

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

# HOUSE BILL 2209

AN ACT

AMENDING SECTIONS 35-706 AND 35-726, ARIZONA REVISED STATUTES; RELATING TO INDUSTRIAL DEVELOPMENT AUTHORITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 35-706, Arizona Revised Statutes, is amended to  
3 read:

4 35-706. Corporate powers

5 A. In addition to the powers granted to an industrial development  
6 authority by law, the authority has the following powers, together with all  
7 powers incidental or necessary for the performance of those powers:

8 1. To acquire, whether by purchase, exchange, gift, lease or otherwise  
9 establish, construct, improve, maintain, equip and furnish one or more  
10 projects.

11 2. To lease to others any or all of its projects, to charge and  
12 collect rent and to terminate any lease upon the failure of the lessee to  
13 comply with any of the obligations of the lease.

14 3. To sell, exchange, donate and convey to others any or all of its  
15 projects or properties upon terms and conditions as its board of directors  
16 may deem advisable, including the power to receive for any sale the note or  
17 notes of the purchaser of the project or property, whenever its board of  
18 directors finds the action to further advance the interest of the  
19 corporation.

20 4. To issue its bonds for the purpose of carrying out any of its  
21 powers.

22 5. To mortgage and pledge any or all of its projects and properties,  
23 whether owned or acquired, and to pledge the revenues, proceeds and receipts  
24 or any portion of the revenues, proceeds and receipts from a project as  
25 security for the payment of the principal of and interest on any bonds so  
26 issued and any agreements made in connection therewith.

27 6. To contract with and employ others to provide and to pay  
28 compensation for professional services and other services as the board of  
29 directors deems necessary for the financing of projects and for the business  
30 of the corporation.

31 7. To refund outstanding obligations incurred by an enterprise to  
32 finance the cost of a project when the board of directors finds that the  
33 refinancing is in the public interest.

34 8. To invest and reinvest funds under the control of the corporation  
35 and bond proceeds pending application thereof to the purposes for which the  
36 bonds were issued, subject only to the provisions of any bond resolution,  
37 lease or other agreement entered into by the board of directors.

38 9. To make secured or unsecured loans for the purpose of financing or  
39 refinancing the acquisition, construction, improvement, equipping or  
40 operating of a project and to charge and collect interest on the loans and  
41 pledge the proceeds of loan agreements as security for the payment of the  
42 principal and interest of any bonds, or designated issues of bonds, issued by  
43 the corporation, and any agreements made in connection with the loan,  
44 whenever the board of directors finds the loans to further advance the  
45 interest of the corporation or the public.

1           10. To acquire and hold obligations of any kind to carry out any of its  
2 purposes.

3           11. Subject to this section, to make loans to any bank, savings and  
4 loan institution, credit union or other mortgage lender, whether organized or  
5 existing under the laws of this state, another state or the United States,  
6 which is qualified to do business in this state, for the purpose of enabling  
7 the institutions to make loans to finance the acquisition, construction,  
8 improvement or equipping of projects which are owner-occupied single family  
9 dwelling units to be occupied by persons of low and moderate income, as  
10 determined by the corporation. The loans shall be fully secured in the same  
11 manner as deposits of public funds or by loans secured by mortgages, deeds of  
12 trust or other security instruments guaranteed or insured by the United  
13 States, or any instrumentality thereof, or by any private mortgage insurance  
14 or surety company which is approved by the federal home loan mortgage  
15 corporation or the federal national mortgage association and which is  
16 licensed to do business in this state, if the private mortgage insurance  
17 shall be in a dollar amount sufficient to satisfy the mortgage insurance  
18 requirements for loans eligible to be purchased by the federal home loan  
19 mortgage corporation or the federal national mortgage association or any  
20 other agency or department of the United States. The security shall not be  
21 necessary if the bonds issued to make the loans are guaranteed or insured by  
22 an agency, department or instrumentality of the United States. Any bonds  
23 issued to make loans shall be ratable as "A" or better by a nationally  
24 recognized bond rating agency.

