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Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

HOUSE BILL 2529

AN ACT

AMENDING TITLE 15, CHAPTER 13, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-1670; AMENDING SECTION 42-5075, ARIZONA REVISED STATUTES; RELATING TO UNIVERSITY RESEARCH INFRASTRUCTURE PROJECTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1

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

2 Section 1. Title 15, chapter 13, article 4, Arizona Revised Statutes,
3 is amended by adding section 15-1670, to read:

4 15-1670. Appropriation for university research infrastructure
5 facilities; definition

6 A. IN FISCAL YEARS 2007-2008 THROUGH 2030-2031, THE FOLLOWING SUMS ARE
7 APPROPRIATED EACH YEAR FROM THE STATE GENERAL FUND TO THE RESPECTIVE
8 UNIVERSITIES FOR LEASE-PURCHASE CAPITAL FINANCING FOR RESEARCH INFRASTRUCTURE
9 PROJECTS:

- 10 1. \$14,472,000 TO ARIZONA STATE UNIVERSITY.
11 2. \$14,253,000 TO THE UNIVERSITY OF ARIZONA.
12 3. \$5,900,000 TO NORTHERN ARIZONA UNIVERSITY.

13 B. LEASE-PURCHASE FINANCING AGREEMENTS UNDER SUBSECTION A OF THIS
14 SECTION:

- 15 1. MUST BE ENTERED INTO BEFORE JULY 1, 2006.
16 2. ARE SUBJECT TO THE REQUIREMENTS OF SECTION 15-1682.01.

17 C. THE APPROPRIATIONS UNDER SUBSECTION A OF THIS SECTION CONSTITUTE
18 CONTINUING YEAR-TO-YEAR APPROPRIATIONS BUT DO NOT CONSTITUTE AN OBLIGATION OF
19 THE LEGISLATURE OR THIS STATE TO CONTINUE THE APPROPRIATION IN ANY FISCAL
20 YEAR. THE ANNUAL APPROPRIATION IS A CURRENT EXPENSE OF THIS STATE IN THE
21 FISCAL YEAR IN WHICH IT OCCURS AND IS NOT A GENERAL OBLIGATION INDEBTEDNESS
22 OF THIS STATE OR OF ANY UNIVERSITY. IF THE APPROPRIATION IS DISCONTINUED IN
23 ANY FISCAL YEAR, THIS STATE AND THE UNIVERSITY ARE RELIEVED OF ANY SUBSEQUENT
24 OBLIGATION PURSUANT TO THIS SECTION.

25 D. BEGINNING IN FISCAL YEAR 2007-2008 AND IN EACH SUBSEQUENT FISCAL
26 YEAR FOR WHICH AN APPROPRIATION IS MADE PURSUANT TO SUBSECTION A OF THIS
27 SECTION, EACH UNIVERSITY SHALL DEPOSIT NO LATER THAN OCTOBER 1 WITH THE STATE
28 TREASURER IN THE STATE GENERAL FUND AN AMOUNT EQUAL TO:

- 29 1. TWENTY PER CENT OF THE INCOME FROM LICENSURE AND ROYALTY PAYMENTS
30 RECEIVED BY THE UNIVERSITY DURING THE PRECEDING FISCAL YEAR.
31 2. TWENTY-FIVE PER CENT OF THE INCOME RECEIVED BY THE UNIVERSITY
32 DURING THE PRECEDING FISCAL YEAR FROM THE SALE OR TRANSFER OF INTELLECTUAL
33 PROPERTY DEVELOPED BY THE UNIVERSITY.

34 3. IF A CONSTITUTIONAL AMENDMENT AUTHORIZING OWNERSHIPS AND SECURITIES
35 BY THE ARIZONA BOARD OF REGENTS IS APPROVED BY THE QUALIFIED ELECTORS VOTING
36 AT A STATEWIDE GENERAL ELECTION, THIRTY PER CENT OF THE INCOME RECEIVED IN
37 THE PRECEDING FISCAL YEAR RESULTING FROM THE CONVEYANCE OF OWNERSHIP
38 INTERESTS IN BUSINESS ENTERPRISES ACQUIRED TO DEVELOP TECHNOLOGY OR
39 INTELLECTUAL PROPERTY BASED IN WHOLE OR IN PART ON THE UNIVERSITY'S RESEARCH,
40 TECHNOLOGY OR INTELLECTUAL PROPERTY.

