

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2396

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

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3 Title 28, chapter 22, Arizona Revised Statutes, is repealed.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" MEANS ANY LEASE, GROUND LEASE, FRANCHISE, EASEMENT,
12 PERMIT OR OTHER BINDING AGREEMENT TRANSFERRING RIGHTS FOR THE USE OR CONTROL,
13 IN WHOLE OR IN PART, OF AN ELIGIBLE FACILITY BY THE DEPARTMENT OR OTHER UNIT
14 OF GOVERNMENT TO A PRIVATE PARTNER IN ACCORDANCE WITH THIS CHAPTER.

15 2. "ELIGIBLE FACILITY" MEANS ANY FACILITY DEVELOPED OR OPERATED AFTER
16 THE EFFECTIVE DATE OF THIS ACT IN ACCORDANCE WITH THIS CHAPTER, INCLUDING ANY
17 ENHANCED, UPGRADED OR NEW FACILITY USED OR USEFUL FOR THE SAFE TRANSPORT OF
18 PEOPLE OR GOODS VIA ONE OR MORE MODES OF TRANSPORT, WHETHER INVOLVING
19 HIGHWAYS, RAILWAYS, MONORAILS, TRANSIT, BUS SYSTEMS, GUIDED RAPID TRANSIT,
20 FIXED GUIDEWAYS, FERRIES, BOATS, VESSELS, INTERMODAL OR MULTIMODAL SYSTEMS OR
21 ANY OTHER MODE OF TRANSPORT, AS WELL AS FACILITIES, STRUCTURES, PARKING, RAIL
22 YARDS OR STORAGE FACILITIES, VEHICLES, ROLLING STOCK OR OTHER RELATED
23 EQUIPMENT, ITEMS OR PROPERTY.

24 3. "PRIVATE PARTNER" MEANS A PERSON, ENTITY OR ORGANIZATION THAT IS
25 NOT THE FEDERAL GOVERNMENT, THIS STATE, A POLITICAL SUBDIVISION OF THIS STATE
26 OR A UNIT OF GOVERNMENT.

27 4. "UNIT OF GOVERNMENT" MEANS ANY DEPARTMENT OR AGENCY OF THIS STATE
28 OR AGENCY, OFFICE OR DEPARTMENT OF THIS STATE, CITY, COUNTY, DISTRICT,
29 COMMISSION, AUTHORITY, ENTITY, PORT OR OTHER PUBLIC CORPORATION ORGANIZED AND

1 EXISTING UNDER STATUTORY LAW OR UNDER A VOTER APPROVED CHARTER OR INITIATIVE,
2 AND ANY INTERGOVERNMENTAL ENTITY.

3 28-7702. Rules and guidelines

4 THE DEPARTMENT SHALL ADOPT SUCH RULES OR GUIDELINES AS IT DETERMINES
5 NECESSARY TO CARRY OUT THIS CHAPTER.

6 28-7703. Project delivery methods

7 THE DEPARTMENT SHALL PROVIDE FOR THE DEVELOPMENT OR OPERATION OF
8 ELIGIBLE FACILITIES USING A VARIETY OF PROJECT DELIVERY METHODS AND FORMS OF
9 AGREEMENT. THE METHODS MAY INCLUDE A WIDE RANGE OF POSSIBILITIES, INCLUDING:

- 10 1. PREDEVELOPMENT AGREEMENTS LEADING TO OTHER IMPLEMENTING AGREEMENTS.
- 11 2. A DESIGN-BUILD AGREEMENT.
- 12 3. A DESIGN-BUILD-MAINTAIN AGREEMENT.
- 13 4. A DESIGN-BUILD-FINANCE-OPERATE AGREEMENT.
- 14 5. A DESIGN-BUILD-OPERATE-MAINTAIN AGREEMENT.
- 15 6. A CONCESSION PROVIDING FOR THE PRIVATE PARTNER TO DESIGN, BUILD,

16 OPERATE, MAINTAIN, MANAGE OR LEASE AN ELIGIBLE FACILITY.

17 7. ANY OTHER PROJECT DELIVERY METHOD OR AGREEMENT OR COMBINATION OF
18 METHODS OR AGREEMENTS THAT THE DEPARTMENT DETERMINES WILL SERVE THE PUBLIC
19 INTEREST.

