

REFERENCE TITLE: public-private partnerships in transportation

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1261

Introduced by
Senator Nelson

AN ACT

REPEALING TITLE 28, CHAPTER 22, ARIZONA REVISED STATUTES; AMENDING TITLE 28, ARIZONA REVISED STATUTES, BY ADDING A NEW CHAPTER 22; AMENDING SECTIONS 35-701, 42-5069 AND 42-6208, ARIZONA REVISED STATUTES; RELATING TO PUBLIC-PRIVATE PARTNERSHIPS IN TRANSPORTATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Title 28, chapter 22, Arizona Revised Statutes, is repealed.

4 Sec. 2. Title 28, Arizona Revised Statutes, is amended by adding a new
5 chapter 22, to read:

6 CHAPTER 22

7 PUBLIC-PRIVATE PARTNERSHIPS IN TRANSPORTATION

8 ARTICLE 1. GENERAL PROVISIONS

9 28-7701. Definitions

10 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

11 1. "CONCESSION AGREEMENT" MEANS ANY LEASE, GROUND LEASE, FRANCHISE,
12 EASEMENT, PERMIT OR OTHER BINDING AGREEMENT TRANSFERRING RIGHTS FOR THE USE
13 OR CONTROL, IN WHOLE OR IN PART, OF A TRANSPORTATION FACILITY BY THE
14 DEPARTMENT OR OTHER UNIT OF GOVERNMENT TO A PRIVATE PARTNER IN ACCORDANCE
15 WITH THIS CHAPTER.

16 2. "DEVELOP" OR "DEVELOPMENT" MEANS THE PLANNING, FEASIBILITY
17 ANALYSIS, TRAFFIC AND REVENUE STUDIES, ENVIRONMENTAL ASSESSMENT, PRELIMINARY
18 ENGINEERING, DESIGN, ACQUISITION OF RIGHTS-OF-WAY, RELOCATION OF UTILITIES,
19 PERMITTING, ENVIRONMENTAL MITIGATION, CONTRACTING, FINANCING AND CONSTRUCTION
20 OF A TRANSPORTATION FACILITY.

21 3. "OPERATE" OR "OPERATION" MEANS ANY ACTIVITY ASSOCIATED WITH THE
22 MANAGEMENT OF A COMPLETED OR PARTIALLY COMPLETED TRANSPORTATION FACILITY
23 PROJECT, INCLUDING COLLECTING TOLLS, INSTALLING, REPAIRING OR REPLACING
24 EQUIPMENT, MAINTAINING, REPAIRING OR IMPROVING THE TRANSPORTATION FACILITY OR
25 OTHER RELATED APPURTENANCES, EQUIPMENT OR PROPERTY, CONTRACTING OR
26 ADMINISTERING CONTRACTS RELATED TO THE ACTIVITY AND THE FUNDING OR FINANCING
27 OF THE ACTIVITY.

28 4. "PRIVATE PARTNER" MEANS A CORPORATION, LIMITED PARTNERSHIP, GENERAL
29 PARTNERSHIP, LIMITED LIABILITY COMPANY, JOINT VENTURE, BUSINESS TRUST OR
30 OTHER BUSINESS ENTITY THAT IS NOT THE FEDERAL GOVERNMENT, THIS STATE, A
31 POLITICAL SUBDIVISION OF THIS STATE OR A UNIT OF GOVERNMENT.

32 5. "REVENUE" MEANS ANY OF THE FOLLOWING:

33 (a) ANY INCOME, REVENUE, TOLL, EARNINGS, USER FEES, LEASE PAYMENTS,
34 SERVICE PAYMENTS OR RECEIPTS ARISING OUT OF, OR IN CONNECTION WITH, A
35 TRANSPORTATION FACILITY PROJECT OR DERIVED OR TO BE DERIVED FROM THE
36 CONSTRUCTION AND OPERATION OF ANY TRANSPORTATION FACILITY.

37 (b) MONIES GENERATED BY CONTRACT, PLEDGE, DONATION OR BEQUEST.

38 (c) UNIT OF GOVERNMENT MONIES GENERATED BY TAXES THAT ARE AUTHORIZED
39 TO BE ASSESSED AND LEVIED BY THE LEGISLATURE OR ANY ELECTORATE.

40 (d) MONIES RECEIVED FROM THE FEDERAL GOVERNMENT, A PUBLIC ENTITY, A
41 PRIVATE ENTITY OR AN INVESTOR, OR FROM ANY AGENCY OF THOSE ENTITIES, IN AID
42 OF A TRANSPORTATION FACILITY.

