

REFERENCE TITLE: public infrastructure; public-private partnerships

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

SB 1463

Introduced by
Senator Gorman

AN ACT

AMENDING SECTION 28-5611, ARIZONA REVISED STATUTES; REPEALING TITLE 28, CHAPTER 22, ARIZONA REVISED STATUTES; AMENDING TITLE 34, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7; AMENDING SECTIONS 35-701, 42-5069 AND 42-6208, ARIZONA REVISED STATUTES; RELATING TO PUBLIC-PRIVATE PARTNERSHIPS IN PUBLIC INFRASTRUCTURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-5611, Arizona Revised Statutes, is amended to
3 read:

4 28-5611. Refunds; motor vehicle fuel

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

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

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

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

12 (c) A motor vehicle operating on ~~a-transportation~~ AN ELIGIBLE facility
13 or toll road pursuant to TITLE 34, chapter ~~22-of-this-title~~ 7.

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

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

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

21 Sec. 2. Repeal

22 Title 28, chapter 22, Arizona Revised Statutes, is repealed.

23 Sec. 3. Title 34, Arizona Revised Statutes, is amended by adding
24 chapter 7, to read:

25 CHAPTER 7

26 PUBLIC-PRIVATE PARTNERSHIPS IN PUBLIC INFRASTRUCTURE

27 ARTICLE 1. GENERAL PROVISIONS

28 34-701. Definitions

29 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

30 1. "ELIGIBLE FACILITY" MEANS ANY FACILITY DEVELOPED, OPERATED OR HELD
31 IN ACCORDANCE WITH THIS CHAPTER, INCLUDING ANY EXISTING, ENHANCED, UPGRADED
32 OR NEW FACILITY USED OR USEFUL AS PUBLIC INFRASTRUCTURE, INCLUDING FACILITIES
33 RELATED TO TRANSPORTATION, WATER, WASTEWATER, PUBLIC BUILDINGS AND ANY OTHER
34 PUBLIC FACILITIES, AS WELL AS APPURTENANCES.

35 2. "PRIVATE PARTNER" MEANS A PERSON, ENTITY OR ORGANIZATION THAT IS
36 NOT THE FEDERAL GOVERNMENT OR ANY OTHER PUBLIC SPONSOR.

37 3. "PUBLIC-PRIVATE PARTNERSHIP" MEANS ANY OF THE FOLLOWING TYPES OF
38 AGREEMENTS:

39 (a) AGREEMENTS UNDER WHICH THE PRIVATE PARTNER ASSISTS THE PUBLIC
40 SPONSOR IN DEFINING A FEASIBLE PROJECT AND NEGOTIATES FAIR AND REASONABLE
41 TERMS FOR IMPLEMENTING THE PROJECT.

42 (b) AGREEMENTS UNDER WHICH THE PRIVATE PARTY ASSUMES RESPONSIBILITY
43 FOR DELIVERING, IMPROVING, OPERATING OR MAINTAINING ELIGIBLE FACILITIES IN
44 ACCORDANCE WITH ESTABLISHED PERFORMANCE SPECIFICATIONS AND PAYMENT TERMS.

45 4. "PUBLIC SPONSOR" MEANS ANY DEPARTMENT OR AGENCY OF THIS STATE, ANY
46 DEPARTMENT OR AGENCY OF A COUNTY, ANY CITY, TOWN, SPECIAL DISTRICT OR

1 REGIONAL TRANSPORTATION AGENCY, ANY PUBLIC CORPORATION ESTABLISHED UNDER
2 STATE LAW OR COUNTY ORDINANCE, A JOINT POWERS AUTHORITY OR ANY
3 INTERGOVERNMENTAL AGENCY OR CORPORATION.

4 34-702. Authority to enter public-private partnerships

5 NOTWITHSTANDING ANY OTHER LAW, PUBLIC SPONSORS MAY ENTER INTO
6 PUBLIC-PRIVATE PARTNERSHIPS FOR ELIGIBLE FACILITIES PURSUANT TO THIS CHAPTER.

