

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

# HOUSE BILL 2479

AN ACT

AMENDING SECTIONS 35-1001 AND 35-1002, ARIZONA REVISED STATUTES; RELATING TO  
SWAP AGREEMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 35-1001, Arizona Revised Statutes, is amended to  
3 read:

4 35-1001. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Governmental entity" means this state, any county, city,  
7 town, ~~municipality~~ or other political subdivision of this state or any  
8 department, agency, board, commission, authority, ~~political subdivision,~~  
9 public corporation or other public entity of any of the foregoing or  
10 controlled by any of the foregoing, ~~provided that each of the foregoing must~~  
11 ~~comprise a geographical area with a population of at least three hundred~~  
12 ~~thousand persons according to the most recent United States decennial census~~  
13 ~~or special census.~~

14 2. "Obligations" means bonds, notes, bond anticipation notes,  
15 commercial paper or other evidences of indebtedness or lease, installment  
16 purchase or other agreements or purchasing programs or certificates of  
17 participation.

18 3. "Swap agreement" means an agreement, between a governmental entity  
19 and a financial institution, including an insurance company, A bank indemnity  
20 company or a company related to a financial institution, pursuant to which  
21 payments are to be made by the governmental entity to the financial  
22 institution and are also to be made by the financial institution to the  
23 governmental entity, and which is entered into in order to manage interest  
24 rate risk, investment risk, or commodity prices or is entered into in  
25 connection with carrying or securing of obligations of a governmental entity.

26 Sec. 2. Section 35-1002, Arizona Revised Statutes, is amended to read:

27 35-1002. Swap agreements; provisions; purposes; credit  
28 enhancement

29 A. A governmental entity may enter into, modify, amend and terminate  
30 one or more swap agreements that it determines to be necessary or desirable  
31 in connection with, or incidental to, the conduct of its activities including  
32 in connection with the issuance, carrying or securing of obligations or the  
33 acquisition or carrying of investments. A governmental entity may enter into  
34 swap agreements which are to be effective at a future date or which  
35 constitute an option to enter into swap agreements. Swap agreements entered  
36 into by a governmental entity shall contain such provisions, including  
37 payment, term, security, collateralization, termination penalty, default and  
38 remedy provisions, and shall be with such parties as the governmental entity  
39 determines to be necessary or desirable after due consideration to the  
40 creditworthiness of the parties. If the party to the swap agreement which is  
41 not the governmental entity is not rated by a nationally recognized rating  
42 agency in one of the top two rating categories of the rating agency at the  
43 time the swap agreement is entered into, the party shall collateralize its  
44 obligations under the swap agreement with securities or cash acceptable to  
45 the governmental entity. Swap agreements may be payable from revenues of a

1 utility undertaking, excise taxes, ad valorem taxes, street and highway  
2 revenues, monies that may be pledged to pay debt service on any bonds or  
3 other long-term obligations relating to the swap agreements, or any other  
4 legally available monies, as determined by the governmental entity.

5 B. A governmental entity shall not enter into a swap agreement other  
6 than for the purpose of managing an interest rate, commodity price,  
7 investment or similar risk that arises in connection with, or incidental to,  
8 the activities of the governmental entity. A governmental entity shall not  
9 carry on a business of acting as a dealer in swap agreements.

10 C. In connection with entering into any swap agreement a governmental  
11 entity may enter into agreements which enhance the governmental entity's  
12 credit in the swap agreement or enhance the liquidity of the swap agreement,  
13 including a line of credit, letter of credit, insurance policy or other  
14 security.

15 D. BEFORE ENTERING INTO A SWAP AGREEMENT, A GOVERNMENTAL ENTITY MUST:

16 1. REQUIRE ITS CHIEF FINANCIAL OFFICER TO ESTABLISH A SWAP AGREEMENT  
17 POLICY THAT SETS FORTH GUIDELINES AND PARAMETERS FOR THE USE OF SWAP  
18 AGREEMENTS THAT ARE CONSISTENT WITH RECOMMENDATIONS OF NATIONALLY RECOGNIZED  
19 RATING AGENCIES.

20 2. ENGAGE AN INDEPENDENT ADVISOR WITH AT LEAST FIVE YEARS OF EXPERTISE  
21 IN REVIEWING SWAP AGREEMENTS TO REVIEW THE PROPOSED SWAP AGREEMENT AND  
22 DETERMINE THAT THE PROPOSED SWAP AGREEMENT COMPLIES WITH THE POLICY ADOPTED  
23 PURSUANT TO PARAGRAPH 1 AND IS FISCALLY APPROPRIATE FOR THE GOVERNMENTAL  
24 ENTITY TO ENTER INTO.

25 3. RECEIVE A STATEMENT FROM THE FINANCIAL INSTITUTION WITH WHICH THE  
26 GOVERNMENTAL ENTITY IS ENTERING INTO A SWAP AGREEMENT THAT DISCLOSES THE  
27 PRICING AND TERMS OF THE PROPOSED SWAP AGREEMENT.