

REFERENCE TITLE: emergency and military affairs omnibus

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

HB 2274

Introduced by
Representatives Borrelli, Cardenas: Barton, Campbell, Cobb, Kern, Shope,
Thorpe

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, 26-305.01, 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8 repealed.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.

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

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

19 D. All proceeds from the rental or use of armories ~~received by the~~
20 ~~general staff pursuant to the authority of section 26-115, subsection E~~ shall
21 be deposited, pursuant to sections 35-146 and 35-147, in a separate account
22 in the national guard fund, and the monies are continuously appropriated to
23 the department for the maintenance of armories. Monies in the account are
24 exempt from the provisions of section 35-190 relating to lapsing of
25 appropriations, except that any monies remaining in the account for one
26 hundred eighty days after the end of the fiscal year in which they were
27 received revert to the state general fund.

28 E. A camp Navajo fund is established for the operation, maintenance,
29 capital improvements and personal services necessary for the national guard
30 to operate a regional training site and storage facility at Bellemont **AND**
31 **OTHER ARIZONA ARMY NATIONAL GUARD TRAINING SITES AND AS DIRECTED BY THE**
32 **ADJUTANT GENERAL, OR THE ADJUTANT GENERAL'S DESIGNEE**. The fund consists of
33 monies received from storage of commodities and services provided as approved
34 by the adjutant general. The adjutant general shall administer the fund. On
35 notice from the adjutant general, the state treasurer shall invest and divest
36 monies in the fund as provided by section 35-313, and monies earned from
37 investment shall be credited to the fund. Monies in the fund are
38 continuously appropriated to the national guard and are exempt from the
39 provisions of section 35-190 relating to lapsing of appropriations.

40 **F. FOR THE PURPOSES OF THIS SECTION, "TRAINING SITE" MEANS A LOCATION**
41 **THAT CONSISTS OF RANGES, TRAINING LANDS OR FACILITIES TO SUPPORT INDIVIDUAL**
42 **OR COLLECTIVE TRAINING TO MEET ARIZONA ARMY NATIONAL GUARD MISSION OR**
43 **OPERATIONAL REQUIREMENTS.**

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

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

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

9 E. The national guard may sell surplus armory real property and
10 deposit the proceeds in a state armory property fund established for that
11 purpose. Monies in the fund are continuously appropriated to the national
12 guard for the construction and capital improvement of national guard
13 armories, subject to the approval of the joint committee on capital review.
14 On notice from the adjutant general, the state treasurer shall invest and
15 divest monies in the fund as provided by section 35-313, and monies earned
16 from investment shall be credited to the fund.

17 Sec. 7. Section 26-305.01, Arizona Revised Statutes, is amended to
18 read:

19 26-305.01. Nuclear emergency plan; duties of division and
20 director

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

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

- 28 1. Radiation regulatory agency.
- 29 2. Arizona department of agriculture.
- 30 3. Department of health services.
- 31 4. Department of public safety.
- 32 5. Department of transportation.

33 ~~6. Division of military affairs within the department of emergency and~~
34 ~~military affairs.~~

35 ~~7.~~ 6. Arizona commerce authority.

36 ~~8.~~ 7. Arizona corporation commission.

37 ~~9.~~ 8. Department of environmental quality.

38 ~~10.~~ 9. Any other agencies or offices deemed necessary by the division
39 of emergency management.

40 Sec. 8. Section 26-1067, Arizona Revised Statutes, is amended to read:

41 26-1067. Court of military appeals; members; terms;
42 compensation; duties; review; procedures

43 A. The Arizona court of military appeals is established and is located
44 for administrative purposes only in the department of emergency and military
45 affairs. The court shall consist of five judges appointed by the governor on

1 the recommendation of the adjutant general with the advice of the state judge
2 advocate for a term of six years. Initial appointments shall be staggered.
3 The term of office for all successor judges is six years, but any judge
4 appointed to fill a vacancy occurring before the expiration of the term for
5 which ~~his~~ THE JUDGE'S predecessor was appointed shall be appointed only for
6 the unexpired term of ~~his~~ THE predecessor. Not more than three judges of the
7 court may be appointed from the same political party. Judges may succeed
8 themselves in office. A person is eligible for appointment to this court
9 who, in addition to the requirements of article VI, section 22, Constitution
10 of Arizona, has at least five years' experience as a judge advocate in the
11 national guard or armed forces of the United States.

12 B. The governor shall designate one of the judges to act as chief
13 judge. The chief judge has precedence and shall preside at any session ~~which~~
14 ~~he~~ THE JUDGE attends. The other judges have precedence and shall preside
15 according to the seniority of their appointments. Judges whose commissions
16 bear the same date have precedence according to seniority in age.

17 C. The court shall sit in panels of no less than three judges to be
18 selected by the presiding judge.

19 D. Judges of the Arizona court of military appeals may be removed by
20 the governor, on notice and hearing, for neglect of duty or malfeasance in
21 office or for mental or physical disability but for no other cause.

22 E. The judges of the Arizona court of military appeals, while actually
23 sitting in review of a matter placed under their jurisdiction by this
24 chapter, and while traveling to and from such session, are eligible to
25 receive compensation equal to that compensation prescribed for the judges of
26 the Arizona court of appeals, as provided by law, together with the actual
27 cost of meals, lodging and travel expense or the amount set by law if private
28 transportation is utilized. Payment shall be made from monies appropriated
29 to the national guard.