20 28-7704. Procurements

21 A. THE DEPARTMENT:

22 1. MAY PROCURE SERVICES UNDER THIS CHAPTER USING ANY OF THE FOLLOWING:

23 (a) REQUESTS FOR PROJECT PROPOSALS IN WHICH THE DEPARTMENT DESCRIBES A
24 CLASS OF TRANSPORTATION FACILITIES OR A GEOGRAPHIC AREA IN WHICH PRIVATE
25 ENTITIES ARE INVITED TO SUBMIT PROPOSALS TO DEVELOP TRANSPORTATION
26 FACILITIES.

27 (b) SOLICITATIONS USING REQUESTS FOR QUALIFICATIONS, SHORT-LISTING OF
28 QUALIFIED PROPOSERS, REQUESTS FOR PROPOSALS, NEGOTIATIONS, BEST AND FINAL
29 OFFERS OR OTHER PROCUREMENT PROCEDURES.

30 (c) PROCUREMENTS SEEKING FROM THE PRIVATE SECTOR DEVELOPMENT AND
31 FINANCE PLANS MOST SUITABLE FOR THE PROJECT.

1 (d) BEST VALUE SELECTION PROCUREMENTS BASED ON PRICE OR FINANCIAL
2 PROPOSALS, OR BOTH, OR OTHER FACTORS.

3 (e) OTHER PROCEDURES THAT THE DEPARTMENT DETERMINES MAY FURTHER THE
4 IMPLEMENTATION OF THIS CHAPTER.

5 2. SHALL PROCURE SERVICES UNDER THIS CHAPTER USING UNSOLICITED
6 PROPOSALS IF THE DEPARTMENT DETERMINES THAT THERE IS SUFFICIENT MERIT TO
7 PURSUE ANY UNSOLICITED PROPOSAL AND A REASONABLE OPPORTUNITY FOR OTHER
8 ENTITIES TO SUBMIT COMPETING PROPOSALS FOR CONSIDERATION AND A POSSIBLE
9 CONTRACT AWARD AS APPROPRIATE.

10 B. FOR ANY PROCUREMENT IN WHICH THE DEPARTMENT ISSUES A REQUEST FOR
11 QUALIFICATIONS, REQUEST FOR PROPOSALS OR SIMILAR SOLICITATION DOCUMENT, THE
12 REQUEST SHALL GENERALLY SET FORTH THE FACTORS THAT WILL BE EVALUATED AND THE
13 MANNER IN WHICH RESPONSES WILL BE EVALUATED.

14 C. IN EVALUATING PROPOSALS, THE DEPARTMENT MAY ACCORD SUCH RELATIVE
15 WEIGHT TO FACTORS SUCH AS COST, FINANCIAL COMMITMENT, INNOVATIVE FINANCING,
16 TECHNICAL, SCIENTIFIC, TECHNOLOGICAL OR SOCIOECONOMIC MERIT AND OTHER FACTORS
17 AS THE DEPARTMENT DEEMS APPROPRIATE TO OBTAIN THE BEST VALUE FOR THIS STATE.

18 D. THE DEPARTMENT MAY PAY A STIPEND TO A PROPOSER BASED ON THE
19 DEPARTMENT'S ESTIMATE, IN ITS SOLE DISCRETION, OF THE VALUE OF THE WORK
20 PRODUCT RECEIVED, BUT ONLY IF THE DEPARTMENT HAS DETERMINED THAT THE PROPOSAL
21 SUBMITTED WAS RESPONSIVE TO THE DEPARTMENT'S REQUEST FOR PROPOSALS AND MET
22 ALL REQUIREMENTS ESTABLISHED BY THE DEPARTMENT FOR THE PROJECT. IN EXCHANGE
23 FOR THE STIPEND, THE DEPARTMENT MAY REQUIRE THE RECIPIENT TO GRANT TO THE
24 DEPARTMENT THE RIGHT TO USE ANY WORK PRODUCT CONTAINED IN THE RECIPIENT'S
25 PROPOSAL, INCLUDING TECHNOLOGIES, TECHNIQUES, METHODS, PROCESSES AND
26 INFORMATION CONTAINED IN THE RECIPIENT'S PROJECT DESIGN.

