

FIRST REGULAR SESSION

# HOUSE BILL NO. 701

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES RUPP, BYRD, ENGLER, LUETKEMEYER, BEAN, PEARCE,  
STEFANICK, STEVENSON (Co-sponsors) AND WILSON (130).

Read 1<sup>st</sup> time March 19, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2139L.011

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### AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to tax exemptions for structured financing transactions, with an emergency clause.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 135, RSMo, is amended by adding thereto one new section, to be  
2 known as section 135.930, to read as follows:

3       **135.930. 1. This section shall be known and may be cited as the "Structured**  
4 **Financing Act".**

5       **2. As used in this section the following terms mean:**

6       **(1) "Benefits", the value of the attributes, including but not limited to tax attributes**  
7 **that would have value to an investor if that property were transferred to the investor;**

8       **(2) "Consideration", an amount of money paid to the transferring entity by an**  
9 **investor pursuant to a structured financing transaction;**

10       **(3) "Investor", a person who enters into a structured financing transaction**  
11 **pursuant to which the person agrees to pay consideration to the transferring entity in**  
12 **return for the transfer to the investor of the benefits;**

13       **(4) "Person", an individual, corporation, business trust, estate, trust, partnership,**  
14 **limited liability company, limited liability partnership, association, joint venture, or any**  
15 **other legal or commercial entity;**

16       **(5) "Property", all real, personal, mixed, tangible, or intangible property of any**  
17 **type, and all rights, easements, privileges, or interests of any kind or description in,**  
18 **relating to, or connected with property, including but not limited to land, buildings, plants,**  
**structures, institutions, water supply facilities, resource recovery facilities, sewage**  
**treatment facilities, wastewater treatment facilities, transportation facilities, highways,**

19 parking facilities, equipment, motor vehicles, rolling stock, machinery, furniture, leasehold  
20 improvements, fixtures, space rights, development rights, and air rights;

21 (6) "Structured financing agreement", an agreement, contract, or action taken to  
22 authorize, implement, and finance a structured financing transaction, including but not  
23 limited to lease and sublease agreements, sale or assignment agreements, payment account  
24 agreements, escrow deposit agreements, mortgages, security agreements, pledge  
25 agreements, trust agreements, service agreements, letter of credit agreements, operating  
26 agreements, financing agreements, credit agreements, line of credit agreements, revolving  
27 agreements, interest rate exchange agreements, insurance contracts, surety bonds,  
28 purchase or sale agreements, or commitments or other contracts or agreements entered  
29 into in connection with a structured financing transaction;

30 (7) "Structured financing transaction", a transaction, or series of transactions,  
31 evidenced by one or more structured financing agreements, pursuant to which the  
32 transferring entity transfers to an investor in return for consideration all or a portion of  
33 the transferring entity's interest in property, including but not limited to the conveyance  
34 of the property interest, in order that the investor receives all or a portion of the benefits;

35 (8) "Transfer", any transaction or proceeding through which a transferring entity  
36 conveys, leases, assigns, or otherwise disposes of property or an interest therein to an  
37 investor;

38 (9) "Transferring entity", the state, any county, city, elementary or secondary  
39 school operated at public expense, institution of higher education supported by public  
40 funds, city transit authority, city utilities board, interstate transportation authority, public  
41 mass transportation system, or other political subdivision in this state exempt from  
42 taxation for state, county, and local purposes.

43 3. Notwithstanding any other provision of law to the contrary, the transfer of  
44 property by a transferring entity to an investor for which or whom the property is not  
45 exempt immediately after the transfer, the property, and any interest created therein,  
46 regardless of who holds such interest, shall be exempt from taxation for state, county, or  
47 local purposes when the transferring entity enters into a structured financing agreement  
48 that directly or indirectly gives the transferring entity a right to use, control, and possess  
49 the property; provided, that in the event of a conveyance of such property, the transferring  
50 entity shall retain an option to purchase the property at a future date or, within the  
51 limitations period for reverters, the property shall revert to the transferring entity.  
52 Property shall no longer be exempt pursuant to this section if any of the following occurs:

53 (1) The right of the transferring entity to use, control, and possess the property is  
54 terminated;

55           **(2) The transferring entity no longer has an option to purchase or otherwise**  
56 **acquire the property; or**

57           **(3) There is no provision for reverter of the property within the limitation period**  
58 **for reverters.**

