

REFERENCE TITLE: geologists; landscape architects; regulatory repeal

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2410

Introduced by
Representative Mosley

AN ACT

AMENDING SECTIONS 28-411, 28-7361, 32-101, 32-102 AND 32-103, ARIZONA REVISED STATUTES; AMENDING SECTION 32-122, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2016, CHAPTER 352, SECTION 9 AND CHAPTER 371, SECTION 11; REPEALING SECTION 32-122, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2016, CHAPTER 167, SECTION 5; AMENDING SECTIONS 32-122.01, 32-142, 32-143, 34-101, 41-2503, 41-2571, 42-5075, 45-454, 45-596 AND 49-1052, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF TECHNICAL REGISTRATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-411, Arizona Revised Statutes, is amended to
3 read:

4 28-411. Prompt payment; progress payment; consultants and
5 contractors; subconsultants and subcontractors;
6 design professionals

7 A. The department shall make progress payments pursuant to the
8 terms of an agreement with a consultant or contractor on the basis of an
9 invoice for work already performed. All progress payments shall be paid
10 on or before the twenty-first day after the date the department receives
11 the invoice unless the department does not approve and certify the invoice
12 pursuant to subsection B of this section.

13 B. Any invoice from a consultant or contractor for progress
14 payments shall be deemed approved and certified by the department unless
15 within seven days from the date the department receives the invoice the
16 department sends the consultant or contractor written notice by first
17 class mail or by electronic means of those items that the department does
18 not approve and certify under the terms of the agreement.

19 C. On or before the seventh day after the date the department makes
20 a progress payment, if the consultant or contractor contracted with
21 subconsultants or subcontractors to perform the work for which the
22 department made the progress payment, the consultant or contractor shall
23 pay the subconsultants or subcontractors for the work performed to the
24 extent of each subconsultant's or subcontractor's contractual interest in
25 the progress payment. If any subconsultant or subcontractor contests the
26 amount paid by a consultant or contractor from a progress payment made
27 under subsection A of this section, the subconsultant or subcontractor
28 shall notify the department in writing within thirty days after receiving
29 the payment from the consultant or contractor. This subsection does not
30 apply if the contract between the consultant or contractor and the
31 subconsultant or subcontractor expressly provides that the prompt payment
32 provisions of this subsection do not apply to the agreement between the
33 consultant or contractor and the subconsultant or subcontractor.

34 D. If a consultant or contractor fails to pay a subconsultant or
35 subcontractor within seven days of receiving a progress payment from the
36 department, the consultant or contractor shall pay the subconsultant or
37 subcontractor interest on the unpaid balance, beginning on the eighth day
38 at the rate of one percent per month or fraction of a month. This
39 subsection does not apply if the contract between the consultant or
40 contractor and the subconsultant or subcontractor expressly provides that
41 the prompt payment provisions of this subsection do not apply to the
42 agreement between the consultant or contractor and the subconsultant or
43 subcontractor.

44 E. A subconsultant or subcontractor may submit a written request to
45 the department asking the department to notify the subconsultant or

1 subcontractor of each subsequent progress payment made to the consultant
2 or contractor. If the department receives a written request under this
3 subsection, the department shall send the requesting party a written
4 notice by first class mail of each subsequent progress payment within five
5 days of making the progress payment.

6 F. Agreements with the department for consultant or contractor
7 services do not alter the rights of any consultant or contractor to
8 receive prompt and timely payment as provided under this section.

9 G. Subject to the requirements of this section, the department
10 shall pay the agreed or reasonable value of all labor, materials, work or
11 services furnished, installed or performed by a design professional
12 pursuant to a limited notice to proceed from the department's authorized
13 agent before the execution of a contract or contract modification
14 applicable to the labor, materials, work or services. The unit prices,
15 contract sum, hourly rates or other cost or pricing formula of the
16 contract or contract modification applicable to the labor, materials, work
17 or services is the fair and reasonable cost for purposes of this section
18 unless the department and its design professional otherwise agree in
19 writing. If the parties fail to successfully negotiate and sign a
20 contract or contract modification, the design professional shall be paid
21 for costs incurred pursuant to the limited notice to proceed and subject
22 to the department's cost allowability guidelines. For the purposes of
23 this subsection, "design professional" means A GEOLOGIST OR LANDSCAPE
24 ARCHITECT OR an individual or firm registered pursuant to title 32,
25 chapter 1, article 1, to practice architecture, engineering, ~~geology,~~
26 ~~landscape architecture~~ or land surveying or any combination of those
27 professions and persons employed by the registered individual or firm.

28 H. To the extent that this section conflicts with section 28-6924,
29 section 28-6924 controls any agreement between the department and a
30 contractor for highway construction projects.

31 Sec. 2. Section 28-7361, Arizona Revised Statutes, is amended to
32 read:

33 28-7361. Definitions

34 In this article, unless the context otherwise requires:

35 1. "Architect services" means those professional architect services
36 that are within the scope of architectural practice as provided in title
37 32, chapter 1.

38 2. "Construction-manager-at-risk" means a project delivery method
39 in which:

40 (a) There is a contract for construction services that is separate
41 from the contract for design services, except that instead of a single
42 contract for construction services, the department may elect separate
43 contracts for preconstruction services during the design phase, for
44 construction during the construction phase and for any other construction
45 services.

1 (b) Design services are performed under a separate design services
2 contract, except that as to bridges and other transportation facilities
3 the department may perform with its own employees or force account
4 preliminary design and either:

5 (i) In the case of bridges only, all design services up to final
6 design.

7 (ii) In the case of other transportation facilities, up to twenty
8 per cent of the design work.

9 (c) The contract for construction services may be entered into at
10 the same time as the design services are commenced or at a later time.

11 (d) Design and construction of the project may be either:

12 (i) Sequential with the entire design complete before construction
13 commences.

14 (ii) Concurrent with the design produced in two or more phases and
15 construction of some phases commencing before the entire design is
16 complete.

17 (e) Finance services, maintenance services, operations services,
18 preconstruction services and other related services may be included.

19 3. "Construction services" means either of the following for
20 construction-manager-at-risk and job-order-contracting project delivery
21 methods:

22 (a) Construction, excluding services, through the
23 construction-manager-at-risk or job-order-contracting project delivery
24 methods.

25 (b) A combination of construction and, as elected by the
26 department, one or more related services, such as finance services,
27 maintenance services, operations services, design services and
28 preconstruction services, as those services are authorized in the
29 definition of construction-manager-at-risk or job-order-contracting.

30 4. "Contract" means all types of department agreements, regardless
31 of what they are called, for procurements pursuant to this article.

32 5. "Contractor" means any person who has a contract with the
33 department.

34 6. "Design-build" means the process of entering into and managing a
35 contract between the department and another party in which the other party
36 agrees to both design and build a highway, a structure, a facility or
37 other items specified in the contract.

38 7. "Design-builder" means any individual, partnership, joint
39 venture, corporation or other legal entity that is appropriately licensed
40 in this state and that furnishes the necessary design services, in
41 addition to construction of the work, whether by itself or through
42 subcontracts, including subcontracts for architectural and engineering
43 services.

44 8. "Design services" means architect services, engineer services or
45 landscape architect services.

1 9. "Emergency" means an immediate threat to public health, welfare
2 or safety caused by flood, earthquake, hurricane, tornado, explosion, fire
3 or other catastrophe such that compliance with normal bidding procedures
4 for repair or reconstruction of transportation facilities would be
5 impracticable or contrary to the public interest.

6 10. "Engineer services" means those professional engineer services
7 that are within the scope of engineering practice as provided in title 32,
8 chapter 1.

9 11. "Finance services" means financing for a construction services
10 project.

11 12. "Job-order-contracting" means a project delivery method in
12 which:

13 (a) The contract is for indefinite quantities of construction and,
14 at the election of the department, may or may not include a guaranteed
15 minimum amount of work.

16 (b) The construction to be performed is specified in job orders
17 issued during the contract.

18 (c) Finance services, maintenance services, operations services,
19 preconstruction services, design services and other related services may
20 be included.

21 ~~13. "Landscape architect services" means those professional~~
22 ~~landscape architect services that are within the scope of landscape~~
23 ~~architectural practice as provided in title 32, chapter 1.~~

24 ~~14.~~ 13. "Maintenance services" means routine maintenance, repair
25 and replacement of existing facilities, structures, buildings or real
26 property.

27 ~~15.~~ 14. "Operations services" means routine operation of existing
28 facilities, structures, buildings or real property.

29 ~~16.~~ 15. "Person" means any corporation, business, individual, union,
30 committee, club, other organization or group of individuals.

31 ~~17.~~ 16. "Preconstruction services" means services and other
32 activities during the design phase.

33 ~~18.~~ 17. "Specific single project" means a project that is
34 constructed at a single location, at a common location or for a common
35 purpose.

36 ~~19.~~ 18. "Subcontractor" means a person who contracts to perform work
37 or render service to a contractor or to another subcontractor as a part of
38 a contract with the department.

39 Sec. 3. Heading change

40 The chapter heading of title 32, chapter 1, Arizona Revised
41 Statutes, is changed from "ARCHITECTS, ENGINEERS, GEOLOGISTS, HOME
42 INSPECTORS, LANDSCAPE ARCHITECTS AND SURVEYORS" to "ARCHITECTS, ENGINEERS,
43 HOME INSPECTORS AND SURVEYORS".

1 Sec. 4. Section 32-101, Arizona Revised Statutes, is amended to
2 read:

3 32-101. Purpose; definitions

4 A. The purpose of this chapter is to provide for the safety, health
5 and welfare of the public through the promulgation and enforcement of
6 standards of qualification for those individuals who are registered or
7 certified and seeking registration or certification pursuant to this
8 chapter.

9 B. In this chapter, unless the context otherwise requires:

10 1. "Advertising" includes business cards, signs or letterhead
11 provided by a person to the public.

12 2. "Alarm" or "alarm system":

13 (a) Means any mechanical or electrical device that is designed to
14 emit an audible alarm or transmit a signal or message if activated and
15 that is used to detect an unauthorized entry into a building or other
16 facility or alert other persons of the occurrence of a medical emergency
17 or the commission of an unlawful act against a person or in a building or
18 other facility.

19 (b) Includes a silent, panic, holdup, robbery, duress, burglary,
20 medical alert or proprietor alarm that requires emergency personnel to
21 respond.

22 (c) Does not include a telephone call diverter or a system that is
23 designed to report environmental and other occurrences and that is not
24 designed or used to alert or cause other persons to alert public safety
25 personnel.

26 3. "Alarm agent":

27 (a) Means a person, whether an employee, an independent contractor
28 or otherwise, who acts on behalf of an alarm business and who tests,
29 maintains, services, repairs, sells, rents, leases or installs alarm
30 systems.

31 (b) Does not include any action by a person that:

32 (i) Is performed in connection with an alarm system located on the
33 person's own property or the property of the person's employer.

34 (ii) Is acting on behalf of an alarm business whose work duties do
35 not include visiting the location where an alarm system installation
36 occurs.

37 4. "Alarm business":

38 (a) Means any person who, either alone or through a third party,
39 engages in the business of either of the following:

40 (i) Providing alarm monitoring services.

41 (ii) Selling, leasing, renting, maintaining, repairing or
42 installing a nonproprietor alarm system or service.

43 (b) Does not include any of the following:

44 (i) A person or company that purchases, rents or uses an alarm that
45 is affixed to a motor vehicle.

