

REFERENCE TITLE: record of proceedings; certified reporter

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

HB 2235

Introduced by
Representative Allen J

AN ACT

AMENDING SECTIONS 8-233, 8-323, 12-143, 12-221, 12-223 AND 12-224, ARIZONA REVISED STATUTES; REPEALING SECTION 12-225, ARIZONA REVISED STATUTES; AMENDING SECTIONS 12-302, 13-3952, 13-4103, 21-235, 21-411, 23-674, 26-1028, 26-1054, 27-517, 32-1301, 32-3632, 32-4004, 32-4022, 36-539, 36-727, 38-317, 38-424, 40-360.04, 41-324, 41-1092.01, 41-1092.07, 48-704, 48-1034 AND 49-287.06, ARIZONA REVISED STATUTES; RELATING TO CERTIFIED REPORTERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-233, Arizona Revised Statutes, is amended to
3 read:

4 8-233. Record of proceeding

5 ~~The provisions of~~ Title 12, chapter 2, article 3, ~~providing for~~
6 **REGARDING THE APPOINTMENT OF** a ~~court~~ **CERTIFIED** reporter, ~~shall apply~~
7 **APPLIES** at any juvenile court hearing conducted by a judge.

8 Sec. 2. Section 8-323, Arizona Revised Statutes, is amended to
9 read:

10 8-323. Juvenile hearing officer; appointment; term;
11 compensation; hearings; required attendance;
12 contempt

13 A. The judge of the juvenile court, or in counties having more than
14 one judge of the juvenile court, the presiding judge of the juvenile
15 court, may appoint one or more persons of suitable experience who may be
16 magistrates or justices of the peace to serve as juvenile hearing officers
17 on a full-time or part-time basis. The county board of supervisors shall
18 approve the appointment of justices of the peace as juvenile hearing
19 officers. The local governing body shall approve the appointment of
20 municipal judges as juvenile hearing officers. The juvenile hearing
21 officer serves at the pleasure of the appointing judge. The appointing
22 judge, with the approval of the board of supervisors, shall determine
23 whether any compensation shall be paid to a juvenile hearing officer who
24 is not otherwise employed by a public agency or holding another public
25 office and shall establish the amounts and rates of the compensation.

26 B. Subject to the orders of the juvenile court a juvenile hearing
27 officer may hear and determine juvenile pretrial detention hearings and
28 may process, adjudicate and dispose of all cases that are not classified
29 as felonies and in which a juvenile who is under eighteen years of age on
30 the date of the alleged offense is charged with violating any law relating
31 to the following:

- 32 1. Any provision of title 28 not declared to be a felony.
- 33 2. The purchase, possession or consumption of spirituous liquor by
34 a juvenile.
- 35 3. Boating or game and fish.
- 36 4. Curfew.
- 37 5. Truancy.
- 38 6. The damage or disfigurement of property by graffiti or the
39 purchase or possession of materials with the intent to use the materials
40 for graffiti.
- 41 7. The purchase or possession of tobacco.
- 42 8. Any city, town or political subdivision ordinance.
- 43 9. Interference with judicial proceedings involving disobeying or
44 resisting the lawful order, process or other mandate of a juvenile hearing
45 officer or failure to appear related to any offense in this section.

1 C. A hearing before the juvenile hearing officer or a hearing
2 before a commissioner or a judge of the juvenile court in which the
3 juvenile is charged with any offense set forth in this section may be
4 conducted on an exact legible copy of a written notice to appear,
5 including a uniform Arizona traffic ticket and complaint form, that
6 states, at a minimum, the name and address of the juvenile, the offense
7 charged and the time and place the juvenile shall appear in court.

8 D. The juvenile hearing officer, commissioner or judge of the
9 superior court shall not dispose of a petition or citation for any offense
10 under this section unless the parent, guardian or custodian of the
11 juvenile appears in court with the juvenile at the time of disposition of
12 the charge. On a showing of good cause that the parent, guardian or
13 custodian cannot appear on the date and time set by the court, the court
14 may waive the requirement that the parent, guardian or custodian
15 appear. The court shall state on the record the reasons for waiving the
16 requirement that the parent, guardian or custodian appear. At the time
17 the court issues an order to appear or other order pursuant to this
18 section, the court shall inform the juvenile that failure to appear or
19 failure to comply with an order will result in suspension of the
20 juvenile's driver license or privilege to drive. If the juvenile fails to
21 appear pursuant to a citation or an order to appear properly issued under
22 this section or if on disposition fails to comply with any court order,
23 the juvenile hearing officer shall order the department of transportation
24 to suspend the juvenile's driver license or privilege to drive or shall
25 direct the department of transportation to refuse to issue, renew or
26 restore the juvenile's driver license or privilege to drive until the
27 juvenile reaches eighteen years of age or appears in court as directed or
28 complies with the court's order.