41 E. THE AGGREGATE AMOUNT TRANSFERRED IN EACH FISCAL YEAR FOR DEPOSIT IN
42 THE STATE GENERAL FUND BY ALL UNIVERSITIES FROM ALL SOURCES LISTED UNDER
43 SUBSECTION D OF THIS SECTION SHALL NOT EXCEED THE AGGREGATE AMOUNTS
44 APPROPRIATED IN THAT FISCAL YEAR UNDER SUBSECTION A OF THIS SECTION. IF
45 AMOUNTS UNDER SUBSECTION D OF THIS SECTION WOULD OTHERWISE EXCEED THE LIMIT

1 PRESCRIBED BY THIS SUBSECTION, THE DEPOSITED AMOUNTS SHALL BE PROPORTIONATELY
2 REDUCED FOR EACH UNIVERSITY.

3 F. ON OR BEFORE OCTOBER 1 OF EACH YEAR, EACH UNIVERSITY SHALL REPORT
4 TO THE JOINT LEGISLATIVE BUDGET COMMITTEE THE TOTAL AMOUNT OF INCOME THE
5 UNIVERSITY RECEIVED IN THE PRECEDING FISCAL YEAR FROM EACH CATEGORY OF INCOME
6 THAT IS SUBJECT TO DEPOSIT PURSUANT TO SUBSECTION D OF THIS SECTION.

7 G. FOR THE PURPOSES OF THIS SECTION, "RESEARCH INFRASTRUCTURE" MEANS
8 INSTALLATIONS AND FACILITIES FOR CONTINUANCE AND GROWTH OF SCIENTIFIC AND
9 TECHNOLOGICAL RESEARCH ACTIVITIES AT THE UNIVERSITY.

10 Sec. 2. Section 42-5075, Arizona Revised Statutes, is amended to read:

11 42-5075. Prime contracting classification; exemptions;
12 definitions

13 A. The prime contracting classification is comprised of the business
14 of prime contracting and dealership of manufactured buildings. The sale of a
15 used manufactured building is not taxable under this chapter.

16 B. The tax base for the prime contracting classification is sixty-five
17 per cent of the gross proceeds of sales or gross income derived from the
18 business. The following amounts shall be deducted from the gross proceeds of
19 sales or gross income before computing the tax base:

20 1. The sales price of land, which shall not exceed the fair market
21 value.

22 2. Sales and installation of groundwater measuring devices required
23 under section 45-604 and groundwater monitoring wells required by law,
24 including monitoring wells installed for acquiring information for a permit
25 required by law.

26 3. The sales price of furniture, furnishings, fixtures, appliances,
27 and attachments that are not incorporated as component parts of or attached
28 to a manufactured building or the setup site. The sale of such items may be
29 subject to the taxes imposed by article 1 of this chapter separately and
30 distinctly from the sale of the manufactured building.

31 4. The gross proceeds of sales or gross income received from a
32 contract entered into for the construction, alteration, repair, addition,
33 subtraction, improvement, movement, wrecking or demolition of any building,
34 highway, road, railroad, excavation, manufactured building or other
35 structure, project, development or improvement located in a military reuse
36 zone for providing aviation or aerospace services or for a manufacturer,
37 assembler or fabricator of aviation or aerospace products within five years
38 after the zone is initially established or renewed under section 41-1531. To
39 qualify for this deduction, before beginning work under the contract the
40 prime contractor must obtain a letter of qualification from the department of
41 revenue.

42 5. The gross proceeds of sales or gross income derived from a contract
43 to construct a qualified environmental technology manufacturing, producing or
44 processing facility, as described in section 41-1514.02, and from subsequent
45 construction and installation contracts that begin within ten years after the

1 start of initial construction. To qualify for this deduction, before
2 beginning work under the contract the prime contractor must obtain a letter
3 of qualification from the department of revenue. This paragraph shall apply
4 for ten full consecutive calendar or fiscal years after the start of initial
5 construction.

6 6. The gross proceeds of sales or gross income from a contract to
7 provide for one or more of the following actions, or a contract for site
8 preparation, constructing, furnishing or installing machinery, equipment or
9 other tangible personal property, including structures necessary to protect
10 exempt incorporated materials or installed machinery or equipment, and
11 tangible personal property incorporated into the project, to perform one or
12 more of the following actions in response to a release or suspected release
13 of a hazardous substance, pollutant or contaminant from a facility to the
14 environment, unless the release was authorized by a permit issued by a
15 governmental authority:

16 (a) Actions to monitor, assess and evaluate such a release or a
17 suspected release.

18 (b) Excavation, removal and transportation of contaminated soil and
19 its treatment or disposal.

