REFERENCE TITLE: Arizona commerce authority; statutory conformity

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HB 2835

Introduced by
Representative Lesko

AN ACT

AMENDING SECTIONS 5-601.02, 9-461.06, 11-805, 15-1472, 26-305.01, 28-301, 28-2154, 28-2154.01, 34-454, 35-701, 35-706, 35-729, 35-901, 35-902, 35-903, 35-904, 35-905, 35-906, 35-907, 35-908, 35-909, 35-910, 35-911, 35-912, 35-913, 38-719, 41-191.02, 41-531, 41-541, 41-835.02, 41-1505.12 AND 41-1516, ARIZONA REVISED STATUTES; REPEALING SECTIONS 41-1517 AND 41-1517.01, ARIZONA REVISED STATUTES; AMENDING SECTIONS 41-1671, 41-2567, 41-4101, 41-4503, 42-2003, 42-5009, 42-5061, 42-5064, 42-5066, 42-5070, 42-5071, 42-5074, 42-5075, 42-5159, 42-6105, 42-6106, 43-222, 43-1021, 43-1022, 43-1029, 43-1031, 43-1042 AND 43-1074, ARIZONA REVISED STATUTES; AMENDING SECTION 43-1074.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2011, SECOND SPECIAL SESSION, CHAPTER 1, SECTION 96 AND BY LAWS 2011, SECOND SPECIAL SESSION, CHAPTER 1, SECTION 97; AMENDING SECTION 43-1076, ARIZONA REVISED STATUTES; REPEALING SECTIONS 43-1075, 43-1075.01, 43-1077 AND 43-1078, ARIZONA REVISED STATUTES; AMENDING SECTIONS 43-1079, 43-1082, 43-1083.01, 43-1121, 43-1130.01, 43-1161 AND 43-1162, ARIZONA REVISED STATUTES; REPEALING SECTIONS 43-1163 AND 43-1163.01, ARIZONA REVISED STATUTES; AMENDING SECTION 43-1164.01, ARIZONA REVISED STATUTES; REPEALING SECTIONS 43-1165 AND 43-1166, ARIZONA REVISED STATUTES; AMENDING SECTION 43-1167, ARIZONA REVISED STATUTES; AMENDING SECTION 43-1168, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2011, SECOND SPECIAL SESSION, CHAPTER 1, SECTIONS 113 AND 114; AMENDING SECTIONS 44-1561, 44-1762, 45-105, 49-410, 49-837 AND 49-1202, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA COMMERCE AUTHORITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Purpose; Arizona commerce authority; conforming amendments

Pursuant to Laws 2011, second special session, chapter 1, section 136, the Arizona legislative council staff was required to prepare proposed legislation conforming the Arizona Revised Statutes to the provisions of the Laws 2011, second special session, chapter 1, establishing the Arizona commerce authority, for consideration in the fiftieth legislature, second regular session. This measure contains those proposed conforming amendments.

Sec. 2. Subject to the requirements of article IV, part 1, section 1, Constitution of Arizona, section 5-601.02, Arizona Revised Statutes, is amended to read:

5-601.02. New standard form of tribal-state gaming compact; effects

A. Notwithstanding any other law, within 30 days after receipt of a timely written request by the governing body of an Indian tribe, the state, through the governor, shall enter into the new standard form of tribal-state gaming compact with the requesting Indian tribe by executing the new compact and forwarding it to the United States department of the interior for any required approval.

B. The state, through the governor, may only enter into a new compact with an Indian tribe with a pre-existing compact if the Indian tribe requests a new compact pursuant to subsection A during the first 30 days after the effective date of this section. The state, through the governor, shall serve a timely notice of nonrenewal of a pre-existing compact on any Indian tribe that does not request a new compact during the first 30 days after the effective date of this section. Any Indian tribe without a pre-existing compact on the effective date of this section may request a new compact at any time.

C. Notwithstanding any other law, an Indian tribe may conduct the following forms of gambling as regulated gambling, as defined in section 13-3301, if the gambling is conducted in accordance with the terms of a tribal-state gaming compact: gaming devices, keno, offtrack pari-mutuel wagering, pari-mutuel wagering on horse racing, pari-mutuel wagering on dog racing, blackjack, poker (including jackpot poker), and lottery.

D. The department of gaming shall administer and carry out its responsibilities under the procedures for the transfer and pooling of unused gaming device allocations described in section 3(d) of the new compact.

E. The state, through the governor, is authorized to negotiate and enter into amendments to new compacts that are consistent with this chapter and with the policies of the Indian gaming regulatory act.

F. At the request of any Indian tribe for which paragraph 6 of subsection I does not specify a possible additional devices allocation, the state, through the governor, shall negotiate with the Indian tribe for a possible additional devices allocation. This allocation shall not be less than the smallest or greater than the largest possible additional devices allocation provided to an Indian tribe with an equal number of devices in the current device allocation column set forth in the new compact. At the option of the Indian tribe, the possible additional devices allocation shall be included in either the Indian tribe's new compact or an amendment to such new compact.

G. The authority and obligations of the state, through the governor, to negotiate additional compact terms pursuant to subsections E and F are independent of and separate from the obligations of the state pursuant to subsection A, and shall not constitute grounds for any delay by the state in carrying out its obligations to execute and forward new compacts to the United States department of the interior as required in subsection A.

H. The Arizona benefits fund is established consisting of monies paid to the state by Indian tribes pursuant to section 12(c) of new compacts and interest earned on those monies. An Indian tribe with a new compact satisfies the requirements of subsection F of section 5-601. Tribal contributions paid to the state pursuant to a new compact shall be deposited in the Arizona benefits fund, not the permanent tribal-state compact fund pursuant to subsection G of section 5-601.

1. The department of gaming shall administer the Arizona benefits fund. The department of gaming shall make an annual report to the governor, the president of the senate, the speaker of the house of representatives and each Indian tribe with a new compact within 90 days after the end of the state's fiscal year. This report shall be separate from any other report of the department of gaming. The report shall include a statement of aggregate gross gaming revenue for all Indian tribes, aggregate revenues deposited in the Arizona benefits fund, including interest thereon, expenditures made from the Arizona benefits fund, and aggregate amounts contributed by all Indian tribes to cities, towns and counties pursuant to paragraph 4 of this subsection. The department of gaming shall provide a copy of this report to the secretary of state and the director of the Arizona state library, archives and public records.

2. Except for monies expended by the department of gaming as provided in subdivision (a) of paragraph 3 of this subsection, which shall be subject to appropriation, the Arizona benefits fund is not subject to appropriation, and expenditures from the fund are not subject to outside approval notwithstanding any statutory provision to the contrary. Monies paid to the state by Indian tribes pursuant to a new compact shall be deposited directly with the Arizona benefits fund. On notice from the department of gaming, the state treasurer shall invest and divest monies in the Arizona benefits fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. Monies in the Arizona benefits fund shall be expended only as provided in paragraph 3 of this subsection, and shall not revert to any other fund, including the state general fund. Monies in the Arizona

benefits fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations.

3. Monies in the Arizona benefits fund, including all investment earnings, shall be allocated as follows:

(a)(i) Eight million dollars or nine percent, whichever is greater, shall be used for reimbursement of administrative and regulatory expenses, including expenses for development of and access to any online electronic game management systems and for law enforcement activities incurred by the department of gaming pursuant to this chapter. Any monies that are allocated pursuant to this subsection 3(a) that are not appropriated to the department of gaming shall be deposited in the instructional improvement fund established by section 15-979.

(ii) Two percent shall be used by the department of gaming to fund state and local programs for the prevention and treatment of, and education concerning, problem gambling.

(b) Of the monies in the Arizona benefits fund that are not allocated pursuant to subdivision (a):

(i) Fifty-six percent shall be deposited in the instructional improvement fund established by section 15-979 for use by school districts for classroom size reduction, teacher salary increases, dropout prevention programs, and instructional improvement programs.

(ii) Twenty-eight percent shall be deposited in the trauma and emergency services fund established by section 36-2903.07.

(iii) Eight percent shall be deposited in the Arizona wildlife conservation fund established by section 17-299.

(iv) Eight percent shall be deposited in the tourism fund account established by paragraph 4 of subsection A of section 41-2306 for statewide tourism promotion.

4. In addition to monies contributed to the Arizona benefits fund, twelve percent of tribal contributions pursuant to new compacts shall be contributed by Indian tribes to cities, towns and counties as defined in title 11, Arizona Revised Statutes, for government services that benefit the general public, including public safety, mitigation of impacts of gaming, and promotion of commerce and economic development.

(a) An Indian tribe may distribute such funds directly to cities, towns and counties for these purposes. The amount of monies so distributed by each Indian tribe shall be reported to the department of gaming in the quarterly report required by the new compact.

(b) Any monies comprising the twelve percent not so distributed by an Indian tribe shall be deposited in the ~~commerce and economic development commission~~ ARIZONA COMMERCE AUTHORITY local communities fund established by section 41-1505.12 for grants to cities, towns and counties.

5. The deposit of monies required by subdivision (b) of paragraph 3 of this subsection shall be made on a quarterly basis, or more frequently if practicable.

I. For the purposes of this section:

1. "Gaming devices" means gaming devices as defined in subdivision (b)(i) of paragraph 6 of this subsection.

2. "Indian gaming regulatory act" means the Indian gaming regulatory act of 1988 (P.L. 100-497; 102 Stat. 2467; 25 United States Code sections 2701 through 2721 and 18 United States Code sections 1166 through 1168).

3. "Indian lands" means lands as defined in 25 United States Code section 2703(4)(a) and (b), subject to the provisions of 25 United States Code section 2719.

4. "Indian tribe" means:

(a) The Cocopah Indian tribe.

(b) The Fort Mojave Indian tribe.

(c) The Quechan tribe.

(d) The Tonto Apache tribe.

(e) The Yavapai-Apache nation.

(f) The Yavapai-Prescott Indian tribe.

(g) The Colorado River Indian tribes.

(h) The San Carlos Apache tribe.

(i) The White Mountain Apache tribe.

(j) The Ak-Chin Indian community.

(k) The Fort Mcdowell Yavapai nation.

(l) The Salt River Pima-Maricopa Indian community.

(m) The Gila River Indian community.

(n) The Pascua Yaqui tribe.

(o) The Tohono O'odham nation.

(p) The Havasupai tribe.

(q) The Hualapai tribe.

(r) The Kaibab-Paiute tribe.

(s) The Hopi tribe.

(t) The Navajo nation.

(u) The San Juan Southern Paiute tribe.

(v) Any Indian tribe, as defined in 25 United States Code section 2703(5), with Indian lands in this state.

5. "Pre-existing compact" means an Indian tribe's tribal-state gaming compact and amendments thereto as approved by the United States department of the interior, and all appendices thereto, as of the effective date of this section.

6. "New standard form of tribal-state gaming compact" or "new compact" means:

(a) For an Indian tribe without a pre-existing compact, a tribal-state gaming compact that contains the provisions of the most recent tribal-state gaming compact entered into by the state and an Indian tribe and approved by the United States secretary of the interior, and its appendices, prior to the effective date of this section, modified to include the provisions described in subdivision (b)(i) through (xi) of this paragraph.

(b) For an Indian tribe with a pre-existing compact, a tribal-state gaming compact that contains the provisions of the Indian tribe's pre-existing compact, modified as follows, with any cross references in a pre-existing compact to be conformed accordingly:

(i) The following definition shall replace the corresponding definition in section 2 of the pre-existing compact:

""Gaming device" means a mechanical device, an electro-mechanical device or a device controlled by an electronic microprocessor or another manner, whether that device constitutes class II gaming or class III gaming, that allows a player or players to play games of chance, whether or not the outcome also is affected in some part by skill, and whether the device accepts coins, tokens, bills, coupons, ticket vouchers, pull tabs, smart cards, electronic in-house accounting system credits or other similar forms of consideration and, through the application of chance, allows a player to become entitled to a prize, which may be collected through the dispensing of coins, tokens, bills, coupons, ticket vouchers, smart cards, electronic in-house accounting system credits or other similar forms of value. Gaming device does not include any of the following:

(1) Those technological aids for bingo games that function only as electronic substitutes for bingo cards.

(2) Devices that issue and validate paper lottery products and that are directly operated only by Arizona state lottery licensed retailers and their employees.

(3) Devices that are operated directly by a lottery player and that dispense paper lottery tickets, if the devices do not identify winning or losing lottery tickets, display lottery winnings or disburse lottery winnings.

(4) Devices that are operated directly by a lottery player and that validate paper lottery tickets for a game that does not have a predetermined number of winning tickets, if:

(a) The devices do not allow interactive gaming;

(b) The devices do not allow a lottery player to play the lottery for immediate payment or reward;

(c) The devices do not disburse lottery winnings; and

(d) The devices are not video lottery terminals.

(5) Player activated lottery terminals."

(ii) The following definitions shall be added to section 2 of the pre-existing compact:

"(mm) "Additional gaming devices" means the number of additional gaming devices allocated to the tribe in column (2) of the tribe's row in the table.

(nn) "Card game table" means a single table at which the tribe conducts the card game of poker or blackjack.

(oo) "Class II gaming device" means a gaming device which, if operated on Indian lands by an Indian tribe, would be class II gaming.

(pp) "Class III gaming device" means a gaming device which, if operated on Indian lands by an Indian tribe, would be class III gaming.

(qq) "Class III net win" means gross gaming revenue, which is the difference between gaming wins and losses, before deducting costs and expenses.

(rr) "CPI adjustment rate" shall mean the quotient obtained as follows: the CPI index for the sixtieth (60th) calendar month of the applicable five-year period for which the wager limitations are being adjusted shall be divided by the CPI index for the calendar month in which the effective date occurs. The CPI index for the numerator and the denominator shall have the same base year. If the CPI index is no longer published, or if the format of the CPI index has changed so that this calculation is no longer possible, then another substantially comparable index shall be substituted in the formula by agreement of the tribe and the state so that the economic effect of this calculation is preserved. If the parties cannot agree on the substitute index, the substitute index shall be determined by arbitration in accordance with section 15.

(ss) "CPI index" means the "United States city average (all urban consumers) - all items (1982-1984 = 100)" index of the consumer price index published by the bureau of labor statistics, United States department of labor.

(tt) "CPR" means the CPR institute for dispute resolution.

(uu) "Current gaming device allocation" means the number of class III gaming devices allocated to the tribe in column (1) of the tribe's row in the table as adjusted under section 3(c)(4).

(vv) "Effective date" means the day this compact goes into effect after all of the following events have occurred:

(1) It is executed on behalf of the state and the tribe;

(2) It is approved by the secretary of the interior;

(3) Notice of the secretary of the interior's approval is published in the federal register pursuant to the act; and

(4) Each Indian tribe with a gaming facility in Maricopa, Pima or Pinal counties has entered into a new compact as defined in A.R.S. section 5-601.02(I)(6), each of which has been approved by the secretary of the interior, and notice of the secretary of the interior's approval has been published in the federal register pursuant to the act, unless the governor of the state waives the requirements of this section 2(vv)(4).

(ww) "Forbearance agreement" means an agreement between the state and an Indian tribe in which the Indian tribe that is transferring some or all of its gaming device operating rights waives its rights to put such gaming device operating rights into play during the term of a transfer agreement.

(xx) "Gaming device operating right" means the authorization of an Indian tribe to operate class III gaming devices pursuant to the terms of a new compact as defined in A.R.S. section 5-601.02(I)(6).

(yy) "Maximum devices per gaming facility" means the total number of class III gaming devices that the tribe may operate within a single gaming facility.

(zz) "Multi-station device" means an electronic class III gaming device that incorporates more than one player station and contains one central processing unit which operates the game software, including a single random number generator that determines the outcome of all games at all player stations for that class III gaming device.

(aaa) "Player activated lottery terminal" means an on-line computer system that is player activated, but that does not provide the player with interactive gaming, and that uses the terminal for dispensing purposes only, in which:

(1) The terminal algorithm is used for the random generation of numbers;

(2) The tickets dispensed by the terminal do not allow the player the means to play directly against the terminal;

(3) The player uses the dispensed ticket to participate in an off-site random drawing; and

(4) The player's ability to play against the terminal for immediate payment or reward is eliminated.

(bbb) "Player station" means a terminal of a multi-station device through which the player plays an electronic game of chance simultaneously with other players at other player stations of that multi-station device, and which:

(1) Has no means to individually determine game outcome;

(2) Cannot be disconnected from the gaming device central processing unit that determines the game outcomes for all player stations without rendering that terminal inoperable; and

(3) Does not separately contain a random number generator or other means to individually determine the game outcome.

(ccc) "Population adjustment rate" means the quotient obtained as follows: the state population for the calendar year immediately preceding the calendar year in which the sixtieth (60th) calendar month of the applicable five-year period for which the applicable figure or amount is being adjusted occurs divided by the state population for the calendar year immediately preceding the calendar year in which the effective date occurs. If the state population is no longer published or calculated by the Arizona department of economic security, then another substantially comparable agency of the state shall be substituted by agreement of the tribe and the state so that the effect of this calculation is preserved. If the parties cannot agree on the substitute agency of the state to provide the state population, the substitute agency or person shall be determined by arbitration in accordance with section 15.

(ddd) "Previous gaming facility allocation" means the number of facilities allocated to the tribe in column (3) of the tribe's row in the table.

(eee) "Revised gaming facility allocation" means the number of facilities allocated to the tribe in column (4) of the tribe's row in the table or by section 3(c)(6).

(fff) "Rules" means the CPR rules for non-administered arbitration (2000 rev.).

(ggg) "State population" means the population of the state as determined using the most recent estimates published by the Arizona department of economic security.

(hhh) "Table" means the gaming device allocation table set out at section 3(c)(5).

(iii) "Transfer agreement" means a written agreement authorizing the transfer of gaming device operating rights between the tribe and another Indian tribe.

(jjj) "Transfer notice" means a written notice that the tribe must provide to the state gaming agency of its intent to acquire or transfer gaming device operating rights pursuant to a transfer agreement.

(kkk) "Wager" means:

(1) In the case of a gaming device, the sum of money placed into the gaming device in cash, or cash equivalent, by the player which will allow activation of the next random play of the gaming device.

(2) In the case of poker, the sum of money placed into the pot and onto the card game table by the player in cash, or cash equivalent, which entitles the player to an initial deal of cards, a subsequent deal of a card or cards, or which is required to be placed into the pot and onto the card game table by the player entitling the player to continue in the game.

(3) In the case of blackjack, the sum of money in cash, or cash equivalent, placed onto the card game table by the player entitling the player to an initial deal of cards and to all subsequent cards requested by the player."

(iii) Section 3 of the pre-existing compact shall be replaced with the following:

"Section 3. Nature, size, and conduct of class III gaming.

(a) Authorized class III gaming activities. Subject to the terms and conditions of this compact, the tribe is authorized to operate the following gaming activities: (1) class III gaming devices, (2) blackjack, (3) jackpot poker, (4) keno, (5) lottery, (6) off-track pari-mutuel wagering, (7) pari-mutuel wagering on horse racing, and (8) pari-mutuel wagering on dog racing.

(b) Appendices governing gaming.

(1) Technical standards for gaming devices. The tribe may only operate class III gaming devices, including multi-station devices, which comply with the technical standards set forth in appendix A to this compact.

The tribal gaming office shall require each licensed and certified manufacturer and distributor to verify under oath, on forms provided by the tribal gaming office, that the class III gaming devices manufactured or distributed by them for use or play at the gaming facilities meet the requirements of this section 3(b)(1) and appendix A. The tribal gaming office and the state gaming agency by mutual agreement may require the testing of any class III gaming device to ensure compliance with the requirements of this section 3(b)(1) and appendix A. Any such testing shall be at the expense of the licensed manufacturer or distributor.

(2) Operational standards for blackjack and jackpot poker. The tribe shall conduct blackjack and jackpot poker in accordance with an appendix, which shall consist of the minimum internal control standards of the commission as set forth in 25 C.F.R. part 542 as published in 64 Fed. Reg. 590 (Jan. 5, 1999) as may be amended from time to time, without regard to the commission's authority to promulgate the standards, until an appendix setting forth the operational standards, specifications, regulations and any limitations governing such gaming activities is agreed to by the tribe and the state.

(3) Additional appendices.

(a) Except as provided in sections 3(b)(1) and (2), the tribe may not conduct any gaming activities authorized in this compact without a mutually agreed-upon appendix setting forth the operational standards, specifications, regulations and any limitations governing such gaming activities. For purposes of this subsection, promotional activity conducted as a lottery is a gaming activity for which an appendix shall be required. Any disputes regarding the contents of such appendices shall be resolved in the manner set forth in section 15.

(b) The gaming facility operator shall conduct its gaming activities under an internal control system that implements the minimum internal control standards of the commission as set forth in 25 C.F.R. part 542 as published in 64 Fed. Reg. 590 (Jan. 5, 1999) as may be amended from time to time, without regard to the commission's authority to promulgate the standards.

(c) The tribal gaming office and the state gaming agency may agree to amend appendices to this compact in order to continue efficient regulation and address future circumstances. A change in an appendix or the addition of a new appendix shall not be considered an amendment to this compact.

(4) Security and surveillance requirements. The tribe shall comply with the security and surveillance requirements set forth in appendix C to this compact.

(a) If the gaming facility operator operates the surveillance system, the manager of the surveillance department may report to management of the gaming facility operator regarding administrative and daily matters, but must report to a person or persons independent of the management of the gaming facility operator (e.g., the gaming facility operator's management board or a committee thereof, the tribe's council or a committee thereof, or the tribe's chairperson, president, or governor) regarding matters of policy, purpose, responsibility, authority, and integrity of casino management.

(b) If the tribal gaming office operates the surveillance system, the manager of its surveillance department must report directly to the executive director of the tribal gaming office.

(5) Online electronic game management system. Each gaming facility must have an online electronic game management system that meets the requirements of appendix A.

(a) If the tribe is Ak-Chin Indian community, Ft. McDowell Yavapai nation, Gila River Indian community, Pascua Yaqui tribe, Salt River Pima-Maricopa Indian community, or Tohono O'odham nation, then the gaming facility operator shall provide the state gaming agency with real time read-only electronic access to the online electronic game management system for each gaming facility of the tribe that is located within forty (40) miles of a municipality with a population of more than four hundred thousand (400,000), to provide the state gaming agency a more effective and efficient means of regulating gaming devices and tracking revenues.

1. The state gaming agency's real time read-only electronic access shall be limited to the following data maintained by the online electronic game management system, provided that the data is available in real-time and providing real-time access does not result in the loss of accumulation of data elements: coin in; coin out; drop (bills and coins); individual bills denomination; vouchers; theoretical hold; variances; jackpots; machine fills; ticket in; ticket out; slot door opening; drop door opening; cash box opening; ticket in opening; ticket out opening; and no-communication. If providing this data in real-time would result in the loss of accumulation of data elements, the gaming facility operator must provide the state gaming agency with access to the data via end-of-day reports containing the required data.

2. The state gaming agency shall phase in the system to provide it with real time read-only access to the online electronic game management system over a three year period. The state gaming agency shall pay the cost of:

A. Constructing and maintaining a dedicated telecommunications connection between the gaming facility operator's server room and the state gaming agency's offices;

B. Obtaining, installing, and maintaining any hardware or software necessary to interface between the gaming facility operator's online electronic game management system and the dedicated telecommunications connection; and

C. Obtaining, installing, and maintaining any hardware or software required in the state gaming agency's offices.

3. The state gaming agency's dedicated telecommunications connection from its offices to each gaming facility must meet accepted industry standards for security sufficient to minimize the possibility of any

third-party intercepting any data transmitted from the gaming facility operator's online electronic game management system over the connection. The state gaming agency's system security policy must meet accepted industry standards to assure that data received from the gaming facility operator's online electronic game management system will not be accessible to unauthorized persons or entities.

(b) The state gaming agency (and its officers, employees, and agents) are prohibited from:

1. Using any information obtained from the gaming facility operator's online electronic game management system for any purpose other than to carry out its duties under this compact; and

2. Disclosing any information obtained from the gaming facility operator's online electronic game management system to any person outside the state gaming agency, except as provided in section 7(b) and section 12(c).

(c) Number of gaming device operating rights and number of gaming facilities.

(1) Number of gaming devices. The tribe's gaming device operating rights are equal to the sum of its current gaming device allocation, plus any rights to operate additional gaming devices acquired by the tribe in accordance with and subject to the provisions of section 3(d). The tribe may operate one class III gaming device for each of the tribe's gaming device operating rights.

(2) Class II gaming devices. The tribe may operate up to forty (40) class II gaming devices in a gaming facility without acquiring gaming device operating rights under section 3(d), but such class II gaming devices shall be counted against the tribe's number of additional gaming devices. Each class II gaming device in excess of forty (40) that the tribe operates within its Indian lands shall be counted against the tribe's current gaming device allocation.

(3) Number of gaming facilities and maximum devices per gaming facility. The tribe may operate gaming devices in the number of gaming facilities in column (3) or (4) of the tribe's row in the table, whichever is lower, but shall not operate more than its maximum devices per gaming facility in any one gaming facility. The maximum devices per gaming facility for the tribe is the sum of the tribe's current gaming device allocation (including automatic periodic increases under section 3(c)(4)), plus the tribe's additional gaming devices, except if the tribe is Salt River Pima-Maricopa Indian community, Gila River Indian community, Pascua Yaqui tribe, Tohono O'odham nation, or Navajo nation, then the maximum devices per gaming facility is the same number as the maximum devices per gaming facility for Ak-Chin Indian community and Ft. McDowell Yavapai nation. If the tribe is the Tohono O'odham nation, and if the tribe operates four (4) gaming facilities, then at least one of the four (4) gaming facilities shall:

(i) Be at least fifty (50) miles from the existing gaming facilities of the tribe in the Tucson metropolitan area as of the effective date;

(ii) Have no more than six hundred forty-five (645) gaming devices; and

(iii) Have no more than seventy-five (75) card game tables.

(4) Periodic increase. During the term of this compact, the tribe's current gaming device allocation shall be automatically increased (but not decreased), without the need to amend this compact on each five-year anniversary of the effective date, to the number equal to the current gaming device allocation specified in the table multiplied by the population adjustment rate (with any fractions rounded up to the next whole number).

(5) Gaming device allocation table.

Gaming device allocation table

Listed tribe	(1) Current gaming device allocation	(2) Additional gaming devices	(3) Previous gaming facility allocation	(4) Revised gaming facility allocation
The Cocopah Indian tribe	475	170	2	2
Fort Mojave Indian tribe	475	370	2	2
Quechan tribe	475	370	2	2
Tonto Apache tribe	475	170	2	1
Yavapai-Apache nation	475	370	2	1
Yavapai-Prescott tribe	475	370	2	2
Colorado River Indian tribes	475	370	2	2
San Carlos Apache tribe	900	230	3	2
White Mountain Apache tribe	900	40	3	2
Ak-Chin Indian community	475	523	2	1
Ft. McDowell Yavapai nation	475	523	2	1
Salt River Pima-Maricopa Indian community	700	830	3	2
Gila River Indian community	1400	1020	4	3
Pascua Yaqui tribe	900	670	3	2
Tohono O'odham nation	1400	1020	4	4
Subtotal	10,475		38	29
Non-gaming tribes (as of 5/1/02)				
Havasupai tribe	475		2	
Hualapai tribe	475		2	
Kaibab-Paiute tribe	475		2	
Hopi tribe	900		3	
Navajo nation	2400		4	
San Juan Southern Paiute tribe	475		2	
Subtotal	5,200		15	
State total	15,675		53	

(6) If the tribe is not listed on the table, the tribe's current device allocation shall be four hundred seventy-five (475) gaming devices and the tribe's revised gaming facility allocation shall be two (2) gaming facilities.

(7) Multi-station devices. No more than two and one-half percent (2.5%) of the gaming devices in a gaming facility (rounded off to the nearest whole number) may be multi-station devices.

(d) Transfer of gaming device operating rights.

(1) Transfer requirements. During the term of this compact, the tribe may enter into a transfer agreement with one or more Indian tribes to acquire gaming device operating rights up to the tribe's number of additional gaming devices or to transfer some or all the tribe's gaming device operating rights up to the tribe's current gaming device allocation, except that if the tribe is Navajo nation, then the tribe may transfer only up to 1400 gaming devices of its current gaming device allocation. The tribe's acquisition or transfer of gaming device operating rights is subject to the following conditions:

(a) Gaming compact. Each Indian tribe that is a party to a transfer agreement must have a valid and effective new compact as defined in A.R.S. section 5-601.02(I)(6) that contains a provision substantially similar to this section 3(d) permitting transfers of the Indian tribe's gaming device operating rights.

(b) Forbearance agreement. If the tribe enters into a transfer agreement to transfer some or all of its gaming device operating rights the tribe shall also execute a forbearance agreement with the state. The forbearance agreement shall include:

1. A waiver of all rights of the tribe to put into play or operate the number of gaming device operating rights transferred during the term of the transfer agreement;

2. An agreement by the tribe to reduce its gaming facility allocation during the term of the transfer agreement as follows:

Number of transferred gaming device operating rights	Reductions in gaming facility allocation
1 - 475	1
476 - 1020	2
1021 - 1400	3

(i) If the tribe's number under column (4) of the table is lower than the tribe's number under column (3), then the tribe shall be credited for the reduction, if the tribe enters into a transfer agreement.

(ii) The numbers in the column under number of transferred gaming device operating rights shall be increased on each five-year anniversary of the effective date by multiplying each such number, other than one (1), by the population adjustment rate.

(iii) Reductions in the gaming facility allocation will be based on the cumulative total number of gaming device operating rights transferred by the tribe under all transfer agreements that are in effect.

(iv) If the tribe is the Navajo nation, then the tribe's gaming facility allocation shall be two (2), even if the tribe transfers up to 1400 gaming device operating rights.

(c) Gaming facility not required. The tribe may transfer unused gaming device operating rights whether or not it has a gaming facility allocation.

(d) Current operation. The tribe must operate gaming devices at least equal to its current gaming device allocation before, or simultaneously with, the tribe acquiring the right to operate additional gaming devices by a transfer agreement. The tribe is not required to utilize any gaming device operating rights it acquires, or to utilize them prior to acquiring additional gaming device operating rights.

(e) Transfer of acquired gaming device operating rights prohibited. The tribe shall not at any time simultaneously acquire gaming device operating rights and transfer gaming device operating rights pursuant to transfer agreements.

(2) Transfer agreements. Transfers of gaming device operating rights may be made pursuant to a transfer agreement between two Indian tribes. A transfer agreement must include the following provisions:

(a) Number. The number of gaming device operating rights transferred and acquired.

(b) Term. The duration of the transfer agreement.

(c) Consideration. The consideration to be paid by the Indian tribe acquiring the gaming device operating rights to the Indian tribe transferring the gaming device operating rights and the method of payment.

(d) Dispute resolution. The dispute resolution and enforcement procedures, including a provision for the state to receive notice of any such proceeding.

(e) Notice. A procedure to provide quarterly notice to the state gaming agency of payments made and received, and to provide timely notice of disputes, revocation, amendment, and termination.

(3) Transfer notice. At least thirty (30) days prior to the execution of a transfer agreement, the tribe must send to the state gaming agency a transfer notice of its intent to acquire or transfer gaming device operating rights. The transfer notice shall include a copy of the proposed transfer agreement, the proposed forbearance agreement and a copy of the tribal resolution authorizing the acquisition or transfer.

(4) State gaming agency denial of transfer. The state gaming agency may deny a transfer as set forth in a transfer notice only if:

(i) The proposed transfer violates the conditions set forth in section 3(d)(1), or

(ii) The proposed transfer agreement does not contain the minimum requirements listed in section 3(d)(2). The state gaming agency's denial of a proposed transfer must be in writing, must include the specific reason(s) for the denial (including copies of all documentation relied upon by the state gaming agency to the extent allowed by state law), and must be received by the tribe within thirty (30) days of the state gaming agency's receipt of the transfer notice. If the tribe disputes the state gaming agency's denial of a proposed transfer, the tribe shall have the right to have such dispute resolved pursuant to section 15.

(5) Effective date of transfer. If the tribe does not receive a notice of denial of the transfer from the state gaming agency within the time period specified above, the proposed transfer agreement shall become effective on the later of the thirty-first (31st) day following the state gaming agency's receipt of the transfer notice or the date set forth in the transfer agreement.

(6) Use of brokers. The tribe shall not contract with any person to act as a broker in connection with a transfer agreement. No person shall be paid a percentage fee or a commission as a result of a transfer agreement, nor shall any person receive a share of any financial interest in the transfer agreement or the proceeds generated by the transfer agreement. Any person acting as a broker in connection with a transfer agreement is providing gaming services.

(7) Revenue from transfer agreements. The tribe agrees that:

(i) All proceeds received by the tribe as a transferor under a transfer agreement are net revenues from tribal gaming as defined by the act and that such proceeds shall be used for the purposes permitted under the act; and

(ii) The tribe shall include the proceeds in an annual audit and shall make available to the state that portion of the audit addressing proceeds from transfer agreements.

(8) Agreed upon procedures report. The tribe agrees to provide to the state gaming agency, either separately or with the other party to the transfer agreement, an agreed upon procedures report from an independent certified public accountant. The procedures to be examined and reported upon are whether payments made under the transfer agreement were made in the proper amount, made at the proper time, and deposited in an account of the Indian tribe transferring gaming device operating rights.

(9) State payment. Proceeds received by the tribe as a transferor under a transfer agreement from the transfer of gaming device operating rights are not subject to any payment to the state under this compact or otherwise.

(10) Compact enforcement; effect on transfer agreements. If the tribe acquires gaming device operating rights under a transfer agreement, no dispute between the state and the other party to the transfer agreement shall affect the tribe's rights under the transfer agreement or the tribe's

obligations to make the payments required under the transfer agreement. If the tribe transfers gaming device operating rights under a transfer agreement, no dispute between the state and the other party to the transfer agreement shall affect the tribe's rights under the transfer agreement or the obligations of the other party to the transfer agreement to make the payments required under the transfer agreement. These provisions shall not apply to a dispute among the state and both parties to a transfer agreement regarding the validity of a transfer agreement or to a dispute between the parties to a transfer agreement regarding a breach of the transfer agreement.

(11) Access to records regarding transfer agreement. The state gaming agency shall have access to all records of the tribe directly relating to transfer agreements and forbearance agreements under section 7(b).

(12) Transfer and acquisition of pooled gaming devices.

(a) The tribe is authorized to join with other Indian tribes to periodically establish a pool to collect gaming device operating rights from Indian tribes that desire to transfer gaming device operating rights and transfer them to Indian tribes that desire to acquire gaming device operating rights. If the tribe is operating all of its current gaming device allocation and, after making reasonable efforts to do so, the tribe is not able to acquire additional gaming devices pursuant to an agreement described in section 3(d)(2), the tribe may acquire additional gaming devices up to the number specified in the table for the tribe from a transfer pool under procedures agreed to by Indian tribes participating in the transfer pool and the state.

(b) The tribe and the state are authorized to establish a pooling mechanism, under procedures agreed to by the tribe and the state, by which the rights to operate gaming devices that are not in operation may be acquired by an Indian tribe through an agreement with the state. If the tribe is operating all of its current gaming device allocation and, after making reasonable efforts to do so, the tribe is not able to acquire additional gaming devices pursuant to an agreement described in section 3(d)(2) or from any transfer pool established pursuant to section 3(d)(12)(a) within 90 days after the opening of a transfer pool established pursuant to section 3(d)(12)(a), the tribe may acquire additional gaming devices from the state up to the number specified in the table for the tribe at a price that is at least one hundred percent (100%) of the highest price paid to date for the transfer of at least one hundred (100) gaming device operating rights for a term of at least five (5) years. The monies paid by an Indian tribe to acquire additional gaming devices under an agreement pursuant to this section 3(d)(12)(b) shall benefit Indian tribes that have the right to operate gaming devices that are eligible to be transferred and are not in operation. The state shall provide Indian tribes that are eligible to enter into an agreement with the state pursuant to this section 3(d)(12)(b) the opportunity to participate in the pool pursuant to the procedures agreed to by the tribe and the state.

(c) Prior to agreeing to any procedures with any Indian tribe pursuant to sections 3(d)(12)(a) or (b), the state shall provide notice to the tribe of the proposed procedures.

(e) Number of card game tables.

(1) Number of card game tables; number of players per game. Subject to the terms and conditions of this compact, the tribe is authorized to operate up to seventy-five (75) card game tables within each gaming facility that is located more than forty (40) miles from any municipality with a population of more than four hundred thousand (400,000) persons; and up to one hundred (100) card game tables within each gaming facility that is located within forty (40) miles of a municipality with a population of more than four hundred thousand (400,000) persons. Each blackjack table shall be limited to no more than seven (7) available player positions plus the dealer. Each poker table shall be limited to no more than ten (10) available player positions plus the dealer. The tribe agrees that it will not operate card games outside of a gaming facility.

(2) Periodic increases in the number of card game tables. The number of card game tables that the tribe is authorized to operate in each gaming facility shall be automatically increased (but not decreased), without the need to amend this compact on each five-year anniversary of the effective date, to the number that is equal to the number of card game tables the tribe is authorized to operate in each gaming facility set forth in section 3(e)(1) multiplied by the applicable population adjustment rate (with any fraction rounded up to the next whole number).

(f) Number of keno games. Subject to the terms and conditions of this compact, the tribe is authorized to operate no more than two (2) keno games per gaming facility.

(g) Inter-tribal parity provisions.

(1) Gaming devices. Except as provided in section 3(g)(5), if, during the term of this compact:

(a) An Indian tribe listed on the table is authorized or permitted to operate in the state:

1. More class III gaming devices than the total number of that Indian tribe's current gaming device allocation in column (1) of the table, plus the number of that Indian tribe's additional gaming devices in column (2) of the table; or

2. More class III gaming devices than that Indian tribe's current gaming device allocation in column (1) of the table without acquiring gaming device operating rights pursuant to and in accordance with section 3(d); or

3. More class III gaming devices within a single gaming facility than that Indian tribe's maximum devices per gaming facility (as adjusted in accordance with section 3(c)(3)); or

(b) Any Indian tribe not listed on the table is authorized or permitted after the effective date to operate in the state more than four hundred seventy-five (475) class III gaming devices, or more than five hundred twenty-three (523) additional gaming devices under terms other than section 3(d); then

(c) The following remedies shall be available to the tribe to elect, as the tribe may determine in its sole discretion, from time to time:

1. The tribe shall automatically be entitled to a greater number of gaming device operating rights, without the need to amend this compact and without the need to acquire any gaming device operating rights under section 3(d). The greater number of gaming device operating rights is the product of a ratio (which is the total number of class III gaming devices the other Indian tribe is in fact authorized or permitted to operate following the occurrence of any of the events specified in subsections (a) or (b) of this section 3(g)(1) divided by the total number assigned to the other Indian tribe under column (1) plus column (2) of the table) multiplied by the total number assigned to the tribe in column (1) plus column (2) of the table. If the tribe is not listed on the table, then the ratio described in the previous sentence is multiplied by the tribe's total number of gaming devices authorized in the compact; and

2. The tribe shall automatically be entitled to immediately reduce its obligations to make contributions to the state under section 12. Instead of the amounts payable under section 12(b), the tribe shall make quarterly contributions to the state equal to seventy-five hundredths of one percent (.75%) of its class III net win for the prior quarter. This remedy will not be available after any Indian tribe with a new compact as defined in A.R.S. section 5-601.02(I)(6) enters its final renewal period as described in section 23(b)(3).

(2) Contribution terms. If, during the term of this compact any other Indian tribe is authorized or permitted to operate gaming devices in the state and the terms of the other Indian tribe's obligation to make contributions to the state are more favorable to the other Indian tribe than the obligation of the tribe to make contributions to the state under the terms of section 12, then the tribe may elect to have section 12 automatically amended to conform to those more favorable terms.

(3) Additional class III gaming. Except as provided in section 3(g)(5), if during the term of this compact, any Indian tribe is authorized to operate:

(a) A form of class III gaming in the state that is not listed in section 3(a), then the tribe shall be entitled to operate the additional form of gaming that the other Indian tribe is authorized to operate, without the need to amend this compact.

(b) Blackjack on more card game tables per gaming facility than authorized under this compact, then the tribe shall be entitled to operate blackjack on the additional number of card game tables that the other Indian tribe is authorized to operate, without the need to amend this compact.

(4) Wager limits. Except as provided in section 3(g)(5), if, during the term of this compact, any Indian tribe is authorized or permitted to

operate in the state any class III gaming devices or card game tables with higher wager limits than the wager limits specified in section 3, then the tribe is also authorized to operate its gaming devices and/or card game tables with the same higher wager limits, without the need to amend this compact.

(5) Exceptions. The provisions of section 3(g) shall not be triggered:

(a) By the automatic periodic increases in:

(i) The current gaming device allocation provided in section 3(c)(4), or the resulting increase in the maximum device per gaming facility;

(ii) The number of authorized card game tables provided in section 3(e)(2); or

(iii) The authorized wager limits for gaming devices or card game tables provided in section 3(m)(4);

(b) If the state enters into a compact with an Indian tribe listed as a non-gaming tribe on the table that provides a number of additional gaming devices that is no greater than the largest number of additional gaming devices shown on the table for another Indian tribe with the same current gaming device allocation as shown on the table for such non-gaming tribe; and

(c) By the provisions of a pre-existing compact as defined in A.R.S. section 5-601.02(I)(5).

(h) Additional gaming due to changes in state law with respect to persons other than Indian tribes.

(1) If, on or after May 1, 2002, state law changes or is interpreted in a final judgment of a court of competent jurisdiction or in a final order of a state administrative agency to permit either a person or entity other than an Indian tribe to operate gaming devices; any form of class III gaming (including video lottery terminals) that is not authorized under this compact, other than gambling that is lawful on May 1, 2002 pursuant to A.R.S. section 13-3302; or poker, other than poker that is lawful on May 1, 2002 pursuant to A.R.S. section 13-3302, then, upon the effective date of such state law, final judgment, or final order:

(a) The tribe shall be authorized under this compact to operate class III gaming devices without limitations on the number of gaming devices, the number of gaming facilities, or the maximum gaming devices per gaming facility, and without the need to amend this compact;

(b) The tribe shall be authorized under this compact to operate table games, without limitations on the number of card game tables, on wagers, or on the types of games, and without the need to amend this compact, subject to the provisions of 3(b)(3); and

(c) In addition to sections 3(h)(1)(a) and (b), the tribe's obligation under section 12 to make contributions to the state shall be immediately reduced. Instead of the amounts payable under section 12(b), the tribe shall make quarterly contributions to the state equal to seventy-five hundredths of one percent (.75%) of its class III net win for the prior quarter.

(2) The provisions of this section 3(h) shall not apply to casino nights operated by non-profit or charitable organizations pursuant to and qualified under A.R.S. section 13-3302(b); to social gambling as defined in A.R.S. section 13-3301(7); to any paper product lottery games, including ticket dispensing devices of the nature used prior to May 1, 2002, by the Arizona lottery; or to low-wager, non-banked recreational pools or similar activities operated by and on the premises of retailers licensed under title 4, Arizona Revised Statutes, as may be authorized by state law.

(i) Notice. Prior to the tribe obtaining rights under sections 3(g) or (h), either the tribe or the state must first give written notice to the other describing the facts which the tribe or the state contend either do or may satisfy the elements of sections 3(g) or (h). The receiving party shall serve a written response on the other party within thirty (30) days of receipt of the notice. If the parties do not agree on whether sections 3(g) or (h) have been triggered, the dispute may be submitted to dispute resolution under section 15 by either the tribe or the state.

(j) Location of gaming facility.

(1) All gaming facilities shall be located on the Indian lands of the tribe. All gaming facilities of the tribe shall be located not less than one and one-half (1 1/2) miles apart unless the configuration of the Indian lands of an Indian tribe makes this requirement impracticable. The tribe shall notify the state gaming agency of the physical location of any gaming facility a minimum of thirty (30) days prior to commencing gaming activities at such location. Gaming activity on lands acquired after the enactment of the act on October 17, 1988 shall be authorized only in accordance with 25 U.S.C. § 2719.

(2) Notice to surrounding communities. The tribe shall notify surrounding communities regarding new or substantial modifications to gaming facilities and shall develop procedures for consultation with surrounding communities regarding new or substantial modifications to gaming facilities.

(k) Financial services in gaming facilities. The tribe shall enact a tribal ordinance establishing responsible restrictions on the provision of financial services at gaming facilities. At a minimum, the ordinance shall prohibit:

(1) Locating an automatic teller machine ("ATM") adjacent to, or in close proximity to, any gaming device;

(2) Locating in a gaming facility an ATM that accepts electronic benefit transfer cards issued pursuant to a state or federal program that is intended to provide for needy families or individuals;

(3) Accepting checks or other non-cash items issued pursuant to a state or federal program that is intended to provide for needy families or individuals; and

(4) The gaming facility operator from extending credit to any patron of a gaming facility for gaming activities.

(l) Forms of payment for wagers. All payment for wagers made for gaming activities conducted by the tribe on its Indian lands, including the purchase of tokens for use in wagering, shall be made by cash, cash equivalent, credit card or personal check. Automatic teller machines (ATMs) may be installed at a gaming facility.

(m) Wager limitations.

(1) For gaming devices. The maximum wager authorized for any single play of a gaming device is twenty five dollars ($25.00).

(2) For blackjack. The maximum wager authorized for any single initial wager on a hand of blackjack by each individual player shall be (a) five hundred dollars ($500.00) at up to ten (10) card game tables per gaming facility, and (b) two hundred and fifty dollars ($250.00) for all other card game tables in a gaming facility. The foregoing maximum wager limits shall apply to each subsequent wager that an individual player shall be entitled to make on the same hand as the result of "splits" and/or "doubling down" during the play of such hand.

(3) For poker. The wager limits for a hand of poker shall be (a) $75.00/$150.00 at up to ten (10) card game tables per gaming facility, and (b) $20.00/$40.00 for all other card game tables in a gaming facility.

(4) Periodic increases in wager limitations. During the term of this compact, the wager limitations set forth in this section 3(m) shall each be automatically increased (but not decreased) without the need to amend this compact on each five-year anniversary of the effective date to an amount equal to the wager limitations specified in sections 3(m)(1), (2) and (3) multiplied by the CPI adjustment rate (with all amounts rounded up to the next whole dollar). The tribe will notify the state gaming agency of such wager limitation adjustments as soon as reasonably possible after the CPI adjustment rate has been determined.