29 E. If a parent, guardian or custodian fails to appear with the
30 juvenile, and good cause for the failure to appear is not found as
31 provided in subsection D of this section, the court shall issue an order
32 to show cause to the parent, guardian or custodian as to why that person
33 shall not be held in contempt.

34 F. Except as otherwise provided by law, on an admission by the
35 juvenile of a violation charged pursuant to this section, or after a
36 hearing, on the finding that the juvenile committed the violation, the
37 juvenile hearing officer, commissioner or judge of the superior court may
38 do one or more of the following:

39 1. Place the juvenile on probation, except that a city magistrate
40 or justice of the peace may only place the juvenile on unsupervised
41 probation.

42 2. Transfer the citation to the juvenile court for all further
43 proceedings.

1 3. Suspend the driving privileges of the juvenile, or restrict the
2 juvenile's driving privileges for a period of not to exceed one hundred
3 eighty days.

4 4. Order the juvenile to attend a traffic school or a counseling or
5 education program approved by the presiding judge of the juvenile court or
6 the supreme court.

7 5. Order the juvenile to pay the monetary assessment or penalty
8 that is applicable to the offense. Except as provided in section 8-341,
9 subsection S, the monetary assessment or penalty shall not exceed ~~five~~
10 ~~hundred dollars~~ \$500 plus lawful surcharges and assessments payable to the
11 public agency processing the violation. If no monetary assessment or
12 penalty is specified for the offense, the juvenile hearing officer,
13 commissioner or judge of the superior court may order the juvenile to pay
14 not more than ~~one hundred fifty dollars~~ \$150 plus lawful surcharges and
15 assessments payable to the public agency processing the violation.

16 6. In lieu of or in addition to a monetary assessment or penalty,
17 order the juvenile to perform a program of work that does not conflict
18 with the juvenile's regular schooling and employment, to repair the
19 victim's property or to provide community restitution.

20 7. If the juvenile hearing officer, commissioner or judge of the
21 superior court determines that the person charged is eighteen or more
22 years of age, transfer the matter to the appropriate criminal court having
23 jurisdiction.

24 8. If the juvenile violated any truancy laws, require the juvenile
25 and the juvenile's parents or guardians to participate in a specialized
26 program consisting of counseling, supervision and education under the
27 terms and conditions the juvenile hearing officer, commissioner or judge
28 of the superior court orders.

29 9. Order the juvenile and one or both of the juvenile's custodial
30 parents to pay restitution to any person who suffered an economic loss as
31 the result of the juvenile's conduct. The juvenile hearing officer,
32 commissioner or judge of the superior court shall not consider the ability
33 of the juvenile's parents to pay restitution before making a restitution
34 order. If the juvenile hearing officer, commissioner or judge of the
35 superior court orders one or both of the juvenile's custodial parents to
36 pay restitution, the amount of the order shall not exceed the liability
37 limit established pursuant to section 12-661.

38 10. Impose sanctions authorized by section 8-343.

39 11. Reprimand the juvenile and take no further action.

40 G. A record of the proceedings before a juvenile hearing officer
41 may be made by a ~~court~~ CERTIFIED reporter, videotape or audiotape or any
42 other method approved by the supreme court that accurately reproduces what
43 occurred at the proceeding.

44 H. Within five days after receiving the citation, the juvenile
45 hearing officer shall notify the juvenile court that the juvenile has been

1 charged with an offense by citation and shall indicate the listed
2 charges. The juvenile hearing officer shall retain jurisdiction of the
3 case until all orders made under this section have been fully complied
4 with. Within five days after disposition, the juvenile hearing officer
5 shall transmit a copy of the citation with the findings and disposition of
6 the court noted on the copy to the juvenile court for record keeping
7 purposes. If appropriate, the juvenile hearing officer shall transmit a
8 copy of the citation to the department of transportation. If on
9 disposition the juvenile fails to comply with any court order, the
10 juvenile hearing officer, in the manner provided by subsection D of this
11 section, may impose any of the sanctions prescribed in subsection F of
12 this section.

13 I. Subject to an appeal pursuant to section 8-325 all orders of the
14 juvenile hearing officer shall be effective immediately.

