

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

HOUSE BILL 2787

AN ACT

AMENDING SECTIONS 13-2314.01, 13-3906, 13-3961 AND 38-886.01, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 12, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1722; REPEALING LAWS 2006, CHAPTER 348, SECTION 4; MAKING APPROPRIATIONS; RELATING TO CRIMINAL JUSTICE BUDGET RECONCILIATION; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-2314.01, Arizona Revised Statutes, is amended to
3 read:

4 13-2314.01. Anti-racketeering revolving fund; use of fund;
5 reports

6 A. There is established an anti-racketeering revolving fund to be
7 administered by the attorney general under the conditions and for the
8 purposes provided by this section. Monies in the fund are exempt from the
9 lapsing provisions of section 35-190.

10 B. Any prosecution and investigation costs, including ~~attorney's~~
11 ~~ATTORNEY~~ fees, recovered for the state by the attorney general as a result of
12 enforcement of civil and criminal statutes pertaining to any offense included
13 in the definition of racketeering in section 13-2301, subsection D, paragraph
14 4 or section 13-2312, whether by final judgment, settlement or otherwise,
15 shall be deposited in the fund established by this section.

16 C. Any monies received by any department or agency of this state or
17 any political subdivision of this state from any department or agency of the
18 United States or another state as a result of participation in any
19 investigation or prosecution, whether by final judgment, settlement or
20 otherwise, shall be deposited in the fund established by this section or, if
21 the recipient is a political subdivision of this state, may be deposited in
22 the fund established by section 13-2314.03.

23 D. Any monies obtained as a result of a forfeiture by any department
24 or agency of this state under this title or under federal law shall be
25 deposited in the fund established by this section. Any monies or other
26 property obtained as a result of a forfeiture by any political subdivision of
27 this state or the federal government may be deposited in the fund established
28 by this section. Monies deposited in the fund pursuant to this section or
29 section 13-4315 shall accrue interest and shall be held for the benefit of
30 the agency or agencies responsible for the seizure or forfeiture to the
31 extent of their contribution. Except as provided in subsections F and G of
32 this section, the monies and interest shall be distributed within thirty days
33 of application to the agency or agencies responsible for the seizure or
34 forfeiture. ~~THE USE BY THE ATTORNEY GENERAL OF MONIES IN THE FUND FOR~~
35 ~~CAPITAL PROJECTS IN EXCESS OF ONE MILLION DOLLARS IS SUBJECT TO REVIEW BY THE~~
36 ~~JOINT COMMITTEE ON CAPITAL REVIEW.~~

37 E. Monies in the fund may be used for the funding of gang prevention
38 programs, substance abuse prevention programs, substance abuse education
39 programs and witness protection pursuant to section 41-196 or for any purpose
40 permitted by federal law relating to the disposition of any property that is
41 transferred to a law enforcement agency. ~~Monies in the fund may be~~
42 ~~transmitted by the attorney general on behalf of a department or agency of~~
43 ~~this state or any political subdivision of this state to the Arizona drug and~~
44 ~~gang policy council for the funding of gang prevention programs, substance~~
45 ~~abuse prevention programs and substance abuse education programs.~~ Monies in

1 the fund may be used for the investigation and prosecution of any offense
2 included in the definition of racketeering in section 13-2301, subsection D,
3 paragraph 4 or section 13-2312, including civil enforcement.

4 F. On or before January 15, April 15, July 15 and October 15 of each
5 year, each department or agency of this state receiving monies pursuant to
6 this section or section 13-2314.03 or 13-4315 or from any department or
7 agency of the United States or another state as a result of participation in
8 any investigation or prosecution shall file with the attorney general a
9 report for the previous calendar quarter. The report shall be in a form that
10 is prescribed by the Arizona criminal justice commission and approved by the
11 director of the joint legislative budget committee. The report shall set
12 forth the sources of all monies and all expenditures. The report shall not
13 include any identifying information about specific investigations. If a
14 department or agency of this state fails to file a report within forty-five
15 days after the report is due and there is no good cause as determined by the
16 Arizona criminal justice commission, the attorney general shall make no
17 expenditures from the fund for the benefit of the department or agency until
18 the report is filed. The attorney general is responsible for collecting all
19 reports from departments and agencies of this state and transmitting the
20 reports to the Arizona criminal justice commission at the time that the
21 report required pursuant to subsection ~~H~~-G of this section is submitted.