(n) Hours of operation. The tribe may establish by ordinance or regulation the permissible hours and days of operation of gaming activities; provided, however, that with respect to the sale of liquor the tribe shall comply with all applicable state liquor laws at all gaming facilities.

(o) Ownership of gaming facilities and gaming activities. The tribe shall have the sole proprietary interest in the gaming facilities and gaming activities. This provision shall not be construed to prevent the tribe from granting security interests or other financial accommodations to secured parties, lenders, or others, or to prevent the tribe from entering into leases or financing arrangements.

(p) Prohibited activities. Any class III gaming not specifically authorized in this section 3 is prohibited. Except as provided herein, nothing in this compact is intended to prohibit otherwise lawful and authorized class II gaming upon the tribe's Indian lands or within the gaming facilities.

(q) Operation as part of a network. Gaming devices authorized pursuant to this compact may be operated to offer an aggregate prize or prizes as part of a network, including a network:

(1) With the gaming devices of other Indian tribes located within the state that have entered into tribal-state gaming compacts with the state, or

(2) Beyond the state pursuant to a mutually-agreed appendix containing technical standards for wide area networks.

(r) Prohibition on firearms. The possession of firearms by any person within a gaming facility shall be strictly prohibited. This prohibition shall not apply to certified law enforcement officers authorized to be on the premises as well as any private security service retained to provide security at a gaming facility, or armored car services.

(s) Financing. Any third-party financing extended or guaranteed for the gaming operation and gaming facilities shall be disclosed to the state gaming agency, and any person extending such financing shall be required to be licensed by the tribe and annually certified by the state gaming agency, unless said person is an agency of the United States or a lending institution licensed and regulated by the state or the United States.

(t) Record-keeping. The gaming facility operator or the tribal gaming office, whichever conducts surveillance, shall maintain the following logs as written or computerized records which shall be available for inspection by the state gaming agency in accordance with section 7(b): a surveillance log recording all material surveillance activities in the monitoring room of the gaming facilities; and a security log recording all unusual occurrences investigated by the tribal gaming office. The gaming facility operator or the tribal gaming office, whichever conducts surveillance, shall retain video recordings made in accordance with appendix C for at least seven (7) days from the date of original recording.

(u) Barred persons. The tribal gaming office shall establish a list of persons barred from the gaming facilities because their criminal history or association with career offenders or career offender organizations poses a threat to the integrity of the gaming activities of the tribe. The tribal gaming office shall employ its best efforts to exclude persons on such list from entry into its gaming facilities. To the extent not previously provided, the tribal gaming office shall send a copy of its list on a monthly basis to the state gaming agency, along with detailed information regarding why the person has been barred and, to the extent available, the barred person's photograph, driver's license information, and/or fingerprints, to the extent these items are in the possession of the tribal gaming office. The state gaming agency will establish a list which will contain the names, and to the extent available, photographs of, and other relevant information regarding, persons whose reputations, conduct, or criminal history is such that their presence within a gaming facility may pose a threat to the public health, safety, or welfare. Such persons will be barred from all tribal gaming facilities within the state. The tribe agrees that the state gaming agency may disseminate this list, which shall contain detailed information about why each person is barred, to all other tribal gaming offices.

(v) Problem gambling.

(1) Signage. At all public entrances and exits of each gaming facility, the gaming facility operator shall post signs stating that help is available if a person has a problem with gambling and, at a minimum, provide the statewide toll free crisis hotline telephone number established by the Arizona state lottery commission.

(2) Self-exclusion. The state gaming agency and the tribe shall comply with the following provisions:

(a) The state gaming agency shall establish a list of persons who, by acknowledging in a manner to be established by the state gaming agency that they are problem gamblers, voluntarily seek to exclude themselves from gaming facilities. The state gaming agency shall establish procedures for the placement on and removal from the list of self-excluded persons. No person other than the person seeking voluntary self-exclusion shall be allowed to include any person's name on the self-exclusion list of the state gaming agency.

(b) The tribe shall establish procedures for advising persons who inquire about self-exclusion about the state gaming agency's procedures.

(c) The state gaming agency shall compile identifying information concerning self-excluded persons. Such information shall contain, at a minimum, the full name and any aliases of the person, a photograph of the person, the social security or driver's license number of the person, and the mailing address of the person.

(d) The state gaming agency shall, on a monthly basis, provide the compiled information to the tribal gaming office. The tribe shall treat the information received from the state gaming agency under this section as confidential and such information shall not be disclosed except to other tribal gaming offices for inclusion on their lists, or to appropriate law enforcement agencies if needed in the conduct of an official investigation or unless ordered by a court of competent jurisdiction.

(e) The tribal gaming office shall add the self-excluded persons from the list provided by the state gaming agency to their own list of self-excluded persons.

(f) The tribal gaming office shall require the gaming facility operator to remove all self-excluded persons from all mailing lists and to revoke any slot or player's cards. The tribal gaming office shall require the gaming facility operator to take reasonable steps to ensure that cage personnel check a person's identification against the state gaming agency's list of self-excluded persons before allowing the person to cash a check or complete a credit card cash advance transaction.

(g) The tribal gaming office shall require the gaming facility operator to take reasonable steps to identify self-excluded persons who may be in a gaming facility and, once identified, promptly escort the self-excluded person from the gaming facility.

(h) The tribal gaming office shall prohibit the gaming facility operator from paying any hand-paid jackpot to a person who is on the tribal or state gaming agency self-exclusion list. Any jackpot won by a person on the self-exclusion list shall be donated by the gaming facility operator to an Arizona-based non-profit charitable organization.

(i) Neither the tribe, the gaming facility operator, the tribal gaming office, nor any employee thereof shall be liable to any self-excluded person or to any other party in any proceeding and neither the tribe, the gaming facility operator, nor the tribal gaming office shall be deemed to have waived its sovereign immunity with respect to any person for any harm, monetary or otherwise, which may arise as a result of:

1. The failure of the gaming facility operator or the tribal gaming office to withhold or restore gaming privileges from or to a self-excluded person; or

2. Otherwise permitting a self-excluded person to engage in gaming activity in a gaming facility while on the list of self-excluded persons.

(j) Neither the tribe, the gaming facility operator, the tribal gaming office, nor any employee thereof shall be liable to any self-excluded person or to any other party in any proceeding, and neither the tribe, the gaming facility operator, nor the tribal gaming office shall be deemed to have waived its sovereign immunity with respect to any person for any harm, monetary or otherwise, which may arise as a result of disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, of the identity of any self-excluded person or persons.

(k) Notwithstanding any other provision of this compact, the state gaming agency's list of self-excluded persons shall not be open to public inspection.

(w) Restriction on minors.

(1) Until May 31, 2003, no person under 18 years of age shall be permitted to place any wager, directly or indirectly, in any gaming activity.

(2) Prior to May 31, 2003, the tribe shall enact, as tribal law, a requirement that beginning June 1, 2003, no person under 21 years of age shall be permitted to place any wager, directly or indirectly, in any gaming activity.

(3) If, during the term of the compact, the state amends its law to permit wagering by persons under 21 years of age in any gaming activity by a person or entity other than an Indian tribe, the tribe may amend tribal law to reduce the lawful gaming age under this compact to correspond to the lawful gaming age under state law.

(4) No person under 18 years of age shall be employed as a gaming employee. No person under 21 years of age shall be employed in the service of alcoholic beverages at any gaming facility, unless such employment would be otherwise permitted under state law.

(x) Advertising.

(1) Right to advertise. The state and the tribe recognize the tribe's constitutional right to engage in advertising of lawful gaming activities and nothing in this compact shall be deemed to abrogate or diminish that right.

(2) Prohibition on advertising directed to minors. The gaming facility operator shall not advertise or market gaming activities in a manner that specifically appeals to minors.

(3) Advertising guidelines. Within thirty days after the effective date, the gaming facility operator shall adopt guidelines for the advertising and marketing of gaming activities that are no less stringent than those contained in the American gaming association's general advertising guidelines.

(4) Content of advertising. In recognition of the tribe's constitutional right to advertise gaming activities, the specific content of advertising and marketing materials shall not be subject to the provisions of section 15 of this compact.

(y) Internet gaming. The tribe shall not be permitted to conduct gaming on the internet unless persons other than Indian tribes within the state or the state are authorized by state law to conduct gaming on the internet.

(z) Lottery products. The tribe will not offer paper lottery products in competition with the Arizona lottery's pick or powerball games.

(aa) Annual statement. The tribe shall submit to the state gaming agency either an annual statement of compliance with the act regarding the use of net gaming revenues or a copy of its current gaming ordinance requiring that net gaming revenues be used according to the act."

(iv) The following provisions shall replace the corresponding provisions in section 4 of the pre-existing compact:

"(b) Gaming employees. Every gaming employee shall be licensed by the tribal gaming office and every employee of the tribal gaming office shall be licensed by the tribe. Any gaming employee or tribal gaming office employee that is not an enrolled tribal member shall also be certified by the state gaming agency prior to commencement of employment, and annually thereafter, subject to the temporary certification provided in section 5(n). Enrolled tribal members are not required to be certified by the state as a condition of employment. Gaming employees that hold the following positions are also not required to be certified by the state, so long as they do not have unescorted access to secure areas such as gaming device storage and repair areas, count rooms, vaults, cages, change booths, change banks/cabinets, security offices and surveillance rooms, revenue accounting offices, and rooms containing information systems that monitor or control gaming activities (or, as may be agreed to by the state gaming agency and the tribal gaming office in a separate agreement delineating the secure areas in the tribe's gaming facilities):

(1) Food and beverage service personnel such as chefs, cooks, waiters, waitresses, bus persons, dishwashers, food and beverage cashiers, and hosts;

(2) Gift shop managers, assistant managers, cashiers, and clerks;

(3) Greeters;

(4) Landscapers, gardeners, and groundskeepers;

(5) Maintenance, cleaning, and janitorial personnel;

(6) Stewards and valets;

(7) Wardrobe personnel;

(8) Warehouse personnel; and

(9) Hotel personnel.

(d) Manufacturers and suppliers of gaming devices and gaming services. Each manufacturer and distributor of gaming devices, and each person providing gaming services, within or without the gaming facility, shall be licensed by the tribal gaming office and shall be certified by the state gaming agency prior to the sale or lease of any gaming devices or gaming services. The tribe shall provide to the state gaming agency a list of the names and addresses of all vendors providing gaming services on a periodic basis at the time of the meetings required pursuant to section 6(h) of this compact. Utilities which are the sole available source of any particular service to a gaming facility are not required to be certified. A vendor licensed and regulated by another governmental agency may submit a supplement to the application on file with the other agency. The state gaming agency may waive the requirement that a vendor be certified if it determines that certifying the vendor is not necessary to protect the public interest."

(v) The following provision shall replace the corresponding provisions in section 5 of the pre-existing compact:

"(p) State administrative process; certifications. Any applicant for state certification agrees by making such application to be subject to state jurisdiction to the extent necessary to determine the applicant's qualification to hold such certification, including all necessary administrative procedures, hearings and appeals pursuant to the administrative procedures act, title 41, chapter 6, Arizona Revised Statutes and the administrative rules of the state gaming agency.

(q) Administrative process; licenses.

(1) Any person applying for licensure by the tribal gaming office acknowledges that by making such application, the state gaming agency, as set forth herein, may be heard concerning the applicant's qualifications to hold such license. If the state recommends revocation, suspension, or denial of a license, and the tribal gaming office revokes, suspends, or denies the license based on the state gaming agency's recommendation, the person may appeal that action to the tribe, to the extent any such right exists.

(2) If the tribal gaming office takes any action with respect to a license despite a state recommendation to the contrary, the tribal gaming office shall afford the state an opportunity for a hearing before an appropriate tribal forum to contest the tribal gaming office licensing

decision. The decision of the tribal forum shall be final, except as provided in section 5(q)(4).

(3) The tribal gaming office shall afford the state gaming agency the opportunity to be heard in an appropriate tribal forum on its recommendation to suspend or revoke the license of any person in the same manner as if the state gaming agency had recommended denial of the license in the first instance.

(4) Independent tribunal review of tribal forum.

(a) Tribunal appointment and process. If the tribal forum upholds a decision not to follow a gaming employee license recommendation, the state gaming agency may appeal to an independent three member tribunal by providing written notice to the tribal gaming office within ten (10) days after receiving the tribal forum's decision. Within twenty (20) days thereafter, the CPR or a similar dispute resolution service acceptable to the parties (the "dispute resolution service"), shall select the tribunal members, except that upon agreement by the parties, in lieu of selection by the dispute resolution service, each party may select a tribunal member, and the two members shall select a third member. If, within five (5) days after their appointment, the tribunal members appointed by the parties have not agreed upon a third tribunal member, the dispute resolution service shall select the third member. All tribunal members, whether appointed by the dispute resolution service or the parties, shall be (a) impartial, (b) licensed by and in good standing with a state bar association, and (c) independent from the state, the state gaming agency, the tribe, and the tribal gaming office. The tribunal shall hold a hearing and issue its decision within ninety (90) days after the state gaming agency delivers its written notice of appeal to the tribal gaming office.

(b) Tribunal authority. The tribunal's sole authority shall be to review the decision of the tribal forum and determine whether the decision is supported by substantial evidence based on the record as a whole. The tribunal's hearing shall be conducted in a fair and impartial manner. The hearing shall be held on the administrative record presented to the tribal forum. The tribunal's decision shall be final and not subject to further appeal or to section 15 dispute resolution procedures. If the tribunal determines the employee should not be licensed, the tribal gaming office shall promptly revoke the disputed license. The cost of the tribunal and the hearing shall be borne equally between the state and the tribe."

(vi) The following provision shall be added to section 7 of the pre-existing compact:

"(g) Compact compliance review. The state gaming agency is authorized to conduct an annual, comprehensive compact compliance review of the gaming operation, gaming facilities, and the gaming activities of the gaming facility operator to monitor compliance with this compact, any amendments or appendices to this compact, and other agreements relating to this compact."

(vii) Section 12 of the pre-existing compact shall be replaced with the following:

Section 12. Payment of regulatory costs; tribal contributions

(a) Payment of regulatory costs. The tribe agrees to pay the state the necessary costs incurred by the state as a result of the state's performance of its rights or duties under the terms of this compact. The tribe's contributions under this section 12 shall satisfy the agreement to pay those costs.

(b) Tribal contributions. In consideration for the substantial exclusivity covenants by the state in section 3(h), the tribe shall contribute for the benefit of the public a percentage of the tribe's class III net win for each fiscal year of the gaming facility operator as follows:

(1) One percent (1%) of the first twenty-five million dollars ($25,000,000.00);

(2) Three percent (3%) of the next fifty million dollars ($50,000,000.00);

(3) Six percent (6%) of the next twenty-five million dollars ($25,000,000.00); and

(4) Eight percent (8%) of class III net win in excess of one hundred million dollars ($100,000,000.00).

(c) Arizona benefits fund. The tribe shall make eighty-eight percent (88%) of its total annual contribution under section 12(b) to the Arizona benefits fund established by A.R.S. 5-601.02(H). The state agrees that the Arizona benefits fund shall be used for the purpose of administering the contributions made by the tribe to the state in accordance with the provisions of section 12(b). All contributions to the state from the tribe pursuant to this section 12(c), and all contributions to the state from other Indian tribes that have entered into tribal-state gaming compacts with the state that contain similar provisions, shall be deposited in the Arizona benefits fund administered by the state gaming agency. The state agrees to invest all monies in the Arizona benefits fund in accordance with A.R.S. section 35-313; monies earned from such investment may only be credited to the Arizona benefits fund. The state agrees that contributions paid to the state by the tribe under this section 12(c) shall only be distributed as provided in A.R.S. section 5-601.02, as adopted by the people of the state at the November 5, 2002 election, and the state shall not impose any tax, fee, charge, or other assessment upon the tribe's gaming operations.

(d) Distributions by tribe to cities, towns and counties. The tribe shall make twelve percent (12%) of its total annual contribution under section 12(b) in either or both of the following forms:

(1) Distributions to cities, towns or counties for government services that benefit the general public, including public safety, mitigation of impacts of gaming, or promotion of commerce and economic development;

(2) Deposits to the ~~commerce and economic development commission~~ ARIZONA COMMERCE AUTHORITY local communities fund established by A.R.S. section 41-1505.12.

(e) Contribution schedule.

(1) Tribal contributions pursuant to section 12(b) shall be paid quarterly to the state gaming agency, other than the amounts distributed or deposited to benefit cities, towns and counties under section 12(d). The contributions shall be calculated based on the tribe's class III net win for each quarter of the gaming facility operator's fiscal year. Contributions shall be made no later than twenty-five (25) days after the last day of each fiscal quarter.

(2) At the time each quarterly contribution is made, the tribe shall submit to the state gaming agency a report indicating the class III net win by gaming activity for the quarter, and the amounts paid under sections 12(c) and (d).

(3) The tribe's first quarterly contribution will be calculated based on the tribe's class III net win for the first full fiscal quarter after the effective date.

(4) Following the state gaming agency's receipt of the annual audit pursuant to section 11(c), any overpayment of monies by the tribe pursuant to this section shall be credited to the tribe's next quarterly contribution. Any underpayment of monies shall be paid by the tribe within thirty (30) days of the state gaming agency's receipt of the annual audit.

(f) Reduction of tribal contributions. In the event that tribal contributions are reduced pursuant to sections 3(g) or (h), the tribe shall make the reduced contributions under the terms of this section 12, and these monies shall be used in the manner set forth in A.R.S. section 5-601.02(H)(3)(a) as adopted by the people of the state at the November 5, 2002 election."

(viii) The following provisions shall replace the corresponding provisions, or be added to the provisions, as the case may be, in section 13 of the pre-existing compact:

"(b) Emergency service accessibility. The tribe shall require the gaming facility operator to make provisions for adequate emergency accessibility and service. Mutual aid and emergency response service agreements will be entered as needed with entities from the surrounding communities.

(e) Law enforcement. The tribe shall implement a written law enforcement services plan that provides a comprehensive and effective means to address criminal and undesirable activity at the gaming facilities. This plan shall provide that sufficient law enforcement resources are available twenty-four hours a day seven days per week to protect the public health, safety, and welfare at the gaming facilities. The tribe and the state shall investigate violations of state gambling statutes and other criminal activities at the gaming facilities. To accommodate investigations and intelligence sharing, the tribe will provide that a police officer holding current Arizona police officer standards and training (POST) certification is employed by the gaming facility operator, tribal gaming office, or tribal police department, and assigned to handle gaming-related matters when they arise. Intelligence liaisons will be established at the tribal police department or tribal gaming office and also at the state gaming agency. There will be federal, tribal, and state cooperation in task force investigations. The state gaming agency's intelligence unit will gather, coordinate, centralize, and disseminate accurate and current intelligence information pertaining to criminal and undesirable activity that may threaten patrons, employees, or assets of the gaming industry. The state and the tribe will coordinate the use of resources, authority, and personnel of the state and the tribe for the shared goal of preventing and prosecuting criminal or undesirable activity by players, employees, or businesses in connection with tribal gaming facilities. Violations of state criminal gambling statutes on tribal lands may be prosecuted as federal crimes in federal court."

(ix) Section 15 of the pre-existing compact shall be replaced with the following:

"Section 15. Dispute resolution

(a) Notice/negotiation. If either the tribe or the state believes the other has failed to comply with the requirements set forth in this compact, or if a dispute arises as to the proper interpretation of those requirements, then either party may serve a written notice on the other identifying the specific provision or provisions of the compact in dispute and specifying in detail the factual bases for any alleged non-compliance and/or the interpretation of the provision of the compact proposed by the party providing notice. Within ten (10) days following delivery of the written notice of dispute, the executive director of the tribal gaming office and the director of the state gaming agency shall meet in an effort to voluntarily resolve the compliance or interpretation dispute through negotiation. If those negotiations fail to resolve the dispute, the executive director of the tribal gaming office, the director of the state gaming agency, and representatives designated by the governor of Arizona and the chairman of the tribe shall meet in a further effort to voluntarily resolve the dispute through further negotiation.

(b) Mediation. If the tribe and the state are unable to resolve by negotiation any dispute regarding compliance with the requirements of the compact, or the proper interpretation of those requirements, within thirty (30) days after delivery of the written notice of dispute, the tribe and the state shall, upon the request of either party, endeavor to settle the dispute in an amicable manner by non-binding mediation administered by the CPR under its mediation procedures dated April 1, 1998 (unless otherwise agreed to by the parties), and the procedures set forth below. Although the parties shall be required to participate in the mediation process if requested, a request for mediation shall not preclude either party from pursuing any other available remedy.

(1) Selection of mediator. If the parties agree upon a mediator, that person shall serve as the mediator. If the parties are unable to agree on a mediator within ten (10) days of a request for mediation, then the CPR (i) shall select an attorney from the CPR panel of distinguished neutrals to be the mediator or (ii) if requested by the parties, shall select the mediator from a list of potential mediators approved by the parties.

(2) Conduct of mediation. The mediator shall control the procedural aspects of the mediation and shall be guided by the mediation procedures promulgated by the CPR.

(3) Costs of mediation. The costs of mediation shall be borne equally by the parties, with one-half (1/2) of the expenses charged to the tribe and one-half (1/2) of the expenses charged to the state.

(c) Arbitration. If the tribe and the state fail to resolve such a dispute regarding compliance with the requirements of the compact or the proper interpretation of those requirements through negotiation or mediation under sections 15(a) or (b) within thirty (30) days after delivery of the written notice of dispute, upon a demand by either party, the dispute shall be settled through binding arbitration at a neutral location and, unless otherwise agreed to by the parties, the arbitration shall be conducted in accordance with the rules, as modified by the following:

(1) Demand for arbitration. No earlier than thirty (30) days after the delivery of the notice required under section 15(a), either party may serve on the other a written demand for arbitration of the dispute, in accordance with CPR rule 3. The demand shall contain a statement setting forth the nature of the dispute and the remedy sought. The other party shall file a notice of defense and any counterclaim within twenty (20) days, in accordance with CPR rule 3. Failure to provide a notice of defense shall not delay the arbitration. In the absence of a notice of defense, all claims set forth in the demand shall be deemed denied.

(2) Arbitrators. Unless the parties agree in writing to the appointment of a single arbitrator, the arbitration shall be conducted before a panel of three (3) arbitrators. In the absence of an agreement to a single arbitrator, within twenty (20) days of the defending party's receipt of the demand, each party shall select an arbitrator. As soon as possible thereafter, but in no event more than forty (40) days following delivery of the demand, the party-appointed arbitrators shall discuss and select a third (3rd) arbitrator from the panel of distinguished neutrals, who shall chair the tribunal. Alternatively, if the parties have agreed upon a list of arbitrators acceptable to both parties, the CPR shall select the third (3rd) arbitrator from that list. Unless the parties agree otherwise, at least one (1) of the arbitrators on the tribunal shall be an attorney or retired judge knowledgeable about the act, federal Indian law, and jurisdiction within Indian country. If the parties do not appoint an arbitrator with those

qualifications, the party-appointed arbitrators or the CPR shall do so. Once the tribunal is impaneled, there shall be no ex parte contact with the arbitrators, except for contacts with the office of the tribunal chair regarding scheduling or other purely administrative matters that do not deal with substantive matters or the merits of the issues.

(3) Selection of arbitrator(s) by the CPR. If a party fails to appoint an arbitrator, or if the party-appointed arbitrators have failed to appoint a third (3rd) arbitrator within the time period provided in section 15(c)(2), either party may request appointment of the arbitrator by the CPR. The request shall be made in writing and served on the other party. CPR shall fill any vacancies on the tribunal within ten (10) days of a request in accordance with CPR rule 6.

(4) Neutrality of the arbitrators. All arbitrators shall be independent and impartial. Upon selection, each arbitrator shall promptly disclose in writing to the tribunal and the parties any circumstances that might cause doubt regarding the arbitrator's independence or impartiality. Such circumstances may include, but shall not be limited to, bias, interest in the result of the arbitration, and past or present relations with a party or its counsel. Following such disclosure, any arbitrator may be challenged in accordance with CPR rule 7.

(5) Cost of arbitration. The costs of arbitration shall be borne equally by the parties, with one-half (1/2) of the expenses charged to the tribe and one-half (1/2) of the expenses charged to the state.

(6) Preliminary conference/hearing. The tribunal shall hold an initial pre-hearing conference no later than thirty (30) days following the selection of the members of the tribunal and shall permit discovery and make other applicable decisions in accordance with CPR rules 9 through 12. Unless the parties agree otherwise, or unless the tribunal determines that compelling circumstances exist which demand otherwise, the arbitration shall be completed within one hundred and eighty (180) days of the initial pre-hearing conference.

(7) Discovery.

(a) Documents. Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim or on which the producing party may rely in support of or in opposition to any claim or defense. Except as permitted by the tribunal, all written discovery shall be completed within ninety (90) days following the initial pre-hearing conference. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the tribunal, whose determination shall be conclusive.

(b) Depositions. Consistent with the expedited nature of arbitration and unless the parties agree otherwise, a party, upon providing written notice to the other party, shall have the right to take the depositions of up to five (5) witnesses, each of which shall last no longer than one (1) day.

Unless the parties agree otherwise, additional depositions shall be scheduled only with the permission of the tribunal and for good cause shown. A party's need to take the deposition of a witness who is not expected to be available for an arbitration hearing shall be deemed to be good cause. Except as permitted by the tribunal, all depositions shall be concluded within one hundred and twenty (120) days following the initial pre-hearing conference. All objections that might be raised to deposition testimony shall be reserved for the arbitration hearing, except for objections based on privilege, proprietary or confidential information, and objections to form or foundation that could be cured if raised at the deposition.

(8) Injunctive relief in aid of arbitration. The tribe or the state may seek in a court of competent jurisdiction (a) provisional or ancillary remedies, including preliminary injunctive relief, pending the outcome of an arbitration proceeding, or (b) permanent injunctive relief to enforce an arbitration award.

(9) Arbitration hearing.

(a) Notice/transcript. Unless the parties agree otherwise, the tribunal shall provide the parties with at least sixty (60) days notice of the date of the arbitration hearing. Unless the parties agree otherwise, there shall be a stenographic record made of the hearing, with the cost to be shared by the tribe and the state. The transcript shall be the official record of the proceeding.

(b) Last, best offer format. The arbitrators shall conduct each arbitration proceeding using the "last, best offer" format, unless any party to an arbitration proceeding opts out of the "last, best offer" arbitration format in the manner set forth in section 15(c)(9)(c).

1. No later than forty (40) days before the arbitration hearing (or forty (40) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived), each party shall submit to the other party or parties to the arbitration a preliminary last, best offer for those issues that will be decided using the last, best offer format.

2. No later than twenty (20) days before the arbitration hearing (or twenty (20) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived), each party shall submit to the tribunal and the other party or parties to the arbitration its pre-hearing last, best offer for those issues that will be decided using the last, best offer format.

3. No later than ten (10) days after the conclusion of the arbitration hearing (or ten (10) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived), each party shall submit to the tribunal and the other party or parties to the arbitration its final last, best offer for those issues that will be decided using the last, best offer format.

4. Except as otherwise provided in this section 15(c)(9)(b)(4), for each issue to be decided using the last, best offer format, the tribunal shall, for its decision on the issue, adopt one of the last, best offers submitted under section 15(c)(9)(b)(3) and no other remedy (excepting only remedies in aid of the tribunal's decision). If the tribunal expressly determines that a last, best offer submitted by a party with respect to an issue or issues is not consistent with or does not comply with the act and/or the compact, as they may be amended and as they are interpreted by courts of competent jurisdiction, then the tribunal shall reject that last, best offer and shall not consider it in rendering its decision. If the tribunal expressly determines that all the last, best offers submitted by the parties with respect to an issue or issues are not consistent with or do not comply with the act and/or the compact, as they may be amended and as they are interpreted by courts of competent jurisdiction, then the tribunal shall reject all the last, best offers and shall decide the related issue or issues as if the parties had elected to have the issue or those issues decided without using the "last, best offer" format. In addition, the tribunal shall have no authority to award money damages against either party, regardless of whether a last, best offer proposes an award of damages.

(c) Opting out of last, best offer format. Unless the parties agree otherwise, a party desiring to opt out of the "last, best offer" arbitration format shall serve a written notice of its election no later than fifty (50) days before the arbitration hearing (or fifty (50) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived). The notice shall:

1. Identify with specificity the issue or issues that the arbitrators will decide without using the "last, best offer" arbitration format, or

2. State that the arbitrators will not use the "last, best offer" arbitration format.

(10) Decision of the tribunal. The decision of the tribunal shall be in writing, setting forth detailed findings of fact and conclusions of law and a statement regarding the reasons for the disposition of each claim. If the tribunal determines that a last, best offer is not consistent with or does not comply with the act and/or the compact, the decision of the tribunal shall set forth detailed findings of fact and conclusions of law and a statement regarding the reasons for the tribunal's determination. The written decision of the tribunal shall be made promptly and, unless otherwise agreed to by the parties, no later than forty (40) days from the date of the closing of the hearing or, if oral hearings have been waived, no later than forty (40) days from the date the dispute is submitted to the tribunal for decision. The tribunal may take additional time to render its decision if the tribunal determines that compelling circumstances require additional time. The tribunal may issue awards in accordance with CPR rule 13, to the extent that rule is consistent with section 15(c). The decision of the majority of the arbitrators shall be final, binding, and non-appealable,

except for a challenge to a decision on the grounds set forth in 9 U.S.C. § 10. The failure to comply with a judgment upon the award of the arbitrators shall be a breach of this compact.

(11) Governing law/jurisdiction. Title 9 of the United States Code (the United States arbitration act) and the rules shall govern the interpretation and enforcement of section 15(c), but nothing in section 15(c) shall be interpreted as a waiver of the state's tenth amendment or eleventh amendment immunity or as a waiver of the tribe's sovereign immunity. The tribunal shall resolve the disputes submitted for arbitration in accordance with, and every decision of the tribunal must comply and be consistent with, the act and the compact, as they may be amended and as they are interpreted by courts of competent jurisdiction. The tribunal shall have no authority to award money damages against either party.

(12) Judicial confirmation. Judgment upon any award rendered by the tribunal may be entered in any court having competent jurisdiction.

(d) Injunctive relief. The parties acknowledge that, although negotiation followed by mediation and arbitration are the preferred methods of dispute resolution, compact section 15 shall not impair any rights to seek in any court of competent jurisdiction injunctive relief pursuant to 25 U.S.C. § 2710(d)(7)(a)(ii), or a judgment upon an award rendered by an arbitration tribunal in accordance with sections 15(c)(10) and 15(c)(11). In an action brought by the tribe against the state, one court of competent jurisdiction is the Arizona superior court. In an action brought by the state against the tribe, one court of competent jurisdiction is the United States district court for the district of Arizona. Nothing in this compact is intended to prevent either party from seeking relief in some other court of competent jurisdiction, or to constitute an acknowledgement that the state courts have jurisdiction over the tribe or the tribal courts have jurisdiction over the state."

(x) Section 17 of the pre-existing compact shall be replaced with the following:

"Section 17. Amendments

(a) Proposed compact amendments. To continue to ensure the fair and honest operation of Indian gaming, no later than one hundred eighty (180) days after the effective date, the state or the tribe may propose amendments to enhance the following regulatory provisions of this compact:

(1) The process for tribal judicial review of disputes regarding the nonpayment of alleged winnings to patrons;

(2) Compliance with United States public health service requirements regarding food and beverage handling;

(3) Compliance with building codes and fire safety standards in the construction of new gaming facilities and significant modifications to existing gaming facilities;

(4) The availability of adequate police, fire and emergency medical services to serve each gaming facility;

(5) Remedies for violations of this compact, the gaming ordinance, federal law, or state rules for certification holders;

(6) Liability insurance for gaming facilities and procedures for the disposition of tort claims that arise from personal injuries or property damage suffered at gaming facilities by patrons of the gaming facilities;

(7) Standards for background investigations, licensing and certification of gaming employees by the tribe or the state gaming agency, or both;

(8) Standards for background investigations, licensing, and certification by the tribe or the state gaming agency, or both, of persons or entities that provide gaming goods or services on a significant basis;

(9) Reports and audits of revenue from gaming activities to allow tracking and confirmation of such revenue;

(10) Minimum internal control standards, technical standards, testing procedures, and inspection procedures for class III gaming devices and the online electronic game management systems to which they are linked;

(11) Minimum internal control standards, operational standards, specifications, and regulations for other gaming activities permitted under this compact, including rules for game play and dealing procedures for blackjack and poker; and

(12) Surveillance requirements.

(b) Negotiations/mediation. Within ninety (90) days of receipt by the tribe or the state of proposed amendments described in section 17(a), the tribe and the state shall enter into good faith negotiations regarding the proposed amendments. If good faith negotiations fail to result in a mutually-agreed upon amendment to this compact regarding any of the issues listed in section 17(a), the parties shall participate in good faith in a mediation conducted in accordance with the provisions of section 15(b) in an effort to resolve their differences. The remaining provisions of section 15 shall not apply to sections 17(a) or (b). Within thirty (30) days after the conclusion of a mediation, the parties shall conclude negotiations and document any amendments consistent with section 17(c).

(c) Effect. Any amendment to this compact shall be in writing and signed by both parties. The terms and conditions of this compact shall remain in effect until amended, modified, or terminated."

(xi) Section 23 of the pre-existing compact shall be replaced with the following:

"Section 23. Effective date and duration

(a) Replacement of other gaming compacts. On the effective date, this compact shall replace and supersede any other tribal-state gaming compact between the state and the tribe. The tribe and the state shall execute an acknowledgement of the effective date.

(b) Duration.

(1) The initial term of this compact shall commence on the effective date. The initial term of this compact shall be the remainder of the term

under section 23(b)(1) of the tribe's pre-existing compact as defined in A.R.S. section 5-601.02(I)(5), if any, provided that such pre-existing compact was in effect on May 1, 2002, plus ten (10) years.

(2) This compact shall thereafter be extended for a renewal term of ten (10) years, unless the state or the tribe notifies the other in writing, not less than one hundred eighty (180) days prior to the expiration of the initial term, that it does not intend to renew the compact because of substantial non-compliance.

(3) This compact shall thereafter be extended for an additional renewal term of three (3) years in order to provide the parties with an opportunity to negotiate new or amended compact terms, unless the state or the tribe notifies the other in writing, not less than one hundred eighty (180) days prior to the expiration of the renewal term, that it does not intend to renew the compact because of substantial non-compliance.

(4) For purposes of this section 23, substantial non-compliance means the willful failure or refusal to reasonably comply with the material terms of a final, non-appealable court order, or a final, non-appealable award of an arbitrator or arbitrators under section 15. Substantial non-compliance does not include technical inadvertence or non-material variations or omissions in compliance with any such award or judgment. If either party contends that the other is in substantial non-compliance, the party so contending shall provide immediate written notice to the other, including the specific reason(s) for the contention and copies of all documentation relied upon to the extent allowed by law.

(5) A dispute over whether the state or the tribe has engaged in substantial non-compliance shall be resolved under section 15. The compact shall remain in effect until the dispute has been resolved by a final, non-appealable decision under section 15. In any section 15 proceeding to determine substantial non-compliance, the burden of proof shall be on the party alleging substantial non-compliance.

(6) The tribe may operate class III gaming only while this compact, or any extension thereof, is in effect. Prior to the end of the final renewal term of this compact, the state and the tribe shall negotiate under 25 U.S.C. section 2710(d)(3)(a), or other applicable federal law, for a successor compact or other similar agreement."

Sec. 3. Section 9-461.06, Arizona Revised Statutes, is amended to read:

9-461.06. Adoption and amendment of general plan; expiration and readoption

A. In municipalities that have territory in a high noise or accident potential zone as defined in section 28-8461, the legislature finds that in general plans and amendments to general plans land use compatibility with the continued operation of a military airport or ancillary military facility as defined in section 28-8461 is a matter of statewide concern.

B. The general plan and any amendment to such plan shall be adopted or readopted in the manner provided in this article.

C. The governing body shall:

1. Adopt written procedures to provide effective, early and continuous public participation in the development and major amendment of general plans from all geographic, ethnic and economic areas of the municipality. The procedures shall provide for:

(a) The broad dissemination of proposals and alternatives.

(b) The opportunity for written comments.

(c) Public hearings after effective notice.

(d) Open discussions, communications programs and information services.

(e) Consideration of public comments.

2. Consult with, advise and provide an opportunity for official comment by public officials and agencies, the county, school districts, associations of governments, public land management agencies, the military airport if the municipality has territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, other appropriate government jurisdictions, public utility companies, civic, educational, professional and other organizations, property owners and citizens generally to secure maximum coordination of plans and to indicate properly located sites for all public purposes on the general plan.

D. At least sixty days before the general plan or an element or major amendment of a general plan is noticed pursuant to subsection E of this section, the planning agency shall transmit the proposal to the planning commission, if any, and the governing body and shall submit a copy for review and further comment to:

1. The planning agency of the county in which the municipality is located.

2. Each county or municipality that is contiguous to the corporate limits of the municipality or its area of extraterritorial jurisdiction.

3. The regional planning agency within which the municipality is located.

4. The ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY or any other state agency that is subsequently designated as the general planning agency for this state.

5. The department of water resources for review and comment on the water resources element, if a water resources element is required.

6. If the general plan or an element or amendment of the general plan is applicable to territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the military airport.

7. If the general plan or an element or major amendment of the general plan is applicable to property in the high noise or accident potential zone of a military airport or ancillary military facility as defined in section 28-8461, the attorney general. For the purposes of this paragraph, "major

amendment" means a substantial alteration of the municipality's land use mixture or balance as established in the municipality's existing general plan land use element.

8. Any person or entity that requests in writing to receive a review copy of the proposal.

E. If the municipality has a planning commission, after considering any recommendations from the review required under subsection D of this section the planning commission shall hold at least one public hearing before approving a general plan or any amendment to such plan. When the general plan or any major amendment is being adopted, planning commissions in municipalities having populations over twenty-five thousand persons shall hold two or more public hearings at different locations within the municipality to promote citizen participation. Notice of the time and place of a hearing and availability of studies and summaries related to the hearing shall be given at least fifteen and not more than thirty calendar days before the hearing by:

1. Publication at least once in a newspaper of general circulation published or circulated in the municipality, or if there is none, the notice shall be posted in at least ten public places in the municipality.

2. Such other manner in addition to publication as the municipality may deem necessary or desirable.

F. Action by the planning commission on the general plan or any amendment to the plan shall be transmitted to the governing body of the municipality.

G. Before adopting the general plan, or any amendment to it, the governing body shall hold at least one public hearing. Notice of the time and place of the hearing shall be given in the time and manner provided for the giving of notice of the hearing by the planning commission as specified in subsection E of this section.

H. The adoption or readoption of the general plan or any amendment to such plan shall be by resolution of the governing body of the municipality, after notice as provided for in subsection E of this section. The adoption or readoption of or a major amendment to the general plan shall be approved by affirmative vote of at least two-thirds of the members of the governing body of the municipality. All major amendments to the general plan proposed for adoption by the governing body of a municipality shall be presented at a single public hearing during the calendar year the proposal is made. The general plan, or any amendment to the plan, shall be endorsed in the manner provided by the governing body to show that it has been adopted by the governing body. If the municipality includes property in the high noise or accident potential zone of a military airport or ancillary military facility as defined in section 28-8461, the governing body of the municipality shall send notice of the approval, adoption or readoption of the general plan or major amendment to the general plan to the attorney general by certified mail, return receipt requested, within three business days after the approval, adoption or readoption. If the attorney general determines the approval, adoption or readoption of the general plan or major amendment to the general plan is not in compliance with section 28-8481, subsection J, the attorney general shall notify the municipality by certified mail, return receipt requested, of the determination of noncompliance. The municipality shall receive the notice from the attorney general within twenty-five days after the notice from the municipality to the attorney general is mailed pursuant to this subsection. The effective date of any approval, adoption or readoption of, or major amendment to, the general plan shall be thirty days after the governing body's receipt of the attorney general's determination of noncompliance. Within thirty days after the receipt of a determination of noncompliance by the attorney general as prescribed by this section, the governing body of the municipality shall reconsider any approval, adoption or readoption of, or major amendment to, the general plan that impacts property in the high noise or accident potential zone of a military airport or ancillary military facility as defined in section 28-8461. If the governing body reaffirms a prior action subject to an attorney general's determination of noncompliance pursuant to this section, the attorney general may institute a civil action pursuant to section 28-8481, subsection L. If the governing body timely sends notice pursuant to this subsection and the attorney general fails to timely notify the governing body of a determination of noncompliance, the general plan or major amendment to the general plan shall be deemed to comply with section 28-8481, subsection J. If the motion to adopt or readopt a general plan or an amendment to the general plan fails to pass, the governing body may reconsider the motion in any manner allowed by the governing body's rules of procedure, but any subsequent motion for the adoption or readoption of the general plan or a major amendment to the general plan must be approved by an affirmative vote of at least two-thirds of the members of the governing body. For the purposes of this subsection, "major amendment" means a substantial alteration of the municipality's land use mixture or balance as established in the municipality's existing general plan land use element. The municipality's general plan shall define the criteria to determine if a proposed amendment to the general plan effects a substantial alteration of the municipality's land use mixture or balance as established in the municipality's existing general plan land use element.

I. If the municipality does not have a planning commission, the only procedural steps required for the adoption of the general plan, or any amendment to such plan, shall be those provided in this article for action by the governing body.

J. A copy of the adopted general plan of a municipality shall be sent to the planning agency of the county within which the municipality is located, and such plan or any portion of the plan may be adopted as a part of the county general plan.

K. A general plan, with any amendments, is effective for up to ten years from the date the plan was initially adopted and ratified pursuant to subsection M of this section, or until the plan is readopted pursuant to this subsection and ratified pursuant to subsection M of this section or a new plan is adopted pursuant to this subsection and ratified pursuant to subsection M of this section, and becomes effective. On or before the tenth anniversary of the plan's most recent adoption, the governing body of the municipality shall either readopt the existing plan for an additional term of up to ten years or shall adopt a new general plan as provided by this article.

L. Except for general plans that are required to be submitted to the voters for ratification pursuant to subsection M of this section, the adoption or readoption of a general plan, and any amendment to a general plan, shall not be enacted as an emergency measure and is subject to referendum as provided by article IV, part 1, section 1, subsection (8), Constitution of Arizona, and title 19, chapter 1, article 4.

M. The governing body of a city or town having a population of more than two thousand five hundred persons but less than ten thousand persons and whose population growth rate exceeded an average of two per cent per year for the ten year period before the most recent United States decennial census, and any city or town having a population of ten thousand or more persons, shall submit each new general plan adopted pursuant to subsection K of this section to the voters for ratification at the next regularly scheduled municipal election or at a special election scheduled at least one hundred twenty days after the governing body adopted the plan pursuant to section 16-204. The governing body shall include a general description of the plan and its elements in the municipal election pamphlet and shall provide public copies of the plan in at least two locations that are easily accessible to the public and may include posting on the municipality's official internet website. If a majority of the qualified electors voting on the proposition approves the new plan, it shall become effective as provided by law. If a majority of the qualified electors voting on the proposition fails to approve the new plan, the current plan remains in effect until a new plan is approved by the voters pursuant to this subsection. The governing body shall either resubmit the proposed new plan, or revise the new plan as provided by this section, for subsequent submission to the voters at the next regularly scheduled municipal election or at a special election scheduled at least one hundred twenty days after the governing body readopted the new or revised new plan. All subsequent adoptions and submissions of the new plan or revised plans must comply with the procedures prescribed by this section until the plan is ratified.

N. In applying an open space element or a growth element of a general plan a municipality shall not designate private land or state trust land as open space, recreation, conservation or agriculture unless the municipality receives the written consent of the landowner or provides an alternative, economically viable designation in the general plan or zoning ordinance, allowing at least one residential dwelling per acre. If the landowner is the prevailing party in any action brought to enforce this subsection, a court shall award fees and other expenses to the landowner. A municipality may designate land as open space without complying with the requirements of this subsection if the land was zoned as open space and used as a golf course pursuant to a zoning ordinance adopted pursuant to article 6.1 of this chapter before May 1, 2000 and the designation does not impose additional conditions, limitations or restrictions on the golf course, unless the land is state trust land that was not planned and zoned as open space pursuant to title 37, chapter 2, article 5.1.

O. A person, after having participated in the public hearing pursuant to subsection H of this section, may file a petition for special action in superior court to review the governing body's decision that does not comply with the mandatory requirement prescribed in section 9-461.05, subsection C, paragraph 1, subdivision (g) within thirty days after the governing body has rendered its decision. The court may affirm, reverse or remand to the governing body, in whole or in part, the decision reviewed for further action that is necessary to comply with the mandatory requirements prescribed in section 9-461.05, subsection C, paragraph 1, subdivision (g).

Sec. 4. Section 11-805, Arizona Revised Statutes, is amended to read:

11-805. Comprehensive plan adoption; notice; hearing; amendment; expiration; readoption

A. The board shall adopt a comprehensive plan and subsequently amend or extend the adopted plan as provided by this article. On adoption or readoption, the plan, or any part of the plan, shall be the official guide for the development of the area of jurisdiction. Any change, amendment, extension or addition of the comprehensive plan may be made only pursuant to this chapter.

B. The board of supervisors shall:

1. Adopt written procedures to provide effective, early and continuous public participation in the development and major amendment of the comprehensive plan from all geographic, ethnic and economic areas of the county. The procedures shall provide for:

(a) The broad dissemination of proposals and alternatives.

(b) The opportunity for written comments.

(c) Public hearings after effective notice.

(d) Open discussions, communications programs and information services.

(e) Consideration of public comments.

2. Consult with, advise and provide an opportunity for official comment by public officials and agencies, municipalities, school districts, associations of governments, public land management agencies, the military airport if the county's area of jurisdiction includes territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, other appropriate government jurisdictions, public utility companies, civic, educational, professional and other organizations, property

owners and citizens generally to secure the maximum coordination of plans and to indicate properly located sites for all public purposes on the plan.

C. The commission shall confer with the state land department and the governing bodies and planning commissions of cities and towns in the county for the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the county, of zoning districts, of urban growth and of public improvements and utilities that do not begin and terminate within the boundaries of any single city or town and that will, pursuant to the present and future needs of the county, best promote with efficiency and economy the health, safety, morals, order, convenience or general welfare of the public.

D. The commission shall coordinate the production of the comprehensive plan with the creation of the conceptual state land use plans under title 37, chapter 2, article 5.1. The commission shall cooperate with the state land department regarding integrating the conceptual state land use plans into the comprehensive plan.

