

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2737

AN ACT

AMENDING SECTION 9-500.11, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 200, SECTION 1; REPEALING SECTION 9-500.11, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 105, SECTION 2; RELATING TO MUNICIPAL TAX INCENTIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 9-500.11, Arizona Revised Statutes, as amended by
3 Laws 2005, chapter 200, section 1, is amended to read:

4 9-500.11. Economic development incentives; requirements;
5 limitations; conditions; definitions

6 A. In addition to any other powers granted to a city or town, the
7 governing body of a city or town may appropriate and spend public monies for
8 and in connection with economic development activities.

9 B. To fund economic development activities under this section, a city
10 or town subject to the requirements of section 9-500.06 shall not impose a
11 new fee or tax on a single specific industry or type of business.

12 C. Notwithstanding section 19-142, subsection B, a decision by the
13 governing body involving an expenditure pursuant to this section shall not be
14 enacted as an emergency measure and that decision is not effective for at
15 least thirty days after final approval of the expenditure.

16 D. THE GOVERNING BODY OF A CITY OR TOWN MAY ENTER INTO A RETAIL
17 DEVELOPMENT TAX INCENTIVE AGREEMENT AS AN INDUCEMENT OR IN EXCHANGE FOR
18 RETAIL DEVELOPMENT ACTIVITIES OR LOCATING OR RELOCATING A RETAIL BUSINESS IN
19 THE CITY OR TOWN, SUBJECT TO THE REQUIREMENTS OF THIS SECTION, IF THE
20 PROPOSED TAX INCENTIVE WILL PRODUCE MORE REVENUE THAN THE AMOUNT OF THE
21 INCENTIVE DURING THE TERM OF THE AGREEMENT.

22 E. THE GOVERNING BODY OF A CITY OR TOWN THAT OFFERS A RETAIL
23 DEVELOPMENT TAX INCENTIVE MUST MAINTAIN A PUBLIC REGISTER OF EACH OFFER MADE
24 TO A RETAILER OR RETAIL DEVELOPER AS AN INCENTIVE FOR LOCATING OR RELOCATING
25 A RETAIL BUSINESS IN THE CITY OR TOWN. THE REGISTER MUST INCLUDE THE DATE OF
26 THE OFFER AND ANY COUNTER OFFERS BY THE RETAILER OR RETAIL DEVELOPER AND THE
27 NAME OF THE RETAILER OR RETAIL DEVELOPER. FOR THIRTY DAYS AFTER A BONA FIDE
28 OFFER IS FIRST LISTED ON THE REGISTER, AND FOR THIRTY DAYS AFTER A BONA FIDE
29 COUNTER OFFER IS LISTED, NO OTHER CITY OR TOWN LOCATED WITHIN FIVE MILES MAY
30 OFFER A RETAIL DEVELOPMENT TAX INCENTIVE TO THE SAME RETAILER OR RETAIL
31 DEVELOPER. THE LISTING OF THE OFFER ON THE REGISTER MUST CONTINUE UNTIL THE
32 TIME LIMITS PRESCRIBED BY THIS SUBSECTION EXPIRE, UNTIL THE OFFER IS
33 WITHDRAWN BY THE CITY OR TOWN OR UNTIL THE CITY OR TOWN ENTERS INTO A RETAIL
34 DEVELOPMENT TAX INCENTIVE AGREEMENT WITH THE RETAILER OR RETAIL DEVELOPER,
35 WHICHEVER OCCURS FIRST.

36 ~~D.~~ F. EXCEPT AS PROVIDED BY SUBSECTION G OF THIS SECTION, before
37 entering into a retail development tax incentive agreement, a city or town
38 shall AT A PUBLIC HEARING make a finding by a simple majority vote of the
39 governing body ~~without the use of consent calendar~~ AFTER A PUBLIC HEARING
40 that includes both of the following:

41 1. That the proposed tax incentive is anticipated to ~~raise~~ PRODUCE
42 more revenue than the amount of the incentive within the duration of the
43 agreement. THE FINDING UNDER THIS PARAGRAPH MUST BE VERIFIED BY AN
44 INDEPENDENT THIRD PARTY BEFORE THE CITY OR TOWN ENTERS INTO THE AGREEMENT.
45 THE DEVELOPER OR RETAIL BUSINESS RECEIVING THE INCENTIVES UNDER THE AGREEMENT

1 SHALL NOT FINANCE THE INDEPENDENT THIRD PARTY OR HAVE INPUT INTO THE
2 SELECTION OF THE INDEPENDENT THIRD PARTY.

3 2. That in the absence of a tax incentive, the retail business
4 facility or similar retail business facility would not locate in the city or
5 town in the same time, place or manner.