43 (e) THE PROCEEDS OF ANY BONDS ISSUED FOR TRANSPORTATION FACILITY
44 PROJECTS AUTHORIZED BY THIS CHAPTER.

1 6. "TOLL" MEANS ANY FEE OR CHARGE FOR THE USE OF A TRANSPORTATION
2 FACILITY.

3 7. "TRANSPORTATION FACILITY" MEANS ANY FACILITY DEVELOPED, OPERATED OR
4 HELD IN ACCORDANCE WITH THIS CHAPTER, INCLUDING ANY ENHANCED, UPGRADED OR NEW
5 FACILITY USED OR USEFUL FOR THE SAFE TRANSPORT OF PEOPLE OR GOODS VIA ONE OR
6 MORE MODES OF TRANSPORT, WHETHER INVOLVING HIGHWAYS, BRIDGES, LIMITED ACCESS
7 FACILITIES, AIRPORTS, RAILWAYS, PORTS, MONORAILS, TRANSIT, BUS SYSTEMS,
8 GUIDED RAPID TRANSIT, FIXED GUIDEWAYS, FERRIES, BOATS, VESSELS, INTERMODAL OR
9 MULTIMODAL SYSTEMS OR ANY OTHER MODE OF TRANSPORT, AS WELL AS FACILITIES,
10 BUILDINGS, STRUCTURES, PARKING, YARDS OR STORAGE FACILITIES, VEHICLES,
11 ROLLING STOCK OR OTHER RELATED APPURTENANCES, EQUIPMENT, ITEMS OR PROPERTY.

12 8. "UNIT OF GOVERNMENT" MEANS ANY AGENCY, OFFICE OR DEPARTMENT OF THIS
13 STATE, CITY, COUNTY, DISTRICT, COMMISSION, AUTHORITY, ENTITY, PORT OR OTHER
14 PUBLIC CORPORATION ORGANIZED AND EXISTING UNDER STATUTORY LAW OR UNDER A
15 VOTER APPROVED CHARTER OR INITIATIVE, AND ANY INTERGOVERNMENTAL ENTITY.

16 9. "USER FEES" MEANS THE RATES, FEES OR OTHER CHARGES IMPOSED BY A
17 PRIVATE ENTITY FOR THE USE OF ALL OR A PORTION OF A TRANSPORTATION FACILITY
18 PURSUANT TO A COMPREHENSIVE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.

19 28-7702. Rules and guidelines

20 THE DEPARTMENT SHALL ADOPT AND ENFORCE RULES OR GUIDELINES IT
21 DETERMINES NECESSARY TO CARRY OUT THIS CHAPTER.

22 28-7703. Project delivery methods

23 A UNIT OF GOVERNMENT MAY PROVIDE FOR THE DEVELOPMENT OR OPERATION OF
24 NEW OR EXISTING TRANSPORTATION FACILITIES USING ANY PROCUREMENT OR PROJECT
25 DELIVERY METHOD AND FORM OF AGREEMENT THAT THE UNIT OF GOVERNMENT IS
26 AUTHORIZED TO USE.

27 28-7704. Procurements

28 A. A UNIT OF GOVERNMENT MAY PROCURE SERVICES UNDER THIS CHAPTER USING
29 ANY OF THE FOLLOWING:

30 1. REQUESTS FOR PROJECT QUALIFICATIONS OR PROPOSALS IN WHICH THE UNIT
31 OF GOVERNMENT DESCRIBES A TYPE OR CLASS OF TRANSPORTATION FACILITY OR A
32 GEOGRAPHIC AREA IN WHICH PRIVATE ENTITIES ARE INVITED TO SUBMIT
33 QUALIFICATIONS OR PROPOSALS TO DEVELOP TRANSPORTATION FACILITIES.

34 2. SOLICITATIONS USING REQUESTS FOR QUALIFICATIONS, SHORT-LISTING OF
35 QUALIFIED PROPOSERS, REQUESTS FOR PROPOSALS, NEGOTIATIONS, BEST AND FINAL
36 OFFERS OR OTHER PROCUREMENT PROCEDURES.

