

House Engrossed

dredge; fill; permits; clean up

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
Second Regular Session  
2024

# HOUSE BILL 2369

AN ACT

AMENDING SECTIONS 17-265, 35-142, 49-104, 49-203, 49-261, 49-262 AND  
49-263.01, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF  
ENVIRONMENTAL QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 17-265, Arizona Revised Statutes, is amended to  
3 read:

4 17-265. Game and fish in-lieu fee program restoration  
5 endowment trust fund; exemption; definition

6 A. The game and fish in-lieu fee program restoration endowment  
7 trust fund is established to be used to fulfill the department's  
8 obligations as an in-lieu fee sponsor pursuant to sections 401 and 404 of  
9 the clean water act ~~or pursuant to title 49, chapter 2, article 3.2~~. The  
10 commission shall administer the trust fund as trustee.

11 B. The trust fund is a permanent endowment fund that consists of  
12 monies deposited from proceeds received by the department as an in-lieu  
13 fee sponsor pursuant to sections 401 and 404 of the clean water act ~~or~~  
14 ~~pursuant to title 49, chapter 2, article 3.2~~, and interest and investment  
15 income earned on those monies, including:

16 1. Compensatory mitigation monies received from in-lieu fee  
17 permittees through the purchase of in-lieu fee mitigation credits.

18 2. Monies received from the United States army corps of engineers  
19 for other approved in-lieu fee programs.

20 3. Monies received from the United States army corps of engineers  
21 as a resolution of unauthorized activities under a completed federal  
22 enforcement action that does not involve department personnel pursuant to  
23 sections 401 and 404 of the clean water act.

24 C. Monies in the trust fund are continuously appropriated. Monies  
25 in the trust fund do not revert to the state general fund and are exempt  
26 from the provisions of section 35-190 relating to lapsing of  
27 appropriations.

28 D. The state treasurer shall accept, separately account for and  
29 hold in trust any trust fund monies deposited pursuant to this section in  
30 the state treasury, which are considered to be trust monies as defined in  
31 section 35-310 and which may not be commingled with any other monies in  
32 the state treasury except for investment purposes. On notice from the  
33 commission, the state treasurer shall invest and divest, as provided by  
34 section 35-313, 35-314 or 35-314.03, any trust fund monies deposited in  
35 the state treasury, and monies earned from interest and investment income  
36 shall be credited to the trust fund.

37 E. The beneficiaries of the trust are the in-lieu fee projects  
38 sponsored by the department pursuant to sections 401 and 404 of the clean  
39 water act ~~or pursuant to title 49, chapter 2, article 3.2~~.

40 F. Monies in the trust fund shall be spent by the commission solely  
41 for the following:

42 1. The purposes authorized under any enabling instrument between  
43 the commission, the United States army corps of engineers and the United  
44 States environmental protection agency ~~or pursuant to an enabling~~  
45 ~~instrument executed under title 49, chapter 2, article 3.2~~.

1           2. Site selection, design, implementation, monitoring, management  
2 and administrative costs related to the department's responsibilities as  
3 an in-lieu fee sponsor pursuant to sections 401 and 404 of the clean water  
4 act ~~or pursuant to title 49, chapter 2, article 3.2.~~

5           G. For the purposes of this section, "clean water act" has the same  
6 meaning prescribed in section 49-201.

7           Sec. 2. Section 35-142, Arizona Revised Statutes, is amended to  
8 read:

9           35-142. Monies kept in funds separate from state general  
10           fund; receipt and withdrawal

11           A. All monies received for and belonging to ~~the~~ THIS state shall be  
12 deposited in the state treasury and credited to the state general fund  
13 except the following, which shall be placed and retained in separate  
14 funds:

15           1. The unexpendable principal of monies received from federal land  
16 grants shall be placed in separate funds, and the account of each separate  
17 fund shall bear a title indicating the source and the institution or  
18 purpose to which the fund belongs.

19           2. The interest, rentals and other expendable monies received as  
20 income from federal land grants shall be placed in separate accounts, each  
21 account bearing a title indicating the source and the institution or  
22 purpose to which the fund belongs. Such expendable monies shall be  
23 expended only as authorized, regulated and controlled by the general  
24 appropriations act or other act of the legislature.

25           3. All private or quasi-private monies authorized by law to be paid  
26 to or held by the state treasurer shall be placed in separate accounts,  
27 each account bearing a title indicating the source and purpose of the  
28 fund.

29           4. All monies legally pledged to retire building indebtedness or  
30 bonds issued by those institutions authorized to incur such indebtedness  
31 or to issue such bonds shall be placed in separate accounts.

32           5. Monies of a multi-county water conservation district authorized  
33 by law to be paid to or held by the state treasurer shall be placed in  
34 separate accounts, each account bearing a title indicating the source and  
35 purpose of the fund.

36           6. All monies collected by the Arizona game and fish department  
37 shall be deposited in a special fund known as the state game and fish  
38 protection fund for the use of the Arizona game and fish commission in  
39 carrying out title 17.

40           7. All federal monies that are received by the department of  
41 economic security for family assistance benefits and medical eligibility  
42 as a result of efficiencies developed by the department of economic  
43 security and that would otherwise revert to the state general fund  
44 pursuant to section 35-190 shall be retained for use by the department of  
45 economic security in accordance with the terms and conditions imposed by

1 the federal funding source in an account or accounts established or  
2 authorized by the state treasurer.

3 8. Monies designated by law as special state funds shall not be  
4 considered a part of the state general fund. Unless otherwise prescribed  
5 by law, the state treasurer ~~shall be~~ IS the custodian of all such funds.

6 9. All monies received and any accounts established and maintained  
7 by the director of the Arizona state retirement system or the  
8 administrator of the public safety personnel retirement system, the  
9 corrections officer retirement plan and the elected officials' retirement  
10 plan.