- 1 (ii) A person who owns or conducts a business of selling, leasing,
2 renting, installing, maintaining or monitoring an alarm that is affixed to
3 a motor vehicle.
- 4 (iii) A person who installs a nonmonitored proprietor alarm for a
5 business that the person owns, is employed by or manages.
- 6 (iv) The installation or monitoring of fire alarm systems.
- 7 (v) An alarm system that is operated by a city or town.
- 8 5. "Alarm subscriber" means any person who:
- 9 (a) Leases, rents or purchases any monitored alarm system or
10 service from an alarm business.
- 11 (b) Leases or rents an alarm system.
- 12 (c) Contracts with an alarm business for alarm monitoring,
13 installation, repair or maintenance services.
- 14 6. "Architect" means a person who, by reason of knowledge of the
15 mathematical and physical sciences and the principles of architecture and
16 architectural engineering acquired by professional education and practical
17 experience, is qualified to engage in the practice of architecture and is
18 registered as an architect pursuant to this chapter.
- 19 7. "Architectural practice" means any professional service or
20 creative work requiring architectural education, training and experience,
21 and the application of the mathematical and physical sciences and the
22 principles of architecture and architectural engineering to such
23 professional services or creative work as consultation, evaluation, design
24 and review of construction for conformance with contract documents and
25 design, in connection with any building, planning or site development. A
26 person shall be deemed to practice or offer to practice architecture who
27 in any manner represents that the person is an architect or is able to
28 perform any architectural service or other services recognized by
29 educational authorities as architecture.
- 30 8. "Board" means the state board of technical registration.
- 31 9. "Controlling person":
- 32 (a) Means a person who is designated by an alarm business.
- 33 (b) Does not include an alarm agent.
- 34 10. "Engineer" means a person who, by reason of special knowledge
35 of the mathematical and physical sciences and the principles and methods
36 of engineering analysis and design acquired by professional education and
37 practical experience, is qualified to practice engineering and is
38 registered as a professional engineer pursuant to this chapter.
- 39 11. "Engineering practice" means any professional service or
40 creative work requiring engineering education, training and experience and
41 the application of special knowledge of the mathematical, physical and
42 engineering sciences to such professional services or creative work as
43 consultation, research investigation, evaluation, planning, surveying as
44 defined in paragraph ~~20~~ 17, subdivisions (d) and (e) of this subsection,
45 design, location, development, and review of construction for conformance

1 with contract documents and design, in connection with any public or
 2 private utility, structure, building, machine, equipment, process, work or
 3 project. Such services and work include plans and designs relating to the
 4 location, development, mining and treatment of ore and other minerals. A
 5 person shall be deemed to be practicing or offering to practice
 6 engineering if the person practices any branch of the profession of
 7 engineering, or by verbal claim, sign, advertisement, letterhead, card or
 8 any other manner represents that the person is a professional engineer or
 9 is able to perform or does perform any engineering service or other
 10 service recognized by educational authorities as engineering. A person
 11 employed on a full-time basis as an engineer by an employer engaged in the
 12 business of developing, mining and treating ores and other minerals shall
 13 not be deemed to be practicing engineering for the purposes of this
 14 chapter if the person engages in the practice of engineering exclusively
 15 for and as an employee of such employer and does not represent that the
 16 person is available and is not represented as being available to perform
 17 any engineering services for persons other than the person's employer.

18 12. "Engineer-in-training" means a candidate for registration as a
 19 professional engineer who is a graduate in an approved engineering
 20 curriculum of four years or more of a school approved by the board or who
 21 has four years or more of education or experience, or both, in engineering
 22 work that meets standards specified by the board in its rules. In
 23 addition, the candidate shall have passed the engineer-in-training
 24 examination.

25 13. "Firm" means any individual or partnership, corporation or
 26 other type of association, including the association of a nonregistrant
 27 and a registrant who offers to the public professional services regulated
 28 by the board.

29 ~~14. "Geological practice" means any professional service or work~~
 30 ~~requiring geological education, training and experience, and the~~
 31 ~~application of special knowledge of the earth sciences to such~~
 32 ~~professional services as consultation, evaluation of mining properties,~~
 33 ~~petroleum properties and groundwater resources, professional supervision~~
 34 ~~of exploration for mineral natural resources including metallic and~~
 35 ~~nonmetallic ores, petroleum and groundwater, and the geological phases of~~
 36 ~~engineering investigations.~~

37 ~~15. "Geologist" means a person, not of necessity an engineer, who~~
 38 ~~by reason of special knowledge of the earth sciences and the principles~~
 39 ~~and methods of search for and appraisal of mineral or other natural~~
 40 ~~resources acquired by professional education and practical experience is~~
 41 ~~qualified to practice geology as attested by registration as a~~
 42 ~~professional geologist. A person employed on a full-time basis as a~~
 43 ~~geologist by an employer engaged in the business of developing, mining or~~
 44 ~~treating ores and other minerals shall not be deemed to be engaged in~~
 45 ~~geological practice for the purposes of this chapter if the person engages~~

1 ~~in geological practice exclusively for and as an employee of such employer~~
2 ~~and does not represent that the person is available and is not represented~~
3 ~~as being available to perform any geological services for persons other~~
4 ~~than the person's employer.~~

5 ~~16. "Geologist-in-training" means a candidate for registration as a~~
6 ~~professional geologist who is a graduate of a school approved by the board~~
7 ~~or who has four years or more of education or experience, or both, in~~
8 ~~geological work that meets standards specified by the board in its~~
9 ~~rules. In addition, the candidate shall have passed the~~
10 ~~geologist-in-training examination.~~

11 17. 14. "Home inspection" means a visual analysis for the purposes
12 of providing a professional opinion of the building, any reasonably
13 accessible installed components and the operation of the building's
14 systems, including the controls normally operated by the owner, for the
15 following components of a residential building of four units or less:

- 16 (a) Heating system.
- 17 (b) Cooling system.
- 18 (c) Plumbing system.
- 19 (d) Electrical system.
- 20 (e) Structural components.
- 21 (f) Foundation.
- 22 (g) Roof covering.
- 23 (h) Exterior and interior components.
- 24 (i) Site aspects as they affect the building.
- 25 (j) Pursuant to rules adopted by the board, swimming pool and spa.

26 ~~18.~~ 15. "Home inspection report" means a written report that is
27 prepared for compensation, that is issued after a home inspection and that
28 clearly describes and identifies the inspected systems, structures and
29 components of a completed dwelling and any visible major defects found to
30 be in need of immediate major repair and any recommendations for
31 additional evaluation by appropriate persons.

32 ~~19.~~ 16. "Home inspector" means an individual who is certified
33 pursuant to this chapter as a home inspector and who engages in the
34 business of performing home inspections and writing home inspection
35 reports.

36 ~~20.~~ 17. "Land surveying practice" means the performance of one or
37 more of the following professional services:

- 38 (a) Measurement of land to determine the position of any monument
39 or reference point that marks a property line, boundary or corner for the
40 purpose of determining the area or description of the land.
- 41 (b) Location, relocation, establishment, reestablishment, setting,
42 resetting or replacing of corner monuments or reference points which
43 identify land boundaries, rights-of-way or easements.
- 44 (c) Platting or plotting of lands for the purpose of subdividing.

1 (d) Measurement by angles, distances and elevations of natural or
2 artificial features in the air, on the surface and immediate subsurface of
3 the earth, within underground workings and on the surface or within bodies
4 of water for the purpose of determining or establishing their location,
5 size, shape, topography, grades, contours or water surface and depths, and
6 the preparation and perpetuation of field note records and maps depicting
7 these features.

8 (e) Setting, resetting or replacing of points to guide the location
9 of new construction.

10 ~~21.~~ 18. "Land surveyor" means a person who by reason of knowledge
11 of the mathematical and physical sciences, principles of land surveying
12 and evidence gathering acquired by professional education or practical
13 experience, or both, is qualified to practice land surveying as attested
14 by registration as a land surveyor. A person employed on a full-time
15 basis as a land surveyor by an employer engaged in the business of
16 developing, mining or treating ores or other minerals shall not be deemed
17 to be engaged in land surveying practice for purposes of this chapter if
18 the person engages in land surveying practice exclusively for and as an
19 employee of such employer and does not represent that the person is
20 available and is not represented as being available to perform any land
21 surveying services for persons other than the person's employer.

22 ~~22.~~ 19. "Land surveyor-in-training" means a candidate for
23 registration as a professional land surveyor who is a graduate of a school
24 and curriculum approved by the board or who has four years or more of
25 education or experience, or both, in land surveying work that meets
26 standards specified by the board in its rules. In addition, the candidate
27 shall have passed the land surveyor-in-training examination.

28 ~~23. "Landscape architect" means a person who, by reason of~~
29 ~~professional education or practical experience, or both, is qualified to~~
30 ~~engage in the practice of landscape architecture as attested by~~
31 ~~registration as a landscape architect.~~

32 ~~24. "Landscape architectural practice" means the performance of~~
33 ~~professional services such as consultations, investigation,~~
34 ~~reconnaissance, research, planning, design or responsible supervision in~~
35 ~~connection with the development of land and incidental water areas where,~~
36 ~~and to the extent that, the dominant purpose of such services is the~~
37 ~~preservation, enhancement or determination of proper land uses, natural~~
38 ~~land features, ground cover and planting, naturalistic and aesthetic~~
39 ~~values, the settings of and approaches to buildings, structures,~~
40 ~~facilities or other improvements, natural drainage and the consideration~~
41 ~~and the determination of inherent problems of the land relating to~~
42 ~~erosion, wear and tear, light or other hazards. This practice shall~~
43 ~~include the location and arrangement of such tangible objects and features~~
44 ~~as are incidental and necessary to the purposes outlined in this paragraph~~
45 ~~but shall not include the making of cadastral surveys or final land plats~~

1 ~~for official recording or approval, nor mandatorily include planning for~~
2 ~~governmental subdivisions.~~

3 ~~25.~~ 20. "Monitored alarm" means a device that is designed for the
4 detection of an entry on any premises and that if activated generates a
5 notification signal.

6 ~~26.~~ 21. "Person" means any individual, firm, partnership,
7 corporation, association or other organization.

8 ~~27.~~ 22. "Principal" means an individual who is an officer of the
9 corporation or is designated by a firm as having full authority and
10 responsible charge of the services offered by the firm.

11 ~~28.~~ 23. "Proprietor alarm" means any alarm or alarm system that is
12 owned by an alarm subscriber who has not contracted with an alarm
13 business.

14 ~~29.~~ 24. "Registrant" means a person registered or certified by the
15 board.

16 ~~30.~~ 25. "Registration" means a registration or certification
17 issued by the board.

18 Sec. 5. Section 32-102, Arizona Revised Statutes, is amended to
19 read:

20 32-102. State board of technical registration; vacancies;
21 terms

22 A. The state board of technical registration is established
23 consisting of members who are appointed by the governor as follows:

24 1. Two architects.

25 2. Three professional engineers, one of whom is a civil engineer
26 and two of whom are representatives of branches of engineering other than
27 civil engineering and are registered in those branches pursuant to this
28 chapter.

29 3. One public member.

30 ~~4. One landscape architect.~~

31 ~~5. One geologist.~~

32 ~~6.~~ 4. One land surveyor.

33 B. On the expiration of any of the terms, a successor who is
34 qualified pursuant to subsection A of this section shall be appointed for
35 a full term of three years. The governor may remove a member of the board
36 for misconduct, incapacity or neglect of duty. Appointment to fill a
37 vacancy caused other than by expiration of term shall be for the unexpired
38 portion of the term.

39 C. No member may serve more than two consecutive terms.

40 Sec. 6. Section 32-103, Arizona Revised Statutes, is amended to
41 read:

42 32-103. Qualifications of members

43 A. Each professional member of the board shall:

44 1. Be at least twenty-five years of age.

1 2. Have been a resident of this state for at least three years
2 immediately preceding appointment as a member.

3 B. Each member who is an architect, ~~a geologist, a landscape~~
4 ~~architect,~~ a professional engineer or a land surveyor shall have at least
5 five years' active professional experience as attested by registration
6 under this chapter.

7 Sec. 7. Section 32-122, Arizona Revised Statutes, as amended by
8 Laws 2016, chapter 352, section 9 and chapter 371, section 11, is amended
9 to read:

10 32-122. Qualifications for in-training registration

11 A. An applicant for in-training registration as an architect, ~~OR~~
12 ~~engineer, geologist or landscape architect~~ shall:

13 1. Be of good moral character and repute.

14 2. Be a graduate of a school approved by the board or have four
15 years or more, or if an applicant for in-training registration as an
16 architect, five years or more, of education or experience, or both, in
17 work in the profession in which registration is sought that meets
18 standards specified by the board in its rules.

19 3. Unless exempt under section 32-126, subsection D, pass the
20 in-training examination in the profession in which registration is sought.

21 B. An applicant for in-training registration as a land surveyor
22 shall:

23 1. Be a graduate of a school and curriculum approved by the board,
24 or have four years or more of education or experience, or both, in work in
25 the profession in which registration is sought that meets standards
26 specified by the board in its rules.

27 2. Unless exempt under section 32-126, subsection D, pass the
28 in-training examination in the profession in which registration is sought.

29 C. An applicant for in-training registration as a home
30 inspector-in-training shall meet the requirements of section 32-122.02,
31 subsection A, paragraphs 1 through 7.

