

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HOUSE BILL 2396

AN ACT

REPEALING TITLE 28, CHAPTER 22, ARIZONA REVISED STATUTES; AMENDING TITLE 28, ARIZONA REVISED STATUTES, BY ADDING A NEW CHAPTER 22; RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Title 28, chapter 22, Arizona Revised Statutes, is repealed.

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

6 CHAPTER 22

7 PUBLIC-PRIVATE PARTNERSHIPS IN TRANSPORTATION

8 ARTICLE 1. GENERAL PROVISIONS

9 28-7701. Definitions

10 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

11 1. "CONCESSION" 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 CHAPTER IN ACCORDANCE WITH THIS CHAPTER, INCLUDING
17 ANY ENHANCED, UPGRADED OR NEW FACILITY USED OR USEFUL FOR THE SAFE TRANSPORT
18 OF 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 AGENCY, OFFICE OR DEPARTMENT OF THIS
28 STATE, CITY, COUNTY, DISTRICT, COMMISSION, AUTHORITY, ENTITY, PORT OR OTHER
29 PUBLIC CORPORATION ORGANIZED AND EXISTING UNDER STATUTORY LAW OR UNDER A
30 VOTER APPROVED CHARTER OR INITIATIVE, AND ANY INTERGOVERNMENTAL ENTITY.

31 28-7702. Rules and guidelines

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

34 28-7703. Project delivery methods

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

- 38 1. PREDEVELOPMENT AGREEMENTS LEADING TO OTHER IMPLEMENTING AGREEMENTS.
- 39 2. A DESIGN-BUILD AGREEMENT.
- 40 3. A DESIGN-BUILD-MAINTAIN AGREEMENT.
- 41 4. A DESIGN-BUILD-FINANCE-OPERATE AGREEMENT.
- 42 5. A DESIGN-BUILD-OPERATE-MAINTAIN AGREEMENT.
- 43 6. A DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN AGREEMENT.
- 44 7. A CONCESSION PROVIDING FOR THE PRIVATE PARTNER TO DESIGN, BUILD,
45 OPERATE, MAINTAIN, MANAGE OR LEASE AN ELIGIBLE FACILITY.

1 8. ANY OTHER PROJECT DELIVERY METHOD OR AGREEMENT OR COMBINATION OF
2 METHODS OR AGREEMENTS THAT THE DEPARTMENT DETERMINES WILL SERVE THE PUBLIC
3 INTEREST.

4 28-7704. Procurements

5 A. THE DEPARTMENT:

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

7 (a) REQUESTS FOR PROJECT PROPOSALS IN WHICH THE DEPARTMENT DESCRIBES A
8 CLASS OF TRANSPORTATION FACILITIES OR A GEOGRAPHIC AREA IN WHICH PRIVATE
9 ENTITIES ARE INVITED TO SUBMIT PROPOSALS TO DEVELOP TRANSPORTATION
10 FACILITIES.

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

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

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

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

20 2. SHALL PROCURE SERVICES UNDER THIS CHAPTER USING UNSOLICITED
21 PROPOSALS IF THE DEPARTMENT DETERMINES THAT THERE IS SUFFICIENT MERIT TO
22 PURSUE ANY UNSOLICITED PROPOSAL AND A REASONABLE OPPORTUNITY FOR OTHER
23 ENTITIES TO SUBMIT COMPETING PROPOSALS FOR CONSIDERATION AND A POSSIBLE
24 CONTRACT AWARD AS APPROPRIATE.

25 B. FOR ANY PROCUREMENT IN WHICH THE DEPARTMENT ISSUES A REQUEST FOR
26 QUALIFICATIONS, REQUEST FOR PROPOSALS OR SIMILAR SOLICITATION DOCUMENT, THE
27 REQUEST SHALL GENERALLY SET FORTH THE FACTORS THAT WILL BE EVALUATED AND THE
28 MANNER IN WHICH RESPONSES WILL BE EVALUATED.