11 10. Monies received by a state agency or institution as a gift,  
12 devise or donation shall not be considered a part of the state general  
13 fund or transferred to the state general fund unless the gift, devise or  
14 donation specifically authorizes a general state use for the monies. A  
15 state agency or institution that receives a monetary gift, devise or  
16 donation shall account for those monies separately.

17 11. All monies received by the Arizona game and fish commission in  
18 connection with clean water act in-lieu fee projects shall be deposited in  
19 a special trust fund, known as the game and fish in-lieu fee program  
20 restoration endowment trust fund, established by section 17-265 for the  
21 use of the Arizona game and fish commission solely for the following:

22 (a) The purposes authorized under any enabling instrument between  
23 the commission ~~and the department of environmental quality or between the~~  
24 ~~commission~~, the United States army corps of engineers and the United  
25 States environmental protection agency.

26 (b) Site selection, design, implementation, monitoring, management  
27 and administrative costs related to the Arizona game and fish department's  
28 responsibilities as an in-lieu fee sponsor pursuant to sections 401 and  
29 404 of the clean water act.

30 B. Monies shall not be received or held by the state treasurer  
31 except as authorized by law, and in every instance the treasurer shall  
32 issue a receipt for monies received and shall record the transaction in  
33 the statewide accounting system. Monies shall not be withdrawn from the  
34 treasury except on the warrant, check or substitute check, or electronic  
35 funds transfer voucher of the department of administration.

36 C. Monies received for and belonging to this state and resulting  
37 from compromises or settlements by or against this state, excluding  
38 restitution and reimbursement to state agencies for costs or attorney  
39 fees, shall be credited to the state general fund unless specifically  
40 credited to another fund by law. A fund consisting of monies other than  
41 monies received for restitution, costs or attorney fees shall not be  
42 established by a court order without prior legislative authorization. For  
43 the purposes of this subsection, "restitution" means monies intended to  
44 compensate a specific, identifiable person, including this state, for  
45 economic loss.

1           D. All federal monies granted and paid to this state by the federal  
2 government shall be accounted for in the accounts or funds of this state  
3 in the necessary detail to meet federal and state accounting, budgetary  
4 and auditing requirements, and all appropriations for matching such  
5 federal monies shall be transferred from the state general fund to such  
6 separate funds as needed, except as otherwise required by the federal  
7 government.

8           E. This section does not require the establishment of separate  
9 accounts or funds for such federal monies unless otherwise required by  
10 federal or state law. The department of administration may use the most  
11 efficient system of accounts and records, consistent with legal  
12 requirements and standard and necessary fiscal safeguards.

13           F. This section does not preclude the department of administration  
14 from establishing a clearing account or other acceptable accounting method  
15 to effect prompt payment of claims from an approved budget or  
16 appropriation. The department of administration shall report each account  
17 or fund established or cancelled to the directors of the joint legislative  
18 budget committee and the governor's office of strategic planning and  
19 budgeting.

20           G. This section and any other section do not preclude the use of  
21 monies kept in funds separate from the state general fund, the interest  
22 from which accrues to the state general fund, to pay claims against the  
23 state general fund if sufficient monies remain available to pay claims  
24 against such funds.

25           H. The department of administration may issue warrants, checks or  
26 electronic funds transfer vouchers for qualified expenditures of federal  
27 program monies before they are deposited in the state treasury. The  
28 receipt of federal monies shall be timed to coincide, as closely as  
29 administratively feasible, with the redemption of warrants, checks or  
30 substitute checks, or electronic funds transfer vouchers by the state  
31 treasurer. The department of administration shall limit expenditures to  
32 the amount that has been made available to use under the grant award by  
33 the federal government. The state agency initiating the expenditures is  
34 responsible for ensuring that expenditures qualify for coverage under the  
35 guidelines of the federal grant award.

36           I. The department of administration shall establish policies and  
37 procedures for all state agencies for drawing federal monies. When the  
38 established method results in federal monies being held by this state, the  
39 department of administration may use the interest earned on the monies to  
40 pay the federal government for any related interest liability. If an  
41 interest liability is incurred due to a state agency varying from the  
42 established policies and procedures, the department of administration  
43 shall charge the appropriate agency account or fund. Any federal interest  
44 liability owed to this state resulting from the delayed federal  
45 disbursements shall be used to offset this state's interest liability to

1 the federal government. Any remaining interest earnings shall be  
2 deposited in the state general fund.

3 J. Any state agency or authorized agent of a state agency may  
4 accept credit cards pursuant to an agreement entered into by the state  
5 treasurer pursuant to section 35-315 to pay any amount due to that agency  
6 or agent or this state.

7 K. Except for the department of revenue, agencies or authorized  
8 agents on behalf of state agencies that accept credit cards shall deduct  
9 any applicable discount fee and processing fee associated with the  
10 transaction amount before depositing the net amount in the appropriate  
11 state fund. No other reduction is ~~permitted~~ ALLOWED against the  
12 transaction amount. The net amount deposited in the appropriate state  
13 fund shall be considered as the full deposit required by law of monies  
14 received by the agency or the authorized agent. Payment of any applicable  
15 discount fee and processing fee shall be accounted for in the annual  
16 report submitted to the governor's office of strategic planning and  
17 budgeting in accordance with section 41-1273. The transaction amount of  
18 any credit card transaction shall not be reduced by any discount fee or  
19 processing fee in an amount of more than the merchant card settlement fees  
20 reflected in the state banking contract with the state treasurer's office.

