Arizona SIB Statutes

Title 28- Transportation, Chapter 21 - STATE HIGHWAY FINANCING AND BONDING
Article 5 - Highway Expansion and Extension Loan Program

28-7671. Definitions

In this article, unless the context otherwise requires:

1. " Eligible highway project" means a highway project that is both:

(a) On the federal aid system, national highway system or state route or state highway system.

(b) Included in either:

(i) The department's state highway construction plan.

(ii) The transportation improvement plan of a regional association of governments.

2. " Eligible transit capital project" means land, buildings or motor vehicles or a combination of land, buildings and motor vehicles that is included in the transportation improvement plan of a regional association of governments and that is part of the federal transit administration's rural public transportation program for entities that are eligible pursuant to section 28-7676 and that have populations of less than fifty thousand persons.

3. " Eligible transportation project" means a transportation project that is eligible pursuant to section 28-7676.

4. " Federal SIB act" means section 350 of the national highway system designation act of 1995 (P.L. 104-59; 109 Stat. 618), any regulations adopted pursuant to that section and any other provisions of federal law providing for state infrastructure banks, infrastructure credit programs and other grant programs for highway purposes and any regulations adopted pursuant to those laws.

5. " Fund" means the highway expansion and extension loan program fund established by section 28-7674.

6. " Indian tribe" means any Indian tribe, band, group or community that is recognized by the United States secretary of the interior and that exercises governmental authority within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

7. " Loan repayment agreement" means one or more loan agreements, instruments or other agreements providing for repayment of a loan or other financial assistance and entered into by this state or its agencies, including the department, or a political subdivision or Indian tribe.

8. " Political subdivision" means a county, city, town or special taxing district authorized by law to construct or assist in the construction of an eligible highway project or a

county, city, town or special taxing district established pursuant to section 48-5102 to construct or assist in the construction of a transportation project.

9. " SIB cooperative agreement" means a cooperative agreement or agreements entered into by the Arizona department of transportation with the United States department of transportation pursuant to this article and the federal SIB act.

28-7673. Powers and duties of the board and department

A. The transportation board may:

1. Make loans or provide other financial assistance to political subdivisions, Indian tribes or this state or its agencies, including the department, from monies in the fund for eligible projects.

2. Enter into a loan repayment agreement with an entity if in the board's judgment the loan repayment agreement is in furtherance of funding eligible projects pursuant to this article.

3. Apply for, accept and administer grants and other financial assistance from the United States government and from other public and private sources that are made for deposit in the fund.

B. The Arizona department of transportation may enter into SIB cooperative agreements or capitalization grant agreements with the United States department of transportation.

C. The board or the department shall deposit, pursuant to sections 35-146 and 35-147, any monies received pursuant to subsection A, paragraphs 2 and 3 and subsection B in the fund.

D. The board and the department may each enter into contracts, execute any agreements or instruments and do any other act necessary or appropriate to carry out the purposes of this article, including exercising any power granted to them pursuant to this title in conjunction with, to facilitate or to otherwise assist the financing or operation of the fund or an eligible project.

E. If a SIB cooperative agreement and the federal SIB act apply, the board and the department shall each comply with the requirements of the SIB cooperative agreement and the federal SIB act in carrying out their powers and duties pursuant to this article.

F. In providing financial assistance pursuant to this article, the board shall not make a gift, grant or donation of monies in the fund, and any financial assistance provided shall be repaid to the fund.

G. This article does not increase the board's bonding authority.

28-7674. Highway expansion and extension loan program fund

A. The highway expansion and extension loan program fund is established. The fund constitutes a state infrastructure bank under the federal SIB act. The state treasurer shall receive in trust, hold and disburse monies in the fund solely for the purposes authorized by this article. The department shall administer the fund as a continuing

appropriation in accordance with this article and the federal SIB act. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. The fund consists of:

1. Monies appropriated by the legislature.

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

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

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

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

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

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

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

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

2. Subsidizing interest rates.

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

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

D. Except for monies received pursuant to subsection B, paragraph 4 of this section, up to ten million dollars of the monies in the fund may be used for eligible transit capital projects in municipalities with a population of less than fifty thousand persons.