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

33 D. THE DEPARTMENT MAY PAY A STIPEND TO A PROPOSER BASED ON THE
34 DEPARTMENT'S ESTIMATE, IN ITS SOLE DISCRETION, OF THE VALUE OF THE WORK
35 PRODUCT RECEIVED, BUT ONLY IF THE DEPARTMENT HAS DETERMINED THAT THE PROPOSAL
36 SUBMITTED WAS RESPONSIVE TO THE DEPARTMENT'S REQUEST FOR PROPOSALS AND MET
37 ALL REQUIREMENTS ESTABLISHED BY THE DEPARTMENT FOR THE PROJECT. IN EXCHANGE
38 FOR THE STIPEND, THE DEPARTMENT MAY REQUIRE THE RECIPIENT TO GRANT TO THE
39 DEPARTMENT THE RIGHT TO USE ANY WORK PRODUCT CONTAINED IN THE RECIPIENT'S
40 PROPOSAL, INCLUDING TECHNOLOGIES, TECHNIQUES, METHODS, PROCESSES AND
41 INFORMATION CONTAINED IN THE RECIPIENT'S PROJECT DESIGN.

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

44 F. THE DEPARTMENT MAY PROCURE SERVICES, AWARD AGREEMENTS AND
45 ADMINISTER REVENUES AS AUTHORIZED IN THIS SECTION NOTWITHSTANDING ANY

1 REQUIREMENTS OF ANY OTHER STATE OR LOCAL STATUTE, REGULATION OR LAW RELATING
2 TO PUBLIC BIDDING OR OTHER PROCUREMENT PROCEDURES OR OTHER PROVISIONS
3 OTHERWISE APPLICABLE TO PUBLIC WORKS, SERVICES OR UTILITIES.

4 G. THE DEPARTMENT MAY RETAIN FINANCIAL, LEGAL AND OTHER CONSULTANTS
5 AND EXPERTS INSIDE OR OUTSIDE THE PUBLIC SECTOR TO ASSIST IN THE EVALUATION,
6 NEGOTIATION AND DEVELOPMENT OF ELIGIBLE FACILITIES UNDER THIS CHAPTER WITH A
7 MINIMUM OF FIVE YEARS EXPERIENCE WORKING IN THAT CAPACITY WITH PUBLIC-PRIVATE
8 PARTNERSHIPS.

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

13 28-7705. Public-private partnership agreements

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

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

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

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

22 (c) GOVERN ENFORCEMENT OF TOLLS, INCLUDING PROVISIONS FOR USE OF
23 CAMERAS OR OTHER MECHANISMS TO ENSURE THAT USERS HAVE PAID TOLLS THAT ARE DUE
24 AND PROVISIONS THAT ALLOW THE PRIVATE PARTNER ACCESS TO RELEVANT DATABASES
25 FOR ENFORCEMENT PURPOSES. MISUSE OF THE DATA CONTAINED IN THE DATABASES,
26 INCLUDING NEGLIGENCE IN SECURING THE DATA PROPERLY, SHALL RESULT IN A CIVIL
27 PENALTY OF TEN THOUSAND DOLLARS FOR EACH VIOLATION. CIVIL PENALTIES
28 COLLECTED PURSUANT TO THIS SUBDIVISION SHALL BE DEPOSITED IN THE STATE
29 GENERAL FUND.

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

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

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

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

38 6. ALLOCATE FINANCIAL RESPONSIBILITY FOR COST OVERRUNS.