32 Sec. 8. Repeal

33 Section 32-122, Arizona Revised Statutes, as amended by Laws 2016,
34 chapter 167, section 5, is repealed.

35 Sec. 9. Section 32-122.01, Arizona Revised Statutes, is amended to
36 read:

37 32-122.01. Qualifications for professional registration

38 A. An applicant for professional registration as an architect, ~~OR~~
39 ~~engineer, geologist or landscape architect~~ shall:

40 1. Be of good moral character and repute.

41 2. Be actively engaged in education or experience, or both, in the
42 profession for which registration is sought for at least eight years.

43 3. Unless exempt under section 32-126, pass the applicable
44 in-training and professional examinations in the profession in which
45 registration is sought.

1 B. An applicant for professional registration as a land surveyor
2 shall:

- 3 1. Be of good moral character and repute.
4 2. Be actively engaged in education or experience, or both, in the
5 profession for which registration is sought for at least six years.
6 3. Unless exempt under section 32-126, pass the in-training and
7 professional examinations in the profession in which registration is
8 sought.

9 C. In computing the period of active engagement required under this
10 section:

11 1. Each year of study that is satisfactorily completed in an
12 architectural, ~~OR engineering, geological or landscape architectural~~
13 school approved by the board is equivalent to one year of active
14 engagement up to a maximum of five years. One year or more of teaching
15 architectural, ~~OR engineering, geological or landscape architectural~~
16 subjects in a school approved by the board is equivalent to one year of
17 active engagement.

18 2. Each year of study satisfactorily completed in a land surveying
19 curriculum and school approved by the board is considered equivalent to
20 one year of active engagement up to a maximum of four years. One year or
21 more of teaching land surveying or other courses approved by the board as
22 pertinent to the profession in which registration is sought in a school
23 approved by the board is equivalent to one year of active engagement.

24 D. Except as provided in subsection E of this section, experience
25 credited by the board under this section and sections 32-101, 32-122 and
26 32-126 must be attained under the direct supervision of a professional who
27 is satisfactory to the board and registered in this state, another state
28 or a foreign country in the profession in which the applicant is seeking
29 registration, except that up to one year's experience may be attained
30 under the direct supervision of a professional who is satisfactory to the
31 board and registered in another profession regulated under this chapter in
32 this state, another state or a foreign country.

33 E. By a two-thirds majority vote, the board may allow an applicant
34 except for an architect applicant to meet the requirements of subsection D
35 of this section by crediting comparable experience satisfactory to the
36 board that the applicant attained without direct supervision of a
37 registered professional.

38 Sec. 10. Section 32-142, Arizona Revised Statutes, is amended to
39 read:

40 32-142. Public works

41 A. Drawings, plans, specifications, estimates and construction
42 observation for public works of this state or a political subdivision of
43 this state involving architecture, engineering, ~~geology, landscape~~
44 ~~architecture~~ or land surveying shall be prepared by or under the direct
45 supervision of a registrant within the category involved.

1 B. Surveys or maps required in connection with public land
2 surveying shall be made by or under the personal direction of a qualified
3 registrant.

4 C. Drawings, plans, design specifications and construction
5 observation of public works facilities of the state or a political
6 subdivision of this state for the use or storage of hazardous materials
7 shall be made by or under the direct supervision of a qualified registrant
8 in the appropriate field.

9 Sec. 11. Section 32-143, Arizona Revised Statutes, is amended to
10 read:

11 32-143. Exceptions

12 An architect, ~~geologist,~~ OR engineer ~~or landscape architect~~
13 registered under this chapter may engage in practice in another category
14 regulated pursuant to this chapter only to the extent that the person is
15 qualified and to the extent that the work may be necessary and incidental
16 to the work of the registrant's profession on a specific project. This
17 exception does not apply to public works projects.

18 Sec. 12. Section 34-101, Arizona Revised Statutes, is amended to
19 read:

20 34-101. Definitions

21 In this title, unless the context otherwise requires:

22 1. "Agent":

23 (a) Means any county, city or town, or officer, board or commission
24 of any county, city or town, and irrigation, power, electrical, drainage,
25 flood protection and flood control districts, tax levying public
26 improvement districts and county or city improvement districts.

27 (b) Includes any county board of supervisors and any representative
28 authorized by an agent to act as an agent for the purpose of authorizing
29 necessary change orders to previously awarded contracts in accordance with
30 guidelines established by rule of the agent, including the board of
31 supervisors.

32 2. "Architect services" means those professional architect services
33 that are within the scope of architectural practice as provided in title
34 32, chapter 1.

35 3. "Construction":

36 (a) Means the process of building, altering, repairing, improving
37 or demolishing any public structure or building or other public
38 improvements of any kind to any public real property.

39 (b) Does not include the routine operation, routine repair or
40 routine maintenance of existing facilities, structures, buildings or real
41 property.

42 4. "Construction-manager-at-risk" means a project delivery method
43 in which:

44 (a) There is a separate contract for design services and a separate
45 contract for construction services, except that instead of a single

1 contract for construction services, the agent may elect separate contracts
2 for preconstruction services during the design phase, for construction
3 during the construction phase and for any other construction services.

4 (b) The contract for construction services may be entered into at
5 the same time as the contract for design services or at a later time.

6 (c) Design and construction of the project may be either:

7 (i) Sequential with the entire design complete before construction
8 commences.

9 (ii) Concurrent with the design produced in two or more phases and
10 construction of some phases commencing before the entire design is
11 complete.

12 (d) Finance services, maintenance services, operations services,
13 preconstruction services and other related services may be included.

14 5. "Construction services" means either of the following for
15 construction-manager-at-risk, design-build and job-order-contracting
16 project delivery methods:

17 (a) Construction, excluding services, through the
18 construction-manager-at-risk or job-order-contracting project delivery
19 methods.

20 (b) A combination of construction and, as elected by the agent, one
21 or more related services, such as finance services, maintenance services,
22 operations services, design services and preconstruction services, as
23 those services are authorized in the definitions of
24 construction-manager-at-risk, design-build or job-order-contracting in
25 this section.

26 6. "Contract" means all types of agent agreements, regardless of
27 what they are called, for the procurement of services pursuant to this
28 title.

29 7. "Contractor" means any person who has a contract with an agent.

30 8. "Design-bid-build" means a project delivery method in which:

31 (a) There is a sequential award of two separate contracts.

32 (b) The first contract is for design services.

33 (c) The second contract is for construction.

34 (d) Design and construction of the project are in sequential
35 phases.

36 (e) Finance services, maintenance services and operations services
37 are not included.

38 9. "Design-build" means a project delivery method in which:

39 (a) There is a single contract for design services and construction
40 services, except that instead of a single contract for design services and
41 construction services, the agent may elect separate contracts for
42 preconstruction services and design services during the design phase, for
43 construction and design services during the construction phase and for any
44 other construction services.

- 1 (b) Design and construction of the project may be either:
2 (i) Sequential with the entire design complete before construction
3 commences.
4 (ii) Concurrent with the design produced in two or more phases and
5 construction of some phases commencing before the entire design is
6 complete.
7 (c) Finance services, maintenance services, operations services,
8 preconstruction services and other related services may be included.
- 9 10. "Design professional" means A GEOLOGIST OR LANDSCAPE ARCHITECT
10 OR an individual or firm that is registered by the state board of
11 technical registration pursuant to title 32, chapter 1 to practice
12 architecture, engineering, ~~geology, landscape architecture~~ or land
13 surveying or any combination of those professions and persons employed by
14 the registered individual or firm.
- 15 11. "Design requirements":
16 (a) Means at a minimum the agent's written description of the
17 project or service to be procured, including:
18 (i) The required features, functions, characteristics, qualities
19 and properties.
20 (ii) The anticipated schedule, including start, duration and
21 completion.
22 (iii) The estimated budgets applicable to the specific procurement
23 for design and construction and, if applicable, for operation and
24 maintenance.
- 25 (b) May include:
26 (i) Drawings and other documents illustrating the scale and
27 relationship of the features, functions and characteristics of the
28 project, which shall all be prepared by a design professional who is
29 registered pursuant to section 32-121.
30 (ii) Additional design information or documents that the agent
31 elects to include.
- 32 12. "Design services" means architect services, engineer services
33 or landscape architect services.
- 34 13. "Direct selection" means the selection of a technical
35 registrant without the requirement of advertising or the use of a current
36 register.
- 37 14. "Engineer services" means those professional engineer services
38 that are within the scope of engineering practice as provided in title 32,
39 chapter 1.
- 40 15. "Finance services" means financing for a construction services
41 project.
- 42 16. "Horizontal construction" means construction of highways,
43 roads, streets, bridges, canals, floodways, earthen dams, landfills, light
44 rail and airport runways, taxiways and aprons. For the purposes of this

1 paragraph, light rail does not include any related rail stations,
2 maintenance facilities or parking facilities.

3 17. "Job-order-contracting" means a project delivery method in
4 which:

5 (a) The contract is a requirements contract for indefinite
6 quantities of construction.

7 (b) The construction to be performed is specified in job orders
8 issued during the contract.

9 (c) Finance services, maintenance services, operations services,
10 preconstruction services, design services and other related services may
11 be included.

12 ~~18. "Landscape architect services" means those professional~~
13 ~~landscape architect services that are within the scope of landscape~~
14 ~~architectural practice as provided in title 32, chapter 1.~~

15 ~~19.~~ 18. "Maintenance services" means routine maintenance, repair
16 and replacement of existing facilities, structures, buildings or real
17 property.

18 ~~20.~~ 19. "Materials":

19 (a) Means all property, including equipment, supplies, printing,
20 insurance and leases of property.

21 (b) Does not include land, a permanent interest in land or real
22 property or leasing space.

23 ~~21.~~ 20. "Operations services" means routine operation of existing
24 facilities, structures, buildings or real property.

25 ~~22.~~ 21. "Person" means any corporation, business, individual,
26 union, committee, club, other organization or group of individuals.

27 ~~23.~~ 22. "Preconstruction services" means services and other
28 activities during the design phase.

29 ~~24.~~ 23. "Procurement":

30 (a) Means buying, purchasing, renting, leasing or otherwise
31 acquiring any materials, services, construction or construction services.

32 (b) Includes all functions that pertain to obtaining any materials,
33 services, construction or construction services, including description of
34 requirements, selection and solicitation of sources, preparation and award
35 of contract and all phases of contract administration.

36 ~~25.~~ 24. "Public competition" means a competitive procurement
37 process pursuant to section 34-103, subsection G that includes advertising
38 in a public newspaper and a qualification-based selection process.

39 ~~26.~~ 25. "Services":

40 (a) Means the furnishing of labor, time or effort by a contractor
41 or subcontractor that does not involve the delivery of a specific end
42 product other than required reports and performance.

43 (b) Does not include employment agreements or collective bargaining
44 agreements.

1 ~~27.~~ 26. "Subcontractor" means a person who contracts to perform
2 work or render service to a contractor or to another subcontractor as a
3 part of a contract with an agent.

4 ~~28.~~ 27. "Technical registrant" means a person who provides any of
5 the professional services listed in title 32, chapter 1.

6 Sec. 13. Section 41-2503, Arizona Revised Statutes, is amended to
7 read:

8 41-2503. Definitions

9 In this chapter, unless the context otherwise requires:

10 1. "Architect services" means those professional architect services
11 that are within the scope of architectural practice as provided in title
12 32, chapter 1.

13 2. "Business" means any corporation, partnership, individual, sole
14 proprietorship, joint stock company, joint venture or other private legal
15 entity.

16 3. "Change order" means a written order that is signed by a
17 procurement officer and that directs the contractor to make changes that
18 the changes clause of the contract authorizes the procurement officer to
19 order.

20 4. "Construction":

21 (a) Means the process of building, altering, repairing, improving
22 or demolishing any public structure or building or other public
23 improvements of any kind to any public real property.

24 (b) Does not include:

25 (i) The routine operation, routine repair or routine maintenance of
26 existing facilities, structures, buildings or real property.

27 (ii) The investigation, characterization, restoration or
28 remediation due to an environmental issue of existing facilities,
29 structures, buildings or real property.

30 5. "Construction-manager-at-risk" means a project delivery method
31 in which:

32 (a) There is a separate contract for design services and a separate
33 contract for construction services, except that instead of a single
34 contract for construction services, the purchasing agency may elect
35 separate contracts for preconstruction services during the design phase,
36 for construction during the construction phase and for any other
37 construction services.

38 (b) The contract for construction services may be entered into at
39 the same time as the contract for design services or at a later time.

40 (c) Design and construction of the project may be either:

41 (i) Sequential with the entire design complete before construction
42 commences.

43 (ii) Concurrent with the design produced in two or more phases and
44 construction of some phases commencing before the entire design is
45 complete.

