

REFERENCE TITLE: dredge; fill; permits; clean up

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

HB 2369

Introduced by
Representative Griffin

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 FEDERAL 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~~ 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.