E. The commission may formulate and draft the comprehensive plan as a whole, or as separate parts of the plan corresponding with functional divisions of the subject matter, and, subject to the limitations of this chapter, may amend, extend or add to the comprehensive plan.

F. At least sixty days before the comprehensive plan or an element or major amendment of a comprehensive plan is noticed pursuant to subsection G of this section, the commission shall transmit the proposal to the board of supervisors and submit a copy for review and further comment to:

1. Each municipality in the county.

2. Each other county that is contiguous to the county.

3. The regional planning agency in the county.

4. The ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY or any other state agency that is subsequently designated as the general planning agency for this state.

5. The department of water resources for review and comment on the water resources element, if a water resources element is required.

6. If the comprehensive plan or an element or amendment of the comprehensive plan is applicable to territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the military airport.

7. If the comprehensive plan or an element or major amendment of the comprehensive plan is applicable to property in the high noise or accident potential zone of a military airport or ancillary military facility as defined in section 28-8461, the attorney general. For the purposes of this paragraph, "major amendment" means a substantial alteration of the county's land use mixture or balance as established in the county's existing comprehensive plan land use element for that area of the county.

8. Any person or entity that requests in writing to receive a review copy of the proposal.

G. After considering any recommendations from the review required under subsection F of this section, the commission shall hold at least one public hearing. Notice of the time and place of a hearing and availability of studies and summaries related to the hearing shall be given at least fifteen and not more than thirty calendar days before the hearing by:

1. Publication at least once in a newspaper of general circulation in the county seat.

2. Publication at least once in a newspaper of general circulation in the area to be affected, or adjacent to the area to be affected, if the area affected is other than the county seat.

3. Such other manner in addition to publication as the county may deem necessary or desirable.

H. After the commission recommends the comprehensive plan or any section of the plan, the plan shall be submitted to the board of supervisors for its consideration and official action.

I. Before the adoption, amendment or extension of the plan, the board shall hold at least one public hearing on the plan. After the board considers the commission's recommendation and any recommendations from the review required under subsection F of this section, the board shall hold at least one public hearing at which residents of the county shall be heard concerning the matters contained in the plan. At least fifteen days' notice of the hearing shall be given by one publication in a newspaper of general circulation in the county seat. The board shall consider protests and objections to the plan and may change or alter any portion of the comprehensive plan. However, before any change is made, that portion of the plan proposed to be changed shall be re-referred to the commission for its recommendation, which may be accepted or rejected by the board.

J. The board of supervisors may adopt the county comprehensive plan as a whole or by successive actions adopt separate parts of the plan. The adoption or readoption of the comprehensive plan or any amendment to the plan shall be by resolution of the board. The adoption or readoption of, or a major amendment to, the county comprehensive plan shall be approved by the affirmative vote of at least two-thirds of the members of the board. All major amendments proposed for adoption to the comprehensive plan by the board shall be presented at a single public hearing during the calendar year the proposal is made. The adoption or readoption of the comprehensive plan, and any major amendment to the comprehensive plan, shall not be enacted as an emergency measure and is subject to referendum as provided by article IV, part 1, section 1, subsection (8), Constitution of Arizona, and title 19, chapter 1, article 4. For the purposes of this section, "major amendment" means a substantial alteration of the county's land use mixture or balance as established in the county's existing comprehensive plan land use element for that area of the county. The county's comprehensive plan shall define the criteria to determine if a proposed amendment to the comprehensive plan effects a substantial alteration of the county's land use mixture or balance as established in the county's existing comprehensive plan land use element for that area of the county.

K. If the county's area of jurisdiction includes property in the high noise or accident potential zone of a military airport or ancillary military facility as defined in section 28-8461, the board shall send notice of the approval, adoption or readoption of the comprehensive plan or major amendment to the comprehensive plan to the attorney general by certified mail, return receipt requested, within three business days after the approval, adoption or readoption. If the attorney general determines the approval, adoption or readoption of the comprehensive plan or major amendment to the comprehensive plan is not in compliance with section 28-8481, subsection J, the attorney general shall notify the county by certified mail, return receipt requested, of the determination of noncompliance. The board shall receive the notice from the attorney general within twenty-five days after the notice from the board to the attorney general is mailed pursuant to this subsection. The effective date of any approval, adoption or readoption of, or major amendment to, the comprehensive plan shall be thirty days after the board's receipt of the attorney general's determination of noncompliance. Within thirty days after the receipt of a determination of noncompliance by the attorney general as prescribed by this section, the board shall reconsider any approval, adoption or readoption of, or major amendment to, the comprehensive plan that impacts property in the high noise or accident potential zone of a military airport or ancillary military facility as defined in section 28-8461. If the board reaffirms a prior action subject to an attorney general's determination of noncompliance pursuant to this section, the attorney general may institute a civil action pursuant to section 28-8481, subsection L. If the board timely sends notice pursuant to this subsection and the attorney general fails to timely notify the board of a determination of noncompliance, the comprehensive plan or major amendment to the comprehensive plan is deemed to comply with section 28-8481, subsection J. For the purposes of this subsection "major amendment" has the same meaning prescribed in subsection J of this section.

L. If the motion to adopt or readopt the plan or an amendment to the plan fails to pass, the board may reconsider the motion in any manner allowed by the board's rules of procedure, but any subsequent motion for the adoption or readoption of the plan or a major amendment to the plan must be approved by an affirmative vote of at least two-thirds of the members of the board. If the board fails to adopt or readopt the plan, the current plan remains in effect until a new plan is adopted. The board shall either reconsider the proposed plan or consider a revised plan within one year and shall continue to do so until one is adopted. All subsequent considerations of a new or revised plan must comply with the procedures prescribed by this article.

M. A county comprehensive plan, with any amendments, is effective for up to ten years from the date the plan was initially adopted or until the plan is readopted or a new plan is adopted pursuant to this subsection and becomes effective. On or before the tenth anniversary of the plan's most recent adoption, the board shall either readopt the existing plan for an additional term of up to ten years or shall adopt a new comprehensive plan as provided by this article.

N. A person, after having participated in the public hearing pursuant to subsection I of this section, may file a petition for special action in superior court to review the board of supervisor's decision that does not comply with the mandatory requirement prescribed in section 11-804, subsection B, paragraph 1, subdivision (e) within thirty days after the board has rendered its decision. The court may affirm, reverse or remand to the board of supervisors, in whole or in part, the decision reviewed for further action that is necessary to comply with the mandatory requirements prescribed in section 11-804, subsection B, paragraph 1, subdivision (e).

Sec. 5. Section 15-1472, Arizona Revised Statutes, is amended to read:

15-1472. Community college district workforce development accounts; reports

A. Each community college district shall establish a separate workforce development account to receive only tax revenues authorized pursuant to section 42-5029, subsection E, paragraph 3. Each community college district board shall approve the expenditure of these monies in accordance with section 15-1461 and consistent with subsection B of this section.

B. Monies received pursuant to subsection A of this section shall be expended for workforce development and job training purposes. These expenditures may include:

1. Partnerships with businesses and educational institutions.

2. Additional faculty for improved and expanded classroom instruction and course offerings.

3. Technology, equipment and technology infrastructure for advanced teaching and learning in classrooms or laboratories.

4. Student services such as assessment, advisement and counseling for new and expanded job opportunities.

5. The purchase, lease or lease-purchase of real property, for new construction, remodeling or repair of buildings or facilities on real property.

C. The state treasurer shall transfer monies under this section into each district's workforce development account by the fifteenth day of each month. The state treasurer shall also allocate and distribute any pooled interest earnings earned from revenues authorized in section 42-5029, subsection E, paragraph 3 to each district in accordance with the method prescribed in subsection D, paragraph 2 of this section.

D. Revenues authorized for community college districts in section 42-5029, subsection E, paragraph 3 shall be distributed by the state in the following manner:

1. For thirteen fiscal years beginning in fiscal year 2001-2002 the state treasurer shall allocate one million dollars per fiscal year for the purpose of bringing this state into compliance with the matching capital requirements prescribed in section 15-1463. The state treasurer shall distribute the monies authorized in this subsection to each district in the order in which each campus qualified for funding pursuant to section 15-1463.

2. After the monies have been paid each year to the eligible districts pursuant to paragraph 1 of this subsection, the state treasurer shall distribute monies from the workforce development fund to each community college district in the following manner:

(a) Each district shall receive the sum of two hundred thousand dollars.

(b) After each district has received the payments prescribed in subdivision (a), the remainder of monies in the fund shall be distributed to each district according to each district's full-time equivalent student enrollment percentage of the total statewide audited full-time equivalent student enrollment in the preceding fiscal year prescribed in section 15-1466.01. For the purposes of this subdivision, the full-time equivalent student enrollment of a provisional community college district shall be added to the full-time equivalent student enrollment of the community college district that contracts with the provisional community college district pursuant to section 15-1409, subsection A, and that portion of the monies distributed under this subdivision to that community college district shall be used to provide services to students enrolled in that provisional community college district as approved by the provisional community college district's governing board as part of the annual budget process pursuant to section 15-1461. The percentage distribution under this subdivision shall be adjusted annually on October 1 of each year. For the purposes of this subdivision, the following distribution procedures apply:

(i) If a community college district established pursuant to section 15-1402.01 contracts with another community college district pursuant to section 15-1402.01, subsection B, the full-time equivalent student enrollment of that district shall be added to the full-time equivalent student enrollment of the other community college district that contracts with that district pursuant to section 15-1402.01, subsection B, and that portion of the monies distributed under this subdivision to the other community college district shall be used to provide services to students enrolled in the community college district established pursuant to section 15-1402.01 as approved by that district's governing board as part of the annual budget process pursuant to section 15-1461.

(ii) If a community college district established pursuant to section 15-1402.01 is no longer required to contract with another community college district pursuant to section 15-1402.01, subsection B, that community college district shall receive monies as provided in this subdivision according to its full-time equivalent student enrollment.

E. Revenues received by community college districts shall not be used by the legislature to supplant or reduce any state aid authorized in this chapter or supplant any proceeds from the sale of bonds authorized in this article and article 5 of this chapter.

F. Monies received under this section shall not be considered to be local revenues for purposes of article IX, section 21, Constitution of Arizona.

G. Each community college district or community college that is owned, operated or chartered by a qualifying Indian tribe on its own Indian reservation shall submit a report once every two years of its workforce development plan activities and the expenditures authorized in this section to the governor, president of the senate, speaker of the house of representatives, joint legislative budget committee and ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY by December 1 of every even-numbered year. The report shall include the purpose and goals for which the workforce development monies were expended by each district or community college together with a general accounting of the expenditures authorized in subsection B of this section. A copy of the final report shall also be provided to the secretary of state. For the purposes of this subsection, "qualifying Indian tribe" has the same meaning prescribed in section 42-5031.01.

Sec. 6. Section 26-305.01, Arizona Revised Statutes, is amended to read:

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

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

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

1. Radiation regulatory agency.
2. Arizona department of agriculture.
3. Department of health services.
4. Department of public safety.
5. Department of transportation.
6. Division of military affairs within the department of emergency and military affairs.
~~7. Department of commerce.~~
7. ARIZONA COMMERCE AUTHORITY.
8. Arizona corporation commission.
9. Department of environmental quality.
10. Any other agencies or offices deemed necessary by the division of emergency management.

Sec. 7. Section 28-301, Arizona Revised Statutes, is amended to read:

28-301. Transportation districts

A. Except as provided in subsection B, the state is divided into six transportation districts as follows:

1. First district, Maricopa county.

2. Second district, Pima county.

3. Third district, Cochise, Greenlee and Santa Cruz counties.

4. Fourth district, Gila, Graham and Pinal counties.

5. Fifth district, Apache, Coconino and Navajo counties.

6. Sixth district, La Paz, Mohave, Yavapai and Yuma counties.

B. If, after January 1, 2009, a county attains a population of five hundred thousand or more persons, a new district shall be formed consisting of only that county. The county shall be removed from the district it was in before the new district was formed. The clerk of the county board of supervisors, with the concurrence of the ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY, shall notify the governor, the state transportation board and the department of transportation of the new district by the end of the calendar year in which the county becomes qualified under this subsection. The governor shall appoint an additional member of the state transportation board for the new district pursuant to this section within sixty days after receiving the notice.

Sec. 8. Section 28-2154, Arizona Revised Statutes, is amended to read:

28-2154. Special registrations

A. A nonresident who purchases an unregistered vehicle in this state for removal to the state of residence of the purchaser shall obtain a special ninety day nonresident registration permit for the vehicle. The nonresident shall obtain the special ninety day nonresident registration permit by applying to the department, to an authorized third party or to a motor vehicle dealer as defined in section 28-4301 and by paying the fees prescribed by section 28-2003. Unless the nonresident purchaser has completed a form prescribed by section 42-5009, subsection ~~I~~ H, an affidavit in a form prescribed by the director shall accompany the application and shall contain the following statements:

1. The purchaser is not a resident of this state as defined in section 28-2001. For the purposes of this section and section 28-2154.01, the purchaser shall present to the department, an authorized third party or a motor vehicle dealer a driver license or other evidence prescribed by the director showing that the purchaser is not a resident of this state.

2. The vehicle is purchased to be registered out of state within ninety days after the issuance of the special ninety day nonresident registration permit.

3. The vehicle is not purchased for transfer to a resident of this state.

4. Other information that the director deems necessary.

B. At the time of application for a special ninety day nonresident registration permit, the purchaser shall submit for inspection proper evidence of ownership of the vehicle to be registered. The special ninety day nonresident registration permit is valid for not more than ninety days from the date of issuance and shall be in the form prescribed by the director. A person who obtains a special ninety day nonresident registration permit on a semitrailer that has been manufactured in this state may use the semitrailer for commercial purposes if the semitrailer is being used to transport goods from this state, subject to the payment of any taxes prescribed by this title.

C. An enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe and who purchases an unregistered vehicle in this state for removal to the Indian reservation shall obtain a special ninety day nonresident registration permit for the vehicle. The member may obtain the special ninety day nonresident registration permit by applying to the department, to an authorized third party or to any motor vehicle dealer as defined by section 28-4301 and by payment of the fees prescribed by section 28-2003.

D. A resident who does not have complete documentation for issuance of an Arizona title and registration on a noncommercial vehicle but who has established ownership of the vehicle to the satisfaction of the department may receive a special ninety day resident registration by applying and paying the fee prescribed by section 28-2003 to the department. The basis of assessment for the full annual registration fee and vehicle license tax relates back to the date of issuance of the first special ninety day resident registration.

E. A resident may receive a second consecutive special ninety day resident registration on application and payment of the fee prescribed by section 28-2003 if:

1. The person has applied for a bonded title and the title has not been issued during the first ninety day registration.

2. The person is awaiting settlement of an estate.

3. The person is awaiting lien clearance.

4. The person is awaiting a hearing decision as a result of a title complaint.

5. The person is awaiting the issuance of honorary consular official special license plates.

6. The director determines other circumstances justify the issuance.

F. At the discretion of the director, a resident may receive more than two consecutive special ninety day resident registrations for a vehicle in a twelve month period.

G. If there is a judgment against a resident of this state in another state that requires suspension of the resident's vehicle registration, in lieu of suspension of the resident's vehicle registration the department may issue a special temporary registration for the resident's vehicle that is valid for a period of not more than one hundred eighty days.

Sec. 9. Section 28-2154.01, Arizona Revised Statutes, is amended to read:

28-2154.01. Special ninety day nonresident registration permits; procedures

A. A dealer or an authorized third party that issues a special ninety day nonresident registration permit pursuant to section 28-2154 shall send an electronic record of the permit to the department through an authorized third party or through the department's authorized third party electronic service provider.

B. The department, an authorized third party or a dealer shall not:

1. Issue, assign or deliver a special ninety day nonresident registration permit to any person unless the person does all of the following:

(a) Obtains the special ninety day nonresident registration permit pursuant to section 28-2154.

(b) Completes an affidavit in a form prescribed by the director pursuant to section 28-2154 or completes a form prescribed by section 42-5009, subsection ~~I~~ H.

(c) Presents to the department, authorized third party or motor vehicle dealer a ~~currently~~ CURRENT valid driver license issued by another state indicating an address outside of this state.

(d) Provides any other information reasonably and uniformly required by the department of transportation pursuant to section 28-2154 or the department of revenue pursuant to section 42-5009, subsection ~~I~~ H.

2. Issue and affix, as prescribed in subsection C of this section, a special ninety day nonresident registration permit unless the permit is recorded in the electronic records of the department.

C. A person who issues a special ninety day nonresident registration permit shall affix or insert, clearly and indelibly, on the face of each permit the dates of issuance and expiration and the make and vehicle identification number of the vehicle. The special ninety day nonresident registration permit shall not bear the name or address of the person who purchased the vehicle in a position that is legible from outside of the vehicle.

D. A dealer or authorized third party who issues a special ninety day nonresident registration permit shall maintain a record, in a form prescribed by the director, of all special ninety day nonresident registration permits issued by the dealer or authorized third party and a record of other information pertaining to the issuance of special ninety day nonresident registration permits that the department of transportation or the department of revenue requires.

E. The dealer or authorized third party shall keep each record for at least three years after the date of entry of the record.

F. A dealer or authorized third party shall allow the director of the department of transportation or the director of the department of revenue full and free access to the records during regular business hours.

G. The electronic record is written notice of the removal of the vehicle from this state for use in the purchaser's state of residence and relieves the dealer or authorized third party of liability in accordance with the requirements of section 42-5009.

H. If a purchaser registers the vehicle in this state within three hundred sixty-five days after the issuance of the special ninety day nonresident registration permit, the purchaser is liable in an amount equal to any tax, penalty and interest that the motor vehicle dealer or authorized third party would have been required to pay under title 42, chapter 5 and under articles IV and VI of the model city tax code as defined in section 42-6051. At the time of issuing the special ninety day nonresident registration permit, a motor vehicle dealer or authorized third party shall inform the purchaser in writing of the purchaser's liability described in this section. Subsequent registration or use of the vehicle in this state does not create a cause of action against a dealer or authorized third party that complies with section 28-2154, subsection A, this section and section 42-5009, subsection ~~I~~ H.

I. The department of transportation and the department of revenue shall jointly develop and prescribe forms for the motor vehicle dealer, the authorized third party and the purchaser to complete for the proper administration and enforcement of this section.

J. Compliance with this section and section 28-2154 allows delivery of the vehicle to a nonresident purchaser in this state and retains the applicable deductions pursuant to section 42-5061, subsection A, paragraph 28, subdivision (a) and subsection U.

Sec. 10. Section 34-454, Arizona Revised Statutes, is amended to read:

34-454. Establishment and use of life cycle cost methods and procedures; definition

A. The director of the department of administration, in consultation with the ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY, shall establish practical and effective present value methods for estimating and comparing life cycle costs for state capital projects, using the sum of all capital and operating expenses associated with the energy system of the building involved over the expected life of the system or during a period of twenty-five years, whichever is shorter, and using average fuel costs and a discount rate determined by the director. The director shall develop and prescribe the procedures to be followed in applying and implementing the methods and procedures established by this subsection.

B. The design of new capital projects and the application of energy conservation measures to existing capital projects shall be made using life cycle cost methods and procedures established pursuant to subsection A.

C. In leasing buildings preference shall be given to buildings which minimize life cycle costs.

D. For the purposes of this section, "life cycle cost" means the total cost of owning, operating and maintaining a building over its useful life, including such costs as fuel, energy, labor and replacement components determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle costs shall be calculated over the effective remaining term of the lease.

Sec. 11. Section 35-701, Arizona Revised Statutes, is amended to read:

35-701. Definitions

In this chapter, unless the context otherwise requires:

1. "Corporation" means any corporation organized as an authority as provided in this chapter.

2. "Designated area" means any area of this state which is either designated pursuant to section 36-1479 as a slum or blighted area as defined in section 36-1471, designated by regulation as a pocket of poverty or a neighborhood strategy area by the United States department of housing and urban development pursuant to title I of the housing and community development act of 1977 (P.L. 95-128; 42 United States Code sections 5301 through 5320), as amended, and the department of housing and urban development act (P.L. 89-174; 42 United States Code section 3535(d)) or designated by the United States department of housing and urban development as an empowerment or enterprise zone pursuant to the federal omnibus budget reconciliation act of 1993 (P.L. 103-66; 26 United States Code section 1391(g)) ~~or an area certified as an enterprise zone pursuant to section 41-1524, subsection B~~.

3. "Governing body" means:

(a) The board or body in which the general legislative powers of the municipality or the county are vested.

(b) The Arizona board of regents with respect to a corporation formed with the permission of the Arizona board of regents.

4. "Income" means gross earnings from wages, salary, commissions, bonuses or tips from all jobs, net earnings from such person's or family's own nonfarm business, professional practice or partnership, and net earnings from such person's or family's own farm. Income includes income, other than earnings, that consists of amounts received from social security or railroad retirement, interest, dividends, veterans payments, pensions and other regular payments, public assistance or welfare payments, including aid for dependent children, old age assistance and aid to the blind or totally disabled, but excluding separate payments for hospital or other medical care.

5. "Manufactured house" means a structure that is manufactured in a factory after June 15, 1976, that is delivered to a homesite in more than one section and that is placed on a permanent foundation. The dimensions of the completed house shall not be less than twenty feet by forty feet, the roof

must be sloping, the siding and roofing must be the same as those found in site-built houses and the house must be eligible for thirty year real estate mortgage financing.

6. "Municipality" or "county" means the Arizona board of regents or any incorporated city or town, including charter cities, or any county in this state in which a corporation may be organized and in which it is contemplated the corporation will function.

7. "Persons of low and moderate income" means, for the purposes of financing owner-occupied single family dwelling units in areas which the municipality has found, pursuant to section 36-1479, to be slum or blighted areas, as defined in section 36-1471, persons and families whose income does not exceed two and one-half times the median family income of this state. In all other areas it means persons and families whose income does not exceed one and one-half times the median family income of this state.

8. "Project" means any land, any building or any other improvement and all real and personal properties, including machinery and equipment whether or not now in existence or under construction and whether located within or without this state or the municipality or county approving the formation of the corporation, that are suitable for any of the following:

(a) With respect to a corporation formed with the permission of a municipality or county other than the Arizona board of regents:

(i) Any enterprise for the manufacturing, processing or assembling of any agricultural or manufactured products.

(ii) Any commercial enterprise for the storing, warehousing, distributing or selling of products of agriculture, mining or industry, or of processes related thereto, including research and development.

(iii) Any office building or buildings for use as corporate or company headquarters or regional offices or the adaptive use for offices of any building within this state that is on the national register of historic places or rehabilitation of residential buildings located in registered historic neighborhoods.

(iv) A health care institution as defined in section 36-401.

(v) Residential real property for dwelling units located within the municipality or county approving the formation of the corporation and, in the case of a county, whether or not also within a municipality that is within the county.

(vi) Repairing or rehabilitating single family dwelling units or constructing or repairing residential fences and walls.

(vii) Convention or trade show facilities.

(viii) Airports, docks, wharves, mass commuting facilities, parking facilities or storage or training facilities directly related to any of the facilities as provided in this item.

(ix) Sewage or solid waste disposal facilities or facilities for the furnishing of electric energy, gas or water.

(x) Industrial park facilities.

(xi) Air or water pollution control facilities.

(xii) Any educational institution that is operated by a nonprofit educational organization that is exempt from taxation under section 501(c)(3) of the United States internal revenue code and that is not otherwise funded by state monies, any educational institution or organization that is established under title 15, chapter 1, article 8 and that is owned by a nonprofit organization, any private nonsectarian school or any private nonsectarian organization established for the purpose of funding a joint technical education school district.

(xiii) Research and development facilities.

(xiv) Commercial enterprises, including facilities for office, recreational, hotel, motel and service uses if the facilities authorized by this item are to be located in a designated area.

(xv) A child welfare agency, as defined in section 8-501, owned and operated by a nonprofit organization.

(xvi) A transportation facility constructed or operated pursuant to title 28, chapter 22.

(xvii) A museum operated by a nonprofit organization.

(xviii) Facilities owned or operated by a nonprofit organization described in section 501(c) of the United States internal revenue code of 1986.

(xix) New or existing correctional facilities within this state.

(b) With respect to a corporation formed with the permission of the Arizona board of regents, any facility consisting of classrooms, lecture halls or conference centers or any facility for research and development or for manufacturing, processing, assembling, marketing, storing and transferring items developed through or connected with research and development or in which the results of such research and development are utilized, but only if the facility is located in an area designated as a research park by the Arizona board of regents.

9. "Property" means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds necessary to a project and any other personal properties deemed necessary in connection with a project.

10. "Research park" means an area of land that has been designated by the Arizona board of regents as a research park for a university and that, at the date of designation, is owned by this state or by the Arizona board of regents.

11. "Single family dwelling unit" includes any new, used or manufactured house that meets the insuring requirements of the federal housing administration, the veterans administration or any other insuring entity of the United States government or any private mortgage insurance or surety company that is approved by the federal home loan mortgage corporation or the federal national mortgage association.

Sec. 12. Section 35-706, Arizona Revised Statutes, is amended to read:

35-706. Corporate powers

A. In addition to the powers granted to an industrial development authority by law, the authority ~~shall have~~ HAS the following powers, together with all powers incidental or necessary for the performance of ~~the following~~ THOSE POWERS:

1. To acquire, whether by purchase, exchange, gift, lease or otherwise establish, construct, improve, maintain, equip and furnish one or more projects.

2. To lease to others any or all of its projects, to charge and collect rent and to terminate any lease upon the failure of the lessee to comply with any of the obligations of the lease.

3. To sell, exchange, donate and convey to others any or all of its projects or properties upon terms and conditions as its board of directors may deem advisable, including the power to receive for any sale the note or notes of the purchaser of the project or property, whenever its board of directors finds the action to further advance the interest of the corporation.

4. To issue its bonds for the purpose of carrying out any of its powers.

5. To mortgage and pledge any or all of its projects and properties, whether owned or acquired, and to pledge the revenues, proceeds and receipts or any portion of the revenues, proceeds and receipts from a project as security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith.

6. To contract with and employ others to provide and to pay compensation for professional services and other services as the board of directors deems necessary for the financing of projects and for the business of the corporation.

7. To refund outstanding obligations incurred by an enterprise to finance the cost of a project when the board of directors finds that the refinancing is in the public interest.

8. To invest and reinvest funds under the control of the corporation and bond proceeds pending application thereof to the purposes for which the bonds were issued, subject only to the provisions of any bond resolution, lease or other agreement entered into by the board of directors.

9. To make secured or unsecured loans for the purpose of financing or refinancing the acquisition, construction, improvement, equipping or operating of a project and to charge and collect interest on the loans and pledge the proceeds of loan agreements as security for the payment of the principal and interest of any bonds, or designated issues of bonds, issued by the corporation, and any agreements made in connection with the loan, whenever the board of directors finds the loans to further advance the interest of the corporation or the public.

10. To acquire and hold obligations of any kind to carry out any of its purposes.

11. Subject to this section, to make loans to any bank, savings and loan institution, credit union or other mortgage lender, whether organized or existing under the laws of this state, another state or the United States, which is qualified to do business in this state, for the purpose of enabling the institutions to make loans to finance the acquisition, construction, improvement or equipping of projects which are owner-occupied single family dwelling units to be occupied by persons of low and moderate income, as determined by the corporation. The loans shall be fully secured in the same manner as deposits of public funds or by loans secured by mortgages, deeds of trust or other security instruments guaranteed or insured by the United States, or any instrumentality thereof, or by any private mortgage insurance or surety company which is approved by the federal home loan mortgage corporation or the federal national mortgage association and which is licensed to do business in this state, if the private mortgage insurance shall be in a dollar amount sufficient to satisfy the mortgage insurance requirements for loans eligible to be purchased by the federal home loan mortgage corporation or the federal national mortgage association or any other agency or department of the United States. The security shall not be necessary if the bonds issued to make the loans are guaranteed or insured by an agency, department or instrumentality of the United States. Any bonds issued to make loans shall be ratable as "A" or better by a nationally recognized bond rating agency.

12. Subject to this section, to purchase or enter into advance commitments to purchase loans or any loan interests secured by mortgages, deeds of trust or other security instruments relating to projects which are owner-occupied single family dwelling units from or with any bank, savings and loan institution, credit union or other mortgage lender, whether organized or existing under the laws of this state, another state or the United States, which is qualified to do business in this state, on terms and conditions as may be determined by the corporation. The purpose of the purchases shall be to finance directly or indirectly the acquisition, construction, improvement or equipping of projects which are owner-occupied single family dwelling units to be occupied by persons of low and moderate income. If the bonds issued to make purchases are not guaranteed or insured by an agency, department or instrumentality of the United States or secured by a letter of credit, insurance policy, surety bond or other credit facility from a financial institution or a combination of such instruments, the purchased loans shall be guaranteed or insured by the United States or any agency, department, or instrumentality thereof, or by any private mortgage insurance or surety company which is approved by the federal home loan mortgage corporation or the federal national mortgage association or secured by a letter of credit, insurance policy, surety bond or other credit facility from a financial institution or a combination of such instruments. In the

case of private mortgage insurance, the insurance shall be in a dollar amount sufficient to satisfy the mortgage insurance requirements for loans eligible to be purchased by the federal home loan mortgage corporation or the federal national mortgage association or any other agency or department of the United States. Any bonds issued to purchase loans shall be ratable as "A" or better by a nationally recognized bond rating agency. If the purchased loans have not been originated on behalf of the corporation to directly finance projects, the corporation shall require that the institution receiving proceeds from the sale of the loans use the proceeds to make loans to finance or refinance the acquisition, construction, improvement or equipping of projects which are owner-occupied single family dwelling units to be occupied by persons of low and moderate income, as determined by the corporation.

13. To elect not to issue an amount of qualified mortgage revenue bonds which it may otherwise issue during any calendar year and to issue instead mortgage credit certificates pursuant to a qualified mortgage credit certificate program as defined in section 35-901.

14. To make loans to any person or entity owning residential property or to make loans to any bank, savings and loan association, credit union or other mortgage lender, or to purchase or enter into advance commitments to purchase funding for the repair or improvement of property related to residential or neighborhood improvement projects. An authority may issue its bonds or incur other obligations to fund loans or purchases. An authority shall establish the provisions relating to bonds or other obligations, including the security for the loans, and shall establish the guidelines for the approval, funding, purchasing and security of the loans.

15. To enter into contracts and execute any agreements or instrument and do any other act necessary or appropriate to carry out its purposes.

16. To exercise the powers granted by this chapter, including through the issuance of bonds, to provide financing or refinancing for projects other than a project as defined in section 35-701, paragraph 8, subdivision (a), item (v), located in whole or in part outside this state, provided that the board of directors of the corporation has determined that the exercise of such powers will provide a benefit within this state.

B. The corporation shall not have the power to operate any project as a business other than as lessor or seller nor shall any corporation make any loans pursuant to subsection A, paragraph 9 of this section for projects which are owner-occupied single family dwelling units except by utilizing as its contract agent a mortgage lender, whether organized or existing under the laws of this state, another state or the United States, which is qualified to do business in this state. Any project established pursuant to subsection A, paragraph 14 of this section is not required to use a mortgage lender as its contract agent. The corporation shall not permit any funds derived from the sale of its bonds to be used, loaned or provided for the acquisition of any facilities of a public utility or public service corporation, except as provided in section 35-701. The corporation shall comply with title 38, chapter 3, article 3.1.

C. A person's or family's eligibility for an owner-occupied single family dwelling unit financed pursuant to subsection A, paragraph 11, 12 or 13 of this section shall be determined by considering the person's or family's income. Owner-occupied single family dwelling units shall only be financed as provided in subsection A, paragraphs 11, 12 and 13 of this section unless the owner-occupied single family dwelling units are located in an area designated pursuant to section 36-1479 as a slum or blighted area as defined in section 36-1471 by a municipality having a population of more than two hundred fifty thousand persons according to the most recent United States decennial census or a special census conducted in accordance with section 42-5033.

D. In the exercise of its powers authorized in this section with respect to projects which are owner-occupied single family dwelling units to be occupied by persons of low and moderate income and financed pursuant to subsection A, paragraphs 11 and 12 of this section, the corporation shall establish, subject to approval by the governing body of the authorizing county or municipality, standards and requirements applicable to the purchase of loans or the making of loans to mortgage lenders, including:

1. The eligibility of mortgage lenders, including the requirement that all mortgage lenders be approved as mortgagees by the federal housing administration and the veterans administration and be approved as sellers and servicers of mortgage loans by the federal national mortgage association or federal home loan mortgage corporation.

2. The time within which mortgage lenders must make commitments and disbursements for mortgage loans.

3. The character of residences to be financed by mortgage loans.

4. The eligibility of persons of low and moderate income, including the requirement that no person of low and moderate income may receive, more than once in a three year period, a mortgage loan financed directly or indirectly from the proceeds of bonds issued by the corporation.

5. The terms and conditions of mortgage loans to be acquired.

6. The amounts and types of insurance coverage required on residences, mortgages and bonds.

7. The representations and warranties of mortgage lenders confirming compliance with the standards and requirements.

8. Restrictions as to interest rate and other terms of mortgage loans and the return realized on mortgage loans by mortgage lenders.

9. The type and amount of collateral security to be provided to assure repayment of any loans from the corporation and to assure repayment of bonds.

10. Assignment of the mortgage loans to a trustee acting on behalf of the corporation which shall be either a bank or trust company doing business in this state, having an officially reported combined capital surplus, undivided profits and reserves of not less than fifteen million dollars.

Trustees must be approved to sell mortgages to and service mortgages for the federal national mortgage association and the federal home loan mortgage corporation.

11. Any other matters related to the purchase of mortgage loans or the making of loans to mortgage lenders deemed relevant by the corporation. In establishing standards and requirements, the corporation shall be guided by the following standards:

(a) The amount of mortgage monies proposed to be made available in the area is to be reasonably related to the demand for mortgage monies.

(b) For projects of owner-occupied single family dwelling units to be occupied by persons of low and moderate income and financed pursuant to subsection A, paragraphs 11 and 12 of this section, at least ten per cent of all mortgage monies proposed to be made available by the corporations other than mortgage monies reserved for any period to finance mortgage loans on residences located within an area designated as a slum or blighted area as defined in section 36-1471 shall be reserved for at least a three month period for the financing of mortgage loans on manufactured housing unless the ~~department of commerce makes a determination~~ ARIZONA COMMERCE AUTHORITY DETERMINES that any bonds issued to make loans will not be ratable as "A" or better by a nationally recognized bond rating agency, in which case no such reservation is required. If all the mortgage monies reserved for manufactured housing are not committed or used to make mortgage loans during this three month period, the mortgage lender may allocate the remaining monies to finance mortgage loans on any single family dwelling unit.

(c) Any departure from the level of commitment fees, origination fees or servicing fees normally charged by a mortgage lender is to be justified in the context of the transaction.

(d) The costs, fees and expenditures associated with the issuance of bonds are to be reasonably related to the services provided.

E. Only corporations, the formations of which have been approved by the governing body of a county having a population of more than nine per cent of the total state population computed according to the most recent United States decennial census or by the governing body of a municipality having a population of more than nine per cent of the total state population computed according to the most recent United States decennial census, shall have the powers granted in subsection A, paragraphs 11, 12 and 13 of this section. Except as provided in section 35-913, subsections E and F, a corporation shall not exercise the powers granted in subsection A, paragraphs 11, 12 and 13 of this section outside of its jurisdiction. For the purposes of a refunding of any mortgage revenue bond issued before January 1, 2000, the proceeds from the refunding may be used outside the jurisdiction of the corporation issuing the refunding bonds except the corporation issuing the refunding bonds shall obtain the consent from another corporation with powers granted in subsection A, paragraphs 11, 12 and 13 of this section if the proceeds of the refunding are to be used within the jurisdiction of that corporation. For the purposes of exercising the powers granted in subsection A, paragraphs 11, 12 and 13 of this section, the jurisdiction of a corporation formed on behalf of a county includes all incorporated and unincorporated territory in the county.

F. A corporation may not permit proceeds of bonds or a qualified mortgage credit certificate program to be used to finance projects which are owner-occupied single family dwelling units within the corporate limits of an incorporated city or town unless the governing body of the city or town has approved the general location and character of the residences to be financed. The corporation, prior to the issuance of bonds or mortgage credit certificates for that purpose, shall give written notice to the governing body of each city or town in which it intends to permit proceeds of an issue of bonds or mortgage credit certificates to be used to finance projects which are owner-occupied single family dwelling units and of the general location and character of the residences which may be financed. The governing body of the city or town shall be deemed to have given its approval unless it has denied approval by formal action of the governing body within twenty-one days after receiving the written notice from the corporation. Approvals given or deemed to have been given with respect to use of proceeds of an issue of bonds or mortgage credit certificates under this subsection may not be withdrawn. Denials may be withdrawn by the governing body of a city or town and approval may be given thereafter if the corporation issuing the bonds or mortgage credit certificates approves the withdrawal of the denial.

G. Two or more corporations with the powers granted by subsection E of this section may provide:

1. That a corporation, the formation of which was approved by the governing body of a county or city, may exercise the powers granted in subsection A, paragraphs 11, 12 and 13 of this section, with respect to owner-occupied single family dwelling units located in all counties and cities which are parties to a cooperative agreement.

2. For the joint exercise by two or more corporations, each formed with the approval of a governing body executing the cooperative agreement, of the powers granted in subsection A, paragraphs 11, 12 and 13 of this section, with respect to owner-occupied single family dwelling units located in all counties and cities which are parties to the cooperative agreement. The agreement shall specify the calendar year or years for which it is effective, the means by which the agreement may be terminated prior to the expiration of the calendar year or years and the aggregate principal amount of bonds which may be issued by the designated corporation or corporations to exercise the powers pursuant to the agreement. The corporation or corporations designated in the agreement to exercise the powers in the counties and cities which are parties to the agreement are the only corporation or corporations authorized and having jurisdiction to exercise the powers and to issue bonds to carry out the powers in the counties and cities while the agreement is in effect. The combined jurisdictions of all the counties and cities which are parties

to the cooperative agreement are the jurisdictions of the corporation or corporations designated to exercise the powers granted in subsection A, paragraphs 11, 12 and 13 of this section within the meaning of the mortgage subsidy bond tax act of 1980 (P.L. 96-499; 26 United States Code section 103A).

H. It shall not be a conflict of interest under title 38, chapter 3, article 8, and this chapter, for any trustee or any mortgage lender to enter into loan agreements with, or to sell mortgage loans to, the corporation as contemplated in subsection A, paragraphs 11, 12 and 13 of this section, act for or under contract with the corporation as a mortgage originator, servicer, paying agent or depository, act as holder or dealer of bonds of the corporation or have as a director, officer or employee any member of the board of directors of the corporation or any combination.

I. The department of economic security shall once in each calendar year on or before March 1 determine the median family income of this state for the purposes of this chapter.

J. All areas in this state which are either designated pursuant to section 36-1479 as slum or blighted areas as defined in section 36-1471 or designated as pockets of poverty by the United States department of housing and urban development are designated as areas of chronic economic distress within the meaning of the mortgage subsidy bond tax act of 1980 (P.L. 96-499; 26 United States Code section 103A).

K. Any corporation that is described in subsection E of this section and that desires to exercise the powers granted in subsection A, paragraphs 11, 12 and 13 of this section, with respect to owner-occupied single family dwelling units located in two or more counties, may do so if the corporation, before issuing bonds or mortgage credit certificates for that purpose, gives written notice to the governing bodies of the other counties and their respective corporations, if any, of its intent to permit the proceeds of an issue of bonds or mortgage credit certificates to finance projects within its jurisdiction which are owner-occupied single family dwelling units. The governing body of a county and its respective corporation, if any, which have been given notice are deemed to have approved the use of the proceeds or mortgage credit certificates for owner-occupied single family dwelling units within their jurisdiction and approved the use of any state ceiling, as defined in section 35-901, unless approval is denied by formal action of the governing body or the board of directors of the corporation, if any, within twenty-one days after receiving written notice from the corporation. Absent a denial of approval as stated in this subsection, a cooperative agreement providing for the exercise of the powers granted in subsection A, paragraphs 11, 12 and 13 of this section is deemed to exist among the applicable counties or corporations. Approvals given or deemed to have been given with respect to the matters stated in this subsection may not be withdrawn. Denials by the governing body of a county apply only to the unincorporated areas of the county. Denials may be withdrawn by the governing body of a county and approval may be given thereafter if the corporation issuing the bonds or mortgage credit certificates approves the withdrawal of the denial. Mortgage credit certificates and bond proceeds issued pursuant to this subsection shall be available on an equitable basis within each of the participating counties.

Sec. 13. Section 35-729, Arizona Revised Statutes, is amended to read:

35-729. Exemption from procurement code

For purposes of this article and chapter 7 of this title, the following are exempt from title 41, chapter 23 or other restrictions on the procedure for entering into contracts:

~~1. The department of commerce.~~

1. THE ARIZONA COMMERCE AUTHORITY.

2. The Arizona department of housing.

Sec. 14. Section 35-901, Arizona Revised Statutes, is amended to read:

35-901. Definitions

In this chapter, unless the context otherwise requires:

1. "AUTHORITY" MEANS THE ARIZONA COMMERCE AUTHORITY.

~~1.~~ 2. "Bond" means any obligation which is subject to the provisions of section 146 of the code, excluding obligations that received a carry-forward allocation in a prior year.

~~2.~~ 3. "Business day" means between the hours of 8:00 a.m. and 5:00 p.m., mountain standard time, any day of the week other than a Saturday, a Sunday or a legal holiday or a day on which the ~~department~~ AUTHORITY is authorized or obligated by law or executive order to close.

~~3.~~ 4. "Carry-forward project" means any project receiving a carry-forward allocation pursuant to section 35-907.

~~4.~~ 5. "Certificate of closing" means the certificate of closing adopted for use by and to be filed with the ~~department~~ AUTHORITY declaring that bonds were issued or that a qualified mortgage credit certificate program has been established.

6. "CHIEF EXECUTIVE OFFICER" MEANS THE CHIEF EXECUTIVE OFFICER OF THE AUTHORITY.

~~5.~~ 7. "Code" means the United States internal revenue code of 1986, as amended, and its applicable regulations.

~~6.~~ 8. "Confirmation" means the allocation confirmation which confirms an allocation to a project in the form adopted for use by the ~~department~~ AUTHORITY.

~~7. "Department" means the department of commerce.~~

~~8. "Director" means the director of the department and any other person authorized to act on behalf of the department.~~

9. "Issued" means, with respect to a bond or bonds, either of the following:

(a) The bond or bonds have been delivered and paid for in full.

(b) For bonds issued pursuant to a draw-down loan for which a bond purchaser has agreed to receive and pay for the bonds of the issue in increments from time to time, all of the bonds are treated as issued on the first date on which the aggregate principal amount of such bonds delivered and paid for exceeds the lesser of fifty thousand dollars or five per cent of the aggregate issue price of the issue.

10. "Issuer" means an entity or person issuing bonds.

11. "Manufacturing project" means a project as described in section 35-701, paragraph 8, subdivision (a), item (i), (ii), (x) or (xiii).

12. "Mortgage credit certificate" means a certificate as described in section 25(c)(1) of the code.

13. "Nonurban area" means all areas of this state not within the boundaries of the urban cities.

14. "Notice of intent" means the notice of intent to be filed with the ~~department~~ AUTHORITY in the form adopted for use by the ~~department~~ AUTHORITY.

15. "Project" means a qualified mortgage credit certificate program or any construction, acquisition, planned expenditure or other activity, including all phases of a multiphased project which requests allocations in the same year and including costs of issuance, capitalized interest and discounts, financed with bonds and located in this state or directly benefiting residents of this state. All qualified mortgage credit certificate programs and qualified mortgage revenue bonds, or combinations of such programs and bonds, of a single issuer or group of issuers acting together, constitute a single project for the purposes of this paragraph.

16. "Qualified mortgage credit certificate program" means a qualified mortgage credit certificate program as described in section 25(c)(2) of the code.

17. "Qualified mortgage revenue bonds" means an issue of bonds as described in section 143(a) of the code.

18. "Qualified student loan project" means an issue of bonds as described in section 144(b) of the code.

19. "Request" means the request for allocation to be filed with the ~~department~~ AUTHORITY in the form adopted for use by the ~~department~~ AUTHORITY.

20. "Security deposit" means cash, a bank cashier's check, a surety bond, a letter of credit or any other form of security approved by the ~~director~~ CHIEF EXECUTIVE OFFICER in favor of the ~~department which~~ AUTHORITY THAT is received by the ~~department~~ AUTHORITY from an issuer or user to secure or extend an allocation.

21. "State ceiling" means the dollar limit of the aggregate amount of private activity bonds which may be issued in this state pursuant to section 146 of the code for each calendar year, beginning in 1988.

22. "Tax reform act of 1986" means P.L. 99-514 enacted by the ninety-ninth Congress, second session in 1986.

23. "Urban city" means a city having a population of not less than one hundred thousand persons according to the most recent United States decennial

or special census. The area of each urban city is the boundary of the city as of January 1 of the current calendar year.

24. "Year" means the calendar year.

Sec. 15. Section 35-902, Arizona Revised Statutes, is amended to read:

35-902. Allocation

A. Subject to the provisions of this chapter, the total amount of the state ceiling is allocated among projects pursuant to this section. The ~~director~~ CHIEF EXECUTIVE OFFICER shall issue confirmations on a first come, first served basis, within any particular category of projects as described in subsection C, D, E, F or G of this section.

B. Ten per cent of the state ceiling is allocated to projects that are designated at the sole discretion of the ~~director~~ CHIEF EXECUTIVE OFFICER.

C. Thirty-five per cent of the state ceiling is allocated to qualified mortgage revenue bonds and qualified mortgage credit certificate programs, excluding any such bonds and certificate programs for home improvement and rehabilitation.

D. Ten per cent of the state ceiling is allocated to qualified residential rental projects as described in the United States internal revenue code of 1986, thirty per cent of which shall be for rural residential rental projects for a period of at least one hundred eighty days.

E. Twenty per cent of the state ceiling is allocated to qualified student loan projects.

F. Fifteen per cent of the state ceiling is allocated to manufacturing projects.

G. Ten per cent of the state ceiling is allocated to all projects financable through issuance of bonds that require an allocation of state ceiling and that are not described and provided for in subsections C, D, E and F of this section. Such projects include, but are not limited to, qualified mortgage revenue bonds and qualified mortgage credit certificate programs for home improvement and rehabilitation.