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

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

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

- 1 10. ESTABLISH RECORD KEEPING, ACCOUNTING AND AUDITING STANDARDS TO BE
2 USED FOR THE PROJECT.
- 3 11. FOR A PROJECT THAT REVERTS TO PUBLIC OWNERSHIP, ADDRESS
4 RESPONSIBILITY FOR RECONSTRUCTION OR RENOVATIONS THAT ARE REQUIRED IN ORDER
5 FOR A FACILITY TO MEET ALL APPLICABLE GOVERNMENT STANDARDS ON REVERSION OF
6 THE FACILITY TO THIS STATE.
- 7 12. PROVIDE FOR PATROLLING AND LAW ENFORCEMENT ON PUBLIC FACILITIES.
- 8 13. IDENTIFY ANY DEPARTMENT SPECIFICATIONS THAT MUST BE SATISFIED,
9 INCLUDING PROVISIONS ALLOWING THE PRIVATE PARTNER TO REQUEST AND RECEIVE
10 AUTHORIZATION TO DEVIATE FROM THE SPECIFICATIONS ON MAKING A SHOWING
11 SATISFACTORY TO THE DEPARTMENT.
- 12 14. REQUIRE A PRIVATE PARTNER TO PROVIDE PERFORMANCE AND PAYMENT BONDS,
13 PARENT COMPANY GUARANTEES, LETTERS OF CREDIT OR OTHER ACCEPTABLE FORM OF
14 SECURITY OR A COMBINATION OF ANY OF THESE, THE PENAL SUM OR AMOUNT OF WHICH
15 MAY BE LESS THAN ONE HUNDRED PER CENT OF THE VALUE OF THE CONTRACT INVOLVED
16 BASED ON THE DEPARTMENT'S DETERMINATION, MADE ON A FACILITY-BY-FACILITY
17 BASIS, OF WHAT IS REQUIRED TO ADEQUATELY PROTECT THIS STATE.
- 18 15. AUTHORIZE THE PRIVATE PARTNER IN ANY CONCESSION AGREEMENT TO
19 COLLECT USER FEES, TOLLS, FARES OR SIMILAR CHARGES TO COVER ITS COSTS AND
20 PROVIDE FOR A REASONABLE RATE OF RETURN ON THE PRIVATE PARTNER'S INVESTMENT,
21 INCLUDING PROVISIONS SUCH AS THE FOLLOWING:
- 22 (a) THE CHARGES MAY BE COLLECTED DIRECTLY BY THE PRIVATE PARTNER OR BY
23 A THIRD PARTY ENGAGED FOR THAT PURPOSE.
- 24 (b) A FORMULA FOR THE ADJUSTMENT OF USER FEES, TOLLS, FARES OR SIMILAR
25 CHARGES DURING THE TERM OF THE AGREEMENT.
- 26 (c) FOR AN AGREEMENT THAT DOES NOT INCLUDE A FORMULA DESCRIBED IN
27 SUBDIVISION (b) OF THIS PARAGRAPH, PROVISIONS REGULATING THE PRIVATE
28 PARTNER'S RETURN ON INVESTMENT.
- 29 (d) A VARIETY OF TRAFFIC MANAGEMENT STRATEGIES, INCLUDING:
- 30 (i) GENERAL PURPOSE TOLL LANES.
- 31 (ii) HIGH OCCUPANCY VEHICLE LANES WHERE SINGLE OR LOW OCCUPANCY
32 VEHICLES MAY USE HIGHER OCCUPANCY VEHICLE LANES BY PAYING A TOLL.
- 33 (iii) LANES OR FACILITIES IN WHICH THE TOLLS MAY VARY DURING THE
34 COURSE OF THE DAY OR WEEK OR ACCORDING TO LEVELS OF CONGESTION ANTICIPATED OR
35 EXPERIENCED.
- 36 (iv) COMBINATIONS OF, OR VARIATIONS ON, ITEMS (i), (ii) AND (iii),
37 OR OTHER STRATEGIES THE DEPARTMENT DETERMINES ARE APPROPRIATE ON A
38 FACILITY-BY-FACILITY BASIS.
- 39 16. SPECIFY REMEDIES AVAILABLE AND DISPUTE RESOLUTION PROCEDURES,
40 INCLUDING THE RIGHT OF THE PRIVATE PARTNER TO INSTITUTE LEGAL PROCEEDINGS TO
41 OBTAIN AN ENFORCEABLE JUDGMENT OR AWARD AGAINST THE DEPARTMENT IN THE EVENT
42 OF A DEFAULT BY THE DEPARTMENT AND PROCEDURES FOR USE OF DISPUTE REVIEW
43 BOARDS, MEDIATION, FACILITATED NEGOTIATION, ARBITRATION AND OTHER ALTERNATIVE
44 DISPUTE RESOLUTION PROCEDURES.

