

COMMITTEE ON TRANSPORTATION

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1507

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 28-363, Arizona Revised Statutes, is amended
3 effective from and after August 31, 2008, to read:

4 28-363. Duties of the director; administration

5 A. The director shall:

6 1. Supervise and administer the overall activities of the department
7 and its divisions and employees.

8 2. Appoint assistant directors for each of the divisions.

9 3. Provide for the assembly and distribution of information to the
10 public concerning department activities.

11 4. Delegate functions, duties or powers as the director deems
12 necessary to carry out the efficient operation of the department.

13 5. Exercise complete and exclusive operational control and
14 jurisdiction over the use of state highways and routes.

15 6. Coordinate the design, right-of-way purchase and construction of
16 controlled access highways that are either state routes or state highways and
17 related grade separations of controlled access highways.

18 7. Coordinate the design, right-of-way purchase, construction,
19 standard and reduced clearance grade separation, extension and widening of
20 arterial streets and highways under chapters 17 and 18 of this title.

21 8. Assist regional transportation planning agencies, councils of
22 government, tribal governments, counties, cities and towns in the development
23 of their regional and local transportation plans to ensure that the streets,
24 highways and other regionally significant modes of transportation within each
25 county form an integrated and efficient regional system.

26 9. On or before December 1, present an annual report to the speaker of
27 the house of representatives and the president of the senate documenting the
28 expenditures of monies under chapters 17 and 18 of this title during the
29 previous fiscal year relating to the design, right-of-way purchase or
30 construction of controlled access highways that are accepted in the state

1 highway system as state routes or state highways or related grade separations
2 of controlled access highways that are included in the regional
3 transportation plans of the counties.

4 10. Designate the necessary agencies for enforcing the provisions of
5 the laws the director administers or enforces.

6 11. Exercise other duties or powers as the director deems necessary to
7 carry out the efficient operation of the department.

8 12. Cooperate with the Arizona-Mexico commission in the governor's
9 office and with researchers at universities in this state to collect data and
10 conduct projects in the United States and Mexico on issues that are within
11 the scope of the department's duties and that relate to quality of life,
12 trade and economic development in this state in a manner that will help the
13 Arizona-Mexico commission to assess and enhance the economic competitiveness
14 of this state and of the Arizona-Mexico region.

15 13. Develop **AND ANNUALLY PRESENT** a plan **TO THE BOARD** to increase **THE**
16 use of bypass routes by vehicles ~~on days of poor visibility~~ in ~~the Phoenix~~
17 ~~metropolitan area~~ **CONGESTED AREAS THROUGH THE USE OF AGREEMENTS WITH ANY**
18 **PRIVATE ENTITY OR UNIT OF GOVERNMENT OR ANY CONFIGURATION OF PRIVATE ENTITIES**
19 **AND UNITS OF GOVERNMENT THAT INVOLVE THE PLANNING, ACQUISITION, FINANCING,**
20 **DEVELOPMENT, DESIGN, CONSTRUCTION, RECONSTRUCTION, REPLACEMENT, IMPROVEMENT,**
21 **MAINTENANCE, MANAGEMENT, REPAIR, LEASING AND OPERATION OF TRANSPORTATION**
22 **PROJECTS.**

23 B. The assistant directors appointed pursuant to subsection A are
24 exempt from the state personnel system.

25 C. The director shall not spend any monies, adopt any rules or
26 implement any policies or programs to convert signs to the metric system or
27 to require the use of the metric system with respect to designing or
28 preparing plans, specifications, estimates or other documents for any highway
29 project before the conversion or use is required by federal law, except that
30 the director may:

31 1. Spend monies and require the use of the metric system with respect
32 to designing or preparing plans, specifications, estimates or other documents
33 for a highway project that is awarded before October 1, 1997 and that is
34 exclusively metric from its inception.

35 2. Prepare for conversion to and use of the metric system not more

1 than six months before the conversion or use is required by federal law.

2 Sec. 2. Section 28-366, Arizona Revised Statutes, is amended effective
3 from and after August 31, 2008, to read:

4 28-366. Director; rules

5 The director shall adopt rules pursuant to title 41, chapter 6 as the
6 director deems necessary for:

7 1. Collection of taxes and license fees.

8 2. Public safety and convenience.

9 3. Enforcement of the provisions of the laws the director administers
10 or enforces.

11 4. The use of state highways and routes to prevent the abuse and
12 unauthorized use of state highways and routes.

13 5. AGREEMENTS OR ANY CONFIGURATION OF AGREEMENTS RELATING TO
14 TRANSPORTATION PROJECTS WITH ANY PRIVATE ENTITY OR UNIT OF GOVERNMENT OR ANY
15 CONFIGURATION OF PRIVATE ENTITIES AND UNITS OF GOVERNMENT.

16 Sec. 3. Section 28-367, Arizona Revised Statutes, is amended effective
17 from and after August 31, 2008, to read:

18 28-367. Public transit

19 The director shall:

20 1. Receive, allocate, control and disperse all monies designated for
21 state public transit programs by federal or state law or rule.

22 2. Pass on projects for construction in cooperation with the United
23 States.

24 3. Negotiate and enter into contracts on behalf of this state with the
25 United States for the cooperative construction and maintenance of federal aid
26 public transit systems in this state.

27 4. Enter into agreements on behalf of this state with ~~counties,~~
28 ~~cities, towns, public transit districts or any other political subdivisions~~
29 ANY PRIVATE ENTITY OR UNIT OF GOVERNMENT OR ANY CONFIGURATION OF PRIVATE
30 ENTITIES AND UNITS OF GOVERNMENT for the OPERATION, improvement or
31 maintenance of public transit systems or for the joint OPERATION, improvement
32 or maintenance of public transit systems.

33 5. Enter into contracts WITH ANY PRIVATE ENTITY OR UNIT OF GOVERNMENT
34 OR ANY CONFIGURATION OF PRIVATE ENTITIES AND UNITS OF GOVERNMENT for the
35 construction OR FOR THE JOINT CONSTRUCTION of state public transit systems.

1 6. Adopt rules for the application for and the expenditure of all
2 public transit monies.

3 Sec. 4. Section 28-5611, Arizona Revised Statutes, is amended
4 effective from and after August 31, 2008, to read:

5 28-5611. Refunds; motor vehicle fuel

6 A. Except as provided in subsection B of this section, on application
7 to the director pursuant to this article and if section 28-5612 is complied
8 with, a person who buys and uses motor vehicle fuel shall receive a refund in
9 the amount of the tax if the person pays the tax on the fuel and either:

10 1. Uses the fuel other than in any of the following:

11 (a) A motor vehicle on a highway in this state.

12 (b) Watercraft on the waterways of this state.

13 (c) A motor vehicle operating on a transportation facility ~~or toll~~
14 ~~road~~ pursuant to chapter 22 of this title.

15 2. Buys aviation fuel for use in aircraft applying seeds, fertilizer
16 or pesticides.

17 3. Loses the fuel by fire, theft or other accident.

18 B. If a claim for refund is based on the use of motor vehicle fuel in
19 aircraft, five cents of the tax collected on each gallon of motor vehicle
20 fuel claimed shall remain in the state aviation fund, and the department
21 shall refund the remainder of the tax pursuant to section 28-5612.

22 Sec. 5. Section 28-7009, Arizona Revised Statutes, is amended
23 effective from and after August 31, 2008, to read:

24 28-7009. Statewide transportation acceleration needs account;
25 establishment; definition

26 A. The statewide transportation acceleration needs account is
27 established as a separate account in the state highway fund. The account
28 consists of all of the following, except that the source of monies in the
29 fund shall not be a consent agreement or any type of negotiated settlement by
30 any state or local agency or any donation made in place of a consent
31 agreement or any type of settlement:

32 1. Monies appropriated by the legislature.

33 2. Monies designated for deposit in the account by the transportation
34 board, a state agency or a political subdivision.

35 3. Monies received from the United States government for the purpose

1 of accelerating transportation projects.

2 4. Monies received from political subdivisions, Indian tribes or this
3 state or its agencies for the purpose of accelerating transportation
4 projects.

5 5. Interest and other income received from investing monies in the
6 account.

7 6. Gifts, grants, donations or other amounts received from any public
8 or private source for deposit in the account for the purpose of accelerating
9 transportation projects.

10 B. On notice from the transportation board, the state treasurer shall
11 invest and divest monies in the statewide transportation acceleration needs
12 account as provided by section 35-313, and monies earned from investment
13 shall be credited to the account.

14 C. The transportation board may establish any subaccount in the
15 statewide transportation acceleration needs account that the board determines
16 is necessary or appropriate to carry out the purposes of this section.

17 D. If a governmental entity or a private person deposits monies in the
18 statewide transportation acceleration needs account for acceleration of a
19 specific project and the appropriate regional planning agency or council of
20 governments in cooperation with the transportation board approves the
21 project, the board shall designate the monies deposited by the governmental
22 entity or private person solely for the project for which the monies are
23 deposited.

24 E. Notwithstanding section 28-6993, and any other agreements entered
25 into by the department of transportation for the distribution and expenditure
26 of monies from the state highway fund, the transportation board shall not
27 approve any expenditures from the statewide transportation acceleration needs
28 account unless the expenditure is made in accordance with this section and is
29 for the construction or reconstruction of freeways, state highways, bridges
30 and interchanges that are contained in the regional transportation plan of a
31 county or the department's long-range statewide transportation plan pursuant
32 to section 28-506. For the purposes of this subsection, a regional
33 transportation plan is a twenty year comprehensive, performance based,
34 multimodal and coordinated regional transportation plan that is approved for
35 the county as provided by law and as amended or otherwise modified.

1 F. Except as provided in sections 28-7010 and 28-7011, monies in the
2 statewide transportation acceleration needs account shall be used only to pay
3 for the following costs of a transportation project approved pursuant to this
4 section **ON OR AFTER JULY 1, 2006:**

- 5 1. Materials and labor.
- 6 2. Acquisition of rights-of-way for highway needs.
- 7 3. Design and other engineering services that are within the scope of
8 engineering practice as provided in title 32, chapter 1.

9 **4. INTEREST COSTS FROM BONDS, LOANS, NOTES OR ADVANCES ISSUED TO, BY**
10 **OR ON BEHALF OF A CITY OR COUNTY.**

11 ~~4.~~ 5. Other directly related costs approved by the transportation
12 board.

13 G. Monies in the statewide transportation acceleration needs account
14 that are appropriated by the legislature and any interest earnings shall be
15 allocated as follows:

16 1. For a county with a population of at least one million two hundred
17 thousand persons for the area included in the regional planning agency's
18 transportation improvement plan, sixty per cent.

19 2. For a county with a population of more than five hundred thousand
20 persons but less than one million two hundred thousand persons for the area
21 included in the regional planning agency's transportation improvement plan,
22 sixteen per cent.

23 3. For all other counties, twenty-four per cent.

24 H. The regional planning agency in a county designated as a
25 transportation management area shall establish a process for the review and
26 approval of transportation projects eligible to receive monies from the
27 statewide transportation acceleration needs account. As part of its request
28 to the transportation board for monies, the regional planning agency shall
29 ensure and submit evidence satisfactory to the board that any project costs
30 not eligible for monies from the statewide transportation acceleration needs
31 account are available and dedicated to the project. In all other counties,
32 the department, in cooperation with the metropolitan planning organization or
33 the council of governments that has the authority to approve transportation
34 projects for the county, shall develop requests for expenditure of monies
35 from the statewide transportation acceleration needs account. As part of the

1 request to the transportation board for monies, the metropolitan planning
2 organization or the council of governments for the department shall submit
3 evidence satisfactory to the board that any project costs not eligible for
4 monies from the statewide transportation acceleration needs account are
5 available and dedicated to the project.