25           12. Subject to this section, to purchase or enter into advance  
26 commitments to purchase loans or any loan interests secured by mortgages,  
27 deeds of trust or other security instruments relating to projects which are  
28 owner-occupied single family dwelling units from or with any bank, savings  
29 and loan institution, credit union or other mortgage lender, whether  
30 organized or existing under the laws of this state, another state or the  
31 United States, which is qualified to do business in this state, on terms and  
32 conditions as may be determined by the corporation. The purpose of the  
33 purchases shall be to finance directly or indirectly the acquisition,  
34 construction, improvement or equipping of projects which are owner-occupied  
35 single family dwelling units to be occupied by persons of low and moderate  
36 income. If the bonds issued to make purchases are not guaranteed or insured  
37 by an agency, department or instrumentality of the United States or secured  
38 by a letter of credit, insurance policy, surety bond or other credit facility  
39 from a financial institution or a combination of such instruments, the  
40 purchased loans shall be guaranteed or insured by the United States or any  
41 agency, department, or instrumentality thereof, or by any private mortgage  
42 insurance or surety company which is approved by the federal home loan  
43 mortgage corporation or the federal national mortgage association or secured  
44 by a letter of credit, insurance policy, surety bond or other credit facility  
45 from a financial institution or a combination of such instruments. In the

1 case of private mortgage insurance, the insurance shall be in a dollar amount  
2 sufficient to satisfy the mortgage insurance requirements for loans eligible  
3 to be purchased by the federal home loan mortgage corporation or the federal  
4 national mortgage association or any other agency or department of the United  
5 States. Any bonds issued to purchase loans shall be ratable as "A" or better  
6 by a nationally recognized bond rating agency. If the purchased loans have  
7 not been originated on behalf of the corporation to directly finance  
8 projects, the corporation shall require that the institution receiving  
9 proceeds from the sale of the loans use the proceeds to make loans to finance  
10 or refinance the acquisition, construction, improvement or equipping of  
11 projects which are owner-occupied single family dwelling units to be occupied  
12 by persons of low and moderate income, as determined by the corporation.

13 13. To elect not to issue an amount of qualified mortgage revenue bonds  
14 which it may otherwise issue during any calendar year and to issue instead  
15 mortgage credit certificates pursuant to a qualified mortgage credit  
16 certificate program as defined in section 35-901.

17 14. To make loans to any person or entity owning residential property  
18 or to make loans to any bank, savings and loan association, credit union or  
19 other mortgage lender, or to purchase or enter into advance commitments to  
20 purchase funding for the repair or improvement of property related to  
21 residential or neighborhood improvement projects. An authority may issue its  
22 bonds or incur other obligations to fund loans or purchases. An authority  
23 shall establish the provisions relating to bonds or other obligations,  
24 including the security for the loans, and shall establish the guidelines for  
25 the approval, funding, purchasing and security of the loans.

26 15. To enter into contracts and execute any agreements or instrument  
27 and do any other act necessary or appropriate to carry out its purposes.

28 16. To exercise the powers granted by this chapter, including through  
29 the issuance of bonds, to provide financing or refinancing for projects other  
30 than a project as defined in section 35-701, paragraph 8, subdivision (a),  
31 item (v), located in whole or in part outside this state, provided that the  
32 board of directors of the corporation has determined that the exercise of  
33 such powers will provide a benefit within this state.

34 B. The corporation shall not have the power to operate any project as  
35 a business other than as lessor or seller nor shall any corporation make any  
36 loans pursuant to subsection A, paragraph 9 of this section for projects  
37 which are owner-occupied single family dwelling units except by utilizing as  
38 its contract agent a mortgage lender, whether organized or existing under the  
39 laws of this state, another state or the United States, which is qualified to  
40 do business in this state. Any project established pursuant to subsection A,  
41 paragraph 14 of this section is not required to use a mortgage lender as its  
42 contract agent. The corporation shall not permit any funds derived from the  
43 sale of its bonds to be used, loaned or provided for the acquisition of any  
44 facilities of a public utility or public service corporation, except as

1 provided in section 35-701. The corporation shall comply with title 38,  
2 chapter 3, article 3.1.