21 L. Any state agency that contracts with an authorized agent to  
22 electronically process transactions pursuant to title 41, chapter 23 may  
23 include a provision in the contract to allow the authorized agent to  
24 impose a convenience fee or a service fee or surcharge. If allowed, the  
25 convenience fee or the service fee or surcharge shall be charged to the  
26 cardholder in addition to the transaction amount, except for the  
27 following:

28 1. Except as provided in subsection R of this section, any permits,  
29 licenses or other authorizations needed to pursue a trade or occupation in  
30 this state.

31 2. Except as provided in subsection R of this section, any permits,  
32 licenses or other authorizations needed to establish, expand or operate a  
33 business in this state.

34 3. Except as provided in subsection R of this section, any permits,  
35 licenses or other authorizations needed to register a vehicle or license a  
36 driver in this state.

37 M. Each state agency or its authorized agent shall:

38 1. Deduct the amount of the convenience fee or the service fee or  
39 surcharge before depositing the transaction amount or the transaction  
40 amount reduced by the discount fee or the processing fee, or both, into  
41 the appropriate state fund.

42 2. Not deduct any part of the convenience fee or the service fee or  
43 surcharge from the transaction amount before depositing the net amount  
44 into the appropriate state fund.

1           3. Deduct the amount of the discount fee or the processing fee, or  
2 both, from the transaction amount before depositing the net amount into  
3 the appropriate state fund.

4           N. The net amount deposited in the appropriate state fund pursuant  
5 to subsection L or M of this section shall be considered as the full  
6 deposit of monies that is required by law and that is received by the  
7 agency.

8           O. Before charging a convenience fee or a service fee or surcharge,  
9 a state agency shall submit the proposed convenience fee or the proposed  
10 service fee or surcharge to the state treasurer for approval. If the  
11 state treasurer determines that the proposed convenience fee or the  
12 proposed service fee or surcharge is necessary to ensure the efficient  
13 processing of payments to the state agency and complies with the standards  
14 of the credit card industry, the state treasurer shall approve the  
15 convenience fee or the service fee or surcharge. Notwithstanding section  
16 35-142.01, convenience fees received by a state agency or its authorized  
17 agent may be used to offset the costs imposed by the authorized agent in  
18 processing the transactions.

19           P. When the percentage of electronic transactions first exceeds at  
20 least thirty percent of a state agency's total transactions, the state  
21 agency shall perform a cost benefit report, including costs of convenience  
22 fees or the service fee or surcharge, the amount of revenue generated and  
23 any realized cost savings.

24           Q. This section and any other provision of law do not authorize any  
25 state agency, authorized agent of any state agency or budget unit to  
26 establish a bank account for any government monies. All monies received  
27 by or on behalf of this state shall be deposited with and in the custody  
28 of the state treasurer or in an account that is authorized by the state  
29 treasurer pursuant to this section. This subsection does not apply to  
30 monies received and any accounts established and maintained by the  
31 director of the Arizona state retirement system or the administrator of  
32 the public safety personnel retirement system, the corrections officer  
33 retirement plan and the elected officials' retirement plan.

34           R. If a state agency provides an alternative method of payment, the  
35 convenience fee or the service fee or surcharge may be charged to the  
36 cardholder in addition to the transaction amount.

37           Sec. 3. Section 49-104, Arizona Revised Statutes, is amended to  
38 read:

39           49-104. Powers and duties of the department and director

40           A. The department shall:

41           1. Formulate policies, plans and programs to implement this title  
42 to protect the environment.

43           2. Stimulate and encourage all local, state, regional and federal  
44 governmental agencies and all private persons and enterprises that have  
45 similar and related objectives and purposes, cooperate with those

- 1 agencies, persons and enterprises and correlate department plans, programs  
2 and operations with those of the agencies, persons and enterprises.
- 3 3. Conduct research on its own initiative or at the request of the  
4 governor, the legislature or state or local agencies pertaining to any  
5 department objectives.
- 6 4. Provide information and advice on request of any local, state or  
7 federal agencies and private persons and business enterprises on matters  
8 within the scope of the department.
- 9 5. Consult with and make recommendations to the governor and the  
10 legislature on all matters concerning department objectives.
- 11 6. Promote and coordinate the management of air resources to ensure  
12 their protection, enhancement and balanced utilization consistent with the  
13 environmental policy of this state.
- 14 7. Promote and coordinate the protection and enhancement of the  
15 quality of water resources consistent with the environmental policy of  
16 this state.
- 17 8. Encourage industrial, commercial, residential and community  
18 development that maximizes environmental benefits and minimizes the  
19 effects of less desirable environmental conditions.
- 20 9. Ensure the preservation and enhancement of natural beauty and  
21 man-made scenic qualities.
- 22 10. Provide for the prevention and abatement of all water and air  
23 pollution including that related to particulates, gases, dust, vapors,  
24 noise, radiation, odor, nutrients and heated liquids in accordance with  
25 article 3 of this chapter and chapters 2 and 3 of this title.
- 26 11. Promote and recommend methods for the recovery, recycling and  
27 reuse or, if recycling is not possible, the disposal of solid wastes  
28 consistent with sound health, scenic and environmental quality policies.  
29 The department shall report annually on its revenues and expenditures  
30 relating to the solid and hazardous waste programs overseen or  
31 administered by the department.
- 32 12. Prevent pollution through ~~the regulation of~~ REGULATING the  
33 storage, handling and transportation of solids, liquids and gases that may  
34 cause or contribute to pollution.
- 35 13. Promote the restoration and reclamation of degraded or  
36 despoiled areas and natural resources.
- 37 14. Participate in the state civil defense program and develop the  
38 necessary organization and facilities to meet wartime or other disasters.
- 39 15. Cooperate with the Arizona-Mexico commission in the governor's  
40 office and with researchers at universities in this state to collect data  
41 and conduct projects in the United States and Mexico on issues that are  
42 within the scope of the department's duties and that relate to quality of  
43 life, trade and economic development in this state in a manner that will  
44 help the Arizona-Mexico commission to assess and enhance the economic  
45 competitiveness of this state and of the Arizona-Mexico region.

