

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HOUSE BILL 2274

AN ACT

PROVIDING FOR TRANSFERRING AND RENUMBERING; REPEALING TITLE 26, CHAPTER 1, ARTICLE 1.1, ARIZONA REVISED STATUTES; AMENDING SECTIONS 26-152 AND 26-153, ARIZONA REVISED STATUTES; REPEALING SECTION 26-183, ARIZONA REVISED STATUTES; AMENDING SECTIONS 26-231, 26-303, 26-305.01, 26-1067, 26-1135 AND 35-192, ARIZONA REVISED STATUTES; REPEALING SECTION 43-619, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO THE DEPARTMENT OF EMERGENCY MANAGEMENT AND MILITARY AFFAIRS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Transfer and renumber

3 Section 26-113, Arizona Revised Statutes, is transferred and renumbered
4 for placement in title 26, chapter 1, article 1, Arizona Revised Statutes, as
5 section 26-104.

6 Sec. 2. Repeal

7 Title 26, chapter 1, article 1.1, Arizona Revised Statutes, is
8 repealed.

9 Sec. 3. Section 26-152, Arizona Revised Statutes, is amended to read:

10 ~~26-152.~~ National guard fund; camp Navajo fund; definition

11 A. The national guard fund is established consisting of monies
12 appropriated to the national guard. ~~THE ADJUTANT GENERAL SHALL ADMINISTER~~
13 ~~THE FUND. ON NOTICE FROM THE ADJUTANT GENERAL, THE STATE TREASURER SHALL~~
14 ~~INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND~~
15 ~~MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND. MONIES IN THE~~
16 ~~FUND ARE CONTINUOUSLY APPROPRIATED TO THE NATIONAL GUARD AND ARE EXEMPT FROM~~
17 ~~THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.~~

18 B. The fund may be drawn ~~upon~~ ON by the adjutant general, ~~OR THE~~
19 ~~ADJUTANT GENERAL'S DESIGNEE~~, for any purpose commensurate with the purpose
20 and mission of the national guard.

21 C. The amount of the national guard fund appropriated for capital
22 outlay or improvements shall be exempt from the provisions of section 35-190
23 relating to lapsing appropriations.

24 D. ~~All proceeds from the rental or use of armories received by the~~
25 ~~general staff pursuant to the authority of section 26 115, subsection E~~ THE
26 ~~ADJUTANT GENERAL IS AUTHORIZED TO UTILIZE ANY NATIONAL GUARD FACILITY FOR~~
27 ~~COMMERCIAL PURPOSES. ALL PROCEEDS FROM COMMERCIAL ACTIVITIES~~ shall be
28 deposited, pursuant to sections 35-146 and 35-147, in a separate account in
29 the national guard fund, and the monies are continuously appropriated to the
30 department for the OPERATION, maintenance ~~of armories~~, SUPPORT AND CAPITAL
31 IMPROVEMENTS OF ANY NATIONAL GUARD FACILITY. Monies in the account are
32 exempt from the provisions of section 35-190 relating to lapsing of
33 appropriations. ~~, except that any monies remaining in the account for one~~
34 ~~hundred eighty days after the end of the fiscal year in which they were~~
35 ~~received revert to the state general fund.~~

36 E. A camp Navajo fund is established for the operation, maintenance,
37 capital improvements and personal services necessary for the national guard
38 to operate a regional training site and storage facility at Bellemont. The
39 fund consists of monies received from storage of commodities and services
40 provided as approved by the adjutant general. The adjutant general shall
41 administer the fund. On notice from the adjutant general, the state
42 treasurer shall invest and divest monies in the fund as provided by section
43 35-313, and monies earned from investment shall be credited to the
44 fund. Monies in the fund are continuously appropriated to the national guard

1 and are exempt from the provisions of section 35-190 relating to lapsing of
2 appropriations.

3 F. AFTER ALL BUDGETED OPERATIONAL, MAINTENANCE, SUPPORT AND CAPITAL
4 IMPROVEMENT REQUIREMENTS ARE MET AT CAMP NAVAJO, THE ADJUTANT GENERAL MAY
5 UTILIZE REMAINING MONIES IN THE CAMP NAVAJO FUND TO PROVIDE FOR THE
6 OPERATION, MAINTENANCE, SUPPORT AND CAPITAL IMPROVEMENTS OF ANY NATIONAL
7 GUARD FACILITY.

8 G. FOR THE PURPOSES OF THIS SECTION, "FACILITY" MEANS ALL PROPERTY
9 UNDER THE CONTROL AND ADMINISTRATION OF THE ADJUTANT GENERAL.