3 C. A person's or family's eligibility for an owner-occupied single  
4 family dwelling unit financed pursuant to subsection A, paragraph 11, 12 or  
5 13 of this section shall be determined by considering the person's or  
6 family's income. Owner-occupied single family dwelling units shall only be  
7 financed as provided in subsection A, paragraphs 11, 12 and 13 of this  
8 section unless the owner-occupied single family dwelling units are located in  
9 an area designated pursuant to section 36-1479 as a slum or blighted area as  
10 defined in section 36-1471 by a municipality having a population of more than  
11 two hundred fifty thousand persons according to the most recent United States  
12 decennial census or a special census conducted in accordance with section  
13 42-5033.

14 D. In the exercise of its powers authorized in this section with  
15 respect to projects which are owner-occupied single family dwelling units to  
16 be occupied by persons of low and moderate income and financed pursuant to  
17 subsection A, paragraphs 11 and 12 of this section, the corporation shall  
18 establish, subject to approval by the governing body of the authorizing  
19 county or municipality, standards and requirements applicable to the purchase  
20 of loans or the making of loans to mortgage lenders, including:

21 1. The eligibility of mortgage lenders, including the requirement that  
22 all mortgage lenders be approved as mortgagees by the federal housing  
23 administration and the ~~veterans administration~~ UNITED STATES DEPARTMENT OF  
24 VETERANS AFFAIRS and be approved as sellers and servicers of mortgage loans  
25 by the federal national mortgage association or federal home loan mortgage  
26 corporation.

27 2. The time within which mortgage lenders must make commitments and  
28 disbursements for mortgage loans.

29 3. The character of residences to be financed by mortgage loans.

30 4. The eligibility of persons of low and moderate income, including  
31 the requirement that no person of low and moderate income may receive, more  
32 than once in a three year period, a mortgage loan financed directly or  
33 indirectly from the proceeds of bonds issued by the corporation.

34 5. The terms and conditions of mortgage loans to be acquired.

35 6. The amounts and types of insurance coverage required on residences,  
36 mortgages and bonds.

37 7. The representations and warranties of mortgage lenders confirming  
38 compliance with the standards and requirements.

39 8. Restrictions as to interest rate and other terms of mortgage loans  
40 and the return realized on mortgage loans by mortgage lenders.

41 9. The type and amount of collateral security to be provided to assure  
42 repayment of any loans from the corporation and to assure repayment of bonds.

43 10. Assignment of the mortgage loans to a trustee acting on behalf of  
44 the corporation which shall be either a bank or trust company doing business  
45 in this state, having an officially reported combined capital surplus,

1 undivided profits and reserves of not less than fifteen million dollars.  
2 Trustees must be approved to sell mortgages to and service mortgages for the  
3 federal national mortgage association and the federal home loan mortgage  
4 corporation.

5 11. Any other matters related to the purchase of mortgage loans or the  
6 making of loans to mortgage lenders deemed relevant by the corporation. In  
7 establishing standards and requirements, the corporation shall be guided by  
8 the following standards:

9 (a) The amount of mortgage monies proposed to be made available in the  
10 area is to be reasonably related to the demand for mortgage monies.

11 (b) For projects of owner-occupied single family dwelling units to be  
12 occupied by persons of low and moderate income and financed pursuant to  
13 subsection A, paragraphs 11 and 12 of this section, at least ten per cent of  
14 all mortgage monies proposed to be made available by the corporations other  
15 than mortgage monies reserved for any period to finance mortgage loans on  
16 residences located within an area designated as a slum or blighted area as  
17 defined in section 36-1471 shall be reserved for at least a three month  
18 period for the financing of mortgage loans on manufactured housing unless the  
19 Arizona commerce authority determines that any bonds issued to make loans  
20 will not be ratable as "A" or better by a nationally recognized bond rating  
21 agency, in which case no such reservation is required. If all the mortgage  
22 monies reserved for manufactured housing are not committed or used to make  
23 mortgage loans during this three month period, the mortgage lender may  
24 allocate the remaining monies to finance mortgage loans on any single family  
25 dwelling unit.

26 (c) Any departure from the level of commitment fees, origination fees  
27 or servicing fees normally charged by a mortgage lender is to be justified in  
28 the context of the transaction.

29 (d) The costs, fees and expenditures associated with the issuance of  
30 bonds are to be reasonably related to the services provided.