1           16. Unless specifically authorized by the legislature, ensure that  
2 state laws, rules, standards, permits, variances and orders are adopted  
3 and construed to be consistent with and ~~no~~ NOT more stringent than the  
4 corresponding federal law that addresses the same subject matter. This  
5 paragraph does not adversely affect standards adopted by an Indian tribe  
6 under federal law.

7           17. Provide administrative and staff support for the oil and gas  
8 conservation commission.

9           B. The department, through the director, shall:

10           1. Contract for the services of outside advisers, consultants and  
11 aides reasonably necessary or desirable to enable the department to  
12 adequately perform its duties.

13           2. Contract and incur obligations reasonably necessary or desirable  
14 within the general scope of department activities and operations to enable  
15 the department to adequately perform its duties.

16           3. ~~Utilize~~ USE any medium of communication, publication and  
17 exhibition when disseminating information, advertising and publicity in  
18 any field of its purposes, objectives or duties.

19           4. Adopt procedural rules that are necessary to implement the  
20 authority granted under this title, but that are not inconsistent with  
21 other provisions of this title.

22           5. Contract with other agencies, including laboratories, in  
23 furthering any department program.

24           6. Use monies, facilities or services to provide matching  
25 contributions under federal or other programs that further the objectives  
26 and programs of the department.

27           7. Accept gifts, grants, matching monies or direct payments from  
28 public or private agencies or private persons and enterprises for  
29 department services and publications and to conduct programs that are  
30 consistent with the general purposes and objectives of this chapter.  
31 Monies received pursuant to this paragraph shall be deposited in the  
32 department fund corresponding to the service, publication or program  
33 provided.

34           8. Provide for the examination of any premises if the director has  
35 reasonable cause to believe that a violation of any environmental law or  
36 rule exists or is being committed on the premises. The director shall  
37 give the owner or operator the opportunity for its representative to  
38 accompany the director on an examination of those premises. Within  
39 forty-five days after the date of the examination, the department shall  
40 provide to the owner or operator a copy of any report produced as a result  
41 of any examination of the premises.

42           9. Supervise sanitary engineering facilities and projects in this  
43 state, authority for which is vested in the department, and own or lease  
44 land on which sanitary engineering facilities are located, and operate the

1 facilities, if the director determines that owning, leasing or operating  
2 is necessary for the public health, safety or welfare.

3 10. Adopt and enforce rules relating to approving design documents  
4 for constructing, improving and operating sanitary engineering and other  
5 facilities for disposing of solid, liquid or gaseous deleterious matter.

6 11. Define and prescribe reasonably necessary rules regarding the  
7 water supply, sewage disposal and garbage collection and disposal for  
8 subdivisions. The rules shall:

9 (a) Provide for minimum sanitary facilities to be installed in the  
10 subdivision and may require that water systems plan for future needs and  
11 be of adequate size and capacity to deliver specified minimum quantities  
12 of drinking water and to treat all sewage.

13 (b) Provide that the design documents showing or describing the  
14 water supply, sewage disposal and garbage collection facilities be  
15 submitted with a fee to the department for review and that no lots in any  
16 subdivision be offered for sale before compliance with the standards and  
17 rules has been demonstrated by approval of the design documents by the  
18 department.

19 12. Prescribe reasonably necessary measures to prevent pollution of  
20 water used in public or semipublic swimming pools and bathing places and  
21 to prevent deleterious conditions at those places. The rules shall  
22 prescribe minimum standards for the design of and for sanitary conditions  
23 at any public or semipublic swimming pool or bathing place and provide for  
24 abatement as public nuisances of premises and facilities that do not  
25 comply with the minimum standards. The rules shall be developed in  
26 cooperation with the director of the department of health services and  
27 shall be consistent with the rules adopted by the director of the  
28 department of health services pursuant to section 36-136, subsection I,  
29 paragraph 10.

30 13. Prescribe reasonable rules regarding sewage collection,  
31 treatment, disposal and reclamation systems to prevent the transmission of  
32 sewage borne or insect borne diseases. The rules shall:

33 (a) Prescribe minimum standards for the design of sewage collection  
34 systems and treatment, disposal and reclamation systems and for operating  
35 the systems.

36 (b) Provide for inspecting the premises, systems and installations  
37 and for abating as a public nuisance any collection system, process,  
38 treatment plant, disposal system or reclamation system that does not  
39 comply with the minimum standards.

40 (c) Require that design documents for all sewage collection  
41 systems, sewage collection system extensions, treatment plants, processes,  
42 devices, equipment, disposal systems, on-site wastewater treatment  
43 facilities and reclamation systems be submitted with a fee for review to  
44 the department and may require that the design documents anticipate and  
45 provide for future sewage treatment needs.

1 (d) Require that construction, reconstruction, installation or  
2 initiation of any sewage collection system, sewage collection system  
3 extension, treatment plant, process, device, equipment, disposal system,  
4 on-site wastewater treatment facility or reclamation system conform with  
5 applicable requirements.

6 14. Prescribe reasonably necessary rules regarding excreta storage,  
7 handling, treatment, transportation and disposal. The rules may:

8 (a) Prescribe minimum standards for human excreta storage,  
9 handling, treatment, transportation and disposal and shall provide for  
10 inspection of premises, processes and vehicles and for abating as public  
11 nuisances any premises, processes or vehicles that do not comply with the  
12 minimum standards.

13 (b) Provide that vehicles transporting human excreta from privies,  
14 septic tanks, cesspools and other treatment processes ~~shall~~ be licensed by  
15 the department subject to compliance with the rules. The department may  
16 require payment of a fee as a condition of licensure. The department may  
17 establish by rule a fee as a condition of licensure, including a maximum  
18 fee. As part of the rulemaking process, there must be public notice and  
19 comment and a review of the rule by the joint legislative budget  
20 committee. The department shall not increase that fee by rule without  
21 specific statutory authority for the increase. The fees shall be  
22 deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee  
23 fund established by section 49-881.