20 (c) Treatment of contaminated soil by vapor extraction, chemical or
21 physical stabilization, soil washing or biological treatment to reduce the
22 concentration, toxicity or mobility of a contaminant.

23 (d) Pumping and treatment or in situ treatment of contaminated
24 groundwater or surface water to reduce the concentration or toxicity of a
25 contaminant.

26 (e) The installation of structures, such as cutoff walls or caps, to
27 contain contaminants present in groundwater or soil and prevent them from
28 reaching a location where they could threaten human health or welfare or the
29 environment.

30 This paragraph does not include asbestos removal or the construction or use
31 of ancillary structures such as maintenance sheds, offices or storage
32 facilities for unattached equipment, pollution control equipment, facilities
33 or other control items required or to be used by a person to prevent or
34 control contamination before it reaches the environment.

35 7. The gross proceeds of sales or gross income that is derived from a
36 contract entered into for the installation, assembly, repair or maintenance
37 of machinery, equipment or other tangible personal property that is deducted
38 from the tax base of the retail classification pursuant to section 42-5061,
39 subsection B, or that is exempt from use tax pursuant to section 42-5159,
40 subsection B, and that does not become a permanent attachment to a building,
41 highway, road, railroad, excavation or manufactured building or other
42 structure, project, development or improvement. If the ownership of the
43 realty is separate from the ownership of the machinery, equipment or tangible
44 personal property, the determination as to permanent attachment shall be made
45 as if the ownership were the same. The deduction provided in this paragraph

1 does not include gross proceeds of sales or gross income from that portion of
2 any contracting activity which consists of the development of, or
3 modification to, real property in order to facilitate the installation,
4 assembly, repair, maintenance or removal of machinery, equipment or other
5 tangible personal property that is deducted from the tax base of the retail
6 classification pursuant to section 42-5061, subsection B or that is exempt
7 from use tax pursuant to section 42-5159, subsection B. For purposes of this
8 paragraph, "permanent attachment" means at least one of the following:

9 (a) To be incorporated into real property.

10 (b) To become so affixed to real property that it becomes a part of
11 the real property.

12 (c) To be so attached to real property that removal would cause
13 substantial damage to the real property from which it is removed.

14 8. The gross proceeds of sales or gross income received from a
15 contract for constructing any lake facility development in a commercial
16 enhancement reuse district that is designated pursuant to section 9-499.08 if
17 the prime contractor maintains the following records in a form satisfactory
18 to the department and to the city or town in which the property is located:

19 (a) The certificate of qualification of the lake facility development
20 issued by the city or town pursuant to section 9-499.08, subsection D.

21 (b) All state and local transaction privilege tax returns for the
22 period of time during which the prime contractor received gross proceeds of
23 sales or gross income from a contract to construct a lake facility
24 development in a designated commercial enhancement reuse district, showing
25 the amount exempted from state and local taxation.

26 (c) Any other information that the department considers to be
27 necessary.

28 9. The gross proceeds of sales or gross income attributable to the
29 purchase of machinery, equipment or other tangible personal property that is
30 exempt from or deductible from transaction privilege and use tax under:

31 (a) Section 42-5061, subsection A, paragraph 25 or 29.

32 (b) Section 42-5061, subsection B.

33 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
34 (c), (d), (e), (f), (i) or (j).

35 (d) Section 42-5159, subsection B.

36 10. The gross proceeds of sales or gross income received from a
37 contract for the construction of an environmentally controlled facility for
38 the raising of poultry for the production of eggs and the sorting, cooling
39 and packaging of eggs.

40 11. The gross proceeds of sales or gross income that is derived from a
41 contract entered into with a person who is engaged in the commercial
42 production of livestock, livestock products or agricultural, horticultural,
43 viticultural or floricultural crops or products in this state for the
44 construction, alteration, repair, improvement, movement, wrecking or
45 demolition or addition to or subtraction from any building, highway, road,

1 excavation, manufactured building or other structure, project, development or
2 improvement used directly and primarily to prevent, monitor, control or
3 reduce air, water or land pollution.

4 12. The gross proceeds of sales or gross income that is derived from
5 the installation, assembly, repair or maintenance of clean rooms that are
6 deducted from the tax base of the retail classification pursuant to section
7 42-5061, subsection B, paragraph 17.

8 13. For taxable periods beginning from and after June 30, 2001, the
9 gross proceeds of sales or gross income derived from a contract entered into
10 for the construction of a residential apartment housing facility that
11 qualifies for a federal housing subsidy for low income persons over sixty-two
12 years of age and that is owned by a nonprofit charitable organization that
13 has qualified under section 501(c)(3) of the internal revenue code.