6 I. On receipt of a request for monies from the statewide
7 transportation acceleration needs account, the transportation board shall
8 place the request on the agenda for the next regular business meeting of the
9 board. The board shall review the request and, in cooperation with the
10 regional planning agency, the metropolitan planning organization or the
11 council of governments, approve the request or further modify the request
12 before approval.

13 J. The transportation board shall not approve the release of any
14 monies from the statewide transportation acceleration needs account for a
15 transportation project unless the board verifies that all costs related to
16 construction of the project are covered.

17 K. Monies in the statewide transportation acceleration needs account
18 shall be used to supplement, not supplant, funding that would otherwise be
19 made available for projects.

20 L. On or before July 1 of each year, the transportation board shall
21 submit a report of its activities pursuant to this section to the governor,
22 the president of the senate and the speaker of the house of representatives
23 and shall provide a copy of this report to the secretary of state, the
24 director of the joint legislative budget committee and the director of the
25 Arizona state library, archives and public records.

26 M. A regional planning agency that receives monies from the statewide
27 transportation acceleration needs account shall report on or before December
28 15 of each year to the senate and house of representatives transportation
29 committees on approved projects and amounts expended for those projects.

30 N. For the purposes of this section, "project" means the construction
31 or reconstruction of a specific portion of a freeway or state highway or a
32 bridge or interchange or a portion of a bridge or interchange that is
33 constructed at a single location.

34 Sec. 6. Repeal

35 Title 28, chapter 22, Arizona Revised Statutes, is repealed from and

1 after August 31, 2008.

2 Sec. 7. Title 28, Arizona Revised Statutes, is amended by adding a new
3 chapter 22 effective from and after August 31, 2008, to read:

4 CHAPTER 22

5 ARIZONA NEW DIRECTIONS IN INNOVATION PROGRAM

6 ARTICLE 1. GENERAL PROVISIONS

7 28-7701. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "AFFECTED JURISDICTION" MEANS ANY COUNTY, CITY OR TOWN OR OTHER
10 UNIT OF GOVERNMENT IN THIS STATE IN WHICH ALL OR PART OF A TRANSPORTATION
11 FACILITY IS LOCATED OR ANY OTHER PUBLIC ENTITY DIRECTLY AFFECTED BY THE
12 TRANSPORTATION FACILITY.

13 2. "AGREEMENT" MEANS A WRITTEN AGREEMENT, INCLUDING AN INITIATIVE OR
14 AN AGREEMENT FOR A TRANSPORTATION PROJECT THAT IS ENTERED INTO UNDER SECTION
15 28-7703.

16 3. "BOND" MEANS ANY BOND, NOTE, INTERIM CERTIFICATE, CONTRACT OR OTHER
17 EVIDENCE OF INDEBTEDNESS AUTHORIZED BY THIS CHAPTER.

18 4. "FORCE MAJEURE" MEANS AN UNCONTROLLABLE FORCE OR NATURAL DISASTER
19 THAT IS NOT WITHIN THE POWER OF THE OPERATOR OR THIS STATE.

20 5. "MAINTENANCE" INCLUDES ORDINARY MAINTENANCE, REPAIR,
21 REHABILITATION, CAPITAL MAINTENANCE, MAINTENANCE REPLACEMENT AND ANY OTHER
22 CATEGORIES OF MAINTENANCE THAT MAY BE DESIGNATED BY THE DEPARTMENT.

23 6. "MATERIAL DEFAULT" MEANS ANY FAILURE OF AN OPERATOR TO PERFORM ANY
24 DUTIES UNDER A PUBLIC-PRIVATE AGREEMENT THAT JEOPARDIZES DELIVERY OF ADEQUATE
25 SERVICE TO THE PUBLIC AND REMAINS UNSATISFIED AFTER A REASONABLE PERIOD OF
26 TIME AND AFTER THE OPERATOR RECEIVES WRITTEN NOTICE FROM THE DEPARTMENT OF
27 THE FAILURE.

28 7. "OPERATE" MEANS ANY ACTION TO MAINTAIN, REHABILITATE, IMPROVE,
29 EQUIP OR MODIFY A TRANSPORTATION FACILITY.

30 8. "OPERATOR" MEANS A PRIVATE ENTITY THAT HAS ENTERED INTO A
31 PUBLIC-PRIVATE AGREEMENT UNDER THIS CHAPTER.

32 9. "PRIVATE ENTITY" MEANS ANY NATURAL PERSON, CORPORATION, GENERAL
33 PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED PARTNERSHIP, JOINT VENTURE,
34 BUSINESS TRUST, PUBLIC BENEFIT CORPORATION, NONPROFIT ENTITY OR OTHER
35 BUSINESS ENTITY.

1 10. "PUBLIC-PRIVATE AGREEMENT" MEANS THE AGREEMENT BETWEEN A PRIVATE
2 ENTITY AND THE DEPARTMENT THAT RELATES TO THE DEVELOPMENT, FINANCING,
3 MAINTENANCE OR OPERATION OF A TRANSPORTATION FACILITY SUBJECT TO THIS
4 CHAPTER.

5 11. "PUBLIC-PRIVATE INITIATIVE" MEANS AN ARRANGEMENT BETWEEN THE
6 DEPARTMENT AND ONE OR MORE PRIVATE ENTITIES, THE TERMS OF WHICH ARE STATED IN
7 A PUBLIC-PRIVATE AGREEMENT THAT PROVIDES FOR:

8 (a) ACCEPTANCE OF A PRIVATE CONTRIBUTION, INCLUDING A MONEY PAYMENT,
9 FOR A PROJECT OR SERVICE FOR A TRANSPORTATION FACILITY.

10 (b) SHARING OF RESOURCES AND THE MEANS OF PROVIDING A PROJECT OR
11 SERVICE FOR A TRANSPORTATION FACILITY.

12 (c) COOPERATION IN RESEARCHING, DEVELOPING AND IMPLEMENTING PROJECTS
13 OR SERVICES FOR A TRANSPORTATION FACILITY.

14 12. "REVENUES" MEANS ANY TOLLS, FEES, RATES, CHARGES, ASSESSMENTS,
15 GRANTS, CONTRIBUTIONS OR OTHER INCOME AND REVENUES RECEIVED.

16 13. "TRANSPORTATION FACILITY" MEANS ANY, INCLUDING ANY NEW OR EXISTING,
17 HIGHWAY, ROAD, BRIDGE, TUNNEL, OVERPASS, FERRY, AIRPORT, PUBLIC
18 TRANSPORTATION FACILITY, VEHICLE PARKING FACILITY, SEAPORT FACILITY, RAIL
19 FACILITY, INTERMODAL FACILITY OR SIMILAR FACILITY OPEN TO THE PUBLIC AND USED
20 FOR THE TRANSPORTATION OF PERSONS OR GOODS AND ANY BUILDING, STRUCTURE,
21 PARKING AREA, APPURTENANCES OR OTHER PROPERTY NEEDED TO OPERATE THE FACILITY
22 THAT IS SUBJECT TO A PUBLIC-PRIVATE AGREEMENT.

23 14. "TRANSPORTATION PROJECT" MEANS ANY PROPOSED OR EXISTING UNDERTAKING
24 THAT FACILITATES ANY MODE OF TRANSPORTATION IN THIS STATE.

25 15. "UNIT OF GOVERNMENT" MEANS ANY DEPARTMENT OR AGENCY OF THE FEDERAL
26 GOVERNMENT, ANY STATE OR ANY AGENCY, OFFICE OR DEPARTMENT OF A STATE, ANY
27 CITY, COUNTY, DISTRICT, COMMISSION, AUTHORITY, ENTITY, PORT OR OTHER PUBLIC
28 CORPORATION ORGANIZED AND EXISTING UNDER STATUTORY LAW OR UNDER A VOTER
29 APPROVED CHARTER AND ANY INTERGOVERNMENTAL ENTITY.

30 16. "USER FEES" MEANS THE RATES, TOLLS, FEES OR OTHER CHARGES IMPOSED
31 BY AN OPERATOR FOR USE OF ALL OR PART OF A TRANSPORTATION FACILITY.

32 17. "UTILITY" MEANS A PRIVATELY, PUBLICLY OR COOPERATIVELY OWNED LINE,
33 FACILITY OR SYSTEM FOR PRODUCING, TRANSMITTING OR DISTRIBUTING
34 COMMUNICATIONS, CABLE TELEVISION, POWER, ELECTRICITY, LIGHT, HEAT, GAS, OIL,
35 CRUDE PRODUCTS, WATER, STEAM, WASTE, STORM WATER NOT CONNECTED WITH HIGHWAY

1 DRAINAGE OR ANY OTHER SIMILAR COMMODITY, INCLUDING A FIRE OR POLICE SIGNAL
2 SYSTEM OR STREET LIGHTING SYSTEM, THAT DIRECTLY OR INDIRECTLY SERVES THE
3 PUBLIC.

4 28-7702. Arizona new directions in innovation program;
5 authority of department; expenses

6 A. IN COOPERATION WITH REGIONAL PLANNING AGENCIES, METROPOLITAN
7 PLANNING ORGANIZATIONS AND COUNCILS OF GOVERNMENTS IN THIS STATE, THE
8 DEPARTMENT SHALL ESTABLISH THE ARIZONA NEW DIRECTIONS IN INNOVATION PROGRAM
9 FOR THE PLANNING, ACQUISITION, FINANCING, DEVELOPMENT, DESIGN, CONSTRUCTION,
10 RECONSTRUCTION, REPLACEMENT, IMPROVEMENT, MAINTENANCE, MANAGEMENT, REPAIR,
11 LEASING AND OPERATION OF TRANSPORTATION PROJECTS. THE DEPARTMENT SHALL:

- 12 1. DEVELOP AN EXPEDITED TRANSPORTATION PROJECT DELIVERY PROCESS.
- 13 2. MAXIMIZE INNOVATION RELATED TO TRANSPORTATION.
- 14 3. DEVELOP PARTNERSHIPS WITH PRIVATE ENTITIES AND UNITS OF GOVERNMENT.

15 B. AS PART OF THE PROGRAM ESTABLISHED UNDER THIS CHAPTER, THE
16 DEPARTMENT:

17 1. MAY SOLICIT CONCEPTS OR PROPOSALS FOR TRANSPORTATION PROJECTS FROM
18 PRIVATE ENTITIES AND UNITS OF GOVERNMENT AS PRESCRIBED IN SECTION 28-7703.

19 2. SHALL ACCEPT UNSOLICITED CONCEPTS OR PROPOSALS FOR TRANSPORTATION
20 PROJECTS FROM PRIVATE ENTITIES AND UNITS OF GOVERNMENT THAT MEET THE
21 REQUIREMENTS OF SECTION 28-7704.

22 3. SHALL EVALUATE THE CONCEPTS OR PROPOSALS AS PRESCRIBED IN SECTIONS
23 28-7703 AND 28-7704 IN COOPERATION WITH THE REGIONAL PLANNING AGENCY OR
24 COUNCIL OF GOVERNMENTS OF THE AFFECTED JURISDICTION.