24 15. Perform the responsibilities of implementing and maintaining a  
25 data automation management system to support the reporting requirements of  
26 title III of the superfund amendments and reauthorization act of 1986  
27 (P.L. 99-499) and article 2 of this chapter.

28 16. Approve remediation levels pursuant to article 4 of this  
29 chapter.

30 17. Establish or revise fees by rule pursuant to the authority  
31 granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this  
32 title for the department to adequately perform its duties. All fees shall  
33 be fairly assessed and impose the least burden and cost to the parties  
34 subject to the fees. In establishing or revising fees, the department  
35 shall base the fees on:

36 (a) The direct and indirect costs of the department's relevant  
37 duties, including employee salaries and benefits, professional and outside  
38 services, equipment, in-state travel and other necessary operational  
39 expenses directly related to issuing licenses as defined in title 41,  
40 chapter 6 and enforcing the requirements of the applicable regulatory  
41 program.

42 (b) The availability of other funds for the duties performed.

43 (c) The impact of the fees on the parties subject to the fees.

1 (d) The fees charged for similar duties performed by the  
2 department, other agencies and the private sector.

3 18. Appoint a person with a background in oil and gas conservation  
4 to act on behalf of the oil and gas conservation commission and administer  
5 and enforce the applicable provisions of title 27, chapter 4 relating to  
6 the oil and gas conservation commission.

7 C. The department may:

8 1. Charge fees to cover the costs of all permits and inspections it  
9 performs to ensure compliance with rules adopted under section  
10 49-203, ~~except that state agencies are exempt from paying those~~ THE fees  
11 ~~that are not associated with the dredge and fill permit program~~  
12 ~~established pursuant to chapter 2, article 3.2 of this title. For~~  
13 ~~services provided under the dredge and fill permit program, a state agency~~  
14 ~~shall pay either:~~

15 ~~(a) The fees established by the department under the dredge and~~  
16 ~~fill permit program.~~

17 ~~(b) The reasonable cost of services provided by the department~~  
18 ~~pursuant to an interagency service agreement.~~

19 2. Monies collected pursuant to this subsection shall be deposited,  
20 pursuant to sections 35-146 and 35-147, in the water quality fee fund  
21 established by section 49-210.

22 3. Contract with private consultants for the purposes of assisting  
23 the department in reviewing applications for licenses, permits or other  
24 authorizations to determine whether an applicant meets the criteria for  
25 issuance of the license, permit or other authorization. If the department  
26 contracts with a consultant under this paragraph, an applicant may request  
27 that the department expedite the application review by requesting that the  
28 department use the services of the consultant and by agreeing to pay the  
29 department the costs of the consultant's services. Notwithstanding any  
30 other law, monies paid by applicants for expedited reviews pursuant to  
31 this paragraph are appropriated to the department for use in paying  
32 consultants for services.

33 D. The director may:

34 1. If the director has reasonable cause to believe that a violation  
35 of any environmental law or rule exists or is being committed, inspect any  
36 person or property in transit through this state and any vehicle in which  
37 the person or property is being transported and detain or disinfect the  
38 person, property or vehicle as reasonably necessary to protect the  
39 environment if a violation exists.

40 2. Authorize in writing any qualified officer or employee in the  
41 department to perform any act that the director is authorized or required  
42 to do by law.

1           Sec. 4. Section 49-203, Arizona Revised Statutes, is amended to  
2 read:

3           49-203. Powers and duties of the director and department

4           A. The director shall:

5           1. Adopt, by rule, water quality standards in the form and subject  
6 to the considerations prescribed by article 2 of this chapter.

7           2. Adopt, by rule, a permit program for WOTUS that is consistent  
8 with but not more stringent than the requirements of the clean water act  
9 for the point source discharge of any pollutant or combination of  
10 pollutants into WOTUS. The program and the rules shall be sufficient to  
11 enable this state to administer the permit program identified in section  
12 402(b) of the clean water act, including the sewage sludge requirements of  
13 section 405 of the clean water act and as prescribed by article 3.1 of  
14 this chapter.

15           3. Apply the program and rules authorized under paragraph 2 of this  
16 subsection to point source discharges to non-WOTUS protected surface  
17 waters, consistent with section 49-255.04, which establishes the program  
18 components and rules that do not apply to non-WOTUS protected surface  
19 waters. The following are exempt from the non-WOTUS protected surface  
20 waters point source discharge program:

21           (a) Discharges to a non-WOTUS protected surface water incidental to  
22 a recharge project.

23           (b) Established or ongoing farming, ranching and silviculture  
24 activities such as plowing, seeding, cultivating, minor drainage or  
25 harvesting for the production of food, fiber or forest products or upland  
26 soil and water conservation practices.

27           (c) Maintenance but not construction of drainage ditches.

28           (d) Construction and maintenance of irrigation ditches.

29           (e) Maintenance of structures such as dams, dikes and levees.

30           4. Adopt, by rule, a program to control nonpoint source discharges  
31 of any pollutant or combination of pollutants into WOTUS.

32           5. Adopt, by rule, an aquifer protection permit program to control  
33 discharges of any pollutant or combination of pollutants that are reaching  
34 or may with a reasonable probability reach an aquifer. The permit program  
35 shall be as prescribed by article 3 of this chapter.

36           6. Adopt, by rule, the permit program for underground injection  
37 control described in the safe drinking water act.

38           7. Adopt, by rule, technical standards for conveyances of reclaimed  
39 water and a permit program for the direct reuse of reclaimed water.