37 3. UNSOLICITED PROPOSALS IF THE UNIT OF GOVERNMENT DETERMINES THAT
38 THERE IS SUFFICIENT MERIT TO CONSIDER AND PURSUE ANY UNSOLICITED PROPOSAL AND
39 A REASONABLE OPPORTUNITY FOR OTHER ENTITIES TO SUBMIT COMPETING PROPOSALS FOR
40 CONSIDERATION AND A POSSIBLE CONTRACT AWARD AS APPROPRIATE.

41 4. PROCUREMENTS SEEKING FROM THE PRIVATE SECTOR DEVELOPMENT AND
42 FINANCE PLANS MOST SUITABLE FOR THE PROJECT.

43 5. BEST VALUE SELECTION PROCUREMENTS BASED ON PRICE OR FINANCIAL
44 PROPOSALS, OR BOTH, OR ON OTHER FACTORS.

1 6. OTHER PROCEDURES THAT THE UNIT OF GOVERNMENT DETERMINES MAY FURTHER
2 THE IMPLEMENTATION OF THIS CHAPTER.

3 B. A UNIT OF GOVERNMENT MAY CHARGE AN ADMINISTRATIVE FEE FOR THE
4 EVALUATION OF AN UNSOLICITED PROJECT PROPOSAL.

5 C. A UNIT OF GOVERNMENT MAY PROCURE SERVICES, AWARD AGREEMENTS AND
6 ADMINISTER REVENUES AS AUTHORIZED IN THIS SECTION NOTWITHSTANDING ANY
7 REQUIREMENTS OF ANY OTHER STATE OR LOCAL STATUTE, REGULATION OR LAW RELATING
8 TO PUBLIC BIDDING OR OTHER PROCUREMENT PROCEDURES OR OTHER PROVISIONS
9 OTHERWISE APPLICABLE TO PUBLIC WORKS, SERVICES OR UTILITIES.

10 D. A UNIT OF GOVERNMENT SHALL USE FINANCIAL, LEGAL AND OTHER
11 CONSULTANTS AND EXPERTS TO ASSIST IN THE EVALUATION, NEGOTIATION AND
12 DEVELOPMENT OF TRANSPORTATION FACILITIES UNDER THIS CHAPTER.

13 E. A UNIT OF GOVERNMENT MAY SPEND MONIES THAT ARE REASONABLY NECESSARY
14 FOR THE DEVELOPMENT OF PROCUREMENTS, EVALUATION OF CONCEPTS OR PROPOSALS,
15 NEGOTIATION OF AGREEMENTS AND IMPLEMENTATION OF AGREEMENTS FOR DEVELOPMENT OR
16 OPERATION OF TRANSPORTATION FACILITIES UNDER THIS CHAPTER.

17 28-7705. Public-private partnership agreements

18 A. IN ANY PUBLIC-PRIVATE PARTNERSHIP OR OTHER AGREEMENT FOR ANY
19 TRANSPORTATION FACILITY UNDER THIS CHAPTER, A UNIT OF GOVERNMENT MAY INCLUDE
20 PROVISIONS THAT:

21 1. AUTHORIZE THE PRIVATE PARTNER TO COLLECT USER FEES, TOLLS, FARES OR
22 SIMILAR CHARGES, INCLUDING PROVISIONS THAT:

23 (a) SPECIFY TECHNOLOGY TO BE USED IN THE FACILITY.

24 (b) ESTABLISH CIRCUMSTANCES UNDER WHICH THE UNIT OF GOVERNMENT MAY
25 RECEIVE A SHARE OF REVENUES FROM SUCH CHARGES.

26 (c) GOVERN ENFORCEMENT OF TOLLS, INCLUDING PROVISIONS FOR USE OF
27 CAMERAS OR OTHER MECHANISMS TO ENSURE THAT USERS HAVE PAID TOLLS THAT ARE DUE
28 AND PROVISIONS THAT ALLOW THE PRIVATE PARTNER ACCESS TO RELEVANT DATABASES
29 FOR ENFORCEMENT PURPOSES. MISUSE OF THE DATA CONTAINED IN THE DATABASES,
30 INCLUDING NEGLIGENCE IN SECURING THE DATA PROPERLY, SHALL RESULT IN A CIVIL
31 PENALTY OF TEN THOUSAND DOLLARS FOR EACH VIOLATION.

32 2. ALLOW FOR PAYMENTS TO BE MADE BY THE UNIT OF GOVERNMENT TO THE
33 PRIVATE PARTNER, INCLUDING AVAILABILITY PAYMENTS OR PERFORMANCE BASED
34 PAYMENTS.