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

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

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

13 E. A PERSON WHO PAYS A TOLL TO OPERATE A MOTOR VEHICLE ON A ROADWAY
14 PROJECT THAT IS CONSTRUCTED OR OPERATED PURSUANT TO THIS ARTICLE IS ENTITLED
15 TO AND MAY APPLY FOR A REFUND OR CREDIT FROM THE STATE FOR MOTOR VEHICLE FUEL
16 LICENSE TAXES, USE FUEL TAXES OR MOTOR CARRIER FEES PAID WHILE OPERATING THE
17 MOTOR VEHICLE ON THE ROADWAY PROJECT. THE DIRECTOR SHALL ESTABLISH BY RULE
18 THE PROCEDURES FOR GRANTING REFUNDS AND CREDITS.

19 F. THE AGREEMENT SHALL CONTAIN A PROVISION BY WHICH THE PRIVATE
20 PARTNER EXPRESSLY AGREES THAT IT IS TO BE BARRED FROM SEEKING INJUNCTIVE OR
21 OTHER EQUITABLE RELIEF TO DELAY, PREVENT OR OTHERWISE HINDER THE DEPARTMENT
22 FROM DEVELOPING OR CONSTRUCTING ANY FACILITY THAT WAS PLANNED AS OF THE TIME
23 THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT WAS EXECUTED AND THAT WOULD OR MIGHT
24 IMPACT THE REVENUE THAT THE PRIVATE PARTNER WOULD OR MIGHT DERIVE FROM THE
25 FACILITY DEVELOPED UNDER THE AGREEMENT, EXCEPT THAT THE AGREEMENT MAY PROVIDE
26 FOR REASONABLE COMPENSATION TO THE PRIVATE PARTNER FOR THE ADVERSE EFFECT ON
27 TOLL REVENUES OR OTHER USER FEE REVENUES RESULTING FROM DEVELOPMENT AND
28 CONSTRUCTION OF AN UNPLANNED REVENUE IMPACTING FACILITY.

29 G. THE AGREEMENT SHALL CONTAIN A PROVISION THAT PROHIBITS PHOTO
30 TRAFFIC ENFORCEMENT OF CHAPTER 3, ARTICLE 6 OF THIS TITLE ON TOLL LANES.

31 H. ANY FOREIGN PRIVATE ENTITY THAT ENTERS INTO AN AGREEMENT WITH THE
32 DEPARTMENT PURSUANT TO THIS SECTION MUST PROVIDE SATISFACTORY EVIDENCE TO THE
33 BOARD THAT THE FOREIGN ENTITY IS IN COMPLIANCE WITH THE REQUIREMENTS OF TITLE
34 10, CHAPTER 38.

35 I. THE AGREEMENT SHALL CONTAIN A PROVISION THAT ALL PUBLIC-PRIVATE
36 PARTNERSHIPS ARE SUBJECT TO TITLE 28, CHAPTER 20, ARTICLE 3.

37 28-7706. Funding and financing

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

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

42 2. GRANTS, LOANS, LOAN GUARANTEES, LINES OF CREDIT, REVOLVING LINES OF
43 CREDIT OR OTHER ARRANGEMENTS AVAILABLE UNDER THE TRANSPORTATION
44 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 OR NOTES TO PROVIDE
17 MONIES FOR 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.

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

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

39 28-7707. Confidentiality and public disclosure

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

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

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

5 3. STATE THE REASONS WHY PROTECTION IS NECESSARY.