25 4. SHALL, IN COOPERATION WITH THE REGIONAL PLANNING AGENCY OR THE
26 COUNCIL OF GOVERNMENTS OF THE AFFECTED JURISDICTION, MAY SELECT POTENTIAL
27 TRANSPORTATION PROJECTS BASED ON THE CONCEPTS OR PROPOSALS FOR PRESENTATION
28 TO THE BOARD.

29 5. MAY CHARGE AN ADMINISTRATIVE FEE FOR THE EVALUATION IN AN AMOUNT
30 DETERMINED BY THE DIRECTOR. ADMINISTRATIVE FEES RECEIVED PURSUANT TO THIS
31 PARAGRAPH SHALL BE DEPOSITED IN THE STATE TRANSPORTATION ENTERPRISE FUND
32 ESTABLISHED BY SECTION 28-7743.

33 C. THE DEPARTMENT MAY PROCURE SERVICES, AWARD AGREEMENTS AND
34 ADMINISTER REVENUES AS AUTHORIZED IN THIS SECTION NOTWITHSTANDING ANY
35 REQUIREMENTS OF ANY OTHER STATE OR LOCAL STATUTE, REGULATION OR LAW RELATING

1 TO PUBLIC BIDDING OR OTHER PROCUREMENT PROCEDURES OR OTHER PROVISIONS
2 OTHERWISE APPLICABLE TO PUBLIC WORKS, SERVICES OR UTILITIES.

3 D. THE DEPARTMENT MAY SPEND MONIES THAT ARE REASONABLY NECESSARY FOR
4 THE DEVELOPMENT OF PROCUREMENTS, EVALUATION OF CONCEPTS OR PROPOSALS,
5 NEGOTIATION OF AGREEMENTS AND IMPLEMENTATION OF AGREEMENTS FOR DEVELOPMENT OR
6 OPERATION OF ELIGIBLE FACILITIES UNDER THIS CHAPTER.

7 E. IN CONNECTION WITH THE EVALUATION OF CONCEPTS OR PROPOSALS FOR
8 TRANSPORTATION PROJECTS, THE DEPARTMENT MAY CONSIDER ANY FINANCING
9 MECHANISMS, INCLUDING THE IMPOSITION AND COLLECTION OF FRANCHISE FEES OR USER
10 FEES AND THE DEVELOPMENT OR USE OF OTHER REVENUE SOURCES.

11 F. THE DEPARTMENT AND ANY OTHER UNIT OF GOVERNMENT MAY SPEND, OUT OF
12 ANY MONIES AVAILABLE FOR THE PURPOSE, MONIES THAT ARE NECESSARY FOR THE
13 EVALUATION OF CONCEPTS OR PROPOSALS FOR TRANSPORTATION PROJECTS AND FOR
14 NEGOTIATING AGREEMENTS FOR TRANSPORTATION PROJECTS PURSUANT TO THIS CHAPTER.
15 THE DEPARTMENT OR OTHER UNIT OF GOVERNMENT MAY EMPLOY ENGINEERS, CONSULTANTS
16 OR OTHER EXPERTS THE DEPARTMENT OR OTHER UNIT OF GOVERNMENT DETERMINES ARE
17 NEEDED FOR THE PURPOSES OF DOING THE EVALUATION AND NEGOTIATION. EXPENSES
18 INCURRED BY THE DEPARTMENT OR OTHER UNIT OF GOVERNMENT UNDER THIS SUBSECTION
19 BEFORE THE ISSUANCE OF TRANSPORTATION PROJECT REVENUE BONDS OR OTHER
20 FINANCING SHALL BE PAID BY THE DEPARTMENT OR OTHER UNIT OF GOVERNMENT, AS
21 APPLICABLE, AND CHARGED TO THE APPROPRIATE TRANSPORTATION PROJECT. ON THE
22 SALE OF TRANSPORTATION PROJECT REVENUE BONDS OR ON OBTAINING OTHER FINANCING
23 FOR ANY TRANSPORTATION PROJECT, THE MONIES SPENT BY THE DEPARTMENT OR OTHER
24 UNIT OF GOVERNMENT UNDER THIS SUBSECTION IN CONNECTION WITH THE PROJECT SHALL
25 BE REPAID TO THE DEPARTMENT OR THE UNIT OF GOVERNMENT FROM THE PROCEEDS OF
26 THE BONDS OR OTHER FINANCING, AS ALLOWED BY APPLICABLE LAW.

27 G. EACH REQUEST FOR PROPOSALS ISSUED PURSUANT TO THIS CHAPTER SHALL
28 REQUIRE EACH PROPOSER TO INCLUDE WITH ITS PROPOSAL AN EXECUTIVE SUMMARY
29 COVERING THE MAJOR ELEMENTS OF ITS PROPOSAL THAT DO NOT ADDRESS THE
30 PROPOSER'S PRICE, FINANCING PLAN OR OTHER CONFIDENTIAL OR PROPRIETARY
31 INFORMATION OR TRADE SECRETS THAT THE PROPOSER INTENDS TO BE EXEMPT FROM
32 DISCLOSURE. SUCH EXECUTIVE SUMMARY SHALL BE SUBJECT TO RELEASE AND DISCLOSURE
33 TO THE PUBLIC AT ANY TIME. NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR
34 LOCAL LAW, IN ORDER TO MAXIMIZE COMPETITION UNDER THIS CHAPTER, NO PART OF A
35 PROPOSAL OTHER THAN THE EXECUTIVE SUMMARY SHALL BE SUBJECT TO RELEASE OR

1 DISCLOSURE BY THE DEPARTMENT BEFORE AWARD OF THE PUBLIC-PRIVATE PARTNERSHIP
2 CONTRACT AND THE CONCLUSION OF ANY PROTEST OR OTHER CHALLENGE TO SUCH AWARD,
3 ABSENT AN ADMINISTRATIVE OR JUDICIAL ORDER REQUIRING RELEASE OR DISCLOSURE.
4 FOLLOWING THE AWARD OF THE CONTRACT AND THE CONCLUSION OF ANY PROTEST OR
5 OTHER CHALLENGE TO THE AWARD, TITLE 39 APPLIES TO ANY RELEASE OF ANY PART OF
6 THE PROPOSAL.

7 28-7703. Solicited proposals; authority of department;
8 confidentiality

9 A. IN COOPERATION WITH AN AFFECTED JURISDICTION'S REGIONAL PLANNING
10 AGENCY OR COUNCIL OF GOVERNMENTS, THE DEPARTMENT MAY SOLICIT, RECEIVE,
11 CONSIDER, EVALUATE AND ACCEPT A PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE OR A
12 PUBLIC-PRIVATE AGREEMENT.

13 B. IN SOLICITING AND SELECTING A PRIVATE ENTITY WITH WHICH TO ENTER
14 INTO A PUBLIC-PRIVATE INITIATIVE OR PUBLIC-PRIVATE AGREEMENT, THE DEPARTMENT
15 MAY USE ONE OR MORE OF THE FOLLOWING PROCUREMENT APPROACHES:

16 1. SEALED BIDDING.

17 2. SELECTION OF PROPOSALS, WITH OR WITHOUT NEGOTIATIONS, BASED ON
18 QUALIFICATIONS OR BEST VALUE, OR BOTH.

19 3. ANY COMPETITIVE SELECTION PROCESS THAT THE DEPARTMENT DETERMINES TO
20 BE APPROPRIATE OR REASONABLE.

21 C. THE DEPARTMENT MAY SELECT MULTIPLE PRIVATE ENTITIES WITH WHICH TO
22 ENTER A PUBLIC-PRIVATE INITIATIVE OR A PUBLIC-PRIVATE AGREEMENT FOR A
23 TRANSPORTATION FACILITY IF IT IS IN THE PUBLIC INTEREST.

24 D. THE DEPARTMENT SHALL SELECT A PRIVATE ENTITY OR ENTITIES FOR A
25 PUBLIC-PRIVATE INITIATIVE OR A PUBLIC-PRIVATE AGREEMENT ON A COMPETITIVE
26 BASIS TO THE MAXIMUM EXTENT PRACTICABLE.

27 E. BEFORE THE SUBMISSION OF A SOLICITED PROPOSAL, A PRIVATE ENTITY MAY
28 REQUEST A REVIEW BY THE DEPARTMENT OF INFORMATION THAT THE PRIVATE ENTITY HAS
29 IDENTIFIED AS CONFIDENTIAL OR PROPRIETARY TO DETERMINE WHETHER THE
30 INFORMATION WOULD BE SUBJECT TO DISCLOSURE UNDER TITLE 39, CHAPTER 1.

31 F. A PRIVATE ENTITY MAY IDENTIFY CONFIDENTIAL OR PROPRIETARY
32 INFORMATION SUBMITTED AS PART OF A SOLICITED PROPOSAL. A PRIVATE ENTITY
33 SHALL HAVE AN OPPORTUNITY TO OBJECT TO THE RELEASE OF ANY INFORMATION IT
34 IDENTIFIES AS CONFIDENTIAL OR PROPRIETARY.

35 G. THE DEPARTMENT SHALL REVIEW ANY INFORMATION IDENTIFIED AS

1 CONFIDENTIAL OR PROPRIETARY BY A PRIVATE ENTITY AS PART OF A SOLICITED
2 PROPOSAL AND SHALL DETERMINE IF THE INFORMATION IS EXEMPT FROM DISCLOSURE
3 UNDER TITLE 39, CHAPTER 1.

4 H. THE DEPARTMENT SHALL INFORM THE PRIVATE ENTITY THAT SUBMITTED THE
5 INFORMATION OF ITS DETERMINATION OF WHETHER INFORMATION IDENTIFIED BY THE
6 PRIVATE ENTITY AS CONFIDENTIAL OR PROPRIETARY IS SUBJECT TO DISCLOSURE UNDER
7 TITLE 39, CHAPTER 1.

8 I. THE PRIVATE ENTITY SHALL HAVE THE OPPORTUNITY TO OBJECT TO THE
9 DETERMINATION THAT THE INFORMATION IS SUBJECT TO DISCLOSURE UNDER TITLE 39,
10 CHAPTER 1 OR TO WITHDRAW ITS PROPOSAL.

11 J. ANY INFORMATION DETERMINED BY THE DEPARTMENT TO BE CONFIDENTIAL OR
12 PROPRIETARY IS EXEMPT FROM DISCLOSURE UNDER TITLE 39, CHAPTER 1, EXCEPT TO
13 THE ATTORNEY GENERAL AND TO ANY COUNTY ATTORNEY IN CONNECTION WITH AN
14 INVESTIGATION MADE OR ACTION TAKEN IN THE COURSE OF THEIR OFFICIAL DUTIES.

15 K. ANY INFORMATION NOT DETERMINED TO BE CONFIDENTIAL OR PROPRIETARY
16 MAY BE SUBJECT TO DISCLOSURE UNDER TITLE 39, CHAPTER 1.

17 L. THIS SECTION IS EXEMPT FROM TITLE 41, CHAPTER 23.

18 28-7704. Unsolicited proposals; authority of department;
19 confidentiality

20 A. THE DEPARTMENT SHALL RECEIVE, CONSIDER, EVALUATE AND ACCEPT AN
21 UNSOLICITED PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE IF THE PROPOSAL:

- 22 1. IS INDEPENDENTLY ORIGINATED AND DEVELOPED BY THE PROPOSER.
- 23 2. BENEFITS THE PUBLIC.
- 24 3. IS PREPARED WITHOUT DEPARTMENT SUPERVISION.
- 25 4. INCLUDES SUFFICIENT DETAIL AND INFORMATION FOR THE DEPARTMENT TO
26 EVALUATE THE PROPOSAL IN AN OBJECTIVE AND TIMELY MANNER.

