CH. 276

STATE OF ARIZONA

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July 2, 2007

The Honorable Jim Weiers
Speaker of the House
Arizona House of Representatives
1700 West Washington Street
Phoenix, Arizona 85007

Re: House Bill 2515: municipal sales tax incentives; prohibition

Dear Speaker Weiers:

Today, I signed House Bill 2515, which will put an end to the practice of some cities in Maricopa County of giving huge tax breaks to retail businesses for locating within their municipalities. These tax breaks have gotten out of control and been offered to a host of businesses, many of whom were likely to locate in Arizona regardless of whether they were offered a tax incentive. The use of tax incentives to pit Maricopa County towns and cities against each other is not in the interest of Arizona or its taxpayers.

I note, however, that the bill appears to contain an inadvertent loophole exempting cities whose boundaries are not entirely within the exterior boundary of a metropolitan statistical area having a population of more than 2 million persons. This could exempt at least the City of Peoria and could put that city at an unfair competitive advantage. I understand that this was not the intent of the legislature, and I call upon the legislature to fix this provision of the bill at its earliest opportunity.

Yours very truly,

Janet Napolitano
Governor

JN:TAN/jm

cc: The Honorable Timothy Bee
The Honorable Rick Murphy

Senate Engrossed House Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 276

HOUSE BILL 2515

AN ACT

AMENDING SECTION 42-5029, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-6010; RELATING TO TAX INCENTIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 42-5029, Arizona Revised Statutes, is amended to read:

42-5029. Remission and distribution of monies; definition

A. The department shall deposit, pursuant to sections 35-146 and 35-147, all revenues collected under this article and articles 4, 5, 8 and 9 of this chapter pursuant to section 42-1116, separately accounting for:

1. Payments of estimated tax under section 42-5014, subsection D.

2. Revenues collected pursuant to section 42-5070.

3. Revenues collected under this article and article 5 of this chapter from and after June 30, 2000 from sources located on Indian reservations in this state.

4. Revenues collected pursuant to section 42-5010, subsection G and section 42-5155, subsection D.

B. The department shall credit payments of estimated tax to an estimated tax clearing account and each month shall transfer all monies in the estimated tax clearing account to a fund designated as the transaction privilege and severance tax clearing account. The department shall credit all other payments to the transaction privilege and severance tax clearing account, separately accounting for the monies designated as distribution base under sections 42-5010, 42-5164, 42-5205, 42-5353 and 42-5409. Each month the department shall report to the state treasurer the amount of monies collected pursuant to this article and articles 4, 5, 8 and 9 of this chapter.

C. On notification by the department, the state treasurer shall distribute the monies deposited in the transaction privilege and severance tax clearing account in the manner prescribed by this section and by sections 42-5164, 42-5205, 42-5353 and 42-5409, after deducting warrants drawn against the account pursuant to sections 42-1118 and 42-1254.

D. Of the monies designated as distribution base the department shall:

1. Pay twenty-five per cent to the various incorporated municipalities in this state in proportion to their population to be used by the municipalities for any municipal purpose.

2. Pay 38.08 per cent to the counties in this state by averaging the following proportions:

(a) The proportion that the population of each county bears to the total state population.

(b) The proportion that the distribution base monies collected during the calendar month in each county under this article, section 42-5164, subsection B, section 42-5205, subsection B and sections 42-5353 and 42-5409 bear to the total distribution base monies collected under this article, section 42-5164, subsection B, section 42-5205, subsection B and sections 42-5353 and 42-5409 throughout the state for the calendar month.

3. Pay an additional 2.43 per cent to the counties in this state as follows:

(a) Average the following proportions:

(i) The proportion that the assessed valuation used to determine secondary property taxes of each county, after deducting that part of the assessed valuation that is exempt from taxation at the beginning of the month for which the amount is to be paid, bears to the total assessed valuations used to determine secondary property taxes of all the counties after deducting that portion of the assessed valuations that is exempt from taxation at the beginning of the month for which the amount is to be paid. Property of a city or town that is not within or contiguous to the municipal corporate boundaries and from which water is or may be withdrawn or diverted and transported for use on other property is considered to be taxable property in the county for purposes of determining assessed valuation in the county under this item.

(ii) The proportion that the distribution base monies collected during the calendar month in each county under this article, section 42-5164, subsection B, section 42-5205, subsection B and sections 42-5353 and 42-5409 bear to the total distribution base monies collected under this article, section 42-5164, subsection B, section 42-5205, subsection B and sections 42-5353 and 42-5409 throughout the state for the calendar month.