40           8. Adopt, by rule or as permit conditions, discharge limitations,  
41 best management practice standards, new source performance standards,  
42 toxic and pretreatment standards and other standards and conditions as  
43 reasonable and necessary to carry out the permit programs and regulatory  
44 duties described in paragraphs 2 through 6 of this subsection.

1           9. Assess and collect fees to revoke, issue, deny, modify or  
2 suspend permits issued pursuant to this chapter and to process permit  
3 applications. The director may also assess and collect costs reasonably  
4 necessary if the director must conduct sampling or monitoring relating to  
5 a facility because the owner or operator of the facility has refused or  
6 failed to do so on order by the director. The director shall set fees  
7 that are reasonably related to the department's costs of providing the  
8 service for which the fee is charged. Monies collected from aquifer  
9 protection permit fees and from Arizona pollutant discharge elimination  
10 system permit fees shall be deposited, pursuant to sections 35-146 and  
11 35-147, in the water quality fee fund established by section 49-210.  
12 Monies from other permit fees shall be deposited, pursuant to sections  
13 35-146 and 35-147, in the water quality fee fund unless otherwise provided  
14 by law. Monies paid by an applicant for review by consultants for the  
15 department pursuant to section 49-241.02, subsection B shall be deposited,  
16 pursuant to sections 35-146 and 35-147, in the water quality fee fund  
17 established by section 49-210. State agencies are exempt from all fees  
18 imposed pursuant to this chapter ~~except for those fees associated with the~~  
19 ~~dredge and fill permit program established pursuant to article 3.2 of this~~  
20 ~~chapter. For services provided under the dredge and fill permit program,~~  
21 ~~a state agency shall pay either:~~

22           ~~(a) The fees established by the department under the dredge and~~  
23 ~~fill permit program.~~

24           ~~(b) The reasonable cost of services provided by the department~~  
25 ~~pursuant to an interagency service agreement.~~

26           10. Adopt, modify, repeal and enforce other rules that are  
27 reasonably necessary to carry out the director's functions under this  
28 chapter.

29           11. Require monitoring at an appropriate point of compliance for  
30 any organic or inorganic pollutant listed under section 49-243,  
31 subsection I if the director has reason to suspect the presence of the  
32 pollutant in a discharge.

33           12. Adopt rules establishing what constitutes a significant  
34 increase or adverse alteration in the characteristics or volume of  
35 pollutants discharged for purposes of determining what constitutes a major  
36 modification to an existing facility under the definition of new facility  
37 pursuant to section 49-201. Before ~~the adoption of~~ ADOPTING these rules,  
38 the director shall determine whether a change at a particular facility  
39 results in a significant increase or adverse alteration in the  
40 characteristics or volume of pollutants discharged on a case-by-case  
41 basis, taking into account site conditions and operational factors.

42           13. Consider evidence gathered by the Arizona navigable stream  
43 adjudication commission established by section 37-1121 when deciding  
44 whether a permit is required to discharge pursuant to article 3.1 of this  
45 chapter.

- 1           B. The director may:
- 2           1. On presentation of credentials, enter into, on or through any
- 3 public or private property from which a discharge has occurred, is
- 4 occurring or may occur or on which any disposal, land application of
- 5 sludge or treatment regulated by this chapter has occurred, is occurring
- 6 or may be occurring and any public or private property where records
- 7 relating to a discharge or records that are otherwise required to be
- 8 maintained as prescribed by this chapter are kept, as reasonably necessary
- 9 to ensure compliance with this chapter. The director or a department
- 10 employee may take samples, inspect and copy records required to be
- 11 maintained pursuant to this chapter, inspect equipment, activities,
- 12 facilities and monitoring equipment or methods of monitoring, take
- 13 photographs and take other action reasonably necessary to determine the
- 14 application of, or compliance with, this chapter. The owner or managing
- 15 agent of the property shall be afforded the opportunity to accompany the
- 16 director or department employee during inspections and investigations, but
- 17 prior notice of entry to the owner or managing agent is not required if
- 18 reasonable grounds exist to believe that notice would frustrate the
- 19 enforcement of this chapter. If the director or department employee
- 20 obtains any samples before leaving the premises, the director or
- 21 department employee shall give the owner or managing agent a receipt
- 22 describing the samples obtained and a portion of each sample equal in
- 23 volume or weight to the portion retained. If an analysis is made of
- 24 samples, or monitoring and testing are performed, a copy of the results
- 25 shall be furnished promptly to the owner or managing agent.
- 26           2. Require any person who has discharged, is discharging or may
- 27 discharge into the waters of the state under article 3, 3.1, ~~3.2~~ or 3.3 of
- 28 this chapter and any person who is subject to pretreatment standards and
- 29 requirements or sewage sludge use or disposal requirements under article
- 30 3.1 of this chapter to collect samples, to establish and maintain records,
- 31 including photographs, and to install, use and maintain sampling and
- 32 monitoring equipment to determine the absence or presence and nature of
- 33 the discharge or indirect discharge or sewage sludge use or disposal.
- 34           3. Administer state or federal grants, including grants to
- 35 political subdivisions of this state, for the construction and
- 36 installation of publicly and privately owned pollutant treatment works and
- 37 pollutant control devices and establish grant application priorities.
- 38           4. Develop, implement and administer a water quality planning
- 39 process, including a ranking system for applicant eligibility, wherein
- 40 appropriated state monies and available federal monies are awarded to
- 41 political subdivisions of this state to support or assist regional water
- 42 quality planning programs and activities.
- 43           5. Enter into contracts and agreements with the federal government
- 44 to implement federal environmental statutes and programs.

1           6. Enter into intergovernmental agreements pursuant to title 11,  
2 chapter 7, article 3 if the agreement is necessary to more effectively  
3 administer the powers and duties described in this chapter.