27 B. WITHIN NINETY DAYS AFTER RECEIVING AN UNSOLICITED PROPOSAL, THE
28 DEPARTMENT SHALL UNDERTAKE A PRELIMINARY EVALUATION OF THE UNSOLICITED
29 PROPOSAL TO DETERMINE IF THE PROPOSAL COMPLIES WITH THE REQUIREMENTS UNDER
30 SUBSECTION A.

31 C. BEFORE THE SUBMISSION OF AN UNSOLICITED PROPOSAL, A PRIVATE ENTITY
32 MAY REQUEST A REVIEW BY THE DEPARTMENT OF INFORMATION THAT THE PRIVATE ENTITY
33 HAS IDENTIFIED AS CONFIDENTIAL OR PROPRIETARY TO DETERMINE WHETHER THE
34 INFORMATION WOULD BE SUBJECT TO DISCLOSURE UNDER TITLE 39, CHAPTER 1.

35 D. THE DEPARTMENT SHALL TAKE APPROPRIATE ACTION TO PROTECT

1 CONFIDENTIAL OR PROPRIETARY INFORMATION THAT A PRIVATE ENTITY PROVIDES AS
2 PART OF AN UNSOLICITED PROPOSAL AND THAT IS EXEMPT FROM DISCLOSURE UNDER
3 TITLE 39, CHAPTER 1.

4 E. IF THE UNSOLICITED PROPOSAL DOES NOT COMPLY WITH SUBSECTION A, THE
5 DEPARTMENT SHALL RETURN THE PROPOSAL WITHOUT FURTHER ACTION.

6 F. IF THE UNSOLICITED PROPOSAL COMPLIES WITH SUBSECTION A, THE
7 DEPARTMENT MAY CONTINUE TO EVALUATE THE PROPOSAL IN ACCORDANCE WITH THIS
8 SECTION.

9 G. IF THE UNSOLICITED PROPOSAL COMPLIES WITH SUBSECTION A, THE
10 DEPARTMENT SHALL ADVERTISE THE UNSOLICITED PROPOSAL FOR THE PURPOSE OF
11 RECEIVING COMPETITIVE PROPOSALS FOR THE SAME PROPOSED TRANSPORTATION
12 FACILITY.

13 H. THE ADVERTISEMENT SHALL OUTLINE THE GENERAL NATURE AND SCOPE OF THE
14 UNSOLICITED PROPOSAL, INCLUDING THE LOCATION OF THE TRANSPORTATION FACILITY
15 AND THE WORK TO BE PERFORMED ON OR IN CONNECTION WITH THE TRANSPORTATION
16 FACILITY AND SHALL SPECIFY AN ADDRESS TO WHICH A COMPETING PROPOSAL MAY BE
17 SUBMITTED.

18 I. THE ADVERTISEMENT SHALL SPECIFY A REASONABLE TIME PERIOD BY WHICH
19 COMPETITORS MUST SUBMIT A COMPETING PROPOSAL TO THE DEPARTMENT.

20 J. THE DEPARTMENT MAY CHARGE A FEE TO BE DETERMINED BY THE DIRECTOR TO
21 PROCESS, REVIEW AND EVALUATE AN UNSOLICITED PROPOSAL AND ANY COMPETING
22 PROPOSALS.

23 K. THE DEPARTMENT SHALL:

24 1. DETERMINE IF ANY COMPETING PROPOSAL IS COMPARABLE IN NATURE AND
25 SCOPE TO THE ORIGINAL UNSOLICITED PROPOSAL.

26 2. EVALUATE THE ORIGINAL UNSOLICITED PROPOSAL AND ANY COMPARABLE
27 COMPETING PROPOSAL.

28 3. CONDUCT ANY GOOD FAITH DISCUSSIONS AND, IF NECESSARY, ANY
29 NEGOTIATIONS CONCERNING EACH QUALIFIED PROPOSAL.

30 L. AFTER EVALUATING THE UNSOLICITED PROPOSAL AND ANY COMPETING
31 PROPOSALS IN COOPERATION WITH THE AFFECTED JURISDICTION'S REGIONAL PLANNING
32 AGENCY OR COUNCIL OF GOVERNMENTS, THE DEPARTMENT MAY:

33 1. ACCEPT THE UNSOLICITED PROPOSAL AND REJECT ANY COMPETING PROPOSALS.

34 2. REJECT THE UNSOLICITED PROPOSAL AND ACCEPT A COMPARABLE COMPETING
35 PROPOSAL IF THE DEPARTMENT DETERMINES THAT THE COMPARABLE COMPETING PROPOSAL

1 IS THE MOST ADVANTAGEOUS TO THE STATE.

2 3. ACCEPT BOTH AN UNSOLICITED PROPOSAL AND A COMPETING PROPOSAL IF
3 ACCEPTING BOTH PROPOSALS IS ADVANTAGEOUS TO THE STATE.

4 4. REJECT THE UNSOLICITED PROPOSAL AND ANY COMPETING PROPOSALS.

5 M. THE DEPARTMENT SHALL RETURN ANY UNSOLICITED PROPOSAL OR COMPETING
6 PROPOSAL THAT IS REJECTED WITHOUT FURTHER ACTION.

7 N. THIS SECTION IS EXEMPT FROM TITLE 41, CHAPTER 23.

8 28-7705. Evaluation criteria for solicited and unsolicited
9 proposals

10 THE DEPARTMENT MAY CONSIDER THE FOLLOWING FACTORS IN EVALUATING AND
11 SELECTING A BID OR PROPOSAL TO ENTER INTO A PUBLIC-PRIVATE INITIATIVE OR A
12 PUBLIC-PRIVATE AGREEMENT:

13 1. THE ABILITY OF THE TRANSPORTATION FACILITY TO IMPROVE SAFETY,
14 REDUCE CONGESTION, INCREASE CAPACITY AND PROMOTE ECONOMIC GROWTH.

15 2. THE PROPOSED COST OF AND FINANCIAL PLAN FOR THE TRANSPORTATION
16 FACILITY.

17 3. THE GENERAL REPUTATION, QUALIFICATIONS, INDUSTRY EXPERIENCE AND
18 FINANCIAL CAPACITY OF THE PRIVATE ENTITY.

19 4. THE PROPOSED DESIGN, OPERATION AND FEASIBILITY OF THE
20 TRANSPORTATION FACILITY.

21 5. COMMENTS FROM LOCAL CITIZENS AND AFFECTED JURISDICTIONS.

22 6. BENEFITS TO THE PUBLIC.

23 7. THE SAFETY RECORD OF THE PRIVATE ENTITY.

24 8. OTHER CRITERIA THAT THE DEPARTMENT DEEMS APPROPRIATE.

25 28-7706. Public-private agreement

26 A. IN COOPERATION WITH THE REGIONAL PLANNING AGENCY OR THE COUNCIL OF
27 GOVERNMENTS OF AN AFFECTED JURISDICTION, THE DIRECTOR MAY SELECT A SOLICITED
28 OR UNSOLICITED PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE OR A PUBLIC-PRIVATE
29 AGREEMENT. BEFORE THE BOARD APPROVES A PROPOSAL, THE JOINT LEGISLATIVE
30 BUDGET COMMITTEE SHALL REVIEW THE PROPOSAL. FOLLOWING A RESOLUTION BY THE
31 BOARD APPROVING THE PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE OR A PUBLIC-
32 PRIVATE AGREEMENT, THE DEPARTMENT MAY ENTER INTO ANY AGREEMENT OR ANY
33 CONFIGURATION OF AGREEMENTS RELATING TO TRANSPORTATION PROJECTS WITH ANY
34 PRIVATE ENTITY OR UNIT OF GOVERNMENT OR ANY CONFIGURATION OF PRIVATE ENTITIES
35 AND UNITS OF GOVERNMENT. AGREEMENTS ENTERED INTO UNDER THIS SECTION MAY

1 INCLUDE PLANNING, ACQUISITION, FINANCING, DEVELOPMENT, DESIGN, CONSTRUCTION,
2 RECONSTRUCTION, REPLACEMENT, IMPROVEMENT, MAINTENANCE, MANAGEMENT, REPAIR,
3 LEASING AND OPERATION OF TRANSPORTATION PROJECTS.

4 B. THE AGREEMENTS AMONG THE PUBLIC AND PRIVATE SECTOR PARTNERS ENTERED
5 INTO UNDER THIS SECTION MUST SPECIFY AT LEAST THE FOLLOWING:

6 1. REVIEW AND APPROVAL BY THE DEPARTMENT OF THE OPERATOR'S PLANS FOR
7 THE DEVELOPMENT AND OPERATION OF THE TRANSPORTATION FACILITY.

8 2. INSPECTION BY THE DEPARTMENT OF CONSTRUCTION OF OR IMPROVEMENTS TO
9 THE TRANSPORTATION FACILITY.

10 3. MAINTENANCE BY THE OPERATOR OF A POLICY OF LIABILITY INSURANCE OR
11 SELF-INSURANCE.

12 4. THE TERM OF THE AGREEMENT.

13 5. COMPLIANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL LAWS.

14 6. RESOLUTION BY THE BOARD THAT THE TRANSPORTATION PROJECT IS
15 CONSISTENT WITH THE FIVE YEAR TRANSPORTATION FACILITIES CONSTRUCTION PROGRAM
16 DEVELOPED BY THE DIRECTOR PURSUANT TO SECTION 28-6951.

17 7. CERTIFICATION BY THE REGIONAL PLANNING AGENCY OR COUNCIL OF
18 GOVERNMENTS OF AN AFFECTED JURISDICTION THAT THE TRANSPORTATION PROJECT
19 CONFORMS TO ANY APPLICABLE REGIONAL TRANSPORTATION PLANS OR LOCAL
20 TRANSPORTATION SYSTEM PROGRAMS AND AIR QUALITY CONFORMITY STANDARDS.

21 8. THE TYPE OF LEASEHOLD INTEREST, IF ANY, THE PRIVATE ENTITY WILL
22 HAVE IN THE TRANSPORTATION FACILITY.

23 9. ANY FINANCING MECHANISMS, INCLUDING THE IMPOSITION AND COLLECTION
24 OF FRANCHISE FEES OR USER FEES AND THE DEVELOPMENT OR USE OF OTHER REVENUE
25 SOURCES.

26 10. THE POINT OF ENTRY IN THE TRANSPORTATION PROJECT BY PUBLIC AND
27 PRIVATE SECTOR PARTNERS.

28 11. THE ASSUMPTION OF RESPONSIBILITY FOR SPECIFIC TRANSPORTATION
29 PROJECT ELEMENTS.

30 12. A DESCRIPTION OF THE ACTIONS THE DEPARTMENT MAY TAKE TO ENSURE
31 PROPER MAINTENANCE OF THE TRANSPORTATION FACILITY.

32 13. GROUNDS FOR TERMINATION OF THE PUBLIC-PRIVATE AGREEMENT BY THE
33 DEPARTMENT OR OPERATOR.

34 14. PROCEDURES FOR AMENDMENT OF THE AGREEMENT.

35 15. SHARING OF MANAGEMENT OF THE RISKS OF THE TRANSPORTATION PROJECT.