7 34-703. Procurement

8 A. NOTWITHSTANDING ANY OTHER LAW, THE PUBLIC SPONSOR MAY PROCURE A
9 PRIVATE PARTNER AND AWARD PUBLIC-PRIVATE PARTNERSHIPS UNDER THIS CHAPTER
10 USING ANY OF THE FOLLOWING:

11 1. CALLS FOR PROJECT PROPOSALS IF THE PUBLIC SPONSOR DESCRIBES THE
12 PUBLIC INFRASTRUCTURE FACILITY THAT PRIVATE ENTITIES ARE INVITED TO SUBMIT
13 PROPOSALS TO DEVELOP.

14 2. SOLICITATIONS USING, WITHOUT LIMITATION, REQUESTS FOR
15 QUALIFICATIONS, SHORT-LISTING OF QUALIFIED PROPOSERS, REQUESTS FOR PROPOSALS,
16 NEGOTIATIONS AND BEST AND FINAL OFFERS.

17 3. UNSOLICITED PROPOSALS IF THE PUBLIC SPONSOR DETERMINES THERE IS
18 SUFFICIENT MERIT TO PURSUE ANY UNSOLICITED PROPOSAL AND REASONABLE
19 OPPORTUNITY FOR OTHER ENTITIES TO SUBMIT COMPETING PROPOSALS FOR
20 CONSIDERATION.

21 B. FOR ANY PROCUREMENT IN WHICH THE PUBLIC SPONSOR ISSUES A REQUEST
22 FOR QUALIFICATIONS, REQUEST FOR PROPOSALS OR SIMILAR SOLICITATION DOCUMENT,
23 THE REQUEST SHALL GENERALLY SET FORTH THE FACTORS THAT THE PUBLIC SPONSOR
24 WILL EVALUATE WHEN REVIEWING THE SUBMITTALS. THE PUBLIC SPONSOR MAY
25 DETERMINE WHICH FACTORS IT WILL CONSIDER AND THE RELATIVE WEIGHT OF THE
26 FACTORS IN THE EVALUATION PROCESS TO OBTAIN THE BEST VALUE FOR THE PUBLIC
27 SPONSOR.

28 C. THE PUBLIC SPONSOR MAY PAY A STIPEND TO AN UNSUCCESSFUL PROPOSER,
29 IN AN AMOUNT AND ON THE TERMS AND CONDITIONS DETERMINED BY THE PUBLIC
30 SPONSOR, IF THE PUBLIC SPONSOR CANCELS THE PROCUREMENT BEFORE THE DUE DATE
31 FOR PROPOSALS IN THE REQUEST FOR PROPOSALS OR THE UNSUCCESSFUL PROPOSER
32 SUBMITS A PROPOSAL AND THE PUBLIC SPONSOR DETERMINES THAT THE PROPOSAL IS
33 RESPONSIVE TO THE PUBLIC SPONSOR'S REQUEST FOR PROPOSALS AND MEETS ALL
34 REQUIREMENTS ESTABLISHED BY THE PUBLIC SPONSOR FOR THE PROJECT. IN EXCHANGE
35 FOR THE STIPEND, THE PUBLIC SPONSOR MAY REQUIRE THE UNSUCCESSFUL PROPOSER TO
36 GRANT TO THE PUBLIC SPONSOR THE RIGHT TO USE ANY WORK PRODUCT CONTAINED IN
37 THE UNSUCCESSFUL PROPOSER'S PROPOSAL OR, IF THE PUBLIC SPONSOR CANCELS THE
38 PROCUREMENT BEFORE THE DUE DATE FOR PROPOSALS IN THE REQUEST FOR PROPOSALS,
39 ANY WORK PRODUCT DEVELOPED BEFORE CANCELLATION, INCLUDING TECHNOLOGIES,
40 TECHNIQUES, METHODS, PROCESSES AND INFORMATION CONTAINED IN THE RECIPIENT'S
41 PROJECT DESIGN.

42 D. THE PUBLIC SPONSOR MAY CHARGE AN ADMINISTRATIVE FEE FOR THE
43 EVALUATION OF AN UNSOLICITED PROJECT PROPOSAL.

44 E. THE PUBLIC SPONSOR MAY PROCURE SERVICES, AWARD AGREEMENTS AND
45 ADMINISTER REVENUES AS AUTHORIZED PURSUANT TO THIS CHAPTER.