1 (d) Finance services, maintenance services, operations services,
2 preconstruction services and other related services may be included.

3 6. "Construction services" means either of the following for
4 construction-manager-at-risk, design-build and job-order-contracting
5 project delivery methods:

6 (a) Construction, excluding services, through the
7 construction-manager-at-risk or job-order-contracting project delivery
8 methods.

9 (b) A combination of construction and, as elected by the purchasing
10 agency, one or more related services, such as finance services,
11 maintenance services, operations services, design services and
12 preconstruction services, as those services are authorized in the
13 definitions of construction-manager-at-risk, design-build or
14 job-order-contracting in this section.

15 7. "Contract" means all types of state agreements, regardless of
16 what they may be called, for the procurement of materials, services,
17 construction, construction services or the disposal of materials.

18 8. "Contract modification" means any written alteration in the
19 terms and conditions of any contract accomplished by mutual action of the
20 parties to the contract.

21 9. "Contractor" means any person who has a contract with a state
22 governmental unit.

23 10. "Data" means documented information, regardless of form or
24 characteristic.

25 11. "Department" means the department of administration.

26 12. "Design-bid-build" means a project delivery method in which:

27 (a) There is a sequential award of two separate contracts.

28 (b) The first contract is for design services.

29 (c) The second contract is for construction.

30 (d) Design and construction of the project are in sequential
31 phases.

32 (e) Finance services, maintenance services and operations services
33 are not included.

34 13. "Design-build" means a project delivery method in which:

35 (a) There is a single contract for design services and construction
36 services, except that instead of a single contract for design services and
37 construction services, the purchasing agency may elect separate contracts
38 for preconstruction services and design services during the design phase,
39 for construction and design services during the construction phase and for
40 any other construction services.

41 (b) Design and construction of the project may be either:

42 (i) Sequential with the entire design complete before construction
43 commences.

1 (ii) Concurrent with the design produced in two or more phases and
2 construction of some phases commencing before the entire design is
3 complete.

4 (c) Finance services, maintenance services, operations services,
5 preconstruction services and other related services may be included.

6 ~~17.~~ 14. "Designee" means a duly authorized representative of the
7 director.

8 ~~14.~~ 15. "Design professional" means A GEOLOGIST OR LANDSCAPE
9 ARCHITECT OR an individual or firm that is registered by the state board
10 of technical registration pursuant to title 32, chapter 1 to practice
11 architecture, engineering, ~~geology, landscape architecture~~ or land
12 surveying or any combination of those professions and any person employed
13 by the registered individual or firm.

14 ~~15.~~ 16. "Design requirements":

15 (a) Means at a minimum the purchasing agency's written description
16 of the project or service to be procured, including:

17 (i) The required features, functions, characteristics, qualities
18 and properties.

19 (ii) The anticipated schedule, including start, duration and
20 completion.

21 (iii) The estimated budgets applicable to the specific procurement
22 for design and construction and, if applicable, for operation and
23 maintenance.

24 (b) May include:

25 (i) Drawings and other documents illustrating the scale and
26 relationship of the features, functions and characteristics of the
27 project, which shall all be prepared by a design professional who is
28 registered pursuant to section 32-121.

29 (ii) Additional design information or documents that the purchasing
30 agency elects to include.

31 ~~16.~~ 17. "Design services" means architect services, engineer
32 services or landscape architect services.

33 18. "Director" means the director of the department of
34 administration.

35 19. "Employee" means an individual drawing a salary from a state
36 governmental unit, whether elected or not, and any noncompensated
37 individual performing personal services for any state governmental unit.

38 20. "Engineer services" means those professional engineer services
39 that are within the scope of engineering practice as provided in title 32,
40 chapter 1.

41 21. "Finance services" means financing for a construction services
42 project.

43 22. "General services administration contract" means contracts
44 awarded by the United States government general services administration.

1 23. "Grant" means the furnishing of financial or other assistance,
2 including state funds or federal grant funds, by any state governmental
3 unit to any person for the purpose of supporting or stimulating
4 educational, cultural, social or economic quality of life.

5 24. "Job-order-contracting" means a project delivery method in
6 which:

7 (a) The contract is a requirements contract for indefinite
8 quantities of construction.

9 (b) The construction to be performed is specified in job orders
10 issued during the contract.

11 (c) Finance services, maintenance services, operations services,
12 preconstruction services, design services and other related services may
13 be included.

14 ~~25. "Landscape architect services" means those professional~~
15 ~~landscape architect services that are within the scope of landscape~~
16 ~~architectural practice as provided in title 32, chapter 1.~~

17 ~~26.~~ 25. "Maintenance services" means routine maintenance, repair
18 and replacement of existing facilities, structures, buildings or real
19 property.

20 ~~27.~~ 26. "Materials":

21 (a) Means all property, including equipment, supplies, printing,
22 insurance and leases of property.

23 (b) Does not include land, a permanent interest in land or real
24 property or leasing space.

25 ~~28.~~ 27. "Operations services" means routine operation of existing
26 facilities, structures, buildings or real property.

27 ~~29.~~ 28. "Owner" means a state purchasing agency or state
28 governmental unit.

29 ~~30.~~ 29. "Person" means any corporation, business, individual,
30 union, committee, club, other organization or group of individuals.

31 ~~31.~~ 30. "Preconstruction services" means services and other
32 activities during the design phase.

33 ~~32.~~ 31. "Procurement":

34 (a) Means buying, purchasing, renting, leasing or otherwise
35 acquiring any materials, services, construction or construction services.

36 (b) Includes all functions that pertain to obtaining any materials,
37 services, construction or construction services, including description of
38 requirements, selection and solicitation of sources, preparation and award
39 of contract, and all phases of contract administration.

40 ~~33.~~ 32. "Procurement officer":

41 (a) Means any person duly authorized to enter into and administer
42 contracts and make written determinations with respect to the contracts.

43 (b) Includes an authorized representative acting within the limits
44 of the authorized representative's authority.

1 ~~34.~~ 33. "Purchasing agency" means any state governmental unit that
2 is authorized by this chapter or rules adopted pursuant to this chapter,
3 or by way of delegation from the director, to enter into contracts.

4 ~~35.~~ 34. "Services":

5 (a) Means the furnishing of labor, time or effort by a contractor
6 or subcontractor that does not involve the delivery of a specific end
7 product other than required reports and performance.

8 (b) Does not include employment agreements or collective bargaining
9 agreements.

10 ~~36.~~ 35. "Significant procurement role":

11 (a) Means any role that includes any of the following duties:

12 (i) Participating in the development of a procurement.

13 (ii) Participating in the development of an evaluation tool.

14 (iii) Approving a procurement or an evaluation tool.

15 (iv) Soliciting quotes greater than ten thousand dollars for the
16 provision of materials, services or construction.

17 (v) Serving as a technical advisor or an evaluator who evaluates a
18 procurement.

19 (vi) Recommending or selecting a vendor that will provide
20 materials, services or construction to this state.

21 (vii) Serving as a ~~decision maker~~ DECISION-MAKER or designee on a
22 protest or an appeal by a party regarding an agency procurement selection
23 or decision.

24 (b) Does not include making decisions on developing specifications
25 and the scope of work for a procurement if the decision is based on the
26 application of commonly accepted industry standards or known published
27 standards of the agency as applied to the project, services, goods or
28 materials.

29 ~~37.~~ 36. "State governmental unit" means any department,
30 commission, council, board, bureau, committee, institution, agency,
31 government corporation or other establishment or official of the executive
32 branch or corporation commission of this state.

33 ~~38.~~ 37. "Subcontractor" means a person who contracts to perform
34 work or render service to a contractor or to another subcontractor as a
35 part of a contract with a state governmental unit.

36 ~~39.~~ 38. "Using agency" means any state governmental unit that uses
37 any materials, services or construction procured under this chapter.

38 Sec. 14. Section 41-2571, Arizona Revised Statutes, is amended to
39 read:

40 41-2571. Definitions

41 In this article, unless the context otherwise requires:

42 1. "Architect services", "engineer services", ~~AND~~ "land surveying
43 services", ~~"geologist services" and "landscape architect services"~~ mean
44 those professional services within the scope of the practice of those
45 services as provided in title 32, chapter 1, article 1.

1 2. "Cost" means the aggregate cost of all materials and services,
2 including labor performed by force account.

3 3. "Design professional service contract" means a written agreement
4 relating to the planning, design, construction administration, study,
5 evaluation, consulting, inspection, surveying, mapping, material sampling,
6 testing or other professional, scientific or technical services furnished
7 in connection with any actual or proposed study, planning, survey,
8 environmental remediation, construction, improvement, alteration, repair,
9 maintenance, relocation, moving, demolition or excavation of a structure,
10 street or roadway, appurtenance, facility or development or other
11 improvement to land.

12 4. "Design professional services" means architect services,
13 engineer services, land surveying services, geologist services or
14 landscape architect services or any combination of those services
15 performed by or under the supervision of a design professional or
16 employees or subconsultants of the design professional.

17 5. "Subconsultant" means any person, firm, partnership,
18 corporation, association or other organization, or a combination of any of
19 them, that has a direct contract with a design professional or another
20 subconsultant to perform a portion of the work under a design professional
21 service contract.

22 Sec. 15. Section 42-5075, Arizona Revised Statutes, is amended to
23 read:

24 42-5075. Prime contracting classification; exemptions;
25 definitions

26 A. The prime contracting classification is comprised of the
27 business of prime contracting and the business of manufactured building
28 dealer. Sales for resale to another manufactured building dealer are not
29 subject to tax. Sales for resale do not include sales to a lessor of
30 manufactured buildings. The sale of a used manufactured building is not
31 taxable under this chapter.

32 B. The tax base for the prime contracting classification is
33 sixty-five percent of the gross proceeds of sales or gross income derived
34 from the business. The following amounts shall be deducted from the gross
35 proceeds of sales or gross income before computing the tax base:

36 1. The sales price of land, which shall not exceed the fair market
37 value.

38 2. Sales and installation of groundwater measuring devices required
39 under section 45-604 and groundwater monitoring wells required by law,
40 including monitoring wells installed for acquiring information for a
41 permit required by law.

42 3. The sales price of furniture, furnishings, fixtures, appliances
43 and attachments that are not incorporated as component parts of or
44 attached to a manufactured building or the setup site. The sale of such

1 items may be subject to the taxes imposed by article 1 of this chapter
2 separately and distinctly from the sale of the manufactured building.

3 4. The gross proceeds of sales or gross income received from a
4 contract entered into for the modification of any building, highway, road,
5 railroad, excavation, manufactured building or other structure, project,
6 development or improvement located in a military reuse zone for providing
7 aviation or aerospace services or for a manufacturer, assembler or
8 fabricator of aviation or aerospace products within an active military
9 reuse zone after the zone is initially established or renewed under
10 section 41-1531. To be eligible to qualify for this deduction, before
11 beginning work under the contract, the prime contractor must have applied
12 for a letter of qualification from the department of revenue.

13 5. The gross proceeds of sales or gross income derived from a
14 contract to construct a qualified environmental technology manufacturing,
15 producing or processing facility, as described in section 41-1514.02, and
16 from subsequent construction and installation contracts that begin within
17 ten years after the start of initial construction. To qualify for this
18 deduction, before beginning work under the contract, the prime contractor
19 must obtain a letter of qualification from the department of revenue.
20 This paragraph shall apply for ten full consecutive calendar or fiscal
21 years after the start of initial construction.

22 6. The gross proceeds of sales or gross income from a contract to
23 provide for one or more of the following actions, or a contract for site
24 preparation, constructing, furnishing or installing machinery, equipment
25 or other tangible personal property, including structures necessary to
26 protect exempt incorporated materials or installed machinery or equipment,
27 and tangible personal property incorporated into the project, to perform
28 one or more of the following actions in response to a release or suspected
29 release of a hazardous substance, pollutant or contaminant from a facility
30 to the environment, unless the release was authorized by a permit issued
31 by a governmental authority:

32 (a) Actions to monitor, assess and evaluate such a release or a
33 suspected release.

34 (b) Excavation, removal and transportation of contaminated soil and
35 its treatment or disposal.

36 (c) Treatment of contaminated soil by vapor extraction, chemical or
37 physical stabilization, soil washing or biological treatment to reduce the
38 concentration, toxicity or mobility of a contaminant.

39 (d) Pumping and treatment or in situ treatment of contaminated
40 groundwater or surface water to reduce the concentration or toxicity of a
41 contaminant.