35 3. ALLOW THE UNIT OF GOVERNMENT TO ACCEPT PAYMENTS OF MONIES AND SHARE
36 REVENUES WITH THE PRIVATE PARTNER.

37 4. ADDRESS HOW THE PARTNERS WILL SHARE MANAGEMENT AND ASSIGNMENT OF
38 THE RISKS OF THE TRANSPORTATION FACILITY PROJECT.

39 5. SPECIFY HOW THE PARTNERS WILL SHARE THE COSTS OF DEVELOPMENT OF THE
40 PROJECT.

41 6. ALLOCATE FINANCIAL RESPONSIBILITY FOR COST OVERRUNS.

42 7. ESTABLISH THE CRITERIA FOR DAMAGES TO BE ASSESSED FOR
43 NONPERFORMANCE.

44 8. ESTABLISH PERFORMANCE CRITERIA OR INCENTIVES, OR BOTH.

9. ADDRESS THE ACQUISITION OF RIGHTS-OF-WAY AND OTHER PROPERTY INTERESTS THAT MAY BE REQUIRED, INCLUDING PROVISIONS THAT ADDRESS THE EXERCISE OF EMINENT DOMAIN AS PROVIDED IN SECTION 28-7710. THE UNIT OF GOVERNMENT SHALL NOT RELINQUISH ITS POWER OF EMINENT DOMAIN AUTHORITY TO THE PRIVATE PARTNER.

10. ESTABLISH RECORD KEEPING, ACCOUNTING AND AUDITING STANDARDS TO BE USED FOR THE TRANSPORTATION FACILITY PROJECT.

11. FOR A PROJECT THAT REVERTS TO PUBLIC OWNERSHIP, ADDRESS RESPONSIBILITY FOR RECONSTRUCTION OR RENOVATIONS THAT ARE REQUIRED IN ORDER FOR A FACILITY TO MEET ALL APPLICABLE GOVERNMENT STANDARDS ON REVERSION OF THE FACILITY TO THE UNIT OF GOVERNMENT.

12. PROVIDE FOR PATROLLING AND LAW ENFORCEMENT ON PUBLIC FACILITIES.

13. IDENTIFY ANY UNIT OF GOVERNMENT SPECIFICATIONS THAT MUST BE SATISFIED, INCLUDING PROVISIONS ALLOWING THE PRIVATE PARTNER TO REQUEST AND RECEIVE AUTHORIZATION TO DEVIATE FROM THE SPECIFICATIONS ON MAKING A SHOWING SATISFACTORY TO THE UNIT OF GOVERNMENT.

14. REQUIRE A PRIVATE PARTNER TO PROVIDE PERFORMANCE AND PAYMENT BONDS, PARENT COMPANY GUARANTEES, LETTERS OF CREDIT OR OTHER ACCEPTABLE FORM OF SECURITY OR A COMBINATION OF ANY OF THESE, THE PENAL SUM OR AMOUNT OF WHICH MAY BE LESS THAN ONE HUNDRED PER CENT OF THE VALUE OF THE CONTRACT INVOLVED BASED ON THE UNIT OF GOVERNMENT'S DETERMINATION, MADE ON A FACILITY-BY-FACILITY BASIS, OF WHAT IS REQUIRED TO ADEQUATELY PROTECT THE UNIT OF GOVERNMENT.

15. AUTHORIZE THE PRIVATE PARTNER IN ANY CONCESSION AGREEMENT TO COLLECT USER FEES, TOLLS, FARES OR SIMILAR CHARGES, INCLUDING PROVISIONS SUCH AS THE FOLLOWING:

(a) THE CHARGES MAY BE COLLECTED DIRECTLY BY THE PRIVATE PARTNER OR BY A THIRD PARTY ENGAGED FOR THAT PURPOSE.

(b) A FORMULA FOR THE ADJUSTMENT OF USER FEES, TOLLS, FARES OR SIMILAR CHARGES DURING THE TERM OF THE AGREEMENT.

(c) FOR AN AGREEMENT THAT DOES NOT INCLUDE A FORMULA DESCRIBED IN SUBDIVISION (b) OF THIS PARAGRAPH, PROVISIONS REGULATING THE PRIVATE PARTNER'S RETURN ON INVESTMENT.

(d) A VARIETY OF TRAFFIC MANAGEMENT STRATEGIES, INCLUDING:

(i) GENERAL PURPOSE TOLL LANES.