1 F. THE PUBLIC SPONSOR MAY RETAIN FINANCIAL, LEGAL AND OTHER
2 CONSULTANTS AND EXPERTS IN THE PUBLIC OR PRIVATE SECTOR TO ASSIST IN THE
3 PROCUREMENT, EVALUATION AND NEGOTIATION OF PUBLIC-PRIVATE PARTNERSHIPS AND
4 FOR THE DEVELOPMENT OR OPERATION, OR BOTH, OF ELIGIBLE FACILITIES UNDER THIS
5 CHAPTER.

6 G. NOTWITHSTANDING ANY OTHER LAW, THE PUBLIC SPONSOR MAY AGREE TO OR
7 REQUIRE USE OF ARBITRATION OR OTHER ALTERNATIVE DISPUTE RESOLUTION PROCEDURES
8 TO RESOLVE DISPUTES WITH PROPOSERS OR THE PRIVATE PARTNER.

9 34-704. Public-private partnership agreements

10 A. IN A PUBLIC-PRIVATE PARTNERSHIP, THE PUBLIC SPONSOR MAY INCLUDE ANY
11 PROVISION THE PUBLIC SPONSOR DETERMINES NECESSARY OR APPROPRIATE, INCLUDING
12 PROVISIONS THAT DO THE FOLLOWING:

13 1. AUTHORIZE THE PRIVATE PARTNER TO IMPOSE, COLLECT AND ENFORCE USER
14 FEES, TOLLS, FARES, RENTS OR SIMILAR CHARGES, INCLUDING PROVISIONS REGARDING
15 WHAT THE PRIVATE PARTNER WILL DO WITH THE COLLECTED MONIES AND THE TECHNOLOGY
16 THE PRIVATE PARTNER IS REQUIRED TO USE TO COLLECT THESE CHARGES.

17 2. ALLOW THE PUBLIC SPONSOR TO ACCEPT PAYMENTS OF MONIES AND SHARE
18 REVENUES WITH THE PRIVATE PARTNER.

19 3. ADDRESS HOW THE PUBLIC SPONSOR AND PRIVATE PARTNER WILL SHARE
20 DEVELOPMENT COSTS AND ALLOCATE AND MANAGE PROJECT RISKS.

21 4. ESTABLISH PERFORMANCE CRITERIA OR INCENTIVES, OR BOTH.

22 5. ADDRESS THE ACQUISITION OF RIGHTS-OF-WAY AND OTHER PROPERTY
23 INTERESTS THAT MAY BE REQUIRED, INCLUDING PROVISIONS ADDRESSING THE EXERCISE
24 OF EMINENT DOMAIN. THE PUBLIC SPONSOR SHALL NOT RELINQUISH ITS POWER OF
25 EMINENT DOMAIN AUTHORITY TO THE PRIVATE PARTNER.

26 6. ADDRESS RESPONSIBILITY FOR RECONSTRUCTION OR RENOVATIONS THAT ARE
27 REQUIRED IN ORDER FOR A FACILITY TO MEET APPLICABLE GOVERNMENT STANDARDS AT
28 THE END OF THE TERM OF THE AGREEMENT.

29 7. PROVIDE FOR PATROLLING AND LAW ENFORCEMENT ON, IN OR FOR THE
30 ELIGIBLE FACILITIES.

31 8. IDENTIFY ANY TECHNICAL SPECIFICATIONS THAT MUST BE SATISFIED AND A
32 PROCESS UNDER WHICH THE PRIVATE PARTNER MAY REQUEST AND RECEIVE AUTHORIZATION
33 TO DEVIATE FROM THE SPECIFICATIONS ON MAKING A SHOWING SATISFACTORY TO THE
34 PUBLIC SPONSOR.

35 9. AUTHORIZE THE PRIVATE PARTNER TO RECEIVE A REASONABLE RATE OF
36 RETURN ON THE PRIVATE PARTNER'S INVESTMENT.

