

CHAPTER 108

Senate Bill 1056

AN ACT

RELATING TO HIGHWAYS; PROVIDING FOR THE DESIGN AND CONSTRUCTION OF BICYCLE AND FOOT PATHWAYS BY THE STATE AND ITS POLITICAL SUBDIVISIONS; AMENDING SECTIONS 28-108, 28-1822, 28-1865, AS ADDED BY LAWS 1973, AND 28-1502, ARIZONA REVISED STATUTES, AND PROVIDING FOR CONDITIONAL ENACTMENT.

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

Section 1. Section 28-108, Arizona Revised Statutes, as added by Laws 1973, chapter 146, section 9, is amended to read:

28-108. Powers and duties**A. The director shall:**

1. Supervise and administer the overall activities of the department, its divisions and employees.
2. Appoint assistant directors for each of the divisions which assistant directors shall be exempt from the state personnel system.
3. Prescribe such rules and regulations as he deems necessary for the collection of taxes and license fees.
4. Provide for the assembly and distribution of information to the public concerning the department activities.
5. Prescribe such rules and regulations as he deems necessary for public safety and convenience.
6. Prescribe standard board and road signs, or other devices, and provide a uniform system of marking and signaling on state routes, ~~and~~ state highways AND ADJACENT PATHWAYS, which shall correlate with and so far as possible conform to the system as approved by the American association of state highway officials, and regulate the use of advertising signboards and road signs on state roads or state highways.
7. Prescribe rules and regulations for closing state highways under construction or repair.
8. Receive, allocate, control and disperse all funds designated for mass transit by federal or state law, regulation or rules.
9. Pass upon projects for construction in cooperation with the United States, and negotiate and enter into contracts on behalf of the state with the United States for the cooperative construction and maintenance of federal aid mass transit systems within the state.

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10. Enter into agreements on behalf of the state with counties, cities, towns, mass transit districts, or with any other political subdivision for the improvement or maintenance of mass transit systems, or for the joint improvement or maintenance thereof, and enter into contracts for the construction of mass transit systems.
11. Prescribe rules and regulations for the application for and the expenditure of all mass transit funds.
12. Exercise such other powers and duties as are necessary to fully carry out the policies, activities and duties of the department.
13. Delegate such functions, duties or powers as he deems necessary to carry out the efficient operation of the department.
14. Contract for both the operation of state owned airports and for the purpose of securing air search and rescue services.
15. Plan, build and develop, in conjunction with local authorities, airports, airport terminals and other related navigational facilities.
16. Operate and maintain the Grand Canyon National Park airport located in the Kaibab National Forest, Coconino County.
17. Enter into agreements on behalf of the state with counties, cities, towns or rural districts for the improvement or maintenance of state routes, or for the joint improvement or maintenance thereof, and to enter into contracts for the construction of state highways.
18. LAY OUT AND ESTABLISH A SYSTEM OF BICYCLE AND FOOT PATHWAYS ADJACENT TO CERTAIN STATE HIGHWAYS AND PROVIDE FOR THE PLANNING, ENGINEERING, CONSTRUCTION AND MAINTENANCE OF SUCH PATHWAYS.
- ~~18.~~ 19. Prescribe rules and regulations for the expenditure of all money in the state highway fund.
- ~~19.~~ 20. Exercise control and jurisdiction over the use of state highways and routes, ADJACENT BICYCLE PATHWAYS AND FOOT PATHWAYS, and prescribe such rules and regulations regarding such use as he deems necessary.

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B. The director may provide technical transportation planning expertise to local governments when requested, coordinate local government transportation planning with regional and state transportation planning, and guide local transportation planning to assure compliance with federal requirements. Such planning authority shall not, however, preempt planning responsibilities and decisions of local governments.

Sec. 2. Section 28-1822, Arizona Revised Statutes, as amended by Laws 1973, chapter 146, section 69, is amended to read:

28-1822. Authorized uses of fund; preferences; investment

A. The highway fund shall be used for the following purposes in strict conformity with and subject to the budget as provided by this section and by sections 28-1823 through 28-1827:

1. To pay salaries, wages, necessary travel and other expenses of officers and employees of the department, and the incidental office expenses, including telegraph, telephone, postal and express charges and expenses for printing, stationery and advertising.
2. To pay for equipment, supplies, machines, tools, department offices and laboratories established by the department, and for the construction and repair of buildings or yards of the department.
3. To pay the cost of engineering, construction, improvement and maintenance of state highways, BICYCLE PATHWAYS ADJACENT TO STATE HIGHWAYS and parts of highways forming state routes, and of highways under cooperative agreements with the United States, entered into as provided by this chapter and pursuant to an act of congress providing for the construction of rural post roads.
4. To pay land damages incurred by reason of establishing, opening, altering, relocating, widening or abandoning portions of a state route, ~~or~~ state highway OR PATHWAY ADJACENT TO A STATE HIGHWAY.
5. To reimburse the department revolving account.
6. To pay premiums upon authorized indemnity bonds, and upon compensation insurance under the workmen's compensation act.
7. To defray lawful expenses and costs required to administer and carry

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out the intent, purposes and provisions of this title, and to pay lawful bills and charges incurred by the state engineer.