31 E. Only corporations, the formations of which have been approved by  
32 the governing body of a county having a population of more than ~~nine~~ SEVEN  
33 per cent of the total state population computed according to the most recent  
34 United States decennial census or by the governing body of a municipality  
35 having a population of more than ~~nine~~ SEVEN per cent of the total state  
36 population computed according to the most recent United States decennial  
37 census, shall have the powers granted in subsection A, paragraphs 11, 12 and  
38 13 of this section. Except as provided in section 35-913, subsections E and  
39 F, a corporation shall not exercise the powers granted in subsection A,  
40 paragraphs 11, 12 and 13 of this section outside of its jurisdiction. For  
41 the purposes of a refunding of any mortgage revenue bond issued before  
42 January 1, 2000, the proceeds from the refunding may be used outside the  
43 jurisdiction of the corporation issuing the refunding bonds except the  
44 corporation issuing the refunding bonds shall obtain the consent from another  
45 corporation with powers granted in subsection A, paragraphs 11, 12 and 13 of

1 this section if the proceeds of the refunding are to be used within the  
2 jurisdiction of that corporation. For the purposes of exercising the powers  
3 granted in subsection A, paragraphs 11, 12 and 13 of this section, the  
4 jurisdiction of a corporation formed on behalf of a county includes all  
5 incorporated and unincorporated territory in the county.

6 F. A corporation may not permit proceeds of bonds or a qualified  
7 mortgage credit certificate program to be used to finance projects which are  
8 owner-occupied single family dwelling units within the corporate limits of an  
9 incorporated city or town unless the governing body of the city or town has  
10 approved the general location and character of the residences to be financed.  
11 The corporation, prior to the issuance of bonds or mortgage credit  
12 certificates for that purpose, shall give written notice to the governing  
13 body of each city or town in which it intends to permit proceeds of an issue  
14 of bonds or mortgage credit certificates to be used to finance projects which  
15 are owner-occupied single family dwelling units and of the general location  
16 and character of the residences which may be financed. The governing body of  
17 the city or town shall be deemed to have given its approval unless it has  
18 denied approval by formal action of the governing body within twenty-one days  
19 after receiving the written notice from the corporation. Approvals given or  
20 deemed to have been given with respect to use of proceeds of an issue of  
21 bonds or mortgage credit certificates under this subsection may not be  
22 withdrawn. Denials may be withdrawn by the governing body of a city or town  
23 and approval may be given thereafter if the corporation issuing the bonds or  
24 mortgage credit certificates approves the withdrawal of the denial.

25 G. Two or more corporations with the powers granted by subsection E of  
26 this section may provide:

27 1. That a corporation, the formation of which was approved by the  
28 governing body of a county or city, may exercise the powers granted in  
29 subsection A, paragraphs 11, 12 and 13 of this section, with respect to  
30 owner-occupied single family dwelling units located in all counties and  
31 cities which are parties to a cooperative agreement.

32 2. For the joint exercise by two or more corporations, each formed  
33 with the approval of a governing body executing the cooperative agreement, of  
34 the powers granted in subsection A, paragraphs 11, 12 and 13 of this section,  
35 with respect to owner-occupied single family dwelling units located in all  
36 counties and cities which are parties to the cooperative agreement. The  
37 agreement shall specify the calendar year or years for which it is effective,  
38 the means by which the agreement may be terminated prior to the expiration of  
39 the calendar year or years and the aggregate principal amount of bonds which  
40 may be issued by the designated corporation or corporations to exercise the  
41 powers pursuant to the agreement. The corporation or corporations designated  
42 in the agreement to exercise the powers in the counties and cities which are  
43 parties to the agreement are the only corporation or corporations authorized  
44 and having jurisdiction to exercise the powers and to issue bonds to carry  
45 out the powers in the counties and cities while the agreement is in effect.

1 The combined jurisdictions of all the counties and cities which are parties  
2 to the cooperative agreement are the jurisdictions of the corporation or  
3 corporations designated to exercise the powers granted in subsection A,  
4 paragraphs 11, 12 and 13 of this section within the meaning of the mortgage  
5 subsidy bond tax act of 1980 (P.L. 96-499; 26 United States Code section  
6 103A).