22 G. On or before January 25, April 25, July 25 and October 25 of each
23 year, the attorney general shall ~~cause to be filed~~ FILE with the Arizona
24 criminal justice commission a report for the previous calendar quarter. The
25 report shall be in a form that is prescribed by the Arizona criminal justice
26 commission and approved by the director of the joint legislative budget
27 committee. The report shall set forth the sources of all monies and all
28 expenditures. The report shall not include any identifying information about
29 specific investigations. If the attorney general fails to file a report
30 within sixty days after the report is due and there is no good cause as
31 determined by the Arizona criminal justice commission, the attorney general
32 shall make no expenditures from the fund for the benefit of the attorney
33 general until the report is filed. If a political subdivision of this state
34 fails to file a report with the county attorney pursuant to section
35 13-2314.03 within forty-five days after the report is due and there is no
36 good cause as determined by the Arizona criminal justice commission, the
37 attorney general shall make no expenditures from the fund for the benefit of
38 the political subdivision until the report is filed.

39 H. On or before January 30, April 30, July 30 and October 30 of each
40 year, the Arizona criminal justice commission shall compile the attorney
41 general report and the reports of all departments and agencies of this state
42 into a single comprehensive report and shall submit a copy of the report to
43 the governor, with copies to the director of the department of
44 administration, the president of the senate, the speaker of the house of
45 representatives and the director of the joint legislative budget committee.

1 (ii) ANY INDICATION BY A LAW ENFORCEMENT AGENCY THAT THE PERSON IS IN
2 THE UNITED STATES ILLEGALLY.

3 (iii) WHETHER AN ADMISSION BY THE ARRESTED PERSON HAS BEEN OBTAINED BY
4 THE COURT OR A LAW ENFORCEMENT AGENCY THAT THE PERSON HAS ENTERED OR REMAINED
5 IN THE UNITED STATES ILLEGALLY.

6 (iv) ANY INFORMATION RECEIVED FROM A LAW ENFORCEMENT AGENCY PURSUANT
7 TO SECTION 13-3906.

8 (v) ANY EVIDENCE THAT THE PERSON HAS RECENTLY ENTERED OR REMAINED IN
9 THE UNITED STATES ILLEGALLY.

10 (vi) ANY OTHER RELEVANT INFORMATION THAT IS OBTAINED BY THE COURT OR
11 THAT IS PRESENTED TO THE COURT BY A PARTY OR ANY OTHER PERSON.

12 (b) "Serious felony offense" means any class 1, 2, 3 or 4 felony or
13 any violation of section 28-1383.

14 B. The purposes of bail and any conditions of release that are set by
15 a judicial officer include:

- 16 1. Assuring the appearance of the accused.
- 17 2. Protecting against the intimidation of witnesses.
- 18 3. Protecting the safety of the victim, any other person or the
19 community.

20 C. THE INITIAL DETERMINATION OF WHETHER AN OFFENSE IS BAILABLE
21 PURSUANT TO SUBSECTION A OF THIS SECTION SHALL BE MADE BY THE MAGISTRATE AT
22 THE TIME OF THE PERSON'S INITIAL APPEARANCE.

