

# Fiscal Note

**BILL #** HB 2876

**TITLE:** government contracts; public-private partnerships

**SPONSOR:** Carroll

**STATUS:** As Amended by Senate TAT

**PREPARED BY:** Jordan Johnston

## REVISED

This revised note reflects information from the Arizona Department of Transportation (ADOT) received after publication of the original note. ADOT provided estimates of the number of recent projects that would have been subject to the increased stipulated fee costs under the bill, which permitted us to estimate an annual impact.

### Description

The bill would increase the limit on stipulated fees that ADOT or local governments award to contractors for unsuccessful requests for proposal (RFP) responses on design-build contracts from 0.2% to 0.4% of the project's final budget. The bill also establishes a stipulated fee of 0.4% for unsuccessful public-private partnership (PPP) design-build contract RFP responses.

### Estimated Impact

Based on historical data provided by ADOT, we estimate the bill could increase stipulated fee costs to the department for design-build projects by about \$2.2 million annually. This estimate assumes 1 PPP design-build project and 1 other design-build project each year, with an average of 2 unsuccessful RFP responses paid. The cost would be split between the State Highway Fund and Federal Funds proportional to their financial participation for a given project.

### Analysis

A.R.S. § 28-7705 outlines the current public-private partnership agreements between private entities and ADOT. A.R.S. § 28-7365 and A.R.S. § 34-603 prescribe the rules and procedures for ADOT and local governments for awarding design-build contracts. These rules include the award of a stipulated fee of 0.2% of the project's final budget for design and construction to any contractor with an unsuccessful RFP.

The bill would modify A.R.S. § 28-7705 to establish a new 0.4% stipulated fee for unsuccessful PPP design-build contract RFP responses. In addition, the bill would modify A.R.S. § 28-7365 and A.R.S. § 34-603 to increase the stipulated fees ADOT and local governments pay for unsuccessful RFP responses submitted for all other design-build contracts from 0.2% to 0.4% of the project's final budget. In effect, these provisions would require government entities to award monies to contractors to help offset the cost incurred from creating and submitting responses to RFPs. Payment of the stipulated fee is not automatic as contractors who accept the stipulated fee must agree to permit ADOT to use any ideas or information in the unsuccessful proposal in the future as permitted by statute.

ADOT provided historical data on design-build contracts, and the subsequent stipulated fees paid, for the past 10 years. Over the past 10 years, ADOT has contracted 11 design-build projects at a total cost of about \$906.4 million, including stipulated fees paid totaling \$3.6 million or an average of about \$330,000 each year. This bill would double the current rate of stipulated fees and would therefore increase the average cost of the fees by \$330,000 annually.

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In addition, although statute is silent regarding stipulated fees paid for PPP design-build contracts, ADOT currently pays stipulated fees for these contracts at a rate of 0.2% of the project's budget (similar to all other design-build contracts). The use of PPP design-build projects is relatively new to the department, with only 4 projects contracted to date. Over the past 4 years, ADOT has entered 4 PPP design-build contracts at a total cost of about \$1.9 billion, including stipulated fees paid totaling \$7.5 million or an average of \$1.9 million each year. Given ADOT's current policy of paying stipulated fees for PPP design-build contracts, the bill would effectively increase the average cost of the fees for these contracts by \$1.9 million annually.

Between both types of design-build contracts, we estimate the combined impact would be an increase of \$2.2 million annually.

#### **Local Government Impact**

The bill would increase the limit on stipulated fees awarded to contractors for unsuccessful RFP responses on design-build contracts from 0.2% to 0.4% of the project's final budget and establish a 0.4% stipulated fee for public-private partnerships. This bill is expected to at least double the stipulated fee costs to local governments for design-build projects, but we cannot estimate the impact in advance.

4/9/21