- 1 16. APPORTIONMENT OF EXPENSES.
- 2 17. ALLOCATION OF FINANCIAL RESPONSIBILITY FOR COST OVERRUNS.
- 3 18. PENALTIES FOR NONPERFORMANCE.
- 4 19. INCENTIVES FOR PERFORMANCE.
- 5 20. ACCOUNTING AND AUDITING STANDARDS TO BE USED TO EVALUATE WORK ON
- 6 THE TRANSPORTATION PROJECT.
- 7 21. FILING BY THE OPERATOR ON A PERIODIC BASIS OF APPROPRIATE FINANCIAL
- 8 STATEMENTS IN A FORM ACCEPTABLE TO THE DEPARTMENT.
- 9 22. FILING BY THE OPERATOR ON A PERIODIC BASIS OF TRAFFIC REPORTS IN A
- 10 FORM ACCEPTABLE TO THE DEPARTMENT.
- 11 23. FINANCING OBLIGATIONS OF THE OPERATOR AND THE DEPARTMENT.
- 12 24. RIGHTS AND DUTIES OF THE OPERATOR, THE DEPARTMENT AND OTHER STATE
- 13 AND LOCAL GOVERNMENTAL ENTITIES WITH RESPECT TO USE OF THE TRANSPORTATION
- 14 FACILITY.
- 15 25. RIGHTS AND REMEDIES AVAILABLE IN THE EVENT OF DEFAULT OR DELAY.
- 16 26. TERMS AND CONDITIONS OF INDEMNIFICATION OF THE OPERATOR BY THE
- 17 DEPARTMENT.
- 18 27. ASSIGNMENT, SUBCONTRACTING OR OTHER DELEGATION OF RESPONSIBILITIES
- 19 OF THE OPERATOR OR THE DEPARTMENT UNDER THE AGREEMENT TO THIRD PARTIES,
- 20 INCLUDING OTHER PRIVATE ENTITIES AND OTHER STATE AGENCIES.
- 21 28. SALE OR LEASE TO THE OPERATOR OF PRIVATE PROPERTY RELATED TO THE
- 22 TRANSPORTATION FACILITY.
- 23 29. TRAFFIC ENFORCEMENT AND OTHER POLICING ISSUES, INCLUDING ANY
- 24 REIMBURSEMENT BY THE PRIVATE ENTITY FOR SUCH SERVICES.
- 25 30. SPECIFIC TECHNOLOGY TO BE USED IN THE FACILITY.
- 26 31. COLLECTION OF USER FEES, TOLLS, FARES OR SIMILAR CHARGES.
- 27 32. ENFORCEMENT OF TOLLS.
- 28 33. CIRCUMSTANCES UNDER WHICH THE DEPARTMENT MAY RECEIVE A SHARE OF
- 29 REVENUES FROM CHARGES.
- 30 34. AVAILABILITY OF FREE, REASONABLE ALTERNATIVE ROUTES A PERSON MAY USE
- 31 INSTEAD OF A TOLL FACILITY.
- 32 35. A REQUIREMENT THAT A PRIVATE PARTNER PROVIDE PERFORMANCE AND
- 33 PAYMENT BONDS, PARENT COMPANY GUARANTEES, LETTERS OF CREDIT OR OTHER
- 34 ACCEPTABLE FORM OF SECURITY OR A COMBINATION OF ANY OF THESE TO ADEQUATELY
- 35 PROTECT THIS STATE.

1 36. A FORMULA FOR THE ADJUSTMENT OF USER FEES, TOLLS, FARES OR SIMILAR
2 CHARGES DURING THE TERM OF THE AGREEMENT.

3 37. FOR AN AGREEMENT THAT DOES NOT INCLUDE A FORMULA, PROVISIONS
4 REGULATING THE PRIVATE PARTNER'S RETURN ON INVESTMENT.

5 38. OTHER TERMS AND CONDITIONS.

6 B. THE DEPARTMENT MAY NOT ENTER INTO, AND THE BOARD MAY NOT APPROVE,
7 AN AGREEMENT UNDER THIS SECTION FOR THE CONSTRUCTION OF A PUBLIC IMPROVEMENT
8 AS PART OF A TRANSPORTATION PROJECT UNLESS THE AGREEMENT PROVIDES FOR
9 BONDING, FINANCIAL GUARANTEES, DEPOSITS OR POSTING OF OTHER SECURITY TO
10 SECURE THE PAYMENT OF LABORERS, SUBCONTRACTORS AND SUPPLIERS THAT PERFORM
11 WORK OR PROVIDE MATERIALS AS PART OF THE TRANSPORTATION PROJECT.

12 C. BEFORE PRESENTING AN AGREEMENT TO THE BOARD FOR APPROVAL UNDER THIS
13 SECTION, THE DEPARTMENT MUST CONSIDER WHETHER TO IMPLEMENT PROCEDURES TO
14 PROMOTE COMPETITION AMONG SUBCONTRACTORS FOR ANY SUBCONTRACTS TO BE LET IN
15 CONNECTION WITH THE TRANSPORTATION PROJECT. AS PART OF ITS REQUEST FOR
16 APPROVAL OF THE AGREEMENT, THE DEPARTMENT SHALL REPORT IN WRITING TO THE
17 BOARD ITS CONCLUSIONS REGARDING THE APPROPRIATENESS OF IMPLEMENTING THOSE
18 PROCEDURES.

19 D. EXCEPT AS PROVIDED IN SUBSECTION E, DOCUMENTS, COMMUNICATIONS AND
20 INFORMATION DEVELOPED, EXCHANGED OR COMPILED IN THE COURSE OF NEGOTIATING AN
21 AGREEMENT WITH A PRIVATE ENTITY UNDER THIS SECTION ARE EXEMPT FROM
22 DISCLOSURE.

23 E. DOCUMENTS, COMMUNICATIONS OR INFORMATION ARE SUBJECT TO DISCLOSURE
24 IF THE DOCUMENTS, COMMUNICATIONS OR INFORMATION ARE SUBMITTED TO THE BOARD IN
25 CONNECTION WITH ITS REVIEW AND APPROVAL OF A TRANSPORTATION PROJECT UNDER
26 SUBSECTION F.

27 F. THE TERMS OF A FINAL AGREEMENT ENTERED INTO UNDER THIS SECTION AND
28 THE TERMS OF A PROPOSED AGREEMENT PRESENTED TO THE BOARD FOR REVIEW AND
29 APPROVAL ARE SUBJECT TO DISCLOSURE.

30 G. AGREEMENTS MAY BE FOR A TERM NOT TO EXCEED FIFTY YEARS BUT MAY BE
31 EXTENDED FOR ADDITIONAL TERMS.

32 H. THE DEPARTMENT MAY APPROVE ANY REQUEST FROM ANOTHER UNIT OF
33 GOVERNMENT TO DEVELOP A TRANSPORTATION FACILITY IN A MANNER SIMILAR TO THAT
34 USED BY THE DEPARTMENT UNDER THIS CHAPTER.

35 28-7707. Funding and financing

1 A. ANY LAWFUL SOURCE OF FUNDING MAY BE USED FOR THE DEVELOPMENT OR
2 OPERATION OF A TRANSPORTATION FACILITY UNDER THIS CHAPTER, INCLUDING:

3 1. THE PROCEEDS OF GRANT ANTICIPATION REVENUE BONDS AUTHORIZED BY 23
4 UNITED STATES CODE SECTION 122 OR ANY OTHER APPLICABLE FEDERAL OR STATE LAW.

5 2. GRANTS, LOANS, LOAN GUARANTEES, LINES OF CREDIT, REVOLVING LINES OF
6 CREDIT OR OTHER ARRANGEMENTS AVAILABLE UNDER THE TRANSPORTATION
7 INFRASTRUCTURE FINANCE AND INNOVATION ACT OF 1998 (P.L. 105-178; 112 STAT.
8 241; 23 UNITED STATES CODE SECTIONS 601 THROUGH 610) OR ANY OTHER FEDERAL OR
9 STATE LAW.

10 3. FEDERAL, STATE OR LOCAL REVENUES.

11 4. USER FEES, TOLLS, FARES, CHARGES, LEASE PROCEEDS, RENTS,
12 AVAILABILITY PAYMENTS, GROSS OR NET RECEIPTS FROM SALES, PROCEEDS FROM THE
13 SALE OF DEVELOPMENT RIGHTS, FRANCHISE FEES, PERMIT FEES OR ANY OTHER LAWFUL
14 FORM OF CONSIDERATION.

15 5. PRIVATE ACTIVITY BONDS AS DESCRIBED BY 26 UNITED STATES CODE
16 SECTION 141 AND OTHER FORMS OF PRIVATE CAPITAL.

17 6. OTHER FORMS OF PUBLIC AND PRIVATE CAPITAL THAT ARE AVAILABLE.

18 B. AS SECURITY FOR THE PAYMENT OF FINANCING DESCRIBED IN THIS SECTION,
19 THE REVENUES FROM THE PROJECT MAY BE PLEDGED, BUT NO PLEDGE OF REVENUES
20 CONSTITUTES IN ANY MANNER OR TO ANY EXTENT A GENERAL OBLIGATION OF THIS
21 STATE. ANY FINANCING MAY BE STRUCTURED ON A SENIOR, PARITY OR SUBORDINATE
22 BASIS TO ANY OTHER FINANCING.

23 C. THE DEPARTMENT MAY ISSUE TOLL REVENUE BONDS TO PROVIDE MONIES FOR
24 ANY PROJECT UNDER THIS CHAPTER.

25 D. THE DEPARTMENT MAY ACCEPT FROM THE UNITED STATES OR ANY OF ITS
26 AGENCIES MONIES THAT ARE AVAILABLE TO THIS STATE OR TO ANY OTHER UNIT OF
27 GOVERNMENT FOR CARRYING OUT THE PURPOSES OF THIS CHAPTER, WHETHER THE MONIES
28 ARE MADE AVAILABLE BY GRANT, LOAN OR OTHER FINANCING ARRANGEMENT. THE
29 DEPARTMENT MAY ENTER INTO AGREEMENTS AND OTHER ARRANGEMENTS WITH THE UNITED
30 STATES OR ANY OF ITS AGENCIES AS MAY BE NECESSARY, PROPER AND CONVENIENT FOR
31 CARRYING OUT THIS CHAPTER.

32 E. THE DEPARTMENT MAY ACCEPT FROM ANY SOURCE ANY GRANT, DONATION, GIFT
33 OR OTHER FORM OF CONVEYANCE OF LAND, MONEY, OTHER REAL OR PERSONAL PROPERTY
34 OR OTHER VALUABLE THING MADE TO THIS STATE, THE DEPARTMENT OR A LOCAL
35 GOVERNMENT FOR CARRYING OUT THIS CHAPTER.

1 F. ANY TRANSPORTATION FACILITY MAY BE FUNDED IN WHOLE OR IN PART BY
2 CONTRIBUTION OF ANY MONIES OR PROPERTY MADE BY ANY PRIVATE ENTITY OR PUBLIC
3 SECTOR PARTNER THAT IS A PARTY TO ANY AGREEMENT ENTERED INTO UNDER THIS
4 CHAPTER.

5 G. NOTWITHSTANDING ANY OTHER LAW, FEDERAL, STATE AND LOCAL MONIES MAY
6 BE COMBINED WITH ANY PRIVATE SECTOR MONIES FOR ANY PROJECT PURPOSES.