37 10. SPECIFY THE PRIVATE PARTNER'S COMPENSATION, INCLUDING PROVISIONS
38 REGARDING THE USE OF AVAILABILITY PAYMENTS, RETENTION OF FEES, TOLLS, FARES,
39 RENTS OR SIMILAR CHARGES AND THE GENERATION AND USE OF OTHER REVENUES.

40 11. SPECIFY THE CONDITIONS UNDER WHICH THE PRIVATE PARTNER IS ENTITLED
41 TO COMPENSATION FOR LOST REVENUES OR OTHER DEMONSTRABLE DAMAGES RESULTING
42 FROM THE CONSTRUCTION OF A COMPETING FACILITY BY THE PUBLIC SPONSOR OR
43 ANOTHER GOVERNMENTAL ENTITY.

44 12. SPECIFY EVENTS OF DEFAULT, REMEDIES AVAILABLE TO THE PRIVATE
45 PARTNER AND PUBLIC SPONSOR AND DISPUTE RESOLUTION PROCEDURES, INCLUDING
46 ARBITRATION AND OTHER ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

1 13. SPECIFY THE MAINTENANCE AND AUDITING OF THE PRIVATE PARTNER'S BOOKS
2 AND RECORDS.

3 B. IN A PUBLIC-PRIVATE PARTNERSHIP, THE PUBLIC SPONSOR MUST INCLUDE A
4 PROVISION THAT ESTABLISHES THE PUBLIC SPONSOR'S RIGHT TO DEVELOP, MAINTAIN,
5 REPAIR, REHABILITATE, OPERATE OR LEASE OTHER PROJECTS INDEPENDENT OF THE
6 LOCATION OF THOSE PROJECTS.

7 34-705. Ad valorem and property taxes

8 PROPERTY DEVELOPED, OPERATED OR HELD BY A PRIVATE PARTNER UNDER A
9 PUBLIC-PRIVATE PARTNERSHIP IS EXEMPT FROM ALL STATE AND COUNTY AD VALOREM AND
10 PROPERTY TAXES.

11 34-706. Performance and payment security

12 A PUBLIC-PRIVATE PARTNERSHIP SHALL REQUIRE THE PRIVATE PARTNER OR EACH
13 OF ITS PRIME CONTRACTORS TO PROVIDE PERFORMANCE AND PAYMENT SECURITY.
14 NOTWITHSTANDING ANY OTHER LAW, THE PENAL SUM OR AMOUNT OF THE SECURITY MAY BE
15 LESS THAN THE PRICE OF THE CONTRACT INVOLVED, BASED ON THE PUBLIC SPONSOR'S
16 DETERMINATION, MADE IN ITS SOLE DISCRETION AND ON A FACILITY-BY-FACILITY
17 BASIS, OF WHAT IS REQUIRED TO ADEQUATELY PROTECT THE PUBLIC SPONSOR AND
18 ADEQUATELY ASSURE PAYMENT OF PERSONS AND PRESCRIBED AMOUNTS.

19 34-707. Funding and financing

20 A. ANY LAWFUL SOURCE OF FUNDING AND FINANCING MAY BE USED FOR THE
21 DEVELOPMENT OR OPERATION OF AN ELIGIBLE FACILITY UNDER THIS CHAPTER.

22 B. THE PUBLIC SPONSOR MAY ACCEPT FROM THE UNITED STATES OR ANY OF ITS
23 AGENCIES MONIES OR CREDIT ASSISTANCE AS ARE AVAILABLE TO IT FOR CARRYING OUT
24 THE PURPOSES OF THIS CHAPTER, WHETHER THE MONIES ARE MADE AVAILABLE BY GRANT,
25 LOAN OR OTHER FINANCING ARRANGEMENT. THE PUBLIC SPONSOR MAY ENTER INTO
26 AGREEMENTS AND OTHER ARRANGEMENTS WITH THE UNITED STATES OR ANY OF ITS
27 AGENCIES AS MAY BE NECESSARY, PROPER AND CONVENIENT FOR CARRYING OUT THE
28 PURPOSES OF THIS CHAPTER.