27 E. THE DEPARTMENT MAY CHARGE AND RETAIN AN ADMINISTRATIVE FEE FOR THE
28 EVALUATION OF AN UNSOLICITED PROJECT PROPOSAL.

29 F. THE DEPARTMENT MAY PROCURE SERVICES, AWARD AGREEMENTS AND
30 ADMINISTER REVENUES AS AUTHORIZED IN THIS SECTION NOTWITHSTANDING ANY
31 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 G. THE DEPARTMENT SHALL RETAIN FINANCIAL, LEGAL AND OTHER CONSULTANTS
4 AND EXPERTS INSIDE OR OUTSIDE THE PUBLIC SECTOR TO ASSIST IN THE EVALUATION,
5 NEGOTIATION AND DEVELOPMENT OF ELIGIBLE FACILITIES UNDER THIS CHAPTER WITH A
6 MINIMUM OF FIVE YEARS EXPERIENCE WORKING IN THAT CAPACITY WITH PUBLIC-PRIVATE
7 PARTNERSHIPS.

8 H. THE DEPARTMENT MAY SPEND MONIES THAT ARE REASONABLY NECESSARY FOR
9 THE DEVELOPMENT OF PROCUREMENTS, EVALUATION OF CONCEPTS OR PROPOSALS,
10 NEGOTIATION OF AGREEMENTS AND IMPLEMENTATION OF AGREEMENTS FOR DEVELOPMENT OR
11 OPERATION OF ELIGIBLE FACILITIES UNDER THIS CHAPTER.

12 28-7705. Public-private partnership agreements

13 A. IN ANY PUBLIC-PRIVATE PARTNERSHIP OR OTHER AGREEMENT FOR ANY
14 ELIGIBLE FACILITY UNDER THIS CHAPTER, THE DEPARTMENT MAY INCLUDE PROVISIONS
15 THAT:

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

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

19 (b) ESTABLISH CIRCUMSTANCES UNDER WHICH THE DEPARTMENT MAY RECEIVE A
20 SHARE OF REVENUES FROM SUCH CHARGES.

21 (c) GOVERN ENFORCEMENT OF TOLLS, INCLUDING PROVISIONS FOR USE OF
22 CAMERAS OR OTHER MECHANISMS TO ENSURE THAT USERS HAVE PAID TOLLS THAT ARE DUE
23 AND PROVISIONS THAT ALLOW THE PRIVATE PARTNER ACCESS TO RELEVANT DATABASES
24 FOR ENFORCEMENT PURPOSES. MISUSE OF THE DATA CONTAINED IN THE DATABASES,
25 INCLUDING NEGLIGENCE IN SECURING THE DATA PROPERLY, SHALL RESULT IN A CIVIL
26 PENALTY OF TEN THOUSAND DOLLARS FOR EACH VIOLATION. AFTER THE PRIVATE
27 PARTNER PAYS THE CIVIL PENALTY THE COURT SHALL TRANSMIT THE CIVIL PENALTY TO
28 EITHER THE CITY OR COUNTY TREASURER. THE CITY OR COUNTY TREASURER SHALL
29 TRANSMIT THE CIVIL PENALTY TO THE STATE TREASURER WHO SHALL TRANSMIT THE
30 CIVIL PENALTY TO THE STATE GENERAL FUND.

31 2. ALLOW FOR PAYMENTS TO BE MADE BY THIS STATE TO THE PRIVATE PARTNER,
32 INCLUDING AVAILABILITY PAYMENTS OR PERFORMANCE BASED PAYMENTS.