H. A request shall not be filed and a confirmation shall not be issued to a project unless the project is subject to section 146 of the code. No project is deemed to have been allocated any portion of the state ceiling unless, in connection with the project, the provisions of this chapter have been substantially complied with.

I. Any request on file with the ~~department~~ AUTHORITY for which a confirmation has not been issued by 5:00 p.m. on June 30, other than a request for an allocation pursuant to subsection B of this section, is deemed to have expired at 5:00 p.m. on June 30. All or any part of any confirmation for which bonds have not been issued or for which a qualified mortgage credit certificate program has not been established by 5:00 p.m. on June 30, evidenced by the filing of a certificate of closing with the ~~department~~ AUTHORITY, or for which confirmations have not been extended pursuant to section 35-910, is deemed to have expired.

J. At any given time, an issuer, or an issuer together with one or more other issuers, may not file ~~with the department~~ more than one request for each project. Nothing in this subsection prohibits an issuer from refiling a request for a given project if a prior request has expired or filing a request for each separate and distinct project.

K. An issuer may not transfer or assign its rights to an allocation of state ceiling from one project to another project or from itself to another issuer.

Sec. 16. Section 35-903, Arizona Revised Statutes, is amended to read:

35-903. Arizona commerce authority designated as state registry; fee

A. The ~~department~~ ARIZONA COMMERCE AUTHORITY is designated as the exclusive state registry for:

1. Requests.

2. Recordation of confirmations, whether outstanding or lapsed.

3. Certificates of closing.

4. Recordation of all requests for carry-forward amounts for specific projects.

5. Other records required for the administration of this chapter.

B. The ~~department~~ AUTHORITY shall develop and maintain separate lists for urban cities, nonurban areas, statewide uses and the aggregate for all categories that summarize all information received pursuant to subsection A.

C. Requests and confirmations adopted or issued under this chapter shall be dated and numbered by the ~~director~~ CHIEF EXECUTIVE OFFICER in the order received and issued, and each item shall be independently entered on the proper list. Each list shall be composed in a manner sufficient to show, at any time:

1. The dollar amount of confirmations outstanding and not then lapsed.

2. The dollar amount of the remaining allocation then available.

3. The amount of confirmations actually closed.

D. The ~~department~~ AUTHORITY may assess an application fee for processing the requests.

Sec. 17. Section 35-904, Arizona Revised Statutes, is amended to read:

35-904. Obtaining and issuing confirmations

A. Subject to section 35-905, a confirmation allocating a portion of the state ceiling to a project must be obtained before the sale or issuance of bonds or mortgage credit certificates by the issuer. A confirmation may be obtained by filing with the ~~department~~ AUTHORITY a request and ~~filing with the department~~ evidence of an inducement resolution or other official action taken by the issuer in connection with the project. Requests filed by mail are deemed to be filed with the ~~department~~ AUTHORITY at 5:00 p.m. on the day the request is actually received at the ~~department~~ AUTHORITY. All requests received on the same date and at the same time shall be dated and numbered by lot and confirmations to those requests shall be issued in the order determined by lot.

B. On and after the first business day of each year, a request may be prepared and filed by the issuer or on behalf of the issuer by bond counsel or any other interested person.

C. Except as provided in section 35-902, subsection I, section 35-909 and subsection D of this section, a confirmation issued before 5:00 p.m. on June 30 expires and no allocation is deemed to be made unless the applicable bonds have been issued or a qualified mortgage credit certificate program has been established and a certificate of closing has been actually filed, not merely postmarked, with the ~~department~~ AUTHORITY no later than ninety days after the date of the confirmation or the first business day after the ninetieth day if the ninetieth day is not a business day. The confirmation may be extended as provided in section 35-910 beyond such ninety day period or 5:00 p.m. on June 30.

D. Notwithstanding subsection C of this section, a confirmation issued for a project to be funded in part with an urban development action grant to be made under section 119 of the housing and community development act of 1974 (P.L. 93-383; 88 Stat. 633) or a housing development grant to be made under section 301 of the housing and urban-renewal recovery act of 1983 (P.L. 98-181, title III, section 301, 97 Stat. 1196 and amended October 17, 1984, P.L. 98-479, title III, section 103, 98 Stat. 2223) expires and no allocation is deemed to be made unless the applicable bonds have been issued and a certificate of closing and evidence satisfactory to the ~~director~~ CHIEF EXECUTIVE OFFICER of the commitment to make an urban development action grant or a housing development grant with respect to such project have been actually filed, not merely postmarked, with the ~~department~~ AUTHORITY no later than 5:00 p.m. on December 26.

E. Subject to this section and section 35-909, the confirmation shall assure allocation in the manner prescribed by the code for a dollar amount of bonds or a qualified mortgage credit certificate program not in excess of the amount set forth in the confirmation.

F. The ~~director~~ CHIEF EXECUTIVE OFFICER shall decline to issue confirmations at such time as the aggregate amount of bonds or mortgage credit certificates allocated under all confirmations previously issued and not expired, together with the proposed issue of bonds or mortgage credit certificates as to which a request has been received, would, through 5:00 p.m. on June 30, exceed the respective aggregate amount allocated under section 35-902, subsection C, D, E, F or G for such purpose, and from July 1, exceed the aggregate amount of the state ceiling that is not allocated under an unexpired confirmation nor within the discretion of the ~~director~~ CHIEF EXECUTIVE OFFICER pursuant to section 35-902, subsection B. On expiration of a confirmation or release of an allocation, the ~~director~~ CHIEF EXECUTIVE OFFICER shall issue a confirmation to the next numbered request which is equal to or less than the then available portion of the state ceiling or to the next numbered request if the principal amount of such request is reduced to an amount equal to or less than the then available portion of the state ceiling available for such purpose. The ~~director~~ CHIEF EXECUTIVE OFFICER may only issue a single confirmation for each request.

G. A confirmation made pursuant to the ~~director's~~ CHIEF EXECUTIVE OFFICER'S discretion may be accompanied by a certificate executed by the ~~director~~ CHIEF EXECUTIVE OFFICER. ~~The director,~~ On request, THE CHIEF EXECUTIVE OFFICER shall execute a certificate stating that the confirmation was not made in consideration of any bribe, gift, gratuity or direct or indirect contribution to any political campaign. The ~~director~~ CHIEF EXECUTIVE OFFICER may require such oaths or affirmations as the ~~director deems~~ CHIEF EXECUTIVE OFFICER CONSIDERS TO BE necessary to verify the accuracy of the certificate.

H. The ~~director~~ CHIEF EXECUTIVE OFFICER shall attempt to issue confirmations within three business days of receipt and shall issue confirmations in the order of receipt of fully and properly completed requests within the limitations of subsection F of this section. The ~~department~~ AUTHORITY shall notify the issuer or other contact person listed in the request in writing, by telefacsimile or by telephone of the issuance of a confirmation. The ~~department~~ AUTHORITY is not responsible for returning confirmations to the filing party. A confirmation shall be available for pickup at the ~~department~~ AUTHORITY after issuance of the confirmation.

Sec. 18. Section 35-905, Arizona Revised Statutes, is amended to read:

35-905. Restrictions on confirmations

A. Before April 1 of each year, seventy per cent of the allocation to manufacturing projects described in section 35-902, subsection F is reserved for manufacturing projects located in nonurban areas, and the remaining thirty per cent of the allocation to manufacturing projects described in section 35-902, subsection F shall be reserved for urban areas. Before July 1 of each year, seventy per cent of the allocation available for confirmation pursuant to the ~~director's~~ CHIEF EXECUTIVE OFFICER'S discretion as described in section 35-902, subsection B is reserved for projects located in nonurban areas, and the remaining thirty per cent of the allocation to the ~~director's~~ CHIEF EXECUTIVE OFFICER'S discretion as described in section 35-902, subsection B, shall be reserved for urban areas.

B. Before December 17, a confirmation shall not be allocated to a project in an amount greater than thirty-five million dollars, except that this subsection does not apply to any project that is eligible to receive an allocation pursuant to section 35-902, subsection B, C or E. For the purposes of this subsection, the amount of allocation to a project shall also include any other state ceiling allocation received by any related person to the project. For the purposes of this subsection, "related person" has the same meaning as provided in section 147(a)(2) of the code, except that all references to fifty per cent shall be changed to twenty-five per cent.

Sec. 19. Section 35-906, Arizona Revised Statutes, is amended to read:

35-906. Allocations obtained after June 30 through 5:00 p.m. December 16

A. Any portions of the state ceiling, including any portions of the state ceiling subject to a confirmation for which bonds have not been issued or for which a qualified mortgage credit certificate program has not been established by 5:00 p.m. on June 30, other than confirmations extended pursuant to section 35-910 and the state ceiling allocated to the discretion of the ~~director~~ CHIEF EXECUTIVE OFFICER pursuant to section 35-902, subsection B, shall be pooled and are subject to allocation among requests on a first come, first served basis.

B. Obtaining and issuing confirmations on or after July 1 through 5:00 p.m. December 16 shall occur as provided in section 35-904, subject to the following restrictions and changes:

1. Requests may be filed on or after July 1 of each year.

2. A confirmation issued on or after July 1 through 5:00 p.m. December 16 expires and no issuer is deemed to have been allocated any portion of the state ceiling unless the issuer's bonds have been issued or a qualified mortgage credit certificate program has been established and a certificate of closing has been actually filed, and not merely postmarked, with the ~~department~~ AUTHORITY no later than ninety days after the date of the confirmation or the first business day after the ninetieth day if the ninetieth day is not a business day, or before 5:00 p.m. December 16, whichever occurs first. The confirmation may be extended as provided in section 35-910.

3. Before the ~~director~~ CHIEF EXECUTIVE OFFICER issues the confirmation, the ~~department~~ AUTHORITY must receive a security deposit in the amount of one per cent of the principal amount stated in the request. The security deposit is forfeited to the ~~department~~ AUTHORITY if the bonds are not issued before the expiration of the confirmation or any extension. The security deposit shall not be required pursuant to this paragraph if the direct beneficiary of the bond proceeds is this state or a county, city, town or nonprofit entity, the issuer is a student loan corporation or the project will include urban development action grant or housing development grant financing, is a qualified mortgage revenue bond or is a qualified mortgage credit certificate program.

4. Except as provided in section 35-910, after June 30 of each year, the ~~director~~ CHIEF EXECUTIVE OFFICER shall not issue confirmations for any request for allocations submitted directly or indirectly in connection with a qualified mortgage certificate program or qualified mortgage revenue bonds.

Sec. 20. Section 35-907, Arizona Revised Statutes, is amended to read:

35-907. Allocations after 5:00 p.m. December 16

A. Any portions of the state ceiling for which bonds have not been issued by 5:00 p.m. December 16, other than confirmations extended pursuant to section 35-910, shall be pooled and are subject to allocation by the

~~director~~ CHIEF EXECUTIVE OFFICER to projects eligible for a carry-forward allocation under the code.

B. Obtaining and issuing a confirmation after 5:00 p.m. December 16 shall occur as provided in section 35-904, subject to the following restrictions and changes:

1. A notice of intent shall be filed on or before December 15 with the ~~department~~ AUTHORITY by any issuer, bond counsel or other interested person, with respect to projects for which allocations may be carried forward pursuant to section 146 of the code. Such notice of intent shall be considered and confirmations shall be issued by the ~~director~~ CHIEF EXECUTIVE OFFICER to the issuers on December 17. Any portions of the state ceiling for which bonds have not been issued or for which a qualified mortgage credit certificate program has not been established by 5:00 p.m. December 26 shall be allocated by the ~~director~~ CHIEF EXECUTIVE OFFICER and confirmations shall be issued to such issuers before January 1. Issuers shall not file elections with the federal government under section 146 of the code until an allocation has been issued by the ~~department~~ AUTHORITY under this section for the bonds pertaining to a project. The failure to file a notice of intent results in the exclusion of the project from allocations to issuers of any portion of the current calendar year state ceiling.

2. A security deposit equal to one per cent of the principal amount stated in the notice of intent shall be received by the ~~department~~ AUTHORITY within five days after notification by the ~~director~~ CHIEF EXECUTIVE OFFICER that the project is eligible for a carry-forward allocation. No security deposit is required if the direct beneficiary of the bonds proceeds is this state or a county, city, town or nonprofit entity, the issuer is a student loan corporation, the project includes urban development action grant or housing development grant financing, is a project described in section 1317(3)(N) of the tax reform act of 1986 or is a qualified mortgage revenue bond project or is a qualified mortgage credit certificate program or the confirmation is issued by the ~~director~~ CHIEF EXECUTIVE OFFICER on or after December 26. The security deposit is forfeited to the ~~department~~ AUTHORITY if bonds are not issued within three years of the receipt of the deposit.

Sec. 21. Section 35-908, Arizona Revised Statutes, is amended to read:

35-908. Principal amount of bonds issued less than confirmation; fee

A confirmation is effective as to bonds or mortgage credit certificates issued in lesser amounts than the principal amount set forth in the confirmation, but for bonds issued after 5:00 p.m. August 1, if the principal amount of bonds issued is less than the principal amount set forth in the confirmation, a fee of one per cent of the difference between the confirmation and the principal amount of the bonds shall be paid to the ~~department~~ AUTHORITY on filing the certificate of closing unless the direct beneficiary of the bond proceeds is this state or a county, city, town or nonprofit entity, the issuer is a student loan corporation or the project includes urban development action grant or housing development grant financing, is a project described in section 1317(3)(N) of the tax reform act of 1986, is a qualified mortgage revenue bond or is a qualified mortgage credit certificate program. The failure to make such payment within ten days of the filing shall result in a retroactive cancellation of the allocation and the barring of the direct private obligor from any future allocations.

Sec. 22. Section 35-909, Arizona Revised Statutes, is amended to read:

35-909. Confirmation fees

On the earlier of three business days after notice of issuance of the confirmation pursuant to section 35-904, subsection H or the filing of a certificate of closing, the ~~department~~ AUTHORITY shall be paid a nonrefundable confirmation fee of three hundred twenty dollars per million dollars for which a confirmation is issued. The failure to make timely payments of the confirmation fee shall result in the retroactive cancellation of the confirmation.

Sec. 23. Section 35-910, Arizona Revised Statutes, is amended to read:

35-910. Extension of confirmations

A. A confirmation may be extended one time for up to ninety days but not later than December 16 on providing the ~~department~~ AUTHORITY with a security deposit equal to one per cent of the principal amount set forth in the confirmation. The security deposit and request for extension shall be submitted to the ~~department~~ AUTHORITY before the expiration of the confirmation. Except as provided in subsection B, all extensions granted pursuant to this section expire on the earlier of ninety days from the date of the extension or at 5:00 p.m. December 16. No security deposit is required pursuant to this section if the project is a qualified student loan project, is a qualified mortgage revenue bond, is a qualified mortgage credit certificate program or is for home improvement and rehabilitation. Requests shall not be extended.

B. A confirmation or extension of confirmation which expires at 5:00 p.m. December 16 may be extended to 5:00 p.m. December 26 by filing with the ~~department~~ AUTHORITY on or before 5:00 p.m. on December 16 a certificate certifying that the bonds will be issued before 5:00 p.m. December 26, and providing the ~~department~~ AUTHORITY with an additional security deposit equal to one per cent of the principal amount stated in the confirmation. All extensions granted pursuant to this subsection expire at 5:00 p.m. December 26.

C. All security deposits received by the ~~department~~ AUTHORITY pursuant to this section are forfeited in favor of the ~~department~~ AUTHORITY if bonds are not issued before the expiration of the extension.

Sec. 24. Section 35-911, Arizona Revised Statutes, is amended to read:

35-911. Powers of the authority; certifications

The ~~department~~ AUTHORITY may do all things necessary or desirable to carry out the purpose of this chapter, including issuing certifications regarding the aggregate amounts of allocations on bonds or mortgage credit certificates.

Sec. 25. Section 35-912, Arizona Revised Statutes, is amended to read:

35-912. Limitation of liability

No pecuniary recourse may be had for any claim based on any obligation contained in this chapter against this state or the ~~department~~ AUTHORITY or any of ~~their~~ THE past, present or future AGENCIES, officers, directors, employees or agents.

Sec. 26. Section 35-913, Arizona Revised Statutes, is amended to read:

35-913. Special allocations for mortgage revenue bonds and mortgage credit certificates; definitions

A. This section governs allocations of the state ceiling made by the ~~director of the department of commerce~~ CHIEF EXECUTIVE OFFICER pursuant to section 35-902, subsection C.

B. If the portion of a corporation's allocation computed pursuant to subsection C of this section is less than ten million dollars, the ~~director of the department of commerce~~ CHIEF EXECUTIVE OFFICER shall first award ten million dollars of the state allocation to that corporation. Thereafter, the ~~director of the department of commerce~~ CHIEF EXE4CUTIVE OFFICER shall award the remaining state allocation in the same proportion that the population of each of the remaining corporations' jurisdictions bears to the population of this state according to the census, minus the population of the corporations receiving a ten million dollar allocation pursuant to this subsection.

C. Each corporation that is described in section 35-706, subsection E and that submits a request for allocation pursuant to section 35-902, subsection C shall receive a portion of the allocation made by the ~~director of the department of commerce~~ CHIEF EXECUTIVE OFFICER in the same proportion that the population of that corporation's jurisdiction bears to the population of this state, according to the census but in no event less than ten million dollars.

D. At any time before submitting a formal request for allocation, but no later than January 31, a corporation described in section 35-706, subsection E may submit to the director OF THE ARIZONA DEPARTMENT OF HOUSING an allocation reservation for an amount not to exceed that portion of the allocation to which the corporation is entitled pursuant to this subsection. The allocation reservation may include an offer to use additional allocation amounts described in subsection E of this section for rural areas. On or before January 31, the Arizona housing finance authority may submit to the director an allocation reservation for the amounts described in subsection E of this section for rural areas. The allocation reservation does not constitute a formal request for allocation and does not obligate the Arizona housing finance authority or a corporation to submit a request for allocation.

E. The director OF THE ARIZONA DEPARTMENT OF HOUSING shall require that one or more qualified mortgage revenue bond or qualified mortgage credit certificate programs benefit the residents of rural areas. Between February 1 and March 1, an allocation of the unreserved portion of the state ceiling under section 35-902, subsection C shall be made by the director for this purpose. The recipient of this allocation shall be the Arizona housing finance authority, or the Arizona housing finance authority and one or more corporations, or one or more corporations that have executed a cooperative agreement and that have jointly submitted an allocation reservation pursuant to subsection C of this section. The director shall determine the recipient of the allocation described in this subsection by March 1 from the Arizona housing finance authority or one or more of those corporations that have offered to use the allocation described in this subsection in an allocation reservation submitted before February 1. If neither the Arizona housing finance authority nor any corporation offers an allocation reservation to use this allocation before February 1 the director shall select the Arizona housing finance authority or a corporation for that purpose.

F. If the director OF THE ARIZONA DEPARTMENT OF HOUSING selects the Arizona housing finance authority, or the Arizona housing finance authority and one or more corporations or one or more corporations to serve rural areas, the Arizona housing finance authority, the Arizona housing finance authority and one or more corporations or the corporation or corporations shall receive confirmation of the allocation described in subsection E of this section before March 1. Mortgage credit certificates or the proceeds of qualified mortgage revenue bonds made available through the portion of the state ceiling allocated pursuant to subsection E of this section shall be reserved for at least a one hundred eighty day period exclusively for the financing of single family dwelling units in rural areas. The director may extend the one hundred eighty day period at the time of allocation or a later time based on market conditions. The director at any time may modify any extension based on market conditions at the time. After the one hundred eighty day period or any extension, whichever is later, the director may allocate any reservation that has not been used for use within the jurisdiction of any corporation that is described in section 35-706, subsection E and that gives its consent.

G. The validity of a confirmation for qualified mortgage revenue bonds or a qualified mortgage credit certificate program to benefit residents of part of the state shall not be affected by reason of qualified mortgage revenue bonds or a qualified mortgage credit certificate program receiving a confirmation to benefit residents of another part of the state not being issued.

H. Except as provided in subsections F and G of this section, a corporation shall not exercise the powers granted under section 35-706, subsection A, paragraphs 11, 12 and 13 outside of its own jurisdiction.

I. At the time a confirmation is issued the director OF THE ARIZONA DEPARTMENT OF HOUSING shall determine in writing the allocation amounts in the manner described in this section. In determining the recipient or recipients for the allocation described in subsection E of this section, the director may consider the effectiveness of alternative program structures in rural areas. No action may be brought questioning the accuracy of any determination made by the director pursuant to this section without a finding of the director's bad faith or wilful misconduct.

J. Confirmations of the state ceiling under section 35-902, subsection C may be applied toward a qualified mortgage revenue bond program or qualified mortgage credit certificate program in any combination deemed appropriate by the issuing corporation with the approval of its governing body or by the board of the Arizona housing finance authority for a program for rural areas established by the Arizona housing finance authority.

K. Denial of approval of the use of qualified mortgage revenue bond proceeds or qualified mortgage credit certificates in a city or town pursuant to section 35-706 or subsection L of this section does not affect the validity of the allocation or affect the amount of state allocation that is allocated for that purpose.

L. The Arizona housing finance authority may not permit proceeds of bonds or a qualified mortgage credit certificate program in rural areas to be used to finance projects that are owner-occupied single family dwelling units within the corporate limits of an incorporated city or town, the unincorporated area of a county or a reservation for an Indian tribe, unless the governing body of the city, town, county or tribe has approved the general location and character of the residences to be financed. Before the issuance of bonds or mortgage credit certificates for that purpose, the authority shall give written notice to the governing body of each city, town, county or tribal reservation in which it intends to permit proceeds of an issue of bonds or mortgage credit certificates to be used to finance projects that are owner-occupied single family dwelling units and of the general location and character of the residences that may be financed. The governing body of the city, town, county or tribe is deemed to have given its approval unless it denies approval by formal action of the governing body within twenty-one days after receiving the written notice from the authority. Approvals given or deemed to have been given with respect to use of proceeds of an issue of bonds or mortgage credit certificates under this subsection may not be withdrawn. Denials may be withdrawn by the governing body of a city, town, county or tribe and approval may be given after a denial is withdrawn if the authority approves the withdrawal of the denial.

M. For the purposes of this section:

1. "Census" means the most recent United States decennial census or the special census conducted in accordance with section 42-5033 if it is more recent than the most recent United States decennial census.

2. "Director" means the director of the Arizona department of housing.

3. "Population" of a corporation's jurisdiction means population according to the census. The population of a corporation formed on behalf of a county equals the population of the county minus the population of any

other corporation that is within the county, that is described in section 35-706, subsection E and that submits a request for allocation pursuant to section 35-902, subsection C.

4. "Rural areas" means all of the area of this state that is not located within the jurisdiction of a corporation described in section 35-706, subsection E.

Sec. 27. Section 38-719, Arizona Revised Statutes, is amended to read:

38-719. Investment of monies; limitations

A. Investment management may invest and reinvest the monies in its accounts and may hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of its account monies are invested. Investment management shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

B. Investment management shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS, except that:

1. No more than eighty per cent of ASRS assets may be invested at any given time in corporate stocks or equity equivalents, based on cost value of the stocks or equity equivalents irrespective of capital appreciation.

2. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgage backed securities and agency debentures issued by federal agencies.

3. No more than five per cent of the voting stock of any one corporation may be owned.

4. No more than thirty per cent of ASRS assets may be invested in foreign securities, and those investments shall be made only by investment managers with demonstrated expertise in those investments.

5. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the Inter-American development bank.

6. No more than one per cent of ASRS assets may be invested in economic development projects authorized as eligible for investment by the ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY.

C. Notwithstanding any other law, investment management shall not be required to invest in any type of investment that is dictated or required by any entity of the federal government and that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

Sec. 28. Section 41-191.02, Arizona Revised Statutes, is amended to read:

41-191.02. Antitrust enforcement revolving fund; receipts and disbursements; exemption; report; data collection

A. There is created an antitrust enforcement revolving fund to be administered by the attorney general under the conditions and for the purposes provided in this section. Monies in the fund are subject to legislative appropriation. Monies in the fund shall be exempt from the lapsing provisions of section 35-190.

B. On or before the fifteenth day of January, April, July and October, the attorney general shall cause to be filed with the governor, with copies to the director of the department of administration, the president of the senate and the speaker of the house of representatives a full and complete account of the receipts and disbursements from the fund in the previous calendar quarter.

C. Monies in the fund shall be used by the attorney general for costs and expenses of antitrust enforcement undertaken by his office and may be expended for such items as filing fees, court costs, travel, depositions, transcripts, reproduction costs, expert witness fees, investigations, and like costs and expenses. Except for the attorney fees due upon the initial recovery of monies as set out in section 41-191.01, in no event shall any of the monies in the fund be used to compensate or employ attorneys or counselors at law.

D. The attorney general shall collect, compile and save data, in a format accessible to the ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY or any member of the legislature, showing the average rack fuel prices for the Phoenix and Tucson petroleum pipeline terminals on a weekly basis and the average dealer tank wagon prices for Phoenix and Tucson on a weekly basis. The attorney general may acquire the data by survey or may purchase the data. If the attorney general purchases the data, the data shall be acquired at the lowest available competitive price. The attorney general shall make the data available to the department of commerce or any member of the legislature without charge.

Sec. 29. Section 41-531, Arizona Revised Statutes, is amended to read:

41-531. Arizona commission of African-American affairs

A. The Arizona commission of African-American affairs is established and consists of the governor, the superintendent of public instruction, the director of the department of health services, the director of the department of transportation, the attorney general, the director of the department of economic security, the director of the office of tourism and the ~~director of the department of commerce~~ CHIEF EXECUTIVE OFFICER OF THE ARIZONA COMMERCE AUTHORITY, or their representatives, who shall be ex officio members, and nine members who are appointed by the governor, seven of whom are African-American and two of whom are not African-American.

B. The term of office of each appointed member is three years. Each member shall hold office until the member's successor is appointed and qualifies. Appointment to fill a vacancy caused other than by expiration of a term shall be for the unexpired portion of the term.

C. Members of the commission shall serve without compensation.

D. The commission shall elect a chairperson and a vice-chairperson from among its appointed members and adopt rules for the conduct of meetings. A record shall be kept of all proceedings and transactions.

E. Section 41-2955, subsection D does not apply to the commission.

F. The commission shall meet at least quarterly on the second Thursday of the first month of each quarter and may hold additional meetings on the call of the chairperson. A majority of the appointed members of the commission constitute a quorum for the transaction of business, but ex officio members may vote. Members who fail to attend three consecutive meetings are deemed to have resigned.

G. The appointed members of the commission shall appoint an executive director of the commission who shall not be a member of the commission. The director is eligible to receive compensation as determined by the commission from monies available in the Arizona commission of African-American affairs fund established by section 41-533. The commission may employ clerical, professional and technical personnel subject to monies available in the Arizona commission of African-American affairs fund and shall prescribe their duties and determine their compensation.

Sec. 30. Section 41-541, Arizona Revised Statutes, is amended to read:

41-541. Commission of Indian affairs; members; term; compensation; officers; meetings; duties

A. The Arizona commission of Indian affairs consists of the governor, the superintendent of public instruction, the director of the department of health services, the director of the department of transportation, the attorney general, the director of the department of economic security, the director of the department of gaming, the director of the office of tourism and the ~~director of the department of commerce~~ CHIEF EXECUTIVE OFFICER OF THE ARIZONA COMMERCE AUTHORITY, or their representatives, who shall be ex officio members. The governor shall appoint eleven additional members, including four at large, one of whom must represent a nonprofit organization, and seven from among the Indian tribes. Each tribe or tribal council may submit names of members of its tribe to be considered for appointment.

B. The term of office of each appointive member shall be three years, unless the member resigns or is removed. The terms of three appointive members shall expire on the first Monday in January each year. Each member shall hold office until the member's successor is appointed and qualifies. Appointment to fill a vacancy caused otherwise than by expiration of a term shall be for the unexpired portion of the term. A member may be removed at the request of a tribe or tribal council if the member was previously nominated by that tribe or tribal council. All members serve at the pleasure of the governor.

C. Members of the commission serving by virtue of their office shall serve without compensation. Appointed members are eligible to receive compensation as determined pursuant to section 38-611 for each day of attendance at meetings.

D. The commission shall elect a chairman and a vice-chairman, who shall be appointive members, and adopt rules for the conduct of meetings. A record shall be kept of all proceedings and transactions.

E. The commission shall meet at least quarterly on the second Thursday of the first month of each quarter and may hold additional meetings on the call of the chairman. A majority of the appointed members of the commission shall constitute a quorum for the transaction of business. Ex officio members may not vote. Members who fail to attend three consecutive meetings shall be deemed to have resigned.

F. The commission may apply for, accept, receive and expend public and private gifts or grants of money or property on such terms and conditions as may be imposed by the donor and for implementation of the commission's internal operations.

G. The commission may accept, receive and spend fees collected at the Arizona Indian town hall to defer expenses for the Arizona Indian town hall.

Sec. 31. Section 41-835.02, Arizona Revised Statutes, is amended to read:

41-835.02. State board on geographic and historic names; membership; expenses; quorum; staff support; chairman

A. A state board on geographic and historic names is established consisting of:

1. One member appointed by the head of each of the following agencies or organizations:

(a) The department of transportation.

(b) The state land department.

(c) The Arizona state library, archives and public records.

(d) The Arizona historical society.

~~(e) The department of commerce.~~

(e) THE ARIZONA COMMERCE AUTHORITY.

(f) The department of economic security.

(g) A geography department of an Arizona university.

2. Two members of the public appointed by the governor.

B. Members shall serve staggered five year terms to begin and end on the third Monday in January, except that the member appointed pursuant to subsection A, paragraph 1, subdivision (g) shall serve a two year term. The initial appointment of the member appointed in subsection A, paragraph 1, subdivision (g) shall be made by Arizona state university. On the expiration of the initial term of the member appointed in subsection A, paragraph 1, subdivision (g) the position shall be appointed by the university of Arizona, and on the expiration of that term northern Arizona university shall appoint the member. The three state universities shall continue to rotate the appointment of this member on the board.

C. Members are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The Arizona state library, archives and public records shall provide staff support to the board.

E. A majority of the members constitutes a quorum.

F. The board shall annually elect a chairman and vice-chairman from among its members.

Sec. 32. Subject to the requirements of article IV, part 1, section 1, Constitution of Arizona, section 41-1505.12, Arizona Revised Statutes, is amended to read:

41-1505.12. Arizona commerce authority local communities fund

A. The ~~commerce and economic development commission~~ ARIZONA COMMERCE AUTHORITY local communities fund is established consisting of monies deposited pursuant to sections 5-601.02(H)(4)(b) and 5-601.02(I)(6)(b)(vii), and interest earned on those monies. The ~~director~~ CHIEF EXECUTIVE OFFICER shall administer the fund. The fund is not subject to appropriation, and expenditures from the fund are not subject to outside approval notwithstanding any statutory provision to the contrary.

B. Monies received pursuant to sections 5-601.02(H)(4)(b) and 5-601.02(I)(6)(b)(vii) shall be deposited directly with the ~~commerce and economic development commission~~ ARIZONA COMMERCE AUTHORITY local communities fund. On notice from the ~~department of commerce~~ CHIEF EXECUTIVE OFFICER, the state treasurer may invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. No monies in the ~~commerce and economic development commission local communities~~ fund shall revert to or be deposited in any other fund, including the state general fund. Monies in the ~~commerce and economic development commission local communities~~ fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. Monies provided from the ~~commerce and economic development commission local communities~~ fund shall supplement, not supplant, existing monies.

C. All monies in the fund shall be used by the ~~commission~~ AUTHORITY to provide grants to cities, towns and counties ~~as defined in title 11, Arizona Revised Statutes,~~ for government services that benefit the general public, including public safety, mitigation of impacts of gaming, or promotion of commerce and economic development. All grant applications must have a written endorsement of a nearby Indian tribe to receive an award of funds from the ~~commission~~ AUTHORITY.

Sec. 33. Section 41-1516, Arizona Revised Statutes, is amended to read:

41-1516. Healthy forest enterprise incentives; definitions

A. The Arizona commerce authority shall:

1. Implement a program to encourage counties, cities and towns to provide local incentives to economic enterprises that promote forest health in this state.

2. Identify and certify to the department of revenue the names of and relevant information relating to qualified businesses for the purposes of available state tax incentives for economic enterprises that promote forest health in this state.

B. To qualify for state tax incentives pursuant to this section, a business:

1. Must be primarily engaged in a qualifying project. The business shall submit to the authority evidence that it is engaged in a qualifying project as follows:

(a) The business operation must enhance or sustain forest health, sustain or recover watershed or improve public safety.

(b) If the qualifying forest product is on federal land, the business shall submit a letter from the federal agency administering the land, or official records or documents produced in connection with the project, stating that the business is primarily engaged in the business of harvesting or initial processing of qualifying forest products for commercial use as follows:

(i) At least seventy per cent of the harvested or processed products, measured by weight, must be qualifying forest products.

(ii) At least seventy-five per cent of the qualifying forest products, measured by weight, must be harvested from sources in this state.

(c) If the qualifying forest product is not on federal land, the business shall submit a letter from the state forester stating that the business is primarily engaged in the business of harvesting or initial processing of qualifying forest products for commercial use as follows:

(i) At least seventy per cent of the harvested or processed products must be qualifying forest products.

(ii) At least seventy-five per cent of the harvested or processed products must be from areas in this state.

(d) If the business is engaged in transporting qualifying forest products, it must submit a letter from the state forester or United States forest service, or official records or documents produced in connection with the project, stating that all of the qualifying forest products it transports are harvested from areas in this state. In addition, the business must submit evidence to the authority that at least seventy-five per cent of the mileage traveled by its units each year are for transporting qualifying forest products from or to qualifying projects described in subdivision (b) or (c) of this paragraph, unless a lower mileage is due to forest closures or weather conditions that are beyond the control of the business.

2. Must employ at least three permanent full-time employees.

3. Must agree to furnish to the authority information relating to the amount of state tax benefits that the business receives each year.

4. Must enter into a memorandum of understanding with the authority containing:

(a) Employment goals. Each year the business must report in writing to the authority its performance in achieving the goals.

(b) A commitment to continue in business and use the qualifying equipment primarily on qualifying projects in this state as described in paragraph 1 of this subsection, other than for reasons beyond the control of the business. The authority shall consult with the department of revenue in designing the memorandum of understanding to incorporate the legal qualifications for the available tax incentives and shall include the requirement that any qualifying equipment that is purchased or leased free of transaction privilege or use tax must continue to be used in this state for the term of the memorandum of understanding or the duration of its operational life, whichever is shorter.

(c) Provisions considered necessary by the authority to ensure the competency and responsibility of businesses that qualify under this section, including registration or other accreditation with trade and professional organizations and compliance with best management and operational practices used by governmental agencies in awarding forestry contracts.

(d) The authorization for the authority to terminate, adjust or recapture all or part of the tax benefits provided to the business on noncompliance with the law, noncompliance with the terms of the memorandum or violation of the terms of any contracts with the federal or state government relating to the qualifying project. The authority shall notify the department of revenue of the conditions of noncompliance. The department of revenue may also terminate the certification if it obtains information indicating a failure to qualify and comply. The department of revenue may require the business to file appropriate amended tax returns or to file appropriate use tax returns reflecting the recapture of the direct or indirect tax benefits.

5. Must submit a copy of the certification to the department of revenue for approval before using the certification for purposes of any tax incentive. The department of revenue shall review and approve the certification in a timely manner if the business is in good standing with the department and is not delinquent in the payment of any tax collected by the department. A failure to approve or deny the certification within sixty days after the date the business submits it to the department constitutes approval of the certification.

C. For the purposes of section 42-5075, subsection B, paragraph ~~19~~ 18, the authority shall certify prime contractors that contract for the construction of any building, or other structure, project, development or improvement owned by a qualified business for purposes of a qualifying project described in subsection B, paragraph 1 of this section.

D. To obtain and maintain certification under this section, a business must:

1. Apply to the authority.

2. Submit and retain copies of all required information, including information relating to the actual or projected number of employees in this state.

3. Allow inspections and audits to verify the qualification and accuracy of information submitted to the authority.

E. Certification under this section is valid for twelve calendar months from the date of issuance. A business must apply for recertification at least thirty days before the current certification expires. The application for recertification shall be in a form prescribed by the authority and shall confirm that the business is continuing in a qualifying project and is in compliance with all requirements prescribed for certification.

F. Within sixty days after receiving a complete and correct application and all required information as prescribed by this section, the authority shall grant or deny certification and give written notice by certified mail to the applicant. The applicant is certified as a qualified business on the date the notice of certification is delivered to the applicant. A failure to respond within sixty days after receiving a complete and correct application constitutes approval of the application.

G. The certification shall state an effective date with respect to each authorized tax incentive which, in each case, must be at the start of a taxable year or taxable period.

H. On or before March 1 of each year, each qualifying business shall make a report to the authority on all business activity in the preceding calendar year. Business information contained in the reports is confidential and shall not be disclosed to the public except as provided by this section and except that a copy of the report shall be transmitted to the department of revenue. The report shall be in a form prescribed by the authority and include:

1. Information prescribed by the authority with respect to both qualifying projects and other projects and business activity that do not qualify for purposes of this section.

2. Employment information necessary to confirm eligibility for income tax credits as prescribed by sections 43-1076 and 43-1162.

3. The quantity, measured by weight, of qualifying forest products harvested, transported or processed.

I. On or before May 1 of each year, the authority shall report to the joint legislative budget committee:

1. The quantity, measured by weight, of qualifying forest products reported by harvesters, by transporters and by processors in the preceding calendar year.

2. The number of new full-time employees hired in qualified employment positions in this state in the preceding calendar year and reported for tax credit purposes.

3. The total number of all full-time employees employed in qualified employment positions in this state in the preceding calendar year and reported for tax credit purposes.

J. For purposes of administering and ensuring compliance with this section, agents of the authority may enter, and a qualified business shall allow access to, a qualifying project site at reasonable times and on reasonable notice to:

1. Inspect the facilities at the site.

2. Obtain factual data and records pertinent to and required by law to be kept for purposes of tax incentives.

3. Otherwise ascertain compliance with law and the terms of the memorandum of understanding.

K. The authority shall revoke the business' certification and notify the department of revenue and county assessor if either:

1. Within thirty days after a formal request from the authority or the department of revenue the business fails or refuses to provide the information or access for inspections required by this section.

2. The business no longer meets the terms and conditions required for qualification for the applicable tax incentives.

L. For the purposes of this section:

1. "Forest health" means the degree to which the integrity of the forest is sustained, including reducing the risk of catastrophic wildfire and destructive insect infestation, benefiting wildland habitats, watersheds and communities.

2. "Harvesting" means all operations relating to felling or otherwise removing trees and other forest plant growth and preparing them for transport for subsequent processing.

3. "Initial processing" means:

(a) The first change, after harvest, in the physical structure of qualifying forest products removed from a qualifying project into a marketable commercial product or component of a product that has commercial value to a consumer or purchaser and that is ready to be used with or without further altering its form.

(b) Burning qualifying forest products in the process of commercial electrical generation or commercial thermal energy production for heating or cooling, regardless of the physical structure of the forest product before burning.

4. "Qualifying equipment" means equipment used directly in the harvesting or initial processing of qualifying forest products removed from a qualifying project. Qualifying equipment does not include self-propelled vehicles required to be licensed by this state, but may include other licensed vehicles as provided by this paragraph. Qualifying equipment includes:

(a) Forest thinning and residue removal equipment, including mulching and masticating equipment, feller-bunchers, skidders, log loaders, portable chippers and grinders, slash bundlers, delimbers, log trailers, chip trailers and other trailers that are uniquely designed for handling forest products and that are licensed for operation on public highways.

(b) Forest residue receiving and handling equipment, including truck dumpers, log unloaders, scales, log decking facilities and equipment and chip pile facilities.

(c) Sorting and processing equipment, including portable and stationary log loaders, front end loaders, fork lifts and cranes, chippers and grinders, screens, decks and debarkers, saws and sawmill equipment, firewood processing, wood residue baling and bagging equipment, kilns, planing and molding equipment and laminating and joining equipment.

(d) Forest waste and residue disposal and processing equipment, including:

(i) Processing and sizing equipment, hogs, chippers, screens, pelletizers and wood splitters.

(ii) Transporting and handling equipment, including loaders, conveyors, blowers, receiving hoppers, truck dumpers and dozers.

(iii) Waste use equipment, including fuel feed, storage bins, boilers and combustors.

(iv) Waste project use equipment, including generators, switchgear and substations and on-site distribution systems.

(v) Generated waste disposal equipment, including ash silos and wastewater treatment and disposal equipment.

(vi) Shop and maintenance equipment and major spares having a value of more than five thousand dollars each.

5. "Qualifying forest products" means dead standing and fallen timber, and forest thinnings associated with the harvest of small diameter timber, slash, wood chips, peelings, brush and other woody vegetation, removed from federal, state and other public forest land and from private forest land.

6. "Qualifying project" means harvesting, transporting or the initial processing of qualifying forest products as required for certification pursuant to this section.

Sec. 34. Repeal

Sections 41-1517 and 41-1517.01, Arizona Revised Statutes, are repealed.

Sec. 35. Section 41-1671, Arizona Revised Statutes, is amended to read:

41-1671. Agreements with private employers; leases

A. The director, in consultation with the ~~directors~~ DIRECTOR of the ~~departments~~ DEPARTMENT of administration and THE CHIEF EXECUTIVE OFFICER OF THE ARIZONA commerce AUTHORITY, may establish programs for the employment of offenders by private employers and enter into agreements with private employers under which the employer constructs, leases or otherwise establishes facilities within the exterior boundaries of any adult correctional facility to manufacture or process goods or conduct any other business, commercial or agricultural enterprise and employ offenders at the correctional facility.

B. As a part of or in connection with any agreement made under this section the director may lease, for an initial term of not more than twenty years, any land and improvements located on the grounds of any adult correctional facility for use by the private employer to provide employment under this article.

Sec. 36. Section 41-2567, Arizona Revised Statutes, is amended to read:

41-2567. Specifications for energy consumptive material

~~The director shall,~~ In conjunction with the ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY, THE DIRECTOR SHALL establish specifications based on considerations of energy conservation for the procurement of selected energy consumptive material.

Sec. 37. Section 41-4101, Arizona Revised Statutes, is amended to read:

41-4101. Interagency council on long-term care; membership; compensation; meetings

A. The interagency council on long-term care is established consisting of the following members:

1. The director of the department of health services or the director's designee.

2. The director of the department of economic security or the director's designee.

3. The director of the Arizona health care cost containment system administration or the director's designee.

~~4. The director of the department of commerce or the director's designee.~~

4. THE CHIEF EXECUTIVE OFFICER OF THE ARIZONA COMMERCE AUTHORITY OR THE CHIEF EXECUTIVE OFFICER'S DESIGNEE.

5. The director of the department of insurance or the director's designee.

6. The executive director of the governor's advisory council on aging.

7. The chairperson of the governor's council on developmental disabilities.

8. The long-term care ombudsman.

9. One representative from an agency on aging in an urban area. The governor shall appoint this member.

10. One representative from an agency on aging in a rural area. The governor shall appoint this member.

11. Two members of the house of representatives who are appointed by the speaker of the house of representatives and who represent different political parties. Members appointed pursuant to this paragraph are nonvoting members and are not counted for the purpose of determining the presence of a quorum.

12. Two members of the senate who are appointed by the president of the senate and who represent different political parties. Members appointed pursuant to this paragraph are nonvoting members and are not counted for the purpose of determining the presence of a quorum.

B. Members appointed by the governor serve three year terms.

C. The governor shall appoint the chairperson and vice-chairperson of the council from among its membership.

D. The council shall meet at least four times a year and at the call of the chairperson. The council shall also hold at least one meeting each year to invite public comment regarding the council's progress toward implementing a coordinated services delivery system.

E. Council members are not eligible to receive compensation, but members appointed by the governor are eligible to receive reimbursement of expenses pursuant to title 38, chapter 4, article 2.

F. The department of economic security shall provide the council with administrative support and meeting room space.

Sec. 38. Section 41-4503, Arizona Revised Statutes, is amended to read:

41-4503. Board of directors; members; appointment; qualifications; terms; officers; meetings; reimbursement; staff

A. The authority's governing board is a board of directors consisting of seven members appointed by the governor pursuant to title 38, chapter 2, article 2. Members of the board shall be chosen based on their experience in one or more of the fields of public finance, international banking, international commerce and relations, transportation, infrastructure and related facilities construction and land use planning. At least one member shall be from each of Cochise, Santa Cruz, Pima and Yuma counties. No more than two members shall be selected from the same county. In those eligible counties where a border regional port authority exists, the governor shall appoint one member of the qualifying border regional port authority board to the Arizona international development authority board. In those eligible counties where a border regional port authority does not exist, the governor shall appoint a member from the respective county that meets the qualifications of this section. The governor may remove any member of the Arizona international development authority board for cause.

B. The speaker of the house of representatives, the president of the senate, the ~~director of the department of commerce~~ CHIEF EXECUTIVE OFFICER OF THE ARIZONA COMMERCE AUTHORITY, the director of the department of transportation and a representative designated by the intertribal council of Arizona are advisory members of the board but are not eligible to vote and are not members of the board for purposes of determining a quorum.

C. Each appointed member of the board shall serve for a term of five years and is ineligible to serve a successive term, but may subsequently be reappointed to the board. Vacancies occurring other than by expiration of term shall be filled for the remainder of the unexpired term in the same manner as members are appointed.

D. The initial board members shall organize the board. The board shall annually elect from among its members a chairperson, a secretary and a treasurer and may also elect other officers it deems appropriate.

E. The board shall provide for a regular annual meeting of the board and other regular meetings as the board determines. The chairperson may call a special meeting at any time. The board shall provide a method of giving notice of special meetings.

F. Members of the board are not eligible to receive compensation, but appointed members are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2 from the Arizona international development authority fund.

G. The board is a public body for the purposes of title 38, chapter 3, article 3.1 and a public agency for the purposes of title 38, chapter 3, article 8 but is exempt from ~~title 41,~~ chapter 23 OF THIS TITLE.

H. The department of transportation shall provide general administrative support, equipment and office and meeting space to the authority. The department may hire staff to provide administrative and technical assistance on behalf of the authority. Monies in the Arizona international development authority fund may be used to pay for staff services, equipment, operating expenses and other costs or expenses of the authority.

Sec. 39. Section 42-2003, Arizona Revised Statutes, is amended to read:

42-2003. Authorized disclosure of confidential information

A. Confidential information relating to:

1. A taxpayer may be disclosed to the taxpayer, its successor in interest or a designee of the taxpayer who is authorized in writing by the taxpayer. A principal corporate officer of a parent corporation may execute a written authorization for a controlled subsidiary.