14 14. For taxable periods beginning from and after December 31, 1996 and
15 ending before January 1, 2011, the contractor's retail cost of solar energy
16 devices that the contractor supplies and installs pursuant to contracts. The
17 deduction shall not exceed five thousand dollars for each solar energy
18 device. Before deducting any amount under this paragraph, the contractor
19 shall register with the department as a solar energy contractor. By
20 registering, the contractor acknowledges that it will make its books and
21 records relating to sales of solar energy devices available to the department
22 for examination.

23 15. The gross proceeds of sales or gross income derived from a contract
24 entered into for the construction of a launch site, as defined in 14 Code of
25 Federal Regulations section 401.5.

26 16. The gross proceeds of sales or gross income derived from a contract
27 entered into for the construction of a domestic violence shelter that is
28 owned and operated by a nonprofit charitable organization that has qualified
29 under section 501(c)(3) of the internal revenue code.

30 17. The gross proceeds of sales or gross income derived from contracts
31 to perform postconstruction treatment of real property for termite and
32 general pest control, including wood destroying organisms.

33 18. THE GROSS PROCEEDS OF SALES OR GROSS INCOME RECEIVED FROM CONTRACTS
34 ENTERED INTO BEFORE JULY 1, 2006 FOR CONSTRUCTING A STATE UNIVERSITY RESEARCH
35 INFRASTRUCTURE PROJECT IF THE PROJECT HAS BEEN REVIEWED BY THE JOINT
36 COMMITTEE ON CAPITAL REVIEW BEFORE THE UNIVERSITY ENTERS INTO THE
37 CONSTRUCTION CONTRACT FOR THE PROJECT. FOR THE PURPOSES OF THIS PARAGRAPH,
38 "RESEARCH INFRASTRUCTURE" HAS THE SAME MEANING PRESCRIBED IN SECTION 15-1670.

39 C. Entitlement to the deduction pursuant to subsection B, paragraph 7
40 of this section is subject to the following provisions:

41 1. A prime contractor may establish entitlement to the deduction by
42 both:

43 (a) Marking the invoice for the transaction to indicate that the gross
44 proceeds of sales or gross income derived from the transaction was deducted
45 from the base.

1 (b) Obtaining a certificate executed by the purchaser indicating the
2 name and address of the purchaser, the precise nature of the business of the
3 purchaser, the purpose for which the purchase was made, the necessary facts
4 to establish the deductibility of the property under section 42-5061,
5 subsection B, and a certification that the person executing the certificate
6 is authorized to do so on behalf of the purchaser. The certificate may be
7 disregarded if the prime contractor has reason to believe that the
8 information contained in the certificate is not accurate or complete.

9 2. A person who does not comply with paragraph 1 of this subsection
10 may establish entitlement to the deduction by presenting facts necessary to
11 support the entitlement, but the burden of proof is on that person.

12 3. The department may prescribe a form for the certificate described
13 in paragraph 1, subdivision (b) of this subsection. The department may also
14 adopt rules that describe the transactions with respect to which a person is
15 not entitled to rely solely on the information contained in the certificate
16 provided in paragraph 1, subdivision (b) of this subsection but must instead
17 obtain such additional information as required in order to be entitled to the
18 deduction.

19 4. If a prime contractor is entitled to a deduction by complying with
20 paragraph 1 of this subsection, the department may require the purchaser who
21 caused the execution of the certificate to establish the accuracy and
22 completeness of the information required to be contained in the certificate
23 which would entitle the prime contractor to the deduction. If the purchaser
24 cannot establish the accuracy and completeness of the information, the
25 purchaser is liable in an amount equal to any tax, penalty and interest which
26 the prime contractor would have been required to pay under article 1 of this
27 chapter if the prime contractor had not complied with paragraph 1 of this
28 subsection. Payment of the amount under this paragraph exempts the purchaser
29 from liability for any tax imposed under article 4 of this chapter. The
30 amount shall be treated as a transaction privilege tax to the purchaser and
31 as tax revenues collected from the prime contractor in order to designate the
32 distribution base for purposes of section 42-5029.

33 D. Subcontractors or others who perform services in respect to any
34 improvement, building, highway, road, railroad, excavation, manufactured
35 building or other structure, project, development or improvement are not
36 subject to tax if they can demonstrate that the job was within the control of
37 a prime contractor or contractors or a dealership of manufactured buildings
38 and that the prime contractor or dealership is liable for the tax on the
39 gross income, gross proceeds of sales or gross receipts attributable to the
40 job and from which the subcontractors or others were paid.