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

8 B. EACH REQUEST FOR PROPOSALS ISSUED PURSUANT TO THIS CHAPTER SHALL
9 REQUIRE EACH PROPOSER TO INCLUDE WITH ITS PROPOSAL AN EXECUTIVE SUMMARY
10 COVERING THE MAJOR ELEMENTS OF ITS PROPOSAL THAT DO NOT ADDRESS THE
11 PROPOSER'S PRICE, FINANCING PLAN OR OTHER CONFIDENTIAL OR PROPRIETARY
12 INFORMATION OR TRADE SECRETS THAT THE PROPOSER INTENDS TO BE EXEMPT FROM
13 DISCLOSURE. THE EXECUTIVE SUMMARY SHALL BE SUBJECT TO RELEASE AND DISCLOSURE
14 TO THE PUBLIC AT ANY TIME. NOTWITHSTANDING ANY OTHER LAW, IN ORDER TO
15 MAXIMIZE COMPETITION UNDER THIS CHAPTER, NO PART OF A PROPOSAL OTHER THAN THE
16 EXECUTIVE SUMMARY SHALL BE SUBJECT TO RELEASE OR DISCLOSURE BY THE DEPARTMENT
17 BEFORE AN AWARD OF THE PUBLIC-PRIVATE PARTNERSHIP CONTRACT AND THE CONCLUSION
18 OF ANY PROTEST OR OTHER CHALLENGE TO THE AWARD, ABSENT AN ADMINISTRATIVE OR
19 JUDICIAL ORDER REQUIRING RELEASE OR DISCLOSURE. AFTER THE AWARD OF THE
20 CONTRACT AND THE CONCLUSION OF ANY PROTEST OR OTHER CHALLENGE TO THE AWARD,
21 TITLE 39 APPLIES TO ANY RELEASE OF ANY PART OF THE PROPOSAL.

22 28-7708. Government agreements

23 EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER PUBLIC SECTOR
24 PARTNER, THIS STATE MAY ENTER INTO WORKING AGREEMENTS, COORDINATION
25 AGREEMENTS OR SIMILAR IMPLEMENTATION AGREEMENTS.

26 28-7709. Eminent domain

27 THIS STATE MAY EXERCISE THE POWER OF EMINENT DOMAIN TO ACQUIRE
28 PROPERTY, RIGHTS-OF-WAY OR OTHER RIGHTS IN PROPERTY FOR PROJECTS THAT ARE
29 NECESSARY TO DEVELOP, OPERATE OR HOLD AN ELIGIBLE FACILITY UNDER THIS
30 CHAPTER, REGARDLESS OF WHETHER THE PROPERTY WILL BE OWNED IN FEE SIMPLE BY
31 THIS STATE OR WHETHER THE PROPERTY WILL BE LEASED TO THE PRIVATE PARTNER TO
32 USE, LEASE OR OPERATE FOR ITS BUSINESS PURPOSES IN CONNECTION WITH THE
33 PUBLIC-PRIVATE PARTNERSHIP PROJECT.

34 28-7710. Federal laws and severability

35 A. IF NO FEDERAL MONIES ARE USED ON AN ELIGIBLE FACILITY, THE LAWS OF
36 THIS STATE, INCLUDING THIS CHAPTER, GOVERN. NOTWITHSTANDING ANY OTHER
37 PROVISION OF THIS CHAPTER, IF FEDERAL MONIES ARE USED ON AN ELIGIBLE FACILITY
38 AND APPLICABLE FEDERAL LAWS CONFLICT WITH THIS CHAPTER OR REQUIRE PROVISIONS
39 OR PROCEDURES INCONSISTENT WITH THIS CHAPTER, THE APPLICABLE FEDERAL LAWS
40 GOVERN.

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

5 Sec. 3. Conforming legislation

6 The legislative council staff shall prepare proposed legislation
7 conforming the Arizona Revised Statutes to the provisions of this chapter for
8 consideration in the forty-ninth legislature, second regular session.