and SIB  
24 cooperative agreements.

25          H. A loan under this section shall:

26           1. Bear interest at or below the market interest rate or rates, as  
27 determined by the board, to make the project that is the subject of the loan  
28 feasible. The interest rate for any loan shall be uniform with interest  
29 rates for comparable loans.

30           2. If the source of the loan is monies designated pursuant to a SIB  
31 cooperative agreement, be repaid not longer than ten years after the date the  
32 highway project is open to traffic.

33           3. If the source of the loan is monies other than those monies  
34 designated pursuant to a SIB cooperative agreement, be repaid not longer than  
35 five years after the date the highway project is open to traffic.

36           4. Be conditioned on the identification of a revenue source for  
37 repaying the loan.

38           5. Not be made for the nonfederal share of any project that has  
39 received a grant under title 23, United States Code.

40           6. If made to an Indian tribe, be conditioned on the establishment of  
41 a dedicated source under the control of a tribally chartered corporation or  
42 another tribal entity that is subject to suit by the attorney general to  
43 enforce the loan repayment agreement or be secured by assets that, in the  
44 event of default of the loan repayment agreement, are subject to execution by

1 the attorney general without the waiver of any claim of sovereign immunity by  
2 the tribe.

3 ~~7. Not be made after December 31, 2004 if the source of the loan is~~  
4 ~~monies derived from a board funding obligation delivered pursuant to section~~  
5 ~~28-7678.~~

6 I. The approval of a loan is conditioned on a written commitment by  
7 the political subdivision, the Indian tribe or this state or its agencies to  
8 complete all applicable reviews and approvals and to secure all required  
9 permits in a timely manner.

10 J. On the request of the board, the attorney general shall take  
11 whatever actions are necessary to enforce a loan repayment agreement and  
12 achieve repayment of loans provided by the board pursuant to this article.

13 K. The state treasurer, to the extent not otherwise expressly  
14 prohibited by law, may withhold from a defaulting city, town or county the  
15 next succeeding distribution of monies pursuant to chapter 18, article 2 of  
16 this title and section 42-6107 otherwise distributable to it, to the extent  
17 necessary to meet the certified amount of the deficiency, and shall deposit  
18 in the appropriate subaccount in the fund the amount so withheld, except that  
19 the state treasurer shall not withhold from the distribution any amount that  
20 is necessary, as certified in writing by the defaulting city, town or county  
21 to the state treasurer and the director, to make any required deposits then  
22 due for payment of principal and interest on bonds issued by a city or town  
23 pursuant to title 48, chapter 4, article 5 or by a county pursuant to title  
24 11, chapter 2, article 12. Amounts so certified shall be distributed to the  
25 city, town or county. The withholding and deposit in the appropriate  
26 subaccount in the fund by the state treasurer shall continue until the  
27 director certifies to the state treasurer that the default has been cured.

28 L. The recipient of any loan retains sole responsibility to ensure  
29 that any related eligible project is in compliance with any applicable  
30 federal, state or local environmental or other laws, rules or regulations.  
31 The board does not assume any responsibility for compliance by the awarding  
32 of financial assistance or other actions under this article. The awarding of  
33 financial assistance or any other actions by the board under this article do  
34 not constitute actions that subject the board to compliance with state or  
35 local environmental or other laws.

36 M. This article does not authorize a political subdivision to issue  
37 any bonds or incur any debt except in compliance with applicable law.

38 N. In order to repay any loan or other financial assistance from the  
39 fund, this state or its agencies, including the department, and a political  
40 subdivision may enter into a loan repayment agreement with the board.

41 O. A loan repayment agreement may be payable by a political  
42 subdivision, this state or its agencies or an Indian tribe from any revenues  
43 otherwise authorized by law to be used or pledged for street and highway  
44 purposes and may be secured by any other revenues authorized by law to be  
45 pledged to repay long-term obligations. Notwithstanding chapters 17 and 18

1 of this title, a loan repayment agreement may be payable from monies in a  
2 regional area road fund construction account and from revenues distributed  
3 pursuant to section 28-6538, subsection B.

4 P. Payments made pursuant to a loan repayment agreement are not  
5 subject to section 42-17106.

6 Q. This section is exempt from title 41, chapter 6.