Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

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)

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

Section 1. Repeal

Title 28, chapter 22, Arizona Revised Statutes, is repealed.

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

CHAPTER 22

PUBLIC-PRIVATE PARTNERSHIPS IN TRANSPORTATION

ARTICLE 1. GENERAL PROVISIONS

28-7701. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "CONCESSION" MEANS ANY LEASE, GROUND LEASE, FRANCHISE, EASEMENT, PERMIT OR OTHER BINDING AGREEMENT TRANSFERRING RIGHTS FOR THE USE OR CONTROL, IN WHOLE OR IN PART, OF AN ELIGIBLE FACILITY BY THE DEPARTMENT OR OTHER UNIT OF GOVERNMENT TO A PRIVATE PARTNER IN ACCORDANCE WITH THIS CHAPTER.

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

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

4. "UNIT OF GOVERNMENT" MEANS ANY AGENCY, OFFICE OR DEPARTMENT OF THIS STATE, CITY, COUNTY, DISTRICT, COMMISSION, AUTHORITY, ENTITY, PORT OR OTHER PUBLIC CORPORATION ORGANIZED AND EXISTING UNDER STATUTORY LAW OR UNDER A VOTER APPROVED CHARTER OR INITIATIVE, AND ANY INTERGOVERNMENTAL ENTITY.

28-7702. Rules and guidelines

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

28-7703. Project delivery methods

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

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

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

28-7704. Procurements

A. THE DEPARTMENT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28-7705. Public-private partnership agreements

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

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

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

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

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

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

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

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

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

6. ALLOCATE FINANCIAL RESPONSIBILITY FOR COST OVERRUNS.

7. ESTABLISH THE DAMAGES TO BE ASSESSED FOR NONPERFORMANCE.

8. ESTABLISH PERFORMANCE CRITERIA OR INCENTIVES, OR BOTH.

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

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

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

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

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

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

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

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

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

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

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

(i) GENERAL PURPOSE TOLL LANES.

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

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

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

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

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

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

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

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

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

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

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

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

28-7706. Funding and financing

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

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

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

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

3. FEDERAL, STATE OR LOCAL REVENUES.

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

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

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

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

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

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

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

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

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

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

28-7707. <u>Confidentiality and public disclosure</u>

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

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

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

3. STATE THE REASONS WHY PROTECTION IS NECESSARY.

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

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

28-7708. Government agreements

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

28-7709. Eminent domain

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

28-7710. Federal laws and severability

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

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

1 Sec. 3. Section 35-701, Arizona Revised Statutes, is amended to read:
2 35-701. Definitions
3 In this chapter, unless the context otherwise requires:
4 1. "Corporation" means any corporation organized as an authority as
5 provided in this chapter.
6 2. "Designated area" means any area of this state which is either
7 designated pursuant to section 36-1479 as a slum or blighted area as defined
8 in section 36-1471, designated by regulation as a pocket of poverty or a
9 neighborhood strategy area by the United States department of housing and
10 urban development pursuant to title I of the housing and community
11 development act of 1977 (P.L. 95-128; 42 United States Code sections 5301
12 through 5320), as amended, and the department of housing and urban
13 development act (P.L. 89-174; 42 United States Code section 3535(d)) or
14 designated by the United States department of housing and urban development
15 as an empowerment or enterprise zone pursuant to the federal omnibus budget
16 reconciliation act of 1993 (P.L. 103-66; 26 United States Code section
17 1391(g)) or an area certified as an enterprise zone pursuant to section
18 41-1524, subsection B.
19 3. "Governing body" means:
20 (a) The board or body in which the general legislative powers of the
21 municipality or the county are vested.
22 (b) The Arizona board of regents with respect to a corporation formed
23 with the permission of the Arizona board of regents.
24 4. "Income" means gross earnings from wages, salary, commissions,
25 bonuses or tips from all jobs, net earnings from such person's or family's
26 own nonfarm business, professional practice or partnership, and net earnings
27 from such person's or family's own farm. Income includes income, other than
28 earnings, that consists of amounts received from social security or railroad
29 retirement, interest, dividends, veterans payments, pensions and other
30 regular payments, public assistance or welfare payments, including aid for
31 dependent children, old age assistance, general assistance and aid to the
32 blind or totally disabled, but excluding separate payments for hospital or
33 other medical care.
34 5. "Manufactured house" means a structure that is manufactured in a
35 factory after June 15, 1976, that is delivered to a homesite in more than one
36 section and that is placed on a permanent foundation. The dimensions of the
37 completed house shall not be less than twenty feet by forty feet, the roof
38 must be sloping, the siding and roofing must be the same as those found in
39 site-built houses and the house must be eligible for thirty year real estate
40 mortgage financing.
41 6. "Municipality" or "county" means the Arizona board of regents or
42 any incorporated city or town, including charter cities, or any county in
43 this state in which a corporation may be organized and in which it is
44 contemplated the corporation will function.