15 J. A city or town attorney or prosecutor shall act on behalf of the
16 state in matters that are heard in a municipal court by a juvenile hearing
17 officer pursuant to this section. In these matters and on approval of the
18 county attorney, with notice to the presiding judge of the juvenile court,
19 the city or town attorney or the prosecutor may establish diversion
20 programs for offenses other than offenses involving either:

21 1. A violation of section 28-1381, 28-1382 or 28-1383.

22 2. The purchase, possession or consumption of spirituous liquor or
23 misdemeanor violations under title 13, chapter 34 if the juvenile has
24 previously participated in a diversion program established pursuant to
25 this subsection at least two times within twenty-four months before the
26 date of the commission of the current offense.

27 Sec. 3. Section 12-143, Arizona Revised Statutes, is amended to
28 read:

29 12-143. Payment of salaries and other expenses; providing
30 facilities; judicial employees

31 A. The salary of a judge pro tempore shall be paid one-half by the
32 state and one-half by the county to which ~~such~~ THE judge PRO TEMPORE is
33 assigned.

34 B. The sessions of the superior court presided over by a judge pro
35 tempore shall be held wherever the county board of supervisors may direct,
36 if approved by the chief justice of the supreme court. The expense for
37 the court and other required facilities such as attendants, judicial
38 employees, fuel, lights and supplies suitable and sufficient for the
39 transaction of business shall be provided by the county.

40 C. Assignment of judicial employees to the court over which a judge
41 pro tempore presides, such as any deputy clerk of the court, certified
42 ~~superior court~~ reporter, bailiff, interpreter and adult probation officer,
43 shall be made by the county.

1 Sec. 4. Heading change

2 The article heading of title 12, chapter 2, article 3, Arizona
3 Revised Statutes, is changed from "COURT REPORTER" to "CERTIFIED
4 REPORTER".

5 Sec. 5. Section 12-221, Arizona Revised Statutes, is amended to
6 read:

7 12-221. Appointment and oath

8 ~~Each~~ A judge of the superior court ~~shall~~ MAY appoint a ~~court~~
9 CERTIFIED reporter. Before entering ~~upon his~~ ON THE CERTIFIED REPORTER'S
10 duties, the ~~court~~ CERTIFIED reporter shall take and subscribe the official
11 oath to be administered by ~~the~~ A judge of the court.

12 Sec. 6. Section 12-223, Arizona Revised Statutes, is amended to
13 read:

14 12-223. Attendance at and report of proceedings; sale of
15 transcripts

16 A. The ~~court~~ CERTIFIED reporter shall attend court during the
17 hearing of ~~all~~ matters before it ~~unless excused~~ AS DIRECTED by the
18 judge. ~~He~~ THE CERTIFIED REPORTER shall make stenographic notes of all
19 oral proceedings before the court, but unless requested by court or
20 counsel, ~~he~~ THE CERTIFIED REPORTER need not make stenographic notes of
21 arguments of counsel to a jury, nor of argument of counsel to the court in
22 the absence of a jury.

23 B. ~~Upon~~ ON payment or tender of the fees ~~therefor~~ FOR A TRANSCRIPT,
24 ~~he~~ THE CERTIFIED REPORTER shall furnish to any person a typewritten
25 transcript of all or any part of the proceedings reported by ~~him~~ THE
26 CERTIFIED REPORTER UNLESS OTHERWISE PROHIBITED BY LAW OR ORDER OF THE
27 COURT, and ~~upon~~ ON request, certify that ~~such~~ THE transcript is a correct
28 and complete statement of ~~such~~ THE proceedings.

29 Sec. 7. Section 12-224, Arizona Revised Statutes, is amended to
30 read:

31 12-224. Salary; fees for transcripts; free transcripts;
32 office supplies

33 A. The salary of the ~~court~~ CERTIFIED reporter shall be fixed by the
34 presiding judge of the court, with the approval of the board of
35 supervisors of the county, and shall be paid by the county.

36 B. The CERTIFIED reporter shall receive from a party ordering an
37 appeal transcript, ~~two dollars fifty cents~~ \$2.50 per page for the
38 original, ~~and thirty cents~~ \$0.30 per page for each copy if ordered at the
39 same time and by the same party.

40 C. The CERTIFIED reporter, when requested in advance, shall furnish
41 free of charge to the county attorney or the attorney general a copy of
42 the transcript of testimony when a transcript is made on an appeal in a
43 criminal case, ~~and~~ and to the attorney general when the state is a party.