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

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

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

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

28-7675. Fund; annual financial audit and report

A. The transportation board shall annually cause a financial audit to be made of the fund. The financial audit shall be conducted by a certified public accountant within six months after the end of each fiscal year. The board shall immediately file a certified copy of the audit with the auditor general.

B. The board shall pay any fees and costs of the financial audit under this section from the fund.

C. The transportation board is exempt from subsection A of this section if all of the following apply:

1. Unexpended monies do not remain in the fund except interest and investment earnings deposited pursuant to section 28-7674, subsection B, paragraph 6.

2. There are no outstanding eligible project loans in the fund.

3. All approved or pending eligible project loans or other financial assistance applications are disbursed, and the board does not expect additional financial assistance applications.

4. There are no outstanding board funding obligations due to the state treasurer.

28-7676. Eligible project loans and other financial assistance

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

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

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

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

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

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

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

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

1. Approve, disapprove or modify a simplified application form and guidelines.

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

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

(a) Economic benefits.

(b) Mobility.

(c) Air quality.

(d) Safety.

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

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

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

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

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

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

H. A loan under this section shall:

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

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

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

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

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

6. If made to an Indian tribe, be conditioned on the establishment of a dedicated source under the control of a tribally chartered corporation or another tribal entity that is subject to suit by the attorney general to enforce the loan repayment agreement or be secured by assets that, in the event of default of the loan repayment agreement, are subject to execution by the attorney general without the waiver of any claim of sovereign immunity by the tribe.

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

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

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

L. The recipient of any loan retains sole responsibility to ensure that any related eligible project is in compliance with any applicable federal, state or local environmental or other laws, rules or regulations. The board does not assume any responsibility for compliance

by the awarding of financial assistance or other actions under this article. The awarding of financial assistance or any other actions by the board under this article do not constitute actions that subject the board to compliance with state or local environmental or other laws.

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

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

O. A loan repayment agreement may be payable by a political subdivision, this state or its agencies or an Indian tribe from any revenues otherwise authorized by law to be used or pledged for street and highway purposes and may be secured by any other revenues authorized by law to be pledged to repay long-term obligations. Notwithstanding chapters 17 and 18 of this title, a loan repayment agreement may be payable from monies in a regional area road fund construction account and from revenues distributed pursuant to section 28-6538, subsection B.

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

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

28-7677. Acceleration of right-of-way acquisition, design or construction of eligible highway and transportation projects

A. If the department enters into an agreement with a political subdivision or Indian tribe for accelerated right-of-way acquisition, design or construction of an eligible highway project, the agreement may provide for the advancing to the department by the political subdivision or Indian tribe of monies needed for the right-of-way acquisition, design or construction and for the repayment by the department of the advanced monies, with interest, if any, at the agreed on rate, to the political subdivision or Indian tribe. The political subdivision or Indian tribe may make an advance from any available monies, and any advance constitutes an eligible investment for sinking funds or other funds of the political subdivision or Indian tribe.

B. The department shall repay the political subdivision or Indian tribe for an advance, together with interest, if any, on the advance at the agreed on rate, from monies available to the department for the eligible project pursuant to a mutually agreed on repayment schedule. The period for repayment shall not be more than five years from the date of the advance. Notwithstanding chapters 17 and 18 of this title, an advance, together with interest on the advance, may be repaid by the department from monies in a regional area road fund construction account and from revenues distributed pursuant to section 28-6538, subsection B.

C. If the department enters into an agreement with a political subdivision, regional planning agency, metropolitan planning organization or council of governments or

designated grant recipient to accelerate a transportation project, the agreement may provide that the political subdivision may advance to the department monies needed for the transportation project. The agreement may also provide for the department's repayment of the advanced monies to the political subdivision with interest at a specified rate. The political subdivision may make an advance from any available monies. Any advance constitutes an eligible investment for sinking funds or other funds of the political subdivision.

D. The department's repayment as described in subsection C of this section shall be made from monies available to the department for the transportation project pursuant to the mutually agreed on repayment schedule. An advance, together with interest on the advance, may be repaid by the department from any lawfully available monies.