(b) If the proportion computed under subdivision (a) of this paragraph for any county is greater than the proportion computed under paragraph 2 of this subsection, the department shall compute the difference between the amount distributed to that county under paragraph 2 of this subsection and the amount that would have been distributed under paragraph 2 of this subsection using the proportion computed under subdivision (a) of this paragraph and shall pay that difference to the county from the amount available for distribution under this paragraph. Any monies remaining after all payments under this subdivision shall be distributed among the counties according to the proportions computed under paragraph 2 of this subsection.

4. After any distributions required by sections 42-5030, 42-5030.01, 42-5031, 42-5032 and 42-5032.01, and after making any transfer to the water quality assurance revolving fund as required by section 49-282, subsection B, credit the remainder of the monies designated as distribution base to the state general fund. From this amount:

(a) The legislature shall annually appropriate to:

(i) The department of revenue sufficient monies to administer and enforce this article and articles 5, 8 and 9 of this chapter.

(ii) The department of economic security monies to be used for the purposes stated in title 46, chapter 1.

(iii) The Arizona arts endowment fund established by section 41-986, the full amount by which revenues derived from the amusement classification pursuant to section 42-5073 for the current fiscal year exceed the revenues that were derived from that classification in fiscal year 1993-1994, except that this amount shall not exceed two million dollars through fiscal year 2008-2009.

(iv) The firearms safety and ranges fund established by section 17-273, fifty thousand dollars derived from the taxes collected from the retail classification pursuant to section 42-5061 for the current fiscal year.

(b) The state treasurer shall transfer to the tourism fund an amount equal to the sum of the following:

(i) Three and one-half per cent of the gross revenues derived from the transient lodging classification pursuant to section 42-5070 during the preceding fiscal year.

(ii) Three per cent of the gross revenues derived from the amusement classification pursuant to section 42-5073 during the preceding fiscal year.

(iii) Two per cent of the gross revenues derived from the restaurant classification pursuant to section 42-5074 during the preceding fiscal year.

E. If approved by the qualified electors voting at a statewide general election, all monies collected pursuant to section 42-5010, subsection G and section 42-5155, subsection D shall be distributed each fiscal year pursuant to this subsection. The monies distributed pursuant to this subsection are in addition to any other appropriation, transfer or other allocation of public or private monies from any other source and shall not supplant, replace or cause a reduction in other school district, charter school, university or community college funding sources. The monies shall be distributed as follows:

1. If there are outstanding state school facilities revenue bonds pursuant to title 15, chapter 16, article 7, each month one-twelfth of the amount that is necessary to pay the fiscal year's debt service on outstanding state school improvement revenue bonds for the current fiscal year shall be transferred each month to the school improvement revenue bond debt service fund established by section 15-2084. The total amount of bonds for which these monies may be allocated for the payment of debt service shall not exceed a principal amount of eight hundred million dollars exclusive of refunding bonds and other refinancing obligations.

2. After any transfer of monies pursuant to paragraph 1 of this subsection, twelve per cent of the remaining monies collected during the preceding month shall be transferred to the technology and research initiative fund established by section 15-1648 to be distributed among the universities for the purpose of investment in technology and research-based initiatives.

3. After the transfer of monies pursuant to paragraph 1 of this subsection, three per cent of the remaining monies collected during the preceding month shall be transferred to the workforce development account established in each community college district pursuant to section 15-1472 for the purpose of investment in workforce development programs.

4. After transferring monies pursuant to paragraphs 1, 2 and 3 of this subsection, one-twelfth of the amount a community college that is owned, operated or chartered by a qualifying Indian tribe on its own Indian

reservation would receive pursuant to section 15-1472, subsection D, paragraph 2 if it were a community college district shall be distributed each month to the treasurer or other designated depository of a qualifying Indian tribe. Monies distributed pursuant to this paragraph are for the exclusive purpose of providing support to one or more community colleges owned, operated or chartered by a qualifying Indian tribe and shall be used in a manner consistent with section 15-1472, subsection B. For THE purposes of this paragraph, "qualifying Indian tribe" has the same meaning as defined in section 42-5031.01, subsection D.

5. After transferring monies pursuant to paragraphs 1, 2 and 3 of this subsection, one-twelfth of the following amounts shall be transferred each month to the department of education for the increased cost of basic state aid under section 15-971 due to added school days and associated teacher salary increases enacted in 2000:

(a) In fiscal year 2001-2002, $15,305,900.

(b) In fiscal year 2002-2003, $31,530,100.

