

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

CHAPTER 141
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; AMENDING SECTIONS 35-701, 42-5069 AND 42-6208, ARIZONA REVISED STATUTES; 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3 Title 28, chapter 22, Arizona Revised Statutes, is repealed.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
46 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 MAY 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. CIVIL PENALTIES
27 COLLECTED PURSUANT TO THIS SUBDIVISION SHALL BE DEPOSITED IN THE STATE
28 GENERAL FUND.

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

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

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

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

37 6. ALLOCATE FINANCIAL RESPONSIBILITY FOR COST OVERRUNS.

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

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

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

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

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

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

6 13. IDENTIFY ANY DEPARTMENT SPECIFICATIONS THAT MUST BE SATISFIED,
7 INCLUDING PROVISIONS ALLOWING THE PRIVATE PARTNER TO REQUEST AND RECEIVE
8 AUTHORIZATION TO DEVIATE FROM THE SPECIFICATIONS ON MAKING A SHOWING
9 SATISFACTORY TO THE DEPARTMENT.

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

16 15. AUTHORIZE THE PRIVATE PARTNER IN ANY CONCESSION AGREEMENT TO
17 COLLECT USER FEES, TOLLS, FARES OR SIMILAR CHARGES TO COVER ITS COSTS AND
18 PROVIDE FOR A REASONABLE RATE OF RETURN ON THE PRIVATE PARTNER'S INVESTMENT,
19 INCLUDING PROVISIONS SUCH AS THE FOLLOWING:

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

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

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

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

28 (i) GENERAL PURPOSE TOLL LANES.

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

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

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

37 16. SPECIFY REMEDIES AVAILABLE AND DISPUTE RESOLUTION PROCEDURES,
38 INCLUDING THE RIGHT OF THE PRIVATE PARTNER TO INSTITUTE LEGAL PROCEEDINGS TO
39 OBTAIN AN ENFORCEABLE JUDGMENT OR AWARD AGAINST THE DEPARTMENT IN THE EVENT
40 OF A DEFAULT BY THE DEPARTMENT AND PROCEDURES FOR USE OF DISPUTE REVIEW
41 BOARDS, MEDIATION, FACILITATED NEGOTIATION, ARBITRATION AND OTHER ALTERNATIVE
42 DISPUTE RESOLUTION PROCEDURES.

43 B. NOTWITHSTANDING ANY OTHER LAW, THE DEPARTMENT MAY ENTER INTO
44 AGREEMENTS, WHETHER A CONCESSION AGREEMENT OR OTHER FORM OF AGREEMENT, WITH
45 ANY PRIVATE PARTNER THAT INCLUDES PROVISIONS DESCRIBED IN SUBSECTION A OF

1 THIS SECTION. AGREEMENTS MAY BE FOR A TERM NOT TO EXCEED FIFTY YEARS BUT MAY
2 BE EXTENDED FOR ADDITIONAL TERMS.

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

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

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

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

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

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

32 I. THE AGREEMENT SHALL CONTAIN A PROVISION THAT ALL PUBLIC-PRIVATE
33 PARTNERSHIPS ARE SUBJECT TO CHAPTER 20, ARTICLE 3 OF THIS TITLE.

34 28-7706. Funding and financing

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

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

39 2. GRANTS, LOANS, LOAN GUARANTEES, LINES OF CREDIT, REVOLVING LINES OF
40 CREDIT OR OTHER ARRANGEMENTS AVAILABLE UNDER THE TRANSPORTATION
41 INFRASTRUCTURE FINANCE AND INNOVATION ACT OF 1998 (P.L. 105-178; 112 STAT.
42 241; 23 UNITED STATES CODE SECTIONS 601 THROUGH 610) OR ANY OTHER FEDERAL OR
43 STATE LAW.

44 3. FEDERAL, STATE OR LOCAL REVENUES.

45 4. USER FEES, TOLLS, FARES, CHARGES, LEASE PROCEEDS, RENTS,
46 AVAILABILITY PAYMENTS, GROSS OR NET RECEIPTS FROM SALES, PROCEEDS FROM THE

1 SALE OF DEVELOPMENT RIGHTS, FRANCHISE FEES, PERMIT FEES OR ANY OTHER LAWFUL
2 FORM OF CONSIDERATION.

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

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

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

11 C. THE DEPARTMENT MAY ISSUE TOLL REVENUE BONDS OR NOTES TO PROVIDE
12 MONIES FOR ANY PROJECT UNDER THIS CHAPTER.

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

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

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

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

30 H. REVENUE BONDS ISSUED PURSUANT TO THIS SECTION ARE NOT GENERAL
31 OBLIGATIONS OF THIS STATE AND ARE NOT SECURED BY OR PAYABLE FROM ANY MONIES
32 OR ASSETS OF THIS STATE OTHER THAN THE MONIES AND REVENUES SPECIFICALLY
33 PLEDGED TO THE REPAYMENT OF THE REVENUE BONDS.

