

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

HOUSE BILL 2477

AN ACT

AMENDING SECTIONS 41-1505.06 AND 41-1505.07, ARIZONA REVISED STATUTES;
AMENDING TITLE 41, CHAPTER 10, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING
SECTION 41-1505.09; MAKING AN APPROPRIATION; RELATING TO THE DEPARTMENT OF
COMMERCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1505.06, Arizona Revised Statutes, is amended to
3 read:

4 41-1505.06. Powers and duties; services; confidential
5 information; annual report; liability

6 A. The commission has the following powers and duties:

7 1. Develop comprehensive long-range strategic economic plans for this
8 state and submit them to the director.

9 2. Assist the department in the coordination of the independent
10 efforts of all state and local agencies involved in economic planning and
11 economic development.

12 3. Develop and annually update a ten-year strategic economic plan for
13 submission to the director.

14 4. Adopt resolutions and act on such resolutions.

15 5. Either directly or indirectly, provide financial assistance to
16 businesses locating or expanding within this state. The value of the
17 assistance provided shall not exceed fifty per cent of the estimated total
18 increase in tax revenues accruing to this state and its political
19 subdivisions as a direct or indirect result of the location, retention or
20 expansion of such business as determined by the department.

21 6. Accept gifts, grants or loans and enter into contracts or other
22 transactions with any federal or state agency, municipality, private
23 organization or other source.

24 7. Adopt and use a seal.

25 8. Purchase, acquire or hold by grant, gift, devise, lease or
26 otherwise real or personal property or interests in real or personal
27 property.

28 9. Improve, employ or use any real or personal property or interests
29 in any real or personal property purchased, acquired or held for purposes of
30 this article.

31 10. Sell, convey, lease, exchange, transfer or otherwise dispose of any
32 of its property or any interest in its property, wherever situated.

33 11. Adopt rules necessary to carry out its duties.

34 B. The commission shall utilize the services of employees of the
35 department. The times and conditions of the use of such employees shall be
36 determined by the chairman of the commission.

37 C. The commission may utilize the services of professionals in the
38 field of economic development under contractual arrangements as deemed
39 appropriate. Such contracts shall be entered into in accordance with chapter
40 23 of this title.

41 ~~D. Any information submitted to or compiled by the commission in~~
42 ~~connection with its work that concerns the identity, background, financial~~
43 ~~status, marketing plans or trade secrets or any other proprietary information~~
44 ~~related to persons, firms, associations, partnerships, agencies, corporations~~
45 ~~or other entities is exempt from the provisions of title 39, chapter 1,~~

1 ~~article 2 and deemed confidential and is not subject to disclosure except to~~
2 ~~the extent that the person or organization that provided the information and~~
3 ~~to whom the information relates consents to the disclosure.~~

4 ~~F.~~ D. On or before the conclusion of each calendar quarter the
5 commission shall report to the governor, the president of the senate and the
6 speaker of the house of representatives on the activities of the commission.
7 The report shall include a detailed accounting of any expenditures made from
8 the ~~fund~~ FUNDS established ~~pursuant to section~~ BY SECTIONS 41-1505.09 AND
9 41-1505.10.

10 ~~F.~~ E. A member or any person acting on behalf of the commission
11 through the execution of any contracts, commitments or agreements issued
12 pursuant to the work of the commission is not personally liable under the
13 contracts, commitments or agreements. A member or any person acting on
14 behalf of the commission is not personally liable for damages or injury
15 resulting from the performance of commission duties.

16 ~~G.~~ F. Any contract or agreement made in violation of this section is
17 void and does not give rise to any action against the commission.

18 G. NOTWITHSTANDING ANY OTHER LAW, INFORMATION REGARDING ASSISTANCE
19 PROVIDED BY THE COMMISSION SHALL BE PUBLIC RECORD, EXCEPT FOR TRADE SECRETS
20 OR OTHER INFORMATION EXEMPTED PURSUANT TO SECTION 41-1505.07, SUBSECTION J.