(ii) HIGH OCCUPANCY VEHICLE LANES WHERE SINGLE OR LOW OCCUPANCY VEHICLES MAY USE HIGHER OCCUPANCY VEHICLE LANES BY PAYING A TOLL.

(iii) LANES OR FACILITIES IN WHICH THE TOLLS MAY VARY DURING THE COURSE OF THE DAY OR WEEK OR ACCORDING TO LEVELS OF CONGESTION ANTICIPATED OR EXPERIENCED.

(iv) COMBINATIONS OF, OR VARIATIONS ON, ITEMS (i), (ii) AND (iii), OR OTHER STRATEGIES THE UNIT OF GOVERNMENT DETERMINES ARE APPROPRIATE ON A FACILITY-BY-FACILITY BASIS.

16. SPECIFY REMEDIES AVAILABLE AND DISPUTE RESOLUTION PROCEDURES, INCLUDING THE RIGHT OF THE PRIVATE PARTNER TO INSTITUTE LEGAL PROCEEDINGS TO

1 OBTAIN AN ENFORCEABLE JUDGMENT OR AWARD AGAINST THE UNIT OF GOVERNMENT IN THE
2 EVENT OF A DEFAULT BY THE UNIT OF GOVERNMENT AND PROCEDURES FOR USE OF
3 DISPUTE REVIEW BOARDS, MEDIATION, FACILITATED NEGOTIATION, ARBITRATION AND
4 OTHER ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

5 17. CONTAIN AN EXPRESS AGREEMENT BY THE PRIVATE PARTNER THAT IT IS
6 BARRED FROM SEEKING INJUNCTIVE OR OTHER EQUITABLE RELIEF TO DELAY, PREVENT OR
7 OTHERWISE HINDER THE UNIT OF GOVERNMENT FROM DEVELOPING OR CONSTRUCTING ANY
8 TRANSPORTATION FACILITY THAT WAS UNPLANNED AT THE TIME THAT THE
9 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT WAS EXECUTED AND THAT WOULD OR MIGHT
10 IMPACT THE REVENUE THAT THE PRIVATE PARTNER WOULD OR MIGHT DERIVE FROM THE
11 TRANSPORTATION FACILITY DEVELOPED UNDER THE AGREEMENT, EXCEPT THAT THE
12 AGREEMENT MAY PROVIDE FOR REASONABLE COMPENSATION TO THE PRIVATE PARTNER FOR
13 THE ADVERSE EFFECT ON TOLL REVENUES OR OTHER USER FEE REVENUES RESULTING FROM
14 DEVELOPMENT AND CONSTRUCTION OF AN UNPLANNED REVENUE IMPACTING TRANSPORTATION
15 FACILITY.

16 18. SPECIFY A TERM DETERMINED APPROPRIATE FOR THE TRANSPORTATION
17 FACILITY BY THE UNIT OF GOVERNMENT.

18 B. NOTWITHSTANDING ANY OTHER LAW, A UNIT OF GOVERNMENT MAY ENTER INTO
19 AGREEMENTS, WHETHER A CONCESSION AGREEMENT OR OTHER FORM OF AGREEMENT, WITH
20 ANY PRIVATE PARTNER THAT INCLUDES PROVISIONS DESCRIBED IN SUBSECTION A OF
21 THIS SECTION.

22 C. NOTWITHSTANDING ANY OTHER LAW, AGREEMENTS UNDER THIS CHAPTER THAT
23 ARE PROPERLY DEVELOPED, OPERATED OR HELD BY A PRIVATE PARTNER UNDER AN
24 AGREEMENT PURSUANT TO THIS CHAPTER AND THAT ARE RELATED TO A TRANSPORTATION
25 FACILITY ARE EXEMPT FROM ALL STATE AND LOCAL AD VALOREM AND PROPERTY TAXES
26 THAT OTHERWISE MIGHT BE APPLICABLE.

27 28-7706. Confidentiality

28 A. UNTIL THE APPROVAL OF A COMPREHENSIVE AGREEMENT BY A UNIT OF
29 GOVERNMENT, STATEMENTS OF QUALIFICATIONS AND PROPOSALS SUBMITTED BY PRIVATE
30 PARTNERS, WHETHER UNSOLICITED OR IN RESPONSE TO A SOLICITATION ISSUED BY THE
31 UNIT OF GOVERNMENT, ARE CONFIDENTIAL AND ONLY THE NAMES OF THE PERSONS OR
32 FIRMS ON THE FINAL LIST AND ANY DETAILED SUMMARY OF THE PROPOSAL INTENDED FOR
33 PUBLICATION MAY BE DISCLOSED.