23 ~~C.~~ D. EXCEPT AS PROVIDED IN SUBSECTION A OF THIS SECTION, a person
24 who is in custody shall not be admitted to bail if the person is charged with
25 a felony offense and the state certifies by motion and the court finds after
26 a hearing on the matter that there is clear and convincing evidence that the
27 person charged poses a substantial danger to another person or the community
28 or engaged in conduct constituting a violent offense, that no condition or
29 combination of conditions of release may be imposed that will reasonably
30 assure the safety of the other person or the community and that the proof is
31 evident or the presumption great that the person committed the offense for
32 which the person is charged. For the purposes of this subsection, "violent
33 offense" means either of the following:

- 34 1. A dangerous crime against children.
- 35 2. Terrorism.

36 ~~D.~~ E. On oral motion of the state, the court shall order the hearing
37 required by subsection ~~C.~~ D OF THIS SECTION at or within twenty-four hours of
38 the initial appearance unless the person who is subject to detention or the
39 state moves for a continuance. A continuance that is granted on the motion
40 of the person shall not exceed five calendar days unless there are
41 extenuating circumstances. A continuance on the motion of the state shall be
42 granted on good cause shown and shall not exceed twenty-four hours. THE
43 PROSECUTOR SHALL PROVIDE REASONABLE NOTICE AND AN OPPORTUNITY FOR VICTIMS AND
44 WITNESSES TO BE PRESENT AND HEARD AT ANY HEARING. The person may be detained
45 pending the hearing. The person is entitled to representation by counsel and

1 is entitled to present information by proffer or otherwise, to testify and to
2 present witnesses in the person's own behalf. Testimony of the person
3 charged that is given during the hearing shall not be admissible on the issue
4 of guilt in any subsequent judicial proceeding, except as it might relate to
5 the compliance with or violation of any condition of release subsequently
6 imposed or the imposition of appropriate sentence or in perjury proceedings,
7 or for the purposes of impeachment. The case of the person shall be placed
8 on an expedited calendar and, consistent with the sound administration of
9 justice, the person's trial shall be given priority. The person may be
10 admitted to bail in accordance with the Arizona rules of criminal procedure
11 whenever a judicial officer finds that a subsequent event has eliminated the
12 basis for detention.

13 ~~E.~~ F. The finding of an indictment or the filing of an information
14 does not add to the strength of the proof or the presumption to be drawn.

15 Sec. 4. Section 38-886.01, Arizona Revised Statutes, is amended to
16 read:

17 38-886.01. Ordinary disability retirement; qualifications;
18 amount of pension; conditions for continued
19 payment of pension; definition

20 A. ~~Full-time dispatchers who are employed by an employer of an~~
21 ~~eligible group as defined in section 38-842~~ A MEMBER may retire and receive
22 an ordinary disability pension if the local board finds that all of the
23 following conditions occur:

24 1. An application for disability retirement is filed with the
25 retirement plan or the local board by either the member or the member's
26 participating employer after the disabling incident or within one year after
27 the date the member ceases to be an employee. Timely application for an
28 ordinary disability pension is a prerequisite to receipt of the pension.

29 2. The member undergoes all medical examinations and tests ordered by
30 the local board and releases to the local board all medical reports and
31 records requested by the local board.

32 3. The local board determines that an ordinary disability condition
33 exists that meets the requirements for an ordinary disability.

34 4. THE MEMBER IS NOT PARTICIPATING IN THE REVERSE DEFERRED RETIREMENT
35 OPTION PLAN PURSUANT TO SECTION 38-885.01.

36 B. The effective date of an ordinary disability retirement shall not
37 predate the date of disability or the date the member ceases to be an
38 employee.