6 ~~E.~~ G. A city or town located in or within twenty-five miles of the
7 exterior boundary of a metropolitan statistical area having a population of
8 more than two million persons shall make a finding pursuant to subsection ~~D~~
9 F of this section, by a two-thirds vote of the governing body.

10 ~~F. A city or town shall not enter into a retail tax incentive~~
11 ~~agreement if the proposed tax incentive raises less revenue than the amount~~
12 ~~of the incentive.~~

13 ~~G. A city or town shall present a status report of the revenues and~~
14 ~~expenses associated with the tax incentive every two years for the duration~~
15 ~~of the agreement in a public meeting.~~

16 ~~H. The finding made pursuant to subsection D, paragraph 1 of this~~
17 ~~section shall be verified by an independent third party before the city or~~
18 ~~town enters into the retail development incentive agreement.~~

19 H. ANY RETAIL DEVELOPMENT TAX INCENTIVE AGREEMENT ENTERED INTO AFTER
20 DECEMBER 31, 2006 BY A CITY OR TOWN LOCATED IN OR WITHIN TWENTY-FIVE MILES OF
21 THE EXTERIOR BOUNDARY OF A METROPOLITAN STATISTICAL AREA HAVING A POPULATION
22 OF MORE THAN FIVE HUNDRED THOUSAND PERSONS MUST BE STRUCTURED AS FOLLOWS:

23 1. THE AGREEMENT MUST PROVIDE THAT THE EXPENDITURES FOR THE INCENTIVE
24 MAY BE DERIVED ONLY FROM THE FIRST ONE-HALF OF ONE PER CENT OF THE REVENUES
25 GENERATED AT THE SITE OVER THE TERM OF THE AGREEMENT THAT ARE SUBJECT TO THE
26 CITY'S OR TOWN'S SALES, USE OR TRANSACTION PRIVILEGE TAX.

27 2. THE AGREEMENT MUST STATE A MAXIMUM CUMULATIVE DOLLAR AMOUNT OF THE
28 TAX EXPENDITURE CONSIDERING MARKET ANALYSES CONDUCTED BY THE DEVELOPER, THE
29 RETAILER OR THE CITY OR TOWN BEYOND WHICH NO FURTHER INCENTIVE IS ALLOWED
30 REGARDLESS OF WHETHER THE FULL TERM OF THE AGREEMENT UNDER PARAGRAPH 3 OF
31 THIS SUBSECTION HAS EXPIRED.

32 3. THE AGREEMENT MUST INCLUDE A TERMINATION DATE, NOT MORE THAN SIXTY
33 MONTHS AFTER THE FIRST RETAIL UNIT IS OPEN FOR BUSINESS, AFTER WHICH NO
34 FURTHER INCENTIVE IS ALLOWED TO BE EARNED OR PAID REGARDLESS OF WHETHER THE
35 MAXIMUM AMOUNT OF THE EXPENDITURE UNDER PARAGRAPH 2 OF THIS SUBSECTION HAS
36 BEEN DELIVERED.

37 I. IF A CITY OR TOWN THAT IS NOT SUBJECT TO SUBSECTION H OF THIS
38 SECTION ADOPTS AN ORDINANCE RELATING TO RETAIL DEVELOPMENT TAX INCENTIVE
39 AGREEMENTS, THE ORDINANCE MUST BE EQUAL TO OR MORE STRINGENT THAN THE
40 PROVISIONS OF THIS SECTION.

41 J. THE REQUIREMENTS OF SUBSECTION H OF THIS SECTION APPLY REGARDLESS
42 OF WHETHER THE PRIMARY INDUCEMENT IS OFFERED FOR RETAIL DEVELOPMENT
43 ACTIVITIES OR FOR LOCATING OR RELOCATING A RETAIL BUSINESS IN THE CITY OR
44 TOWN. IF A RETAIL DEVELOPMENT TAX INCENTIVE AGREEMENT IS FOR:

- 1 1. RETAIL DEVELOPMENT ACTIVITIES, THE DEVELOPER MUST AGREE TO:
2 (a) COOPERATE AND PROVIDE FOR THE COMPILATION AND SUBMISSION TO THE
3 CITY OR TOWN AND TO THE AUDITOR GENERAL OF ANY DATA THAT ARE NECESSARY TO
4 ADMINISTER AND DETERMINE COMPLIANCE WITH THE AGREEMENT.
5 (b) WAIVE CONFIDENTIALITY UNDER STATE AND FEDERAL LAW REGARDING TAX
6 INFORMATION FURNISHED BY THE DEVELOPER SOLELY FOR THE PURPOSE OF THE
7 ADMINISTRATION OF THE AGREEMENT BY THE CITY OR TOWN AND THE DETERMINATION OF
8 COMPLIANCE WITH THE AGREEMENT BY THE AUDITOR GENERAL.
9 (c) INCLUDE IN ANY LEASES AND SUBLEASES RESPECTING THE PROPERTY AND
10 REQUIRE OF LESSEES AND SUBLESSEES THE SAME DATA GATHERING OBLIGATION AND
11 LIMITED WAIVER OF CONFIDENTIALITY OF TAX INFORMATION FURNISHED BY THE LESSEE
12 OR SUBLESSEE FOR THE PURPOSES OF ADMINISTERING AND DETERMINING COMPLIANCE
13 WITH THE AGREEMENT.
14 2. LOCATING OR RELOCATING A RETAIL BUSINESS, THE BUSINESS MUST AGREE
15 TO:
16 (a) COOPERATE AND PROVIDE FOR THE COMPILATION AND SUBMISSION TO THE
17 CITY OR TOWN AND TO THE AUDITOR GENERAL OF ANY DATA THAT ARE NECESSARY TO
18 ADMINISTER AND DETERMINE COMPLIANCE WITH THE TERMS OF THE AGREEMENT.
19 (b) WAIVE CONFIDENTIALITY UNDER STATE AND FEDERAL LAW REGARDING TAX
20 INFORMATION FURNISHED BY THE RETAILER SOLELY FOR THE PURPOSE OF THE
21 ADMINISTRATION OF THE AGREEMENT BY THE CITY OR TOWN AND THE DETERMINATION OF
22 COMPLIANCE WITH THE AGREEMENT BY THE AUDITOR GENERAL.
23 K. A city or town shall adopt a notice of intent to ~~enter into~~
24 CONSIDER ENTERING INTO a retail development tax incentive agreement at least
25 fourteen days before approving a retail development tax incentive agreement.
26 ~~I.~~ L. The adoption of the retail development tax incentive agreement
27 shall, AT A PUBLIC HEARING, be approved by a simple majority vote of the
28 governing body, ~~without the use of consent calendar.~~ For EXCEPT THAT IN a
29 city or town located in or within twenty-five miles of the exterior boundary
30 of a metropolitan statistical area having a population of more than two
31 million persons, the adoption of a retail development tax incentive agreement
32 shall be approved by an affirmative vote of at least two-thirds of the
33 governing body. ~~without the use of consent calendar.~~
34 ~~J. A person or business entity receiving the retail development tax~~
35 ~~incentive agreement shall not finance the independent third party~~
36 ~~verification of the findings or have input into the selection of the~~
37 ~~independent third party verifying the findings.~~
38 M. A COPY OF ANY RETAIL DEVELOPMENT TAX INCENTIVE AGREEMENT ENTERED
39 INTO AFTER DECEMBER 31, 2006, MUST BE IMMEDIATELY FILED WITH THE AUDITOR
40 GENERAL.
41 N. EVERY TWO YEARS FOR THE DURATION OF THE AGREEMENT THE CITY OR TOWN
42 SHALL PRESENT IN A PUBLIC MEETING A STATUS REPORT OF THE REVENUES AND
43 EXPENDITURES ASSOCIATED WITH THE AGREEMENT.

1 0. THE AUDITOR GENERAL SHALL DEVELOP AND PRESCRIBE THE FORM OF AUDIT
2 REPORTS RESPECTING EACH AGREEMENT. THE AUDIT REPORT IS DUE FROM THE CITY OR
3 TOWN WITHIN NINETY DAYS AFTER THE TERMINATION OF THE AGREEMENT. THE AUDITOR
4 GENERAL SHALL CONDUCT OR CAUSE TO BE CONDUCTED AN AUDIT OF THE EXPENDITURES
5 UNDER THE AGREEMENT AND DETERMINE COMPLIANCE WITH THE LIMITATIONS PRESCRIBED
6 BY SUBSECTION H OF THIS SECTION. IF THE AUDITOR GENERAL DECLINES OR FAILS TO
7 BEGIN THE AUDIT WITHIN ONE HUNDRED TWENTY DAYS, NO FURTHER ACTION IS
8 AUTHORIZED. IF, AFTER AUDIT, THE AUDITOR GENERAL DETERMINES THAT THERE IS A
9 VIOLATION OF THE LIMITATIONS PRESCRIBED BY SUBSECTION H OF THIS SECTION:

10 1. THE AUDITOR GENERAL SHALL NOTIFY THE PARTIES TO THE AGREEMENT OF
11 THE VIOLATION BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

12 2. THE PARTIES MAY CORRECT THE VIOLATION WITHOUT PENALTY WITHIN NINETY
13 DAYS AFTER THE DATE OF THE NOTICE.