59           **4. The transferring entity may enter into a structured financing transaction on such**  
60 **terms, covenants, and conditions and at such times as the transferring entity may**  
61 **determine and execute and deliver a structured financing agreement, and may perform any**  
62 **act necessary or convenient to carrying out a structured financing transaction; provided,**  
63 **that the transferring entity shall not enter into a structured financing transaction relating**  
64 **to any property that is otherwise restricted by law, regulation, or contract with respect to**  
65 **the transfer of the transferring entity's interest in the property. A structured financing**  
66 **transaction shall not result in a change in the use or occupancy by the transferring entity**  
67 **of the property; provided, that the structured financing transaction may authorize an**  
68 **investor to have the right to exercise certain rights and remedies and to acquire certain**  
69 **interests which may interfere with or terminate the transferring entity's ownership,**  
70 **occupation, or use of the property upon the default of the transferring entity of its**  
71 **obligations under the structured financing agreement or its failure to exercise an option**  
72 **to purchase. The transferring entity shall select the investor for structured financing**  
73 **transactions, and may engage the services of financial advisors and experts, underwriters,**  
74 **appraisers, and such other advisors, legal counsel, consultants, and agents to assist in the**  
75 **structured financing transaction in accordance with applicable public procurement**  
76 **procedures.**

77           **5. (1) Except as provided in subsection 6 of this section, no consent or approval,**  
78 **other than the approval of the governing body of the transferring entity, shall be required**  
79 **to effectuate a structured financing transaction and to enter into, execute, deliver, and**  
80 **perform a structured financing agreement. Before entering into a structured financing**  
81 **transaction, the transferring entity shall transmit to the joint committee on capital**  
82 **improvements and leases oversight a preliminary report that a decision to enter a**  
83 **structured financing agreement has been made, describing the following:**

84           **(a) The anticipated consideration to be received by the transferring entity;**

85           **(b) The events that may result in the loss of control of the property subject to the**  
86 **structured financing transaction;**

87           **(c) The financial condition of the transferring entity; including its ability to pay any**  
88 **sums due under the structured financing agreement and any casualty losses; and**

89           **(d) The extent to which the obligations under a structured financing transaction**  
90 **have been defeased.**

91           **(2) The transferring entity shall, within sixty days of completing a structured**  
92 **financing transaction, provide the following to the joint committee on capital**  
93 **improvements and leases oversight:**

94           **(a) Executed copies of the operative documents for the structured financing**  
95 **transaction;**

96           **(b) Copies of all filings by the transferring entity regarding the transaction made**  
97 **with government agencies;**

98           **(c) A statement of the amount of proceeds of the transferring entity from the**  
99 **structured financing; and**

100           **(d) The total costs of the transaction, including but not limited to all fees paid by**  
101 **the transferring entity and the investor of their related parties to any broker, arranger,**  
102 **financial institution, legal counsel, appraiser, or other consultant or advisor.**

103           **6. (1) For all transferring entities that are instrumentalities of the state, before**  
104 **entering into a structured financing transaction, the transferring entity shall transmit to**  
105 **the joint committee on capital improvements and leases oversight a preliminary report that**  
106 **a decision to enter a structured financing agreement has been made, describing the**  
107 **following:**

108           **(a) The anticipated consideration to be received by the transferring entity;**

109           **(b) The events that may result in the loss of control of the property subject to the**  
110 **structured financing transaction;**

111           **(c) The financial condition of the transferring entity, including its ability to pay any**  
112 **sums due under the structured financing agreement and any casualty losses; and**

113           **(d) The extent to which the obligations under a structured financing transaction**  
114 **have been defeased.**

115           **(2) The joint committee on capital improvements and leases oversight shall consider**  
116 **the structured financing transaction within sixty business days after physical receipt of the**  
117 **preliminary report. The joint committee shall notify the transferring entity in writing of**  
118 **its approval or disapproval. No structured financing transaction shall be entered into**  
119 **unless the preliminary report has been approved by the joint committee.**

120           **(3) The transferring entity shall, within sixty business days of completing a**  
121 **structured financing transaction, provide the following to the joint committee and the**  
122 **director of the division of budget and planning:**

123           **(a) Executed copies of the operative documents for the structured financing**  
124 **transaction;**

125           **(b) Copies of all filings by the transferring entity regarding the transaction made**  
126 **with government agencies;**

127           (c) A statement of the amount of proceeds of the transferring entity from the  
128 structured financing; and

129           (d) The total costs of the transaction, including but not limited to all fees paid by  
130 the transferring entity and the investor of their related parties to any broker, arranger,  
131 financial institution, legal counsel, appraiser, or other consultant or advisor.

132           7. An obligation of a transferring entity to make payments pursuant to a structured  
133 financing transaction shall not constitute a general obligation of the state or a debt or a  
134 liability as defined in the Constitution of Missouri. No person shall be deemed to be doing  
135 business, or employing or owning capital or property in this state, for purposes of taxation  
136 or service of process, by reason of the entry into and performance of a structured financing  
137 agreement. This section shall not be construed to limit, alter, or impair in any way the  
138 rights and obligations of the transferring entity under the provisions of contracts made  
139 from time to time with the holders of bonds, notes, and other obligations issued before or  
140 after the effective date of this section by the transferring entity with respect to property  
141 that is the subject of a structured financing transaction.

Section B. Because immediate action is necessary to protect the economic welfare of the  
2 citizens of this state, section A of this act is deemed necessary for the immediate preservation  
3 of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act  
4 within the meaning of the constitution, and section A of this act shall be in full force and effect  
5 upon its passage and approval.