39 C. EXCEPT FOR A FULL-TIME DISPATCHER, THE AMOUNT OF AN ORDINARY
40 DISABILITY PENSION IS EQUAL TO A FRACTION TIMES THE MEMBER'S NORMAL
41 RETIREMENT PENSION THAT IS COMPUTED PURSUANT TO SECTION 38-885, SUBSECTION C
42 AS IF THE MEMBER HAD TWENTY YEARS OF CREDITED SERVICE. THE FRACTION IS THE
43 RESULT OBTAINED BY DIVIDING THE MEMBER'S ACTUAL YEARS OF CREDITED SERVICE,
44 NOT TO EXCEED TWENTY YEARS OF CREDITED SERVICE, BY TWENTY. FOR A FULL-TIME
45 DISPATCHER, the amount of an ordinary disability pension is equal to a

1 fraction times the member's normal retirement pension that is computed
2 pursuant to section 38-885, subsection C as if the member had twenty-five
3 years of credited service. The fraction is the result obtained by dividing
4 the member's actual years of credited service, not to exceed twenty-five
5 years of credited service, by twenty-five.

6 D. During the period, if any, between the effective date of ordinary
7 disability retirement and the date the disabled retired member attains
8 sixty-two years of age the local board may require a disabled retired member
9 to undergo periodic reevaluation of the continuation of ordinary disability.
10 If the disabled retired member refuses to submit to reevaluation, the local
11 board may suspend payment of the pension. If the refusal continues for one
12 year, the local board may revoke the disabled retired member's rights to the
13 pension. An ordinary disability pension is terminated if the local board
14 finds the retired member no longer meets the requirements for ordinary
15 disability retirement.

16 E. A member does not qualify for an ordinary disability pension if the
17 local board determines that the member's disability results from any of the
18 following:

19 1. An injury suffered while engaged in a felonious criminal act or
20 enterprise.

21 2. Service in the armed forces of the United States that entitles the
22 member to a veteran's disability pension.

23 3. A physical or mental condition or injury that existed or occurred
24 before the member's date of membership in the plan.

25 F. Local boards shall base a finding of ordinary disability on medical
26 evidence that is obtained by a medical doctor or clinic selected by the local
27 board and shall disregard any other medical evidence or opinions. If the
28 local board retains more than one medical doctor or clinic in connection with
29 the application, the local board shall resolve any material conflicts
30 presented in the medical evidence that is presented by the medical doctors
31 or clinics.

32 G. For the purposes of this section, "ordinary disability" means a
33 physical condition that the local board determines will prevent an employee
34 from totally and permanently performing a reasonable range of duties within
35 the employee's department or a mental condition that the local board
36 determines will prevent an employee from totally and permanently engaging in
37 any substantial gainful activity.

38 Sec. 5. Title 41, chapter 12, article 2, Arizona Revised Statutes, is
39 amended by adding section 41-1722, to read:

40 41-1722. Immigration enforcement grants; powers and duties;
41 fund

42 A. THE DEPARTMENT SHALL:

43 1. AFTER REVIEW BY THE JOINT LEGISLATIVE BUDGET COMMITTEE, MAKE GRANTS
44 FROM FIFTY PER CENT OF THE MONIES IN THE IMMIGRATION GRANT FUND ESTABLISHED
45 BY SUBSECTION C OF THIS SECTION TO COUNTIES AND INDIAN TRIBES FOR

1 INCARCERATION OPERATING EXPENSES, INCLUDING TEMPORARY AND MOVABLE DETAINMENT
2 FACILITIES, TENTS FOR IMMIGRATION CONTROL AND OPERATING AND PERSONNEL COSTS
3 FOR THE DETAINMENT FACILITIES.

4 2. AFTER REVIEW BY THE JOINT LEGISLATIVE BUDGET COMMITTEE, MAKE GRANTS
5 FROM FIFTY PER CENT OF THE MONIES IN THE IMMIGRATION GRANT FUND ESTABLISHED
6 BY SUBSECTION C OF THIS SECTION TO CITY, TOWN, COUNTY AND TRIBAL LAW
7 ENFORCEMENT AGENCIES, CITY AND TOWN PROSECUTORS AND COUNTY ATTORNEYS FOR
8 BORDER SECURITY PERSONNEL, PHYSICAL BARRIERS AND ANY OTHER IMMIGRATION
9 ENFORCEMENT PURPOSES.

