

REFERENCE TITLE: Bicycle Pathways; Construction; Maintenance; Funds

State of Arizona
Senate
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Second Regular Session

Charles W. Fosdy

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S. B. **1251**

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AN ACT

RELATING TO TAXATION AND TRANSPORTATION; IMPOSING AN EXCISE TAX FOR CONSTRUCTION AND MAINTENANCE OF BICYCLE PATHWAYS; ESTABLISHING A PERMANENT BICYCLE PATHWAY CAPITAL OUTLAY REVOLVING FUND; AUTHORIZING DEPARTMENT OF TRANSPORTATION TO ESTABLISH STANDARDS FOR CONSTRUCTION OF SUCH PATHWAYS; AMENDING TITLE 28, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 17, ARTICLE 1; AMENDING TITLE 42, CHAPTER 8, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 1.3, AND MAKING AN APPROPRIATION.

1 Be it enacted by the Legislature of the State of Arizona:
 2 Section 1. Title 28, Arizona Revised Statutes, is amended by
 3 adding chapter 17, article 1, sections 28-2201 through 28-2205, to read:
 4 CHAPTER 17
 5 BICYCLE PATHWAYS
 6 ARTICLE 1. IN GENERAL
 7 28-2201. Definitions
 8 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
 9 1. "BICYCLE" MEANS EVERY DEVICE PROPELLED BY HUMAN POWER UPON
 10 WHICH ANY PERSON MAY RIDE, HAVING TWO TANDEM WHEELS EITHER OF WHICH IS
 11 MORE THAN SIXTEEN INCHES IN DIAMETER AND INCLUDES ANY DEVICE GENERALLY
 12 RECOGNIZED AS A BICYCLE THOUGH EQUIPPED WITH TWO FRONT OR REAR WHEELS.
 13 BICYCLE ALSO INCLUDES A DEVICE WHICH ALTHOUGH EQUIPPED WITH PEDALS, IS
 14 ASSISTED BY POWER FURNISHED TO THE DRIVE WHEEL THROUGH AN INDIRECT CON-
 15 NECTION THERETO.
 16 2. "BICYCLE LANE" MEANS AN AREA WITHIN A HIGHWAY OR SIDEWALK AREA,
 17 WHICH IS DESIGNED OR MARKED FOR EXCLUSIVE USE OF BICYCLES AND FROM WHICH
 18 MOTOR VEHICLES ARE PROHIBITED FROM OCCUPYING.
 19 3. "BICYCLE PATH" MEANS A WAY ESTABLISHED OR USED TO THE EXCLUSION
 20 OF OTHER VEHICLES OR WHICH IS NOT OPEN TO THE PUBLIC FOR USE BY VEHICLES
 21 OTHER THAN BICYCLES BUT WHICH MAY CROSS HIGHWAYS. "BICYCLE PATH" ALSO
 22 MEANS A WAY WITHIN A HIGHWAY WHICH IS SEPARATED FROM OTHER VEHICLES BY
 23 A BARRIER AT LEAST TWO FEET HIGHER THAN THE SURFACE OF THE HIGHWAY OR
 24 PATH.

1 4. "BICYCLE PATHWAY" MEANS BICYCLE PATH OR BICYCLE LANE BUT NOT
2 BICYCLE ROUTE.

3 5. "BICYCLE ROUTE" MEANS ANY WAY WHICH IS MARKED BY SIGNS BUT
4 IS OTHERWISE UNIMPROVED OR UNMARKED.

5 6. "DEPARTMENT" MEANS THE DEPARTMENT OF TRANSPORTATION.

6 28-2202. Revolving fund; priority of use

7 A. THERE IS ESTABLISHED A PERMANENT BICYCLE PATHWAY CAPITAL OUTLAY
8 REVOLVING FUND FOR THE CONSTRUCTION AND MAINTENANCE OF BICYCLE PATHWAYS
9 IN THIS STATE. CITIES, TOWNS, COUNTIES AND AGENCIES OF THIS STATE MAY
10 APPLY TO THE DEPARTMENT FOR MONIES THEREFROM, BUT IN NO EVENT MAY AN
11 AMOUNT PAID EXCEED FIFTY PERCENTUM OF THE TOTAL COST OF THE APPROVED
12 PROJECT COST.