41 E. Amounts received by a contractor for a project are excluded from
42 the contractor's gross proceeds of sales or gross income derived from the
43 business if the person who hired the contractor executes and provides a
44 certificate to the contractor stating that the person providing the
45 certificate is a prime contractor and is liable for the tax under article 1

1 of this chapter. The department shall prescribe the form of the certificate.
2 If the contractor has reason to believe that the information contained on the
3 certificate is erroneous or incomplete, the department may disregard the
4 certificate. If the person who provides the certificate is not liable for
5 the tax as a prime contractor, that person is nevertheless deemed to be the
6 prime contractor in lieu of the contractor and is subject to the tax under
7 this section on the gross receipts or gross proceeds received by the
8 contractor.

9 F. Every person engaging or continuing in this state in the business
10 of prime contracting or dealership of manufactured buildings shall present to
11 the purchaser of such prime contracting or manufactured building a written
12 receipt of the gross income or gross proceeds of sales from such activity and
13 shall separately state the taxes to be paid pursuant to this section.

14 G. For purposes of section 42-5032.01, the department shall separately
15 account for revenues collected under the prime contracting classification
16 from any prime contractor engaged in the preparation or construction of a
17 multipurpose facility, and related infrastructure, that is owned, operated or
18 leased by the tourism and sports authority pursuant to title 5, chapter 8.

19 H. The gross proceeds of sales or gross income derived from a contract
20 for lawn maintenance services are not subject to tax under this section if
21 the contract does not include landscaping activities. Lawn maintenance
22 service is a service pursuant to section 42-5061, subsection A, paragraph 1,
23 and includes lawn mowing and edging, weeding, repairing sprinkler heads or
24 drip irrigation heads, seasonal replacement of flowers, refreshing gravel,
25 lawn de-thatching, seeding winter lawns, leaf and debris collection and
26 removal, tree or shrub pruning or clipping, garden and gravel raking and
27 applying pesticides, as defined in section 3-361 and fertilizer materials, as
28 defined in section 3-262.

29 I. The gross proceeds of sales or gross income derived from
30 landscaping activities are subject to tax under this section. Landscaping
31 includes installing lawns, grading or leveling ground, installing gravel or
32 boulders, planting trees and other plants, felling trees, removing or
33 mulching tree stumps, removing other imbedded plants, building or modifying
34 irrigation berms, repairing sprinkler or watering systems, installing
35 railroad ties and installing underground sprinkler or watering systems.

36 J. For purposes of this section:

37 1. "Contracting" means engaging in business as a contractor.

38 2. "Contractor" is synonymous with the term "builder" and means any
39 person, firm, partnership, corporation, association or other organization, or
40 a combination of any of them, that undertakes to or offers to undertake to,
41 or purports to have the capacity to undertake to, or submits a bid to, or
42 does personally or by or through others, construct, alter, repair, add to,
43 subtract from, improve, move, wreck or demolish any building, highway, road,
44 railroad, excavation, manufactured building or other structure, project,
45 development or improvement, or to do any part of such a project, including

1 the erection of scaffolding or other structure or works in connection with
2 such a project, and includes subcontractors and specialty contractors. For
3 all purposes of taxation or deduction, this definition shall govern without
4 regard to whether or not such contractor is acting in fulfillment of a
5 contract.

6 3. "Dealership of manufactured buildings" means a dealer who either:
7 (a) Is licensed pursuant to title 41, chapter 16 and who sells at
8 retail manufactured buildings.

9 (b) Supervises, performs or coordinates the excavation and completion
10 of site improvements, setup or moving of a manufactured building including
11 the contracting, if any, with any subcontractor or specialty contractor for
12 the completion of the contract.

13 4. "Manufactured building" means a manufactured home, mobile home or
14 factory-built building, as defined in section 41-2142.

15 5. "Prime contracting" means engaging in business as a prime
16 contractor.

17 6. "Prime contractor" means a contractor who supervises, performs or
18 coordinates the construction, alteration, repair, addition, subtraction,
19 improvement, movement, wreckage or demolition of any building, highway, road,
20 railroad, excavation, manufactured building or other structure, project,
21 development or improvement including the contracting, if any, with any
22 subcontractors or specialty contractors and who is responsible for the
23 completion of the contract.

24 7. "Sale of a used manufactured building" does not include a lease of
25 a used manufactured building.

26 Sec. 3. Emergency

27 This act is an emergency measure that is necessary to preserve the
28 public peace, health or safety and is operative immediately as provided by
29 law.