4           7. Participate in, conduct and contract for studies,  
5 investigations, research and demonstrations relating to the causes,  
6 minimization, prevention, correction, abatement, mitigation, elimination,  
7 control and remedy of discharges and collect and disseminate information  
8 relating to discharges.

9           8. File bonds or other security as required by a court in any  
10 enforcement actions under article 4 of this chapter.

11           ~~9. Adopt by rule a permit program for the discharge of dredged or~~  
12 ~~fill material into WOTUS for purposes of implementing the permit program~~  
13 ~~established by 33 United States Code section 1344.~~

14           C. Subject to section 38-503 and other applicable statutes and  
15 rules, the department may contract with a private consultant to assist the  
16 department in reviewing aquifer protection permit applications and on-site  
17 wastewater treatment facilities to determine whether a facility meets the  
18 criteria and requirements of this chapter and the rules adopted by the  
19 director. Except as provided in section 49-241.02, subsection B, the  
20 department shall not use a private consultant if the fee charged for that  
21 service would be greater than the fee the department would charge to  
22 provide that service. The department shall pay the consultant for the  
23 services rendered by the consultant from fees paid by the applicant or  
24 facility to the department pursuant to subsection A, paragraph 9 of this  
25 section.

26           D. The director shall integrate all of the programs authorized in  
27 this section and other programs affording water quality protection that  
28 are administered by the department for purposes of administration and  
29 enforcement and shall avoid duplication and dual permitting to the maximum  
30 extent practicable.

31           Sec. 5. Section 49-261, Arizona Revised Statutes, is amended to  
32 read:

33           49-261. Compliance orders; appeal; enforcement

34           A. If the director determines that a person is in violation of a  
35 rule adopted or a condition of a permit issued pursuant to section 49-203,  
36 subsection A, paragraph 7, any provision of article 2, 3, 3.1, ~~3.2~~ or 3.3  
37 of this chapter, a rule adopted pursuant to article 2, 3, 3.1, ~~3.2~~ or 3.3  
38 of this chapter, a discharge limitation or any other condition of a permit  
39 issued under article 2, 3, 3.1, ~~3.2~~ or 3.3 of this chapter or is creating  
40 an imminent and substantial endangerment to the public health or  
41 environment, the director may issue an order requiring compliance within a  
42 reasonable time period.

43           B. A compliance order shall state with reasonable specificity the  
44 nature of the violation, a time for compliance if applicable and the right  
45 to a hearing.

1 C. A compliance order shall be transmitted to the alleged violator  
2 by certified mail, return receipt requested, or by personal service.

3 D. A compliance order becomes final and enforceable in the superior  
4 court unless within thirty days after the receipt of the order the alleged  
5 violator requests a hearing before an administrative law judge. If a  
6 hearing is requested, the order does not become final until the  
7 administrative law judge has issued a final decision on the appeal.  
8 Appeals shall be conducted pursuant to section 49-321.

9 E. At the request of the director the attorney general may commence  
10 an action in superior court to enforce orders issued under this section  
11 once an order becomes final.

12 Sec. 6. Section 49-262, Arizona Revised Statutes, is amended to  
13 read:

14 49-262. Injunctive relief; civil penalties; recovery of  
15 litigation costs; affirmative defense

16 A. Whether or not a person has requested a hearing, the director,  
17 through the attorney general, may request a temporary restraining order, a  
18 preliminary injunction, a permanent injunction or any other relief  
19 necessary to protect the public health if the director has reason to  
20 believe either of the following:

21 1. That a person is in violation of:

22 (a) Any provision of article 2, 3, 3.1, ~~3.2~~ or 3.3 of this chapter.

23 (b) A rule adopted pursuant to section 49-203, subsection A,  
24 paragraph 7.

25 (c) A rule adopted pursuant to article 2, 3, 3.1, ~~3.2~~ or 3.3 of  
26 this chapter.

27 (d) A discharge limitation or any other condition of a permit  
28 issued under article 2, 3, 3.1, ~~3.2~~ or 3.3 of this chapter.

29 2. That a person is creating an actual or potential endangerment to  
30 the public health or environment because of acts performed that violate  
31 this chapter.

32 B. Notwithstanding any other provision of this chapter, if the  
33 director, the county attorney or the attorney general has reason to  
34 believe that a person is creating an imminent and substantial endangerment  
35 to the public health or environment because of acts performed that violate  
36 article 2, 3, 3.1, ~~3.2~~ or 3.3 of this chapter or a rule adopted or a  
37 condition of a permit issued pursuant to section 49-203, subsection A,  
38 paragraph 2, 7 or 8, the county attorney or attorney general may request a  
39 temporary restraining order, a preliminary injunction, a permanent  
40 injunction or any other relief necessary to protect the public health.

41 C. A person who violates any provision of article 2, 3, ~~OR 3.1~~ ~~OR~~  
42 ~~3.2~~ of this chapter or a rule, permit, discharge limitation or order  
43 issued or adopted pursuant to article 2, 3, ~~OR 3.1~~ ~~OR~~ ~~3.2~~ of this chapter  
44 is subject to a civil penalty of not more than \$25,000 per day per  
45 violation. A person who violates any rule adopted or a condition of a

1 permit issued pursuant to section 49-203, subsection A, paragraph 7 is  
2 subject to a civil penalty of not more than \$5,000 per day per violation.  
3 A person who violates any rule adopted, permit condition or other  
4 provision of article 3.3 of this chapter is subject to a civil penalty of  
5 not more than \$5,000 per day per violation. The attorney general may, and  
6 at the request of the director shall, commence an action in superior court  
7 to recover civil penalties provided by this section.

8 D. The court, in issuing any final order in any civil action  
9 brought under this section, may award costs of litigation, including  
10 reasonable attorney and expert witness fees, to any substantially  
11 prevailing party if the court determines such an award is appropriate. If  
12 a temporary restraining order is sought, the court may require the filing  
13 of a bond or equivalent security.