2. A corporate taxpayer may be disclosed to any principal officer, any person designated by a principal officer or any person designated in a

resolution by the corporate board of directors or other similar governing body.

3. A partnership may be disclosed to any partner of the partnership. This exception does not include disclosure of confidential information of a particular partner unless otherwise authorized.

4. An estate may be disclosed to the personal representative of the estate and to any heir, next of kin or beneficiary under the will of the decedent if the department finds that the heir, next of kin or beneficiary has a material interest which will be affected by the confidential information.

5. A trust may be disclosed to the trustee or trustees, jointly or separately, and to the grantor or any beneficiary of the trust if the department finds that the grantor or beneficiary has a material interest which will be affected by the confidential information.

6. Any taxpayer may be disclosed if the taxpayer has waived any rights to confidentiality either in writing or on the record in any administrative or judicial proceeding.

7. The name and taxpayer identification numbers of persons issued direct payment permits may be publicly disclosed.

B. Confidential information may be disclosed to:

1. Any employee of the department whose official duties involve tax administration.

2. The office of the attorney general solely for its use in preparation for, or in an investigation which may result in, any proceeding involving tax administration before the department or any other agency or board of this state, or before any grand jury or any state or federal court.

3. The department of liquor licenses and control for its use in determining whether a spirituous liquor licensee has paid all transaction privilege taxes and affiliated excise taxes incurred as a result of the sale of spirituous liquor, as defined in section 4-101, at the licensed establishment and imposed on the licensed establishments by this state and its political subdivisions.

4. Other state tax officials whose official duties require the disclosure for proper tax administration purposes if the information is sought in connection with an investigation or any other proceeding conducted by the official. Any disclosure is limited to information of a taxpayer who is being investigated or who is a party to a proceeding conducted by the official.

5. The following agencies, officials and organizations, if they grant substantially similar privileges to the department for the type of information being sought, pursuant to statute and a written agreement between the department and the foreign country, agency, state, Indian tribe or organization:

(a) The United States internal revenue service, alcohol and tobacco tax and trade bureau of the United States treasury, United States bureau of alcohol, tobacco, firearms and explosives of the United States department of justice, United States drug enforcement agency and federal bureau of investigation.

(b) A state tax official of another state.

(c) An organization of states, federation of tax administrators or multistate tax commission that operates an information exchange for tax administration purposes.

(d) An agency, official or organization of a foreign country with responsibilities that are comparable to those listed in subdivision (a), (b) or (c) of this paragraph.

(e) An agency, official or organization of an Indian tribal government with responsibilities comparable to the responsibilities of the agencies, officials or organizations identified in subdivision (a), (b) or (c) of this paragraph.

6. The auditor general, in connection with any audit of the department subject to the restrictions in section 42-2002, subsection D.

7. Any person to the extent necessary for effective tax administration in connection with:

(a) The processing, storage, transmission, destruction and reproduction of the information.

(b) The programming, maintenance, repair, testing and procurement of equipment for purposes of tax administration.

(c) The collection of the taxpayer's civil liability.

8. The office of administrative hearings relating to taxes administered by the department pursuant to section 42-1101, but the department shall not disclose any confidential information:

(a) Regarding income tax, withholding tax or estate tax.

(b) On any tax issue relating to information associated with the reporting of income tax, withholding tax or estate tax.

9. The United States treasury inspector general for tax administration for the purpose of reporting a violation of internal revenue code section 7213A (26 United States Code section 7213A), unauthorized inspection of returns or return information.

10. The financial management service of the United States treasury department for use in the treasury offset program.

11. The United States treasury department or its authorized agent for use in the state income tax levy program and in the electronic federal tax payment system.

12. The Arizona commerce authority for its use in:

~~(a) Qualifying motion picture production companies for the tax incentives provided for motion picture production under chapter 5 of this title and sections 43-1075 and 43-1163.~~

~~(b) Qualifying applicants for the motion picture infrastructure project tax credits under sections 43-1075.01 and 43-1163.01.~~

~~(c)~~ (a) Qualifying renewable energy operations for the tax incentives under sections 42-12006, 43-1083.01 and 43-1164.01.

~~(d)~~ (b) Fulfilling its annual reporting responsibility pursuant to section 41-1511, subsections U and V ~~and section 41-1517, subsections S and T~~.

13. A prosecutor for purposes of section 32-1164, subsection C.

14. The state fire marshal for use in determining compliance with and enforcing title 41, chapter 16, article 3.1.

15. The department of transportation for its use in administering taxes and surcharges prescribed by title 28.

C. Confidential information may be disclosed in any state or federal judicial or administrative proceeding pertaining to tax administration pursuant to the following conditions:

1. One or more of the following circumstances must apply:

(a) The taxpayer is a party to the proceeding.

(b) The proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability, with respect to any tax imposed under this title or title 43.

(c) The treatment of an item reflected on the taxpayer's return is directly related to the resolution of an issue in the proceeding.

(d) Return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer and directly affects the resolution of an issue in the proceeding.

2. Confidential information may not be disclosed under this subsection if the disclosure is prohibited by section 42-2002, subsection C or D.

D. Identity information may be disclosed for purposes of notifying persons entitled to tax refunds if the department is unable to locate the persons after reasonable effort.

E. The department, upon the request of any person, shall provide the names and addresses of bingo licensees as defined in section 5-401, verify whether or not a person has a privilege license and number, a distributor's license and number or a withholding license and number or disclose the information to be posted on the department's website or otherwise publicly accessible pursuant to section 42-1124, subsection F and section 42-3201, subsection A.

F. A department employee, in connection with the official duties relating to any audit, collection activity or civil or criminal investigation, may disclose return information to the extent that disclosure is necessary to obtain information which is not otherwise reasonably available. These official duties include the correct determination of and liability for tax, the amount to be collected or the enforcement of other state tax revenue laws.

G. If an organization is exempt from this state's income tax as provided in section 43-1201 for any taxable year, the name and address of the organization and the application filed by the organization upon which the department made its determination for exemption together with any papers submitted in support of the application and any letter or document issued by the department concerning the application are open to public inspection.

H. Confidential information relating to transaction privilege tax, use tax, severance tax, jet fuel excise and use tax and rental occupancy tax may be disclosed to any county, city or town tax official if the information relates to a taxpayer who is or may be taxable by the county, city or town. Any taxpayer information released by the department to the county, city or town:

1. May only be used for internal purposes.

2. May not be disclosed to the public in any manner that does not comply with confidentiality standards established by the department. The county, city or town shall agree in writing with the department that any release of confidential information that violates the confidentiality standards adopted by the department will result in the immediate suspension of any rights of the county, city or town to receive taxpayer information under this subsection.

I. The department may disclose statistical information gathered from confidential information if it does not disclose confidential information attributable to any one taxpayer. The department may disclose statistical information gathered from confidential information, even if it discloses confidential information attributable to a taxpayer, to:

1. The state treasurer in order to comply with the requirements of section 42-5029, subsection A, paragraph 3.

2. The joint legislative income tax credit review committee and the joint legislative budget committee staff in order to comply with the requirements of section 43-221.

J. The department may disclose the aggregate amounts of any tax credit, tax deduction or tax exemption enacted after January 1, 1994. Information subject to disclosure under this subsection shall not be disclosed if a taxpayer demonstrates to the department that such information would give an unfair advantage to competitors.

K. Except as provided in section 42-2002, subsection C, confidential information, described in section 42-2001, paragraph 2, subdivision (a), item (iii), may be disclosed to law enforcement agencies for law enforcement purposes.

L. The department may provide transaction privilege tax license information to property tax officials in a county for the purpose of identification and verification of the tax status of commercial property.

M. The department may provide transaction privilege tax, luxury tax, use tax, property tax and severance tax information to the ombudsman-citizens aide pursuant to title 41, chapter 8, article 5.

N. Except as provided in section 42-2002, subsection D, a court may order the department to disclose confidential information pertaining to a party to an action. An order shall be made only upon a showing of good cause and that the party seeking the information has made demand upon the taxpayer for the information.

O. This section does not prohibit the disclosure by the department of any information or documents submitted to the department by a bingo licensee. Before disclosing the information the department shall obtain the name and address of the person requesting the information.

P. If the department is required or permitted to disclose confidential information, it may charge the person or agency requesting the information for the reasonable cost of its services.

Q. Except as provided in section 42-2002, subsection D, the department of revenue shall release confidential information as requested by the department of economic security pursuant to section 42-1122 or 46-291. Information disclosed under this subsection is limited to the same type of information that the United States internal revenue service is authorized to disclose under section 6103(l)(6) of the internal revenue code.

R. Except as provided in section 42-2002, subsection D, the department of revenue shall release confidential information as requested by the courts and clerks of the court pursuant to section 42-1122.

S. To comply with the requirements of section 42-5031, the department may disclose to the state treasurer, to the county stadium district board of directors and to any city or town tax official that is part of the county stadium district confidential information attributable to a taxpayer's business activity conducted in the county stadium district.

T. The department shall release confidential information as requested by the attorney general for purposes of determining compliance with and enforcing section 44-7101, the master settlement agreement referred to therein and subsequent agreements to which the state is a party that amend or implement the master settlement agreement. Information disclosed under this subsection is limited to luxury tax information relating to tobacco manufacturers, distributors, wholesalers and retailers and information collected by the department pursuant to section 44-7101(2)(j).

U. For proceedings before the department, the office of administrative hearings, the board of tax appeals or any state or federal court involving penalties that were assessed against a return preparer, an electronic return preparer or a payroll service company pursuant to section 42-1103.02, 42-1125.01 or 43-419, confidential information may be disclosed only before the judge or administrative law judge adjudicating the proceeding, the parties to the proceeding and the parties' representatives in the proceeding prior to its introduction into evidence in the proceeding. The confidential information may be introduced as evidence in the proceeding only if the taxpayer's name, the names of any dependents listed on the return, all social security numbers, the taxpayer's address, the taxpayer's signature and any attachments containing any of the foregoing information are redacted and if either:

1. The treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding.

2. Such return or return information relates or may relate to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.

3. The method of payment of the taxpayer's withholding tax liability or the method of filing the taxpayer's withholding tax return is an issue for the period.

V. The department may disclose to the attorney general confidential information received under section 44-7111 and requested by the attorney general for purposes of determining compliance with and enforcing section 44-7111. The department and attorney general shall share with each other the information received under section 44-7111, and may share the information with other federal, state or local agencies only for the purposes of enforcement of section 44-7101, section 44-7111 or corresponding laws of other states.

W. The department may provide the name and address of qualifying hospitals and qualifying health care organizations, as defined in section 42-5001, to a business classified and reporting transaction privilege tax under the utilities classification.

Sec. 40. Section 42-5009, Arizona Revised Statutes, is amended to read:

42-5009. Certificates establishing deductions; liability for making false certificate

A. A person who conducts any business classified under article 2 of this chapter may establish entitlement to the allowable deductions from the tax base of that business by both:

1. Marking the invoice for the transaction to indicate that the gross proceeds of sales or gross income derived from the transaction was deducted from the tax base.

2. Obtaining a certificate executed by the purchaser indicating the name and address of the purchaser, the precise nature of the business of the purchaser, the purpose for which the purchase was made, the necessary facts to establish the appropriate deduction and the tax license number of the purchaser to the extent the deduction depends on the purchaser conducting business classified under article 2 of this chapter and a certification that the person executing the certificate is authorized to do so on behalf of the purchaser. The certificate may be disregarded if the seller has reason to believe that the information contained in the certificate is not accurate or complete.

B. A person who does not comply with subsection A of this section may establish entitlement to the deduction by presenting facts necessary to support the entitlement, but the burden of proof is on that person.

C. The department may prescribe a form for the certificate described in subsection A of this section. Under such rules as it may prescribe, the department may also describe transactions with respect to which a person is not entitled to rely solely on the information contained in the certificate provided for in subsection A of this section but must instead obtain such additional information as required by the rules in order to be entitled to the deduction.

D. If a seller is entitled to a deduction by complying with subsection A of this section, the department may require the purchaser which caused the execution of the certificate to establish the accuracy and completeness of the information required to be contained in the certificate which would entitle the seller to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest which the seller would have been required to pay under this article if the seller had not complied with subsection A of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029.

E. If a seller is entitled to a deduction by complying with subsection B of this section, the department may require the purchaser to establish the accuracy and completeness of the information provided to the seller that entitled the seller to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article if the seller had not complied with subsection B of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029.

F. The department may prescribe a form for a certificate used to establish entitlement to the deductions described in section 42-5061, subsection A, paragraph 47 and section 42-5063, subsection B, paragraph 3. Under rules the department may prescribe, the department may also require additional information for the seller to be entitled to the deduction. If a seller is entitled to the deductions described in section 42-5061, subsection A, paragraph 47 and section 42-5063, subsection B, paragraph 3, the department may require the purchaser who executed the certificate to establish the accuracy and completeness of the information contained in the certificate that would entitle the seller to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029.

G. If a seller claims a deduction under section 42-5061, subsection A, paragraph 25 and establishes entitlement to the deduction with an exemption letter that the purchaser received from the department and the exemption letter was based on a contingent event, the department may require the purchaser that received the exemption letter to establish the satisfaction of the contingent event within a reasonable time. If the purchaser cannot establish the satisfaction of the event, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article if the seller had not been furnished the exemption letter. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029. For the purposes of this subsection, "reasonable time" means a time limitation that the department determines and that does not exceed the time limitations pursuant to section 42-1104.

~~H. From and after December 31, 2005 through December 31, 2010, the department shall prescribe a form for a certificate used to establish entitlement to the deductions described in section 42-5061, subsection B, paragraph 23, section 42-5066, subsection B, paragraph 5, section 42-5070, subsection C, paragraph 2, section 42-5074, subsection B, paragraph 10, section 42-5075, subsection B, paragraph 20 and section 42-5159, subsection B, paragraph 23 relating to motion picture production. The certificate is effective for twelve consecutive calendar months from and after the date of issuance and is subject to the following requirements and conditions:~~

~~1. A motion picture production company as defined in section 41-1517 may use a certificate issued pursuant to this subsection only with respect to production costs described in section 41-1517, subsection A, paragraph 2 that are subject to taxation under article 2 or 4 of this chapter.~~

~~2. The department shall issue the certificate to a motion picture production company on receiving the company's letter of qualification from the department of commerce, except as otherwise provided in this subsection.~~

~~3. The department shall not issue a certificate to a motion picture production company that has a delinquent tax balance owing to the department under this title or title 43.~~

~~4. If the department determines that a motion picture production company no longer qualifies for a certificate or has used the certificate for unauthorized purposes, the department shall revoke the certificate and the motion picture production company is liable for an amount equal to the transaction privilege and use taxes that would have been due on taxable~~

~~transactions during the time the company did not qualify for or improperly used the certificate, with interest and penalties as provided by law.~~

~~5. The department shall maintain annual data on the total amount of monies exempted through the use of certificates issued pursuant to this subsection and shall provide those data to the department of commerce on request.~~

~~6. The department of revenue, with the cooperation of the department of commerce, shall adopt rules and publish and prescribe forms and procedures as necessary to effectuate the purposes of this subsection.~~

~~7. If, after audit, the department determines that a motion picture production company failed to meet any of the requirements prescribed by this subsection, any deductions from taxation from the use of the certificate are subject to recapture and payment by the motion picture production company to the department.~~

~~I.~~ H. The department shall prescribe forms for certificates used to establish the satisfaction of the criteria necessary to qualify the sale of a motor vehicle for the deductions described in section 42-5061, subsection A, paragraph 14, paragraph 28, subdivision (a) and paragraph 45 and subsection U. To establish entitlement to these deductions, a motor vehicle dealer shall retain:

1. A valid certificate as prescribed by this subsection completed by the purchaser and obtained prior to the issuance of the nonresident registration permit authorized by section 28-2154.

2. A copy of the nonresident registration permit authorized by section 28-2154.

3. A legible copy of a current valid driver license issued to the purchaser by another state or foreign country that indicates an address outside of this state. For the sale of a motor vehicle to a nonresident entity, the entity's representative must have a current valid driver license issued by the same jurisdiction as that in which the entity is located.

4. For the purposes of the deduction provided by section 42-5061, subsection A, paragraph 14, a certificate documenting the delivery of the motor vehicle to an out-of-state location.

~~J.~~ I. Notwithstanding subsection A, paragraph 2 of this section, if a motor vehicle dealer has established entitlement to a deduction by complying with subsection ~~I~~ H of this section, the department may require the purchaser who executed the certificate to establish the accuracy and completeness of the information contained in the certificate that entitled the motor vehicle dealer to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the motor vehicle dealer would have been required to pay under this article and under articles IV and V of the model city tax code as defined in section 42-6051. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter and any tax imposed under article VI of the model city tax code as defined in section 42-6051. The amount shall be treated as tax revenues collected from the motor vehicle dealer in order to designate the distribution base for purposes of section 42-5029.

~~K.~~ J. Notwithstanding any other law, compliance with subsection ~~I~~ H of this section by a motor vehicle dealer entitles the motor vehicle dealer to the exemption provided in section 42-6004, subsection A, paragraph 4.

Sec. 41. Section 42-5061, Arizona Revised Statutes, is amended to read:

42-5061. Retail classification; definitions

A. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. The tax imposed on the retail classification does not apply to the gross proceeds of sales or gross income from:

1. Professional or personal service occupations or businesses which involve sales or transfers of tangible personal property only as inconsequential elements.

2. Services rendered in addition to selling tangible personal property at retail.

3. Sales of warranty or service contracts. The storage, use or consumption of tangible personal property provided under the conditions of such contracts is subject to tax under section 42-5156.

4. Sales of tangible personal property by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

5. Sales to persons engaged in business classified under the restaurant classification of articles used by human beings for food, drink or condiment, whether simple, mixed or compounded.

6. Business activity which is properly included in any other business classification which is taxable under this article.

7. The sale of stocks and bonds.

8. Drugs and medical oxygen, including delivery hose, mask or tent, regulator and tank, on the prescription of a member of the medical, dental or veterinarian profession who is licensed by law to administer such substances.

9. Prosthetic appliances as defined in section 23-501 prescribed or recommended by a health professional who is licensed pursuant to title 32, chapter 7, 8, 11, 13, 14, 15, 16, 17 or 29.

10. Insulin, insulin syringes and glucose test strips.

11. Prescription eyeglasses or contact lenses.

12. Hearing aids as defined in section 36-1901.

13. Durable medical equipment which has a centers for medicare and medicaid services common procedure code, is designated reimbursable by medicare, is prescribed by a person who is licensed under title 32, chapter

7, 8, 13, 14, 15, 17 or 29, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

14. Sales to nonresidents of this state for use outside this state if the vendor ships or delivers the tangible personal property out of this state.

15. Food, as provided in and subject to the conditions of article 3 of this chapter and section 42-5074.

16. Items purchased with United States department of agriculture food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code section 1786).

17. Textbooks by any bookstore that are required by any state university or community college.

18. Food and drink to a person who is engaged in business which is classified under the restaurant classification and which provides such food and drink without monetary charge to its employees for their own consumption on the premises during the employees' hours of employment.

19. Articles of food, drink or condiment and accessory tangible personal property to a school district or charter school if such articles and accessory tangible personal property are to be prepared and served to persons for consumption on the premises of a public school within the district or on the premises of the charter school during school hours.

20. Lottery tickets or shares pursuant to title 5, chapter 5, article 1.

21. The sale of precious metal bullion and monetized bullion to the ultimate consumer, but the sale of coins or other forms of money for manufacture into jewelry or works of art is subject to the tax. For the purposes of this paragraph:

(a) "Monetized bullion" means coins and other forms of money which are manufactured from gold, silver or other metals and which have been or are used as a medium of exchange in this or another state, the United States or a foreign nation.

(b) "Precious metal bullion" means precious metal, including gold, silver, platinum, rhodium and palladium, which has been smelted or refined so that its value depends on its contents and not on its form.

22. Motor vehicle fuel and use fuel that are subject to a tax imposed under title 28, chapter 16, article 1, sales of use fuel to a holder of a valid single trip use fuel tax permit issued under section 28-5739, sales of aviation fuel that are subject to the tax imposed under section 28-8344 and sales of jet fuel that are subject to the tax imposed under article 8 of this chapter.

23. Tangible personal property sold to a person engaged in the business of leasing or renting such property under the personal property rental classification if such property is to be leased or rented by such person.

24. Tangible personal property sold in interstate or foreign commerce if prohibited from being so taxed by the Constitution of the United States or the constitution of this state.

25. Tangible personal property sold to:

(a) A qualifying hospital as defined in section 42-5001.

(b) A qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

(c) A qualifying health care organization as defined in section 42-5001 if the organization is dedicated to providing educational, therapeutic, rehabilitative and family medical education training for blind, visually impaired and multihandicapped children from the time of birth to age twenty-one.

(d) A qualifying community health center as defined in section 42-5001.

(e) A nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

(f) For taxable periods beginning from and after June 30, 2001, a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that provides residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy, if the tangible personal property is used by the organization solely to provide residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy.

26. Magazines or other periodicals or other publications by this state to encourage tourist travel.

27. Tangible personal property sold to a person that is subject to tax under this article by reason of being engaged in business classified under the prime contracting classification under section 42-5075, or to a subcontractor working under the control of a prime contractor that is subject to tax under article 1 of this chapter, if the property so sold is any of the following:

(a) Incorporated or fabricated by the person into any real property, structure, project, development or improvement as part of the business.

(b) Used in environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

~~(c) Incorporated or fabricated by the person into any lake facility development in a commercial enhancement reuse district under conditions prescribed for the deduction allowed by section 42-5075, subsection B, paragraph 8.~~

28. The sale of a motor vehicle to:

(a) A nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by article 1 of this chapter and if the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01.

(b) An enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe.

29. Tangible personal property purchased in this state by a nonprofit charitable organization that has qualified under section 501(c)(3) of the United States internal revenue code and that engages in and uses such property exclusively in programs for mentally or physically handicapped persons if the programs are exclusively for training, job placement, rehabilitation or testing.

30. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

31. Sales of commodities, as defined by title 7 United States Code section 2, that are consigned for resale in a warehouse in this state in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the United States commodity futures trading commission.

32. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the organization sponsors or operates a rodeo featuring primarily farm and ranch animals and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

33. Sales of seeds, seedlings, roots, bulbs, cuttings and other propagative material to persons who use those items to commercially produce agricultural, horticultural, viticultural or floricultural crops in this state.

34. Machinery, equipment, technology or related supplies that are only useful to assist a person who is physically disabled as defined in section 46-191, has a developmental disability as defined in section 36-551 or has a head injury as defined in section 41-3201 to be more independent and functional.

35. Sales of tangible personal property that is shipped or delivered directly to a destination outside the United States for use in that foreign country.

36. Sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

37. Paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing.

38. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.

39. Sales of liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development and, beginning on January 1, 1999, printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involves direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This paragraph does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect any deduction for such chemicals that is otherwise provided by this section. For the purposes of this paragraph, "printing" means a commercial printing operation and includes job printing, engraving, embossing, copying and bookbinding.

40. Through December 31, 1994, personal property liquidation transactions, conducted by a personal property liquidator. From and after December 31, 1994, personal property liquidation transactions shall be taxable under this section provided that nothing in this subsection shall be construed to authorize the taxation of casual activities or transactions under this chapter. For the purposes of this paragraph:

(a) "Personal property liquidation transaction" means a sale of personal property made by a personal property liquidator acting solely on behalf of the owner of the personal property sold at the dwelling of the owner or upon the death of any owner, on behalf of the surviving spouse, if any, any devisee or heir or the personal representative of the estate of the deceased, if one has been appointed.

(b) "Personal property liquidator" means a person who is retained to conduct a sale in a personal property liquidation transaction.

41. Sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

42. A motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle sold to a motor carrier who is subject to a fee prescribed in title 28, chapter 16, article 4 and who is engaged in the business of leasing or renting such property.

43. Livestock and poultry feed, salts, vitamins and other additives for livestock or poultry consumption that are sold to persons who are engaged in producing livestock, poultry, or livestock or poultry products or who are engaged in feeding livestock or poultry commercially. For the purposes of this paragraph, "poultry" includes ratites.

44. Sales of implants used as growth promotants and injectable medicines, not already exempt under paragraph 8 of this subsection, for livestock or poultry owned by or in possession of persons who are engaged in producing livestock, poultry, or livestock or poultry products or who are engaged in feeding livestock or poultry commercially. For the purposes of this paragraph, "poultry" includes ratites.

45. Sales of motor vehicles at auction to nonresidents of this state for use outside this state if the vehicles are shipped or delivered out of this state, regardless of where title to the motor vehicles passes or its free on board point.

46. Tangible personal property sold to a person engaged in business and subject to tax under the transient lodging classification if the tangible personal property is a personal hygiene item or articles used by human beings for food, drink or condiment, except alcoholic beverages, which are furnished without additional charge to and intended to be consumed by the transient during the transient's occupancy.

47. Sales of alternative fuel, as defined in section 1-215, to a used oil fuel burner who has received a permit to burn used oil or used oil fuel under section 49-426 or 49-480.

48. Sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:

(a) Printed or photographic materials, beginning August 7, 1985.

(b) Electronic or digital media materials, beginning July 17, 1994.

49. Tangible personal property sold to a commercial airline and consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this paragraph, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

50. Sales of alternative fuel vehicles if the vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to

convert the vehicle to operate on an alternative fuel, as defined in section 1-215.

51. Sales of any spirituous, vinous or malt liquor by a person that is licensed in this state as a wholesaler by the department of liquor licenses and control pursuant to title 4, chapter 2, article 1.

52. Sales of tangible personal property to be incorporated or installed as part of environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

53. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(6) of the internal revenue code if the organization produces, organizes or promotes cultural or civic related festivals or events and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

54. Through August 31, 2014, sales of Arizona centennial medallions by the historical advisory commission.

55. Application services that are designed to assess or test student learning or to promote curriculum design or enhancement purchased by or for any school district, charter school, community college or state university. For the purposes of this paragraph:

(a) "Application services" means software applications provided remotely using hypertext transfer protocol or another network protocol.

(b) "Curriculum design or enhancement" means planning, implementing or reporting on courses of study, lessons, assignments or other learning activities.

B. In addition to the deductions from the tax base prescribed by subsection A of this section, the gross proceeds of sales or gross income derived from sales of the following categories of tangible personal property shall be deducted from the tax base:

1. Machinery, or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining" and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

2. Mining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface. "Mining" includes underground, surface and open pit operations for extracting ores and minerals.

3. Tangible personal property sold to persons engaged in business classified under the telecommunications classification and consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio equipment and carrier equipment including optical

fiber, coaxial cable and other transmission media which are components of carrier systems.

4. Machinery, equipment or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.

5. Neat animals, horses, asses, sheep, ratites, swine or goats used or to be used as breeding or production stock, including sales of breedings or ownership shares in such animals used for breeding or production.

6. Pipes or valves four inches in diameter or larger used to transport oil, natural gas, artificial gas, water or coal slurry, including compressor units, regulators, machinery and equipment, fittings, seals and any other part that is used in operating the pipes or valves.

7. Aircraft, navigational and communication instruments and other accessories and related equipment sold to:

(a) A person holding a federal certificate of public convenience and necessity, a supplemental air carrier certificate under federal aviation regulations (14 Code of Federal Regulations part 121) or a foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

(b) Any foreign government.

(c) Persons who are not residents of this state and who will not use such property in this state other than in removing such property from this state. This subdivision also applies to corporations that are not incorporated in this state, regardless of maintaining a place of business in this state, if the principal corporate office is located outside this state and the property will not be used in this state other than in removing the property from this state.

8. Machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.

9. Railroad rolling stock, rails, ties and signal control equipment used directly to transport persons or property.

10. Machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

11. Buses or other urban mass transit vehicles which are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and which are sold to bus companies holding a federal certificate of convenience and necessity or operated by any city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

12. Groundwater measuring devices required under section 45-604.

13. New machinery and equipment consisting of tractors, tractor-drawn implements, self-powered implements, machinery and equipment necessary for extracting milk, and machinery and equipment necessary for cooling milk and livestock, and drip irrigation lines not already exempt under paragraph 6 of this subsection and that are used for commercial production of agricultural, horticultural, viticultural and floricultural crops and products in this state. For the purposes of this paragraph:

(a) "New machinery and equipment" means machinery and equipment which have never been sold at retail except pursuant to leases or rentals which do not total two years or more.

(b) "Self-powered implements" includes machinery and equipment that are electric-powered.

14. Machinery or equipment used in research and development. For the purposes of this paragraph, "research and development" means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.

~~15. Machinery and equipment that are purchased by or on behalf of the owners of a soundstage complex and primarily used for motion picture, multimedia or interactive video production in the complex. This paragraph applies only if the initial construction of the soundstage complex begins after June 30, 1996 and before January 1, 2002 and the machinery and equipment are purchased before the expiration of five years after the start of initial construction. For the purposes of this paragraph:~~

~~(a) "Motion picture, multimedia or interactive video production" includes products for theatrical and television release, educational presentations, electronic retailing, documentaries, music videos, industrial films, CD-ROM, video game production, commercial advertising and television episode production and other genres that are introduced through developing technology.~~

~~(b) "Soundstage complex" means a facility of multiple stages including production offices, construction shops and related areas, prop and costume shops, storage areas, parking for production vehicles and areas that are leased to businesses that complement the production needs and orientation of the overall facility.~~

~~16.~~ 15. Tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunications information:

(a) Any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations part 25.

(b) Any satellite television or data transmission facility, if both of the following conditions are met:

(i) Over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations part 25.

(ii) Over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services.

For the purposes of subdivision (b) of this paragraph, "test period" means the three hundred sixty-five day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers.

~~17.~~ 16. Clean rooms that are used for manufacturing, processing, fabrication or research and development, as defined in paragraph 14 of this subsection, of semiconductor products. For the purposes of this paragraph, "clean room" means all property that comprises or creates an environment where humidity, temperature, particulate matter and contamination are precisely controlled within specified parameters, without regard to whether the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Clean room:

(a) Includes the integrated systems, fixtures, piping, movable partitions, lighting and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the clean room environment.

(b) Does not include the building or other permanent, nonremovable component of the building that houses the clean room environment.

~~18.~~ 17. Machinery and equipment used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs.

~~19.~~ 18. Machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development and that is used directly to meet or exceed rules or regulations adopted by the federal energy regulatory commission, the United States environmental protection agency, the United States nuclear regulatory commission, the Arizona department of environmental quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution.

~~20.~~ 19. Machinery and equipment that are sold to a person engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state and that are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

~~21.~~ 20. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code section 336) and the federal communications commission order issued April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does not exempt any of the following:

(a) Repair or replacement parts purchased for the machinery or equipment described in this paragraph.

(b) Machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph.

(c) Any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.

~~22.~~ 21. Qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2014 by a qualified business under section 41-1516 for harvesting or the initial processing of qualifying forest products removed from qualifying projects as defined in section 41-1516. To qualify for this deduction, the qualified business at the time of purchase must present its certification approved by the department.

~~23. Machinery, equipment and other tangible personal property used directly in motion picture production by a motion picture production company. To qualify for this deduction, at the time of purchase, the motion picture production company must present to the retailer its certificate that is issued pursuant to section 42-5009, subsection H and that establishes its qualification for the deduction.~~

C. The deductions provided by subsection B of this section do not include sales of:

1. Expendable materials. For the purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in subsection B of this section regardless of the cost or useful life of that property.

2. Janitorial equipment and hand tools.

3. Office equipment, furniture and supplies.

4. Tangible personal property used in selling or distributing activities, other than the telecommunications transmissions described in subsection B, paragraph 16 of this section.

5. Motor vehicles required to be licensed by this state, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection B, paragraph 11 of this section, without regard to the use of such motor vehicles.

6. Shops, buildings, docks, depots and all other materials of whatever kind or character not specifically included as exempt.

7. Motors and pumps used in drip irrigation systems.

D. In addition to the deductions from the tax base prescribed by subsection A of this section, there shall be deducted from the tax base the gross proceeds of sales or gross income derived from sales of machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in section 41-1514.02. This subsection applies for ten full consecutive calendar or fiscal years after the start of initial construction.

E. In computing the tax base, gross proceeds of sales or gross income from retail sales of heavy trucks and trailers does not include any amount attributable to federal excise taxes imposed by 26 United States Code section 4051.

F. In computing the tax base, gross proceeds of sales or gross income from the sale of use fuel, as defined in section 28-5601, does not include any amount attributable to federal excise taxes imposed by 26 United States Code section 4091.

G. If a person is engaged in an occupation or business to which subsection A of this section applies, the person's books shall be kept so as to show separately the gross proceeds of sales of tangible personal property and the gross income from sales of services, and if not so kept the tax shall be imposed on the total of the person's gross proceeds of sales of tangible personal property and gross income from services.

H. If a person is engaged in the business of selling tangible personal property at both wholesale and retail, the tax under this section applies only to the gross proceeds of the sales made other than at wholesale if the person's books are kept so as to show separately the gross proceeds of sales of each class, and if the books are not so kept, the tax under this section applies to the gross proceeds of every sale so made.

I. A person who engages in manufacturing, baling, crating, boxing, barreling, canning, bottling, sacking, preserving, processing or otherwise preparing for sale or commercial use any livestock, agricultural or horticultural product or any other product, article, substance or commodity and who sells the product of such business at retail in this state is deemed, as to such sales, to be engaged in business classified under the retail classification. This subsection does not apply to businesses classified under the:

1. Transporting classification.
2. Utilities classification.
3. Telecommunications classification.
4. Pipeline classification.
5. Private car line classification.
6. Publication classification.
7. Job printing classification.
8. Prime contracting classification.
9. Owner builder sales classification.
10. Restaurant classification.

J. The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base for the retail classification:

1. Sales made directly to the United States government or its departments or agencies by a manufacturer, modifier, assembler or repairer.
2. Sales made directly to a manufacturer, modifier, assembler or repairer if such sales are of any ingredient or component part of products sold directly to the United States government or its departments or agencies by the manufacturer, modifier, assembler or repairer.
3. Overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract.
4. Sales of overhead materials or other tangible personal property to a manufacturer, modifier, assembler or repairer if the gross proceeds of sales or gross income derived from the property by the manufacturer, modifier, assembler or repairer will be exempt under paragraph 3 of this subsection.

K. There shall be deducted from the tax base fifty per cent of the gross proceeds or gross income from any sale of tangible personal property made directly to the United States government or its departments or agencies, which is not deducted under subsection J of this section.

L. The department shall require every person claiming a deduction provided by subsection J or K of this section to file on forms prescribed by the department at such times as the department directs a sworn statement disclosing the name of the purchaser and the exact amount of sales on which the exclusion or deduction is claimed.

M. In computing the tax base, gross proceeds of sales or gross income does not include:

1. A manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.
2. The waste tire disposal fee imposed pursuant to section 44-1302.

N. There shall be deducted from the tax base the amount received from sales of solar energy devices. The retailer shall register with the department as a solar energy retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.

O. In computing the tax base in the case of the sale or transfer of wireless telecommunications equipment as an inducement to a customer to enter into or continue a contract for telecommunications services that are taxable under section 42-5064, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.

P. For the purposes of this section, a sale of wireless telecommunications equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunications services that are taxable under section 42-5064 is considered to be a sale for resale in the regular course of business.

Q. Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this section.

R. For the purposes of this section, the diversion of gas from a pipeline by a person engaged in the business of:

1. Operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.

2. Converting natural gas into liquefied natural gas, for the sole purpose of fueling compressor equipment used in the conversion process, is not a sale of gas to the operator of the compressor equipment.

S. If a seller is entitled to a deduction pursuant to subsection B, paragraph ~~16~~ 15, subdivision (b) of this section, the department may require the purchaser to establish that the requirements of subsection B, paragraph ~~16~~ 15, subdivision (b) of this section have been satisfied. If the purchaser cannot establish that the requirements of subsection B, paragraph ~~16~~ 15, subdivision (b) of this section have been satisfied, the purchaser is liable in an amount equal to any tax, penalty and interest which the seller would have been required to pay under article 1 of this chapter if the seller had not made a deduction pursuant to subsection B, paragraph ~~16~~ 15, subdivision (b) of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter and related to the tangible personal property purchased. The amount shall be treated as transaction privilege tax to the purchaser and as tax revenues collected from the seller to designate the distribution base pursuant to section 42-5029.

T. For the purposes of section 42-5032.01, the department shall separately account for revenues collected under the retail classification from businesses selling tangible personal property at retail:

1. On the premises of a multipurpose facility that is owned, leased or operated by the tourism and sports authority pursuant to title 5, chapter 8.

2. At professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

U. In computing the tax base for the sale of a motor vehicle to a nonresident of this state, if the purchaser's state of residence allows a corresponding use tax exemption to the tax imposed by article 1 of this chapter and the rate of the tax in the purchaser's state of residence is lower than the rate prescribed in article 1 of this chapter or if the purchaser's state of residence does not impose an excise tax, and the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01, there shall be deducted from the tax base a portion of the gross proceeds or gross income from the sale so that the amount of transaction privilege tax that is paid in this state is equal to the excise tax that is imposed by the purchaser's state of residence on the nonexempt sale or use of the motor vehicle.

V. For the purposes of this section:

1. "Aircraft" includes:

(a) An airplane flight simulator that is approved by the federal aviation administration for use as a phase II or higher flight simulator under appendix H, 14 Code of Federal Regulations part 121.

(b) Tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.

2. "Other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.

3. "Selling at retail" means a sale for any purpose other than for resale in the regular course of business in the form of tangible personal property, but transfer of possession, lease and rental as used in the definition of sale mean only such transactions as are found on investigation to be in lieu of sales as defined without the words lease or rental.

W. For the purposes of subsection J of this section:

1. "Assembler" means a person who unites or combines products, wares or articles of manufacture so as to produce a change in form or substance without changing or altering the component parts.

2. "Manufacturer" means a person who is principally engaged in the fabrication, production or manufacture of products, wares or articles for use from raw or prepared materials, imparting to those materials new forms, qualities, properties and combinations.

3. "Modifier" means a person who reworks, changes or adds to products, wares or articles of manufacture.

4. "Overhead materials" means tangible personal property, the gross proceeds of sales or gross income derived from which would otherwise be included in the retail classification, and which are used or consumed in the performance of a contract, the cost of which is charged to an overhead expense account and allocated to various contracts based upon generally accepted accounting principles and consistent with government contract accounting standards.

5. "Repairer" means a person who restores or renews products, wares or articles of manufacture.

6. "Subcontract" means an agreement between a contractor and any person who is not an employee of the contractor for furnishing of supplies or services that, in whole or in part, are necessary to the performance of one or more government contracts, or under which any portion of the contractor's obligation under one or more government contracts is performed, undertaken or assumed and that includes provisions causing title to overhead materials or other tangible personal property used in the performance of the subcontract to pass to the government or that includes provisions incorporating such title passing clauses in a government contract into the subcontract.

Sec. 42. Section 42-5064, Arizona Revised Statutes, is amended to read:

42-5064. Telecommunications classification; definitions

A. The telecommunications classification is comprised of the business of providing intrastate telecommunications services. The telecommunications classification does not include:

1. Sales of intrastate telecommunications services by a cable television system as defined in section 9-505 or by a microwave television transmission system that transmits television programming to multiple subscribers and that is operated pursuant to 47 Code of Federal Regulations parts 21 and 74.

2. Sales of internet access or application services to the person's subscribers and customers. For the purposes of this paragraph:

(a) "Application services" means software applications provided remotely using hypertext transfer protocol or another network protocol and purchased by or for any school district, charter school, community college or state university to assess or test student learning or to promote curriculum design or enhancement.

(b) "Curriculum design or enhancement" means planning, implementing or reporting on courses of study, lessons, assignments or other learning activities.

B. The tax base for the telecommunications classification is the gross proceeds of sales or gross income derived from the business, including the gross income derived from tolls, subscriptions and services on behalf of subscribers or from the publication of a directory of the names of subscribers. However, the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales of intrastate telecommunications services to:

(a) Other persons engaged in businesses classified under the telecommunications classification for use in such business.

(b) A direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations part 25 for use in its direct broadcast satellite television or data transmission operation by a facility described in section 42-5061, subsection B, paragraph ~~16~~ 15, subdivision (b).

2. End user common line charges established by federal communications commission regulations (47 Code of Federal Regulations section 69.104(a)).

3. Carrier access charges established by federal communications commission regulations (47 Code of Federal Regulations sections 69.105(a) through 69.118).

4. Sales of direct broadcast satellite television services pursuant to 47 Code of Federal Regulations part 25 by a direct broadcast satellite television service that operates pursuant to 47 Code of Federal Regulations part 25.

5. Telecommunications services purchased with a prepaid calling card, or a prepaid authorization number for telecommunications services, that is taxable under section 42-5061.

C. A person that is engaged in a transient lodging business subject to taxation under section 42-5070 and that provides telephone, fax or internet access services to its customers at an additional charge, which is separately stated on the customer invoice, is considered to be engaged in business subject to taxation under this section for the purposes of taxing the gross proceeds of sales or gross income derived from providing those services.

D. The gross proceeds of sales or gross income derived from a bundled transaction of services that are taxable pursuant to section 42-5023 are subject to the following:

1. A telecommunications service provider who can reasonably identify the portion of the sales price of the bundled transaction derived from charges for nontaxable services is subject to tax only on the gross proceeds of sales or gross income derived from the taxable services. For the purposes of this section, the telecommunications service provider may elect to reasonably identify the portion of the sales price of the bundled transaction derived from charges for nontaxable services by using allocation percentages derived from the telecommunications service provider's entire service area, including territories outside of this state. On request, the department may require the telecommunications service provider to provide this allocation information. The reasonableness of the allocation is subject to audit by the department.

2. Notwithstanding sections 42-1118, 42-1120 and 42-1121, the telecommunications service provider shall waive the right to file a claim for

a refund of taxes paid on the bundled transaction if the taxes paid are based on the allocation percentage the telecommunications service provider had determined to be reasonable at the beginning of the tax period at issue.

3. The burden of proof is on the telecommunications service provider to establish that the gross proceeds of sales or gross income is derived from charges for nontaxable services.

E. For the purposes of this section:

1. "Bundled transaction" means a sale of multiple services in which both of the following apply:

(a) The sale consists of both taxable and nontaxable services.

(b) The telecommunications service provider charges a customer one sales price for all services that are sold instead of separately charging for each individual service.

2. "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.

3. "Internet access" means a service that enables users to access content, information, electronic mail or other services over the internet. Internet access does not include telecommunications services provided by a common carrier.

4. "Intrastate telecommunications services" means transmitting signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio waves, light waves or other electromagnetic means if the information transmitted originates and terminates in this state.

Sec. 43. Section 42-5066, Arizona Revised Statutes, is amended to read:

42-5066. Job printing classification

A. The job printing classification is comprised of the business of job printing, engraving, embossing and copying.

B. The tax base for the job printing classification is the gross proceeds of sales or gross income derived from the business, but the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales to a person in this state who has a transaction privilege tax license issued in this state, and who does either of the following:

(a) Resells the job printing, engraving, embossing or copying.

(b) Distributes such printing, engraving, embossing or copying without consideration in connection with the publication of a newspaper or magazine.

2. Sales of job printing, engraving, embossing and copying for use outside this state if the materials are shipped or delivered out of this state regardless of where title to the materials passes or their free on board point.

3. Sales of personal property to:

(a) Qualifying hospitals as defined in section 42-5001.

(b) A qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

4. Sales of postage and freight except that the amount deducted shall not exceed the actual postage and freight expense that is paid to the United States postal service or a commercial delivery service and that is separately itemized by the taxpayer on the customer's invoice and in the taxpayer's records.

~~5. Sales to a motion picture production company that will use the job printing, engraving, embossing or copying directly in motion picture production. To qualify for this deduction, at the time of sale, the motion picture production company must present the job printer its certificate that is issued pursuant to section 42-5009, subsection H, and that establishes its qualifications for the deduction.~~

Sec. 44. Section 42-5070, Arizona Revised Statutes, is amended to read:

42-5070. Transient lodging classification; definition

A. The transient lodging classification is comprised of the business of operating, for occupancy by transients, a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure, and also including a space, lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy.

B. The transient lodging classification does not include:

1. Operating a convalescent home or facility, home for the aged, hospital, jail, military installation or fraternity or sorority house or operating any structure exclusively by an association, institution, governmental agency or corporation for religious, charitable or educational purposes, if no part of the net earnings of the association, corporation or other entity inures to the benefit of any private shareholder or individual.

2. A lease or rental of a mobile home or house trailer at a fixed location or any other similar structure, and also including a space, lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy for thirty or more consecutive days.

3. Leasing or renting four or fewer rooms of an owner-occupied residential home, together with furnishing no more than a breakfast meal, to transient lodgers at no more than a fifty per cent average annual occupancy rate.

C. The tax base for the transient lodging classification is the gross proceeds of sales or gross income derived from the business, except that the tax base does not include~~:~~

~~1.~~ gross proceeds of sales or gross income derived from business activity that is properly included in another business classification under this article and that is taxable to the person engaged in that business classification, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

~~2. Gross proceeds of sales or gross income from leases or rentals of lodging space to a motion picture production company if, at the time of lease or rental, the motion picture production company presents to the business its certificate of qualification that is issued pursuant to section 42-5009, subsection H.~~

D. For the purposes of this section, the tax base for the transient lodging classification does not include gross proceeds of sales or gross income derived from:

1. Transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person not subject to tax under this article.

2. Transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under section 42-5062 or 42-5073 due to an exclusion, exemption or deduction.

3. Commissions paid to a person that is engaged in transient lodging business subject to taxation under this section by a person providing services or property to the customers of the person engaging in the transient lodging business.

E. For the purposes of this section, "transient" means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty consecutive days.

Sec. 45. Section 42-5071, Arizona Revised Statutes, is amended to read:

42-5071. Personal property rental classification

A. The personal property rental classification is comprised of the business of leasing or renting tangible personal property for a consideration. The tax does not apply to:

1. Leasing or renting films, tapes or slides used by theaters or movies, which are engaged in business under the amusement classification, or used by television stations or radio stations.

2. Activities engaged in by the Arizona exposition and state fair board or county fair commissions in connection with events sponsored by such entities.