1 3. ALLOW THE DEPARTMENT TO ACCEPT PAYMENTS OF MONIES AND SHARE
2 REVENUES WITH THE PRIVATE PARTNER.

3 4. ADDRESS HOW THE PARTNERS WILL SHARE MANAGEMENT OF THE RISKS OF THE
4 PROJECT.

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

7 6. ALLOCATE FINANCIAL RESPONSIBILITY FOR COST OVERRUNS.

8 7. ESTABLISH THE DAMAGES TO BE ASSESSED FOR NONPERFORMANCE.

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

10 9. ADDRESS THE ACQUISITION OF RIGHTS-OF-WAY AND OTHER PROPERTY
11 INTERESTS THAT MAY BE REQUIRED, INCLUDING PROVISIONS THAT ADDRESS THE
12 EXERCISE OF EMINENT DOMAIN AS PROVIDED IN SECTION 28-7709. THIS STATE SHALL
13 NOT RELINQUISH ITS POWER OF EMINENT DOMAIN AUTHORITY TO THE PRIVATE PARTNER.

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

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

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

21 13. IDENTIFY ANY DEPARTMENT SPECIFICATIONS THAT MUST BE SATISFIED,
22 INCLUDING PROVISIONS ALLOWING THE PRIVATE PARTNER TO REQUEST AND RECEIVE
23 AUTHORIZATION TO DEVIATE FROM THE SPECIFICATIONS ON MAKING A SHOWING
24 SATISFACTORY TO THE DEPARTMENT.

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

31 15. AUTHORIZE THE PRIVATE PARTNER IN ANY CONCESSION AGREEMENT TO
32 COLLECT USER FEES, TOLLS, FARES OR SIMILAR CHARGES TO COVER ITS COSTS AND

1 PROVIDE FOR A REASONABLE RATE OF RETURN ON THE PRIVATE PARTNER'S INVESTMENT,
2 INCLUDING PROVISIONS SUCH AS THE FOLLOWING:

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

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

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

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

11 (i) GENERAL PURPOSE TOLL LANES.

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

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

17 (iv) COMBINATIONS OF, OR VARIATIONS ON, ITEMS (I), (II) AND (III), OR
18 OTHER STRATEGIES THE DEPARTMENT DETERMINES ARE APPROPRIATE ON A FACILITY-BY-
19 FACILITY BASIS.

20 16. SPECIFY REMEDIES AVAILABLE AND DISPUTE RESOLUTION PROCEDURES,
21 INCLUDING THE RIGHT OF THE PRIVATE PARTNER TO INSTITUTE LEGAL PROCEEDINGS TO
22 OBTAIN AN ENFORCEABLE JUDGMENT OR AWARD AGAINST THE DEPARTMENT IN THE EVENT
23 OF A DEFAULT BY THE DEPARTMENT AND PROCEDURES FOR USE OF DISPUTE REVIEW
24 BOARDS, MEDIATION, FACILITATED NEGOTIATION, ARBITRATION AND OTHER ALTERNATIVE
25 DISPUTE RESOLUTION PROCEDURES.

26 B. NOTWITHSTANDING ANY OTHER LAW, THE DEPARTMENT MAY ENTER INTO
27 AGREEMENTS, WHETHER A CONCESSION AGREEMENT OR OTHER FORM OF AGREEMENT, WITH
28 ANY PRIVATE PARTNER THAT INCLUDES PROVISIONS DESCRIBED IN SUBSECTION A OF
29 THIS SECTION. AGREEMENTS MAY BE FOR A TERM NOT TO EXCEED FIFTY YEARS BUT MAY
30 BE EXTENDED FOR ADDITIONAL TERMS.

1 C. THE DEPARTMENT MAY APPROVE ANY REQUEST FROM ANOTHER UNIT OF
2 GOVERNMENT TO DEVELOP AN ELIGIBLE FACILITY IN A MANNER SIMILAR TO THAT USED
3 BY THE DEPARTMENT UNDER THIS CHAPTER.