42 (e) The installation of structures, such as cutoff walls or caps,
43 to contain contaminants present in groundwater or soil and prevent them
44 from reaching a location where they could threaten human health or welfare
45 or the environment.

1 This paragraph does not include asbestos removal or the construction or
2 use of ancillary structures such as maintenance sheds, offices or storage
3 facilities for unattached equipment, pollution control equipment,
4 facilities or other control items required or to be used by a person to
5 prevent or control contamination before it reaches the environment.

6 7. The gross proceeds of sales or gross income that is derived from
7 a contract for the installation, assembly, repair or maintenance of
8 machinery, equipment or other tangible personal property that is either
9 deducted from the tax base of the retail classification under section
10 42-5061, subsection B or that is exempt from use tax under section
11 42-5159, subsection B and that has independent functional utility,
12 pursuant to the following provisions:

13 (a) The deduction provided in this paragraph includes the gross
14 proceeds of sales or gross income derived from all of the following:

15 (i) Any activity performed on machinery, equipment or other
16 tangible personal property with independent functional utility.

17 (ii) Any activity performed on any tangible personal property
18 relating to machinery, equipment or other tangible personal property with
19 independent functional utility in furtherance of any of the purposes
20 provided for under subdivision (d) of this paragraph.

21 (iii) Any activity that is related to the activities described in
22 items (i) and (ii) of this subdivision, including inspecting the
23 installation of or testing the machinery, equipment or other tangible
24 personal property.

25 (b) The deduction provided in this paragraph does not include gross
26 proceeds of sales or gross income from the portion of any contracting
27 activity that consists of the development of, or modification to, real
28 property in order to facilitate the installation, assembly, repair,
29 maintenance or removal of machinery, equipment or other tangible personal
30 property that is either deducted from the tax base of the retail
31 classification under section 42-5061, subsection B or exempt from use tax
32 under section 42-5159, subsection B.

33 (c) The deduction provided in this paragraph shall be determined
34 without regard to the size or useful life of the machinery, equipment or
35 other tangible personal property.

36 (d) For the purposes of this paragraph, "independent functional
37 utility" means that the machinery, equipment or other tangible personal
38 property can independently perform its function without attachment to real
39 property, other than attachment for any of the following purposes:

40 (i) Assembling the machinery, equipment or other tangible personal
41 property.

42 (ii) Connecting items of machinery, equipment or other tangible
43 personal property to each other.

1 (iii) Connecting the machinery, equipment or other tangible
2 personal property, whether as an individual item or as a system of items,
3 to water, power, gas, communication or other services.

4 (iv) Stabilizing or protecting the machinery, equipment or other
5 tangible personal property during operation by bolting, burying or
6 performing other similar nonpermanent connections to either real property
7 or real property improvements.

8 8. The gross proceeds of sales or gross income attributable to the
9 purchase of machinery, equipment or other tangible personal property that
10 is exempt from or deductible from transaction privilege and use tax under:

11 (a) Section 42-5061, subsection A, paragraph 25, 29, 57 or 59.

12 (b) Section 42-5061, subsection B.

13 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a),
14 (b), (c), (d), (e), (f), (j), (k), (m) or (n) or paragraph 54 or 56.

15 (d) Section 42-5159, subsection B.

16 9. The gross proceeds of sales or gross income received from a
17 contract for the construction of an environmentally controlled facility
18 for the raising of poultry for the production of eggs and the sorting,
19 cooling and packaging of eggs.

20 10. The gross proceeds of sales or gross income that is derived
21 from a contract entered into with a person who is engaged in the
22 commercial production of livestock, livestock products or agricultural,
23 horticultural, viticultural or floricultural crops or products in this
24 state for the modification of any building, highway, road, excavation,
25 manufactured building or other structure, project, development or
26 improvement used directly and primarily to prevent, monitor, control or
27 reduce air, water or land pollution.

28 11. The gross proceeds of sales or gross income that is derived
29 from the installation, assembly, repair or maintenance of clean rooms that
30 are deducted from the tax base of the retail classification pursuant to
31 section 42-5061, subsection B, paragraph 16.

32 12. For taxable periods beginning from and after June 30, 2001, the
33 gross proceeds of sales or gross income derived from a contract entered
34 into for the construction of a residential apartment housing facility that
35 qualifies for a federal housing subsidy for low income persons over
36 sixty-two years of age and that is owned by a nonprofit charitable
37 organization that has qualified under section 501(c)(3) of the internal
38 revenue code.

39 13. For taxable periods beginning from and after December 31, 1996
40 and ending before January 1, 2017, the gross proceeds of sales or gross
41 income derived from a contract to provide and install a solar energy
42 device. The contractor shall register with the department as a solar
43 energy contractor. By registering, the contractor acknowledges that it
44 will make its books and records relating to sales of solar energy devices
45 available to the department for examination.

1 14. The gross proceeds of sales or gross income derived from a
2 contract entered into for the construction of a launch site, as defined in
3 14 Code of Federal Regulations section 401.5.

4 15. The gross proceeds of sales or gross income derived from a
5 contract entered into for the construction of a domestic violence shelter
6 that is owned and operated by a nonprofit charitable organization that has
7 qualified under section 501(c)(3) of the internal revenue code.

8 16. The gross proceeds of sales or gross income derived from
9 contracts to perform postconstruction treatment of real property for
10 termite and general pest control, including wood-destroying organisms.

11 17. The gross proceeds of sales or gross income received from
12 contracts entered into before July 1, 2006 for constructing a state
13 university research infrastructure project if the project has been
14 reviewed by the joint committee on capital review before the university
15 enters into the construction contract for the project. For the purposes
16 of this paragraph, "research infrastructure" has the same meaning
17 prescribed in section 15-1670.

18 18. The gross proceeds of sales or gross income received from a
19 contract for the construction of any building, or other structure,
20 project, development or improvement owned by a qualified business under
21 section 41-1516 for harvesting or processing qualifying forest products
22 removed from qualifying projects as defined in section 41-1516 if actual
23 construction begins before January 1, 2024. To qualify for this
24 deduction, the prime contractor must obtain a letter of qualification from
25 the Arizona commerce authority before beginning work under the contract.

26 19. Any amount of the gross proceeds of sales or gross income
27 attributable to development fees that are incurred in relation to a
28 contract for construction, development or improvement of real property and
29 that are paid by a prime contractor or subcontractor. For the purposes of
30 this paragraph:

31 (a) The attributable amount shall not exceed the value of the
32 development fees actually imposed.

33 (b) The attributable amount is equal to the total amount of
34 development fees paid by the prime contractor or subcontractor, and the
35 total development fees credited in exchange for the construction of,
36 contribution to or dedication of real property for providing public
37 infrastructure, public safety or other public services necessary to the
38 development. The real property must be the subject of the development
39 fees.

40 (c) "Development fees" means fees imposed to offset capital costs
41 of providing public infrastructure, public safety or other public services
42 to a development and authorized pursuant to section 9-463.05, section
43 11-1102 or title 48 regardless of the jurisdiction to which the fees are
44 paid.

1 20. The gross proceeds of sales or gross income derived from a
2 contract entered into for the construction of a mixed waste processing
3 facility that is located on a municipal solid waste landfill and that is
4 constructed for the purpose of recycling solid waste or producing
5 renewable energy from landfill waste. For the purposes of this paragraph:

6 (a) "Mixed waste processing facility" means a solid waste facility
7 that is owned, operated or used for the treatment, processing or disposal
8 of solid waste, recyclable solid waste, conditionally exempt small
9 quantity generator waste or household hazardous waste. For the purposes
10 of this subdivision, "conditionally exempt small quantity generator
11 waste", "household hazardous waste" and "solid waste facility" have the
12 same meanings prescribed in section 49-701, except that solid waste
13 facility does include a site that stores, treats or processes paper,
14 glass, wood, cardboard, household textiles, scrap metal, plastic,
15 vegetative waste, aluminum, steel or other recyclable material.

16 (b) "Municipal solid waste landfill" has the same meaning
17 prescribed in section 49-701.

18 (c) "Recycling" means collecting, separating, cleansing, treating
19 and reconstituting recyclable solid waste that would otherwise become
20 solid waste, but does not include incineration or other similar processes.

21 (d) "Renewable energy" has the same meaning prescribed in section
22 41-1511.

23 C. Entitlement to the deduction pursuant to subsection B, paragraph
24 7 of this section is subject to the following provisions:

25 1. A prime contractor may establish entitlement to the deduction by
26 both:

27 (a) Marking the invoice for the transaction to indicate that the
28 gross proceeds of sales or gross income derived from the transaction was
29 deducted from the base.

30 (b) Obtaining a certificate executed by the purchaser indicating
31 the name and address of the purchaser, the precise nature of the business
32 of the purchaser, the purpose for which the purchase was made, the
33 necessary facts to establish the deductibility of the property under
34 section 42-5061, subsection B, and a certification that the person
35 executing the certificate is authorized to do so on behalf of the
36 purchaser. The certificate may be disregarded if the prime contractor has
37 reason to believe that the information contained in the certificate is not
38 accurate or complete.

39 2. A person who does not comply with paragraph 1 of this subsection
40 may establish entitlement to the deduction by presenting facts necessary
41 to support the entitlement, but the burden of proof is on that person.

42 3. The department may prescribe a form for the certificate
43 described in paragraph 1, subdivision (b) of this subsection. The
44 department may also adopt rules that describe the transactions with
45 respect to which a person is not entitled to rely solely on the

1 information contained in the certificate provided in paragraph 1,
 2 subdivision (b) of this subsection but must instead obtain such additional
 3 information as required in order to be entitled to the deduction.

4 4. If a prime contractor is entitled to a deduction by complying
 5 with paragraph 1 of this subsection, the department may require the
 6 purchaser who caused the execution of the certificate to establish the
 7 accuracy and completeness of the information required to be contained in
 8 the certificate that would entitle the prime contractor to the deduction.
 9 If the purchaser cannot establish the accuracy and completeness of the
 10 information, the purchaser is liable in an amount equal to any tax,
 11 penalty and interest that the prime contractor would have been required to
 12 pay under article 1 of this chapter if the prime contractor had not
 13 complied with paragraph 1 of this subsection. Payment of the amount under
 14 this paragraph exempts the purchaser from liability for any tax imposed
 15 under article 4 of this chapter. The amount shall be treated as a
 16 transaction privilege tax to the purchaser and as tax revenues collected
 17 from the prime contractor in order to designate the distribution base for
 18 purposes of section 42-5029.

19 D. Subcontractors or others who perform modification activities are
 20 not subject to tax if they can demonstrate that the job was within the
 21 control of a prime contractor or contractors or a dealership of
 22 manufactured buildings and that the prime contractor or dealership is
 23 liable for the tax on the gross income, gross proceeds of sales or gross
 24 receipts attributable to the job and from which the subcontractors or
 25 others were paid.

26 E. Amounts received by a contractor for a project are excluded from
 27 the contractor's gross proceeds of sales or gross income derived from the
 28 business if the person who hired the contractor executes and provides a
 29 certificate to the contractor stating that the person providing the
 30 certificate is a prime contractor and is liable for the tax under article
 31 1 of this chapter. The department shall prescribe the form of the
 32 certificate. If the contractor has reason to believe that the information
 33 contained on the certificate is erroneous or incomplete, the department
 34 may disregard the certificate. If the person who provides the certificate
 35 is not liable for the tax as a prime contractor, that person is
 36 nevertheless deemed to be the prime contractor in lieu of the contractor
 37 and is subject to the tax under this section on the gross receipts or
 38 gross proceeds received by the contractor.

39 F. Every person engaging or continuing in this state in the
 40 business of prime contracting or dealership of manufactured buildings
 41 shall present to the purchaser of such prime contracting or manufactured
 42 building a written receipt of the gross income or gross proceeds of sales
 43 from such activity and shall separately state the taxes to be paid
 44 pursuant to this section.

1 G. For the purposes of section 42-5032.01, the department shall
2 separately account for revenues collected under the prime contracting
3 classification from any prime contractor engaged in the preparation or
4 construction of a multipurpose facility, and related infrastructure, that
5 is owned, operated or leased by the tourism and sports authority pursuant
6 to title 5, chapter 8.

7 H. For the purposes of section 42-5032.02, from and after
8 September 30, 2013, the department shall separately account for revenues
9 reported and collected under the prime contracting classification from any
10 prime contractor engaged in the construction of any buildings and
11 associated improvements that are for the benefit of a manufacturing
12 facility. For the purposes of this subsection, "associated improvements"
13 and "manufacturing facility" have the same meanings prescribed in section
14 42-5032.02.