30 F. The Arizona court of military appeals has exclusive appellate and
31 special action jurisdiction, in appeals filed by this state pursuant to
32 section 26-1062, or on petition of an accused, to hear and review the record
33 in all general and special court-martial cases and all summary court-martial
34 cases in which a sentence of confinement has been adjudged.

35 G. The accused has thirty calendar days from the time of receipt of
36 actual notice of the final action on ~~his~~ THE case by the convening authority
37 under section 26-1060 to petition the Arizona court of military appeals for
38 review. The court shall act on a petition within sixty calendar days after
39 receipt. If the court fails or refuses to grant a petition for review, the
40 final action of the convening authority is deemed approved. Notwithstanding
41 any other provision of this chapter, if the court grants a hearing of an
42 appeal, the court may grant a stay or defer service of the sentence of
43 confinement or any other punishment until the court's final decision on the
44 case.

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

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

16 J. Decisions of the Arizona court of military appeals are subject to
17 review by the Arizona supreme court by a petition for review in accordance
18 with the Arizona rules of criminal procedure and the rules of the supreme
19 court of Arizona.

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

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

26 Sec. 9. Section 26-1135, Arizona Revised Statutes, is amended to read:
27 26-1135. Courts of inquiry

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

32 B. A court of inquiry consists of three or more commissioned
33 officers. For each court of inquiry the convening authority shall also
34 appoint counsel for the court.

35 C. Any person who is subject to this chapter and whose conduct is
36 subject to inquiry shall be designated as a party. Any person who is subject
37 to this chapter ~~or employed by the division of military affairs~~ and who has a
38 direct interest in the subject of inquiry may be designated as a party on
39 request to the court. Any person designated as a party shall be given due
40 notice and may be present, may be represented by counsel, may cross-examine
41 witnesses and may introduce evidence.

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

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

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

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

6 H. Each court of inquiry shall keep a record of its findings, which
7 shall be authenticated by the signatures of the president and counsel for the
8 court and forwarded to the convening authority. If the record cannot be
9 authenticated by the president, it shall be signed by a member in lieu of the
10 president. If the record cannot be authenticated by the counsel for the
11 court, it shall be signed by a member in lieu of the counsel.

12 Sec. 10. Section 35-192, Arizona Revised Statutes, is amended to read:

13 35-192. Authorization for declaration of disaster; authorization
14 for liabilities and expenses; priorities and
15 limitations; review and report of expenditures

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

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

- 26 1. Invasions, hostile attacks, riots or insurrections.
- 27 2. Epidemics of disease or plagues of insects.
- 28 3. Floods or floodwaters.
- 29 4. Acts of God or any major disaster.

30 5. Wildland fires, but only after all necessary authorizations under
31 section 37-623.02 are exhausted.

32 C. When authorized by the governor, specific liabilities and expenses
33 provided for in this section may be incurred against and may be paid as
34 claims against the state from unrestricted monies from the general fund to
35 meet contingencies and emergencies arising from incidents relating to
36 hazardous materials as defined in section 26-301 and search or rescue
37 operations conducted pursuant to section 11-251.02, section 11-441,
38 subsection C or section 26-306 subject to the limitations provided in section
39 35-192.01. Within ninety days after monies are awarded under this section,
40 the department of emergency and military affairs shall post in a prominent
41 location on the department's official website the amount of monies awarded
42 under this section, who received the monies and how the monies were spent.

43 D. Liabilities and expenses authorized under subsection B of this
44 section may be incurred for any of the emergencies or contingencies

1 prescribed in subsection B of this section in the following order of
2 priority:

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

6 2. Reimbursement for expenses incurred to repair damage to any
7 property of the state.

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

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

11 5. Reimbursement for expenses incurred in emergency or disaster
12 recovery activities or in matching federal disaster recovery programs.

13 6. Reimbursement for expenses for property loss mitigation measures or
14 to match federal property loss mitigation programs.

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

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

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

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

34 3. The aggregate amount of all liabilities incurred under this section
35 shall not exceed four million dollars for any fiscal year beginning July 1
36 through June 30. Monies authorized for disasters and emergencies in prior
37 fiscal years may be used in subsequent fiscal years only for the disaster or
38 emergency for which they were authorized. Monies authorized for disasters
39 and emergencies in prior fiscal years, and expended in subsequent fiscal
40 years for the disaster or emergency for which they were authorized, apply
41 toward the four million dollar liability limit for the fiscal year in which
42 they were authorized.

43 4. Notwithstanding the limitations in paragraph 3 of this subsection,
44 monies that were previously obligated but not used for a declared emergency
45 or disaster may be reallocated to an outstanding obligation for another

1 declared emergency or disaster and shall remain available for expenditure for
2 the outstanding obligation. The reallocation of monies pursuant to this
3 paragraph does not apply toward the four million dollar liability limit of
4 the fiscal year to which the monies were reallocated or in which the monies
5 are spent.

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

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

10 (b) An appropriation is insufficient to meet the contingency or
11 emergency.

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

14 G. The director of the division of emergency management in the
15 department of emergency and military affairs shall develop rules for
16 administering the monies authorized for liabilities under this section,
17 subject to approval by the governor.

18 Sec. 11. Repeal

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

20 Sec. 12. Transfer of monies

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