44 D. The CERTIFIED reporter, when requested, shall furnish at county
45 expense to the county attorney or the attorney general a copy of the

1 transcript of testimony of any proceeding held in the superior court when
2 the state or an instrumentality ~~thereof~~ OF THE STATE is ordered to provide
3 ~~such~~ transcripts by a federal court in a habeas corpus proceeding in the
4 federal courts or when ordered by the Arizona supreme court to provide
5 ~~such~~ transcripts in a habeas corpus proceeding in state court.

6 E. The COUNTY SHALL FURNISH THE necessary supplies for conduct of
7 the office of CERTIFIED reporter ~~shall be furnished by the county~~.

8 Sec. 8. Repeal

9 Section 12-225, Arizona Revised Statutes, is repealed.

10 Sec. 9. Section 12-302, Arizona Revised Statutes, is amended to
11 read:

12 12-302. Extension of time for payment of fees and costs;
13 relief from default for nonpayment; deferral or
14 waiver of court fees and costs; definitions

15 A. The court or any judge may for good cause shown extend the time
16 for paying any court fees and costs required by law or may relieve against
17 a default caused by nonpayment of a fee within the time provided by law,
18 but no fees paid shall be refunded.

19 B. The supreme court shall adopt forms and procedures for deferral
20 or waiver of court fees and costs.

21 C. Except as provided in subsection E of this section, the court
22 shall grant an application for deferral of court fees and costs if the
23 applicant establishes by affidavit, including supporting documentation,
24 that the applicant either:

25 1. Is receiving benefits pursuant to one or more of the following
26 programs:

27 (a) The temporary assistance for needy families program established
28 by section 403 of title 4 of the social security act as it exists after
29 August 21, 1996.

30 (b) The food stamp program (7 United States Code sections 2011
31 through 2029).

32 2. Is receiving benefits pursuant to the supplemental security
33 income program (42 United States Code sections 1381 through 1385).

34 3. Has an income that is insufficient or barely sufficient to meet
35 the daily essentials of life and that includes no allotment that could be
36 budgeted for the fees and costs that are required to gain access to the
37 court. In considering insufficient income pursuant to this paragraph, the
38 court may consider the following as evidence of insufficient income:

39 (a) The applicant has a gross income that as computed on a monthly
40 basis is one hundred fifty percent or less of the current poverty level
41 established by the United States department of health and human services.
42 Gross monthly income includes the applicant's share of community property
43 income.

44 (b) The applicant's income is considered to be sufficient, but the
45 applicant provides proof of extraordinary expenses, including medical

1 expenses, costs of care for elderly family members or family members with
 2 disabilities or other expenses that are deemed extraordinary, that reduce
 3 the applicant's gross monthly income to at or below one hundred fifty
 4 percent of the current poverty level established by the United States
 5 department of health and human services.

6 D. On proof that the applicant is permanently unable to pay fees or
 7 costs, the court shall waive them. For the purposes of this subsection,
 8 "permanently unable to pay" means the applicant's income and liquid assets
 9 are insufficient or barely sufficient to meet the daily essentials of life
 10 and the income and liquid assets are unlikely to change in the foreseeable
 11 future.

12 E. Except in cases of dissolution of marriage, legal separation,
 13 annulment or establishment, enforcement or modification of child support,
 14 and notwithstanding subsection A of this section or chapter 9, article 4
 15 of this title, if the applicant is an inmate who is confined to a
 16 correctional facility operated by the state department of corrections and
 17 who initiates a civil action or proceeding, the inmate is responsible for
 18 the full payment of actual court fees and costs. On filing the civil
 19 action or proceeding, the clerk of the court shall assess and, when monies
 20 exist, collect as a partial payment of any court fees and costs required
 21 by law a first time payment of twenty percent. Thereafter the state
 22 department of corrections shall withhold twenty percent of all deposits
 23 into the prisoner's spendable account administered by the department until
 24 the actual court fees and costs are collected in full. The state
 25 department of corrections shall annually forward any monies withheld to
 26 the clerk of the court of each court of jurisdiction before January
 27 31. If a prisoner is released before the full fees and costs are
 28 collected, the state department of corrections shall forward the amount of
 29 fees and costs collected through the date of the prisoner's release. The
 30 clerk of the court of each court of jurisdiction is responsible for
 31 sending the state department of corrections a copy of the order mandating
 32 the amount of fees and costs to be paid. This subsection does not
 33 prohibit an applicant from filing a civil action or proceeding if the
 34 applicant is unable to pay the filing fees.