7 H. It shall not be a conflict of interest under title 38, chapter 3,  
8 article 8, and this chapter, for any trustee or any mortgage lender to enter  
9 into loan agreements with, or to sell mortgage loans to, the corporation as  
10 contemplated in subsection A, paragraphs 11, 12 and 13 of this section, act  
11 for or under contract with the corporation as a mortgage originator,  
12 servicer, paying agent or depository, act as holder or dealer of bonds of the  
13 corporation or have as a director, officer or employee any member of the  
14 board of directors of the corporation or any combination.

15 I. The department of economic security shall once in each calendar  
16 year on or before March 1 determine the median family income of this state  
17 for the purposes of this chapter.

18 J. All areas in this state which are either designated pursuant to  
19 section 36-1479 as slum or blighted areas as defined in section 36-1471 or  
20 designated as pockets of poverty by the United States department of housing  
21 and urban development are designated as areas of chronic economic distress  
22 within the meaning of the mortgage subsidy bond tax act of 1980 (P.L. 96-499;  
23 26 United States Code section 103A).

24 K. Any corporation that is described in subsection E of this section  
25 and that desires to exercise the powers granted in subsection A, paragraphs  
26 11, 12 and 13 of this section, with respect to owner-occupied single family  
27 dwelling units located in two or more counties, may do so if the corporation,  
28 before issuing bonds or mortgage credit certificates for that purpose, gives  
29 written notice to the governing bodies of the other counties and their  
30 respective corporations, if any, of its intent to permit the proceeds of an  
31 issue of bonds or mortgage credit certificates to finance projects within its  
32 jurisdiction which are owner-occupied single family dwelling units. The  
33 governing body of a county and its respective corporation, if any, which have  
34 been given notice are deemed to have approved the use of the proceeds or  
35 mortgage credit certificates for owner-occupied single family dwelling units  
36 within their jurisdiction and approved the use of any state ceiling, as  
37 defined in section 35-901, unless approval is denied by formal action of the  
38 governing body or the board of directors of the corporation, if any, within  
39 twenty-one days after receiving written notice from the corporation. Absent  
40 a denial of approval as stated in this subsection, a cooperative agreement  
41 providing for the exercise of the powers granted in subsection A, paragraphs  
42 11, 12 and 13 of this section is deemed to exist among the applicable  
43 counties or corporations. Approvals given or deemed to have been given with  
44 respect to the matters stated in this subsection may not be withdrawn.  
45 Denials by the governing body of a county apply only to the unincorporated

1 areas of the county. Denials may be withdrawn by the governing body of a  
2 county and approval may be given thereafter if the corporation issuing the  
3 bonds or mortgage credit certificates approves the withdrawal of the denial.  
4 Mortgage credit certificates and bond proceeds issued pursuant to this  
5 subsection shall be available on an equitable basis within each of the  
6 participating counties.

7 Sec. 2. Section 35-726, Arizona Revised Statutes, is amended to read:  
8 35-726. Approval of general plan before issuing bonds; fee;  
9 definition

10 A. Bonds shall not be issued by a corporation for the purpose of  
11 financing single family dwelling units pursuant to section 35-706, subsection  
12 A, paragraph 11 or 12 without approval of a general plan by its governing  
13 body. The corporation shall submit a general plan for each respective series  
14 of bonds to its governing body. The general plan shall briefly describe:

15 1. The amount of the proposed bonds.

16 2. The maximum term of the bonds.

17 3. The maximum interest rate on the bonds.

18 4. The need for the bond issue.

19 5. The terms and conditions for originating or purchasing mortgage  
20 loans or making loans to lenders.

21 6. The area in which the single family dwelling units to be financed  
22 may be located.

23 7. The proposed fees, charges and expenditures to be paid for  
24 originators, servicers, trustees, custodians, mortgage administrators and  
25 others.

26 8. All insurance requirements with respect to mortgage loans,  
27 mortgaged property, mortgagors, originators, servicers and trustees.

28 9. The anticipated date of issuance of the bonds.

29 B. The governing body shall review general plans submitted by  
30 corporations pursuant to subsection A of this section. In reviewing the  
31 plans the governing body shall consider:

32 1. Whether the amount of the mortgage monies proposed to be made  
33 available is reasonably related to the demand for the mortgage monies.

34 2. Whether the terms of the general plan are justifiable in the  
35 context of the transaction and in the context of similar transactions.