4 D. NOTWITHSTANDING ANY OTHER LAW, AGREEMENTS UNDER THIS CHAPTER THAT
5 ARE PROPERLY DEVELOPED, OPERATED OR HELD BY A PRIVATE PARTNER UNDER A
6 CONCESSION AGREEMENT PURSUANT TO THIS CHAPTER ARE EXEMPT FROM ALL STATE AND
7 LOCAL AD VALOREM AND PROPERTY TAXES THAT OTHERWISE MIGHT BE APPLICABLE.

8 E. THE AGREEMENT SHALL CONTAIN A PROVISION BY WHICH THE PRIVATE
9 PARTNER EXPRESSLY AGREES THAT IT IS TO BE BARRED FROM SEEKING INJUNCTIVE OR
10 OTHER EQUITABLE RELIEF TO DELAY, PREVENT OR OTHERWISE HINDER THE DEPARTMENT
11 FROM DEVELOPING OR CONSTRUCTING ANY FACILITY THAT WAS UNPLANNED AS OF THE
12 TIME THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT WAS EXECUTED AND THAT WOULD OR
13 MIGHT IMPACT THE REVENUE THAT THE PRIVATE PARTNER WOULD OR MIGHT DERIVE FROM
14 THE FACILITY DEVELOPED UNDER THE AGREEMENT, EXCEPT THAT THE AGREEMENT MAY
15 PROVIDE FOR REASONABLE COMPENSATION TO THE PRIVATE PARTNER FOR THE ADVERSE
16 EFFECT ON TOLL REVENUES OR OTHER USER FEE REVENUES RESULTING FROM DEVELOPMENT
17 AND CONSTRUCTION OF AN UNPLANNED REVENUE IMPACTING FACILITY.

18 F. THE AGREEMENT SHALL CONTAIN A PROVISION WHICH PROHIBITS PHOTO
19 ENFORCEMENT ON TOLL LANES.

20 G. ANY FOREIGN PRIVATE ENTITY THAT SUBMITS A PROPOSAL TO THE
21 DEPARTMENT OR THAT ENTERS INTO AN AGREEMENT WITH THE DEPARTMENT PURSUANT TO
22 THIS SECTION, MUST PROVIDE SATISFACTORY EVIDENCE TO THE BOARD THAT THE
23 FOREIGN ENTITY IS IN COMPLIANCE WITH THE REQUIREMENTS OF TITLE 10,
24 CHAPTER 38.

25 28-7706. Funding and financing

26 A. ANY LAWFUL SOURCE OF FUNDING MAY BE USED FOR THE DEVELOPMENT OR
27 OPERATION OF AN ELIGIBLE FACILITY UNDER THIS CHAPTER, INCLUDING:

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

30 2. GRANTS, LOANS, LOAN GUARANTEES, LINES OF CREDIT, REVOLVING LINES OF
31 CREDIT OR OTHER ARRANGEMENTS AVAILABLE UNDER THE TRANSPORTATION
32 INFRASTRUCTURE FINANCE AND INNOVATION ACT OF 1998 (P.L. 105-178; 112 STAT,

1 241; 23 UNITED STATES CODE SECTIONS 601 THROUGH 610) OR ANY OTHER FEDERAL OR
2 STATE LAW.

3 3. FEDERAL, STATE OR LOCAL REVENUES.

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

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

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

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

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

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

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

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

1 G. NOTWITHSTANDING ANY OTHER LAW, FEDERAL, STATE AND LOCAL MONIES
2 SHALL NOT BE COMBINED WITH ANY PRIVATE SECTOR MONIES FOR ANY PROJECT
3 PURPOSES.

4 H. REVENUE BONDS ISSUED PURSUANT TO THIS SECTION ARE NOT GENERAL
5 OBLIGATIONS OF THIS STATE AND ARE NOT SECURED BY OR PAYABLE FROM ANY MONIES
6 OR ASSETS OF THIS STATE OTHER THAN THE MONIES AND REVENUES SPECIFICALLY
7 PLEDGED TO THE REPAYMENT OF THE REVENUE BONDS.