35 F. At the time an applicant signs and submits the application for
 36 deferral to the court, the applicant shall acknowledge under oath and sign
 37 a consent to judgment. By signing the consent to judgment, the applicant
 38 consents to judgment being entered against the applicant for all fees and
 39 costs that are deferred but that remain unpaid after thirty calendar days
 40 following the entry of final judgment or order. A consent judgment may be
 41 entered against the applicant unless one of the following applies:

42 1. The applicant has an established schedule of payment in effect
 43 and is current with payments.

44 2. A supplemental application for further deferral or waiver has
 45 been filed and is pending.

1 3. In response to a supplemental application, the court orders that
2 the fees and costs be further deferred or waived.

3 4. Within twenty days of the date the court denies the supplemental
4 application, the applicant either pays the fees or requests a hearing on
5 the court's final order denying further deferral or waiver. If the
6 applicant requests a hearing, the court shall not enter a consent judgment
7 unless a hearing is held, further deferral or waiver is denied and payment
8 has not been made within the time prescribed by the court.

9 G. An applicant who is granted a deferral or waiver or a party to
10 the action who knows of any change in the financial circumstances of the
11 applicant shall promptly notify the court of the change in the applicant's
12 financial circumstances during the pendency of the action that affects the
13 applicant's ability to pay court fees and costs. If within ten days after
14 notice and a hearing the court determines that the applicant's financial
15 circumstances have changed and that the applicant no longer meets the
16 eligibility requirements of this section, the court shall order the
17 applicant to pay the deferred or waived fees and costs.

18 H. The following court fees and costs may be deferred or waived,
19 except that the county shall pay the fees and costs in paragraphs 6, ~~and~~ 7
20 ~~AND~~ 8 of this subsection on the granting of an application for deferral or
21 waiver and an applicant who has been granted a deferral shall reimburse
22 the county for the fees and costs in paragraphs 6, ~~and~~ 7 ~~AND~~ 8 of this
23 subsection:

24 1. Filing fees.

25 2. Fees for ~~issuance of~~ ISSUING either a summons or subpoena.

26 3. Fees for obtaining one certified copy of a temporary order in a
27 domestic relations case.

28 4. Fees for obtaining one certified copy of a final order, judgment
29 or decree in all civil proceedings.

30 5. Sheriff, marshal, constable and law enforcement fees for service
31 of process if any of the following applies:

32 (a) The applicant established by affidavit that the applicant has
33 attempted without success to obtain voluntary acceptance of service of
34 process.

35 (b) The applicant's attempt to obtain voluntary acceptance of
36 service of process would be futile or dangerous.

37 (c) An order of protection or an injunction against harassment in
38 favor of the applicant and against the party sought to be served exists
39 and is enforceable.

40 6. The fee for service by publication if service is required by law
41 and if the applicant establishes by affidavit specific facts to show that
42 the applicant has exercised due diligence in attempting to locate the
43 person to be served and has been unable to do so.

1 7. ~~Court reporter's~~ CERTIFIED REPORTER fees for ~~the preparation of~~
2 PREPARING court transcripts if the ~~court~~ CERTIFIED reporter is employed by
3 the court.

4 8. AUTHORIZED TRANSCRIBER FEES FOR PREPARING COURT TRANSCRIPTS IF
5 THE AUTHORIZED TRANSCRIBER IS EMPLOYED BY THE COURT.

6 ~~8.~~ 9. Appeal preparation and filing fees at all levels of appeal
7 and photocopy fees for ~~the preparation of~~ PREPARING the record on appeal
8 pursuant to sections 12-119.01, 12-120.31 and 12-2107 and section 12-284,
9 subsection A.

10 I. If the case is appealed, the initial deferral or waiver remains
11 in effect unless there is a change in the applicant's financial
12 circumstances. If a case is appealed an applicant may be required to
13 submit to the appellate court a new application for a deferral or waiver
14 of the court fees and costs.

15 J. If a judgment is rendered for court fees and costs, the court
16 fees and costs deferred but unpaid and the expenses paid by the county
17 under this section shall be included in the judgment and shall be paid
18 directly to the clerk of the court by the party against whom the court
19 fees and costs were assessed.

20 K. A waiver of court fees or costs shall not be granted for:

21 1. Matters that are filed as class actions pursuant to rule 23 of
22 the Arizona rules of civil procedure.

23 2. Civil actions other than cases of dissolution of marriage, legal
24 separation, annulment or establishment, enforcement or modification of
25 child support that are filed by persons who at the time of filing the
26 application are incarcerated as a result of a felony conviction in an
27 out-of-state correctional facility or in a jail waiting to be transported
28 to a state department of corrections facility.