14 E. All civil penalties except litigation costs obtained under this  
15 section shall be deposited, pursuant to sections 35-146 and 35-147, in the  
16 state general fund.

17 F. Except as applied to permits issued or authorized pursuant to  
18 article 3.1, ~~3.2~~ or 3.3 of this chapter, it is an affirmative defense to  
19 civil liability under this section and section 49-261 for causing or  
20 contributing to a violation of a water quality standard established  
21 pursuant to this chapter, or a violation of a permit condition prohibiting  
22 a violation of an aquifer water quality standard or limitation at the  
23 point of compliance or a surface water quality standard if the release  
24 that caused or contributed to the violation came from a facility owned or  
25 operated by a party that has either:

26 1. Undertaken a remedial or response action approved by the  
27 director or the administrator under this title or CERCLA in response to  
28 the release of a hazardous substance, pollutant or contaminant that caused  
29 or contributed to the violation of article 2 of this chapter and is in  
30 compliance with that remedial or response action.

31 2. Otherwise resolved its liability for the release of a hazardous  
32 substance that caused or contributed to the violation of article 2 of this  
33 chapter in whole or in part by the execution of a settlement agreement or  
34 consent decree with the director or administrator under this article,  
35 CERCLA or any other environmental law and is in compliance with that  
36 settlement agreement or consent decree.

37 G. Subsection F of this section does not prevent the director from  
38 taking an appropriate enforcement action to address the release of a  
39 hazardous substance, pollutant or contaminant or the violation of a permit  
40 condition before or as an element of an approved remedial or response  
41 action, settlement agreement or consent decree.

1 H. In determining the amount of a civil penalty for a violation  
2 under article 3, 3.1, ~~3.2~~ or 3.3 of this chapter, the court shall consider  
3 the following factors:

- 4 1. The seriousness of the violation or violations.
- 5 2. The economic benefit, if any, that results from the violation.
- 6 3. Any history of similar violations.
- 7 4. Any good faith efforts to comply with the applicable  
8 requirements.
- 9 5. The economic impact of the penalty on the violator.
- 10 6. The extent to which the violation was caused by a third party.
- 11 7. Other matters as justice may require.

12 I. A single operational upset that leads to simultaneous violations  
13 of more than one pollutant limitation in a permit issued or authorized  
14 pursuant to section 49-255.01 constitutes a single violation for purposes  
15 of any penalty calculation.

16 J. If a permittee holds both a permit issued or authorized pursuant  
17 to article 3 of this chapter and a permit issued or authorized pursuant to  
18 article 3.1, ~~3.2~~ or 3.3 of this chapter and the permittee violates a  
19 similar provision in both permits simultaneously, the department shall not  
20 recover penalties for violations of both permits based on the same act or  
21 omission.

22 K. For a wastewater treatment facility or system that is regulated  
23 as a public service corporation by the corporation commission, the  
24 department shall make a written request to the chairperson and executive  
25 director of the corporation commission to take necessary corrective  
26 actions, and the corporation commission shall commence necessary  
27 corrective actions within thirty calendar days after both of the following  
28 occur:

- 29 1. The department does any one or more of the following:
  - 30 (a) Determines that the wastewater treatment facility or system is  
31 out of compliance with an administrative order issued by the department  
32 for a violation of this chapter.
  - 33 (b) Files a civil action against the owner or operator of the  
34 wastewater treatment facility or system for a violation of this chapter.
  - 35 (c) Determines that an emergency exists with respect to the  
36 wastewater treatment facility or system.

37 2. The department determines that the corporation commission taking  
38 necessary corrective actions would expedite the wastewater treatment  
39 facility's or system's return to compliance with this chapter.

40 L. If the department makes a written request to the corporation  
41 commission as prescribed by subsection K of this section, the department  
42 shall provide a copy of the request to the governing body of any local  
43 jurisdiction with residents served by the facility or system that is the  
44 subject of the request.



1 (b) Knowledge possessed by a person other than the defendant but  
2 not by the defendant may not be attributed to the defendant, except that  
3 in proving the defendant's possession of actual knowledge, circumstantial  
4 evidence may be used, including evidence that affirmative steps were taken  
5 by the defendant to shield the defendant from relevant information.

6 2. It is an affirmative defense to prosecution under this  
7 subsection that the conduct charged was consented to by the person  
8 endangered and that the danger and conduct charged were reasonably  
9 foreseeable hazards of either:

10 (a) An occupation, a business or a profession.

11 (b) Medical treatment or medical or scientific experimentation  
12 conducted by professionally approved methods and the other person had been  
13 made aware of the risks involved before giving consent.

14 A defense may be established pursuant to this paragraph by a preponderance  
15 of the evidence.

16 F. A person who knowingly introduces into a sewer system or into a  
17 treatment works any pollutant or hazardous substance that the person knew  
18 could cause personal injury or property damage or, other than in  
19 compliance with all applicable federal, state or local requirements or  
20 permits, that causes the treatment works to violate any discharge  
21 limitation or condition in a permit issued to the treatment works pursuant  
22 to article 3.1 of this chapter or section 402 of the clean water act is  
23 guilty of a class 5 felony.

24 G. A person who knowingly violates a pretreatment standard or  
25 pretreatment requirement imposed under article 3.1 of this chapter, or any  
26 other federal pretreatment standard or pretreatment requirement, or any  
27 state or municipal pretreatment standard or pretreatment requirement  
28 enacted to meet the state's or municipality's obligations pursuant to  
29 article 3.1 of this chapter is guilty of a class 5 felony.

30 H. Each day of violation of any provision of this section  
31 constitutes a separate offense.

32 I. The attorney general may enforce this section.