10 Sec. 4. Section 26-153, Arizona Revised Statutes, is amended to read:

11 26-153. Morale, welfare and recreational fund; sources of
12 monies; exemptions

13 A. ~~A~~ THE morale, welfare and recreational fund is established as a
14 state fund for morale, welfare and recreational activities and support
15 personnel for the national guard. Support personnel shall be employees of
16 the fund and not of this state. The adjutant general shall administer the
17 fund ~~pursuant to regulations of the general staff~~, subject to approval of the
18 governor. Monies shall be deposited, pursuant to sections 35-146 and 35-147,
19 in the fund from the following sources:

20 1. Monies transferred by the director of the department of
21 transportation pursuant to section 28-2415.

22 2. Monies deposited pursuant to section 26-102, subsection B,
23 paragraph 8 or monies generated from recycling activities consistent with
24 federal recycling policies.

25 3. Any other nonappropriated monies received by the national guard
26 from state and federal revenue producing military activities relating to
27 morale, welfare and recreation.

28 B. Monies in the fund are from nonappropriated sources, are not
29 subject to legislative appropriation and are exempt from the provisions of
30 section 35-190 relating to lapsing of appropriations. The adjutant general
31 may establish bank accounts for monies withdrawn from the fund to administer
32 the operations of the morale, welfare and recreational programs.

33 C. On notice from the adjutant general, the state treasurer shall
34 invest and divest monies in the fund as provided by section 35-313, and
35 monies earned from investment shall be credited to the fund.

36 D. Expenditures of monies in the fund are subject to ~~general staff~~
37 ~~regulations~~ RULES ADOPTED BY THE DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS
38 and are exempt from the procurement code requirements of title 41,
39 chapter 23.

40 Sec. 5. Repeal

41 Section 26-183, Arizona Revised Statutes, is repealed.

1 Sec. 6. Section 26-231, Arizona Revised Statutes, is amended to read:

2 26-231. Acquisition of property by national guard; surplus
3 property of municipalities; acquisition by eminent
4 domain; purchase; rent or lease; armory property fund

5 A. A county, city or town may sell, lease or otherwise grant to the
6 state for national guard purposes surplus real or personal property owned by
7 it. The determination of the governing body of the county, city or town that
8 the property is surplus is final, and the property may be sold to the state
9 for a consideration agreed ~~upon~~ ON between the governing body and the ~~general~~
10 ~~staff~~ ADJUTANT GENERAL OR THE ADJUTANT GENERAL'S DESIGNEE, or for a nominal
11 consideration. The sale shall be conducted without formalities,
12 advertisement for bids or consideration of bids by other persons.

13 B. The governor may exercise the power of eminent domain to obtain
14 from individuals, corporations or municipalities lands appropriate for
15 national guard purposes.

16 C. The national guard may purchase real property, buildings and
17 appurtenances from any person, corporation or municipal corporation with
18 ~~funds~~ MONIES appropriated for that purpose.

19 D. The national guard may lease or rent real property, buildings and
20 appurtenances with ~~funds~~ MONIES appropriated for that purpose.

21 E. The national guard may sell surplus armory real property and
22 deposit the proceeds in a state armory property fund established for that
23 purpose. Monies in the fund are continuously appropriated to the national
24 guard for the construction and capital improvement of national guard
25 armories, subject to the approval of the joint committee on capital review.
26 On notice from the adjutant general, the state treasurer shall invest and
27 divest monies in the fund as provided by section 35-313, and monies earned
28 from investment shall be credited to the fund.

29 Sec. 7. Section 26-303, Arizona Revised Statutes, is amended to read:

30 26-303. Emergency powers of governor; termination;
31 authorization for adjutant general; limitation

32 A. During a state of war emergency, the governor may:

33 1. Suspend the provisions of any statute prescribing the procedure for
34 conduct of state business, or the orders or rules of any state agency, if the
35 governor determines and declares that strict compliance with the provisions
36 of any such statute, order or rule would in any way prevent, hinder or delay
37 mitigation of the effects of the emergency.

38 2. Commandeer and utilize any property, except for firearms or
39 ammunition or firearms or ammunition components or personnel deemed necessary
40 in carrying out the responsibilities vested in the office of the governor by
41 this chapter as chief executive of the state and thereafter the state shall
42 pay reasonable compensation therefor as follows:

43 (a) If property is taken for temporary use, the governor, within ten
44 days after the taking, shall determine the amount of compensation to be paid
45 therefor. If the property is returned in a damaged condition, the governor,

1 within ten days after its return, shall determine the amount of compensation
2 to be paid for such damage.