7 H. REVENUE BONDS ISSUED PURSUANT TO THIS CHAPTER ARE NOT GENERAL
8 OBLIGATIONS OF THIS STATE AND ARE NOT SECURED BY OR PAYABLE FROM ANY MONIES
9 OR ASSETS OF THIS STATE OTHER THAN THE MONIES AND REVENUES SPECIFICALLY
10 PLEDGED TO THE REPAYMENT OF THE REVENUE BONDS.

11 28-7708. Government agreements

12 EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER PUBLIC SECTOR
13 PARTNER, THIS STATE MAY ENTER INTO AGREEMENTS TO CARRY OUT THE JOINT
14 IMPLEMENTATION OF A TRANSPORTATION PROJECT UNDER THIS CHAPTER.

15 28-7709. Eminent domain

16 A. THIS STATE MAY EXERCISE THE POWER OF EMINENT DOMAIN TO ACQUIRE
17 PROPERTY, RIGHTS-OF-WAY OR OTHER RIGHTS IN PROPERTY FOR PROJECTS THAT ARE
18 NECESSARY TO DEVELOP, OPERATE OR HOLD A TRANSPORTATION FACILITY UNDER THIS
19 CHAPTER, REGARDLESS OF WHETHER THE PROPERTY WILL BE OWNED IN FEE SIMPLE BY
20 THIS STATE OR WHETHER THE PROPERTY WILL BE LEASED TO THE PRIVATE PARTNER TO
21 USE, LEASE OR OPERATE FOR ITS BUSINESS PURPOSES IN CONNECTION WITH THE
22 PUBLIC-PRIVATE PARTNERSHIP PROJECT.

23 B. THIS STATE SHALL NOT RELINQUISH ITS POWER OF EMINENT DOMAIN
24 AUTHORITY.

25 28-7710. Material default; remedies

26 A. ON THE OCCURRENCE AND DURING THE CONTINUATION OF MATERIAL DEFAULT
27 BY AN OPERATOR, NOT RELATED TO AN EVENT OF FORCE MAJEURE, THE DEPARTMENT MAY
28 DO EITHER OF THE FOLLOWING:

29 1. ELECT TO TAKE OVER THE TRANSPORTATION FACILITY, INCLUDING THE
30 SUCCESSION TO ALL RIGHTS, TITLE AND INTEREST IN THE TRANSPORTATION FACILITY,
31 SUBJECT TO ANY LIENS ON REVENUES PREVIOUSLY GRANTED BY THE PRIVATE ENTITY.

32 2. TERMINATE THE PUBLIC-PRIVATE AGREEMENT AND EXERCISE ANY OTHER
33 RIGHTS AND REMEDIES THAT MAY BE AVAILABLE.

34 B. IF THE DEPARTMENT ELECTS TO TAKE OVER A TRANSPORTATION FACILITY
35 UNDER SUBSECTION A OF THIS SECTION, THE DEPARTMENT:

1 1. SHALL COLLECT AND PAY ANY REVENUES THAT ARE SUBJECT TO LIEN TO
2 SATISFY ANY OBLIGATION.

3 2. MAY DEVELOP AND OPERATE THE TRANSPORTATION FACILITY, IMPOSE USER
4 FEES FOR THE USE OF THE TRANSPORTATION FACILITY AND COMPLY WITH ANY SERVICE
5 CONTRACTS.

6 3. MAY SOLICIT PROPOSALS FOR THE MAINTENANCE AND OPERATION OF THE
7 TRANSPORTATION FACILITY UNDER SECTION 28-7703.

8 28-7711. Reversion of transportation facility to the department

9 A. IF THE PUBLIC-PRIVATE AGREEMENT TERMINATES, THE AUTHORITY AND
10 DUTIES OF THE OPERATOR CEASE, EXCEPT FOR ANY DUTIES AND OBLIGATIONS THAT
11 EXTEND BEYOND THE TERMINATION AS PROVIDED IN THE PUBLIC-PRIVATE AGREEMENT,
12 AND THE TRANSPORTATION FACILITY REVERTS TO THE DEPARTMENT AND SHALL BE
13 DEDICATED TO THE DEPARTMENT FOR PUBLIC USE.

14 B. THE DIRECTOR SHALL ESTABLISH STANDARDS AND ASSESS RESPONSIBILITY
15 FOR RECONSTRUCTION OR RENOVATIONS THAT ARE REQUIRED IN ORDER FOR A FACILITY
16 TO MEET ALL APPLICABLE GOVERNMENT STANDARDS PRIOR TO REVERSION OF THE
17 FACILITY TO THIS STATE OR A GOVERNMENT UNIT.

18 28-7712. Reports to board

19 A. THE DEPARTMENT SHALL REPORT TO THE BOARD AT LEAST TWICE DURING EACH
20 YEAR REGARDING THE TRANSPORTATION PROJECTS PROPOSED OR AGREED TO UNDER THIS
21 CHAPTER.

22 B. THE REPORT UNDER SUBSECTION A SHALL INCLUDE INFORMATION ABOUT
23 EXPENDITURE OF MONIES FOR EVALUATION OF CONCEPTS AND PROPOSALS FOR
24 TRANSPORTATION PROJECTS, AGREEMENTS ENTERED INTO, TRANSPORTATION PROJECTS
25 THAT HAVE BEEN AGREED TO AND FINANCING MECHANISMS BEING USED FOR
26 TRANSPORTATION PROJECTS.

27 28-7713. Police powers; violations of law

28 A. ALL LAW ENFORCEMENT OFFICERS OF THIS STATE AND OF AN AFFECTED
29 JURISDICTION HAVE THE SAME POWERS AND JURISDICTION WITHIN THE LIMITS OF THE
30 TRANSPORTATION FACILITY AS THEY HAVE IN THEIR RESPECTIVE AREAS OF
31 JURISDICTION AND ACCESS TO THE TRANSPORTATION FACILITY AT ANY TIME FOR THE
32 PURPOSE OF EXERCISING THE POWERS AND JURISDICTION.

33 B. THE TRAFFIC AND MOTOR VEHICLE LAWS OF THIS STATE OR, IF APPLICABLE,
34 ANY AFFECTED JURISDICTION SHALL BE THE SAME ON THE TRANSPORTATION FACILITY AS
35 THOSE LAWS APPLIED TO CONDUCT ON SIMILAR TRANSPORTATION FACILITIES IN THIS

1 STATE OR AFFECTED JURISDICTION.

2 C. PUNISHMENT FOR VIOLATIONS OF TRAFFIC AND MOTOR VEHICLE LAWS OF THIS
3 STATE OR, IF APPLICABLE, ANY AFFECTED JURISDICTION ON THE TRANSPORTATION
4 FACILITY SHALL BE AS PRESCRIBED BY LAW FOR CONDUCT OCCURRING ON SIMILAR
5 TRANSPORTATION FACILITIES IN THIS STATE OR AFFECTED JURISDICTION.

6 28-7714. Program termination

7 THE PROGRAM ESTABLISHED BY THIS CHAPTER ENDS ON JULY 1, 2018 PURSUANT
8 TO SECTION 41-3102.

9 ARTICLE 2. FINANCING

10 28-7741. Bonds secured by state transportation enterprise fund;
11 financing of transportation projects

12 A. IN ADDITION TO ANY AUTHORITY THE DEPARTMENT HAS TO ISSUE AND SELL
13 BONDS AND OTHER SIMILAR OBLIGATIONS, THIS SECTION ESTABLISHES CONTINUING
14 AUTHORITY FOR THE ISSUANCE AND SALE OF BONDS AND OTHER SIMILAR OBLIGATIONS IN
15 A MANNER CONSISTENT WITH THIS SECTION. TO FINANCE ANY TRANSPORTATION PROJECT
16 IN WHOLE OR IN PART, THE DEPARTMENT MAY ISSUE REVENUE BONDS. THE BONDS SHALL
17 BE SECURED BY A PLEDGE OF, AND A LIEN ON, AND SHALL BE PAYABLE ONLY FROM,
18 MONIES IN THE STATE TRANSPORTATION ENTERPRISE FUND ESTABLISHED BY SECTION
19 28-7743 AND ANY OTHER REVENUES SPECIFICALLY PLEDGED TO REPAYMENT OF THE
20 BONDS. A PLEDGE BY THE DEPARTMENT OF ITS REVENUES CREATES A LIEN THAT IS
21 VALID AND BINDING FROM THE TIME THE PLEDGE IS MADE. REVENUE BONDS ISSUED
22 PURSUANT TO THIS SECTION ARE NOT GENERAL OBLIGATIONS OF THIS STATE AND ARE
23 NOT SECURED BY OR PAYABLE FROM ANY MONIES OR ASSETS OF THIS STATE OTHER THAN
24 THE MONIES AND REVENUES SPECIFICALLY PLEDGED TO THE REPAYMENT OF THE REVENUE
25 BONDS.

26 B. MONIES RECEIVED FROM THE ISSUANCE OF REVENUE BONDS OR OTHER DEBT
27 OBLIGATIONS, INCLUDING ANY INVESTMENT EARNINGS, MAY BE SPENT:

28 1. FOR THE PURPOSE OF FINANCING THE COSTS OF THE TRANSPORTATION
29 PROJECT FOR WHICH THE BONDS ARE ISSUED.

30 2. TO PAY THE COSTS AND OTHER ADMINISTRATIVE EXPENSES OF THE BONDS.

31 3. TO PAY THE COSTS OF CREDIT ENHANCEMENT OR TO FUND ANY RESERVES
32 DETERMINED TO BE NECESSARY OR ADVANTAGEOUS IN CONNECTION WITH THE REVENUE
33 BONDS.

34 4. TO REIMBURSE THE DEPARTMENT FOR ANY COSTS RELATED TO CARRYING OUT
35 THE PURPOSES OF THE PROGRAM ESTABLISHED UNDER THIS CHAPTER.

1 C. ANY TRANSPORTATION PROJECT MAY BE FINANCED IN WHOLE OR IN PART
2 WITH:

3 1. THE PROCEEDS OF GRANT ANTICIPATION REVENUE BONDS AUTHORIZED BY 23
4 UNITED STATES CODE SECTION 122 AND APPLICABLE STATE LAW.

5 2. GRANTS, LOANS, LOAN GUARANTEES, LINES OF CREDIT, REVOLVING LINES OF
6 CREDIT OR OTHER FINANCING ARRANGEMENTS AVAILABLE PURSUANT TO THE
7 TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT OF 1998
8 (P.L. 105-178; 112 STAT. 241; 23 UNITED STATES CODE SECTIONS 601 THROUGH 610)
9 OR ANY OTHER APPLICABLE FEDERAL LAW.

10 3. INFRASTRUCTURE LOANS OR ASSISTANCE FROM THE HIGHWAY EXPANSION AND
11 EXTENSION LOAN PROGRAM FUND ESTABLISHED BY SECTION 28-7674.

12 4. PRIVATE ACTIVITY BONDS AS DESCRIBED BY 26 UNITED STATES CODE
13 SECTION 141 AND OTHER FORMS OF PRIVATE CAPITAL.

14 D. AS SECURITY FOR THE PAYMENT OF FINANCING DESCRIBED IN SUBSECTION C
15 OF THIS SECTION, THE REVENUES FROM THE TRANSPORTATION PROJECT MAY BE PLEDGED,
16 BUT NO PLEDGE OF REVENUES CONSTITUTES IN ANY MANNER OR TO ANY EXTENT A
17 GENERAL OBLIGATION OF THIS STATE. ANY FINANCING DESCRIBED IN SUBSECTION C OF
18 THIS SECTION MAY BE STRUCTURED ON A SENIOR, PARITY OR SUBORDINATE BASIS TO
19 ANY OTHER FINANCING.