8 28-7707. Confidentiality and public disclosure

9 A. A PROPOSER SHALL IDENTIFY THOSE PORTIONS OF A PROPOSAL OR OTHER
10 SUBMISSION THAT THE PROPOSER CONSIDERS TO BE TRADE SECRETS OR CONFIDENTIAL
11 COMMERCIAL, FINANCIAL OR PROPRIETARY INFORMATION. IN ORDER FOR CONFIDENTIAL
12 AND PROPRIETARY INFORMATION AND TRADE SECRETS TO BE EXEMPT FROM DISCLOSURE,
13 THE PRIVATE ENTITY MUST DO ALL OF THE FOLLOWING:

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

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

18 3. STATE THE REASONS WHY PROTECTION IS NECESSARY.

19 4. FULLY COMPLY WITH ANY APPLICABLE STATE LAW WITH RESPECT TO
20 INFORMATION THAT THE PROPOSER CONTENDS SHOULD BE EXEMPT FROM DISCLOSURE.

21 B. EACH REQUEST FOR PROPOSALS ISSUED PURSUANT TO THIS CHAPTER SHALL
22 REQUIRE EACH PROPOSER TO INCLUDE WITH ITS PROPOSAL AN EXECUTIVE SUMMARY
23 COVERING THE MAJOR ELEMENTS OF ITS PROPOSAL THAT DO NOT ADDRESS THE
24 PROPOSER'S PRICE, FINANCING PLAN OR OTHER CONFIDENTIAL OR PROPRIETARY
25 INFORMATION OR TRADE SECRETS THAT THE PROPOSER INTENDS TO BE EXEMPT FROM
26 DISCLOSURE. THE EXECUTIVE SUMMARY SHALL BE SUBJECT TO RELEASE AND DISCLOSURE
27 TO THE PUBLIC AT ANY TIME. NOTWITHSTANDING ANY OTHER LAW, IN ORDER TO
28 MAXIMIZE COMPETITION UNDER THIS CHAPTER, NO PART OF A PROPOSAL OTHER THAN THE
29 EXECUTIVE SUMMARY SHALL BE SUBJECT TO RELEASE OR DISCLOSURE BY THE DEPARTMENT
30 BEFORE AN AWARD OF THE PUBLIC-PRIVATE PARTNERSHIP CONTRACT AND THE CONCLUSION
31 OF ANY PROTEST OR OTHER CHALLENGE TO THE AWARD, ABSENT AN ADMINISTRATIVE OR
32 JUDICIAL ORDER REQUIRING RELEASE OR DISCLOSURE. AFTER THE AWARD OF THE

1 CONTRACT AND THE CONCLUSION OF ANY PROTEST OR OTHER CHALLENGE TO THE AWARD,
2 TITLE 39 APPLIES TO ANY RELEASE OF ANY PART OF THE PROPOSAL.

3 28-7708. Government agreements

4 EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER PUBLIC SECTOR
5 PARTNER, THIS STATE MAY ENTER INTO WORKING AGREEMENTS, COORDINATION
6 AGREEMENTS OR SIMILAR IMPLEMENTATION AGREEMENTS.

7 28-7709. Eminent domain

8 THIS STATE MAY EXERCISE THE POWER OF EMINENT DOMAIN TO ACQUIRE
9 PROPERTY, RIGHTS-OF-WAY OR OTHER RIGHTS IN PROPERTY FOR PROJECTS THAT ARE
10 NECESSARY TO DEVELOP, OPERATE OR HOLD AN ELIGIBLE FACILITY UNDER THIS
11 CHAPTER, REGARDLESS OF WHETHER THE PROPERTY WILL BE OWNED IN FEE SIMPLE BY
12 THIS STATE OR WHETHER THE PROPERTY WILL BE LEASED TO THE PRIVATE PARTNER TO
13 USE, LEASE OR OPERATE FOR ITS BUSINESS PURPOSES IN CONNECTION WITH THE
14 PUBLIC-PRIVATE PARTNERSHIP PROJECT.