29 3. Civil actions other than cases of dissolution of marriage, legal
30 separation, annulment or establishment, enforcement or modification of
31 child support THAT ARE filed by a pro se litigant who has been previously
32 declared a vexatious litigant by any court.

33 L. This section does not limit the court's discretion in deferring,
34 waiving or ordering the county to pay any fees and costs as may be
35 necessary and appropriate.

36 M. If an applicant who is granted a deferral or waiver is found to
37 be a vexatious litigant by any court during the pendency of the action,
38 the court shall order the applicant to pay the deferred or waived fees and
39 costs.

40 N. For the purposes of this section:

41 1. "Deferral" means either postponement of an obligation to pay
42 fees or establishment of a schedule for payment of fees.

43 2. "Further deferral" means the establishment of a schedule for
44 payment of fees.

1 Sec. 10. Section 13-3952, Arizona Revised Statutes, is amended to
2 read:

3 13-3952. Compensation of certified reporter appearing at
4 preliminary hearing; fees for transcribing notes

5 When a regularly appointed ~~court~~ CERTIFIED reporter appears and
6 takes testimony at a preliminary hearing in a criminal proceeding, the
7 CERTIFIED reporter's compensation shall be fixed by the magistrate before
8 whom the examination is had. ~~Such~~ THE compensation shall not exceed ~~the~~
9 ~~amount of fifteen dollars~~ \$15 per day for each preliminary hearing
10 actually attended ~~upon~~ ON such examination, ~~and two dollars fifty cents~~
11 \$2.50 per page for transcribing ~~his~~ THE CERTIFIED REPORTER'S notes, to be
12 allowed and paid as other county charges. The CERTIFIED reporter, when
13 requested, shall furnish at county expense to the county attorney or the
14 attorney general a copy of the transcript of testimony of any proceedings
15 held in the justice court when the state or an instrumentality ~~thereof~~ OF
16 THIS STATE is ordered to provide ~~such~~ transcripts by a federal court in a
17 habeas corpus proceeding in the federal courts or when ordered by the
18 Arizona supreme court to provide ~~such~~ transcripts in a habeas corpus
19 proceeding in state court.

20 Sec. 11. Section 13-4103, Arizona Revised Statutes, is amended to
21 read:

22 13-4103. Order for examination; notice; proof of service

23 A. If the court is satisfied that the examination of the witness is
24 necessary, an order shall be made that the witness be examined
25 conditionally at a specified time and place, ~~and~~ that a copy of the order
26 be served on the opposite party at least two days before the examination.

27 B. The order shall direct that the examination be taken before the
28 clerk of the court, the ~~court~~ CERTIFIED reporter, a magistrate or a notary
29 public named ~~therein, and~~ IN THE ORDER. On proof of service ~~upon~~ ON the
30 opposite party of a copy of the order, though no counsel appears for the
31 state, the examination shall proceed.

32 Sec. 12. Section 21-235, Arizona Revised Statutes, is amended to
33 read:

34 21-235. Recording, listening to, observing proceedings
35 unlawful; classification

36 A. A person who knowingly, by any means whatsoever, records all or
37 part of the proceedings of any grand jury while it is in session or
38 listens to or observes the proceedings of any grand jury of which ~~he~~ THE
39 PERSON is not a member while ~~such~~ THE GRAND jury is in session is guilty
40 of a class 2 misdemeanor.

41 B. This section does not prohibit:

42 1. The prescribed activities of the court, INCLUDING THE COURT'S
43 USE OF AN ELECTRONIC RECORDING SYSTEM, the prosecuting officer, a ~~court~~
44 CERTIFIED reporter designated by the court, ~~or~~ an interpreter designated
45 by the court.

1 2. The taking of notes by a grand juror in connection with and
2 solely for the purpose of assisting ~~him~~ THE GRAND JUROR in the performance
3 of ~~his~~ THE GRAND JUROR'S duties as such juror.

4 3. The appearance, for the purposes of giving the testimony, of a
5 witness.

6 4. The appearance, for the purpose of presenting evidence when
7 ~~permitted~~ ALLOWED pursuant to section 21-412, of a person being
8 investigated and ~~his~~ THE PERSON'S counsel.