29 C. THE PUBLIC SPONSOR MAY ACCEPT FROM ANY SOURCE ANY GRANT, DONATION,
30 GIFT OR OTHER FORM OF CONVEYANCE OF LAND, MONEY, OTHER REAL OR PERSONAL
31 PROPERTY OR OTHER VALUABLE THING MADE TO THE PUBLIC SPONSOR FOR CARRYING OUT
32 THE PURPOSES OF THIS CHAPTER.

33 D. PUBLIC SPONSORS MAY IMPOSE AND COLLECT USER FEES, TOLLS, FARES,
34 RENTS OR SIMILAR CHARGES FROM USERS OF ELIGIBLE FACILITIES AND USE LAWFUL
35 MEASURES TO ENFORCE THE CHARGES OR AUTHORIZE A PRIVATE PARTNER OR ANOTHER
36 PUBLIC ENTITY TO IMPOSE, COLLECT AND ENFORCE THE CHARGES TO THE SAME EXTENT
37 AS AVAILABLE TO THE PUBLIC SPONSOR.

38 34-708. Confidentiality and public disclosure

39 A. A PROPOSER MAY IDENTIFY THOSE PORTIONS OF A PROPOSAL OR OTHER
40 SUBMISSION THAT THE PROPOSER CONSIDERS TO BE TRADE SECRETS OR CONFIDENTIAL
41 COMMERCIAL, FINANCIAL OR PROPRIETARY INFORMATION. IN ORDER FOR CONFIDENTIAL
42 AND PROPRIETARY INFORMATION AND TRADE SECRETS TO BE EXEMPT FROM DISCLOSURE,
43 THE PROPOSER SHALL DO ALL OF THE FOLLOWING:

44 1. INVOKE THE EXCLUSION ON SUBMISSION OF THE INFORMATION OR OTHER
45 MATERIALS FOR WHICH PROTECTION IS SOUGHT.

1 2. IDENTIFY THE DATA OR OTHER MATERIALS FOR WHICH PROTECTION IS SOUGHT
2 WITH CONSPICUOUS LABELING.

3 3. STATE THE REASONS WHY PROTECTION IS NECESSARY.

4 4. FULLY COMPLY WITH ANY APPLICABLE PROVISIONS OF STATE LAW WITH
5 RESPECT TO INFORMATION THE PROPOSER CONTENDS SHOULD BE EXEMPT FROM
6 DISCLOSURE.

7 B. NOTWITHSTANDING ANY OTHER LAW, IN ORDER TO PROPERLY BALANCE THE
8 NEED TO MAXIMIZE COMPETITION UNDER THIS CHAPTER AND CREATE A TRANSPARENT
9 PROCUREMENT PROCESS, PROPOSALS ARE NOT SUBJECT TO RELEASE OR DISCLOSURE BY
10 THE PUBLIC SPONSOR UNTIL THE AWARD OF THE PUBLIC-PRIVATE PARTNERSHIP AND THE
11 CONCLUSION OF ANY PROTEST OR OTHER CHALLENGE TO THE AWARD, ABSENT AN
12 ADMINISTRATIVE OR JUDICIAL ORDER REQUIRING THE RELEASE OR DISCLOSURE.

13 34-709. Technical standards and specifications; eminent domain

14 A. NOTWITHSTANDING ANY OTHER LAW, FOR A PUBLIC-PRIVATE PARTNERSHIP THE
15 PUBLIC SPONSOR MAY ADOPT, AMEND, REPEAL, APPLY, ENFORCE AND WAIVE TECHNICAL
16 STANDARDS AND SPECIFICATIONS, INCLUDING STANDARDS AND SPECIFICATIONS FOR
17 PERFORMANCE OR OUTCOMES.

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

25 34-710. Powers

26 THE POWERS GRANTED TO CITIES, TOWNS, LOCAL AGENCIES, COUNTIES, SPECIAL
27 DISTRICTS, REGIONAL TRANSPORTATION AGENCIES, ANY DEPARTMENT OR AGENCY OF THIS
28 STATE AND ANY OTHER AGENCIES IN THIS CHAPTER ARE IN ADDITION TO ANY OTHER
29 POWERS AUTHORIZED UNDER APPLICABLE LAW.