15 28-7710. Federal laws and severability

16 A. IF NO FEDERAL MONIES ARE USED ON AN ELIGIBLE FACILITY, THE LAWS OF
17 THIS STATE, INCLUDING THIS CHAPTER, GOVERN. NOTWITHSTANDING ANY OTHER
18 PROVISION OF THIS CHAPTER, IF FEDERAL MONIES ARE USED ON AN ELIGIBLE FACILITY
19 AND APPLICABLE FEDERAL LAWS CONFLICT WITH THIS CHAPTER OR REQUIRE PROVISIONS
20 OR PROCEDURES INCONSISTENT WITH THIS CHAPTER, THE APPLICABLE FEDERAL LAWS
21 GOVERN.

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

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

27 35-701. Definitions

28 In this chapter, unless the context otherwise requires:

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

31 2. "Designated area" means any area of this state which is either
32 designated pursuant to section 36-1479 as a slum or blighted area as defined

1 in section 36-1471, designated by regulation as a pocket of poverty or a
2 neighborhood strategy area by the United States department of housing and
3 urban development pursuant to title I of the housing and community
4 development act of 1977 (P.L. 95-128; 42 United States Code sections 5301
5 through 5320), as amended, and the department of housing and urban
6 development act (P.L. 89-174; 42 United States Code section 3535(d)) or
7 designated by the United States department of housing and urban development
8 as an empowerment or enterprise zone pursuant to the federal omnibus budget
9 reconciliation act of 1993 (P.L. 103-66; 26 United States Code section
10 1391(g)) or an area certified as an enterprise zone pursuant to section
11 41-1524, subsection B.

12 3. "Governing body" means:

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

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

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

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

1 site-built houses and the house must be eligible for thirty year real estate
2 mortgage financing.

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

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

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

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

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

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

26 (iii) Any office building or buildings for use as corporate or company
27 headquarters or regional offices or the adaptive use for offices of any
28 building within this state that is on the national register of historic
29 places or rehabilitation of residential buildings located in registered
30 historic neighborhoods.

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

1 (v) Residential real property for dwelling units located within the
2 municipality or county approving the formation of the corporation and, in the
3 case of a county, whether or not also within a municipality that is within
4 the county.

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

7 (vii) Convention or trade show facilities.

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

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

13 (x) Industrial park facilities.

14 (xi) Air or water pollution control facilities.

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

23 (xiii) Research and development facilities.

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

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

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

31 (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
28 Sec. 4. Section 42-5069, Arizona Revised Statutes, is amended to read:
29 42-5069. Commercial lease classification; definitions

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

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

7 C. The commercial lease classification does not include:

8 1. Any business activities that are classified under the transient
9 lodging classification.

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

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

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

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

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

32 ~~7.~~ 6. Leasing real property for boarding horses.

1 ~~8.~~ 7. Leasing or renting real property or the right to use real
2 property at exhibition events in this state sponsored, operated or conducted
3 by a nonprofit organization that is exempt from taxation under section
4 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
5 organization is associated with major league baseball teams or a national
6 touring professional golfing association and no part of the organization's
7 net earnings inures to the benefit of any private shareholder or individual.

8 ~~9.~~ 8. Leasing or renting real property or the right to use real
9 property for use as a rodeo featuring primarily farm and ranch animals in
10 this state sponsored, operated or conducted by a nonprofit organization that
11 is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6),
12 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the
13 organization's net earnings inures to the benefit of any private shareholder
14 or individual.

15 ~~10.~~ 9. Leasing or renting dwelling units, lodging facilities or
16 trailer or mobile home spaces if the units, facilities or spaces are intended
17 to serve as the principal or permanent place of residence for the lessee or
18 renter or if the unit, facility or space is leased or rented to a single
19 tenant thirty or more consecutive days.