B. When expending money from the fund, the department shall give preference to the requirements of the budget in the following order:

1. Construction of highways in cooperation with the United States.
2. Taking over and constructing other state highways.

C. Reconstruction or replacement of existing highways damaged or destroyed by acts of God or other sudden or unexpected causes, shall be given preference accorded for maintenance expenditures in accordance with the order named in subsection B of this section.

D. Expenditures from the state highway fund for non-highway functions of the department shall be reimbursed concurrently to the state highway fund in strict compliance with section 28-1833.

E. The director, or his designated agent, with the advice of the state treasurer, may invest inactive deposits in the highway fund in United States government bonds or interest bearing notes and other interest bearing obligations of the United States for which the full faith and credit of the United States are pledged. All interest earned on highway funds shall be credited by the state treasurer to the highway fund.

Sec. 3. Section 28-1865, Arizona Revised Statutes, as added by Laws 1973, chapter 146, section 69, is amended to read:

28-1865. Purchase, sale or condemnation of land for highway purposes

A. The director, in the name of the state, may acquire, either in fee or a lesser estate or interest, real property which he considers necessary for transportation purposes, by purchase, donation, dedication, exchange, condemnation or other lawful means with monies from the state highway fund or any other monies appropriated to the department. Property acquired for such purposes shall include lands or any interest therein considered necessary for rights-of-way or camp sites, roadside rest areas, BICYCLE OR FOOT PATHWAYS, water or material needed in the construction, improvement or maintenance of state highways, airports, runways or taxiways or other property under the jurisdiction, possession or control of the department, or for spoil banks, rock quarries, gravel pits,

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sand or earth borrow pits, or for rights-of-way to the place where material required in the construction, improvement or maintenance of state highways may be located, for offices, shops, maintenance camps, storage yards, inspection or weighing stations, radio transmitter or repeater stations, and for rights-of-way for access to such location and airports, runways or taxiways.

B. Whenever a part of a parcel of land is to be taken for transportation purposes and the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the whole parcel may be acquired by any means provided in subsection A of this section, and the remainder may be sold or may be exchanged for other property needed for transportation purposes.

C. The right of eminent domain may be exercised by the state for such purposes and the court in which the action is pending shall give the action precedence over other civil actions. Whenever property which is devoted to or held for some public use other than existing street, highway or airport uses for which the power of eminent domain might be exercised is to be taken for such transportation purposes, the director may, with the consent of the person or agency in charge of such public use, purchase real property or an interest therein to be exchanged with such person or agency for the real property so to be taken for transportation purposes. This section does not limit the authorization to the department to acquire, other than by exchange, property for such purposes, or to acquire directly, by condemnation, purchase or otherwise, without such exchange, property held for some other public use by any lawful means set forth in subsection A of this section.

D. The authority conferred by this section to acquire real property for transportation purposes includes authority to acquire for future needs provided the transportation board has an adopted and approved state route plan or airport site location for such transportation showing a reasonable need for such property. The director is authorized to lease or let at fair rental value any lands which are held for transportation purposes and are not presently needed therefor on such terms and conditions as the director may fix and to maintain and care for such property in order to secure rent therefrom on terms consistent with this section. Rents received from property acquired in which federal funds participated in the cost of acquisition shall be deposited in the state highway fund. Twenty-four per cent of all other rent so received shall be deposited in the transportation

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properties rental fund in the state treasury, which fund is hereby created. The balance of such rents shall be deposited in the state highway fund. Income received from rentals under this section shall be credited to the budgetary item from which the property was acquired.

E. Whenever it is determined by the director that any rental revenue collected under the provisions of this section represents overpayment or payment in duplicate, the director may authorize the refund of such overpayment or payment in duplicate from the transportation properties rental fund and the state highway fund.