9 Sec. 13. Section 21-411, Arizona Revised Statutes, is amended to
10 read:

11 21-411. Appointment of reporter; transcript

12 A. The presiding judge of the superior court ~~shall~~ OR THE PRESIDING
13 JUDGE'S DESIGNEE MAY appoint a ~~regularly appointed court~~ CERTIFIED
14 reporter to record the proceedings before the grand jury, except the
15 deliberations of the grand jury. The CERTIFIED reporter's notes OR AN
16 ELECTRONIC RECORDING containing the proceedings from which an indictment
17 is returned shall be transcribed and filed with the clerk of the superior
18 court not later than twenty days following the return of the indictment,
19 unless the court otherwise orders. ~~Such~~ THE transcript shall be made
20 available to the prosecuting officer and the defendant. The transcript OR
21 ELECTRONIC RECORDING or a portion of the transcript OR ELECTRONIC
22 RECORDING may be denied to a defendant by the court ~~upon~~ ON a showing of
23 extraordinary circumstances by a prosecuting officer. The CERTIFIED
24 reporter's notes ~~which are~~ OR THE ELECTRONIC RECORDING THAT IS not
25 transcribed as provided in this section shall be ~~filed with~~ SECURED BY the
26 clerk of the superior court and impounded and shall be transcribed only
27 when ordered by the presiding judge of the superior court OR THE PRESIDING
28 JUDGE'S DESIGNEE.

29 B. The ~~reporter and typists~~ PERSON who ~~transcribe~~ TRANSCRIBES the
30 CERTIFIED reporter's notes OR AN ELECTRONIC RECORDING of grand jury
31 proceedings shall be sworn by the foreman, ~~or~~ acting foreman, CLERK OF THE
32 SUPERIOR COURT OR PRESIDING JUDGE OF THE SUPERIOR COURT OR PRESIDING
33 JUDGE'S DESIGNEE not to disclose any testimony or the name of any witness
34 except to the county attorney or other prosecuting officer or when
35 testifying in court.

36 Sec. 14. Section 23-674, Arizona Revised Statutes, is amended to
37 read:

38 23-674. Procedure in rendering decisions and orders; rights
39 of parties; representation

40 A. All interested parties to a hearing before the appeal tribunal
41 or the appeals board shall be given reasonable notice of the hearing and
42 afforded an opportunity for hearing. The notice shall state the time,
43 place and issues involved but if by reason of the nature of the proceeding
44 the issues cannot be fully stated in advance of the hearing, or if
45 subsequent amendment of the issues is necessary, they shall be fully

1 stated as soon as practicable, and opportunity shall be afforded all
 2 parties to present evidence and argument with respect thereto. If a
 3 party's legal or factual basis of contention is substantially changed at
 4 the hearing, causing surprise to the opposing party, the hearing shall be
 5 rescheduled with timely notice of the nature of the new contention unless
 6 a waiver on the record is obtained from the party claiming surprise or the
 7 surprise could have been avoided with due diligence. All hearings shall
 8 be recorded. The appeal tribunal shall secure either a ~~court~~ CERTIFIED
 9 reporter or an electronic means of producing a clear and accurate record
 10 of the proceeding at the department's expense. If a party files an
 11 application for appeal to the court of appeals pursuant to section 41-1993
 12 and the hearing has not yet been transcribed, the hearing shall be
 13 transcribed at the department's expense. Informal disposition may be made
 14 of any case by stipulation, agreed settlement, consent order or default.

15 B. In a hearing conducted pursuant to this section, parties may be
 16 represented in the following manner:

17 1. An individual, either an employee or an employer, may represent
 18 himself or may be represented by a duly authorized agent who is not
 19 charging a fee for the representation.

20 2. An employer, including a corporate employer, may represent
 21 itself through an officer or employee.

22 3. Any party may be represented by a person who is charging a fee
 23 for the representation and who is either a duly authorized agent who was
 24 previously or is currently retained by a party for purposes other than
 25 representation in an unemployment compensation hearing or an attorney who
 26 is authorized to practice law in this state. An attorney or agent
 27 representing a party before an appeal tribunal or the appeals board may
 28 charge a fee not in excess of ~~seven hundred fifty dollars~~ \$750 but may
 29 request the department to approve an additional amount which is reasonable
 30 for the services rendered. This is limited only to an unemployment
 31 compensation appeal.

32 C. Notwithstanding any other law, representation of a party at a
 33 hearing conducted pursuant to this section is not deemed to be the
 34 practice of law.