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

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

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

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

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

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

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

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

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

(vii) Convention or trade show facilities.

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

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

(x) Industrial park facilities.

(xi) Air or water pollution control facilities.

(xii) Any educational institution that is operated by a nonprofit educational organization that is exempt from taxation under section 501(c)(3) of the United States internal revenue code and that is not otherwise funded by state monies, any educational institution or organization that is established under title 15, chapter 1, article 8 and that is owned by a nonprofit organization, any private nonsectarian school or any private

nonsectarian organization established for the purpose of funding a joint technological education school district.

(xiii) Research and development facilities.

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

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

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

(xvii) A museum operated by a nonprofit organization.

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

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

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

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

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

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

Sec. 4. Section 42-5069, Arizona Revised Statutes, is amended to read:

42-5069. <u>Commercial lease classification; definitions</u>

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

B. A person who, as a lessor, leases or rents for a consideration under one or more leases or rental agreements the use or occupancy of real property that is used by the lessee for commercial purposes is deemed to be engaged in business and subject to the tax imposed by article 1 of this

chapter, but this subsection does not include leases or rentals of real property used for residential or agricultural purposes.

C. The commercial lease classification does not include:

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

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

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

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

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

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

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

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

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

~~10.~~ 9. Leasing or renting dwelling units, lodging facilities or trailer or mobile home spaces if the units, facilities or spaces are intended to serve as the principal or permanent place of residence for the lessee or

renter or if the unit, facility or space is leased or rented to a single tenant thirty or more consecutive days.

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

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

(a) The lease or rental is between family members, trusts, estates, corporations, partnerships, joint venturers or similar entities, or any combination thereof, if the individuals or at least eighty per cent of the beneficiaries, shareholders, partners or joint venturers share a family relationship as parents or ancestors of parents, children or descendants of children, siblings, cousins of the first degree, aunts, uncles, nieces or nephews of the first degree, spouses of any of the listed relatives and listed relatives by the half-blood or by adoption.

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

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

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

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

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

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

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

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

~~17.~~ 16. Granting or providing rights to real property that constitute a profit à prendre for the severance of minerals, including all rights to use the surface or subsurface of the property as is necessary or convenient to the right to sever the minerals. This paragraph does not exclude from the commercial lease classification leasehold rights to the real property that are granted in addition to and not included within the right of profit à

prendre, but the tax base for the grant of such a leasehold right, if the gross income derived from the grant is not separately stated from the gross income derived from the grant of the profit à prendre, shall not exceed the fair market value of the leasehold rights computed after excluding the value of all rights under the profit à prendre. For the purposes of this paragraph, "profit à prendre" means a right to use the land of another to mine minerals, and carries with it the right of entry and the right to remove and take the minerals from the land and also includes the right to use the surface of the land as is necessary and convenient for exercise of the profit.

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

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

F. For the purposes of this section:

1. "Leasing" includes renting.

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

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

42-6208. Exempt government property improvements

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

1. Property that is used for a governmental activity.

2. Property that is used for public housing.

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

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

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

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

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

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

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

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

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

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

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

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

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.