13 B. AVAILABLE FUNDS SHALL BE APPLIED FIRST TO THE CONSTRUCTION OF
14 BICYCLE PATHS BUT ANY REMAINING FUNDS MAY BE APPLIED TO CONSTRUCTION OR
15 MARKING OF BICYCLE LANES.

16 C. ALL MONIES DEPOSITED IN THE REVOLVING FUND ARE APPROPRIATED
17 TO THE DEPARTMENT FOR USE AS PROVIDED IN THIS ARTICLE AND SHALL BE EXEMPT
18 FROM THE PROVISIONS OF SECTION 35-190, RELATING TO THE LAPSING OF APPRO-
19 PRIATIONS.

20 28-2203. Matching funds; procedure for application

21 A. A CITY, TOWN, COUNTY OR AGENCY OF THIS STATE MAY APPLY TO THE
22 DEPARTMENT FOR MONIES FROM THE BICYCLE PATHWAY CAPITAL OUTLAY REVOLVING
23 FUND, PROVIDED:

24 1. SUCH CITY, TOWN, COUNTY OR AGENCY OF THE STATE HAS APPROPRIATED
25 AND BUDGETED FUNDS FROM SOME SOURCE OTHER THAN THE MONIES APPLIED FOR
26 UNDER THIS ARTICLE WHICH WILL BE USED TO CONSTRUCT THE PROPOSED BICYCLE
27 PATHWAY.

28 2. THAT NO MONIES SHALL BE PAID FROM THE BICYCLE PATHWAY CAPITAL
29 OUTLAY REVOLVING FUND FOR ESTABLISHING A BICYCLE ROUTE.

30 B. A CITY, TOWN, COUNTY OR AGENCY OF THIS STATE DESIRING MATCHING
31 FUNDS FROM THE BICYCLE PATHWAY CAPITAL OUTLAY REVOLVING FUND SHALL MAKE
32 APPLICATION THEREFOR TO THE DEPARTMENT. SUCH APPLICATION SHALL CONTAIN
33 A COMPREHENSIVE PLAN FOR BICYCLE PATHWAYS WITHIN ITS JURISDICTION WHICH
34 SHALL HAVE BEEN COORDINATED WITH ADJACENT JURISDICTIONS AND APPROVED BY
35 THE DEPARTMENT AND SHALL HAVE:

36 1. COMPLETE PLANS AND SPECIFICATIONS FOR CONSTRUCTION OR MARKING
37 OF THE PROPOSED BICYCLE PATH OR LANE.

38 2. ESTIMATED COSTS OF CONSTRUCTION OR MARKING, INCLUDING NECESSARY
39 RIGHTS-OF-WAY COSTS.

40 3. THE SOURCE OF MATCHING FUNDS, INCLUDING NECESSARY APPROVALS OR
41 EVIDENCE OF GRANTS FROM THE FEDERAL GOVERNMENT FOR SUCH FUNDS.

42 4. AN ESTIMATED TIME FOR COMPLETION OF THE PROJECT.

43 C. MATCHING FUNDS MAY BE FROM ANY SOURCE EXCEPT THE BICYCLE PATHWAY
44 CAPITAL OUTLAY REVOLVING FUND BUT SHALL NOT INCLUDE COSTS OF ENGINEERING
45 AND DESIGN OF THE BICYCLE PATHWAY SUBMITTED NOR RIGHTS-OF-WAY COSTS.

46 D. THE DEPARTMENT SHALL APPROVE OR DISAPPROVE THE PROJECT WITHIN
47 NINETY WORKING DAYS AFTER RECEIPT OF THE APPLICATION.

48 28-2204. Power of eminent domain

49 THE STATE, CITIES, TOWNS AND COUNTIES OR OTHER PERSONS MAY EXERCISE
50 THE POWER OF EMINENT DOMAIN TO ACQUIRE NECESSARY RIGHTS-OF-WAY FOR BICYCLE

1 PATHS OR BICYCLE LANES INCLUDING AREAS FOR RESTING WHICH ARE ADJACENT
2 THERETO OR FOR AREAS IN OR UPON WHICH BICYCLES MAY BE PARKED WHILE NOT
3 IN USE.