3. Leasing or renting tangible personal property by a parent corporation to a subsidiary corporation or by a subsidiary corporation to

another subsidiary of the same parent corporation if taxes were paid under this chapter on the gross proceeds or gross income accruing from the initial sale of the tangible personal property. For the purposes of this paragraph, "subsidiary" means a corporation of which at least eighty per cent of the voting shares are owned by the parent corporation.

4. Operating coin operated washing, drying and dry cleaning machines or coin operated car washing machines at establishments for the use of such machines.

5. Leasing or renting tangible personal property for incorporation into or comprising any part of a qualified environmental technology facility as described in section 41-1514.02. This paragraph shall apply for ten full consecutive calendar or fiscal years following the initial lease or rental by each qualified environmental technology manufacturer, producer or processor.

6. Leasing or renting aircraft, flight simulators or similar training equipment to students or staff by nonprofit, accredited educational institutions that offer associate or baccalaureate degrees in aviation or aerospace related fields.

7. Leasing or renting photographs, transparencies or other creative works used by this state on internet web sites, in magazines or in other publications that encourage tourism.

B. The tax base for the personal property rental classification is the gross proceeds of sales or gross income derived from the business, but the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Reimbursements by the lessee to the lessor of a motor vehicle for payments by the lessor of the applicable fees and taxes imposed by sections 28-2003, 28-2352, 28-2402, 28-2481 and 28-5801, title 28, chapter 15, article 2 and article IX, section 11, Constitution of Arizona, to the extent such amounts are separately identified as such fees and taxes and are billed to the lessee.

2. Leases or rentals of tangible personal property which, if it had been purchased instead of leased or rented by the lessee, would have been exempt under:

(a) Section 42-5061, subsection A, paragraph 8, 9, 12, 13, 25, 29, 50 or 55.

(b) Section 42-5061, subsection B, except that a lease or rental of new machinery or equipment is not exempt pursuant to:

(i) Section 42-5061, subsection B, paragraph 13 if the lease is for less than two years.

(ii) Section 42-5061, subsection B, paragraph ~~22~~ 21 if the lease is for less than five years.

(c) Section 42-5061, subsection J, paragraph 1.

(d) Section 42-5061, subsection N.

3. Motor vehicle fuel and use fuel that are subject to a tax imposed under title 28, chapter 16, article 1, sales of use fuel to a holder of a valid single trip use fuel tax permit issued under section 28-5739 and sales of aviation fuel that are subject to the tax imposed under section 28-8344.

4. Leasing or renting a motor vehicle subject to and upon which the fee has been paid under title 28, chapter 16, article 4.

5. Amounts received by a motor vehicle dealer for the first month of a lease payment if the lease and the lease payment for the first month of the lease are transferred to a third party leasing company.

C. Sales of tangible personal property to be leased or rented to a person engaged in a business classified under the personal property rental classification are deemed to be resale sales.

D. In computing the tax base, the gross proceeds of sales or gross income from the lease or rental of a motor vehicle does not include any amount attributable to the car rental surcharge under section 28-5810 or 48-4234.

E. Until December 31, 1988, leasing or renting animals for recreational purposes is exempt from the tax imposed by this section. Beginning January 1, 1989, the gross proceeds or gross income from leasing or renting animals for recreational purposes is subject to taxation under this section. Tax liabilities, penalties and interest paid for taxable periods before January 1, 1989 shall not be refunded unless the taxpayer requesting the refund provides proof satisfactory to the department that the monies paid as taxes will be returned to the customer.

Sec. 46. Section 42-5074, Arizona Revised Statutes, is amended to read:

42-5074. Restaurant classification

A. The restaurant classification is comprised of the business of operating restaurants, dining cars, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments where articles of food or drink are sold for consumption on or off the premises.

B. The tax base for the restaurant classification is the gross proceeds of sales or gross income derived from the business. The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales to a person engaged in business classified under the restaurant classification if the items sold are to be resold in the regular course of the business.

2. Sales by a congressionally chartered veterans organization of food or drink prepared for consumption on the premises leased, owned or maintained by the organization.

3. Sales by churches, fraternal benefit societies and other nonprofit organizations, as these organizations are defined in the federal internal revenue code (26 United States Code section 501), which do not regularly

engage or continue in the restaurant business for the purpose of fund-raising.

4. Sales by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

5. Sales at a rodeo featuring primarily farm and ranch animals in this state by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

6. Sales by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

7. Sales to qualifying hospitals as defined in section 42-5001.

8. Sales to a qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

9. Sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

~~10. Sales of catered food, drink and condiment to a motion picture production company. To qualify for this deduction, at the time of purchase, the motion picture production company must present to the business its certificate of qualification that is issued pursuant to section 42-5009, subsection H and that establishes its qualification for the deduction.~~

~~11.~~ 10. Sales of articles of prepared or unprepared food, drink or condiment and accessory tangible personal property to a school district or charter school if the articles and accessory tangible personal property are served to persons for consumption on the premises of a public school in the school district or charter school during school hours.

~~12.~~ 11. Prepared food, drink or condiment donated by a restaurant to a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

C. The tax imposed on the restaurant classification pursuant to this section does not apply to the gross proceeds of sales or gross income from tangible personal property sold to a commercial airline consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this subsection, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

D. For purposes of section 42-5032.01, the department shall separately account for revenues collected under the restaurant classification from businesses operating restaurants, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments:

1. On the premises of a multipurpose facility that is owned or operated by the tourism and sports authority pursuant to title 5, chapter 8 for consumption on or off the premises.

2. At professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

Sec. 47. Section 42-5075, Arizona Revised Statutes, is amended to read:

42-5075. Prime contracting classification; exemptions; definitions

A. The prime contracting classification is comprised of the business of prime contracting and dealership of manufactured buildings. Sales for resale to another dealership of manufactured buildings are not subject to tax. Sales for resale do not include sales to a lessor of manufactured buildings. The sale of a used manufactured building is not taxable under this chapter. The proceeds from alteration and repairs to a used manufactured building are taxable under this section.

B. The tax base for the prime contracting classification is sixty-five per cent of the gross proceeds of sales or gross income derived from the business. The following amounts shall be deducted from the gross proceeds of sales or gross income before computing the tax base:

1. The sales price of land, which shall not exceed the fair market value.

2. Sales and installation of groundwater measuring devices required under section 45-604 and groundwater monitoring wells required by law, including monitoring wells installed for acquiring information for a permit required by law.

3. The sales price of furniture, furnishings, fixtures, appliances and attachments that are not incorporated as component parts of or attached to a manufactured building or the setup site. The sale of such items may be subject to the taxes imposed by article 1 of this chapter separately and distinctly from the sale of the manufactured building.

4. The gross proceeds of sales or gross income received from a contract entered into for the construction, alteration, repair, addition, subtraction, improvement, movement, wrecking or demolition of any building, highway, road, railroad, excavation, manufactured building or other

structure, project, development or improvement located in a military reuse zone for providing aviation or aerospace services or for a manufacturer, assembler or fabricator of aviation or aerospace products within an active military reuse zone after the zone is initially established or renewed under section 41-1531. To be eligible to qualify for this deduction, before beginning work under the contract, the prime contractor must have applied for a letter of qualification from the department of revenue.

5. The gross proceeds of sales or gross income derived from a contract to construct a qualified environmental technology manufacturing, producing or processing facility, as described in section 41-1514.02, and from subsequent construction and installation contracts that begin within ten years after the start of initial construction. To qualify for this deduction, before beginning work under the contract, the prime contractor must obtain a letter of qualification from the department of revenue. This paragraph shall apply for ten full consecutive calendar or fiscal years after the start of initial construction.

6. The gross proceeds of sales or gross income from a contract to provide for one or more of the following actions, or a contract for site preparation, constructing, furnishing or installing machinery, equipment or other tangible personal property, including structures necessary to protect exempt incorporated materials or installed machinery or equipment, and tangible personal property incorporated into the project, to perform one or more of the following actions in response to a release or suspected release of a hazardous substance, pollutant or contaminant from a facility to the environment, unless the release was authorized by a permit issued by a governmental authority:

(a) Actions to monitor, assess and evaluate such a release or a suspected release.

(b) Excavation, removal and transportation of contaminated soil and its treatment or disposal.

(c) Treatment of contaminated soil by vapor extraction, chemical or physical stabilization, soil washing or biological treatment to reduce the concentration, toxicity or mobility of a contaminant.

(d) Pumping and treatment or in situ treatment of contaminated groundwater or surface water to reduce the concentration or toxicity of a contaminant.

(e) The installation of structures, such as cutoff walls or caps, to contain contaminants present in groundwater or soil and prevent them from reaching a location where they could threaten human health or welfare or the environment.

This paragraph does not include asbestos removal or the construction or use of ancillary structures such as maintenance sheds, offices or storage facilities for unattached equipment, pollution control equipment, facilities or other control items required or to be used by a person to prevent or control contamination before it reaches the environment.

7. The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of machinery, equipment or other tangible personal property that is deducted from the tax base of the retail classification pursuant to section 42-5061, subsection B, or that is exempt from use tax pursuant to section 42-5159, subsection B, and that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement. If the ownership of the realty is separate from the ownership of the machinery, equipment or tangible personal property, the determination as to permanent attachment shall be made as if the ownership were the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of machinery, equipment or other tangible personal property that is deducted from the tax base of the retail classification pursuant to section 42-5061, subsection B or that is exempt from use tax pursuant to section 42-5159, subsection B. For the purposes of this paragraph, "permanent attachment" means at least one of the following:

(a) To be incorporated into real property.

(b) To become so affixed to real property that it becomes a part of the real property.

(c) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

~~8. Through December 31, 2009, the gross proceeds of sales or gross income received from a contract for constructing any lake facility development in a commercial enhancement reuse district that is designated pursuant to section 9-499.08 if the prime contractor maintains the following records in a form satisfactory to the department and to the city or town in which the property is located:~~

~~(a) The certificate of qualification of the lake facility development issued by the city or town pursuant to section 9-499.08, subsection D.~~

~~(b) All state and local transaction privilege tax returns for the period of time during which the prime contractor received gross proceeds of sales or gross income from a contract to construct a lake facility development in a designated commercial enhancement reuse district, showing the amount exempted from state and local taxation.~~

~~(c) Any other information that the department considers to be necessary.~~

~~9.~~ 8. The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from transaction privilege and use tax under:

(a) Section 42-5061, subsection A, paragraph 25 or 29.

(b) Section 42-5061, subsection B.

(c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b), (c), (d), (e), (f), (i), (j) or (l).

(d) Section 42-5159, subsection B.

~~10.~~ 9. The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, cooling and packaging of eggs.

~~11.~~ 10. The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

~~12.~~ 11. The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to section 42-5061, subsection B, paragraph ~~17~~ 16.

~~13.~~ 12. For taxable periods beginning from and after June 30, 2001, the gross proceeds of sales or gross income derived from a contract entered into for the construction of a residential apartment housing facility that qualifies for a federal housing subsidy for low income persons over sixty-two years of age and that is owned by a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code.

~~14.~~ 13. For taxable periods beginning from and after December 31, 1996 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.

~~15.~~ 14. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a launch site, as defined in 14 Code of Federal Regulations section 401.5.

~~16.~~ 15. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a domestic violence shelter that is owned and operated by a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code.

~~17.~~ 16. The gross proceeds of sales or gross income derived from contracts to perform postconstruction treatment of real property for termite and general pest control, including wood destroying organisms.

~~18.~~ 17. The gross proceeds of sales or gross income received from contracts entered into before July 1, 2006 for constructing a state university research infrastructure project if the project has been reviewed by the joint committee on capital review before the university enters into the construction contract for the project. For the purposes of this paragraph, "research infrastructure" has the same meaning prescribed in section 15-1670.

~~19.~~ 18. The gross proceeds of sales or gross income received from a contract for the construction of any building, or other structure, project, development or improvement owned by a qualified business under section 41-1516 for harvesting or the initial processing of qualifying forest products removed from qualifying projects as defined in section 41-1516 if actual construction begins before January 1, 2010. To qualify for this deduction, the prime contractor must obtain a letter of qualification from the ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY before beginning work under the contract.

~~20. The gross proceeds of sales or gross income received from a contract for the construction of any building or other structure associated with motion picture production in this state. To qualify for the deduction, at the time the contract is entered into the motion picture production company must present to the prime contractor its certificate that is issued pursuant to section 42-5009, subsection H and that establishes its qualification for the deduction.~~

~~21.~~ 19. Any amount of the gross proceeds of sales or gross income attributable to development fees that are incurred in relation to a contract for construction, development or improvement of real property and that are paid by a prime contractor or subcontractor. For the purposes of this paragraph:

(a) The attributable amount shall not exceed the value of the development fees actually imposed.

(b) The attributable amount is equal to the total amount of development fees paid by the prime contractor or subcontractor, and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(c) "Development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to section 9-463.05, section 11-1102 or title 48 regardless of the jurisdiction to which the fees are paid.

C. Entitlement to the deduction pursuant to subsection B, paragraph 7 of this section is subject to the following provisions:

1. A prime contractor may establish entitlement to the deduction by both:

(a) Marking the invoice for the transaction to indicate that the gross proceeds of sales or gross income derived from the transaction was deducted from the base.

(b) Obtaining a certificate executed by the purchaser indicating the name and address of the purchaser, the precise nature of the business of the purchaser, the purpose for which the purchase was made, the necessary facts to establish the deductibility of the property under section 42-5061, subsection B, and a certification that the person executing the certificate is authorized to do so on behalf of the purchaser. The certificate may be disregarded if the prime contractor has reason to believe that the information contained in the certificate is not accurate or complete.

2. A person who does not comply with paragraph 1 of this subsection may establish entitlement to the deduction by presenting facts necessary to support the entitlement, but the burden of proof is on that person.

3. The department may prescribe a form for the certificate described in paragraph 1, subdivision (b) of this subsection. The department may also adopt rules that describe the transactions with respect to which a person is not entitled to rely solely on the information contained in the certificate provided in paragraph 1, subdivision (b) of this subsection but must instead obtain such additional information as required in order to be entitled to the deduction.

4. If a prime contractor is entitled to a deduction by complying with paragraph 1 of this subsection, the department may require the purchaser who caused the execution of the certificate to establish the accuracy and completeness of the information required to be contained in the certificate which would entitle the prime contractor to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest which the prime contractor would have been required to pay under article 1 of this chapter if the prime contractor had not complied with paragraph 1 of this subsection. Payment of the amount under this paragraph exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as a transaction privilege tax to the purchaser and as tax revenues collected from the prime contractor in order to designate the distribution base for purposes of section 42-5029.

D. Subcontractors or others who perform services in respect to any improvement, building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement are not subject to tax if they can demonstrate that the job was within the control of a prime contractor or contractors or a dealership of manufactured buildings and that the prime contractor or dealership is liable for the tax on the gross income, gross proceeds of sales or gross receipts attributable to the job and from which the subcontractors or others were paid.

E. Amounts received by a contractor for a project are excluded from the contractor's gross proceeds of sales or gross income derived from the business if the person who hired the contractor executes and provides a certificate to the contractor stating that the person providing the certificate is a prime contractor and is liable for the tax under article 1 of this chapter. The department shall prescribe the form of the certificate. If the contractor has reason to believe that the information contained on the certificate is erroneous or incomplete, the department may disregard the certificate. If the person who provides the certificate is not liable for the tax as a prime contractor, that person is nevertheless deemed to be the prime contractor in lieu of the contractor and is subject to the tax under this section on the gross receipts or gross proceeds received by the contractor.

F. Every person engaging or continuing in this state in the business of prime contracting or dealership of manufactured buildings shall present to the purchaser of such prime contracting or manufactured building a written receipt of the gross income or gross proceeds of sales from such activity and shall separately state the taxes to be paid pursuant to this section.

G. For the purposes of section 42-5032.01, the department shall separately account for revenues collected under the prime contracting classification from any prime contractor engaged in the preparation or construction of a multipurpose facility, and related infrastructure, that is owned, operated or leased by the tourism and sports authority pursuant to title 5, chapter 8.

H. The gross proceeds of sales or gross income derived from a contract for lawn maintenance services are not subject to tax under this section if the contract does not include landscaping activities. Lawn maintenance service is a service pursuant to section 42-5061, subsection A, paragraph 1, and includes lawn mowing and edging, weeding, repairing sprinkler heads or drip irrigation heads, seasonal replacement of flowers, refreshing gravel, lawn de-thatching, seeding winter lawns, leaf and debris collection and removal, tree or shrub pruning or clipping, garden and gravel raking and applying pesticides, as defined in section 3-361, and fertilizer materials, as defined in section 3-262.

I. The gross proceeds of sales or gross income derived from landscaping activities are subject to tax under this section. Landscaping includes installing lawns, grading or leveling ground, installing gravel or boulders, planting trees and other plants, felling trees, removing or mulching tree stumps, removing other imbedded plants, building or modifying irrigation berms, repairing sprinkler or watering systems, installing railroad ties and installing underground sprinkler or watering systems.

J. The portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

K. Operating a landfill or a solid waste disposal facility is not subject to taxation under this section, including filling, compacting and creating vehicle access to and from cell sites within the landfill.

Constructing roads to a landfill or solid waste disposal facility and constructing cells within a landfill or solid waste disposal facility may be deemed prime contracting under this section.

L. The following apply to manufactured buildings:

1. For sales in this state where the dealership of manufactured buildings contracts to deliver the building to a setup site or to perform the setup in this state, the taxable situs is the setup site.

2. For sales in this state where the dealership of manufactured buildings does not contract to deliver the building to a setup site or does not perform the setup, the taxable situs is the location of the dealership where the building is delivered to the buyer.

3. For sales in this state where the dealership of manufactured buildings contracts to deliver the building to a setup site that is outside this state, the situs is outside this state and the transaction is excluded from tax.

M. The gross proceeds of sales or gross income attributable to a separate, written design phase services contract or professional services contract, executed before modification begins, is not subject to tax under this section, regardless of whether the services are provided sequential to or concurrent with prime contracting activities that are subject to tax under this section. This subsection does not include the gross proceeds of sales or gross income attributable to construction phase services. For the purposes of this subsection:

1. "Construction phase services" means services for the execution and completion of any modification, including the following:

(a) Administration or supervision of any modification performed on the project, including team management and coordination, scheduling, cost controls, submittal process management, field management, safety program, close-out process and warranty period services.

(b) Administration or supervision of any modification performed pursuant to a punch list. For the purposes of this subdivision, "punch list" means minor items of modification work performed after substantial completion and before final completion of the project.

(c) Administration or supervision of any modification performed pursuant to change orders. For the purposes of this subdivision, "change order" means a written instrument issued after execution of a contract for modification work, providing for all of the following:

(i) The scope of a change in the modification work, contract for modification work or other contract documents.

(ii) The amount of an adjustment, if any, to the guaranteed maximum price as set in the contract for modification work. For the purposes of this item, "guaranteed maximum price" means the amount guaranteed to be the maximum amount due to a prime contractor for the performance of all modification work for the project.

(iii) The extent of an adjustment, if any, to the contract time of performance set forth in the contract.

(d) Administration or supervision of any modification performed pursuant to change directives. For the purposes of this subdivision, "change directive" means a written order directing a change in modification work before agreement on an adjustment of the guaranteed maximum price or contract time.

(e) Inspection to determine the dates of substantial completion or final completion.

(f) Preparation of any manuals, warranties, as-built drawings, spares or other items the prime contractor must furnish pursuant to the contract for modification work. For the purposes of this subdivision, "as-built drawing" means a drawing that indicates field changes made to adapt to field conditions, field changes resulting from change orders or buried and concealed installation of piping, conduit and utility services.

(g) Preparation of status reports after modification work has begun detailing the progress of work performed, including preparation of any of the following:

(i) Master schedule updates.

(ii) Modification work cash flow projection updates.

(iii) Site reports made on a periodic basis.

(iv) Identification of discrepancies, conflicts or ambiguities in modification work documents that require resolution.

(v) Identification of any health and safety issues that have arisen in connection with the modification work.

(h) Preparation of daily logs of modification work, including documentation of personnel, weather conditions and on-site occurrences.

(i) Preparation of any submittals or shop drawings used by the prime contractor to illustrate details of the modification work performed.

(j) Administration or supervision of any other activities for which a prime contractor receives a certificate for payment or certificate for final payment based on the progress of modification work performed on the project.

2. "Design phase services" means services for developing and completing a design for a project that are not construction phase services, including the following:

(a) Evaluating surveys, reports, test results or any other information on-site conditions for the project, including physical characteristics, legal limitations and utility locations for the site.

(b) Evaluating any criteria or programming objectives for the project to ascertain requirements for the project, such as physical requirements affecting cost or projected utilization of the project.

(c) Preparing drawings and specifications for architectural program documents, schematic design documents, design development documents, modification work documents or documents that identify the scope of or materials for the project.

(d) Preparing an initial schedule for the project, excluding the preparation of updates to the master schedule after modification work has begun.

(e) Preparing preliminary estimates of costs of modification work before completion of the final design of the project, including an estimate or schedule of values for any of the following:

(i) Labor, materials, machinery and equipment, tools, water, heat, utilities, transportation and other facilities and services used in the execution and completion of modification work, regardless of whether they are temporary or permanent or whether they are incorporated in the modifications.

(ii) The cost of labor and materials to be furnished by the owner of the real property.

(iii) The cost of any equipment of the owner of the real property to be assigned by the owner to the prime contractor.

(iv) The cost of any labor for installation of equipment separately provided by the owner of the real property that has been designed, specified, selected or specifically provided for in any design document for the project.

(v) Any fee paid by the owner of the real property to the prime contractor pursuant to the contract for modification work.

(vi) Any bond and insurance premiums.

(vii) Any applicable taxes.

(viii) Any contingency fees for the prime contractor that may be used before final completion of the project.

(f) Reviewing and evaluating cost estimates and project documents to prepare recommendations on site use, site improvements, selection of materials, building systems and equipment, modification feasibility, availability of materials and labor, local modification activity as related to schedules and time requirements for modification work.

(g) Preparing the plan and procedures for selection of subcontractors, including any prequalification of subcontractor candidates.

3. "Professional services" means architect services, assayer services, engineer services, geologist services, land surveying services or landscape architect services that are within the scope of those services as provided in title 32, chapter 1 and for which gross proceeds of sales or gross income has not otherwise been deducted under subsection J of this section.

N. Notwithstanding subsection O, paragraph 8 of this section, a person owning real property who enters into a contract for sale of the real property, who is responsible to the new owner of the property for modifications made to the property in the period subsequent to the transfer of title and who receives a consideration for the modifications is considered a prime contractor solely for purposes of taxing the gross proceeds of sale or gross income received for the modifications made subsequent to the transfer of title. The original owner's gross proceeds of sale or gross income received for the modifications shall be determined according to the following methodology:

1. If any part of the contract for sale of the property specifies amounts to be paid to the original owner for the modifications to be made in the period subsequent to the transfer of title, the amounts are included in the original owner's gross proceeds of sale or gross income under this section. Proceeds from the sale of the property that are received after transfer of title and that are unrelated to the modifications made subsequent to the transfer of title are not considered gross proceeds of sale or gross income from the modifications.

2. If the original owner enters into an agreement separate from the contract for sale of the real property providing for amounts to be paid to the original owner for the modifications to be made in the period subsequent to the transfer of title to the property, the amounts are included in the original owner's gross proceeds of sale or gross income received for the modifications made subsequent to the transfer of title.

3. If the original owner is responsible to the new owner for modifications made to the property in the period subsequent to the transfer of title and derives any gross proceeds of sale or gross income from the project subsequent to the transfer of title other than a delayed disbursement from escrow unrelated to the modifications, it is presumed that the amounts are received for the modifications made subsequent to the transfer of title unless the contrary is established by the owner through its books, records and papers kept in the regular course of business.

4. The tax base of the original owner is computed in the same manner as a prime contractor under this section.

O. For the purposes of this section:

1. "Contracting" means engaging in business as a contractor.

2. "Contractor" is synonymous with the term "builder" and means any person or organization that undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does personally or by or through others, modify any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement, or to do any part of such a project, including the erection of scaffolding or other structure or works in connection with such a project, and includes subcontractors and specialty contractors. For all purposes of taxation or deduction, this definition shall govern without regard to whether or not such contractor is acting in fulfillment of a contract.

3. "Dealership of manufactured buildings" means a dealer who either:

(a) Is licensed pursuant to title 41, chapter 16 and who sells manufactured buildings to the final consumer.

(b) Supervises, performs or coordinates the excavation and completion of site improvements, setup or moving of a manufactured building including the contracting, if any, with any subcontractor or specialty contractor for the completion of the contract.

4. "Manufactured building" means a manufactured home, mobile home or factory-built building, as defined in section 41-2142.

5. "Modification" means construction, alteration, repair, addition, subtraction, improvement, movement, wreckage or demolition.

6. "Modify" means to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish.

7. "Prime contracting" means engaging in business as a prime contractor.

8. "Prime contractor" means a contractor who supervises, performs or coordinates the modification of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement including the contracting, if any, with any subcontractors or specialty contractors and who is responsible for the completion of the contract. Except as provided in subsections E and N of this section, a person who owns real property, who engages one or more contractors to modify that real property and who does not itself modify that real property is not a prime contractor within the meaning of this paragraph regardless of the existence of a contract for sale or the subsequent sale of that real property.

9. "Sale of a used manufactured building" does not include a lease of a used manufactured building.

Sec. 48. Section 42-5159, Arizona Revised Statutes, is amended to read:

42-5159. Exemptions

A. The tax levied by this article does not apply to the storage, use or consumption in this state of the following described tangible personal property:

1. Tangible personal property sold in this state, the gross receipts from the sale of which are included in the measure of the tax imposed by articles 1 and 2 of this chapter.

2. Tangible personal property the sale or use of which has already been subjected to an excise tax at a rate equal to or exceeding the tax imposed by this article under the laws of another state of the United States. If the excise tax imposed by the other state is at a rate less than the tax imposed by this article, the tax imposed by this article is reduced by the amount of the tax already imposed by the other state.

3. Tangible personal property, the storage, use or consumption of which the constitution or laws of the United States prohibit this state from taxing or to the extent that the rate or imposition of tax is unconstitutional under the laws of the United States.

4. Tangible personal property which directly enters into and becomes an ingredient or component part of any manufactured, fabricated or processed article, substance or commodity for sale in the regular course of business.

5. Motor vehicle fuel and use fuel, the sales, distribution or use of which in this state is subject to the tax imposed under title 28, chapter 16, article 1, use fuel which is sold to or used by a person holding a valid single trip use fuel tax permit issued under section 28-5739, aviation fuel, the sales, distribution or use of which in this state is subject to the tax imposed under section 28-8344, and jet fuel, the sales, distribution or use of which in this state is subject to the tax imposed under article 8 of this chapter.

6. Tangible personal property brought into this state by an individual who was a nonresident at the time the property was purchased for storage, use or consumption by the individual if the first actual use or consumption of the property was outside this state, unless the property is used in conducting a business in this state.

7. Purchases of implants used as growth promotants and injectable medicines, not already exempt under paragraph 16 of this subsection, for livestock and poultry owned by, or in possession of, persons who are engaged in producing livestock, poultry, or livestock or poultry products, or who are engaged in feeding livestock or poultry commercially. For the purposes of this paragraph, "poultry" includes ratites.

8. Livestock, poultry, supplies, feed, salts, vitamins and other additives for use or consumption in the businesses of farming, ranching and feeding livestock or poultry, not including fertilizers, herbicides and insecticides. For the purposes of this paragraph, "poultry" includes ratites.

9. Seeds, seedlings, roots, bulbs, cuttings and other propagative material for use in commercially producing agricultural, horticultural, viticultural or floricultural crops in this state.

10. Tangible personal property not exceeding two hundred dollars in any one month purchased by an individual at retail outside the continental limits of the United States for the individual's own personal use and enjoyment.

11. Advertising supplements which are intended for sale with newspapers published in this state and which have already been subjected to an excise tax under the laws of another state in the United States which equals or exceeds the tax imposed by this article.

12. Materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:

(a) Printed or photographic materials, beginning August 7, 1985.

(b) Electronic or digital media materials, beginning July 17, 1994.

13. Tangible personal property purchased by:

(a) A hospital organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) A hospital operated by this state or a political subdivision of this state.

(c) A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.

(d) A qualifying health care organization, as defined in section 42-5001, if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

(e) A qualifying health care organization as defined in section 42-5001 if the organization is dedicated to providing educational, therapeutic, rehabilitative and family medical education training for blind, visually impaired and multihandicapped children from the time of birth to age twenty-one.

(f) A nonprofit charitable organization that has qualified under section 501(c)(3) of the United States internal revenue code and that engages in and uses such property exclusively in programs for mentally or physically handicapped persons if the programs are exclusively for training, job placement, rehabilitation or testing.

(g) A person that is subject to tax under article 1 of this chapter by reason of being engaged in business classified under the prime contracting classification under section 42-5075, or a subcontractor working under the control of a prime contractor, if the tangible personal property is any of the following:

(i) Incorporated or fabricated by the contractor into a structure, project, development or improvement in fulfillment of a contract.

(ii) Used in environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

~~(iii) Incorporated or fabricated by the person into any lake facility development in a commercial enhancement reuse district under conditions prescribed for the deduction allowed by section 42-5075, subsection B, paragraph 8.~~

(h) A nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code if the property is purchased from the parent or an affiliate organization that is located outside this state.

(i) A qualifying community health center as defined in section 42-5001.

(j) A nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

(k) A person engaged in business under the transient lodging classification if the property is a personal hygiene item or articles used by human beings for food, drink or condiment, except alcoholic beverages, which are furnished without additional charge to and intended to be consumed by the transient during the transient's occupancy.

(l) For taxable periods beginning from and after June 30, 2001, a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that provides residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy, if the tangible personal property is used by the organization solely to provide residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy.

14. Commodities, as defined by title 7 United States Code section 2, that are consigned for resale in a warehouse in this state in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the United States commodity futures trading commission.

15. Tangible personal property sold by:

(a) Any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

(b) A nonprofit organization that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

(c) A nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the organization sponsors or operates a rodeo featuring primarily farm and ranch animals and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

16. Drugs and medical oxygen, including delivery hose, mask or tent, regulator and tank, on the prescription of a member of the medical, dental or veterinarian profession who is licensed by law to administer such substances.

17. Prosthetic appliances, as defined in section 23-501, prescribed or recommended by a person who is licensed, registered or otherwise professionally credentialed as a physician, dentist, podiatrist, chiropractor, naturopath, homeopath, nurse or optometrist.

18. Prescription eyeglasses and contact lenses.

19. Insulin, insulin syringes and glucose test strips.

20. Hearing aids as defined in section 36-1901.

21. Durable medical equipment which has a centers for medicare and medicaid services common procedure code, is designated reimbursable by medicare, is prescribed by a person who is licensed under title 32, chapter 7, 13, 17 or 29, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

22. Food, as provided in and subject to the conditions of article 3 of this chapter and section 42-5074.

23. Items purchased with United States department of agriculture food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code section 1786).

24. Food and drink provided without monetary charge by a taxpayer which is subject to section 42-5074 to its employees for their own consumption on the premises during the employees' hours of employment.

25. Tangible personal property that is used or consumed in a business subject to section 42-5074 for human food, drink or condiment, whether simple, mixed or compounded.

26. Food, drink or condiment and accessory tangible personal property that are acquired for use by or provided to a school district or charter school if they are to be either served or prepared and served to persons for consumption on the premises of a public school in the school district or on the premises of the charter school during school hours.

27. Lottery tickets or shares purchased pursuant to title 5, chapter 5, article 1.

28. Textbooks, sold by a bookstore, that are required by any state university or community college.

29. Magazines, other periodicals or other publications produced by this state to encourage tourist travel.

30. Paper machine clothing, such as forming fabrics and dryer felts, purchased by a paper manufacturer and directly used or consumed in paper manufacturing.

31. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity purchased by a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.

32. Motor vehicles that are removed from inventory by a motor vehicle dealer as defined in section 28-4301 and that are provided to:

(a) Charitable or educational institutions that are exempt from taxation under section 501(c)(3) of the internal revenue code.

(b) Public educational institutions.

(c) State universities or affiliated organizations of a state university if no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

33. Natural gas or liquefied petroleum gas used to propel a motor vehicle.

34. Machinery, equipment, technology or related supplies that are only useful to assist a person who is physically disabled as defined in section 46-191, has a developmental disability as defined in section 36-551 or has a head injury as defined in section 41-3201 to be more independent and functional.

35. Liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development and, beginning on January 1, 1999, printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involves direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This paragraph does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect any exemption for such chemicals that is otherwise provided by this section. For the purposes of this paragraph, "printing" means a commercial printing operation and includes job printing, engraving, embossing, copying and bookbinding.

36. Food, drink and condiment purchased for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

37. A motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle sold to a motor carrier who is subject to a fee prescribed in title 28, chapter 16, article 4 and who is engaged in the business of leasing or renting such property.

38. Tangible personal property which is or directly enters into and becomes an ingredient or component part of cards used as prescription plan identification cards.

39. Overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract. For the purposes of this paragraph:

(a) "Overhead materials" means tangible personal property, the gross proceeds of sales or gross income derived from which would otherwise be included in the retail classification, and which are used or consumed in the performance of a contract, the cost of which is charged to an overhead expense account and allocated to various contracts based upon generally accepted accounting principles and consistent with government contract accounting standards.

(b) "Subcontract" means an agreement between a contractor and any person who is not an employee of the contractor for furnishing of supplies or services that, in whole or in part, are necessary to the performance of one or more government contracts, or under which any portion of the contractor's obligation under one or more government contracts is performed, undertaken or assumed, and that includes provisions causing title to overhead materials or other tangible personal property used in the performance of the subcontract to pass to the government or that includes provisions incorporating such title passing clauses in a government contract into the subcontract.

40. Through December 31, 1994, tangible personal property sold pursuant to a personal property liquidation transaction, as defined in section 42-5061. From and after December 31, 1994, tangible personal property sold pursuant to a personal property liquidation transaction, as defined in section 42-5061, if the gross proceeds of the sales were included in the measure of the tax imposed by article 1 of this chapter or if the personal property liquidation was a casual activity or transaction.

41. Wireless telecommunications equipment that is held for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunications services that are taxable under section 42-5064.

42. Alternative fuel, as defined in section 1-215, purchased by a used oil fuel burner who has received a permit to burn used oil or used oil fuel under section 49-426 or 49-480.

43. Tangible personal property purchased by a commercial airline and consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this paragraph, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

44. Alternative fuel vehicles if the vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in section 1-215.

45. Gas diverted from a pipeline, by a person engaged in the business of:

(a) Operating a natural or artificial gas pipeline, and used or consumed for the sole purpose of fueling compressor equipment that pressurizes the pipeline.

(b) Converting natural gas into liquefied natural gas, and used or consumed for the sole purpose of fueling compressor equipment used in the conversion process.

46. Tangible personal property that is excluded, exempt or deductible from transaction privilege tax pursuant to section 42-5063.

47. Tangible personal property purchased to be incorporated or installed as part of environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

48. Tangible personal property sold by a nonprofit organization that is exempt from taxation under section 501(c)(6) of the internal revenue code if the organization produces, organizes or promotes cultural or civic related festivals or events and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

49. Prepared food, drink or condiment donated by a restaurant as classified in section 42-5074, subsection A to a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

50. Application services that are designed to assess or test student learning or to promote curriculum design or enhancement purchased by or for any school district, charter school, community college or state university. For the purposes of this paragraph:

(a) "Application services" means software applications provided remotely using hypertext transfer protocol or another network protocol.

(b) "Curriculum design or enhancement" means planning, implementing or reporting on courses of study, lessons, assignments or other learning activities.

B. In addition to the exemptions allowed by subsection A of this section, the following categories of tangible personal property are also exempt:

1. Machinery, or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining" and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

2. Machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface. "Mining" includes underground, surface and open pit operations for extracting ores and minerals.

3. Tangible personal property sold to persons engaged in business classified under the telecommunications classification under section 42-5064

and consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio equipment and carrier equipment including optical fiber, coaxial cable and other transmission media which are components of carrier systems.

4. Machinery, equipment or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.

5. Neat animals, horses, asses, sheep, ratites, swine or goats used or to be used as breeding or production stock, including sales of breedings or ownership shares in such animals used for breeding or production.

6. Pipes or valves four inches in diameter or larger used to transport oil, natural gas, artificial gas, water or coal slurry, including compressor units, regulators, machinery and equipment, fittings, seals and any other part that is used in operating the pipes or valves.

7. Aircraft, navigational and communication instruments and other accessories and related equipment sold to:

(a) A person holding a federal certificate of public convenience and necessity, a supplemental air carrier certificate under federal aviation regulations (14 Code of Federal Regulations part 121) or a foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

(b) Any foreign government, or sold to persons who are not residents of this state and who will not use such property in this state other than in removing such property from this state.

8. Machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.

9. Rolling stock, rails, ties and signal control equipment used directly to transport persons or property.

10. Machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

11. Buses or other urban mass transit vehicles which are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and which are sold to bus companies holding a federal certificate of convenience and necessity or operated by any city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

12. Groundwater measuring devices required under section 45-604.

13. New machinery and equipment consisting of tractors, tractor-drawn implements, self-powered implements, machinery and equipment necessary for

extracting milk, and machinery and equipment necessary for cooling milk and livestock, and drip irrigation lines not already exempt under paragraph 6 of this subsection and that are used for commercial production of agricultural, horticultural, viticultural and floricultural crops and products in this state. For the purposes of this paragraph:

(a) "New machinery and equipment" means machinery or equipment which has never been sold at retail except pursuant to leases or rentals which do not total two years or more.

(b) "Self-powered implements" includes machinery and equipment that are electric-powered.

14. Machinery or equipment used in research and development. For the purposes of this paragraph, "research and development" means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.

~~15. Machinery and equipment that are purchased by or on behalf of the owners of a soundstage complex and primarily used for motion picture, multimedia or interactive video production in the complex. This paragraph applies only if the initial construction of the soundstage complex begins after June 30, 1996 and before January 1, 2002 and the machinery and equipment are purchased before the expiration of five years after the start of initial construction. For the purposes of this paragraph:~~

~~(a) "Motion picture, multimedia or interactive video production" includes products for theatrical and television release, educational presentations, electronic retailing, documentaries, music videos, industrial films, CD-ROM, video game production, commercial advertising and television episode production and other genres that are introduced through developing technology.~~

~~(b) "Soundstage complex" means a facility of multiple stages including production offices, construction shops and related areas, prop and costume shops, storage areas, parking for production vehicles and areas that are leased to businesses that complement the production needs and orientation of the overall facility.~~

~~16.~~ 15. Tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunications information:

(a) Any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations part 25.

(b) Any satellite television or data transmission facility, if both of the following conditions are met:

(i) Over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations part 25.

(ii) Over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services.

For the purposes of subdivision (b) of this paragraph, "test period" means the three hundred sixty-five day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers.

~~17.~~ 16. Clean rooms that are used for manufacturing, processing, fabrication or research and development, as defined in paragraph 14 of this subsection, of semiconductor products. For the purposes of this paragraph, "clean room" means all property that comprises or creates an environment where humidity, temperature, particulate matter and contamination are precisely controlled within specified parameters, without regard to whether the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Clean room:

(a) Includes the integrated systems, fixtures, piping, movable partitions, lighting and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the clean room environment.

(b) Does not include the building or other permanent, nonremovable component of the building that houses the clean room environment.

~~18.~~ 17. Machinery and equipment that are used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs.

~~19.~~ 18. Machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development and that is used directly to meet or exceed rules or regulations adopted by the federal energy regulatory commission, the United States environmental protection agency, the United States nuclear regulatory commission, the Arizona department of environmental quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution.

~~20.~~ 19. Machinery and equipment that are used in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state and that are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

~~21.~~ 20. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code section 336) and the federal communications commission order issued April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does not exempt any of the following:

(a) Repair or replacement parts purchased for the machinery or equipment described in this paragraph.

(b) Machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph.

(c) Any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.

~~22.~~ 21. Qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2014 by a qualified business under section 41-1516 for harvesting or the initial processing of qualifying forest products removed from qualifying projects as defined in section 41-1516. To qualify for this exemption, the qualified business must obtain and present its certification from the Arizona commerce authority at the time of purchase.

~~23. Machinery, equipment and other tangible personal property used directly in motion picture production by a motion picture production company. To qualify for this exemption, at the time of purchase, the motion picture production company must present to the retailer its certificate that is issued pursuant to section 42-5009, subsection H and that establishes its qualification for the exemption.~~

C. The exemptions provided by subsection B of this section do not include:

1. Expendable materials. For the purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in subsection B of this section regardless of the cost or useful life of that property.

2. Janitorial equipment and hand tools.

3. Office equipment, furniture and supplies.

4. Tangible personal property used in selling or distributing activities, other than the telecommunications transmissions described in subsection B, paragraph 16 of this section.

5. Motor vehicles required to be licensed by this state, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection B, paragraph 11 of this section, without regard to the use of such motor vehicles.

6. Shops, buildings, docks, depots and all other materials of whatever kind or character not specifically included as exempt.

7. Motors and pumps used in drip irrigation systems.

D. The following shall be deducted in computing the purchase price of electricity by a retail electric customer from a utility business:

1. Revenues received from sales of ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity to a retail electric customer who is located outside this state for use outside this state if the electricity is delivered to a point of sale outside this state.

2. Revenues received from providing electricity, including ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity with respect to which the transaction privilege tax imposed under section 42-5063 has been paid.

E. The tax levied by this article does not apply to~~:~~

~~1. The storage, use or consumption in Arizona of machinery, equipment, materials or other tangible personal property if used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility, as described in section 41-1514.02. This paragraph applies for ten full consecutive calendar or fiscal years after the start of initial construction.~~

~~2. The purchase of electricity by a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 that is used directly in environmental technology manufacturing, producing or processing. This paragraph shall apply for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.~~

~~3.~~ the purchase of solar energy devices from a retailer that is registered with the department as a solar energy retailer or a solar energy contractor.

F. The following shall be deducted in computing the purchase price of electricity by a retail electric customer from a utility business:

1. Fees charged by a municipally owned utility to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.

2. Reimbursement or contribution compensation to any person or persons owning a utility system for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This deduction shall not exceed the value of such property and equipment.

G. For the purposes of subsection B of this section:

1. "Aircraft" includes:

(a) An airplane flight simulator that is approved by the federal aviation administration for use as a phase II or higher flight simulator under appendix H, 14 Code of Federal Regulations part 121.

(b) Tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.

2. "Other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.

H. For the purposes of subsection D of this section, "ancillary services", "electric distribution service", "electric generation service", "electric transmission service" and "other services" have the same meanings prescribed in section 42-5063.

Sec. 49. Section 42-6105, Arizona Revised Statutes, is amended to read:

42-6105. County transportation excise tax; counties with population of one million two hundred thousand or more persons

A. If approved by the qualified electors voting at a countywide election, a county with a population of one million two hundred thousand or more persons shall levy and the department shall collect a tax as provided by this section, in addition to all other taxes.

B. The tax shall be levied and collected:

1. At a rate of not more than ten per cent of the transaction privilege tax rate prescribed by section 42-5010, subsection A applying, as of January 1, 1990~~:~~

~~(a)~~ to each person engaging or continuing in the county in a business taxed under chapter 5, article 1 of this title.

~~(b) Except that for the purposes of this paragraph with respect to the prime contracting classification under section 42-5075, the gross proceeds of sales or gross income that is deductible pursuant to section 42-5075, subsection B, paragraph 8 or pursuant to section 42-5061, subsection A, paragraph 27 for sales to a contractor who is exempt under section 42-5075, subsection B, paragraph 8 shall be included in the tax base for purposes of this paragraph.~~

2. In the case of persons subject to the tax imposed under section 42-5352, subsection A, at a rate of not more than .305 cents per gallon of jet fuel sold.

3. On the use or consumption of electricity or natural gas by retail electric or natural gas customers in the county who are subject to use tax under section 42-5155, at a rate equal to the transaction privilege tax rate under paragraph 1 of this subsection applying to persons engaging or continuing in the county in the utilities transaction privilege tax classification.

C. A tax under this section may not be levied at the same time as a tax in the county under section 42-6104. A tax levy under this section shall not begin until the expiration of the tax under section 42-6104.

D. The tax levied under this section shall be in effect for a term of twenty years.

E. The net revenues collected under this section shall be distributed and deposited as follows for use consistent with the regional transportation plan adopted under title 28, chapter 17, article 1:

1. 56.2 per cent to the regional area road fund pursuant to section 28-6303 for freeways and other routes in the state highway system, including capital expense and maintenance.

2. 10.5 per cent to the regional area road fund pursuant to section 28-6303 for major arterial streets and intersection improvements, including capital expense and implementation studies.

3. 33.3 per cent to the public transportation fund pursuant to section 48-5103 for:

(a) Capital costs, maintenance and operation of public transportation classifications.

(b) Capital costs and utility relocation costs associated with a light rail public transit system.

Sec. 50. Section 42-6106, Arizona Revised Statutes, is amended to read:

42-6106. County transportation excise tax

A. If approved by the qualified electors voting at a countywide election, the regional transportation authority in any county shall levy and the department shall collect a transportation excise tax up to the rate authorized by this section in addition to all other taxes.

B. The tax shall be levied and collected:

1. At a rate of not more than ten per cent of the transaction privilege tax rate prescribed by section 42-5010, subsection A in effect on January 1, 1990~~:~~

~~(a)~~ to each person engaging or continuing in the county in a business taxed under chapter 5, article 1 of this title.

~~(b) Except that for the purposes of this paragraph with respect to the prime contracting classification under section 42-5075, the gross proceeds of sales or gross income that is deductible pursuant to section 42-5075, subsection B, paragraph 8 or pursuant to section 42-5061, subsection A, paragraph 27 for sales to a contractor who is exempt under section 42-5075,~~

~~subsection B, paragraph 8 shall be included in the tax base for purposes of this paragraph.~~

2. In the case of persons subject to the tax imposed under section 42-5352, subsection A, at a rate of not more than .305 cents per gallon of jet fuel sold.

3. On the use or consumption of electricity or natural gas by retail electric or natural gas customers in the county who are subject to use tax under section 42-5155, at a rate equal to the transaction privilege tax rate under paragraph 1 applying to persons engaging or continuing in the county in the utilities transaction privilege tax classification.

C. Any subsequent reduction in the transaction privilege tax rate prescribed by chapter 5, article 1 of this title shall not reduce the tax that is approved and collected as prescribed in this section. The department shall collect the tax at a variable rate if the variable rate is specified in the ballot proposition. The department shall collect the tax at a modified rate if approved by a majority of the qualified electors voting.