10 3. RECEIVE QUARTERLY REPORTS FROM THE ENTITIES RECEIVING GRANTS AND
11 EVALUATE THE EFFECTIVENESS OF THE GRANTS.

12 4. ON OR BEFORE DECEMBER 1 OF EACH YEAR, SUBMIT TO THE GOVERNOR, THE
13 PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE
14 JOINT LEGISLATIVE BUDGET COMMITTEE A WRITTEN REPORT ON THE EFFECTIVENESS OF
15 THE GRANTS PROVIDED AND PROVIDE A COPY OF THIS REPORT TO THE SECRETARY OF
16 STATE AND THE DIRECTOR OF THE ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC
17 RECORDS.

18 B. WHEN AWARDING GRANTS, THE DEPARTMENT SHALL GIVE PREFERRED
19 CONSIDERATION TO LAW ENFORCEMENT AGENCIES THAT HAVE ENTERED INTO A MEMORANDUM
20 OF UNDERSTANDING WITH THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY TO
21 QUALIFY OFFICERS AS IMMIGRATION OFFICERS TO INVESTIGATE, APPREHEND AND DETAIN
22 UNAUTHORIZED PERSONS IN THE UNITED STATES TO THE FULLEST EXTENT CONSISTENT
23 WITH STATE AND FEDERAL LAW.

24 C. THE IMMIGRATION GRANT FUND IS ESTABLISHED CONSISTING OF LEGISLATIVE
25 APPROPRIATIONS, GIFTS AND GRANTS. THE DIRECTOR SHALL ADMINISTER THE FUND.
26 MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT FROM THE
27 PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS. ON
28 NOTICE FROM THE DEPARTMENT, THE STATE TREASURER SHALL INVEST AND DIVEST
29 MONIES IN THE FUND AS PROVIDED IN SECTION 35-313, AND MONIES EARNED FROM
30 INVESTMENTS SHALL BE CREDITED TO THE FUND.

31 Sec. 6. Repeal

32 Laws 2006, chapter 348, section 4 is repealed.

33 Sec. 7. Private prison bed contracting; appropriation

34 A. Notwithstanding the repeal of Laws 2006, chapter 348, section 4,
35 the department of administration shall revise the request for proposals
36 developed pursuant to Laws 2006, chapter 348, section 4 to eliminate the
37 state department of corrections as an eligible bidder and to eliminate any
38 opening date requirements. Notwithstanding section 41-1609.01, subsections G
39 and K and section 41-1609.02, subsection B, Arizona Revised Statutes, the
40 department of administration shall reissue the revised request for proposals
41 to contract for three thousand private prison beds. Private prison vendors
42 may bid for all or a portion of the three thousand beds. The procurement
43 office of the department of administration may award contracts to one or more
44 bidders.

1 B. The sum of \$22,263,000 is appropriated from the state general fund
2 in fiscal year 2008-2009 to the department of administration as partial year
3 funding for costs associated with the opening of the private prison beds.

4 C. The legislature intends that some of the private prison beds
5 authorized pursuant to this section begin opening by the end of fiscal year
6 2008-2009.

7 Sec. 8. Public prison facilities; expansion of existing
8 facilities

9 The state department of corrections and the department of
10 administration shall jointly develop a proposal for adding three thousand
11 state operated prison beds to become operational after the three thousand new
12 private prison beds authorized in section 7 of this act become operational.
13 The state department of corrections shall submit the proposal as part of its
14 fiscal year 2008-2009 capital and operating budget requests, including
15 proposed site locations, pay-as-you-go and long-term financing options for
16 construction costs and staffing and operating costs.

17 Sec. 9. Board of executive clemency; chairperson; executive
18 director

19 Notwithstanding any other law, during fiscal year 2007-2008 and fiscal
20 year 2008-2009, the chairperson of the board of executive clemency shall also
21 act as the executive director of the board.