4 28-2205. Standards for establishment and construction
5 of bicycle pathways; joint use of rights-of-way

6 A. THE DEPARTMENT MAY ENACT RULES ESTABLISHING STANDARDS FOR CON-
7 STRUCTION OF BICYCLE PATHWAYS WHICH SHALL INCLUDE MINIMUM WIDTHS, GRADE,
8 ROADBED CHARACTER AND TREATMENT, TYPE OF SEPARATION FROM OTHER VEHICULAR
9 TRAFFIC, SIGNING AND SUCH OTHER RULES AS ARE INTENDED TO PROTECT THE
10 HEALTH, SAFETY AND GENERAL WELFARE OF BICYCLE PATHWAY USERS AND OTHER
11 MEMBERS OF THE PUBLIC.

12 B. THE DEPARTMENT, CITIES, TOWNS, COUNTIES AND OTHER STATE AGENCIES
13 MAY ALLOW THE USE OF RIGHTS-OF-WAY OR OTHER LANDS UNDER ITS JURISDICTION
14 BY PERMIT, LICENSE OR OTHERWISE FOR BICYCLE PATHWAYS IF SUCH USE DOES
15 NOT INTERFERE WITH THE CURRENT USE OF SUCH RIGHTS-OF-WAY OR LANDS OR
16 ENDANGER OTHER USERS OF SUCH RIGHTS-OF-WAY OR LANDS. IN SUCH CASE, THE
17 USE FOR A BICYCLE PATHWAY SHALL BE WITHOUT CHARGE FOR THE RIGHT-OF-WAY,
18 UNLESS LAW REQUIRES OTHERWISE, IN WHICH CASE THE VALUE SHALL BE AS DE-
19 TERMINED BY ACCEPTED APPRAISAL PRINCIPLES.

20 Sec. 2. Title 42, chapter 8, Arizona Revised Statutes, is amended
21 by adding article 1.3, sections 42-1381 and 42-1382, to read:

22 ARTICLE 1.3. BICYCLE PATHWAY EXCISE TAX

23 42-1381. Levy of tax

24 A. THERE IS LEVIED AND SHALL BE COLLECTED BY THE DEPARTMENT OF
25 REVENUE A TAX:

26 1. ON THE PRIVILEGE OF DOING BUSINESS IN THIS STATE, MEASURED BY
27 THE AMOUNT OR VOLUME OF BUSINESS TRANSACTED BY PERSONS ON ACCOUNT OF
28 THEIR BUSINESS ACTIVITIES, AT THE RATE OF ONE-HALF OF ONE PER CENT
29 AGAINST VALUES, GROSS PROCEEDS OF SALES, OR GROSS INCOME, AS THE CASE
30 MAY BE, ON THE SALE OF BICYCLES AT RETAIL, IN ACCORDANCE WITH THE PRO-
31 VISIONS AS SET FORTH IN ARTICLE 1 OF THIS CHAPTER.

32 2. ON THE STORAGE OR USE IN THIS STATE OF BICYCLES SOLD AT RETAIL,
33 AT THE RATE OF ONE-HALF OF ONE PER CENT, IN ACCORDANCE WITH THE PROVI-
34 SIONS OF ARTICLE 2 OF THIS CHAPTER.

35 B. THE TAX LEVIED AND COLLECTED UNDER THE TERMS OF THIS ARTICLE
36 IS DESIGNATED AS THE "BICYCLE PATHWAY EXCISE TAX".

37 42-1382. Administration

38 UNLESS THE CONTEXT OTHERWISE REQUIRES, THE PROVISIONS OF ARTICLE
39 1 OF THIS CHAPTER SHALL GOVERN THE ADMINISTRATION OF THE TAX IMPOSED BY
40 PARAGRAPH 1, SUBSECTION A, SECTION 42-1381, AND THE PROVISIONS OF ARTICLE
41 2 OF THIS CHAPTER SHALL GOVERN THE ADMINISTRATION OF THE TAX IMPOSED BY
42 PARAGRAPH 2, SUBSECTION A, SECTION 42-1381, HOWEVER:

43 1. NO SEPARATE LICENSE, RETURN OR RECORD SHALL BE REQUIRED, MADE
44 OR KEPT OR FILED, AND THE TAX DUE UNDER PARAGRAPH 1, SUBSECTION A,
45 SECTION 42-1381, SHALL BE INCLUDED AND REPORTED, SHOWN AND PAID WITH
46 THE TRANSACTION PRIVILEGE TAX IN ACCORDANCE WITH THE PROVISIONS OF
47 ARTICLE 1 OF THIS CHAPTER. THE TAX DUE UNDER PARAGRAPH 2, SUBSECTION
48 A, SECTION 42-1381, SHALL BE INCLUDED AND REPORTED, SHOWN AND PAID WITH
49 THE USE TAX IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 2 OF THIS
50 CHAPTER.

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2. THE PROVISIONS OF SECTION 42-1303 SHALL NOT REQUIRE THE EXECUTION OF A SEPARATE BOND CONDITIONED UPON THE FAITHFUL DISCHARGE OF THE DUTIES OF ANY AGENT OF THE DEPARTMENT OF REVENUE IN THE ADMINISTRATION OF THIS ARTICLE. THE CONDITIONS OF BONDS EXECUTED FOR THE ADMINISTRATION OF ARTICLE 1 SHALL BE ENLARGED TO INCLUDE THE ADMINISTRATION OF THIS ARTICLE.

3. THE PROVISIONS OF SECTIONS 42-1341 AND 42-1342 SHALL NOT APPLY TO THIS ARTICLE.

4. THE DEPARTMENT OF REVENUE SHALL EACH DAY REMIT ALL REVENUES COLLECTED UNDER THIS ARTICLE TO THE STATE TREASURER AND THE STATE TREASURER SHALL CREDIT THE PAYMENTS TO A FUND DESIGNATED AS THE BICYCLE PATHWAY EXCISE TAX CLEARING ACCOUNT.

5. AFTER DEDUCTING FROM THE BICYCLE PATHWAY EXCISE TAX CLEARING ACCOUNT, ONLY WARRANTS DRAWN AGAINST THE ACCOUNT BY THE APPLICATION OF SECTIONS 42-1326, 42-1339 AND 42-1413, THE WHOLE OF THE BALANCE THEN REMAINING, WITHOUT ANY FURTHER DEDUCTIONS, SHALL BE CREDITED TO THE PERMANENT BICYCLE PATHWAY CAPITAL OUTLAY REVOLVING FUND ESTABLISHED BY SECTION 28-2202, AND SHALL BE APPROPRIATED EACH YEAR FOR THE PURPOSES AS PROVIDED IN TITLE 28, CHAPTER 17. THE STATE TAX COMMISSION SHALL MAKE AN ESTIMATE OF THE AMOUNT OF MONEY TO BE RECEIVED UNDER THIS ARTICLE, AS REQUIRED BY SECTION 42-108.01.

6. THE TAX IMPOSED BY THIS ARTICLE SHALL BE A LIEN UPON THE PROPERTY OF ANY PERSON SUBJECT TO THE TAX TO THE EXTENT PROVIDED IN SECTION 42-1337 AND MAY BE INCLUDED, WITHOUT SEGREGATION, IN ANY LIEN FILED FOR UNPAID TAXES UNDER THE PROVISIONS OF THAT SECTION.

7. ANY PERSON AGGRIEVED BY THE ENFORCEMENT OF ANY PROVISIONS OF THIS ARTICLE SHALL HAVE THE RIGHT OF PROTEST AND APPEAL AS PROVIDED BY SECTIONS 42-1338 AND 42-1339.

Sec. 3. Appropriation; purpose; exemption; reversion

A. The sum of one million five hundred thousand dollars is appropriated to the department of transportation to be used in administering the provisions of this act.

B. The appropriation made by this act is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, except that any funds thereof remaining unexpended or unencumbered on July 1, 1975 shall on that date revert to the state general fund.