34 B. IF A COMPREHENSIVE AGREEMENT IS ENTERED INTO, THE UNIT OF
35 GOVERNMENT SHALL MAKE PROCUREMENT RECORDS AVAILABLE FOR PUBLIC INSPECTION ON
36 REQUEST. RECORDS THAT CONSTITUTE A PRIVATE PARTNER'S TRADE SECRETS, AS
37 DEFINED IN SECTION 44-401, OR FINANCIAL RECORDS, INCLUDING BALANCE SHEETS OR
38 FINANCIAL STATEMENTS OF THE PRIVATE PARTNER THAT ARE NOT GENERALLY AVAILABLE
39 TO THE PUBLIC THROUGH REGULATORY DISCLOSURE OR OTHERWISE, SHALL REMAIN
40 CONFIDENTIAL.

41 28-7707. Funding and financing

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

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

1 2. GRANTS, LOANS, LOAN GUARANTEES, LINES OF CREDIT, REVOLVING LINES OF
2 CREDIT OR OTHER ARRANGEMENTS AVAILABLE UNDER 23 UNITED STATES CODE SECTIONS
3 601 THROUGH 610 OR ANY OTHER FEDERAL OR STATE LAW.

4 3. FEDERAL, STATE OR LOCAL REVENUES.

5 4. USER FEES, TOLLS, FARES, CHARGES, LEASE PROCEEDS, RENTS,
6 AVAILABILITY PAYMENTS, GROSS OR NET RECEIPTS FROM SALES, PROCEEDS FROM THE
7 SALE OF DEVELOPMENT RIGHTS, FRANCHISE FEES, PERMIT FEES OR ANY OTHER LAWFUL
8 FORM OF CONSIDERATION. NO TOLLS OR USER FEES MAY BE IMPOSED BY THE UNIT OF
9 GOVERNMENT OR PRIVATE ENTITY ON ANY EXISTING FREE TRANSPORTATION FACILITY
10 UNLESS THE TRANSPORTATION FACILITY IS IMPROVED OR EXPANDED.

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

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

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

19 C. A UNIT OF GOVERNMENT MAY ISSUE TOLL REVENUE BONDS TO PROVIDE MONIES
20 FOR ANY PROJECT UNDER THIS CHAPTER.

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

28 E. A UNIT OF GOVERNMENT MAY ACCEPT FROM ANY SOURCE ANY GRANT,
29 DONATION, GIFT OR OTHER FORM OF CONVEYANCE OF LAND, MONEY, OTHER REAL OR
30 PERSONAL PROPERTY OR OTHER VALUABLE THING MADE TO THE UNIT OF GOVERNMENT FOR
31 CARRYING OUT THIS CHAPTER.

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

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

38 H. REVENUE BONDS ISSUED PURSUANT TO THIS SECTION ARE NOT GENERAL
39 OBLIGATIONS OF THIS STATE AND ARE NOT SECURED BY OR PAYABLE FROM ANY MONIES
40 OR ASSETS OF THIS STATE OTHER THAN THE MONIES AND REVENUES SPECIFICALLY
41 PLEDGED TO THE REPAYMENT OF THE REVENUE BONDS.

42 I. A UNIT OF GOVERNMENT MAY ENTER INTO AN INTEREST RATE EXCHANGE
43 AGREEMENT IN ACCORDANCE WITH PRUDENT UNIT OF GOVERNMENT INVESTMENT POLICIES.

28-7708. Government agreements

EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER PUBLIC SECTOR PARTNER, THIS STATE MAY ENTER INTO WORKING AGREEMENTS, COORDINATION AGREEMENTS OR SIMILAR IMPLEMENTATION AGREEMENTS, INCLUDING THE FORMATION OF MULTISTATE TRANSPORTATION ORGANIZATIONS, TO CARRY OUT THE JOINT IMPLEMENTATION OF A TRANSPORTATION FACILITY PROJECT UNDER THIS CHAPTER.