21 Sec. 2. Section 41-1505.07, Arizona Revised Statutes, is amended to
22 read:

23 41-1505.07. Eligibility for economic development assistance;
24 definitions

25 A. The commission shall establish business incentives and assistance
26 procedures for use by the department in evaluating the retention, expansion
27 or location of businesses and other qualified projects within this state for
28 the purpose of providing assistance in excess of one million dollars.

29 B. The provision of assistance to a business or other qualified
30 project pursuant to this section is contingent on a finding by the commission
31 that the retention, expansion or location of the business or other qualified
32 project is clearly in the best interests of this state. This finding shall
33 be contained in a resolution adopted by the commission. The resolution shall
34 state that the retention, expansion or location of the business or other
35 qualified project under consideration is clearly in the best interests of
36 this state and shall set forth the evidence and reasons supporting this
37 finding, including:

38 1. The estimated value of the annual tax revenue accruing to this
39 state and its political subdivisions as a direct or indirect result of the
40 location or expansion of such business or other qualified project.

41 2. The public benefit of the business or project from the retained or
42 increased employment base.

43 3. The extent to which the economic development from the business or
44 project raises the standard of living of persons affected by the business or

1 project, increases free enterprise growth and increases the quality of life
2 in this state through the actions of business, government and the community.

3 4. The ratio of economic benefit from wages paid and capital
4 investment made by the business or project to the amount of assistance given
5 by this state.

6 5. The contribution to the growth of existing businesses and creation
7 of new businesses and business clusters that the business or project will
8 enhance.

9 6. Whether the business or project will pay wages equal to or in
10 excess of the latest available median income in the political subdivision in
11 which such business locates and will provide its employees with benefits such
12 as health care, retirement, child care, educational reimbursements and
13 training.

14 7. The percentage of the products or services the company will export
15 outside of this state over the first five years of operation.

16 8. In the case of a business location or expansion, the number and
17 percentage of the new jobs to be created by the company to be filled by
18 residents of this state in the first five years of operation and, in the case
19 of a business retention, the number of jobs retained in this state.

20 C. Before assistance is provided the commission shall conduct or
21 review a credibly prepared cost benefit analysis of the project to include:

22 1. Information on direct and indirect public and private costs.
23 2. Negative effects from the business or project, and the assumptions
24 on which the information is based.

25 3. An analysis of the impact of the assistance on state revenues and
26 expenditures, and the assumptions on which that analysis is based.

27 D. In the case of a business retention or expansion, the total value
28 of the assistance provided pursuant to this section shall not exceed fifty
29 per cent of the estimated increase in tax revenues received by this state and
30 its political subdivisions as a direct or indirect result of the retention,
31 expansion or location of the business or other qualified project as set forth
32 in the resolution required under this section. In the case of a business
33 retention, the total value of the assistance provided pursuant to this
34 section shall not exceed fifty per cent of the estimated retention of tax
35 revenues received by this state and its political subdivisions as a direct or
36 indirect result of the retention of the business or other qualified project
37 as set forth in the resolution required under this section.

38 E. The department shall develop an application process and necessary
39 application forms for use in considering the provision of assistance for the
40 retention, expansion or location of a business or other qualified project
41 within this state. The application and the department's recommendation as to
42 whether assistance should be provided shall be forwarded to the commission.
43 The commission shall act on all applications forwarded by the department.

1 F. The department shall accept all applications requesting assistance
2 as set forth in this section. The application developed pursuant to
3 subsection E of this section shall be sufficient to provide for the
4 determinations of both the department and the commission as required under
5 this section.

6 G. If the business or project does not meet all of the criteria
7 established in subsection B of this section, the commission may give
8 assistance to the business or project but only after stating in the
9 resolution for assistance its reasons for waiving the criteria that are not
10 met.

11 H. A business or project that receives assistance shall enter into a
12 memorandum of understanding with this state through the commission. The
13 memorandum shall contain performance standards the business or project is
14 expected to meet within the first five years after assistance is received.
15 The business or project shall submit a report no less than annually of its
16 performance in achieving the standards to the commission. The memorandum
17 shall contain provisions that allow the state, through the commission, to
18 stop, readjust or recapture all or part of the assistance given to the
19 company either in full or in part on noncompliance with the terms of the
20 memorandum.