F. The department of administration division of finance shall, not later than the first day of November next following the close of any fiscal year after the effective date of this section, pay the rents deposited in the transportation properties rental fund to the county assessor in the county in which such real property is situated. The director shall certify to the division of finance the amount of such rentals attributable to each county and shall notify each county of the rental and location of each piece of rental property for which rents are deposited in the fund. The county assessor shall distribute any payment received by him pursuant to this section to the county, to each revenue district for which the county assesses and collects real property taxes or assessments, and to every other taxing agency within the county in which the property is situated. The amount distributable to the county and each such revenue district or other taxing agency shall be proportionate to the ratio which the amount of the taxes and assessments of each on similar real property similarly situated within that part of the county embracing the smallest in area of the revenue districts or other taxing agencies other than the county, levied for the fiscal year next preceding, bears to the combined amount of the taxes and assessments of all such districts and agencies, including the county, on such property levied for that year. The county assessor shall determine and certify the amounts distributable to the board of supervisors, which shall thereupon order the making of the distribution. Any money distributed pursuant to this section to any county, revenue district or other taxing agency shall be deposited to the credit of the same fund as any taxes or assessments on any taxable similar real property similarly situated. Where a county receives a payment pursuant to this section in the amount of twenty-five dollars or less in respect to any parcel of leased property, all of such payment shall be distributed to the county for deposit in the county general fund. The money received by the respective jurisdictions under this section may be expended by them for any proper public purpose not prohibited by the state constitution.

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G. The director may dispose of real property or any right, title or interest therein, when he determines that it is no longer needed or used for transportation purposes. The director may after the establishment, laying out or substantial completion of a transportation improvement, convey out any such real property or any interest therein which was acquired pursuant to subsection D of this section and which it determines is not necessary for such improvement. Such conveyance shall be made to the highest and most responsible bidder at a public sale held for that purpose. Such sale may be made for cash or on terms of not less than twenty per cent down with balance payable in annual installments for ten years, the unpaid balance thereof to bear interest at the rate of six per cent per annum. The director may execute all deeds or conveyances necessary to convey any real property or interest therein to be sold or exchanged under the provisions of this section. The director may insert in any such deed or conveyance such conditions, covenants, exceptions and reservations as he deems to be in the public interest or may convey in fee simple absolute. It shall be conclusively presumed in favor of any purchaser for value and without notice of any real property or interest therein conveyed pursuant to the provisions of this section that the department acted within its lawful authority in acquiring the property, and that the director acted within its lawful authority in executing any deed or conveyance or lease authorized by this section.

H. The director may at any time prior to payment of the compensation and damages awarded the defendants by the court or jury abandon the proceedings and cause the action to be dismissed without prejudice provided, however, that the court may require that reasonable attorneys' fees, expert witness fees and the costs be paid as a condition of dismissal.

I. The director shall justify each acquisition or disposal of real property under this section by at least one appraisal report, in sufficient scope to document and justify the economic basis for the acquisition or disposal.

J. None of the provisions of this section are intended to limit, or shall limit, the provisions of any other section, each of which is a distinct and separate authorization.

Sec. 4. Section 28-1502, Arizona Revised Statutes, is amended to read:

28-1502. Payment; distribution of proceeds

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A. The license tax accrued in any calendar month shall be paid on or before the twenty-fifth day of the next succeeding calendar month to the vehicle superintendent, who shall promptly make the distribution pursuant to section 28-1502.01 of the amount of money collected as a license tax on sales of motor vehicle fuel used in propelling watercraft commencing with the month following the conclusion of the survey conducted pursuant to section 28-1502.01, and then shall promptly pay seven-tenths of all remaining monies to the state treasurer to be placed in the highway fund, and three-tenths thereof to the several county treasurers, in the proportion that the sale of motor vehicle fuel in such county bears to the total sales of motor vehicle fuel throughout the state. The superintendent shall deduct all exemptions and refunds before making the division.

B. Two-thirds of the money distributed to the counties shall be retained by the counties for the purposes set forth in this article, and the balance forthwith paid by each of the county treasurers to the several incorporated cities and towns within the boundaries of the county in proportion to their population as shown by the most recent United States census. If there is no incorporated city or town in a county, the amount allocated thereto shall revert to the county for the purposes provided by this article.

C. The tax accruing to the incorporated cities and towns shall be used by them as may be determined by the governing bodies thereof solely for improvement, construction, reconstruction or maintenance of municipal streets and highways, BICYCLE PATHWAYS, FOOT PATHWAYS and administrative expenses in connection therewith, including retirement of bonds issued after November 25, 1946, for the payment of which such revenues have been pledged, and for no other purposes. The tax so accruing to the incorporated cities and towns shall be kept in a separate fund and may be allowed to accumulate from year to year and shall not be subject to the provisions of article 4 of chapter 2, title 42.

D. The tax accruing to the counties shall be used by the counties as determined by the boards of supervisors thereof, for the construction, improvement or maintenance of county highways, BICYCLE PATHWAYS, FOOT PATHWAYS or bridges, or for the retirement of outstanding county highway bonds, or the payment of interest thereon.

Sec. 5. Conditional enactment

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The provisions of this act shall not become effective until such time as the constitution of Arizona is amended by vote of the people to allow use of vehicle, user and gasoline and diesel tax receipts for the creation of such bicycle and foot pathways.

Approved by the Governor-May 7, 1974

Filed in the Office of the Secretary of State-May 8, 1974