(c) In fiscal year 2003-2004, $48,727,700.

(d) In fiscal year 2004-2005, $66,957,200.

(e) In fiscal year 2005-2006 and each fiscal year thereafter, $86,280,500.

6. After transferring monies pursuant to paragraphs 1, 2 and 3 of this subsection, seven million eight hundred thousand dollars is appropriated each fiscal year, to be paid in monthly installments, to the department of education to be used for school safety as provided in section 15-154 and two hundred thousand dollars is appropriated each fiscal year, to be paid in monthly installments to the department of education to be used for the character education matching grant program as provided in section 15-154.01.

7. After transferring monies pursuant to paragraphs 1, 2 and 3 of this subsection, no more than seven million dollars may be appropriated by the legislature each fiscal year to the department of education to be used for accountability purposes as described in section 15-241 and title 15, chapter 9, article 8.

8. After transferring monies pursuant to paragraphs 1, 2 and 3 of this subsection, one million five hundred thousand dollars is appropriated each fiscal year, to be paid in monthly installments, to the failing schools tutoring fund established by section 15-241.

9. After transferring monies pursuant to paragraphs 1, 2 and 3 of this subsection, twenty-five million dollars shall be transferred each fiscal year to the state general fund to reimburse the general fund for the cost of the income tax credit allowed by section 43-1072.01.

10. After the payment of monies pursuant to paragraphs 1 through 9 of this subsection, the remaining monies collected during the preceding month shall be transferred to the classroom site fund established by section 15-977. The monies shall be allocated as follows in the manner prescribed by section 15-977:

(a) Forty per cent shall be allocated for teacher compensation based on performance.

(b) Twenty per cent shall be allocated for increases in teacher base compensation and employee related expenses.

(c) Forty per cent shall be allocated for maintenance and operation purposes.

F. The department shall credit the remainder of the monies in the transaction privilege and severance tax clearing account to the state general fund, subject to any distribution required by section 42-5030.01.

G. Notwithstanding subsection D of this section, if a court of competent jurisdiction finally determines that tax monies distributed under this section were illegally collected under this article or articles 5, 8 and 9 of this chapter and orders the monies to be refunded to the taxpayer, the department shall compute the amount of such monies that was distributed to each city, town and county under this section. The department shall notify the state treasurer of that amount plus the proportionate share of additional allocated costs required to be paid to the taxpayer. Each city's, town's and county's proportionate share of the costs shall be based on the amount of the original tax payment each municipality and county received. Each month the state treasurer shall reduce the amount otherwise distributable to the city, town and county under this section by one thirty-sixth of the total amount to be recovered from the city, town or county until the total amount has been recovered, but the monthly reduction for any city, town or county shall not exceed ten per cent of the full monthly distribution to that entity. The reduction shall begin for the first calendar month after the final disposition of the case and shall continue until the total amount, including interest and costs, has been recovered.

H. On receiving a certificate of default from the greater Arizona development authority pursuant to section 41-1554.06 or 41-1554.07 and to the extent not otherwise expressly prohibited by law, the state treasurer shall withhold from the next succeeding distribution of monies pursuant to this section due to the defaulting political subdivision the amount specified in the certificate of default and immediately deposit the amount withheld in the greater Arizona development authority revolving fund. The state treasurer shall continue to withhold and deposit the monies until the greater Arizona development authority certifies to the state treasurer that the default has been cured. In no event may the state treasurer withhold any amount that the defaulting political subdivision certifies to the state treasurer and the authority as being necessary to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision that were issued before the date of the loan repayment agreement or bonds and that have been secured by a pledge of distributions made pursuant to this section.

I. Except as provided by sections 42-5033 and 42-5033.01, the population of a county, city or town as determined by the most recent United States decennial census plus any revisions to the decennial census certified

by the United States bureau of the census shall be used as the basis for apportioning monies pursuant to subsection D of this section.