28-7709. Property interest dedication

A UNIT OF GOVERNMENT MAY DEDICATE ANY PROPERTY INTEREST IT HAS FOR PUBLIC USE AS A TRANSPORTATION FACILITY IF IT FINDS THAT IN SO DOING IT WILL SERVE THE PUBLIC PURPOSE OF THIS CHAPTER. IN CONNECTION WITH SUCH DEDICATION, THE UNIT OF GOVERNMENT MAY CONVEY ANY PROPERTY INTEREST IT HAS, SUBJECT TO THE CONDITIONS IMPOSED BY LAW, TO THE PRIVATE ENTITY FOR CONSIDERATION AS DETERMINED BY THE UNIT OF GOVERNMENT. THE CONSIDERATION MAY INCLUDE AN AGREEMENT WITH THE PRIVATE ENTITY TO OPERATE THE TRANSPORTATION FACILITY. THE PROPERTY INTERESTS THAT THE UNIT OF GOVERNMENT MAY CONVEY TO THE PRIVATE ENTITY THROUGH A DEDICATION MAY INCLUDE LICENSES, FRANCHISES, EASEMENTS OR ANY OTHER RIGHT OR INTEREST THE UNIT OF GOVERNMENT DEEMS APPROPRIATE.

28-7710. Eminent domain

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

28-7711. Federal laws and severability

A. IF NO FEDERAL MONIES ARE USED ON A TRANSPORTATION FACILITY, THE LAWS OF THIS STATE, INCLUDING THIS CHAPTER, GOVERN. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, IF FEDERAL MONIES ARE USED ON A TRANSPORTATION FACILITY AND APPLICABLE FEDERAL LAWS CONFLICT WITH THIS CHAPTER OR REQUIRE PROVISIONS OR PROCEDURES INCONSISTENT WITH THIS CHAPTER, THE APPLICABLE FEDERAL LAWS GOVERN.

B. IF ANY PROVISION OF THIS CHAPTER OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE REMAINDER OF THE CHAPTER OR THE APPLICATION OF THE PROVISION TO OTHER PERSONS OR CIRCUMSTANCES IS NOT AFFECTED.

Sec. 3. Section 35-701, Arizona Revised Statutes, is amended to read:

35-701. Definitions

In this chapter, unless the context otherwise requires:

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

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

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

3. "Governing body" means:

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

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

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

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

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

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

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

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

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

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

13 (iii) Any office building or buildings for use as corporate or company
14 headquarters or regional offices or the adaptive use for offices of any
15 building within this state that is on the national register of historic
16 places or rehabilitation of residential buildings located in registered
17 historic neighborhoods.

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

19 (v) Residential real property for dwelling units located within the
20 municipality or county approving the formation of the corporation and, in the
21 case of a county, whether or not also within a municipality that is within
22 the county.

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

25 (vii) Convention or trade show facilities.

26 (viii) Airports, docks, wharves, mass commuting facilities, parking
27 facilities or storage or training facilities directly related to any of the
28 facilities as provided in this item.

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

31 (x) Industrial park facilities.

32 (xi) Air or water pollution control facilities.

33 (xii) Any educational institution that is operated by a nonprofit
34 educational organization that is exempt from taxation under section 501(c)(3)
35 of the United States internal revenue code and that is not otherwise funded
36 by state monies, any educational institution or organization that is
37 established under title 15, chapter 1, article 8 and that is owned by a
38 nonprofit organization, any private nonsectarian school or any private
39 nonsectarian organization established for the purpose of funding a joint
40 technological education school district.

41 (xiii) Research and development facilities.

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

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

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

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

6 (xviii) Facilities owned or operated by a nonprofit organization
7 described in section 501(c) of the United States internal revenue code of
8 1986.

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

10 (b) With respect to a corporation formed with the permission of the
11 Arizona board of regents, any facility consisting of classrooms, lecture
12 halls or conference centers or any facility for research and development or
13 for manufacturing, processing, assembling, marketing, storing and
14 transferring items developed through or connected with research and
15 development or in which the results of such research and development are
16 utilized, but only if the facility is located in an area designated as a
17 research park by the Arizona board of regents.

18 9. "Property" means any land, improvements thereon, buildings and any
19 improvements thereto, machinery and equipment of any and all kinds necessary
20 to a project and any other personal properties deemed necessary in connection
21 with a project.

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

26 11. "Single family dwelling unit" includes any new, used or
27 manufactured house that meets the insuring requirements of the federal
28 housing administration, the veterans administration or any other insuring
29 entity of the United States government or any private mortgage insurance or
30 surety company that is approved by the federal home loan mortgage corporation
31 or the federal national mortgage association.