30 34-711. Severability

31 IF ANY PROVISION OF THIS CHAPTER, OR THE APPLICATION OF ANY PROVISION
32 OF THIS CHAPTER TO ANY PERSON OR CIRCUMSTANCE, IS HELD INVALID, THE
33 INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS CHAPTER
34 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION AND TO
35 THIS END THE PROVISIONS OF THIS CHAPTER ARE SEVERABLE.

36 Sec. 4. Section 35-701, Arizona Revised Statutes, is amended to read:

37 35-701. Definitions

38 In this chapter, unless the context otherwise requires:

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

41 2. "Designated area" means any area of this state which is either
42 designated pursuant to section 36-1479 as a slum or blighted area as defined
43 in section 36-1471, designated by regulation as a pocket of poverty or a
44 neighborhood strategy area by the United States department of housing and
45 urban development pursuant to title I of the housing and community
46 development act of 1977 (P.L. 95-128; 42 United States Code sections 5301

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

8 3. "Governing body" means:

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

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

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

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

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

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

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

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

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

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

8 (iii) Any office building or buildings for use as corporate or company
9 headquarters or regional offices or the adaptive use for offices of any
10 building within this state that is on the national register of historic
11 places or rehabilitation of residential buildings located in registered
12 historic neighborhoods.

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

14 (v) Residential real property for dwelling units located within the
15 municipality or county approving the formation of the corporation and, in the
16 case of a county, whether or not also within a municipality that is within
17 the county.

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

20 (vii) Convention or trade show facilities.

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

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

26 (x) Industrial park facilities.

27 (xi) Air or water pollution control facilities.

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

36 (xiii) Research and development facilities.

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

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

42 (xvi) ~~A transportation~~ AN ELIGIBLE facility THAT IS RELATED TO
43 TRANSPORTATION AND THAT IS constructed or operated pursuant to title ~~28~~ 34,
44 chapter 7 ~~22, article 1 or 2~~.

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

1 (xviii) Facilities owned or operated by a nonprofit organization
2 described in section 501(c) of the United States internal revenue code of
3 1986.

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

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

13 9. "Property" means any land, improvements thereon, buildings and any
14 improvements thereto, machinery and equipment of any and all kinds necessary
15 to a project and any other personal properties deemed necessary in connection
16 with a project.

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

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

27 Sec. 5. Section 42-5069, Arizona Revised Statutes, is amended to read:
28 42-5069. Commercial lease classification; definitions

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

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

37 C. The commercial lease classification does not include:

38 1. Any business activities that are classified under the transient
39 lodging classification.

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

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

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

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

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

17 ~~7.~~ 6. Leasing real property for boarding horses.

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

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

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

37 ~~11.~~ 10. Leasing or renting real property and improvements for use
38 primarily for religious worship by a nonprofit organization that is exempt
39 from taxation under section 501(c)(3) of the internal revenue code and no
40 part of the organization's net earnings inures to the benefit of any private
41 shareholder or individual.

42 ~~12.~~ 11. Leasing or renting real property used for agricultural
43 purposes under either of the following circumstances:

44 (a) The lease or rental is between family members, trusts, estates,
45 corporations, partnerships, joint venturers or similar entities, or any
46 combination thereof, if the individuals or at least eighty per cent of the

1 beneficiaries, shareholders, partners or joint venturers share a family
2 relationship as parents or ancestors of parents, children or descendants of
3 children, siblings, cousins of the first degree, aunts, uncles, nieces or
4 nephews of the first degree, spouses of any of the listed relatives and
5 listed relatives by the half-blood or by adoption.

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

8 ~~13.~~ 12. Leasing, renting or granting the right to use real property to
9 vendors or exhibitors by a trade or industry association that is a qualifying
10 organization pursuant to section 513(d)(3)(C) of the internal revenue code
11 for a period not to exceed twenty-one days in connection with an event that
12 meets all of the following conditions:

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

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

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

19 ~~14.~~ 13. Leasing, renting or granting the right to use real property
20 for a period not to exceed twenty-one days by a coliseum, civic center, civic
21 plaza, convention center, auditorium or arena owned by this state or any of
22 its political subdivisions.