3 (b) If the governor deems it necessary for the state to take title to
4 property under this section, the governor shall then cause the owner of the
5 property to be notified thereof in writing by registered mail, postage
6 prepaid, and then cause a copy of the notice to be filed with the secretary
7 of state.

8 (c) If the owner refuses to accept the amount of compensation fixed by
9 the governor for the property referred to in subdivisions (a) and (b), the
10 amount of compensation shall be determined by appropriate proceedings in the
11 superior court in the county where the property was originally taken.

12 B. During a state of war emergency, the governor shall have complete
13 authority over all agencies of the state government and shall exercise all
14 police power vested in this state by the constitution and laws of this state
15 in order to effectuate the purposes of this chapter.

16 C. The powers granted the governor by this chapter with respect to a
17 state of war emergency shall terminate if the legislature is not in session
18 and the governor, within twenty-four hours after the beginning of such state
19 of war emergency, has not issued a call for an immediate special session of
20 the legislature for the purpose of legislating on subjects relating to such
21 state of war emergency.

22 D. The governor may proclaim a state of emergency which shall take
23 effect immediately in an area affected or likely to be affected if the
24 governor finds that circumstances described in section 26-301, paragraph 15
25 exist.

26 E. During a state of emergency:

27 1. The governor shall have complete authority over all agencies of the
28 state government and the right to exercise, within the area designated, all
29 police power vested in the state by the constitution and laws of this state
30 in order to effectuate the purposes of this chapter.

31 2. The governor may direct all agencies of the state government to
32 utilize and employ state personnel, equipment and facilities for the
33 performance of any and all activities designed to prevent or alleviate actual
34 and threatened damage due to the emergency. The governor may direct such
35 agencies to provide supplemental services and equipment to political
36 subdivisions to restore any services in order to provide for the health and
37 safety of the citizens of the affected area.

38 F. The powers granted the governor by this chapter with respect to a
39 state of emergency shall terminate when the state of emergency has been
40 terminated by proclamation of the governor or by concurrent resolution of the
41 legislature declaring it at an end.

42 G. No provision of this chapter may limit, modify or abridge the
43 powers vested in the governor under the constitution or statutes of this
44 state.

1 H. If authorized by the governor, the adjutant general has the powers
2 prescribed in this subsection. If, in the judgment of the adjutant general,
3 circumstances described in section 26-301, paragraph 15 exist, the adjutant
4 general may:

5 1. Exercise those powers pursuant to statute and gubernatorial
6 authorization following the proclamation of a state of emergency under
7 subsection D of this section.

8 2. Incur obligations of ~~twenty~~ ONE HUNDRED thousand dollars or less
9 for each emergency or contingency payable pursuant to section 35-192 as
10 though a state of emergency had been proclaimed under subsection D of this
11 section.

12 I. The powers exercised by the adjutant general pursuant to subsection
13 H of this section expire seventy-two hours after the adjutant general makes a
14 determination under subsection H of this section.

15 J. Pursuant to the second amendment of the United States Constitution
16 and article II, section 26, Constitution of Arizona, and notwithstanding any
17 other law, the emergency powers of the governor, the adjutant general or any
18 other official or person shall not be construed to allow the imposition of
19 additional restrictions on the lawful possession, transfer, sale,
20 transportation, carrying, storage, display or use of firearms or ammunition
21 or firearms or ammunition components.

22 K. Nothing in this section shall be construed to prohibit the
23 governor, the adjutant general or other officials responding to an emergency
24 from ordering the reasonable movement of stores of ammunition out of the way
25 of dangerous conditions.

26 Sec. 8. Section 26-305.01, Arizona Revised Statutes, is amended to
27 read:

28 26-305.01. Nuclear emergency plan; duties of division and
29 director

30 A. The division is designated the lead agency and has the overall and
31 primary responsibility for development of a state plan for off-site response
32 to an emergency caused by an accident at a commercial nuclear generating
33 station.

34 B. The director shall develop the plan by appointing a coordinator and
35 response group and working in consultation with designated representatives
36 from the following:

- 37 1. Radiation regulatory agency.
- 38 2. Arizona department of agriculture.
- 39 3. Department of health services.
- 40 4. Department of public safety.
- 41 5. Department of transportation.

42 ~~6. Division of military affairs within the department of emergency and~~
43 ~~military affairs.~~

44 ~~7.~~ 6. Arizona commerce authority.

45 ~~8.~~ 7. Arizona corporation commission.