32 Sec. 4. Section 42-5069, Arizona Revised Statutes, is amended to read:
33 42-5069. Commercial lease classification; definitions

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

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

42 C. The commercial lease classification does not include:

43 1. Any business activities that are classified under the transient
44 lodging classification.

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

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

4. Leasing real property pursuant to a written lease agreement entered into before December 1, 1967. This exclusion does not apply to the businesses of hotels, guest houses, dude ranches and resorts, rooming houses, apartment houses, office buildings, automobile storage garages, parking lots or tourist camps, or to the extension or renewal of any such written lease agreement.

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

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

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

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

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

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

~~11.~~ 10. Leasing or renting real property and improvements for use primarily for religious worship by a nonprofit organization that is exempt from taxation under section 501(c)(3) of the internal revenue code and no

part of the organization's net earnings inures to the benefit of any private shareholder or individual.

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

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

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

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

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

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

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

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

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

~~16-~~ 15. Leasing or renting a transportation facility as ~~provided~~ ~~DEFINED~~ in section ~~28-7705, subsections A and B~~ 28-7701.

~~17-~~ 16. Granting or providing rights to real property that constitute a profit à prendre for the severance of minerals, including all rights to use the surface or subsurface of the property as is necessary or convenient to the right to sever the minerals. This paragraph does not exclude from the commercial lease classification leasehold rights to the real property that are granted in addition to and not included within the right of profit à prendre, but the tax base for the grant of such a leasehold right, if the gross income derived from the grant is not separately stated from the gross income derived from the grant of the profit à prendre, shall not exceed the fair market value of the leasehold rights computed after excluding the value of all rights under the profit à prendre. For the purposes of this

1 paragraph, "profit à prendre" means a right to use the land of another to
2 mine minerals, and carries with it the right of entry and the right to remove
3 and take the minerals from the land and also includes the right to use the
4 surface of the land as is necessary and convenient for exercise of the
5 profit.

6 D. The tax base for the commercial lease classification is the gross
7 proceeds of sales or gross income derived from the business, but
8 reimbursements to the lessor for utility service shall be deducted from the
9 tax base.

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

16 F. For the purposes of this section:

17 1. "Leasing" includes renting.

18 2. "Real property" includes any improvements, rights or interest in
19 such property.

20 Sec. 5. Section 42-6208, Arizona Revised Statutes, is amended to read:

21 42-6208. Exempt government property improvements

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

23 1. Property that is used for a governmental activity.

24 2. Property that is used for public housing.

25 3. Easements and rights-of-way of railroads and gas, electric, water,
26 pipeline and telephone utilities.

27 4. Interests in all or any part of a facility that is owned of record
28 by a government lessor and used primarily for athletic, recreational,
29 entertainment, artistic, cultural or convention activities if the interest is
30 used for those activities or activities directly related and incidental to
31 these uses including concession stands.

32 5. Property that is located on municipal airports and airports that
33 operate pursuant to sections 28-8423, 28-8424 and 28-8425, if the property is
34 used for or in connection with aviation, including hangars, tie-downs,
35 aircraft maintenance, sale of aviation related items, charter and rental
36 activities, commercial aircraft terminal franchises, parking facilities and
37 restaurants, stores and other services that are located in a terminal.

38 6. The use by a commercial airline of the runways and terminal
39 facilities of state, city, town or county airports and public airports
40 operating pursuant to sections 28-8423, 28-8424 and 28-8425.

41 7. Leases of property or interests in a transportation facility that
42 is constructed or operated pursuant to title 28, chapter 22, ~~article 1 or 2~~.

43 8. Interests in property held in trust for an Indian or an Indian
44 tribe by the United States government.

1 9. Interests in property that is defined as "contractor-acquired
2 property" or "government-furnished property" in the federal acquisition
3 regulations, ~~48~~ Code of Federal Regulations section 45.101, ~~and~~ and that is
4 owned by the government and used to perform a government contract.

5 10. Property of a corporation that is organized by or at the direction
6 of a county, city or town to develop, construct, improve, repair, replace or
7 own any property, improvement, building or other facility to be used for
8 public purposes that the county, city or town pledges to lease or
9 lease-purchase with county or municipal special or general revenues.

10 11. Interests in property used by a chamber of commerce recognized
11 under section 501(c)(6) of the United States internal revenue code if the
12 property is used predominately for those federal tax exempt purposes.

13 12. Interests in property used by organizations that are exempt from
14 taxation under section 501(c)(3) of the internal revenue code.

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

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