36 3. Whether the fees, costs and expenditures as set forth in the  
37 general plan are reasonably related to the services provided.

38 4. For projects of owner-occupied single family dwelling units to be  
39 occupied by persons of low and moderate income and financed pursuant to  
40 section 35-706, subsection A, paragraphs 11 and 12, whether the proposed  
41 mortgage monies to be made available will fulfill a public purpose by  
42 providing housing for persons of low and moderate income or by encouraging  
43 single family developments in all participating jurisdictions, including such  
44 jurisdictions' slum or blighted areas as defined in section 36-1471.

1 C. The governing body shall approve or disapprove the general plan not  
2 later than thirty days after receipt of the plan. If the governing body does  
3 not act upon the general plan within thirty days from the date of receipt,  
4 the general plan shall be deemed approved. If a general plan is approved,  
5 the corporation may issue the series of bonds covered by the general plan  
6 with a total principal amount, maximum term and maximum interest rate no  
7 greater than that which is set forth in the general plan. The origination  
8 and servicing fees pertaining to mortgage loans to be financed in accordance  
9 with the general plan shall not exceed those proposed in the general  
10 plan. The corporation may vary other items in the general plan upon a  
11 finding that the variation is minor and that the variations will not impair  
12 the security for the bonds or substantially increase the cost of financing  
13 the single family dwelling units and the findings of the corporation shall be  
14 conclusive.

15 D. The governing body may charge any corporation submitting a general  
16 plan for review a fee of not to exceed ten thousand dollars together with  
17 reimbursement of its actual costs and expenses incurred in reviewing the  
18 general plan.

19 E. EXCEPT FOR A CORPORATION APPROVED BY A GOVERNING BODY OF A COUNTY  
20 OR A MUNICIPALITY HAVING A POPULATION OF MORE THAN SEVEN PER CENT OF THE  
21 TOTAL STATE POPULATION COMPUTED ACCORDING TO THE MOST RECENT UNITED STATES  
22 DECENNIAL CENSUS, a corporation shall not issue bonds, other than refunding  
23 bonds the proceeds of which are used exclusively to refund a prior bond  
24 issue, to finance a multifamily residential rental project, sanitarium,  
25 clinic, medical hotel, rest home, nursing home, skilled nursing facility or  
26 life care facility as prescribed in section 20-1801, unless the department  
27 approves the project. The department, with or without a hearing, shall  
28 review the project and consider at least the following factors:

29 1. The demand for and feasibility of the project in the area set forth  
30 in the application to the corporation.

31 2. The terms and conditions of the proposed bonds.

32 3. The proposed use of bond proceeds.

33 4. The benefit to the public if the project provides rental housing  
34 for persons of low and moderate income or encourages rental housing in slum  
35 or blighted areas as defined in section 36-1471.

36 5. If the project consists of a nursing home, or a life care facility  
37 as prescribed in section 20-1801, the benefit to the public of the project,  
38 including the proposed rent, fees and other charges of the project in  
39 relation to the level of services to be offered.

40 F. Subsection E of this section does not apply to bonds issued to  
41 finance a sanitarium, clinic, medical hotel, rest home, nursing home, skilled  
42 nursing facility, or life care facility as prescribed in section 20-1801, if  
43 the facility is to be owned and operated by this state or a political  
44 subdivision or agency of this state.

1           G. EXCEPT FOR A CORPORATION THAT IS EXEMPT UNDER SUBSECTION E OF THIS  
2 SECTION, the department with or without a hearing shall approve or disapprove  
3 the project not later than thirty days after receipt of the request for  
4 approval. If the project is approved the corporation may issue the bonds  
5 described in the approval request with the total principal amount, maximum  
6 term and maximum interest rate no greater than as set forth in the  
7 request. The department shall charge each applicant submitting a project  
8 approval request pursuant to this subsection a fee of not to exceed five  
9 thousand dollars together with reimbursement of its actual costs and expenses  
10 incurred in reviewing the project. Beginning on October 1, 2002, the  
11 department shall remit the fees to the state treasurer for deposit in the  
12 Arizona department of housing program fund established by section 41-3957.

13           H. For the purposes of this section, "department" means the Arizona  
14 department of housing.