15 I. The gross proceeds of sales or gross income derived from a
16 contract for lawn maintenance services are not subject to tax under this
17 section if the contract does not include landscaping activities. Lawn
18 maintenance service is a service pursuant to section 42-5061, subsection
19 A, paragraph 1, and includes lawn mowing and edging, weeding, repairing
20 sprinkler heads or drip irrigation heads, seasonal replacement of flowers,
21 refreshing gravel, lawn dethatching, seeding winter lawns, leaf and debris
22 collection and removal, tree or shrub pruning or clipping, garden and
23 gravel raking and applying pesticides, as defined in section 3-361, and
24 fertilizer materials, as defined in section 3-262.

25 J. Except as provided in subsection 0 of this section, the gross
26 proceeds of sales or gross income derived from landscaping activities are
27 subject to tax under this section. Landscaping includes installing lawns,
28 grading or leveling ground, installing gravel or boulders, planting trees
29 and other plants, felling trees, removing or mulching tree stumps,
30 removing other imbedded plants, building irrigation berms, installing
31 railroad ties and installing underground sprinkler or watering systems.

32 K. The portion of gross proceeds of sales or gross income
33 attributable to the actual direct costs of providing architectural or
34 engineering services that are incorporated in a contract is not subject to
35 tax under this section. For the purposes of this subsection, "direct
36 costs" means the portion of the actual costs that are directly expended in
37 providing architectural or engineering services.

38 L. Operating a landfill or a solid waste disposal facility is not
39 subject to taxation under this section, including filling, compacting and
40 creating vehicle access to and from cell sites within the landfill.
41 Constructing roads to a landfill or solid waste disposal facility and
42 constructing cells within a landfill or solid waste disposal facility may
43 be deemed prime contracting under this section.

44 M. The following apply in determining the taxable situs of sales of
45 manufactured buildings:

1 1. For sales in this state where the manufactured building dealer
2 contracts to deliver the building to a setup site or to perform the setup
3 in this state, the taxable situs is the setup site.

4 2. For sales in this state where the manufactured building dealer
5 does not contract to deliver the building to a setup site or does not
6 perform the setup, the taxable situs is the location of the dealership
7 where the building is delivered to the buyer.

8 3. For sales in this state where the manufactured building dealer
9 contracts to deliver the building to a setup site that is outside this
10 state, the situs is outside this state and the transaction is excluded
11 from tax.

12 N. The gross proceeds of sales or gross income attributable to a
13 written contract for design phase services or professional services,
14 executed before modification begins and with terms, conditions and pricing
15 of all of these services separately stated in the contract from those for
16 construction phase services, is not subject to tax under this section,
17 regardless of whether the services are provided sequential to or
18 concurrent with prime contracting activities that are subject to tax under
19 this section. This subsection does not include the gross proceeds of
20 sales or gross income attributable to construction phase services. For
21 the purposes of this subsection:

22 1. "Construction phase services" means services for the execution
23 and completion of any modification, including the following:

24 (a) Administration or supervision of any modification performed on
25 the project, including team management and coordination, scheduling, cost
26 controls, submittal process management, field management, safety program,
27 close-out process and warranty period services.

28 (b) Administration or supervision of any modification performed
29 pursuant to a punch list. For the purposes of this subdivision, "punch
30 list" means minor items of modification work performed after substantial
31 completion and before final completion of the project.

32 (c) Administration or supervision of any modification performed
33 pursuant to change orders. For the purposes of this subdivision, "change
34 order" means a written instrument issued after execution of a contract for
35 modification work, providing for all of the following:

36 (i) The scope of a change in the modification work, contract for
37 modification work or other contract documents.

38 (ii) The amount of an adjustment, if any, to the guaranteed maximum
39 price as set in the contract for modification work. For the purposes of
40 this item, "guaranteed maximum price" means the amount guaranteed to be
41 the maximum amount due to a prime contractor for the performance of all
42 modification work for the project.

43 (iii) The extent of an adjustment, if any, to the contract time of
44 performance set forth in the contract.

1 (d) Administration or supervision of any modification performed
2 pursuant to change directives. For the purposes of this subdivision,
3 "change directive" means a written order directing a change in
4 modification work before agreement on an adjustment of the guaranteed
5 maximum price or contract time.

6 (e) Inspection to determine the dates of substantial completion or
7 final completion.

8 (f) Preparation of any manuals, warranties, as-built drawings,
9 spares or other items the prime contractor must furnish pursuant to the
10 contract for modification work. For the purposes of this subdivision,
11 "as-built drawing" means a drawing that indicates field changes made to
12 adapt to field conditions, field changes resulting from change orders or
13 buried and concealed installation of piping, conduit and utility services.

14 (g) Preparation of status reports after modification work has begun
15 detailing the progress of work performed, including preparation of any of
16 the following:

17 (i) Master schedule updates.

18 (ii) Modification work cash flow projection updates.

19 (iii) Site reports made on a periodic basis.

20 (iv) Identification of discrepancies, conflicts or ambiguities in
21 modification work documents that require resolution.

22 (v) Identification of any health and safety issues that have arisen
23 in connection with the modification work.

24 (h) Preparation of daily logs of modification work, including
25 documentation of personnel, weather conditions and on-site occurrences.

26 (i) Preparation of any submittals or shop drawings used by the
27 prime contractor to illustrate details of the modification work performed.

28 (j) Administration or supervision of any other activities for which
29 a prime contractor receives a certificate for payment or certificate for
30 final payment based on the progress of modification work performed on the
31 project.

32 2. "Design phase services" means services for developing and
33 completing a design for a project that are not construction phase
34 services, including the following:

35 (a) Evaluating surveys, reports, test results or any other
36 information on-site conditions for the project, including physical
37 characteristics, legal limitations and utility locations for the site.

38 (b) Evaluating any criteria or programming objectives for the
39 project to ascertain requirements for the project, such as physical
40 requirements affecting cost or projected utilization of the project.

41 (c) Preparing drawings and specifications for architectural program
42 documents, schematic design documents, design development documents,
43 modification work documents or documents that identify the scope of or
44 materials for the project.

1 (d) Preparing an initial schedule for the project, excluding the
2 preparation of updates to the master schedule after modification work has
3 begun.

4 (e) Preparing preliminary estimates of costs of modification work
5 before completion of the final design of the project, including an
6 estimate or schedule of values for any of the following:

7 (i) Labor, materials, machinery and equipment, tools, water, heat,
8 utilities, transportation and other facilities and services used in the
9 execution and completion of modification work, regardless of whether they
10 are temporary or permanent or whether they are incorporated in the
11 modifications.

12 (ii) The cost of labor and materials to be furnished by the owner
13 of the real property.

14 (iii) The cost of any equipment of the owner of the real property
15 to be assigned by the owner to the prime contractor.

16 (iv) The cost of any labor for installation of equipment separately
17 provided by the owner of the real property that has been designed,
18 specified, selected or specifically provided for in any design document
19 for the project.

20 (v) Any fee paid by the owner of the real property to the prime
21 contractor pursuant to the contract for modification work.

22 (vi) Any bond and insurance premiums.

23 (vii) Any applicable taxes.

24 (viii) Any contingency fees for the prime contractor that may be
25 used before final completion of the project.

26 (f) Reviewing and evaluating cost estimates and project documents
27 to prepare recommendations on site use, site improvements, selection of
28 materials, building systems and equipment, modification feasibility,
29 availability of materials and labor, local modification activity as
30 related to schedules and time requirements for modification work.

31 (g) Preparing the plan and procedures for selection of
32 subcontractors, including any prequalification of subcontractor
33 candidates.

34 3. "Professional services" means architect services, engineer
35 services, ~~geologist services~~, OR land surveying services ~~or landscape~~
36 ~~architect services~~ that are within the scope of those services as provided
37 in title 32, chapter 1 and for which gross proceeds of sales or gross
38 income has not otherwise been deducted under subsection K of this section.

39 0. The gross proceeds of sales or gross income derived from a
40 contract with the owner of real property or improvements to real property
41 for the maintenance, repair, replacement or alteration of existing
42 property is not subject to tax under this section if the contract does not
43 include modification activities, except as specified in this subsection.
44 The gross proceeds of sales or gross income derived from a de minimis
45 amount of modification activity does not subject the contract or any part

1 of the contract to tax under this section. For the purposes of this
2 subsection:

3 1. Tangible personal property that is incorporated or fabricated
4 into a project described in this subsection may be subject to the amount
5 prescribed in section 42-5008.01.

6 2. Each contract is independent of any other contract, except that
7 any change order that directly relates to the scope of work of the
8 original contract shall be treated the same as the original contract under
9 this chapter, regardless of the amount of modification activities included
10 in the change order. If a change order does not directly relate to the
11 scope of work of the original contract, the change order shall be treated
12 as a new contract, with the tax treatment of any subsequent change order
13 to follow the tax treatment of the contract to which the scope of work of
14 the subsequent change order directly relates.

15 P. Notwithstanding subsection O of this section, a contract that
16 primarily involves surface or subsurface improvements to land and that is
17 subject to title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 is
18 taxable under this section, even if the contract also includes vertical
19 improvements. Agencies that are subject to procurement processes under
20 those provisions shall include in the request for proposals a notice to
21 bidders when those projects are subject to this section. This subsection
22 does not apply to contracts with:

23 1. Community facilities districts, fire districts, county
24 television improvement districts, community park maintenance districts,
25 cotton pest control districts, hospital districts, pest abatement
26 districts, health service districts, agricultural improvement districts,
27 county free library districts, county jail districts, county stadium
28 districts, special health care districts, public health services
29 districts, theme park districts or revitalization districts.

30 2. Any special taxing district not specified in paragraph 1 of this
31 subsection if the district does not substantially engage in the
32 modification, maintenance, repair, replacement or alteration of surface or
33 subsurface improvements to land.

34 Q. Notwithstanding subsection R, paragraph 10 of this section, a
35 person owning real property who enters into a contract for sale of the
36 real property, who is responsible to the new owner of the property for
37 modifications made to the property in the period subsequent to the
38 transfer of title and who receives a consideration for the modifications
39 is considered a prime contractor solely for purposes of taxing the gross
40 proceeds of sale or gross income received for the modifications made
41 subsequent to the transfer of title. The original owner's gross proceeds
42 of sale or gross income received for the modifications shall be determined
43 according to the following methodology:

44 1. If any part of the contract for sale of the property specifies
45 amounts to be paid to the original owner for the modifications to be made

1 in the period subsequent to the transfer of title, the amounts are
2 included in the original owner's gross proceeds of sale or gross income
3 under this section. Proceeds from the sale of the property that are
4 received after transfer of title and that are unrelated to the
5 modifications made subsequent to the transfer of title are not considered
6 gross proceeds of sale or gross income from the modifications.

7 2. If the original owner enters into an agreement separate from the
8 contract for sale of the real property providing for amounts to be paid to
9 the original owner for the modifications to be made in the period
10 subsequent to the transfer of title to the property, the amounts are
11 included in the original owner's gross proceeds of sale or gross income
12 received for the modifications made subsequent to the transfer of title.

13 3. If the original owner is responsible to the new owner for
14 modifications made to the property in the period subsequent to the
15 transfer of title and derives any gross proceeds of sale or gross income
16 from the project subsequent to the transfer of title other than a delayed
17 disbursement from escrow unrelated to the modifications, it is presumed
18 that the amounts are received for the modifications made subsequent to the
19 transfer of title unless the contrary is established by the owner through
20 its books, records and papers kept in the regular course of business.

21 4. The tax base of the original owner is computed in the same
22 manner as a prime contractor under this section.

23 R. For the purposes of this section:

24 1. "Alteration" means an activity or action that causes a direct
25 physical change to existing property. For the purposes of this paragraph:

26 (a) For existing property that is properly classified as class two
27 property under section 42-12002, paragraph 1, subdivision (c) or paragraph
28 2, subdivision (c) and that is used for residential purposes, class three
29 property under section 42-12003 or class four property under section
30 42-12004, this paragraph does not apply if the contract amount is more
31 than twenty-five percent of the most recent full cash value established
32 under chapter 13, article 2 of this title as of the date of any bid for
33 the work or the date of the contract, whichever value is higher.

34 (b) For all existing property other than existing property
35 described in subdivision (a) of this paragraph, this paragraph does not
36 apply if any of the following is true:

37 (i) The contract amount is more than seven hundred fifty thousand
38 dollars.