20 28-7742. State transportation enterprise fund

21 A. THE STATE TRANSPORTATION ENTERPRISE FUND IS ESTABLISHED CONSISTING
22 OF:

23 1. PROCEEDS FROM BONDS OR OTHER FINANCING INSTRUMENTS ISSUED UNDER
24 THIS CHAPTER.

25 2. REVENUES RECEIVED FROM ANY TRANSPORTATION PROJECT DEVELOPED UNDER
26 THIS CHAPTER.

27 3. ANY OTHER MONIES THAT ARE BY DONATION, GRANT, CONTRACT, LAW OR
28 OTHER MEANS TRANSFERRED, ALLOCATED OR APPROPRIATED TO THE FUND.

29 B. THE DEPARTMENT SHALL ADMINISTER THE FUND. MONIES IN THE STATE
30 TRANSPORTATION ENTERPRISE FUND ARE CONTINUOUSLY APPROPRIATED TO THE
31 DEPARTMENT FOR THE PURPOSE OF CARRYING OUT THIS CHAPTER AND IMPLEMENTING ALL
32 OR PORTIONS OF ANY TRANSPORTATION PROJECT DEVELOPED UNDER THE PROGRAM
33 ESTABLISHED UNDER THIS CHAPTER.

34 C. ON NOTICE FROM THE DEPARTMENT, THE STATE TREASURER SHALL INVEST AND
35 DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED

1 FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

2 D. THE DEPARTMENT SHALL ESTABLISH A SEPARATE ACCOUNT IN THE STATE
3 TRANSPORTATION ENTERPRISE FUND FOR EACH TRANSPORTATION PROJECT THAT IS
4 UNDERTAKEN PURSUANT TO THIS CHAPTER. THE DEPARTMENT MAY PLEDGE MONIES IN THE
5 STATE TRANSPORTATION ENTERPRISE FUND TO SECURE REVENUE BONDS OR ANY OTHER
6 DEBT OBLIGATIONS RELATING TO THE TRANSPORTATION PROJECT FOR WHICH THE ACCOUNT
7 IS ESTABLISHED.

8 E. MONIES IN AN ACCOUNT ESTABLISHED UNDER SUBSECTION D OF THIS SECTION
9 SHALL BE USED AS PROVIDED IN ANY AGREEMENT APPLICABLE TO THE TRANSPORTATION
10 PROJECT FOR WHICH THE ACCOUNT IS ESTABLISHED.

11 ARTICLE 3. TAXES AND IMMUNITY

12 28-7761. Property tax exemption

13 A. THIS CHAPTER APPLIES TO A TRANSPORTATION FACILITY OR TANGIBLE
14 PERSONAL PROPERTY USED EXCLUSIVELY WITH A TRANSPORTATION FACILITY SUBJECT TO
15 THIS CHAPTER THAT IS EITHER:

16 1. OWNED BY THE DEPARTMENT AND LEASED, LICENSED, FINANCED OR OTHERWISE
17 CONVEYED TO AN OPERATOR.

18 2. ACQUIRED, CONSTRUCTED OR OTHERWISE PROVIDED BY AN OPERATOR ON
19 BEHALF OF THE DEPARTMENT.

20 B. PROPERTY LISTED UNDER SUBSECTION A IS EXEMPT FROM ALL AD VALOREM
21 PROPERTY TAXES AND SPECIAL ASSESSMENTS LEVIED AGAINST PROPERTY BY THIS STATE
22 OR ANY POLITICAL SUBDIVISION OF THIS STATE.

23 Sec. 8. Section 28-8202, Arizona Revised Statutes, is amended to read:

24 28-8202. State aviation fund; report

25 A. A state aviation fund is established consisting of the following:

26 1. Aviation fuel taxes or motor vehicle fuel taxes deposited by the
27 department.

28 2. Monies deposited by the department as a result of the sale of an
29 abandoned aircraft as defined in section 28-8243 or seized aircraft.

30 3. The amount of flight property tax that the department of revenue
31 has deposited pursuant to section 42-14255.

32 4. Registration fees, license taxes and penalties collected pursuant
33 to article 4 of this chapter.

34 5. Monies received by the department from the operation of airports
35 under this article and articles 2 through 5 of this chapter.

1 B. On notice from the department, the state treasurer shall invest and
2 divest monies in the state aviation fund as provided by section 35-313, and
3 monies earned from investment shall be credited to the fund.

4 C. The department shall administer monies that are appropriated by the
5 legislature from the state aviation fund.

6 D. The board shall distribute monies appropriated to the department
7 from the state aviation fund for planning, design, development, acquisition
8 of interests in land, construction and improvement of publicly owned and
9 operated airport facilities in counties and incorporated cities and towns **AND**
10 **ON INDIAN NATION LAND**. The board shall distribute these monies according to
11 the needs for these facilities as determined by the board. **THE COMBINED**
12 **TOTAL OF GRANTS AND LOANS AWARDED TO ANY ONE AIRPORT IN ANY FISCAL YEAR SHALL**
13 **NOT EXCEED TEN PER CENT OF THE AVERAGE ANNUAL REVENUE THAT THE FUND RECEIVED**
14 **FOR THE PAST THREE YEARS. AFTER AND IN ADDITION TO THE INITIAL TOTAL OF**
15 **GRANTS AND LOANS TO A SPECIFIC AIRPORT, IN THE SAME FISCAL YEAR THE BOARD MAY**
16 **AWARD TO THAT SAME AIRPORT ADDITIONAL GRANTS OR LOANS THE COMBINED TOTAL OF**
17 **WHICH DOES NOT EXCEED FIVE PER CENT OF THE AVERAGE ANNUAL REVENUE THAT THE**
18 **FUND RECEIVED FOR THE PAST THREE YEARS.** For THE purposes of this subsection,
19 "publicly owned and operated airport facility" means an airport and
20 appurtenant facilities in which one or more agencies, departments or
21 instrumentalities of this state or a city, town or county of this state **OR**
22 **INDIAN NATION LOCATED IN THIS STATE** holds an interest in the land on which
23 the airport is located that is clear of any reversionary interest, lien,
24 easement, lease or other encumbrance that might preclude or interfere with
25 the possession, use or control of the land for public airport purposes for a
26 minimum period of twenty years.

27 Sec. 9. Section 35-701, Arizona Revised Statutes, is amended effective
28 from and after August 31, 2008, to read:

29 35-701. Definitions

30 In this chapter, unless the context otherwise requires:

31 1. "Corporation" means any corporation organized as an authority as
32 provided in this chapter.

33 2. "Designated area" means any area of this state which is either
34 designated pursuant to section 36-1479 as a slum or blighted area as defined
35 in section 36-1471, designated by regulation as a pocket of poverty or a

1 neighborhood strategy area by the United States department of housing and
2 urban development pursuant to title I of the housing and community
3 development act of 1977 (P.L. 95-128; 42 United States Code sections 5301
4 through 5320), as amended, and the department of housing and urban
5 development act (P.L. 89-174; 42 United States Code section 3535(d)) or
6 designated by the United States department of housing and urban development
7 as an empowerment or enterprise zone pursuant to the federal omnibus budget
8 reconciliation act of 1993 (P.L. 103-66; 26 United States Code section
9 1391(g)) or an area certified as an enterprise zone pursuant to section
10 41-1524, subsection B.

11 3. "Governing body" means:

12 (a) The board or body in which the general legislative powers of the
13 municipality or the county are vested.

14 (b) The Arizona board of regents with respect to a corporation formed
15 with the permission of the Arizona board of regents.

16 4. "Income" means gross earnings from wages, salary, commissions,
17 bonuses or tips from all jobs, net earnings from such person's or family's
18 own nonfarm business, professional practice or partnership, and net earnings
19 from such person's or family's own farm. Income includes income, other than
20 earnings, that consists of amounts received from social security or railroad
21 retirement, interest, dividends, veterans payments, pensions and other
22 regular payments, public assistance or welfare payments, including aid for
23 dependent children, old age assistance, general assistance and aid to the
24 blind or totally disabled, but excluding separate payments for hospital or
25 other medical care.

26 5. "Manufactured house" means a structure that is manufactured in a
27 factory after June 15, 1976, that is delivered to a homesite in more than one
28 section and that is placed on a permanent foundation. The dimensions of the
29 completed house shall not be less than twenty feet by forty feet, the roof
30 must be sloping, the siding and roofing must be the same as those found in
31 site-built houses and the house must be eligible for thirty year real estate
32 mortgage financing.

33 6. "Municipality" or "county" means the Arizona board of regents or
34 any incorporated city or town, including charter cities, or any county in
35 this state in which a corporation may be organized and in which it is

1 contemplated the corporation will function.

2 7. "Persons of low and moderate income" means, for the purposes of
3 financing owner-occupied single family dwelling units in areas which the
4 municipality has found, pursuant to section 36-1479, to be slum or blighted
5 areas, as defined in section 36-1471, persons and families whose income does
6 not exceed two and one-half times the median family income of this state. In
7 all other areas it means persons and families whose income does not exceed
8 one and one-half times the median family income of this state.

9 8. "Project" means any land, any building or any other improvement and
10 all real and personal properties, including machinery and equipment whether
11 or not now in existence or under construction and whether located within or
12 without this state or the municipality or county approving the formation of
13 the corporation, that are suitable for any of the following:

14 (a) With respect to a corporation formed with the permission of a
15 municipality or county other than the Arizona board of regents:

16 (i) Any enterprise for the manufacturing, processing or assembling of
17 any agricultural or manufactured products.

18 (ii) Any commercial enterprise for the storing, warehousing,
19 distributing or selling of products of agriculture, mining or industry, or of
20 processes related thereto, including research and development.

21 (iii) Any office building or buildings for use as corporate or company
22 headquarters or regional offices or the adaptive use for offices of any
23 building within this state that is on the national register of historic
24 places or rehabilitation of residential buildings located in registered
25 historic neighborhoods.

26 (iv) A health care institution as defined in section 36-401.

27 (v) Residential real property for dwelling units located within the
28 municipality or county approving the formation of the corporation and, in the
29 case of a county, whether or not also within a municipality that is within
30 the county.

31 (vi) Repairing or rehabilitating single family dwelling units or
32 constructing or repairing residential fences and walls.

33 (vii) Convention or trade show facilities.

34 (viii) Airports, docks, wharves, mass commuting facilities, parking
35 facilities or storage or training facilities directly related to any of the

1 facilities as provided in this item.

2 (ix) Sewage or solid waste disposal facilities or facilities for the
3 furnishing of electric energy, gas or water.

4 (x) Industrial park facilities.

5 (xi) Air or water pollution control facilities.

6 (xii) Any educational institution that is operated by a nonprofit
7 educational organization that is exempt from taxation under section 501(c)(3)
8 of the United States internal revenue code and that is not otherwise funded
9 by state monies, any educational institution or organization that is
10 established under title 15, chapter 1, article 8 and that is owned by a
11 nonprofit organization, any private nonsectarian school or any private
12 nonsectarian organization established for the purpose of funding a joint
13 technological education school district.

14 (xiii) Research and development facilities.

15 (xiv) Commercial enterprises, including facilities for office,
16 recreational, hotel, motel and service uses if the facilities authorized by
17 this item are to be located in a designated area.