22 Sec. 10. State department of corrections budget structure

23 Notwithstanding any other law, the state department of corrections
24 shall report actual fiscal year 2006-2007, estimated fiscal year 2007-2008
25 and requested fiscal year 2008-2009 expenditures for each line item
26 delineated in the fiscal year 2007-2008 general appropriation act when the
27 department submits the fiscal year 2008-2009 budget request pursuant to
28 section 35-113, Arizona Revised Statutes. The information submitted for each
29 line item shall contain as much detail as submitted in previous years for
30 prior line items.

31 Sec. 11. Criminal justice enhancement fund; state general fund
32 deposit; crime laboratory assessment fund

33 Notwithstanding any other law, for fiscal year 2007-2008, any monies
34 distributed from the criminal justice enhancement fund pursuant to section
35 41-2401, subsection D, paragraph 11, Arizona Revised Statutes, shall be
36 deposited in the crime laboratory assessment fund established by section
37 41-2415, Arizona Revised Statutes. Notwithstanding section 41-2415,
38 subsection C, Arizona Revised Statutes, monies distributed by this section
39 pursuant to section 41-2401, subsection D, paragraph 11, Arizona Revised
40 Statutes, are for use by the department of public safety and are exempt from
41 distribution to political subdivisions.

42 Sec. 12. Justices of the peace; payment of compensation; fiscal
43 year 2007-2008

44 Notwithstanding section 22-117, subsection B, Arizona Revised Statutes,
45 for fiscal year 2007-2008, the state shall pay 38.5 per cent of the

1 compensation and employee related expenditures of a justice of the peace and
2 the county shall pay 61.5 per cent of the compensation and employee related
3 expenditures of a justice of the peace, except that the county shall pay the
4 full amount of the employer contribution to the Arizona state retirement
5 system or any county health plan.

6 Sec. 13. Collection enforcement revolving fund; attorney
7 general; use

8 Notwithstanding section 41-191.03, subsection B, Arizona Revised
9 Statutes, the attorney general may use monies in the collection enforcement
10 revolving fund established by section 41-191.03, Arizona Revised Statutes,
11 for any operating expenses incurred by the department of law in fiscal year
12 2007-2008 and fiscal year 2008-2009.

13 Sec. 14. Capitol police transfer report

14 The department of administration and the department of public safety
15 shall report jointly to the joint legislative budget committee by December 1,
16 2007 on the feasibility of transferring capitol police personnel to the
17 department of public safety.

18 Sec. 15. Appropriation; purpose; billing; exemption

19 A. The sum of \$8,000,000 is appropriated from the state general fund
20 to the immigration grant fund established by section 41-1722, Arizona Revised
21 Statutes, as added by this act, in fiscal year 2007-2008 for the purposes
22 indicated.

23 B. The department of administration shall send billing invoices to the
24 federal government to recover the amount of the appropriation in subsection A
25 of this section for deposit in the state general fund.

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

29 Sec. 16. Effective date; conditional enactment

30 Section 38-886.01, Arizona Revised Statutes, as amended by this act, is
31 effective from and after June 30 of the year that follows the June 30
32 actuarial valuation of the corrections officer retirement plan that
33 determines that the ratio of the funding value of accrued assets to accrued
34 liabilities of the fund is at least one hundred per cent. Notwithstanding
35 this section, the earliest effective date of section 38-886.01, Arizona
36 Revised Statutes, as amended by this act, shall be from and after June 30,
37 2010, but only if the June 30, 2009 actuarial valuation of the corrections
38 officer retirement plan determines that the ratio of the funding value of
39 accrued assets to accrued liabilities of the fund is at least one hundred per
40 cent. The administrator of the corrections officer retirement plan shall
41 notify in writing the director of the Arizona legislative council of the date
42 on which the condition is met.