D. The net revenues collected under this section:

1. In counties with a population exceeding four hundred thousand persons, shall be deposited in the regional transportation fund pursuant to section 48-5307.

2. In counties with a population of four hundred thousand or fewer persons, shall be deposited in the public transportation authority fund pursuant to section 28-9142 or the regional transportation fund pursuant to section 48-5307 or shall be allocated between both funds.

E. The tax shall be levied under this section beginning January 1 or July 1, whichever date occurs first after approval by the voters, and may be in effect for a period of not more than twenty years.

Sec. 51. Section 43-222, Arizona Revised Statutes, is amended to read:

43-222. Income tax credit review schedule

The joint legislative income tax credit review committee shall review the following income tax credits:

1. For years ending in 0 and 5, sections ~~43-1075, 43-1075.01,~~ 43-1079.01, 43-1087, 43-1088, 43-1090.01, ~~43-1163, 43-1163.01,~~ 43-1167.01, 43-1175 and 43-1182.

2. For years ending in 1 and 6, sections 43-1074.02, 43-1083, 43-1083.02, 43-1085.01, 43-1164.02, 43-1164.03 and 43-1183.

3. For years ending in 2 and 7, sections 43-1073, 43-1079, 43-1080, 43-1085, 43-1086, 43-1089, 43-1089.01, 43-1089.02, 43-1090, 43-1164, 43-1167, 43-1169, 43-1176 and 43-1181.

4. For years ending in 3 and 8, sections 43-1074.01, 43-1081, 43-1168, 43-1170 and 43-1178.

5. For years ending in 4 and 9, sections 43-1076, 43-1081.01, 43-1083.01, 43-1084, 43-1162, 43-1164.01, 43-1170.01 and 43-1184.

Sec. 52. Section 43-1021, Arizona Revised Statutes, is amended to read:

43-1021. Additions to Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be added to Arizona gross income:

1. A beneficiary's share of the fiduciary adjustment to the extent that the amount determined by section 43-1333 increases the beneficiary's Arizona gross income.

2. An amount equal to the "ordinary income portion" of a lump sum distribution that was excluded from federal adjusted gross income pursuant to section 402(d) of the internal revenue code.

3. The amount of interest income received on obligations of any state, territory or possession of the United States, or any political subdivision thereof, located outside the state of Arizona, reduced, for tax years beginning from and after December 31, 1996, by the amount of any interest on indebtedness and other related expenses that were incurred or continued to purchase or carry those obligations and that are not otherwise deducted or subtracted in arriving at Arizona gross income.

4. Annuity income received during the taxable year to the extent that the sum of the proceeds received from such annuity in all taxable years prior to and including the current taxable year exceeds the total consideration and premiums paid by the taxpayer. This paragraph applies only to those annuities with respect to which the first payment was received prior to December 31, 1978.

5. The excess of a partner's share of partnership taxable income required to be included under chapter 14, article 2 of this title over the income required to be reported under section 702(a)(8) of the internal revenue code.

6. The excess of a partner's share of partnership losses determined pursuant to section 702(a)(8) of the internal revenue code over the losses allowable under chapter 14, article 2 of this title.

7. The amount by which the adjusted basis of property described in this paragraph and computed pursuant to the internal revenue code exceeds the adjusted basis of such property computed pursuant to this title and the income tax act of 1954, as amended. This paragraph shall apply to all property which is held for the production of income and which is sold or otherwise disposed of during the taxable year, except depreciable property used in a trade or business.

8. The amount of depreciation or amortization of costs of any capital investment that is deducted pursuant to section 167 or 179 of the internal revenue code by a qualified defense contractor with respect to which an election is made to amortize pursuant to section 43-1024.

9. The amount of gain from the sale or other disposition of a capital investment which a qualified defense contractor has elected to amortize pursuant to section 43-1024.

10. Amounts withdrawn from the Arizona state retirement system, the corrections officer retirement plan, the public safety personnel retirement system, the elected officials' retirement plan or a county or city retirement plan by an employee upon termination of employment before retirement to the extent they were deducted in arriving at Arizona taxable income in any year.

11. That portion of the net operating loss included in federal adjusted gross income which has already been taken as a net operating loss for Arizona purposes or which is separately taken as a subtraction under the special net operating loss transition rule.

12. Any nonitemized amount deducted pursuant to section 170 of the internal revenue code representing contributions to an educational institution which denies admission, enrollment or board and room accommodations on the basis of race, color or ethnic background except those institutions primarily established for the education of American Indians.

~~13. The amount paid as taxes on property in this state with respect to which a credit is claimed under section 43-1078.~~

~~14.~~ 13. Amounts withdrawn from a medical savings account by the individual during the taxable year computed pursuant to section 220(f) of the internal revenue code and not included in federal adjusted gross income.

~~15.~~ 14. Any amount of agricultural water conservation expenses that were deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1084.

~~16.~~ 15. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1080 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

~~17.~~ 16. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1080 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1080.

~~18.~~ 17. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under either section 43-1081 or 43-1081.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

~~19.~~ 18. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1074.02, 43-1081 or 43-1081.01 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1074.02, 43-1081 or 43-1081.01, as applicable.

~~20.~~ 19. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

~~21.~~ 20. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F.

~~22.~~ 21. Any amount deducted pursuant to section 170 of the internal revenue code representing contributions to a school tuition organization or a public school for which a credit is claimed under section 43-1089 or 43-1089.01.

~~23.~~ 22. Any amount deducted in computing Arizona gross income as expenses for installing solar stub outs or electric vehicle recharge outlets in this state with respect to which a credit is claimed pursuant to section 43-1090.

~~24.~~ 23. Any wage expenses deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1087 and representing net increases in qualified employment positions for employment of temporary assistance for needy families recipients.

~~25.~~ 24. Any amount deducted for conveying ownership or development rights of property to an agricultural preservation district under section 48-5702 for which a credit is claimed under section 43-1081.02.

~~26.~~ 25. The amount of any depreciation allowance allowed pursuant to section 167(a) of the internal revenue code to the extent not previously added.

~~27.~~ 26. With respect to property for which an expense deduction was taken pursuant to section 179 of the internal revenue code, the amount in excess of twenty-five thousand dollars.

~~28.~~ 27. The amount of any deductions that are claimed in computing federal adjusted gross income representing expenses for which a credit is claimed under either section 43-1075 or 43-1075.01 or both.

~~29.~~ 28. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1090.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

~~30.~~ 29. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1090.01 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1090.01.

~~31.~~ 30. The amount of a nonqualified withdrawal, as defined in section 15-1871, from a college savings plan established pursuant to section 529 of the internal revenue code that is made to a distributee to the extent the amount is not included in computing federal adjusted gross income, except that the amount added under this paragraph shall not exceed the difference between the amount subtracted under section 43-1022 in prior taxable years and the amount added under this section in any prior taxable years.

~~32.~~ 31. The amount of unemployment compensation that is excluded from federal adjusted gross income pursuant to section 85(c) of the internal revenue code as added by section 1007 of the American recovery and reinvestment act of 2009 (P.L. 111-5).

~~33.~~ 32. The amount of discharge of indebtedness income that is deferred and excluded from the computation of federal adjusted gross income or federal taxable income in the current taxable year pursuant to section 108(i) of the internal revenue code as added by section 1231 of the American recovery and reinvestment act of 2009 (P.L. 111-5).

~~34.~~ 33. The amount of any previously deferred original issue discount that was deducted in computing federal adjusted gross income or federal taxable income in the current year pursuant to section 108(i) of the internal revenue code as added by section 1231 of the American recovery and reinvestment act of 2009 (P.L. 111-5), to the extent that the amount was previously subtracted from Arizona gross income pursuant to section 43-1022, paragraph 33.

~~35.~~ 34. For taxable years beginning from and after December 31, 2011 through December 31, 2014, the amount of any deduction that is claimed in computing federal adjusted gross income for health insurance premiums or contributions to a health savings account for which a credit is claimed under section 43-1087.01.

Sec. 53. Section 43-1022, Arizona Revised Statutes, is amended to read:

43-1022. Subtractions from Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be subtracted from Arizona gross income:

1. The amount of exemptions allowed by section 43-1023.

2. Benefits, annuities and pensions in an amount totaling not more than two thousand five hundred dollars received from one or more of the following:

(a) The United States government service retirement and disability fund, retired or retainer pay of the uniformed services of the United States, the United States foreign service retirement and disability system and any other retirement system or plan established by federal law.

(b) The Arizona state retirement system, the corrections officer retirement plan, the public safety personnel retirement system, the elected officials' retirement plan, an optional retirement program established by the Arizona board of regents under section 15-1628, an optional retirement program established by a community college district board under section 15-1451 or a retirement plan established for employees of a county, city or town in this state.

3. A beneficiary's share of the fiduciary adjustment to the extent that the amount determined by section 43-1333 decreases the beneficiary's Arizona gross income.

4. The amount of any distributions from an individual retirement account as provided for in section 408 of the internal revenue code or from a qualified retirement plan of a self-employed individual as provided for in section 401 of the internal revenue code to the extent that total adjustments made pursuant to this paragraph in all tax years do not exceed the total of all contributions made by the taxpayer to such plans prior to December 31, 1975, which were included in computing Arizona taxable income.

5. The amount of income on an installment receivable which is recognized pursuant to the internal revenue code and which has already been recognized on the death of the taxpayer for purposes of this title for tax years ending before January 1, 1990.

6. Interest income received on obligations of the United States, less any interest on indebtedness, or other related expenses, and deducted in arriving at Arizona gross income, which were incurred or continued to purchase or carry such obligations.

7. The amount of any income tax refunds which were received from states other than Arizona and which were included as income in computing federal adjusted gross income.

8. Annuity income included in federal adjusted gross income pursuant to section 72 of the internal revenue code if the first payment with respect to such annuity was received prior to December 31, 1978.

9. The excess of a partner's share of income required to be included under section 702(a)(8) of the internal revenue code over the income required to be included under chapter 14, article 2 of this title.

10. The excess of a partner's share of partnership losses determined pursuant to chapter 14, article 2 of this title over the losses allowable under section 702(a)(8) of the internal revenue code.

11. The amount by which the adjusted basis of property described in this paragraph and computed pursuant to this title and the income tax act of 1954, as amended, exceeds the adjusted basis of such property computed pursuant to the internal revenue code. This paragraph shall apply to all property which is held for the production of income and which is sold or otherwise disposed of during the taxable year other than depreciable property used in a trade or business.

12. The amount allowed by section 43-1024 for amortization, by a qualified defense contractor certified by the Arizona commerce authority under section 41-1508, of a capital investment for private commercial activities.

13. The amount of gain included in federal adjusted gross income on the sale or other disposition of a capital investment that a qualified defense contractor has elected to amortize pursuant to section 43-1024.

14. The amount allowed by section 43-1025 for contributions during the taxable year of agricultural crops to charitable organizations.

15. The portion of any wages or salaries paid or incurred by the taxpayer for the taxable year that is equal to the amount of the federal work opportunity credit, the empowerment zone employment credit, the credit for employer paid social security taxes on employee cash tips and the Indian employment credit that the taxpayer received under sections 45A, 45B, 51(a) and 1396 of the internal revenue code.

16. The amount of prizes or winnings less than five thousand dollars in a single taxable year from any of the state lotteries established and operated pursuant to title 5, chapter 5, article 1, except that all such winnings before March 22, 1983, including periodic distributions from such winnings made after March 22, 1983, may be subtracted.

17. The amount of exploration expenses that is determined pursuant to section 617 of the internal revenue code, that has been deferred in a taxable year ending before January 1, 1990 and for which a subtraction has not previously been made. The subtraction shall be made on a ratable basis as the units of produced ores or minerals discovered or explored as a result of this exploration are sold.

18. The amount included in federal adjusted gross income pursuant to section 86 of the internal revenue code, relating to taxation of social security and railroad retirement benefits.

19. To the extent not already excluded from Arizona gross income under the internal revenue code, compensation received for active service as a member of the reserves, the national guard or the armed forces of the United States, including compensation for service in a combat zone as determined under section 112 of the internal revenue code.

20. The amount of unreimbursed medical and hospital costs, adoption counseling, legal and agency fees and other nonrecurring costs of adoption not to exceed three thousand dollars. In the case of a husband and wife who file separate returns, the subtraction may be taken by either taxpayer or may be divided between them, but the total subtractions allowed both husband and wife shall not exceed three thousand dollars. The subtraction under this paragraph may be taken for the costs that are described in this paragraph and that are incurred in prior years, but the subtraction may be taken only in the year during which the final adoption order is granted.

21. The amount authorized by section 43-1027 for the taxable year relating to qualified wood stoves, wood fireplaces or gas fired fireplaces.

22. With respect to a medical savings account established pursuant to section 43-1028:

(a) An eligible individual may subtract:

(i) The amount of contributions made by the individual's employer during the taxable year to the individual's medical savings account pursuant to section 43-1028 to the extent that the employer contributions are included in the individual's federal adjusted gross income.

(ii) The amount deposited by the individual in the account during the taxable year to the extent that the individual's contributions are included in the individual's federal adjusted gross income.

(b) The individual's employer may subtract the amount of contributions made by the employer to a medical savings account established on the individual's behalf to the extent that the contributions are not deductible under the internal revenue code.

23. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code.

24. Any amount of qualified educational expenses that is distributed from a qualified state tuition program determined pursuant to section 529 of the internal revenue code and that is included in income in computing federal adjusted gross income.

25. Any item of income resulting from an installment sale that has been properly subjected to income tax in another state in a previous taxable year and that is included in Arizona gross income in the current taxable year.

26. The amount authorized by section 43-1030 relating to holocaust survivors.

27. The amount authorized by section 43-1031 for constructing an energy efficient residence.

28. An amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year computed as if the election described in section 168(k)(2)(D)(iii) of the internal revenue code had been made for each applicable class of property in the year the property was placed in service.

29. With respect to property that is sold or otherwise disposed of during the taxable year by a taxpayer that complied with section 43-1021, paragraph ~~26~~ 25 with respect to that property, the amount of depreciation that has been allowed pursuant to section 167(a) of the internal revenue code to the extent that the amount has not already reduced Arizona taxable income in the current or prior taxable years.

30. With respect to property for which an adjustment was made under section 43-1021, paragraph ~~27~~ 26, an amount equal to one-fifth of the amount of the adjustment pursuant to section 43-1021, paragraph ~~27~~ 26 in the year in which the amount was adjusted under section 43-1021, paragraph ~~27~~ 26 and in each of the following four years.

31. For taxable years beginning from and after December 31, 2007 through December 31, 2012, the amount contributed during the taxable year to college savings plans established pursuant to section 529 of the internal revenue code to the extent that the contributions were not deducted in computing federal adjusted gross income. The amount subtracted shall not exceed:

(a) Seven hundred fifty dollars for a single individual or a head of household.

(b) One thousand five hundred dollars for a married couple filing a joint return. In the case of a husband and wife who file separate returns, the subtraction may be taken by either taxpayer or may be divided between them, but the total subtractions allowed both husband and wife shall not exceed one thousand five hundred dollars.

32. To the extent not already excluded from Arizona gross income under the internal revenue code, the amount authorized by section 43-1032 for displaced pupils choice grants.

33. The amount of any original issue discount that was deferred and not allowed to be deducted in computing federal adjusted gross income or federal taxable income in the current taxable year pursuant to section 108(i) of the internal revenue code as added by section 1231 of the American recovery and reinvestment act of 2009 (P.L. 111-5).

34. The amount of previously deferred discharge of indebtedness income that is included in the computation of federal adjusted gross income or federal taxable income in the current taxable year pursuant to section 108(i) of the internal revenue code as added by section 1231 of the American recovery and reinvestment act of 2009 (P.L. 111-5), to the extent that the amount was previously added to Arizona gross income pursuant to section 43-1021, paragraph ~~33~~ 32.

35. The portion of the net operating loss carryforward that would have been allowed as a deduction in the current year pursuant to section 172 of the internal revenue code if the election described in section 172(b)(1)(H) of the internal revenue code had not been made in the year of the loss that exceeds the actual net operating loss carryforward that was deducted in arriving at federal adjusted gross income. This subtraction only applies to taxpayers who made an election under section 172(b)(1)(H) of the internal revenue code as amended by section 1211 of the American recovery and reinvestment act of 2009 (P.L. 111-5) or as amended by section 13 of the worker, homeownership, and business assistance act of 2009 (P.L. 111-92).

36. For taxable years beginning from and after December 31, 2013, the amount of any net capital gain included in federal adjusted gross income for the taxable year derived from investment in a qualified small business as determined by the Arizona commerce authority pursuant to section 41-1518.

Sec. 54. Section 43-1029, Arizona Revised Statutes, is amended to read:

43-1029. Restoration of a substantial amount held under claim of right; computation of tax

A. This section applies if:

1. An item of income was included in gross income for a prior taxable year or years because it appeared that the taxpayer had an unrestricted right to the item.

2. A deduction would be allowable under the internal revenue code or this title for the taxable year, without application of section 1341(b)(3) of the internal revenue code or section 43-1021, paragraph ~~20~~ 19, because after the close of the prior taxable year or years it was established that the taxpayer did not have an unrestricted right to all or part of the item.

3. The amount of the deduction exceeds three thousand dollars.

B. If all of the conditions in subsection A of this section apply, the tax imposed by this chapter for the taxable year is an amount equal to the tax for the taxable year computed without the deduction, minus the decrease in tax under this chapter for the prior taxable year or years that would result solely from excluding the item or portion of the item from gross income for the prior taxable year or years.

C. If the decrease in tax exceeds the tax imposed by this chapter for the taxable year, computed without the deduction, the excess is considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year and shall be refunded or credited in the same manner as if it were an overpayment for the taxable year.

D. Subsection B of this section does not apply to any deduction that is allowable with respect to an item that was included in gross income by reason of the sale or other disposition of stock in trade of the taxpayer, or other property of a kind that would properly have been included in the inventory of the taxpayer on hand at the close of the prior taxable year, or property that is held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. This subsection does not apply if the deduction arises out of refunds or repayments with respect to rates made by a regulated public utility that is listed in section 7701(a)(33)(A) through (H) of the internal revenue code, if the refunds or repayments are:

1. Required to be made by the government, political subdivision, agency or instrumentality referred to in that section.

2. Required to be made by an order of a court.

3. Made in settlement of litigation or under threat or imminence of litigation.

E. If the exclusion under subsection B of this section results in:

1. A net operating loss for the prior taxable year or years for purposes of computing the decrease in tax for the prior year or years under subsection B of this section:

(a) The loss shall be:

(i) Carried over under this chapter to the same extent and in the same manner as was provided under prior law for taxable years beginning on or before December 31, 1989.

(ii) Carried back and carried over to the same extent and in the same manner as provided under section 172 of the internal revenue code for taxable years beginning from and after December 31, 1989.

(b) No carryover beyond the taxable year may be taken into account.

2. A capital loss for the prior taxable year or years, for purposes of computing the decrease in tax for the prior taxable year or years under subsection B of this section:

(a) The loss shall be carried back and carried over to the same extent and in the same manner as is provided under section 1212 of the internal revenue code.

(b) No carryover beyond the taxable year may be taken into account.

F. In computing Arizona taxable income for taxable years subsequent to the current taxable year, the net operating loss or capital loss determined in subsection E of this section shall be taken into account to the same extent and in the same manner as a net operating loss or capital loss sustained for prior taxable years.

Sec. 55. Section 43-1031, Arizona Revised Statutes, is amended to read:

43-1031. Subtraction for constructing an energy efficient residence

A. For taxable years beginning from and after December 31, 2001 through December 31, 2010, in computing Arizona adjusted gross income a taxpayer may subtract five per cent of the sales price, excluding commissions, taxes, interest, points and other brokerage, finance and escrow charges, of one or more new single family residences, condominiums or town houses that are sold by the taxpayer and that exceed the 1995 model energy code by fifty per cent or more as determined by an approved rating program. Rating programs shall meet the United States department of energy's home energy rating system guidelines or other guidelines approved by the governor's energy office. The amount of the subtraction shall not exceed five thousand dollars with respect to each new single family residence, condominium or town house.

B. The governor's energy office shall:

1. Annually review the threshold rating used to determine eligibility for the subtraction.

2. If the number of homes receiving a subtraction in a single year exceeds five per cent of the new homes built in this state as estimated by the ~~department of commerce~~ GOVERNOR'S ENERGY OFFICE, increase the qualifying rating by five per cent for the next taxable year.

3. Provide an annual list to the department of revenue of the criteria used to determine an energy efficiency rating that qualifies for a subtraction pursuant to this section.

C. The taxpayer may elect to transfer a subtraction under this section to the purchaser of the residence or to the financial institution that secures a mortgage or deed of trust on the residence. If the taxpayer transfers the subtraction, the taxpayer shall deliver to the purchaser or financial institution a written statement that the taxpayer has elected not to claim the subtraction and that the purchaser or financial institution may claim the subtraction, subject to the conditions and limitations prescribed by this section.

Sec. 56. Section 43-1042, Arizona Revised Statutes, is amended to read:

43-1042. Itemized deductions

A. Except as provided by subsections B, D~~, E~~ and ~~G~~ F of this section, at the election of the taxpayer, and in lieu of the standard deduction allowed by section 43-1041, in computing taxable income the taxpayer may take the amount of itemized deductions allowable for the taxable year pursuant to subtitle A, chapter 1, subchapter B, parts VI and VII, but subject to the limitations prescribed by sections 67, 68 and 274, of the internal revenue code.

B. In lieu of the amount of the federal itemized deduction for expenses paid for medical care allowed under section 213 of the internal revenue code, the taxpayer may deduct the full amount of such expenses.

C. Notwithstanding subsection B of this section, expenses for medical care that are paid or reimbursed from the taxpayer's medical savings account pursuant to section 43-1028 shall not be deducted pursuant to this section.

~~D. A qualified defense contractor that is identified and certified by the Arizona commerce authority pursuant to section 41-1508 shall not claim both a deduction as provided by this section and a credit under section 43-1078 with respect to the same property taxes paid.~~

~~E.~~ D. A taxpayer shall not claim both a deduction provided by this section and a credit allowed by this title with respect to the same charitable contributions.

~~F.~~ E. The taxpayer may add any interest expense paid by the taxpayer for the taxable year that is equal to the amount of federal credit for interest on certain home mortgages allowed by section 25 of the internal revenue code.

~~G.~~ F. A taxpayer shall not claim any amount that was deducted pursuant to section 164(b)(6) of the internal revenue code, as added by section 1008 of the American recovery and reinvestment act of 2009 (P.L. 111-5), for qualified motor vehicle taxes.

Sec. 57. Section 43-1074, Arizona Revised Statutes, is amended to read:

43-1074. Credit for new employment

A. A credit is allowed against the taxes imposed by this title for net increases in full-time employees hired in qualified employment positions as certified by the Arizona commerce authority pursuant to section 41-1525.

B. Subject to subsection E of this section, the amount of the credit is equal to three thousand dollars for each full-time employee hired for the full taxable year in a qualified employment position in each of the first three years of employment, but not more than four hundred employees in any taxable year.

C. To qualify for a credit under this section, the taxpayer and the employment positions must meet the requirements prescribed by section 41-1525.

D. A credit is allowed for employment in the second and third year only for qualified employment positions for which a credit was claimed and allowed in the first year.

E. The net increase in the number of qualified employment positions is the lesser of the total number of filled qualified employment positions created during the taxable year or the difference between the average number of full-time employees in the current tax year and the average number of full-time employees during the immediately preceding taxable year. The net increase in the number of qualified employment positions computed under this subsection may not exceed four hundred qualified employment positions per taxpayer each year.

F. A taxpayer who claims a credit under section ~~43-1077,~~ 43-1079 or 43-1083.01 shall not claim a credit under this section with respect to the same employment positions.

G. If the allowable tax credit exceeds the income taxes otherwise due on the claimant's income, or if there are no state income taxes due on the claimant's income, the amount of the claim not used as an offset against the income taxes may be carried forward as a tax credit against subsequent years' income tax liability for a period not exceeding five taxable years.

H. Co-owners of a business, including partners in a partnership and shareholders of an S corporation, as defined in section 1361 of the internal revenue code, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all such owners of the business may not exceed the amount that would have been allowed for a sole owner of the business.

I. If the business is sold or changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim first year credits only for the qualified employment positions that it created and filled with an eligible employee after the purchase or reorganization was complete. If a person purchases a taxpayer that had qualified for first or second year credits or changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim the second or third year credits if it meets other eligibility requirements of this section. Credits for which a taxpayer qualified before the changes described in this subsection are terminated and lost at the time the changes are implemented.

J. A failure to timely report and certify to the Arizona commerce authority the information prescribed by section 41-1525, subsection D, and in the manner prescribed by section 41-1525, subsection E disqualifies the taxpayer from the credit under this section. The department shall require written evidence of the timely report to the Arizona commerce authority.

K. A tax credit under this section is subject to recovery for a violation described in section 41-1525, subsection G.

Sec. 58. Section 43-1074.01, Arizona Revised Statutes, as amended by Laws 2011, second special session, chapter 1, section 96, is amended to read:

43-1074.01. Credit for increased research activities

A. A credit is allowed against the taxes imposed by this title in an amount determined pursuant to section 41 of the internal revenue code, except that:

1. The amount of the credit is based on the excess, if any, of the qualified research expenses for the taxable year over the base amount as defined in section 41(c) of the internal revenue code and is computed as follows:

(a) If the excess is two million five hundred thousand dollars or less, the credit is equal to twenty-four per cent of that amount.

(b) If the excess is over two million five hundred thousand dollars, the credit is equal to six hundred thousand dollars plus fifteen per cent of any amount exceeding two million five hundred thousand dollars, except that:

(i) For taxable years beginning from and after December 31, 2000 through December 31, 2001, the credit shall not exceed one million five hundred thousand dollars.

(ii) For taxable years beginning from and after December 31, 2001 through December 31, 2002, the credit shall not exceed two million five hundred thousand dollars.

(c) For taxable years beginning from and after December 31, 2011, an additional credit amount is allowed if the taxpayer made basic research payments during the taxable year to a university under the jurisdiction of the Arizona board of regents. The additional credit amount is equal to ten per cent of the basic research payments that constitute excess expenses for the taxable year over the base amount. The department shall not allow credit amounts under this subdivision and section 43-1168, subsection A, paragraph 1, subdivision (d) that exceed, in the aggregate, a combined total of ten million dollars in any calendar year. Subject to that limit, on application by the taxpayer, the department shall preapprove credit amounts under this subdivision and section 43-1168, subsection A, paragraph 1, subdivision (d) based on priority placement established by the date that the taxpayer filed the application. Notwithstanding subsections B and C of this section, any amount of the additional credit under this subdivision that exceeds the taxes otherwise due under this title is not refundable, but may be carried forward to the next five consecutive taxable years. For the purposes of this subdivision, "basic research payments" has the same meaning prescribed by section 41(e) of the internal revenue code without regard TO whether the taxpayer is or is not a corporation.

2. Qualified research includes only research conducted in this state including research conducted at a university in this state and paid for by the taxpayer.

3. If two or more taxpayers, including partners in a partnership and shareholders of an S corporation, as defined in section 1361 of the internal

revenue code, share in the eligible expenses, each taxpayer is eligible to receive a proportionate share of the credit.

4. The credit under this section applies only to expenses incurred from and after December 31, 2000.

5. The termination provisions of section 41 of the internal revenue code do not apply.

B. Except as provided by subsection C of this section, if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit not used to offset taxes may be carried forward to the next fifteen consecutive taxable years. The amount of credit carryforward from taxable years beginning from and after December 31, 2000 through December 31, 2002 that may be used in any taxable year may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The amount of credit carryforward from taxable years beginning from and after December 31, 2002 that may be used in any taxable year may not exceed the taxpayer's tax liability under this title minus the credit under this section for the current taxable year's qualified research expenses. A taxpayer who carries forward any amount of credit under this subsection may not thereafter claim a refund of any amount of the credit under subsection C of this section.

C. For taxable years beginning from and after December 31, 2009, if a taxpayer who claims a credit under this section employs fewer than one hundred fifty persons in the taxpayer's trade or business and if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, in lieu of carrying the excess amount of credit forward to subsequent taxable years under subsection B of this section, the taxpayer may elect to receive a refund as follows:

1. The taxpayer must apply to the ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY for qualification for the refund pursuant to section 41-1507 and submit a copy of the ~~department of commerce's~~ AUTHORITY'S certificate of qualification to the department of revenue with the taxpayer's income tax return.

2. The amount of the refund is limited to seventy-five per cent of the amount by which the allowable credit under this section exceeds the taxpayer's tax liability under this title for the taxable year. The remainder of the excess amount of the credit is waived.

3. The refund shall be paid in the manner prescribed by section 42-1118.

4. The refund is subject to setoff under section 42-1122.

5. If the department determines that a credit refunded pursuant to this subsection is incorrect or invalid, the excess credit issued may be treated as a tax deficiency pursuant to section 42-1108.

D. A taxpayer that claims a credit for increased research and development activity under this section shall not claim a credit under section 43-1085.01 for the same expenses.

Sec. 59. Section 43-1074.01, Arizona Revised Statutes, as amended by Laws 2011, second special session, chapter 1, section 97, is amended to read:

43-1074.01. Credit for increased research activities

A. A credit is allowed against the taxes imposed by this title in an amount determined pursuant to section 41 of the internal revenue code, except that:

1. The amount of the credit is based on the excess, if any, of the qualified research expenses for the taxable year over the base amount as defined in section 41(c) of the internal revenue code and is computed as follows:

(a) If the excess is two million five hundred thousand dollars or less, the credit is equal to twenty per cent of that amount.

(b) If the excess is over two million five hundred thousand dollars, the credit is equal to five hundred thousand dollars plus eleven per cent of any amount exceeding two million five hundred thousand dollars, except that:

(i) For taxable years beginning from and after December 31, 2000 through December 31, 2001, the credit shall not exceed one million five hundred thousand dollars.

(ii) For taxable years beginning from and after December 31, 2001 through December 31, 2002, the credit shall not exceed two million five hundred thousand dollars.

(c) For taxable years beginning from and after December 31, 2011, an additional credit amount is allowed if the taxpayer made basic research payments during the taxable year to a university under the jurisdiction of the Arizona board of regents. The additional credit amount is equal to ten per cent of the basic research payments that constitute excess expenses for the taxable year over the base amount. The department shall not allow credit amounts under this subdivision and section 43-1168, subsection A, paragraph 1, subdivision (d) that exceed, in the aggregate, a combined total of ten million dollars in any calendar year. Subject to that limit, on application by the taxpayer, the department shall preapprove credit amounts under this subdivision and section 43-1168, subsection A, paragraph 1, subdivision (d) based on priority placement established by the date that the taxpayer filed the application. Notwithstanding subsections B and C of this section, any amount of the additional credit under this subdivision that exceeds the taxes otherwise due under this title is not refundable, but may be carried forward to the next five consecutive taxable years. For the purposes of this subdivision, "basic research payments" has the same meaning prescribed by section 41(e) of the internal revenue code without regard TO whether the taxpayer is or is not a corporation.

2. Qualified research includes only research conducted in this state including research conducted at a university in this state and paid for by the taxpayer.

3. If two or more taxpayers, including partners in a partnership and shareholders of an S corporation, as defined in section 1361 of the internal revenue code, share in the eligible expenses, each taxpayer is eligible to receive a proportionate share of the credit.

4. The credit under this section applies only to expenses incurred from and after December 31, 2000.

5. The termination provisions of section 41 of the internal revenue code do not apply.

B. Except as provided by subsection C of this section, if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit not used to offset taxes may be carried forward to the next fifteen consecutive taxable years. The amount of credit carryforward from taxable years beginning from and after December 31, 2000 through December 31, 2002 that may be used in any taxable year may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The amount of credit carryforward from taxable years beginning from and after December 31, 2002 that may be used in any taxable year may not exceed the taxpayer's tax liability under this title minus the credit under this section for the current taxable year's qualified research expenses. A taxpayer who carries forward any amount of credit under this subsection may not thereafter claim a refund of any amount of the credit under subsection C of this section.

C. For taxable years beginning from and after December 31, 2009, if a taxpayer who claims a credit under this section employs fewer than one hundred fifty persons in the taxpayer's trade or business and if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, in lieu of carrying the excess amount of credit forward to subsequent taxable years under subsection B of this section, the taxpayer may elect to receive a refund as follows:

1. The taxpayer must apply to the ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY for qualification for the refund pursuant to section 41-1507 and submit a copy of the ~~department of commerce's~~ AUTHORITY'S certificate of qualification to the department of revenue with the taxpayer's income tax return.

2. The amount of the refund is limited to seventy-five per cent of the amount by which the allowable credit under this section exceeds the taxpayer's tax liability under this title for the taxable year. The remainder of the excess amount of the credit is waived.

3. The refund shall be paid in the manner prescribed by section 42-1118.

4. The refund is subject to setoff under section 42-1122.

5. If the department determines that a credit refunded pursuant to this subsection is incorrect or invalid, the excess credit issued may be treated as a tax deficiency pursuant to section 42-1108.

D. A taxpayer that claims a credit for increased research and development activity under this section shall not claim a credit under section 43-1085.01 for the same expenses.

Sec. 60. Section 43-1076, Arizona Revised Statutes, is amended to read:

43-1076. <u>Credit for employment by a healthy forest enterprise</u>

A. For taxable years beginning from and after December 31, 2004 through December 31, 2014, a credit is allowed against the taxes imposed by this title for net increases in qualified employment positions by a qualified business that is certified by the Arizona commerce authority as a healthy forest enterprise pursuant to section 41-1516.

B. Subject to subsection E of this section, the amount of the credit is equal to:

1. One-fourth of the taxable wages paid to an employee in a qualified employment position, not to exceed five hundred dollars per qualified employment position, in the first year or partial year of employment.

2. One-third of the taxable wages paid to an employee in a qualified employment position, not to exceed one thousand dollars per qualified employment position, in the second year of continuous employment.

3. One-half of the taxable wages paid to an employee in a qualified employment position, not to exceed one thousand five hundred dollars per qualified employment position, in the third year of continuous employment.

C. To qualify for a credit under this section:

1. The business must employ at least three new full-time employees in qualified employment positions in the first taxable year in which the credit is claimed.

2. All of the employees with respect to whom a credit is claimed must reside in this state on the date of hire.

3. A qualified employment position must meet all of the following requirements:

(a) The position must be full-time employment for a minimum of one thousand five hundred fifty hours per year, unless a shorter period of employment is due to forest closures or weather conditions beyond the taxpayer's control.

(b) The job duties must primarily involve or directly support the harvesting, transporting or the initial processing of qualifying forest products removed from qualifying projects as defined in section 41-1516 into a product having commercial value.

(c) The employer must pay compensation at least equal to the wage offer by county as computed annually by the department of economic security research administration division.

(d) The employee must have been employed for at least ninety days during the first taxable year. An employee who is hired during the last ninety days of the taxable year shall be considered a new employee during the next taxable year. A qualified employment position that is filled during the last ninety days of the taxable year is considered to be a new qualified employment position for the next taxable year.

(e) The employee has not been previously employed by the taxpayer within twelve months before the current date of hire.

4. The employer shall provide health insurance coverage for employees as follows:

(a) The employer shall pay:

(i) At least twenty-five per cent of the premium or membership cost of the insurance program in the third year the taxpayer claims a credit under this section. If the taxpayer is self-insured, the taxpayer must pay at least twenty-five per cent of a predetermined fixed cost per employee for an insurance program that is payable whether or not the employee has filed claims.

(ii) At least forty per cent of the premium or membership cost in the fourth year the taxpayer claims a credit under this section. If the taxpayer is self-insured, the taxpayer must pay at least forty per cent of a predetermined fixed cost per employee for an insurance program that is payable whether or not the employee has filed claims.

(iii) At least fifty per cent of the premium or membership cost of the insurance program in the fifth and each subsequent year the taxpayer claims a credit under this section. If the taxpayer is self-insured, the taxpayer must pay at least fifty per cent of a predetermined fixed cost per employee for an insurance program that is payable whether or not the employee has filed claims.

(b) An employer shall not reduce the amount of health insurance coverage provided to employees before certification by the Arizona commerce authority.

D. A credit is allowed for employment in the second and third year only for qualified employment positions for which a credit was allowed and claimed by the taxpayer on the original first and second year tax returns.

E. The net increase in the number of qualified employment positions is the lesser of the total number of filled qualified employment positions created during the taxable year or the difference between the average number of full-time employees in the current taxable year and the average number of full-time employees during the immediately preceding taxable year. The net increase in the number of qualified employment positions computed under this subsection may not exceed two hundred qualified employment positions per taxpayer each year.

F. A taxpayer who claims a credit under section 43-1074~~, 43-1077~~ or 43-1079 may not claim a credit under this section with respect to the same employees.

G. If the allowable tax credit exceeds the income taxes otherwise due on the claimant's income, or if there are no state income taxes due on the claimant's income, the amount of the claim not used as an offset against income taxes may be carried forward as a tax credit against subsequent years' income tax liability for the period not to exceed five taxable years, provided the business maintains its certification under section 41-1516.

H. Co-owners of a business, including partners in a partnership and shareholders of an S corporation as defined in section 1361 of the internal revenue code, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all such owners of the business may not exceed the amount that would have been allowed for a sole owner of the business.

I. If a qualified business changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim first year credits only for one or more qualified employment positions that it created and filled with an eligible employee after the purchase or reorganization was complete. If a person purchases a business that had qualified for first or second year credits or changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim the second or third year credits if it meets the other eligibility requirements of this section. Credits for which a taxpayer qualified before the changes described in this subsection are terminated and lost at the time the changes are implemented.

J. If, within five taxable years after first receiving a credit pursuant to this section, the certification of qualification of a business is terminated or revoked under section 41-1516 other than for reasons beyond the control of the business as determined by the Arizona commerce authority, the credits allowed the business pursuant to this section are subject to recapture pursuant to this subsection. This subsection applies only in the case of the termination or revocation of a certification of qualification. This subsection does not apply if, in any taxable year, a taxpayer otherwise does not qualify for or fails to claim the credit under this section. The recapture of credits under this subsection is computed by increasing the amount of taxes imposed in the year following the year in which the qualification of the business was terminated or revoked by an amount determined by multiplying the full amount of all credits previously allowed under this section by a percentage determined as follows:

1. If the initial credit under this section was allowed for the taxable year immediately preceding the taxable year in which the certification of qualification of a business is terminated or revoked, one hundred per cent.

2. If the initial credit under this section was allowed two taxable years before the taxable year in which the certification of qualification of a business is terminated or revoked, eighty per cent.

3. If the initial credit under this section was allowed three taxable years before the taxable year in which the certification of qualification of a business is terminated or revoked, sixty per cent.

4. If the initial credit under this section was allowed four taxable years before the taxable year in which the certification of qualification of a business is terminated or revoked, forty per cent.

5. If the initial credit under this section was allowed five taxable years before the taxable year in which the certification of qualification of a business is terminated or revoked, twenty per cent.

Sec. 61. Repeal

Sections 43-1075, 43-1075.01, 43-1077 and 43-1078, Arizona Revised Statutes, are repealed.

Sec. 62. Section 43-1079, Arizona Revised Statutes, is amended to read:

43-1079. Credit for increased employment in military reuse zones; definition

A. A credit is allowed against the taxes imposed by this title for net increases in employment by the taxpayer of full-time employees working in a military reuse zone, established under title 41, chapter 10, article 3, and who are primarily engaged in providing aviation or aerospace services or in manufacturing, assembling or fabricating aviation or aerospace products. The amount of the credit is a dollar amount allowed for each new employee, determined as follows:

1. With respect to each employee other than a dislocated military base employee:

1st year of employment	$ 500
2nd year of employment	$1,000
3rd year of employment	$1,500
4th year of employment	$2,000
5th year of employment	$2,500

2. With respect to each dislocated military base employee:

1st year of employment	$1,000
2nd year of employment	$1,500
3rd year of employment	$2,000
4th year of employment	$2,500
5th year of employment	$3,000

B. If the allowable tax credit exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the claim not used to offset the taxes under this title may be carried forward as a credit against subsequent years' income tax liability for the period, not to exceed five taxable years, if the business remains in the military reuse zone.

C. The net increase in the number of employees for purposes of this section shall be determined by comparing the taxpayer's average employment in the military reuse zone during the taxable year with the taxpayer's previous year's fourth quarter employment in the zone, based on the taxpayer's report to the department of economic security for unemployment insurance purposes but considering only employment in the zone.

D. Co-owners of a business, including partners in a partnership and shareholders of an S corporation, as defined in section 1361 of the internal revenue code, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the business.

E. A credit is not allowed under this section with respect to an employee whose place of employment is relocated by the taxpayer from a location in this state to the military reuse zone, unless the employee is engaged in aviation or aerospace services or in manufacturing, assembling or fabricating aviation or aerospace products and the taxpayer maintains at least the same number of employees in this state but outside the zone.

F. A taxpayer who claims a credit under section 43-1074~~, 43-1077~~ or 43-1083.01 may not claim a credit under this section with respect to the same employees.

G. For the purposes of this section, "dislocated military base employee" means a civilian who previously had permanent full-time civilian employment on the military facility as of the date the closure of the facility was finally determined under federal law, as certified by the Arizona commerce authority.

Sec. 63. Section 43-1082, Arizona Revised Statutes, is amended to read:

43-1082. Credit for construction materials incorporated into qualifying facility; definitions

A. A credit is allowed against the tax imposed by this title for new construction materials incorporated into a qualifying facility located entirely within this state, construction of which is begun on or after January 1, 1994 and completed on or before December 31, 1999. The credit shall be computed as five per cent of the purchase price of the materials. The credit shall be claimed in the taxable year in which the qualified facility receives a certificate of occupancy.

B. Co-owners of a business, including partners in a partnership and shareholders of an S corporation, as defined in section 1361 of the internal revenue code, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest, except that partners in a partnership and members in a limited liability company may allocate among themselves any credit for construction materials that are incorporated into a facility that is predominantly used for direct broadcast satellite television or data transmission services in any proportion stated in their partnership or operating agreement. The total of the credits allowed all such owners may not exceed the amount that would have been allowed a sole owner.

C. If the allowable tax credit exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the taxpayer may carry the amount of the claim not used to offset the taxes under this title forward for not more than five taxable years' income tax liability.

D. The department shall prescribe a form to be filed in the year the credit arises by a partnership or limited liability company that allocates the credit among its partners or members. The form constitutes an election by the business as to the proportion of the credit allocable to each of the specific owners. The election is irrevocable.

E. For purposes of this section:

1. "Construction materials" means tangible personal property incorporated into and permanently affixed to the taxpayer's qualifying facility other than materials exempt from taxation pursuant to section 42-5061 or 42-5159, subsection B.

2. "Direct broadcast satellite television or data transmission services" means either:

(a) Receiving, converting, processing, storing or transmitting telecommunications information by a business that operates pursuant to 47 Code of Federal Regulations parts 25 and 100.

(b) Transmitting telecommunications information to a business that operates pursuant to 47 Code of Federal Regulations parts 25 and 100 if the transmitting meets the requirements of section 42-5061, subsection B, paragraph ~~16~~ 15, subdivision (b).

3. "Purchase price" means either the direct cost of materials purchased by the taxpayer from a supplier for incorporation into the qualifying facility, or the direct cost of materials paid by a contractor for incorporation into the taxpayer's qualifying facility.

4. "Qualifying facility" means a new building or structure, or expansion of an existing building or structure, located entirely within this state, predominantly used for manufacturing, fabricating, mining, refining, metallurgical operations, direct broadcast satellite television or data transmission services or research and development as described in section 43-1168, and which has a total cost of construction in excess of five million dollars.

Sec. 64. Section 43-1083.01, Arizona Revised Statutes, is amended to read:

43-1083.01. Credit for renewable energy industry

A. For taxable years beginning from and after December 31, 2009 through December 31, 2014, a credit is allowed against the taxes imposed by this title for qualified investment and employment in expanding or locating qualified renewable energy operations in this state. To qualify for the credit, the taxpayer must invest in renewable energy manufacturing, or in new regional, national or global renewable energy business headquarters, in this state and produce new full-time employment positions where the job duties are performed at the location of the qualifying investment. The taxpayer must meet the employee compensation and employee health benefit requirements prescribed by section 41-1511.

B. The amount of the credit is computed as follows:

1. Ten per cent of the taxpayer's total capital investment in projects meeting the following minimum employment requirements:

(a) For qualifying renewable energy manufacturing operations, at least one and one-half new full-time employment positions for each five hundred thousand dollar increment of capital investment.

(b) For qualifying renewable energy business headquarters, at least one new full-time employment position for each two hundred thousand dollar increment of capital investment.

2. For other qualifying renewable energy investment, ten per cent of the amount computed as follows:

(a) Five hundred thousand dollars for each one and one-half new full-time employment positions in new renewable energy manufacturing operations.

(b) Two hundred thousand dollars for each new full-time employment position at a new renewable energy business headquarters.

(c) The amount of credit under this paragraph shall not exceed ten per cent of the amount of the taxpayer's total capital investment.

3. The amount of the credit shall not exceed the postapproval amount determined by the Arizona commerce authority under section 41-1511, subsection P.

4. The credit amount computed under paragraph 1 or 2 of this subsection is apportioned, and the taxpayer shall claim the credit in five equal annual installments in each of five consecutive taxable years.

C. To claim the credit the taxpayer must:

1. Conduct a business that qualifies under section 41-1511.

2. Receive preapproval and postapproval from the Arizona commerce authority pursuant to section 41-1511.

3. Submit a copy of a current and valid certification of qualification issued to the taxpayer by the Arizona commerce authority.

D. To be counted for the purposes of the credit, an employee must have been employed at the qualifying facility for at least ninety days during the taxable year in a permanent full-time employment position of at least one thousand seven hundred fifty hours per year. An employee who is hired during the last ninety days of the taxable year shall be considered a new employee during the next taxable year. To be counted for the purposes of the credit during the first taxable year of employment, the employee must not have been previously employed by the taxpayer within twelve months before the current date of hire. The terms of employment must comply in all cases with the requirements of section 41-1511 and certification by the Arizona commerce authority.

E. Co-owners of a business, including partners in a partnership, members of a limited liability company and shareholders of an S corporation, as defined in section 1361 of the internal revenue code, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all owners of the business may not exceed the amount that would have been allowed for a sole owner of the business.