20 ~~11.~~ 10. Leasing or renting real property and improvements for use
21 primarily for religious worship by a nonprofit organization that is exempt
22 from taxation under section 501(c)(3) of the internal revenue code and no
23 part of the organization's net earnings inures to the benefit of any private
24 shareholder or individual.

25 ~~12.~~ 11. Leasing or renting real property used for agricultural
26 purposes under either of the following circumstances:

27 (a) The lease or rental is between family members, trusts, estates,
28 corporations, partnerships, joint venturers or similar entities, or any
29 combination thereof, if the individuals or at least eighty per cent of the
30 beneficiaries, shareholders, partners or joint venturers share a family
31 relationship as parents or ancestors of parents, children or descendants of
32 children, siblings, cousins of the first degree, aunts, uncles, nieces or

1 nephews of the first degree, spouses of any of the listed relatives and
2 listed relatives by the half-blood or by adoption.

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

5 ~~13.~~ 12. Leasing, renting or granting the right to use real property to
6 vendors or exhibitors by a trade or industry association that is a qualifying
7 organization pursuant to section 513(d)(3)(C) of the internal revenue code
8 for a period not to exceed twenty-one days in connection with an event that
9 meets all of the following conditions:

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

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

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

16 ~~14.~~ 13. Leasing, renting or granting the right to use real property
17 for a period not to exceed twenty-one days by a coliseum, civic center, civic
18 plaza, convention center, auditorium or arena owned by this state or any of
19 its political subdivisions.

20 ~~15.~~ 14. Leasing or subleasing real property used by a nursing care
21 institution as defined in section 36-401 that is licensed pursuant to title
22 36, chapter 4.

23 ~~16.~~ 15. Leasing or renting ~~a transportation~~ AN ELIGIBLE facility as
24 ~~provided~~ DEFINED in section ~~28-7705, subsections A and B~~ 28-7701.

25 ~~17.~~ 16. Granting or providing rights to real property that constitute
26 a profit à prendre for the severance of minerals, including all rights to use
27 the surface or subsurface of the property as is necessary or convenient to
28 the right to sever the minerals. This paragraph does not exclude from the
29 commercial lease classification leasehold rights to the real property that
30 are granted in addition to and not included within the right of profit à
31 prendre, but the tax base for the grant of such a leasehold right, if the
32 gross income derived from the grant is not separately stated from the gross

1 income derived from the grant of the profit à prendre, shall not exceed the
2 fair market value of the leasehold rights computed after excluding the value
3 of all rights under the profit à prendre. For the purposes of this
4 paragraph, "profit à prendre" means a right to use the land of another to
5 mine minerals, and carries with it the right of entry and the right to remove
6 and take the minerals from the land and also includes the right to use the
7 surface of the land as is necessary and convenient for exercise of the
8 profit.

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

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

19 F. For the purposes of this section:

20 1. "Leasing" includes renting.

21 2. "Real property" includes any improvements, rights or interest in
22 such property.

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

24 42-6208. Exempt government property improvements

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

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

27 2. Property that is used for public housing.

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

30 4. Interests in all or any part of a facility that is owned of record
31 by a government lessor and used primarily for athletic, recreational,
32 entertainment, artistic, cultural or convention activities if the interest is

1 used for those activities or activities directly related and incidental to
2 these uses including concession stands.

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

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

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

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

16 9. Interests in property that is defined as "contractor-acquired
17 property" or "government-furnished property" in the federal acquisition
18 regulations, ~~(48 Code of Federal Regulations section 45.101)~~, and that is
19 owned by the government and used to perform a government contract.

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

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

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

30 13. Interests in parking garages or decks if the parking garages or
31 decks are owned and operated by a government lessor or operated on behalf of

1 a government lessor, by an entity other than the prime lessee, pursuant to a
2 management agreement with the government lessor.

3 14. Residential rentals if the prime lessee is the occupant."

4 Amend title to conform

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