14 3. IF THE PARTIES FAIL TO CORRECT THE VIOLATION, THE PARTIES ARE
15 SUBJECT TO A CIVIL PENALTY EQUAL TO THREE TIMES THE AMOUNT OF ANY
16 EXPENDITURES THAT EXCEEDS THE LIMIT, PAYABLE BY THE PARTIES IN EQUAL
17 PROPORTIONS. THE PENALTIES SHALL BE PAID TO THE AUDITOR GENERAL FOR CREDIT
18 TO THE STATE GENERAL FUND.

19 4. THE CITY OR TOWN SHALL REIMBURSE THE AUDITOR GENERAL FOR ANY COSTS
20 INCURRED IN COMPLYING WITH THE REQUIREMENTS OF THIS SECTION.

21 ~~L.~~ P. ~~Subsection~~ SUBSECTIONS D THROUGH N of this section ~~does~~ DO not
22 apply WITH RESPECT to:

23 1. MUNICIPAL SERVICES AND BENEFITS THAT ARE GENERALLY AFFORDED BY
24 ORDINANCE TO ALL NEW BUSINESSES IN THE CITY OR TOWN AND THAT HAVE NO DIRECT
25 EFFECT ON MUNICIPAL TAX REVENUES.

26 2. Tax incentives given to a business entity in OR LOCATING OR
27 RELOCATING INTO an area that is designated by a city or town as a
28 redevelopment project as defined in section 36-1471.

29 3. INCENTIVES CONSISTING OF PUBLIC INFRASTRUCTURE FEATURES FURNISHED
30 AND OWNED BY THE CITY OR TOWN, INCLUDING TRANSPORTATION, WATER, SEWER AND
31 OTHER PHYSICAL FACILITIES AND AMENITIES.

32 4. INCENTIVES THAT ARE OFFERED FOR THE PURPOSE OF PRESERVING
33 HISTORICAL BUILDINGS AND OTHER STRUCTURES.

34 5. INCENTIVES THAT ARE OFFERED FOR CLEANUP OR OTHER REMEDIATION
35 ACTIVITIES AT A BROWNFIELDS SITE UNDER TITLE 49, CHAPTER 2, ARTICLE 1.1 OR
36 THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF
37 1980 (P.L. 96-510; 94 STAT. 2767; 42 UNITED STATES CODE SECTIONS 9601 THROUGH
38 9657), COMMONLY KNOWN AS "SUPERFUND".

39 ~~M.~~ Q. For the purposes of this section:

40 1. "Economic development activities" means any project, assistance,
41 undertaking, program or study, whether within or outside the boundaries of
42 the city or town, including acquisition, improvement, redevelopment, leasing
43 or conveyance of improved or unimproved real or personal property or other
44 activity, that the governing body of the city or town has found and
45 determined will assist in the creation or retention of jobs or will otherwise

1 improve or enhance the economic welfare of the inhabitants of the city or
2 town.

3 2. "Expenditure" includes any waiver, exemption, deduction, credit,
4 rebate, discount, deferral or other abatement or reduction of the normal
5 municipal tax liability that otherwise applies to similar existing business
6 entities and properties in that city or town, however denominated, computed
7 or applied, and that is generally understood as an inducement to locate a
8 business facility or other operation in the city or town.

9 3. "Metropolitan statistical area" means a geographical area
10 consisting of cities, towns and other populated areas defined for federal
11 statistical and census purposes by the United States office of management and
12 budget with technical assistance from the United States bureau of the census.

13 4. "Retail" means the sale of tangible personal property, except the
14 sale of tangible personal property to a person who is engaged in the business
15 of selling such property.

16 5. "Retail development activities" means those economic development
17 activities that involve the acquisition, improvement, leasing or conveyance
18 of improved or unimproved real or personal property or other activity to
19 facilitate the sale of ~~goods~~ TANGIBLE PERSONAL PROPERTY at retail, including
20 the sale of automobiles, or to facilitate other activities, including theater
21 and restaurant development, that generate revenues that are subject to
22 municipal SALES, USE OR transaction privilege taxation.

23 6. "Retail development tax incentive agreement" means an agreement
24 between a city or town and a person engaged in or planning to engage in
25 retail development activities OR THE LOCATION OR RELOCATION OF A RETAIL
26 BUSINESS within that city or town in which the city or town agrees to pay,
27 refund, credit, rebate or otherwise provide to that person all or a portion
28 of the sales, use or transaction privilege taxes payable to that city or town
29 in connection with ~~the construction, development or operation of the~~ retail
30 development activities OR THE LOCATION OR RELOCATION OF A RETAIL BUSINESS IN
31 THE CITY OR TOWN.

32 Sec. 2. Repeal

33 Section 9-500.11, Arizona Revised Statutes, as amended by Laws 2005,
34 chapter 105, section 2, is repealed.