34 28-7707. Confidentiality and public disclosure

35 A. A PROPOSER SHALL IDENTIFY THOSE PORTIONS OF A PROPOSAL OR OTHER
36 SUBMISSION THAT THE PROPOSER CONSIDERS TO BE TRADE SECRETS OR CONFIDENTIAL
37 COMMERCIAL, FINANCIAL OR PROPRIETARY INFORMATION. IN ORDER FOR CONFIDENTIAL
38 AND PROPRIETARY INFORMATION AND TRADE SECRETS TO BE EXEMPT FROM DISCLOSURE,
39 THE PRIVATE ENTITY MUST DO ALL OF THE FOLLOWING:

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

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

44 3. STATE THE REASONS WHY PROTECTION IS NECESSARY.

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

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

15 28-7708. Government agreements

16 EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER PUBLIC SECTOR
17 PARTNER, THIS STATE MAY ENTER INTO WORKING AGREEMENTS, COORDINATION
18 AGREEMENTS OR SIMILAR IMPLEMENTATION AGREEMENTS.

19 28-7709. Eminent domain

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

27 28-7710. Federal laws and severability

28 A. IF NO FEDERAL MONIES ARE USED ON AN ELIGIBLE FACILITY, THE LAWS OF
29 THIS STATE, INCLUDING THIS CHAPTER, GOVERN. NOTWITHSTANDING ANY OTHER
30 PROVISION OF THIS CHAPTER, IF FEDERAL MONIES ARE USED ON AN ELIGIBLE FACILITY
31 AND APPLICABLE FEDERAL LAWS CONFLICT WITH THIS CHAPTER OR REQUIRE PROVISIONS
32 OR PROCEDURES INCONSISTENT WITH THIS CHAPTER, THE APPLICABLE FEDERAL LAWS
33 GOVERN.

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

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

39 35-701. Definitions

40 In this chapter, unless the context otherwise requires:

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

43 2. "Designated area" means any area of this state which is either
44 designated pursuant to section 36-1479 as a slum or blighted area as defined
45 in section 36-1471, designated by regulation as a pocket of poverty or a
46 neighborhood strategy area by the United States department of housing and

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

10 3. "Governing body" means:

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

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

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

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

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

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

43 8. "Project" means any land, any building or any other improvement and
44 all real and personal properties, including machinery and equipment whether
45 or not now in existence or under construction and whether located within or

1 without this state or the municipality or county approving the formation of
2 the corporation, that are suitable for any of the following:

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

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

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

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

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

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

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

22 (vii) Convention or trade show facilities.

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

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

28 (x) Industrial park facilities.

29 (xi) Air or water pollution control facilities.

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

38 (xiii) Research and development facilities.

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

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

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

46 (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. 4. 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 as
27 ~~provided~~ DEFINED in section ~~28-7705, subsections A and B~~ 28-7701.

28 ~~17.~~ 16. Granting or providing rights to real property that constitute
29 a profit à prendre for the severance of minerals, including all rights to use
30 the surface or subsurface of the property as is necessary or convenient to
31 the right to sever the minerals. This paragraph does not exclude from the
32 commercial lease classification leasehold rights to the real property that
33 are granted in addition to and not included within the right of profit à
34 prendre, but the tax base for the grant of such a leasehold right, if the
35 gross income derived from the grant is not separately stated from the gross
36 income derived from the grant of the profit à prendre, shall not exceed the
37 fair market value of the leasehold rights computed after excluding the value
38 of all rights under the profit à prendre. For the purposes of this
39 paragraph, "profit à prendre" means a right to use the land of another to
40 mine minerals, and carries with it the right of entry and the right to remove
41 and take the minerals from the land and also includes the right to use the
42 surface of the land as is necessary and convenient for exercise of the
43 profit.

44 D. The tax base for the commercial lease classification is the gross
45 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. 5. 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 facility that
35 is constructed or operated pursuant to title 28, chapter 22, ~~article 1 or 2~~.

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

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

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

- 1 11. Interests in property used by a chamber of commerce recognized
- 2 under section 501(c)(6) of the United States internal revenue code if the
- 3 property is used predominately for those federal tax exempt purposes.
- 4 12. Interests in property used by organizations that are exempt from
- 5 taxation under section 501(c)(3) of the internal revenue code.
- 6 13. Interests in parking garages or decks if the parking garages or
- 7 decks are owned and operated by a government lessor or operated on behalf of
- 8 a government lessor, by an entity other than the prime lessee, pursuant to a
- 9 management agreement with the government lessor.
- 10 14. Residential rentals if the prime lessee is the occupant.

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