J. EXCEPT AS OTHERWISE PROVIDED BY THIS SUBSECTION, ON NOTICE FROM THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 42-6010, SUBSECTION B, THE STATE TREASURER SHALL WITHHOLD FROM THE DISTRIBUTION OF MONIES PURSUANT TO THIS SECTION TO THE AFFECTED CITY OR TOWN THE AMOUNT OF THE PENALTY FOR BUSINESS LOCATION MUNICIPAL TAX INCENTIVES PROVIDED BY THE CITY OR TOWN TO A BUSINESS ENTITY THAT LOCATES A RETAIL BUSINESS FACILITY IN THE CITY OR TOWN. THE STATE TREASURER SHALL CONTINUE TO WITHHOLD MONIES PURSUANT TO THIS SUBSECTION UNTIL THE ENTIRE AMOUNT OF THE PENALTY HAS BEEN WITHHELD. THE STATE TREASURER SHALL CREDIT ANY MONIES WITHHELD PURSUANT TO THIS SUBSECTION TO THE STATE GENERAL FUND AS PROVIDED BY SUBSECTION D, PARAGRAPH 4 OF THIS SECTION. THE STATE TREASURER SHALL NOT WITHHOLD ANY AMOUNT THAT THE CITY OR TOWN CERTIFIES TO THE DEPARTMENT OF REVENUE AND THE STATE TREASURER AS BEING NECESSARY TO MAKE ANY REQUIRED DEPOSITS OR PAYMENTS FOR DEBT SERVICE ON BONDS OR OTHER LONG-TERM OBLIGATIONS OF THE CITY OR TOWN THAT WERE ISSUED OR INCURRED BEFORE THE LOCATION INCENTIVES PROVIDED BY THE CITY OR TOWN.

~~J.~~ K. For the purposes of this section, "community college district" means a community college district THAT IS established pursuant to sections 15-1402 and 15-1403 AND that is a political subdivision of this state.

Sec. 2. Title 42, chapter 6, article 1, Arizona Revised Statutes, is amended by adding section 42-6010, to read:

42-6010. <u>Business location municipal tax incentives; prohibition; penalty; exceptions; definitions</u>

A. A CITY OR TOWN THAT HAS EXTERIOR BOUNDARIES LOCATED ENTIRELY WITHIN THE EXTERIOR BOUNDARY OF A METROPOLITAN STATISTICAL AREA HAVING A POPULATION OF MORE THAN TWO MILLION PERSONS SHALL NOT OFFER OR PROVIDE A TAX INCENTIVE TO A BUSINESS ENTITY AS AN INDUCEMENT OR IN EXCHANGE FOR LOCATING OR RELOCATING A RETAIL BUSINESS FACILITY IN THE CITY OR TOWN.

B. A CITY OR TOWN THAT VIOLATES THIS SECTION IS SUBJECT TO A PENALTY EQUAL TO THE AMOUNT OF THE INCENTIVE REALIZED BY THE TAXPAYER, EXTENDED OVER A PERIOD OF SIXTY MONTHS. THE DEPARTMENT OF REVENUE SHALL NOTIFY THE STATE TREASURER TO WITHHOLD THE AMOUNT OF THE PENALTY FROM MONIES OTHERWISE PAYABLE TO THE CITY OR TOWN AS PROVIDED BY SECTION 42-5029, SUBSECTION J.

C. THE CITY OR TOWN SHALL REPORT TO THE DEPARTMENT OF REVENUE THE VALUE OF ANY TAX INCENTIVE USED AS AN INDUCEMENT OR IN EXCHANGE FOR LOCATING OR RELOCATING A RETAIL BUSINESS FACILITY IN THE CITY OR TOWN. FOR THE PURPOSES OF THIS SUBSECTION, THE VALUE INCLUDES ALL NEGOTIATED AMOUNTS, IN ANY FORM AND WHETHER ACTUAL, REALIZED OR CONTINGENT, OVER THE TERM OF THE INCENTIVE AGREEMENT.

D. THIS SECTION DOES NOT APPLY WITH RESPECT TO:

1. MUNICIPAL SERVICES AND BENEFITS GENERALLY AFFORDED BY ORDINANCE TO ALL NEW BUSINESSES IN THE CITY OR TOWN, HAVING NO DIRECT AFFECT ON MUNICIPAL TAX LEVIES.

2. TAX INCENTIVES THAT ARE AFFORDED TO ALL EXISTING RETAIL BUSINESS FACILITIES IN THE CITY OR TOWN.

3. TAX INCENTIVES FOR LOCATING RETAIL BUSINESS FACILITIES IN AN AREA DESIGNATED AS A REDEVELOPMENT PROJECT PURSUANT TO TITLE 36, CHAPTER 12, ARTICLE 3 WHERE THE AVERAGE HOUSEHOLD INCOME IS LESS THAN THE AVERAGE CITY HOUSEHOLD INCOME AS DETERMINED BY THE UNITED STATES CENSUS BUREAU.