1 under section 26-1060 to petition the Arizona court of military appeals for
2 review. The court shall act on a petition within sixty calendar days after
3 receipt. If the court fails or refuses to grant a petition for review, the
4 final action of the convening authority is deemed approved. Notwithstanding
5 any other provision of this chapter, if the court grants a hearing of an
6 appeal, the court may grant a stay or defer service of the sentence of
7 confinement or any other punishment until the court's final decision on the
8 case.

9 H. The Arizona court of military appeals may act only with respect to
10 the findings and sentence as finally approved and ordered executed by the
11 convening authority.

12 I. If the Arizona court of military appeals sets aside the findings
13 and sentence, it may **ORDER A REHEARING**, except if the setting aside is based
14 on lack of sufficient evidence in the record to support the findings, ~~order a~~
15 ~~rehearing~~. If it sets aside the findings and sentence and does not order a
16 rehearing, it shall order that the charges be dismissed. After the Arizona
17 court of military appeals has acted on the case, the record shall be returned
18 to the state judge advocate who shall notify the convening authority of the
19 court's decision. If further action is required, the state judge advocate
20 shall instruct the convening authority to take action in accordance with that
21 decision. If the court has ordered a rehearing, but the convening authority
22 finds a rehearing impracticable, the state judge advocate may dismiss the
23 charges.

24 J. Decisions of the Arizona court of military appeals are subject to
25 review by the Arizona supreme court by a petition for review in accordance
26 with the Arizona rules of criminal procedure and the rules of the supreme
27 court of Arizona.

28 K. With monies appropriated to the national guard, the adjutant
29 general may employ persons necessary to assist the Arizona court of military
30 appeals in its duties.

31 L. The **ADJUTANT** general ~~staff~~ with the approval of the governor shall
32 adopt rules necessary for the administration of the court. The accused has a
33 right to appointed military counsel for ~~his~~ **AN** appeal.

34 Sec. 10. Section 26-1135, Arizona Revised Statutes, is amended to
35 read:

36 **26-1135. Courts of inquiry**

37 A. Courts of inquiry may be convened to investigate any matter by any
38 person authorized to convene a general court-martial or by any other person
39 designated by the adjutant general for that purpose, whether or not the
40 persons involved have requested such an inquiry.

41 B. A court of inquiry consists of three or more commissioned
42 officers. For each court of inquiry the convening authority shall also
43 appoint counsel for the court.

44 C. Any person who is subject to this chapter and whose conduct is
45 subject to inquiry shall be designated as a party. Any person who is subject

1 to this chapter ~~or employed by the division of military affairs~~ and who has a
2 direct interest in the subject of inquiry may be designated as a party on
3 request to the court. Any person designated as a party shall be given due
4 notice and may be present, may be represented by counsel, may cross-examine
5 witnesses and may introduce evidence.

6 D. Members of a court of inquiry may be challenged by a party but only
7 for cause stated to the court.

8 E. The members, counsel, reporter and interpreters of courts of
9 inquiry shall take an oath to faithfully perform their duties.

10 F. Witnesses may be summoned to appear and testify and be examined
11 before courts of inquiry, as provided for courts-martial.

12 G. Courts of inquiry shall make findings of fact but shall not express
13 opinions or make recommendations unless required to do so by the convening
14 authority.

15 H. Each court of inquiry shall keep a record of its findings, which
16 shall be authenticated by the signatures of the president and counsel for the
17 court and forwarded to the convening authority. If the record cannot be
18 authenticated by the president, it shall be signed by a member in lieu of the
19 president. If the record cannot be authenticated by the counsel for the
20 court, it shall be signed by a member in lieu of the counsel.

21 Sec. 11. Section 35-192, Arizona Revised Statutes, is amended to read:

22 35-192. Authorization for declaration of disaster; authorization
23 for liabilities and expenses; priorities and
24 limitations; review and report of expenditures

25 A. The governor may declare an emergency arising from ~~such~~ major
26 disasters as provided in this section and incur liabilities therefor,
27 regardless of whether or not the legislature is in session.

28 B. When the governor, or the director of the division of emergency
29 management in the department of emergency and military affairs pursuant to
30 section 26-303, subsection H, determines that a contingency or disaster so
31 justifies, and declares an emergency, specific liabilities and expenses
32 provided for in this section are authorized to be incurred against and to be
33 paid as claims against the state from unrestricted monies from the general
34 fund to mitigate and meet contingencies and emergencies arising from:

- 35 1. Invasions, hostile attacks, riots or insurrections.
- 36 2. Epidemics of disease or plagues of insects.
- 37 3. Floods or floodwaters.
- 38 4. Acts of God or any major disaster.
- 39 5. Wildland fires, but only after all necessary authorizations under
40 section 37-623.02 are exhausted.