23 ~~15.~~ 14. Leasing or subleasing real property used by a nursing care
24 institution as defined in section 36-401 that is licensed pursuant to title
25 36, chapter 4.

26 ~~16.~~ 15. Leasing or renting ~~a transportation~~ AN ELIGIBLE facility
27 RELATING TO TRANSPORTATION as provided in ~~section 28-7705, subsections A~~
28 ~~and B~~ TITLE 34, CHAPTER 7.

29 ~~17.~~ 16. Granting or providing rights to real property that constitute
30 a profit à prendre for the severance of minerals, including all rights to use
31 the surface or subsurface of the property as is necessary or convenient to
32 the right to sever the minerals. This paragraph does not exclude from the
33 commercial lease classification leasehold rights to the real property that
34 are granted in addition to and not included within the right of profit à
35 prendre, but the tax base for the grant of such a leasehold right, if the
36 gross income derived from the grant is not separately stated from the gross
37 income derived from the grant of the profit à prendre, shall not exceed the
38 fair market value of the leasehold rights computed after excluding the value
39 of all rights under the profit à prendre. For the purposes of this
40 paragraph, "profit à prendre" means a right to use the land of another to
41 mine minerals, and carries with it the right of entry and the right to remove
42 and take the minerals from the land and also includes the right to use the
43 surface of the land as is necessary and convenient for exercise of the
44 profit.

45 D. The tax base for the commercial lease classification is the gross
46 proceeds of sales or gross income derived from the business, but

1 reimbursements to the lessor for utility service shall be deducted from the
2 tax base.

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

9 F. For the purposes of this section:

10 1. "Leasing" includes renting.

11 2. "Real property" includes any improvements, rights or interest in
12 such property.

13 Sec. 6. Section 42-6208, Arizona Revised Statutes, is amended to read:
14 42-6208. Exempt government property improvements

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

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

17 2. Property that is used for public housing.

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

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

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

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

34 7. Leases of property or interests in ~~a transportation~~ AN ELIGIBLE
35 facility THAT IS RELATED TO TRANSPORTATION AND that is constructed or
36 operated pursuant to title ~~28~~ 34, chapter ~~22, article 1 or 2~~ 7.

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

39 9. Interests in property that is defined as "contractor-acquired
40 property" or "government-furnished property" in the federal acquisition
41 regulations (48 Code of Federal Regulations section 45.101) and that is owned
42 by the government and used to perform a government contract.

43 10. Property of a corporation that is organized by or at the direction
44 of a county, city or town to develop, construct, improve, repair, replace or
45 own any property, improvement, building or other facility to be used for

1 public purposes that the county, city or town pledges to lease or
2 lease-purchase with county or municipal special or general revenues.

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

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

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

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

13 Sec. 7. Legislative intent

14 The legislature makes the following findings:

15 1. It is important for the economic, social and environmental
16 well-being of this state that the people of this state have sufficient
17 quality public infrastructure.

18 2. The ability of this state to provide sufficient quality public
19 infrastructure will be enhanced by a program providing for private entities
20 to undertake all or a portion of the study, planning, design, development,
21 financing, acquisition, installation, construction, reconstruction,
22 improvement, operation or maintenance of public infrastructure facilities,
23 including facilities related to transportation, water, wastewater, public
24 buildings or any other public facility and appurtenances.

25 3. Public-private initiatives provide the public sector with increased
26 access to project opportunities and private sector expertise by:

27 (a) Facilitating the collaboration and cost and risk sharing in public
28 infrastructure projects between public and private partners.

29 (b) Bringing innovative thinking from the private sector to bear on
30 public infrastructure needs in this state.

31 (c) Reducing the public cost of project delivery and services for
32 eligible facilities.

33 (d) Expediting project delivery.

34 (e) Encouraging life cycle efficiencies in public infrastructure
35 projects.

36 (f) Fostering flexibility in procurement methods to provide the best
37 value to the public.

38 (g) Providing better use and leverage of public resources, increasing
39 private investment in public infrastructure facilities, enhancing capital
40 formation for large projects and providing savings to taxpayers.

41 Sec. 8. Emergency

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