39 (ii) The scope of work directly relates to more than forty percent
40 of the existing square footage of the existing property.

41 (iii) The scope of work involves expanding the square footage of
42 more than ten percent of the existing property.

43 (c) Project elements may not be artificially separated from a
44 contract to cause a project to qualify as an alteration. The department

1 has the burden of proof that project elements have been artificially
2 separated from a contract.

3 (d) If a project for which the owner and the person performing the
4 work reasonably believed, at the inception of the contract, would be
5 treated as an alteration under this paragraph and, on completion of the
6 project, the project exceeded the applicable threshold described in either
7 subdivision (a) or (b) of this paragraph by no more than twenty-five
8 percent of the applicable threshold for any reason, the work performed
9 under the contract qualifies as an alteration.

10 (e) A change order that directly relates to the scope of work of
11 the original contract shall be treated as part of the original contract,
12 and the contract amount shall include any amount attributable to a change
13 order that directly relates to the scope of work of the original contract.

14 (f) Alteration does not include maintenance, repair or replacement.

15 2. "Contracting" means engaging in business as a contractor.

16 3. "Contractor" is synonymous with the term "builder" and means any
17 person or organization that undertakes to or offers to undertake to, or
18 purports to have the capacity to undertake to, or submits a bid to, or
19 does personally or by or through others, modify any building, highway,
20 road, railroad, excavation, manufactured building or other structure,
21 project, development or improvement, or to do any part of such a project,
22 including the erection of scaffolding or other structure or works in
23 connection with such a project, and includes subcontractors and specialty
24 contractors. For all purposes of taxation or deduction, this definition
25 shall govern without regard to whether or not such a contractor is acting
26 in fulfillment of a contract.

27 4. "Manufactured building" means a manufactured home, mobile home
28 or factory-built building, as defined in section 41-4001.

29 5. "Manufactured building dealer" means a dealer who either:

30 (a) Is licensed pursuant to title 41, chapter 37, article 4 and who
31 sells manufactured buildings to the final consumer.

32 (b) Supervises, performs or coordinates the excavation and
33 completion of site improvements or the setup of a manufactured building,
34 including the contracting, if any, with any subcontractor or specialty
35 contractor for the completion of the contract.

36 6. "Modification" means construction, grading and leveling ground,
37 wreckage or demolition. Modification does not include:

38 (a) Any project described in subsection 0 of this section.

39 (b) Any wreckage or demolition of existing property, or any other
40 activity that is a necessary component of a project described in
41 subsection 0 of this section.

42 (c) Any mobilization or demobilization related to a project
43 described in subsection 0 of this section, such as the erection or removal
44 of temporary facilities to be used by those persons working on the
45 project.

1 7. "Modify" means to make a modification or cause a modification to
2 be made.

3 8. "Owner" means the person that holds title to the real property
4 or improvements to real property that is the subject of the work, as well
5 as an agent of the title holder and any person with the authority to
6 perform or authorize work on the real property or improvements, including
7 a tenant and a property manager. For the purposes of subsection O of this
8 section, a person who is hired by a general contractor that is hired by an
9 owner, or a subcontractor of a general contractor that is hired by an
10 owner, is considered to be hired by the owner.

11 9. "Prime contracting" means engaging in business as a prime
12 contractor.

13 10. "Prime contractor" means a contractor who supervises, performs
14 or coordinates the modification of any building, highway, road, railroad,
15 excavation, manufactured building or other structure, project, development
16 or improvement, including the contracting, if any, with any subcontractors
17 or specialty contractors and who is responsible for the completion of the
18 contract. Except as provided in subsections E and Q of this section, a
19 person who owns real property, who engages one or more contractors to
20 modify that real property and who does not itself modify that real
21 property is not a prime contractor within the meaning of this paragraph
22 regardless of the existence of a contract for sale or the subsequent sale
23 of that real property.

24 11. "Replacement" means the removal from service of one component
25 or system of existing property or tangible personal property installed in
26 existing property, including machinery or equipment, and the installation
27 of a new component or system or new tangible personal property, including
28 machinery or equipment, that provides the same, a similar or an upgraded
29 design or functionality, regardless of the contract amount and regardless
30 of whether the existing component or system or existing tangible personal
31 property is physically removed from the existing property.

32 12. "Sale of a used manufactured building" does not include a lease
33 of a used manufactured building.

34 Sec. 16. Section 45-454, Arizona Revised Statutes, is amended to
35 read:

36 45-454. Exemption of small non-irrigation wells; definitions

37 A. Withdrawals of groundwater for non-irrigation uses from wells
38 having a pump with a maximum capacity of not more than thirty-five gallons
39 per minute which were drilled before April 28, 1983 or which were drilled
40 after April 28, 1983 pursuant to a notice of intention to drill which was
41 on file with the department on such date are exempt from this chapter,
42 except that:

43 1. Wells drilled before June 12, 1980 which are not abandoned or
44 capped or wells which were not completed on June 12, 1980 but for which a
45 notice of intention to drill was on file with the Arizona water commission

1 on such date are subject to subsections J, K and L of this section and
2 must be registered pursuant to section 45-593. If two or more wells in an
3 active management area are exempt under this paragraph and are used to
4 serve the same non-irrigation use at the same location, the aggregate
5 quantity of groundwater withdrawn from the wells shall not exceed
6 fifty-six acre-feet per year.

7 2. Wells drilled between June 12, 1980 and April 28, 1983, except
8 as provided in paragraph 1 of this subsection, and wells drilled after
9 April 28, 1983 pursuant to a notice of intention to drill which was on
10 file with the department on April 28, 1983, are subject to subsections G,
11 I, J and K of this section.

12 B. Withdrawals of groundwater for non-irrigation uses from wells
13 having a pump with a maximum capacity of not more than thirty-five gallons
14 per minute drilled on or after April 28, 1983, except wells drilled after
15 April 28, 1983 pursuant to a notice of intention to drill which was on
16 file with the department on such date, are exempt from this chapter,
17 except that:

18 1. Such wells are subject to subsections G through K of this
19 section.

20 2. In an active management area, other than a subsequent active
21 management area designated for a portion of a groundwater basin in the
22 regional aquifer systems of northern Arizona, withdrawals of groundwater
23 from such wells for non-irrigation uses other than domestic purposes and
24 stock watering shall not exceed ten acre-feet per year.

25 3. In a subsequent active management area that is designated for a
26 portion of a groundwater basin in the regional aquifer systems of northern
27 Arizona, groundwater withdrawn from such wells may be used only for
28 domestic purposes and stock watering.

29 C. On or after January 1, 2006, an exempt well otherwise allowed by
30 this section may not be drilled on land if any part of the land is within
31 one hundred feet of the operating water distribution system of a municipal
32 provider with an assured water supply designation within the boundaries of
33 an active management area established on or before July 1, 1994, as shown
34 on a digitized service area map provided to the director by the municipal
35 provider and updated by the municipal provider as specified by the
36 director.

37 D. On request from the owner of the land on which an exempt well is
38 prohibited pursuant to subsection C of this section on a form prescribed
39 by the director, the director shall issue an exemption from subsection C
40 of this section if the landowner demonstrates to the satisfaction of the
41 director that any of the following applies:

42 1. The landowner submitted a written request for service to the
43 municipal provider that operates the distribution system and the municipal
44 provider did not provide written verification to the landowner within
45 thirty calendar days after receipt of the request that water service is

1 available to the landowner after payment of any applicable fee to the
2 municipal provider.

3 2. The total capital cost and fees for connecting to the operating
4 water distribution system exceed the total capital cost and fees for
5 drilling and fully equipping an exempt well.

6 3. If the applicant must obtain an easement across other land to
7 connect to the water distribution system of the municipal provider, the
8 applicant sent the owner of the land a request for the easement by
9 certified mail, return receipt requested, and either the applicant did not
10 receive a response to the request within thirty calendar days of mailing
11 the request or the request was denied.

12 4. The landowner does not qualify for an exemption pursuant to
13 paragraph 1, 2 or 3 of this subsection and the landowner provides written
14 verification from the municipal provider that the landowner shall not
15 receive or request water service from the municipal provider while the
16 exempt well is operational. The exemption for that well is revoked if the
17 landowner or any subsequent landowner receives water service from the
18 municipal provider. In determining whether to approve or reject a permit
19 application filed under section 45-599, the director shall not consider
20 any impacts the proposed well may have on an exempt well drilled pursuant
21 to this paragraph.

22 E. This section does not prohibit a property owner, after January
23 1, 2006, from drilling a replacement exempt well for a lawful exempt well
24 if the replacement well does not increase the total number of operable
25 exempt wells on the applicant's land.

26 F. A remediation well drilled for the purpose of remediating
27 groundwater is exempt from this section if it meets one of the following:

28 1. The remediation well is for an approved department of
29 environmental quality or United States environmental protection agency
30 remediation program.

31 2. A ~~registered~~ PROFESSIONAL geologist certifies that the
32 remediation well is for the purpose of remediation.

33 G. A person shall file a notice of intention to drill with the
34 director pursuant to section 45-596 before drilling an exempt well or
35 causing an exempt well to be drilled.

36 H. The registered well owner shall file a completion report
37 pursuant to section 45-600, subsection B.

38 I. In an active management area only one exempt well may be drilled
39 or used to serve the same non-irrigation use at the same location, except
40 that a person may drill or use a second exempt well to serve the same
41 non-irrigation use at the same location if the director determines that
42 all of the following apply:

43 1. Because of its location, the first exempt well is not capable of
44 consistently producing more than three gallons per minute of groundwater

1 when equipped with a pump with a maximum capacity of thirty-five gallons
2 per minute.

3 2. The second exempt well is located on the same parcel of land as
4 the first exempt well, the parcel of land is at least one acre in size,
5 all groundwater withdrawn from both exempt wells is used on that parcel of
6 land and there are no other exempt wells on that parcel of land.

7 3. Combined withdrawals from both wells do not exceed five
8 acre-feet per year.

9 4. If the second exempt well is drilled after January 1, 2000, the
10 county health authority for the county in which the well is located or any
11 other local health authority that controls the installation of septic
12 tanks or sewer systems in the county has approved the location of the well
13 in writing after physically inspecting the well site.

14 5. Use of two wells for the same non-irrigation use at the same
15 location is not contrary to the health and welfare of the public.

16 J. An exempt well is subject to sections 45-594 and 45-595.

17 K. Groundwater withdrawn from an exempt well may be transported
18 only pursuant to articles 8 and 8.1 of this chapter.

19 L. A person who owns land from which exempt withdrawals were being
20 made as of the date of the designation of the active management area is
21 not eligible for a certificate of grandfathered right for a type 2 non-
22 irrigation use for such withdrawals.

23 M. For the purposes of this section:

24 1. "Domestic purposes" means uses related to the supply, service
25 and activities of households and private residences and includes the
26 application of water to less than two acres of land to produce plants or
27 parts of plants for sale or human consumption, or for use as feed for
28 livestock, range livestock or poultry, as such terms are defined in
29 section 3-1201.

30 2. "Municipal provider" means a city, town, private water company
31 or irrigation district that supplies water for non-irrigation use.

32 3. "Stock watering" means the watering of livestock, range
33 livestock or poultry, as such terms are defined in section 3-1201.

34 Sec. 17. Section 45-596, Arizona Revised Statutes, is amended to
35 read:

36 45-596. Notice of intention to drill; fee

37 A. In an area not subject to active management, a person may not
38 drill or cause to be drilled any well or deepen an existing well without
39 first filing notice of intention to drill pursuant to subsection C of this
40 section or obtaining a permit pursuant to section 45-834.01. Only one
41 notice of intention to drill is required for all wells that are drilled by
42 or for the same person to obtain geophysical, mineralogical or
43 geotechnical data within a single section of land.

1 B. In an active management area, a person may not drill or cause to
2 be drilled an exempt well, a replacement well in approximately the same
3 location or any other well for which a permit is not required under this
4 article, article 7 of this chapter or section 45-834.01 or deepen an
5 existing well without first filing a notice of intention to drill pursuant
6 to subsection C of this section. Only one notice of intention to drill is
7 required for all wells that are drilled by or for the same person to
8 obtain geophysical, mineralogical or geotechnical data within a single
9 section of land.