41 C. When authorized by the governor, specific liabilities and expenses
42 provided for in this section may be incurred against and may be paid as
43 claims against the state from unrestricted monies from the general fund to
44 meet contingencies and emergencies arising from incidents relating to
45 hazardous materials as defined in section 26-301 and search or rescue

1 operations conducted pursuant to section 11-251.02, section 11-441,
2 subsection C or section 26-306 subject to the limitations provided in section
3 35-192.01. Within ninety days after monies are awarded under this section,
4 the department of emergency and military affairs shall post in a prominent
5 location on the department's official website the amount of monies awarded
6 under this section, who received the monies and how the monies were spent.

7 D. Liabilities and expenses authorized under subsection B of this
8 section may be incurred for any of the emergencies or contingencies
9 prescribed in subsection B of this section in the following order of
10 priority:

11 1. Reimbursement for expenses incurred to combat a menace to the
12 health, lives or property of any considerable number of persons of the state,
13 or to property of the state or its political subdivisions.

14 2. Reimbursement for expenses incurred to repair damage to any
15 property of the state.

16 3. Reimbursement for expenses incurred to repair damage to any
17 property of the political subdivisions of the state.

18 4. Reimbursement for expenses incurred in search or rescue operations.

19 5. Reimbursement for expenses incurred in emergency or disaster
20 recovery activities or in matching federal disaster recovery programs.

21 6. Reimbursement for expenses for property loss mitigation measures or
22 to match federal property loss mitigation programs.

23 E. The auditor of the department of emergency and military affairs
24 shall review liabilities incurred and expenditures made under this section
25 and report to the state emergency council at ninety-day intervals during the
26 emergency and conduct a final review of each emergency within ninety days
27 after the termination of the emergency. The state emergency council shall
28 make a written report not later than ~~August~~ **SEPTEMBER** 1 of each year to the
29 legislature of the actions of the state emergency council during the
30 preceding fiscal year, including an itemized statement of expenditures for
31 each emergency during the year. The department of emergency and military
32 affairs shall post the report in a prominent location on the department's
33 official website.

34 F. All liabilities incurred under this section shall be subject to the
35 following limitations:

36 1. No liability shall be incurred against the monies authorized
37 without the approval of the governor, or the adjutant general pursuant to
38 section 26-303, subsection H, for each contingency or emergency.

39 2. Incurring of liabilities in excess of two hundred thousand dollars
40 in any single disaster or emergency shall not be made without consent of a
41 majority of the members of the state emergency council.

42 3. The aggregate amount of all liabilities incurred under this section
43 shall not exceed four million dollars for any fiscal year beginning July 1
44 through June 30. Monies authorized for disasters and emergencies in prior
45 fiscal years may be used in subsequent fiscal years only for the disaster or

1 emergency for which they were authorized. Monies authorized for disasters
2 and emergencies in prior fiscal years, and expended in subsequent fiscal
3 years for the disaster or emergency for which they were authorized, apply
4 toward the four million dollar liability limit for the fiscal year in which
5 they were authorized.

6 4. Notwithstanding the limitations in paragraph 3 of this subsection,
7 monies that were previously obligated but not used for a declared emergency
8 or disaster may be reallocated to an outstanding obligation for another
9 declared emergency or disaster and shall remain available for expenditure for
10 the outstanding obligation. The reallocation of monies pursuant to this
11 paragraph does not apply toward the four million dollar liability limit of
12 the fiscal year to which the monies were reallocated or in which the monies
13 are spent.

14 5. An obligation of monies under this section may be made only when
15 one or more of the following conditions exist:

16 (a) No appropriation or other authorization is available to meet the
17 contingency or emergency.

18 (b) An appropriation is insufficient to meet the contingency or
19 emergency.

20 (c) Federal monies available for such contingency or emergency require
21 the use of state or other public monies.

22 G. The director of the division of emergency management in the
23 department of emergency and military affairs shall develop rules for
24 administering the monies authorized for liabilities under this section,
25 subject to approval by the governor.

26 Sec. 12. Repeal

27 Section 43-619, Arizona Revised Statutes, is repealed.

28 Sec. 13. Transfer of monies

29 All unexpended and unencumbered monies remaining in the national guard
30 relief fund established by section 26-183, Arizona Revised Statutes, as
31 repealed by this act, are transferred to the department of veterans' services
32 on the effective date of this act. Using the rules or policies for grants
33 adopted pursuant to section 41-608, Arizona Revised Statutes, the department
34 of veterans' services shall distribute the monies transferred pursuant to
35 this section to a nonprofit organization that provides financial assistance
36 to Arizona national guard members and their families.