F. If the allowable tax credit for a taxable year exceeds the income taxes otherwise due on the claimant's income, or if there are no state income taxes due on the claimant's income, the amount of the claim not used as an offset against income taxes shall be paid to the taxpayer in the same manner as a refund under section 42-1118. Refunds made pursuant to this subsection are subject to setoff under section 42-1122. If the department determines that a refund is incorrect or invalid, the excess refund may be treated as a tax deficiency pursuant to section 42-1108.

G. Except as provided by subsection H of this section, if, within five taxable years after first receiving a credit pursuant to this section, the certification of qualification of a business is terminated or revoked under section 41-1511, other than for reasons beyond the control of the business as determined by the Arizona commerce authority, the taxpayer is disqualified from credits under this section in subsequent taxable years. On a determination that the taxpayer has committed fraud or relocated outside of this state within five taxable years of first receiving a credit pursuant to this section, the credits allowed the taxpayer in all taxable years pursuant to this section are subject to recapture pursuant to this subsection. This subsection applies only in the case of the termination or revocation of a certification of qualification under section 41-1511. This subsection does not apply if, in any taxable year, a taxpayer otherwise does not qualify for or fails to claim the credit under this section. The recapture of credits is computed by increasing the amount of taxes imposed in the year following the year of termination or revocation by the full amount of all credits previously allowed under this section.

H. A taxpayer who claims a credit under section 43-1074~~, 43-1077~~ or 43-1079 may not claim a credit under this section with respect to the same full-time employment positions.

I. The department of revenue shall adopt rules and prescribe forms and procedures as necessary for the purposes of this section. The department of revenue and the Arizona commerce authority shall collaborate in adopting rules as necessary to avoid duplication and contradictory requirements while accomplishing the intent and purposes of this section.

J. For the purposes of this section, renewable energy operations are limited to manufacturers of, and headquarters for, systems and components that are used or useful in manufacturing renewable energy equipment for the generation, storage, testing and research and development, transmission or distribution of electricity from renewable resources, including specialized crates necessary to package the renewable energy equipment manufactured at the facility.

Sec. 65. Section 43-1121, Arizona Revised Statutes, is amended to read:

43-1121. Additions to Arizona gross income; corporations

In computing Arizona taxable income for a corporation, the following amounts shall be added to Arizona gross income:

1. The amounts computed pursuant to section 43-1021, paragraphs 3 through 9, 12, ~~26, 27, 33, 34 and 35~~ 25, 26, 32, 33 AND 34.

2. The amount of dividend income received from corporations and allowed as a deduction pursuant to sections 243, 244 and 245 of the internal revenue code.

3. Taxes which are based on income paid to states, local governments or foreign governments and which were deducted in computing federal taxable income.

4. Expenses and interest relating to tax-exempt income on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the tax imposed by this title. Financial institutions, as defined in section 6-101, shall be governed by section 43-961, paragraph 2.

5. Commissions, rentals and other amounts paid or accrued to a domestic international sales corporation controlled by the payor corporation if the domestic international sales corporation is not required to report its taxable income to this state because its income is not derived from or attributable to sources within this state. If the domestic international sales corporation is subject to article 4 of this chapter, the department shall prescribe by rule the method of determining the portion of the commissions, rentals and other amounts which are paid or accrued to the controlled domestic international sales corporation and which shall be deducted by the payor. For the purposes of this paragraph, "control" means direct or indirect ownership or control of fifty per cent or more of the voting stock of the domestic international sales corporation by the payor corporation.

6. Federal income tax refunds received during the taxable year to the extent they were deducted in arriving at Arizona taxable income in a previous year.

7. The amount of net operating loss taken pursuant to section 172 of the internal revenue code.

8. The amount of exploration expenses determined pursuant to section 617 of the internal revenue code to the extent that they exceed seventy-five thousand dollars and to the extent that the election is made to defer those expenses not in excess of seventy-five thousand dollars.

9. Amortization of costs incurred to install pollution control devices and deducted pursuant to the internal revenue code or the amount of deduction for depreciation taken pursuant to the internal revenue code on pollution control devices for which an election is made pursuant to section 43-1129.

10. The amount of depreciation or amortization of costs of child care facilities deducted pursuant to section 167 or 188 of the internal revenue code for which an election is made to amortize pursuant to section 43-1130.

11. Arizona state income tax refunds received, to the extent the amount of the refunds is not already included in Arizona gross income, if a tax benefit was derived by deduction of this amount in a prior year.

~~12. The amount paid as taxes on property in this state by a qualified defense contractor with respect to which a credit is claimed under section 43-1166.~~

~~13.~~ 12. The loss of an insurance company that is exempt under section 43-1201 to the extent that it is included in computing Arizona gross income on a consolidated return pursuant to section 43-947.

~~14.~~ 13. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1169 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

~~15.~~ 14. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1169 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1169.

~~16.~~ 15. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under either section 43-1170 or 43-1170.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

~~17.~~ 16. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under either section 43-1170 or 43-1170.01 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1170 or 43-1170.01, as applicable.

~~18.~~ 17. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

~~19.~~ 18. The amount by which a capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the capital loss carryover allowable pursuant to section 43-1130.01, subsection F.

~~20.~~ 19. Any amount deducted in computing Arizona taxable income as expenses for installing solar stub outs or electric vehicle recharge outlets in this state with respect to which a credit is claimed pursuant to section 43-1176.

~~21.~~ 20. Any wage expenses deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1175 and representing net increases in qualified employment positions for employment of temporary assistance for needy families recipients.

~~22.~~ 21. Any amount of expenses that were deducted pursuant to the internal revenue code and for which a credit is claimed under section 43-1178.

~~23.~~ 22. Any amount deducted for conveying ownership or development rights of property to an agricultural preservation district under section 48-5702 for which a credit is claimed under section 43-1180.

~~24.~~ 23. The amount of any deduction that is claimed in computing Arizona gross income and that represents a donation of a school site for which a credit is claimed under section 43-1181.

~~25.~~ 24. The amount of any deductions that are claimed in computing federal taxable income representing expenses for which a credit is claimed under either section 43-1163 or 43-1163.01 or both.

~~26.~~ 25. Any amount deducted in computing Arizona taxable income as expenses for installing water conservation system plumbing stub outs in this state with respect to which a credit is claimed pursuant to section 43-1182.

~~27.~~ 26. Any amount deducted pursuant to section 170 of the internal revenue code representing contributions to a school tuition organization for which a credit is claimed under section 43-1183 or 43-1184.

Sec. 66. Section 43-1130.01, Arizona Revised Statutes, is amended to read:

43-1130.01. Restoration of a substantial amount held under claim of right; computation of tax

A. This section applies if:

1. An item of income was included in gross income for a prior taxable year or years because it appeared that the taxpayer had an unrestricted right to the item.

2. A deduction would be allowable under the internal revenue code or this title for the taxable year, without application of section 1341(b)(3) of the internal revenue code or section 43-1121, paragraph ~~18~~ 15, because after the close of the prior taxable year or years it was established that the taxpayer did not have an unrestricted right to all or part of the item.

3. The amount of the deduction exceeds three thousand dollars.

B. If all of the conditions in subsection A of this section apply, the tax imposed by this chapter for the taxable year is an amount equal to the tax for the taxable year computed without the deduction, minus the decrease in tax under this chapter for the prior taxable year or years that would result solely from excluding the item or portion of the item from gross income for the prior taxable year or years.

C. If the decrease in tax exceeds the tax imposed by this chapter for the taxable year, computed without the deduction, the excess is considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year and shall be refunded or credited in the same manner as if it were an overpayment for the taxable year.

D. Subsection B of this section does not apply to any deduction that is allowable with respect to an item that was included in gross income by reason of the sale or other disposition of stock in trade of the taxpayer, or other property of a kind that would properly have been included in the inventory of the taxpayer on hand at the close of the prior taxable year, or property that is held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. This subsection does not apply if the deduction arises out of refunds or repayments with respect to rates made by a regulated public utility that is listed in section 7701(a)(33)(A) through (H) of the internal revenue code, if the refunds or repayments are:

1. Required to be made by the government, political subdivision, agency or instrumentality referred to in that section.

2. Required to be made by an order of a court.

3. Made in settlement of litigation or under threat or imminence of litigation.

E. If the exclusion under subsection B of this section results in:

1. A net operating loss for the prior taxable year or years for purposes of computing the decrease in tax for the prior year or years under subsection B of this section:

(a) The loss shall be carried over under this chapter to the same extent and in the same manner as provided under section 43-1123, and under prior law.

(b) No carryover beyond the taxable year may be taken into account.

2. A capital loss for the prior taxable year or years, for purposes of computing the decrease in tax for the prior taxable year or years under subsection B of this section:

(a) The loss shall be:

(i) Carried over under this chapter to the same extent and in the same manner as was provided under prior law for taxable years beginning on or before December 31, 1987.

(ii) Carried back and carried over to the same extent and in the same manner as provided under section 1212 of the internal revenue code for taxable years beginning from and after December 31, 1987.

(b) No carryover beyond the taxable year may be taken into account.

F. In computing Arizona taxable income for taxable years subsequent to the current taxable year, the net operating loss or capital loss determined in subsection E of this section shall be taken into account to the same extent and in the same manner as a net operating loss or capital loss sustained for prior taxable years.

Sec. 67. Section 43-1161, Arizona Revised Statutes, is amended to read:

43-1161. Credit for new employment

A. A credit is allowed against the taxes imposed by this title for net increases in full-time employees hired in qualified employment positions as certified by the Arizona commerce authority pursuant to section 41-1525.

B. Subject to subsection E of this section, the amount of the credit is equal to three thousand dollars for each full-time employee hired for the full taxable year in a qualified employment position in each of the first three years of employment, but not more than four hundred employees in any taxable year.

C. To qualify for a credit under this section, the taxpayer and the employment positions must meet the requirements prescribed by section 41-1525.

D. A credit is allowed for employment in the second and third year only for qualified employment positions for which a credit was claimed and allowed in the first year.

E. The net increase in the number of qualified employment positions is the lesser of the total number of filled qualified employment positions created during the taxable year or the difference between the average number of full-time employees in the current tax year and the average number of full-time employees during the immediately preceding taxable year. The net increase in the number of qualified employment positions computed under this subsection may not exceed four hundred qualified employment positions per taxpayer each year.

F. A taxpayer who claims a credit under section 43-1164.01~~, 43-1165~~ or 43-1167 shall not claim a credit under this section with respect to the same employment positions.

G. If the allowable tax credit exceeds the income taxes otherwise due on the claimant's income, or if there are no state income taxes due on the claimant's income, the amount of the claim not used as an offset against the income taxes may be carried forward as a tax credit against subsequent years' income tax liability for a period not exceeding five taxable years.

H. Co-owners of a business, including corporate partners in a partnership, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all such owners of the business may not exceed the amount that would have been allowed for a sole owner of the business.

I. If the business is sold or changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim first year credits only for the qualified employment positions that it created and filled with an eligible employee after the purchase or reorganization was complete. If a person purchases a taxpayer that had qualified for first or second year credits or changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim the second or third year credits if it meets other eligibility requirements of this section. Credits for which a taxpayer qualified before the changes described in this subsection are terminated and lost at the time the changes are implemented.

J. A failure to timely report and certify to the Arizona commerce authority the information prescribed by section 41-1525, subsection D, and in the manner prescribed by section 41-1525, subsection E disqualifies the taxpayer from the credit under this section. The department shall require written evidence of the timely report to the Arizona commerce authority.

K. A tax credit under this section is subject to recovery for a violation described in section 41-1525, subsection G.

Sec. 68. Section 43-1162, Arizona Revised Statutes, is amended to read:

43-1162. Credit for employment by a healthy forest enterprise

A. For taxable years beginning from and after December 31, 2004 through December 31, 2014, a credit is allowed against the taxes imposed by this title for net increases in qualified employment positions by a qualified business that is certified by the Arizona commerce authority as a healthy forest enterprise pursuant to section 41-1516.

B. Subject to subsection E of this section, the amount of the credit is equal to:

1. One-fourth of the taxable wages paid to an employee in a qualified employment position, not to exceed five hundred dollars per qualified employment position, in the first year or partial year of employment.

2. One-third of the taxable wages paid to an employee in a qualified employment position, not to exceed one thousand dollars per qualified employment position, in the second year of continuous employment.

3. One-half of the taxable wages paid to an employee in a qualified employment position, not to exceed one thousand five hundred dollars per qualified employment position, in the third year of continuous employment.

C. To qualify for a credit under this section:

1. The business must employ at least three new full-time employees in qualified employment positions in the first taxable year in which the credit is claimed.

2. All of the employees with respect to whom a credit is claimed must reside in this state on the date of hire.

3. A qualified employment position must meet all of the following requirements:

(a) The position must be full-time employment for a minimum of one thousand five hundred fifty hours per year, unless a shorter period of employment is due to forest closures or weather conditions beyond the taxpayer's control.

(b) The job duties must primarily involve or directly support the harvesting, transporting or the initial processing of qualifying forest products removed from qualifying projects as defined in section 41-1516 into a product having commercial value.

(c) The employer must pay compensation at least equal to the wage offer by county as computed annually by the department of economic security research administration division.

(d) The employee must have been employed for at least ninety days during the first taxable year. An employee who is hired during the last ninety days of the taxable year shall be considered a new employee during the next taxable year. A qualified employment position that is filled during the last ninety days of the taxable year is considered to be a new qualified employment position for the next taxable year.

(e) The employee has not been previously employed by the taxpayer within twelve months before the current date of hire.

4. The employer shall provide health insurance coverage for employees as follows:

(a) The employer shall pay:

(i) At least twenty-five per cent of the premium or membership cost of the insurance program in the third year the taxpayer claims a credit under this section. If the taxpayer is self-insured, the taxpayer must pay at least twenty-five per cent of a predetermined fixed cost per employee for an insurance program that is payable whether or not the employee has filed claims.

(ii) At least forty per cent of the premium or membership cost in the fourth year the taxpayer claims a credit under this section. If the taxpayer is self-insured, the taxpayer must pay at least forty per cent of a predetermined fixed cost per employee for an insurance program that is payable whether or not the employee has filed claims.

(iii) At least fifty per cent of the premium or membership cost of the insurance program in the fifth and each subsequent year the taxpayer claims a credit under this section. If the taxpayer is self-insured, the taxpayer must pay at least fifty per cent of a predetermined fixed cost per employee for an insurance program that is payable whether or not the employee has filed claims.

(b) An employer shall not reduce the amount of health insurance coverage provided to employees before certification by the Arizona commerce authority.

D. A credit is allowed for employment in the second and third year only for qualified employment positions for which a credit was allowed and claimed by the taxpayer on the original first and second year tax returns.

E. The net increase in the number of qualified employment positions is the lesser of the total number of filled qualified employment positions created during the taxable year or the difference between the average number of full-time employees in the current taxable year and the average number of full-time employees during the immediately preceding taxable year. The net increase in the number of qualified employment positions computed under this subsection may not exceed two hundred qualified employment positions per taxpayer each year.

F. A taxpayer who claims a credit under section 43-1161~~, 43-1165~~ or 43-1167 may not claim a credit under this section with respect to the same employees.

G. If the allowable tax credit exceeds the income taxes otherwise due on the claimant's income, or if there are no state income taxes due on the claimant's income, the amount of the claim not used as an offset against income taxes may be carried forward as a tax credit against subsequent years' income tax liability for the period not to exceed five taxable years, provided the business maintains its certification under section 41-1516.

H. Co-owners of a business, including partners in a partnership, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all such owners of the business may not exceed the amount that would have been allowed for a sole owner of the business.

I. If a qualified business changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim first year credits only for one or more qualified employment positions that it created and filled with an eligible employee after the purchase or reorganization was complete. If a person purchases a business that had qualified for first or second year credits or changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim the second or third year credits if it meets the other eligibility requirements of this section. Credits for which a taxpayer qualified before the changes described in this subsection are terminated and lost at the time the changes are implemented.

J. If, within five taxable years after first receiving a credit pursuant to this section, the certification of qualification of a business is terminated or revoked under section 41-1516 other than for reasons beyond the control of the business as determined by the Arizona commerce authority, the credits allowed the business pursuant to this section are subject to recapture pursuant to this subsection. This subsection applies only in the case of the termination or revocation of a certification of qualification. This subsection does not apply if, in any taxable year, a taxpayer otherwise does not qualify for or fails to claim the credit under this section. The recapture of credits under this subsection is computed by increasing the amount of taxes imposed in the year following the year in which the qualification of the business was terminated or revoked by an amount determined by multiplying the full amount of all credits previously allowed under this section by a percentage determined as follows:

1. If the initial credit under this section was allowed for the taxable year immediately preceding the taxable year in which the certification of qualification of a business is terminated or revoked, one hundred per cent.

2. If the initial credit under this section was allowed two taxable years before the taxable year in which the certification of qualification of a business is terminated or revoked, eighty per cent.

3. If the initial credit under this section was allowed three taxable years before the taxable year in which the certification of qualification of a business is terminated or revoked, sixty per cent.

4. If the initial credit under this section was allowed four taxable years before the taxable year in which the certification of qualification of a business is terminated or revoked, forty per cent.

5. If the initial credit under this section was allowed five taxable years before the taxable year in which the certification of qualification of a business is terminated or revoked, twenty per cent.

Sec. 69. Repeal

Sections 43-1163 and 43-1163.01, Arizona Revised Statutes, are repealed.

Sec. 70. Section 43-1164.01, Arizona Revised Statutes, is amended to read:

43-1164.01. Credit for renewable energy industry

A. For taxable years beginning from and after December 31, 2009 through December 31, 2014, a credit is allowed against the taxes imposed by this title for qualified investment and employment in expanding or locating qualified renewable energy operations in this state. To qualify for the credit, the taxpayer must invest in renewable energy manufacturing, or in new regional, national or global renewable energy business headquarters, in this state and produce new full-time employment positions where the job duties are performed at the location of the qualifying investment. The taxpayer must meet the employee compensation and employee health benefit requirements prescribed by section 41-1511.

B. The amount of the credit is computed as follows:

1. Ten per cent of the taxpayer's total capital investment in projects meeting the following minimum employment requirements:

(a) For qualifying renewable energy manufacturing operations, at least one and one-half new full-time employment positions for each five hundred thousand dollar increment of capital investment.

(b) For qualifying renewable energy business headquarters, at least one new full-time employment position for each two hundred thousand dollar increment of capital investment.

2. For other qualifying renewable energy investment, ten per cent of the amount computed as follows:

(a) Five hundred thousand dollars for each one and one-half new full-time employment positions in new renewable energy manufacturing operations.

(b) Two hundred thousand dollars for each new full-time employment position at a new renewable energy business headquarters.

(c) The amount of credit under this paragraph shall not exceed ten per cent of the amount of the taxpayer's total capital investment.

3. The amount of the credit shall not exceed the postapproval amount determined by the Arizona commerce authority under section 41-1511, subsection P.

4. The credit amount computed under paragraph 1 or 2 of this subsection is apportioned, and the taxpayer shall claim the credit in five equal annual installments in each of five consecutive taxable years.

C. To claim the credit the taxpayer must:

1. Conduct a business that qualifies under section 41-1511.

2. Receive preapproval and postapproval from the Arizona commerce authority pursuant to section 41-1511.

3. Submit a copy of a current and valid certification of qualification issued to the taxpayer by the Arizona commerce authority.

D. To be counted for the purposes of the credit, an employee must have been employed at the qualifying facility for at least ninety days during the taxable year in a permanent full-time employment position of at least one thousand seven hundred fifty hours per year. An employee who is hired during the last ninety days of the taxable year shall be considered a new employee during the next taxable year. To be counted for the purposes of the credit during the first taxable year of employment, the employee must not have been previously employed by the taxpayer within twelve months before the current date of hire. The terms of employment must comply in all cases with the requirements of section 41-1511 and certification by the Arizona commerce authority.

E. Co-owners of a business, including corporate partners in a partnership and members of a limited liability company, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all owners of the business may not exceed the amount that would have been allowed for a sole owner of the business.

F. If the allowable tax credit for a taxable year exceeds the income taxes otherwise due on the claimant's income, or if there are no state income taxes due on the claimant's income, the amount of the claim not used as an offset against income taxes shall be paid to the taxpayer in the same manner as a refund under section 42-1118. Refunds made pursuant to this subsection are subject to setoff under section 42-1122. If the department determines that a refund is incorrect or invalid, the excess refund may be treated as a tax deficiency pursuant to section 42-1108.

G. Except as provided by subsection H of this section, if, within five taxable years after first receiving a credit pursuant to this section, the certification of qualification of a business is terminated or revoked under section 41-1511, other than for reasons beyond the control of the business as determined by the Arizona commerce authority, the taxpayer is disqualified from credits under this section in subsequent taxable years. On a determination that the taxpayer has committed fraud or relocated outside of this state within five taxable years of first receiving a credit pursuant to this section, the credits allowed the taxpayer in all taxable years pursuant to this section are subject to recapture pursuant to this subsection. This subsection applies only in the case of the termination or revocation of a certification of qualification under section 41-1511. This subsection does not apply if, in any taxable year, a taxpayer otherwise does not qualify for or fails to claim the credit under this section. The recapture of credits is computed by increasing the amount of taxes imposed in the year following the year of termination or revocation by the full amount of all credits previously allowed under this section.

H. A taxpayer who claims a credit under section 43-1161~~, 43-1165~~ or 43-1167 may not claim a credit under this section with respect to the same full-time employment positions.

I. The department of revenue shall adopt rules and prescribe forms and procedures as necessary for the purposes of this section. The department of revenue and the Arizona commerce authority shall collaborate in adopting rules as necessary to avoid duplication and contradictory requirements while accomplishing the intent and purposes of this section.

J. For the purposes of this section, renewable energy operations are limited to manufacturers of, and headquarters for, systems and components that are used or useful in manufacturing renewable energy equipment for the generation, storage, testing and research and development, transmission or distribution of electricity from renewable resources, including specialized crates necessary to package the renewable energy equipment manufactured at the facility.

Sec. 71. Repeal

Sections 43-1165 and 43-1166, Arizona Revised Statutes, are repealed.

Sec. 72. Section 43-1167, Arizona Revised Statutes, is amended to read:

43-1167. Credit for increased employment in military reuse zones; definition

A. A credit is allowed against the taxes imposed by this title for net increases in employment by the taxpayer of full-time employees working in a military reuse zone, established under title 41, chapter 10, article 3, and who are primarily engaged in providing aviation or aerospace services or in manufacturing, assembling or fabricating aviation or aerospace products. The amount of the credit is a dollar amount allowed for each new employee, determined as follows:

1. With respect to each employee other than a dislocated military base employee:

1st year of employment	$ 500
2nd year of employment	$1,000
3rd year of employment	$1,500
4th year of employment	$2,000
5th year of employment	$2,500

2. With respect to each dislocated military base employee:

1st year of employment	$1,000
2nd year of employment	$1,500
3rd year of employment	$2,000
4th year of employment	$2,500
5th year of employment	$3,000

B. If the allowable tax credit exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the claim not used to offset the taxes under this title may be carried forward as a credit against subsequent years' income tax liability for the period, not to exceed five taxable years, if the business remains in the military reuse zone.

C. The net increase in the number of employees for purposes of this section shall be determined by comparing the taxpayer's average employment in the military reuse zone during the taxable year with the taxpayer's previous year's fourth quarter employment in the zone, based on the taxpayer's report to the department of economic security for unemployment insurance purposes but considering only employment in the zone.

D. Co-owners of a business, including corporate partners in a partnership, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the business.

E. A credit is not allowed under this section with respect to an employee whose place of employment is relocated by the taxpayer from a location in this state to the military reuse zone unless the employee is engaged in aviation or aerospace services or in manufacturing, assembling or fabricating aviation or aerospace products and the taxpayer maintains at least the same number of employees in this state but outside the zone.

F. A taxpayer who claims a credit under section 43-1161~~,~~ OR 43-1164.01 ~~or 43-1165~~ may not claim a credit under this section with respect to the same employees.

G. For the purposes of this section, "dislocated military base employee" means a civilian who previously had permanent full-time civilian employment on the military facility as of the date the closure of the facility was finally determined under federal law, as certified by the Arizona commerce authority.

Sec. 73. Section 43-1168, Arizona Revised Statutes, as amended by Laws 2011, second special session, chapter 1, section 113, is amended to read:

43-1168. Credit for increased research activities

A. A credit is allowed against the taxes imposed by this title in an amount determined pursuant to section 41 of the internal revenue code, except that:

1. The amount of the credit is computed as follows:

(a) Add:

(i) The excess, if any, of the qualified research expenses for the taxable year over the base amount as defined in section 41(c) of the internal revenue code.

(ii) The basic research payments determined under section 41(e)(1)(A) of the internal revenue code.

(b) If the sum computed under subdivision (a) is two million five hundred thousand dollars or less, the credit is equal to twenty-four per cent of that amount.

(c) If the sum computed under subdivision (a) is over two million five hundred thousand dollars, the credit is equal to six hundred thousand dollars plus fifteen per cent of any amount exceeding two million five hundred thousand dollars, except that:

(i) For taxable years beginning from and after December 31, 2000 through December 31, 2001, the credit shall not exceed one million five hundred thousand dollars.

(ii) For taxable years beginning from and after December 31, 2001 through December 31, 2002, the credit shall not exceed two million five hundred thousand dollars.

(d) For taxable years beginning from and after December 31, 2011, an additional credit amount is allowed if the taxpayer made basic research payments during the taxable year to a university under the jurisdiction of the Arizona board of regents. The additional credit amount is equal to ten per cent of the basic research payments that constitute excess expenses for the taxable year over the base amount. The department shall not allow credit amounts under this subdivision and section 43-1074.01, subsection A, paragraph 1, subdivision (c) that exceed, in the aggregate, a combined total of ten million dollars in any calendar year. Subject to that limit, on application by the taxpayer, the department shall preapprove credit amounts under this subdivision and section 43-1074.01, subsection A, paragraph 1, subdivision (c) based on priority placement established by the date that the taxpayer filed the application. Notwithstanding subsections B and D of this section, any amount of the additional credit under this subdivision that exceeds the taxes otherwise due under this title is not refundable, but may be carried forward to the next five consecutive taxable years. FOR THE PURPOSES OF THIS SUBDIVISION, "BASIC RESEARCH PAYMENTS" HAS THE SAME MEANING PRESCRIBED BY SECTION 41(E) OF THE INTERNAL REVENUE CODE.

2. Qualified research includes only research conducted in this state including research conducted at a university in this state and paid for by the taxpayer.

3. If two or more taxpayers, including corporate partners in a partnership, share in the eligible expenses, each taxpayer is eligible to receive a proportionate share of the credit.

4. The credit under this section applies only to expenses incurred from and after December 31, 1993.

5. The termination provisions of section 41 of the internal revenue code do not apply.

B. Except as provided by subsection D of this section, if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit not used to offset taxes may be carried forward to the next fifteen consecutive taxable years. The amount of credit carryforward from taxable years beginning from and after December 31, 2000 through December 31, 2002 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The amount of credit carryforward from taxable years beginning from and after December 31, 2002 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title minus the credit under this section for the current taxable year's qualified research expenses. A taxpayer that carries forward any amount of credit under this subsection may not thereafter claim a refund of any amount of the credit under subsection D of this section.

C. If a taxpayer has qualified research expenses that are carried forward from taxable years beginning before January 1, 2001, the amount of the expenses carried forward shall be converted to a credit carryforward by multiplying the amount of the qualified expenses carried forward by twenty per cent. A credit carryforward determined under this subsection may be carried forward to not more than fifteen years from the year in which the expenses were incurred. The amount of credit carryforward from taxable years beginning before January 1, 2001 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The total amount of credit carryforward from taxable years beginning before January 1, 2003 that may be used in any taxable year under subsection B and this subsection may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses.

D. For taxable years beginning from and after December 31, 2009, if a taxpayer who claims a credit under this section employs fewer than one hundred fifty persons in the taxpayer's trade or business and if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, in lieu of carrying the excess amount of credit forward to subsequent taxable years under subsection B of this section, the taxpayer may elect to receive a refund as follows:

1. The taxpayer must apply to the ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY for qualification for the refund pursuant to section 41-1507 and submit a copy of the ~~department of commerce's~~ AUTHORITY'S certificate of qualification to the department of revenue with the taxpayer's income tax return.

2. The amount of the refund is limited to seventy-five per cent of the amount by which the allowable credit under this section exceeds the taxpayer's tax liability under this title for the taxable year. The remainder of the excess amount of the credit is waived.

3. The refund shall be paid in the manner prescribed by section 42-1118.

4. The refund is subject to setoff under section 42-1122.

5. If the department determines that a credit refunded pursuant to this subsection is incorrect or invalid, the excess credit issued may be treated as a tax deficiency pursuant to section 42-1108.

E. A taxpayer that claims a credit for increased research and development activity under this section shall not claim a credit under section 43-1164.02 for the same expenses.

Sec. 74. Section 43-1168, Arizona Revised Statutes, as amended by Laws 2011, second special session, chapter 1, section 114, is amended to read:

43-1168. Credit for increased research activities

A. A credit is allowed against the taxes imposed by this title in an amount determined pursuant to section 41 of the internal revenue code, except that:

1. The amount of the credit is computed as follows:

(a) Add:

(i) The excess, if any, of the qualified research expenses for the taxable year over the base amount as defined in section 41(c) of the internal revenue code.

(ii) The basic research payments determined under section 41(e)(1)(A) of the internal revenue code.

(b) If the sum computed under subdivision (a) is two million five hundred thousand dollars or less, the credit is equal to twenty per cent of that amount.

(c) If the sum computed under subdivision (a) is over two million five hundred thousand dollars, the credit is equal to five hundred thousand dollars plus eleven per cent of any amount exceeding two million five hundred thousand dollars, except that:

(i) For taxable years beginning from and after December 31, 2000 through December 31, 2001, the credit shall not exceed one million five hundred thousand dollars.

(ii) For taxable years beginning from and after December 31, 2001 through December 31, 2002, the credit shall not exceed two million five hundred thousand dollars.

(d) For taxable years beginning from and after December 31, 2011, an additional credit amount is allowed if the taxpayer made basic research payments during the taxable year to a university under the jurisdiction of the Arizona board of regents. The additional credit amount is equal to ten per cent of the basic research payments that constitute excess expenses for the taxable year over the base amount. The department shall not allow credit amounts under this subdivision and section 43-1074.01, subsection A, paragraph 1, subdivision (c) that exceed, in the aggregate, a combined total of ten million dollars in any calendar year. Subject to that limit, on application by the taxpayer, the department shall preapprove credit amounts under this subdivision and section 43-1074.01, subsection A, paragraph 1, subdivision (c) based on priority placement established by the date that the taxpayer filed the application. Notwithstanding subsections B and D of this section, any amount of the additional credit under this subdivision that exceeds the taxes otherwise due under this title is not refundable, but may be carried forward to the next five consecutive taxable years. FOR THE PURPOSES OF THIS SUBDIVISION, "BASIC RESEARCH PAYMENTS" HAS THE SAME MEANING PRESCRIBED BY SECTION 41(E) OF THE INTERNAL REVENUE CODE.

2. Qualified research includes only research conducted in this state including research conducted at a university in this state and paid for by the taxpayer.

3. If two or more taxpayers, including corporate partners in a partnership, share in the eligible expenses, each taxpayer is eligible to receive a proportionate share of the credit.

4. The credit under this section applies only to expenses incurred from and after December 31, 1993.

5. The termination provisions of section 41 of the internal revenue code do not apply.

B. Except as provided by subsection D of this section, if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit not used to offset taxes may be carried forward to the next fifteen consecutive taxable years. The amount of credit carryforward from taxable years beginning from and after December 31, 2000 through December 31, 2002 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The amount of credit carryforward from taxable years beginning from and after December 31, 2002 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title minus the credit under this section for the current taxable year's qualified research expenses. A taxpayer that carries forward any amount of credit under this subsection may not thereafter claim a refund of any amount of the credit under subsection D of this section.

C. If a taxpayer has qualified research expenses that are carried forward from taxable years beginning before January 1, 2001, the amount of the expenses carried forward shall be converted to a credit carryforward by multiplying the amount of the qualified expenses carried forward by twenty per cent. A credit carryforward determined under this subsection may be carried forward to not more than fifteen years from the year in which the expenses were incurred. The amount of credit carryforward from taxable years beginning before January 1, 2001 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The total amount of credit carryforward from taxable years beginning before January 1, 2003 that may be used in any taxable year under subsection B and this subsection may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses.

D. For taxable years beginning from and after December 31, 2009, if a taxpayer who claims a credit under this section employs fewer than one hundred fifty persons in the taxpayer's trade or business and if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, in lieu of carrying the excess amount of credit forward to subsequent taxable years under subsection B of this section, the taxpayer may elect to receive a refund as follows:

1. The taxpayer must apply to the ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY for qualification for the refund pursuant to section 41-1507 and submit a copy of the department of ~~commerce's~~ AUTHORITY'S certificate of qualification to the department of revenue with the taxpayer's income tax return.

2. The amount of the refund is limited to seventy-five per cent of the amount by which the allowable credit under this section exceeds the taxpayer's tax liability under this title for the taxable year. The remainder of the excess amount of the credit is waived.

3. The refund shall be paid in the manner prescribed by section 42-1118.

4. The refund is subject to setoff under section 42-1122.

5. If the department determines that a credit refunded pursuant to this subsection is incorrect or invalid, the excess credit issued may be treated as a tax deficiency pursuant to section 42-1108.

E. A taxpayer that claims a credit for increased research and development activity under this section shall not claim a credit under section 43-1164.02 for the same expenses.

Sec. 75. Section 44-1561, Arizona Revised Statutes, is amended to read:

44-1561. Arizona commerce authority; fuel price data; availability

A. The ~~director of the department of commerce~~ CHIEF EXECUTIVE OFFICER OF THE ARIZONA COMMERCE AUTHORITY shall collect, compile and maintain all brand average retail prices for Phoenix, Tucson, Flagstaff, Kingman, Show Low, Yuma and Sierra Vista on a bimonthly basis in a format that is accessible to the attorney general or any member of the legislature.

B. The ~~department of commerce~~ AUTHORITY may acquire the data by survey or may purchase the data. If the ~~department~~ AUTHORITY purchases the data, the data shall be acquired at the lowest available competitive price.

C. The ~~department of commerce~~ AUTHORITY shall make the data available to the attorney general or any member of the legislature.

Sec. 76. Section 44-1762, Arizona Revised Statutes, is amended to read:

44-1762. Solar energy device warranties; installation standards; inspections

A. The collectors, heat exchangers and storage units of a solar energy device that is sold or installed in this state, and the installation, shall be warranted for a period of at least two years. The remaining components of the solar energy device and their installation shall be warranted for a period of at least one year.

B. Any person who manufactures, furnishes for installation or installs a solar energy device shall provide with such device a written statement of warranty, responsibilities assumed or disclaimed and performance data of the solar energy device and components of the solar energy device. The form of the statement required by this subsection is subject to approval by the registrar of contractors after consultation with the ~~department of commerce~~ GOVERNOR'S ENERGY OFFICE. The registrar of contractors shall adopt rules governing the readability and understandability of the statement. The statement shall specify the source of any performance data it contains. A copy of the statement shall be delivered to the registrar of contractors where it shall be kept on public file.

C. A person who sells a solar energy device in this state shall furnish a certificate to the buyer that the solar energy device complies with the requirements of this section.

D. A solar energy device that is sold or installed in this state shall comply with any consumer protection, rating, certification, performance, marking, installation and safety standards that have been adopted by the ~~department of commerce~~ GOVERNOR'S ENERGY OFFICE.

E. An individual who installs a solar energy device in this state, in addition to being a licensed solar contractor under title 32, chapter 10, article 4, shall:

1. Possess the general license that is appropriate to the type of solar energy device that is installed. Installers of a solar water heater or a photovoltaic device shall possess an appropriate contractor's license.

2. Meet any education and training standards that have been adopted by the registrar of contractors after consultation with the ~~department of commerce~~ GOVERNOR'S ENERGY OFFICE.

3. Pass an examination on the installation of the type of device to be installed, if the registrar of contractors after consultation with the ~~department of commerce~~ GOVERNOR'S ENERGY OFFICE has adopted such an examination.

F. Solar energy devices that are designed or installed by the final owner are exempt from the requirements of subsections A through E.

G. The installation of a solar energy device shall meet the requirements of:

1. All applicable fire, safety and building codes.

2. Consumer protection standards, including freeze protection and temperature related damage standards adopted by the ~~department of commerce~~ GOVERNOR'S ENERGY OFFICE.

3. All other applicable federal, state and local laws.

H. Solar energy devices are subject to random inspections by the registrar of contractors. Installers who fail to meet safety, installation or other prescribed standards are subject to disciplinary action under title 32, chapter 10, article 3.

Sec. 77. Section 45-105, Arizona Revised Statutes, is amended to read:

45-105. Powers and duties of director

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.

2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information which the director deems advisable.

3. Collect and investigate information upon and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.

4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.

5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.

6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.

7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3 and contract, act jointly or cooperate with any person to carry out the provisions and purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the secretary of the interior and the secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; 33 United States Code section 701.1).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title. If water becomes available under any contract executed under this paragraph, the

director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed upon the department and adopt and issue rules necessary to carry out the purposes of this title.

2. Administer all laws relating to groundwater, as provided in this title.

3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine if the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.

4. Coordinate and confer with and may contract with:

(a) The Arizona power authority, game and fish commission, state land department, Arizona outdoor recreation coordinating commission, ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY, radiation regulatory agency, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.

(b) The department of environmental quality with respect to title 49, chapter 2 for its assistance in the development of state water plans.

(c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.

(d) The department of environmental quality regarding coordination of data bases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.

5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.

6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.

7. Maintain a public docket of all matters before the department which may be subject to judicial review pursuant to this title.

8. Investigate and take appropriate action upon any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.

9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.

11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.

12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.

13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.

14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:

(a) The current status of the water supply in this state and any likely changes in that status.

(b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.

(c) The status of current water conservation programs in this state.

(d) The current state of each active management area and the level of progress toward management goals in each active management area.

(e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.

(f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.

(g) The status of Indian water rights settlements and related negotiations that affect this state.

(h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Sec. 78. Section 49-410, Arizona Revised Statutes, is amended to read:

49-410. Arizona emissions bank; program termination

A. The department of environmental quality shall establish and administer an Arizona emissions bank. The department shall make information on credits deposited in the Arizona emissions bank easily accessible to the ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY and TO the public.

B. After the effective date of rules adopted pursuant to subsection D of this section, a permitted source that reduces emissions of particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, or volatile organic compounds by an amount greater than that required by applicable law, rule, permit or order shall be granted credit in an amount to be determined by the department of environmental quality. The credit shall be deposited into the Arizona emissions bank. To be creditable for deposit in the Arizona emissions bank, the reduction in emissions shall be permanent, quantifiable and otherwise enforceable and shall occur after August 6, 1999. This section does not prohibit a source from receiving credit by means other than the Arizona emissions bank for emissions reductions that occurred before August 6, 1999.

C. The department of environmental quality shall register, certify or otherwise approve the amount of the credit before the credit is banked and used to offset future increases in the emissions of air pollutants. The credit may be used, traded, sold or otherwise expended within the same nonattainment area, maintenance area or modeling domain in which the emissions reduction occurred, only if there will be no adverse impact on air quality. Pursuant to title 41, chapter 6, article 8, the department may delegate certification of emissions credits to a county or multi-county air quality control region, but shall retain authority to register credits and administer the Arizona emissions bank.

D. On or before January 1, 2002, the department of environmental quality shall adopt rules for the implementation and administration of the Arizona emissions bank, and establish the criteria the department will use to determine the amount of the emissions credit. The department shall establish by rule a fee system to administer the Arizona emissions bank. A county that has been delegated authority to certify emissions credits pursuant to subsection C of this section shall establish a fee system to cover the reasonable costs of certification in accordance with section 49-112, subsection B. In setting the fee, the director and a county shall consider the likely economic value of the credits and shall set a fee that does not discourage the banking of emissions credit.

E. The program established by this section ends on July 1, 2019.

Sec. 79. Section 49-837, Arizona Revised Statutes, is amended to read:

49-837. Recycling fund; use; advisory committee

A. A recycling fund is established to be administered by the director. The fund consists of monies appropriated by the legislature, gifts, grants, donations and monies derived from the landfill disposal fees in section 49-836. Monies derived from landfill disposal fees are subject to legislative appropriation. Monies in the fund are exempt from lapsing under section 35-190. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

B. Monies from the recycling fund shall be used for the following purposes:

1. Grants to or contracts with political subdivisions, nonprofit organizations or private enterprise for research, demonstration projects, market development and source reduction studies and implementation of the recommendations or reports prepared pursuant to this article.

2. Public information, public education and technical assistance programs concerning litter control, recycling and source reduction.

3. The collection and administration of monies in the fund.

4. The administration of this article.

5. The administration of the ~~department of commerce~~ ARIZONA COMMERCE AUTHORITY'S recycled market development program. At the end of each fiscal year, any funds not ~~expended by the department of commerce~~ SPENT BY THE AUTHORITY for this purpose shall be returned to the fund.

6. The department's solid waste control program activities prescribed in this chapter and in title 44.

C. In making expenditures pursuant to subsection B, paragraph 2 of this section, the director shall ensure that counties having a population of less than five hundred thousand persons according to the most recent United States decennial census receive benefits in proportion to their contributions to the fund.

D. The director shall appoint an advisory committee to advise the director on the use of monies in the recycling fund. The advisory committee shall consist of two representatives from private solid waste collection businesses, two representatives from private solid waste recycling businesses, four representatives from political subdivisions which have implemented recycling and source reduction programs, at least one of whom resides in a county having a population of fewer than five hundred thousand persons, and one representative of the general public. The members of the committee serve at the pleasure of the director and are not eligible to receive compensation, and the committee is an advisory committee for purposes of title 38, chapter 3, article 3.1.

Sec. 80. Section 49-1202, Arizona Revised Statutes, is amended to read:

49-1202. Water infrastructure finance authority of Arizona; board; water supply development fund committee; violation; classification

A. The water infrastructure finance authority of Arizona is established. A board of directors shall govern the authority. The board of directors consists of:

1. The director of environmental quality, or the director's representative, who serves as chairman.

~~2. The director of the department of commerce or the director's representative.~~

2. THE CHIEF EXECUTIVE OFFICER OF THE ARIZONA COMMERCE AUTHORITY OR THE CHIEF EXECUTIVE OFFICER'S REPRESENTATIVE.

3. The state treasurer or the treasurer's representative.

4. One member who is appointed by the governor to represent municipalities with populations of fifty thousand persons or more.

5. One member who is appointed by the governor to represent municipalities with populations of less than fifty thousand persons from a county with a population of less than five hundred thousand persons.

6. One member who is appointed by the governor to represent counties with populations of five hundred thousand persons or more.

7. One member who is appointed by the governor to represent sanitary districts in counties with populations of less than five hundred thousand persons.

8. The director of water resources or the director's representative.

9. The chairman of the Arizona corporation commission or the chairman's representative.

10. One member who is appointed by the governor from a public water system that serves five hundred persons or more.

11. One member who is appointed by the governor from a public water system that serves fewer than five hundred persons.

12. One member who is appointed by the governor to represent Indian tribes.

B. The water supply development fund committee of the authority is established. The committee consists of:

1. The director of water resources, or the director's representative, who serves as chairperson of the committee.

2. The director of environmental quality, or the director's representative, who serves as vice-chairperson of the committee.

3. The chairman of the corporation commission or the chairman's representative.

4. The state treasurer or the treasurer's representative.

5. One member who is appointed by the governor to represent municipalities with populations of fifty thousand persons or more but less than one hundred thousand persons.

6. One member who is appointed by the governor to represent municipalities with populations of less than fifty thousand persons from a county with a population of less than five hundred thousand persons.

7. One member who is appointed by the governor to represent counties with populations of less than eight hundred thousand persons.

8. One member who is appointed by the governor to represent counties with populations of eight hundred thousand persons or more but less than one million five hundred thousand persons.

9. One member who is appointed by the governor to represent counties with populations of one million five hundred thousand persons or more.

10. One member who is appointed by the governor to represent cities with populations of more than one hundred thousand persons in counties with populations of more than one million persons.

11. One member who is appointed by the governor from a public service corporation that serves one thousand eight hundred fifty persons or more.

12. One member who is appointed by the governor from a public water system that serves fewer than one thousand eight hundred fifty persons.

13. One member who is appointed by the governor to represent Indian tribes.

C. Members of the board and the committee who are appointed by the governor serve at the governor's pleasure and serve staggered five year terms. Members of the board and the committee are not eligible to receive compensation for their services but are eligible for reimbursement for travel and other expenses pursuant to title 38, chapter 4, article 2. Members of the board and the committee are public officers for purposes of title 38, and the authority and the committee are public bodies for purposes of title 38, chapter 3, article 3.1.

D. Members of the board shall not have any direct or indirect personal financial interest in any clean water or drinking water project financed under this article. Members of the committee shall not have any direct or indirect personal financial interest in any water supply development project financed under this article. For the purposes of this subsection, a member of the board or the committee who is a full-time employee of a participant in or applicant for a loan does not have a direct or indirect personal financial interest in a project. A violation of this subsection is a class 1 misdemeanor.

E. The department of environmental quality shall provide clerical support and office and meeting space to the board.

F. The department of water resources shall provide technical assistance to the committee as requested by the committee.

Sec. 81. Effect on preexisting tax benefits

A. The act does not affect the validity of tax benefits granted under prior law that is repealed by this act.

B. Any certification or other approval issued under prior law by the department of commerce before the expiration of any tax incentive qualifies the taxpayer, who is otherwise eligible, for the intended tax benefits. No provision of the act may be interpreted to terminate tax incentives that were not claimed by qualified taxpayers before the effective date of this act.

C. Taxpayers who qualified for tax credits under sections 43-1075, 43-1075.01, 43-1077, 43-1078, 43-1080, 43-1163, 43-1163.01, 43-1165, 43-1166 and 43-1169, Arizona Revised Statutes, in effect before the effective date of this act, may use any applicable amounts of those credits, including allowed carryovers, against income tax liabilities for subsequent taxable years as provided by law in effect before the effective date of this act.

Sec. 82. Requirements for enactment; three-fourths vote

Pursuant to article IV, part 1, section 1, Constitution of Arizona, sections 5-601.02 and 41-1505.12, Arizona Revised Statutes, as amended by this act, are effective only on the affirmative vote of at least three-fourths of the members of each house of the legislature.