10 C. A notice of intention to drill shall be filed with the director
11 on a form that is prescribed and furnished by the director and that shall
12 include:

- 13 1. The name and mailing address of the person filing the notice.
- 14 2. The legal description of the land on which the well is proposed
15 to be drilled and the name and mailing address of the owner of the land.
- 16 3. The legal description of the location of the well on the land.
- 17 4. The depth, diameter and type of casing of the proposed well.
- 18 5. Such legal description of the land on which the groundwater is
19 proposed to be used as may be required by the director to administer this
20 chapter.
- 21 6. When construction is to begin.
- 22 7. The proposed uses to which the groundwater will be applied.
- 23 8. The name and well driller's license number of the well driller
24 who is to construct the well.
- 25 9. The design pumping capacity of the well.
- 26 10. If for a replacement well, the maximum capacity of the original
27 well and the distance of the replacement well from the original well.
- 28 11. Proof that the director determines to be satisfactory that the
29 person proposing to construct the well holds a valid license issued by the
30 registrar of contractors pursuant to title 32, chapter 10 and that the
31 license is of the type necessary to construct the well described in the
32 notice of intention to drill. If the proposed well driller does not hold
33 a valid license, the director may accept proof that the proposed well
34 driller is exempt from licensing as prescribed by section 32-1121.
- 35 12. If any water from the proposed well will be used for domestic
36 purposes as defined in section 45-454, evidence of compliance with the
37 requirements of subsection F of this section.
- 38 13. If for a second exempt well at the same location for the same
39 use pursuant to section 45-454, subsection I, proof that the requirements
40 of that subsection are met.
- 41 14. If for a well to obtain geophysical, mineralogical or
42 geotechnical data within a single section of land, the information
43 prescribed by this subsection for each well that will be included in that
44 section of land before each well is drilled.
- 45 15. Such other information as the director may require.

1 D. On receiving a notice of intention to drill and the fee required
2 by subsection L of this section, the director shall endorse on the notice
3 the date of its receipt. The director shall then determine whether all
4 information that is required has been submitted and whether the
5 requirements of subsection C, paragraphs 11 and 12 and subsection I of
6 this section have been met. If so, within fifteen days of receipt of the
7 notice, or such longer time as provided in subsection J of this section,
8 the director shall record the notice, mail a drilling card that authorizes
9 the drilling of the well to the well driller identified in the notice and
10 mail written notice of the issuance of the drilling card to the person
11 filing the notice of intention to drill at the address stated in the
12 notice. On receipt of the drilling card, the well driller may proceed to
13 drill or deepen the well as described in the notice of intention to drill.
14 If the director determines that the required information has not been
15 submitted or that the requirements of subsection C, paragraphs 11 and 12
16 or subsection I of this section have not been met, the director shall mail
17 a statement of the determination to the person giving the notice to the
18 address stated in the notice, and the person giving the notice may not
19 proceed to drill or deepen the well.

20 E. The well shall be completed within one year after the date of
21 the notice unless the director approves a longer period of time pursuant
22 to this subsection. If the well is not completed within one year or
23 within the time approved by the director pursuant to this subsection, the
24 person shall file a new notice before proceeding with further
25 construction. At the time the drilling card for the well is issued, the
26 director may provide for and approve a completion period that is greater
27 than one year but not to exceed five years from the date of the notice if
28 both of the following apply:

29 1. The proposed well is a nonexempt well within an active
30 management area and qualifies as a replacement well in approximately the
31 same location as prescribed in rules adopted by the director pursuant to
32 section 45-597.

33 2. The applicant has submitted evidence that demonstrates one of
34 the following:

35 (a) This state or a political subdivision of this state has
36 acquired or has begun a condemnation action to acquire the land on which
37 the original well is located.

38 (b) The original well has been rendered inoperable due to flooding,
39 subsidence or other extraordinary physical circumstances that are beyond
40 the control of the well owner.

41 F. If any water from a proposed well will be used for domestic
42 purposes as defined in section 45-454 on a parcel of land of five or fewer
43 acres, the applicant shall submit a well site plan of the property with
44 the notice of intention to drill. The site plan shall:

45 1. Include the county assessor's parcel identification number.

1 2. Show the proposed well location and the location of any septic
2 tank or sewer system that is either located on the property or within one
3 hundred feet of the proposed well site.

4 3. Show written approval by the county health authority that
5 controls the installation of septic tanks or sewer systems in the county,
6 or by the local health authority in areas where the authority to control
7 installation of septic tanks or sewer systems has been delegated to a
8 local authority. In areas where there is no local or county authority
9 that controls the installation of septic tanks or sewer systems, the
10 applicant shall apply for approval directly to the department of water
11 resources.

12 G. Before approving a well site plan submitted pursuant to
13 subsection F of this section, the county or local health authority or the
14 department of water resources, as applicable, pursuant to subsection F of
15 this section, shall review the well site plan and determine whether the
16 proposed well location complies with applicable local laws, ordinances and
17 regulations and any laws or rules adopted under this title and title 49
18 regarding the placement of wells and the proximity of wells to septic
19 tanks or sewer systems. If the health authority or the department of
20 water resources, as applicable, pursuant to subsection F of this section,
21 finds that the proposed well location complies with this title and title
22 49 and with local requirements, it shall endorse the site plan and the
23 proposed well placement in a manner indicating approval. On endorsement,
24 the director of water resources shall approve the construction of the
25 well, if all remaining requirements have been met. If the health
26 authority is unable to determine whether the proposed well location
27 complies with this title and title 49 and local requirements, it shall
28 indicate this on the site plan and the decision to approve or reject the
29 proposed construction rests with the director of water resources. If
30 parcel size, geology or location of improvements on the property prevents
31 the well from being drilled in accordance with this title and title 49 or
32 local requirements, the property owner may apply for a variance. The
33 property owner shall make the request for a variance to the county or
34 local authority if a county or local law, ordinance or regulation prevents
35 the proposed construction. If a law or rule adopted under this title or
36 title 49 prevents the proposed construction, the property owner shall make
37 the request for a variance directly to the department of water resources.
38 The request for a variance shall be in the form and shall contain the
39 information that the department of water resources, county or local
40 authority may require. The department of water resources, or the county
41 or local authority whose law, ordinance or regulation prevents the
42 proposed construction, may expressly require that a particular variance
43 shall include certification by a registered professional engineer or A
44 PROFESSIONAL geologist that the location of the well will not pose a
45 health hazard to the applicant or surrounding property or inhabitants. If

1 all necessary variances are obtained, the director of water resources
2 shall approve the construction of the well if all remaining requirements
3 have been met.

4 H. If a well that was originally drilled as an exploration well, a
5 monitor well or a piezometer well or for any use other than domestic use
6 is later proposed to be converted to use for domestic purposes as defined
7 in section 45-454, the well owner shall file a notice of intention to
8 drill and shall comply with this section before the well is converted and
9 any water from that well is used for domestic purposes.

10 I. Except as prescribed in subsection K of this section, the
11 director shall not approve the drilling of the well if the director
12 determines that the well will likely cause the migration of contaminated
13 groundwater from a remedial action site to another well, resulting in
14 unreasonably increasing damage to the owner of the well or persons using
15 water from the well. In making this determination, the director of water
16 resources shall follow the applicable criteria in the rules adopted by the
17 director of water resources pursuant to section 45-598, subsection A and
18 shall consult with the director of environmental quality. For the
19 purposes of this subsection:

20 1. "Contaminated groundwater" means groundwater that has been
21 contaminated by a release of a hazardous substance, as defined in section
22 49-201, or a pollutant, as defined in section 49-201.

23 2. "Remedial action site" means any of the following:

24 (a) The site of a remedial action undertaken pursuant to the
25 comprehensive environmental response, compensation, and liability act of
26 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code
27 sections 9601 through 9657), commonly known as "superfund".

28 (b) The site of a corrective action undertaken pursuant to title
29 49, chapter 6.

30 (c) The site of a voluntary remediation action undertaken pursuant
31 to title 49, chapter 1, article 5.

32 (d) The site of a remedial action undertaken pursuant to title 49,
33 chapter 2, article 5, including mitigation of a nonhazardous release
34 undertaken pursuant to an order issued by the department of environmental
35 quality pursuant to section 49-286.

36 (e) The site of a remedial action undertaken pursuant to the
37 resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat.
38 2795; 42 United States Code sections 6901 through 6992).

39 (f) The site of remedial action undertaken pursuant to the
40 department of defense environmental restoration program (P.L. 99-499; 100
41 Stat. 1719; 10 United States Code section 2701).

42 J. Except as prescribed in subsection K of this section, the
43 director shall approve or deny the drilling of a well within forty-five
44 days after receipt of the notice of intention to drill if one of the
45 following applies:

1 1. The proposed well is located within a remedial action site.

2 2. The proposed well is located within one mile of any of the
3 following remedial action sites:

4 (a) A remedial action undertaken pursuant to title 49, chapter 2,
5 article 5, including mitigation of a nonhazardous release undertaken
6 pursuant to an order issued by the department of environmental quality
7 pursuant to section 49-286.

8 (b) A remedial action undertaken pursuant to the comprehensive
9 environmental response, compensation, and liability act of 1980, as
10 amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601
11 through 9657), commonly known as "superfund".

12 (c) A remedial action undertaken pursuant to the department of
13 defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10
14 United States Code section 2701).

15 3. The proposed well is located within one-half mile of either of
16 the following remedial action sites:

17 (a) A remedial action undertaken pursuant to title 49, chapter 1,
18 article 5.

19 (b) A remedial action undertaken pursuant to the resource
20 conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42
21 United States Code sections 6901 through 6992).

22 4. The proposed well is located within five hundred feet of the
23 site of a corrective action undertaken pursuant to title 49, chapter 6.

24 K. Subsections I and J of this section do not apply to the
25 deepening of a well or to the drilling of a replacement well in
26 approximately the same location.

27 L. A notice of intention to drill filed under this section shall be
28 accompanied by a filing fee of one hundred fifty dollars, except that a
29 notice filed for a proposed well that will not be located within an active
30 management area or an irrigation nonexpansion area, that will be used
31 solely for domestic purposes as defined in section 45-454 and that will
32 have a pump with a maximum capacity of not more than thirty-five gallons
33 per minute shall be accompanied by a filing fee of one hundred dollars.
34 The director shall deposit, pursuant to sections 35-146 and 35-147, all
35 fees collected pursuant to this subsection in the well administration and
36 enforcement fund established by section 45-606.

37 Sec. 18. Section 49-1052, Arizona Revised Statutes, is amended to
38 read:

39 49-1052. Noncorrective actions; baseline assessment

40 A. A baseline period of seven years from January 1, 2016 is
41 established for underground storage tanks. Beginning January 1, 2016,
42 during the baseline period, an owner, operator or person who meets the
43 requirements of section 49-1016, subsection C may do the following:

44 1. Elect to conduct a baseline assessment pursuant to this section.

1 2. Request a grant to cover costs associated with the baseline
2 assessment pursuant to section 49-1071.

3 3. Request the department to perform the baseline assessment under
4 section 49-1017.02.

5 B. The department shall establish standards for conducting baseline
6 assessments pursuant to this section. Until the department establishes
7 standards by rule or by guidance documents, baseline assessment work plans
8 shall be submitted to the department for approval and shall be considered
9 for preapproval on a case-by-case basis, based on compliance with
10 subsection D of this section.

11 C. Baseline assessments shall be conducted under the direction of a
12 person who is a professional engineer ~~or a registered geologist who is~~
13 registered under title 32, chapter 1, ~~or a remediation specialist who is~~
14 ~~certified under title 32, chapter 1 and the rules adopted under that~~
15 ~~chapter~~ OR A PROFESSIONAL GEOLOGIST.

16 D. The scope of the baseline assessment shall address likely
17 release areas and shall include a collection of sufficient information to
18 allow for a determination of the current environmental condition of the
19 property. Samples shall be collected in areas where contamination is most
20 likely to have occurred and sample locations shall consider site-specific
21 conditions, location of potential receptors and preexisting contamination.
22 The baseline assessment must include the registered or certified
23 professional's interpretation regarding confirmation of an unknown release
24 and evaluation of potential risk for the purpose of prioritizing
25 corrective actions.

26 E. If unknown contamination is identified in the baseline
27 assessment, all of the following apply:

28 1. The owner, operator or person that meets the requirements of
29 section 49-1016, subsection C shall comply with the reporting requirements
30 pursuant to section 49-1004 and shall initiate corrective actions pursuant
31 to section 49-1005.

32 2. Unless documentation is provided to the department that
33 demonstrates that the operating underground storage tank is not the source
34 of the release, the department shall require tightness testing.

35 3. If continued operation of the underground storage tank may result in a
36 continued release, the department may initiate delivery prohibition as
37 prescribed in section 49-1023.