4. INCENTIVES CONSISTING OF REIMBURSEMENT FOR PUBLIC INFRASTRUCTURE DEDICATED TO AND ACCEPTED AND CONTROLLED UPON COMPLETION OF THE PROJECT BY THE CITY OR TOWN, COUNTY, STATE OR A PRIVATE UTILITY WHERE NO OTHER POLITICAL SUBDIVISION PROVIDES SUCH UTILITY FOR TRANSPORTATION, WATER, SEWER, ELECTRICAL, DRAINAGE, THE FAIR MARKET VALUE OF REAL PROPERTY NECESSARY FOR THE PUBLIC INFRASTRUCTURE AND OTHER NECESSARY PUBLIC INFRASTRUCTURE. THIS PARAGRAPH DOES NOT APPLY TO PARKING LOTS, PARKING STRUCTURES OR PARKING FACILITIES OR OTHER STRUCTURES OR AMENITIES OWNED OR CONTROLLED BY A PRIVATE ENTITY.

5. INCENTIVES THAT ARE OFFERED FOR THE PURPOSE OF PRESERVING HISTORICAL BUILDINGS AND OTHER STRUCTURES.

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

E. TO QUALIFY AS EXEMPT FROM THE PENALTY, AN INCENTIVE UNDER SUBSECTION D OF THIS SECTION THAT IS OFFERED IN EXCHANGE FOR EXPENSES INCURRED BY THE BUSINESS ENTITY MUST BE IN THE FORM OF A REIMBURSEMENT OF THE EXPENSES AND MAY NOT EXCEED OR OTHERWISE BE DISPROPORTIONAL TO THE ACTUAL COST INCURRED.

F. THIS SECTION DOES NOT APPLY TO TAX INCENTIVES THAT WERE REFERRED TO A VOTE OF THE QUALIFIED ELECTORS OF THE CITY OR TOWN BEFORE JULY 1, 2007 AND APPROVED BY THE QUALIFIED ELECTORS OF THE CITY OR TOWN.

G. FOR THE PURPOSES OF THIS SECTION:

1. "METROPOLITAN STATISTICAL AREA" MEANS A GEOGRAPHICAL AREA CONSISTING OF CITIES, TOWNS AND OTHER POPULATED AREAS DEFINED FOR FEDERAL STATISTICAL AND CENSUS PURPOSES BY THE UNITED STATES OFFICE OF MANAGEMENT AND BUDGET WITH TECHNICAL ASSISTANCE FROM THE UNITED STATES BUREAU OF THE CENSUS.

2. "RETAIL BUSINESS FACILITY" MEANS A STORE, WAREHOUSE OR OTHER IMPROVEMENT TO REAL ESTATE WHERE AT LEAST ONE-HALF OF THE BUSINESS CONDUCTED ON THE PREMISES CONSISTS OF RETAIL SALES OF TANGIBLE PERSONAL PROPERTY TO THE ULTIMATE CONSUMER, MEASURED BY EITHER THE NUMBER OF EMPLOYEES ASSIGNED TO RETAIL SALES OR THE SQUARE FOOTAGE OF THE FACILITY USED FOR RETAIL SALES. FOR THE PURPOSES OF THIS PARAGRAPH, "RETAIL SALES" DOES NOT INCLUDE:

(a) SALES OF FOOD AND BEVERAGE FOR CONSUMPTION ON THE PREMISES OF THE FACILITY.

(b) THE DISTRIBUTION WITHOUT CHARGE OF PROMOTIONAL PRODUCTS THAT DISPLAY THE COMPANY LOGO OR TRADEMARK.

1 (c) SALES SOLELY TO COMPANY EMPLOYEES.
2 3. "TAX INCENTIVE" MEANS ANY WAIVER, EXEMPTION, DEDUCTION, CREDIT,
3 REBATE, DISCOUNT, DEFERRAL OR OTHER ABATEMENT OR REDUCTION OF THE NORMAL
4 MUNICIPAL TAX LIABILITY OF AN INDIVIDUAL TAXPAYER THAT OTHERWISE APPLIES TO
5 SIMILAR EXISTING TAXPAYERS AND PROPERTIES IN THE CITY OR TOWN, HOWEVER
6 DENOMINATED, COMPUTED OR APPLIED, AND GENERALLY UNDERSTOOD AS AN INDUCEMENT
7 FOR THE TAXPAYER TO LOCATE A BUSINESS FACILITY OR OTHER OPERATION IN THE CITY
8 OR TOWN.
9 Sec. 3. Application
10 This act does not apply to municipal retail tax incentives approved by
11 a city or town council before July 1, 2007.
12 Sec. 4. Effective date
13 This act is effective from and after December 31, 2007.

APPROVED BY THE GOVERNOR JULY 2, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 2, 2007.