21 I. In awarding assistance, the commission shall consider whether the
22 assistance would have a negative impact on other Arizona businesses.

23 ~~J. Any information provided pursuant to an application submitted in
24 accordance with this section is not a public record under title 39, chapter
25 1, article 2, shall be treated as confidential information and shall not be
26 released without the express consent of the agency completing the
27 application.~~

28 J. ANY INFORMATION SUBMITTED TO OR COMPILED BY THE COMMISSION IN
29 CONNECTION WITH ITS WORK, INCLUDING ALL INFORMATION CONCERNING THE AWARD OF
30 GRANT MONIES, IS SUBJECT TO TITLE 39, CHAPTER 1, ARTICLE 2, EXCEPT THAT AN
31 APPLICANT MAY SHOW THAT SPECIFIC INFORMATION MEETS EITHER OF THE FOLLOWING:

32 1. IF MADE PUBLIC, THE INFORMATION WOULD DIVULGE THE APPLICANT'S TRADE
33 SECRETS AS DEFINED IN SECTION 44-401.

34 2. THE SPECIFIC INFORMATION IS LIKELY TO CAUSE SUBSTANTIAL HARM TO THE
35 APPLICANT'S COMPETITIVE POSITION.

36 K. This section shall not apply to economic development assistance
37 provided for in sections 41-1508, 41-1514.02 and 41-1532.

38 L. This section applies to a business or other qualified project where
39 the commission provides assistance in excess of one million dollars.

40 M. For purposes of this section:

41 1. "Assistance" means loans, grants, loan guarantees or interest rate
42 subsidies. Assistance also means anything of value or any service for a
43 business arranged for or provided for by referral of the commission including
44 job training, tax incentives, improvements or other services.

1 E. THE COMMISSION SHALL SUBMIT THE MEMORANDUM OF UNDERSTANDING WITH
2 THE NONPROFIT CORPORATION TO THE JOINT LEGISLATIVE BUDGET COMMITTEE FOR
3 REVIEW BEFORE EXPENDING ANY APPROPRIATED STATE MONIES. THE INITIAL
4 SUBMISSION SHALL INCLUDE PROVISIONS THAT ADDRESS HOW THE NONPROFIT
5 CORPORATION ACCOUNTS FOR THE APPLICATION AND INVESTMENT OF MONIES PURSUANT TO
6 SUBSECTION C OF THIS SECTION, THE DOCUMENTATION OF INVESTMENTS MADE IN WHOLE
7 OR IN PART THROUGH FUNDING PURSUANT TO THIS SECTION AND THE PREPARATION AND
8 FILING OF ANNUAL AUDITS OF THE FUND WITH THE AUDITOR GENERAL. THE INITIAL
9 SUBMISSION SHALL ALSO INCLUDE PERFORMANCE MEASURES TO EVALUATE THE
10 EFFECTIVENESS OF THE PROGRAM AND RECOMMENDATIONS PERTAINING TO PROSPECTIVE
11 REPAYMENT TO THE FUND BY SCIENTIFIC, RESEARCH, ACADEMIC AND MEDICAL
12 INSTITUTIONS OF A PORTION OF THE INCOME DERIVED FROM TECHNOLOGY OR
13 INTELLECTUAL PROPERTY CREATED OR DEVELOPED IN WHOLE OR IN PART THROUGH
14 FUNDING PURSUANT TO THIS SECTION. THE JOINT LEGISLATIVE BUDGET COMMITTEE
15 SHALL REVIEW EXPENDITURES FROM THE FUND AT LEAST QUARTERLY, INCLUDING ANY
16 CHANGES TO THE MEMORANDUM OF UNDERSTANDING, BUT MAY CHOOSE LESS FREQUENT
17 REVIEWS.

18 Sec. 4. Appropriation; Arizona twenty-first century competitive
19 initiative fund; exemption

20 A. The sum of \$35,000,000 is appropriated from the state general fund
21 in fiscal year 2005-2006 to the Arizona twenty-first century competitive
22 initiative fund established by section 41-1505.09, Arizona Revised Statutes,
23 as added by this act, and is appropriated from that fund to the commerce and
24 economic development commission for the purposes prescribed in this act.

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