18 (xv) A child welfare agency, as defined in section 8-501, owned and
19 operated by a nonprofit organization.

20 (xvi) A transportation facility constructed or operated pursuant to
21 title 28, chapter 22, ~~article 1 or 2~~.

22 (xvii) A museum operated by a nonprofit organization.

23 (xviii) Facilities owned or operated by a nonprofit organization
24 described in section 501(c) of the United States internal revenue code of
25 1986.

26 (xix) New or existing correctional facilities within this state.

27 (b) With respect to a corporation formed with the permission of the
28 Arizona board of regents, any facility consisting of classrooms, lecture
29 halls or conference centers or any facility for research and development or
30 for manufacturing, processing, assembling, marketing, storing and
31 transferring items developed through or connected with research and
32 development or in which the results of such research and development are
33 utilized, but only if the facility is located in an area designated as a
34 research park by the Arizona board of regents.

35 9. "Property" means any land, improvements thereon, buildings and any

1 improvements thereto, machinery and equipment of any and all kinds necessary
2 to a project and any other personal properties deemed necessary in connection
3 with a project.

4 10. "Research park" means an area of land that has been designated by
5 the Arizona board of regents as a research park for a university and that, at
6 the date of designation, is owned by this state or by the Arizona board of
7 regents.

8 11. "Single family dwelling unit" includes any new, used or
9 manufactured house that meets the insuring requirements of the federal
10 housing administration, the veterans administration or any other insuring
11 entity of the United States government or any private mortgage insurance or
12 surety company that is approved by the federal home loan mortgage corporation
13 or the federal national mortgage association.

14 Sec. 10. Section 42-5069, Arizona Revised Statutes, is amended
15 effective from and after August 31, 2008, to read:

16 42-5069. Commercial lease classification; definitions

17 A. The commercial lease classification is comprised of the business of
18 leasing for a consideration the use or occupancy of real property.

19 B. A person who, as a lessor, leases or rents for a consideration
20 under one or more leases or rental agreements the use or occupancy of real
21 property that is used by the lessee for commercial purposes is deemed to be
22 engaged in business and subject to the tax imposed by article 1 of this
23 chapter, but this subsection does not include leases or rentals of real
24 property used for residential or agricultural purposes.

25 C. The commercial lease classification does not include:

26 1. Any business activities that are classified under the transient
27 lodging classification.

28 2. Activities engaged in by the Arizona exposition and state fair
29 board or county fair commissions in connection with events sponsored by those
30 entities.

31 3. Leasing real property to a lessee who subleases the property if the
32 lessee is engaged in business classified under the commercial lease
33 classification or the transient lodging classification.

34 4. Leasing real property pursuant to a written lease agreement entered
35 into before December 1, 1967. This exclusion does not apply to the

1 businesses of hotels, guest houses, dude ranches and resorts, rooming houses,
2 apartment houses, office buildings, automobile storage garages, parking lots
3 or tourist camps, or to the extension or renewal of any such written lease
4 agreement.

5 5. Leasing real property by a corporation to an affiliated
6 corporation. For the purposes of this paragraph, "affiliated corporation"
7 means a corporation that owns or controls at least eighty per cent of the
8 lessor, that is at least eighty per cent owned or controlled by the lessor or
9 that is at least eighty per cent owned or controlled by a corporation that
10 also owns or controls at least eighty per cent of the lessor. Ownership and
11 control are determined by reference to the voting shares of a corporation.

12 ~~6. Leasing real property for sublease if the tenant in possession of~~
13 ~~the property is subject to the rental occupancy tax pursuant to article 9 of~~
14 ~~this chapter.~~

15 ~~7.~~ 6. Leasing real property for boarding horses.

16 ~~8.~~ 7. Leasing or renting real property or the right to use real
17 property at exhibition events in this state sponsored, operated or conducted
18 by a nonprofit organization that is exempt from taxation under section
19 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
20 organization is associated with major league baseball teams or a national
21 touring professional golfing association and no part of the organization's
22 net earnings inures to the benefit of any private shareholder or individual.

23 ~~9.~~ 8. Leasing or renting real property or the right to use real
24 property for use as a rodeo featuring primarily farm and ranch animals in
25 this state sponsored, operated or conducted by a nonprofit organization that
26 is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6),
27 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the
28 organization's net earnings inures to the benefit of any private shareholder
29 or individual.

30 ~~10.~~ 9. Leasing or renting dwelling units, lodging facilities or
31 trailer or mobile home spaces if the units, facilities or spaces are intended
32 to serve as the principal or permanent place of residence for the lessee or
33 renter or if the unit, facility or space is leased or rented to a single
34 tenant thirty or more consecutive days.

35 ~~11.~~ 10. Leasing or renting real property and improvements for use

1 primarily for religious worship by a nonprofit organization that is exempt
2 from taxation under section 501(c)(3) of the internal revenue code and no
3 part of the organization's net earnings inures to the benefit of any private
4 shareholder or individual.

5 ~~12.~~ 11. Leasing or renting real property used for agricultural
6 purposes under either of the following circumstances:

7 (a) The lease or rental is between family members, trusts, estates,
8 corporations, partnerships, joint venturers or similar entities, or any
9 combination thereof, if the individuals or at least eighty per cent of the
10 beneficiaries, shareholders, partners or joint venturers share a family
11 relationship as parents or ancestors of parents, children or descendants of
12 children, siblings, cousins of the first degree, aunts, uncles, nieces or
13 nephews of the first degree, spouses of any of the listed relatives and
14 listed relatives by the half-blood or by adoption.

15 (b) The lessor leases or rents real property used for agricultural
16 purposes under no more than three leases or rental agreements.

17 ~~13.~~ 12. Leasing, renting or granting the right to use real property to
18 vendors or exhibitors by a trade or industry association that is a qualifying
19 organization pursuant to section 513(d)(3)(C) of the internal revenue code
20 for a period not to exceed twenty-one days in connection with an event that
21 meets all of the following conditions:

22 (a) The majority of such vending or exhibition activities relate to
23 the nature of the trade or business sponsoring the event.

24 (b) The event is held in conjunction with a formal business meeting of
25 the trade or industry association.

26 (c) The event is organized by the persons engaged in the particular
27 trade or industry.

28 ~~14.~~ 13. Leasing, renting or granting the right to use real property
29 for a period not to exceed twenty-one days by a coliseum, civic center, civic
30 plaza, convention center, auditorium or arena owned by this state or any of
31 its political subdivisions.

32 ~~15.~~ 14. Leasing or subleasing real property used by a nursing care
33 institution as defined in section 36-401 that is licensed pursuant to title
34 36, chapter 4.

35 ~~16.~~ 15. Leasing or renting a transportation facility as provided in

1 ~~section 28-7705, subsections A and B~~ TITLE 28, CHAPTER 22.

2 ~~17.~~ 16. Granting or providing rights to real property that constitute
3 a profit à prendre for the severance of minerals, including all rights to use
4 the surface or subsurface of the property as is necessary or convenient to
5 the right to sever the minerals. This paragraph does not exclude from the
6 commercial lease classification leasehold rights to the real property that
7 are granted in addition to and not included within the right of profit à
8 prendre, but the tax base for the grant of such a leasehold right, if the
9 gross income derived from the grant is not separately stated from the gross
10 income derived from the grant of the profit à prendre, shall not exceed the
11 fair market value of the leasehold rights computed after excluding the value
12 of all rights under the profit à prendre. For the purposes of this
13 paragraph, "profit à prendre" means a right to use the land of another to
14 mine minerals, and carries with it the right of entry and the right to remove
15 and take the minerals from the land and also includes the right to use the
16 surface of the land as is necessary and convenient for exercise of the
17 profit.

18 D. The tax base for the commercial lease classification is the gross
19 proceeds of sales or gross income derived from the business, but
20 reimbursements to the lessor for utility service shall be deducted from the
21 tax base.

22 E. Notwithstanding section 42-1104, subsection B, paragraph 1,
23 subdivision (b) and paragraph 2, the failure to file tax returns for the
24 commercial lease classification that report gross income derived from any
25 agreement that constitutes, in whole or in part, a grant of a right of profit
26 à prendre for the severance of minerals does not constitute an exception to
27 the general rule for the statute of limitations.

28 F. For the purposes of this section:

29 1. "Leasing" includes renting.

30 2. "Real property" includes any improvements, rights or interest in
31 such property.

32 Sec. 11. Section 42-6208, Arizona Revised Statutes, is amended
33 effective from and after August 31, 2008, to read:

34 42-6208. Exempt government property improvements

35 The tax under this article does not apply with respect to:

- 1 1. Property that is used for a governmental activity.
- 2 2. Property that is used for public housing.
- 3 3. Easements and rights-of-way of railroads and gas, electric, water,
4 pipeline and telephone utilities.
- 5 4. Interests in all or any part of a facility that is owned of record
6 by a government lessor and used primarily for athletic, recreational,
7 entertainment, artistic, cultural or convention activities if the interest is
8 used for those activities or activities directly related and incidental to
9 these uses including concession stands.
- 10 5. Property that is located on municipal airports and airports that
11 operate pursuant to sections 28-8423, 28-8424 and 28-8425, if the property is
12 used for or in connection with aviation, including hangars, tie-downs,
13 aircraft maintenance, sale of aviation related items, charter and rental
14 activities, commercial aircraft terminal franchises, parking facilities and
15 restaurants, stores and other services that are located in a terminal.
- 16 6. The use by a commercial airline of the runways and terminal
17 facilities of state, city, town or county airports and public airports
18 operating pursuant to sections 28-8423, 28-8424 and 28-8425.
- 19 7. Leases of property or interests in a transportation facility that
20 is constructed or operated pursuant to title 28, chapter 22, ~~article 1 or 2~~.
- 21 8. Interests in property held in trust for an Indian or an Indian
22 tribe by the United States government.
- 23 9. Interests in property that is defined as "contractor-acquired
24 property" or "government-furnished property" in the federal acquisition
25 regulations (48 Code of Federal Regulations section 45.101) and that is owned
26 by the government and used to perform a government contract.
- 27 10. Property of a corporation that is organized by or at the direction
28 of a county, city or town to develop, construct, improve, repair, replace or
29 own any property, improvement, building or other facility to be used for
30 public purposes that the county, city or town pledges to lease or
31 lease-purchase with county or municipal special or general revenues.
- 32 11. Interests in property used by a chamber of commerce recognized
33 under section 501(c)(6) of the United States internal revenue code if the
34 property is used predominately for those federal tax exempt purposes.
- 35 12. Interests in property used by organizations that are exempt from

1 taxation under section 501(c)(3) of the internal revenue code.

2 13. Interests in parking garages or decks if the parking garages or
3 decks are owned and operated by a government lessor or operated on behalf of
4 a government lessor, by an entity other than the prime lessee, pursuant to a
5 management agreement with the government lessor.

6 14. Residential rentals if the prime lessee is the occupant.

7 Sec. 12. Applicability

8 Title 28, chapter 22, Arizona Revised Statutes, as added by this act,
9 does not apply to transportation or transit projects that are in the
10 department of transportation's statewide highway construction plan or
11 transportation or transit projects that are in the regional transportation
12 plan of a county on the effective date of this act. For the purposes of this
13 section, a regional transportation plan is a twenty year comprehensive,
14 performance based, multimodal and coordinated regional transportation plan
15 that is approved for the county as provided by law and as amended or
16 otherwise modified."

17 Amend title to conform

and, as so amended, it do pass

ANDY BIGGS
Chairman

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