35 D. The tribunal and the appeals board may admit and give probative
 36 effect to evidence ~~which~~ THAT possesses probative value commonly accepted
 37 by reasonably prudent persons in the conduct of their affairs. It shall
 38 give effect to the rules of privilege recognized by law. It may exclude
 39 incompetent, irrelevant, immaterial and unduly repetitious evidence. All
 40 evidence, including records and documents in the possession of the
 41 department of which it desires to avail itself, shall be offered and made
 42 a part of the record in the case, and no other factual information or
 43 evidence shall be considered in the determination of the case.
 44 Documentary evidence may be received in the form of copies or excerpts, or
 45 by incorporation by reference. The tribunal and the appeals board may

1 take notice of judicially cognizable facts and in addition may take notice
2 of general, technical or scientific facts within its specialized
3 knowledge. Parties shall be notified either before or during the hearing,
4 or by reference in preliminary reports or otherwise, of the material so
5 noticed, and they shall be afforded an opportunity to contest the facts so
6 noticed. The tribunal and the appeals board may ~~utilize~~ USE their
7 experience, technical competence and specialized knowledge in ~~the~~
8 ~~evaluation of~~ EVALUATING the evidence presented to them. Each party shall
9 have the right of cross-examination of the witnesses who testify and shall
10 have the right to submit rebuttal evidence.

11 E. Every decision and order adverse to a party to the proceedings
12 shall be in writing or stated in the record and shall be accompanied by
13 findings of fact and conclusions of law. The findings of fact shall
14 consist of a concise statement of the conclusions ~~upon~~ ON each contested
15 issue of fact. Parties to the proceeding shall be notified of the
16 decision and order in person or by mail.

17 Sec. 15. Section 26-1028, Arizona Revised Statutes, is amended to
18 read:

19 26-1028. Detail or employment of reporters and interpreters

20 Under such rules as the adjutant general prescribes, the convening
21 authority of a court-martial, military commission or court of inquiry
22 shall detail or employ qualified ~~court~~ CERTIFIED reporters who shall
23 record the proceedings of and testimony taken before that court or
24 commission. Under similar rules the convening authority of a
25 court-martial or court of inquiry may detail or employ interpreters to
26 interpret for the court.

27 Sec. 16. Section 26-1054, Arizona Revised Statutes, is amended to
28 read:

29 26-1054. Record of trial

30 A. Each general court-martial shall keep a separate record of the
31 proceedings in each case brought before it, and the record shall be
32 authenticated by the signature of the military judge. If the record
33 cannot be authenticated by the military judge by reason of ~~his~~ THE
34 MILITARY JUDGE'S death, disability or absence, it shall be authenticated
35 by the signature of the trial counsel or by that of a member if the trial
36 counsel is unable to authenticate it by reason of ~~his~~ THE TRIAL COUNSEL'S
37 death, disability or absence. In a court-martial consisting of only a
38 military judge the record shall be authenticated by the ~~court~~ CERTIFIED
39 reporter under the same conditions ~~which~~ THAT would impose such a duty on
40 a member under this subsection.

41 B. Each special and summary court-martial shall keep a separate
42 record of the proceedings in each case, and the record shall be
43 authenticated in the manner required by rule the governor adopts.

1 C. A copy of the record of the proceedings of each general and
2 special court-martial shall be given to the accused as soon as it is
3 authenticated.

4 Sec. 17. Section 27-517, Arizona Revised Statutes, is amended to
5 read:

6 27-517. Hearings; reporter; fees

7 A. Any interested person shall, by written request, have the right
8 to have the commissioner call a hearing for the purpose of taking action
9 in respect to any matter within the jurisdiction of the commissioner.
10 Hearings shall be held at the time and place the commissioner directs, and
11 any person having an interest in the subject matter of the hearing may
12 appear and be heard. ~~Upon~~ ON receipt of the request, the commissioner
13 shall promptly call a hearing, and, not more than thirty days thereafter
14 shall take action with regard to the matter as ~~he~~ THE COMMISSIONER deems
15 appropriate. The request for hearing shall be accompanied by a \$50 fee ~~of~~
16 ~~fifty dollars~~.

17 B. The commissioner shall prescribe rules of order and procedure in
18 hearings or other proceedings held under this article. The commissioner
19 shall appoint a competent shorthand reporter to be present throughout all
20 public hearings. The reporter shall be sworn by the commissioner
21 faithfully to perform the duties of a reporter. The commissioner shall
22 have the same control and authority over the reporter as the judge of the
23 superior court exercises over a ~~court~~ CERTIFIED reporter, and the duties
24 of the reporter shall, insofar as applicable, be the same as those fixed
25 by law for a ~~court~~ CERTIFIED reporter.

26 C. As soon as possible following the hearing the commission shall
27 bill the person requesting the hearing for the total cost of publication
28 for the notices of such hearing and the total cost of the ~~court~~ CERTIFIED
29 reporter's fees less the original ~~fifty dollar~~ \$50 fee. The requesting
30 party shall within ten days after receipt of the billing by the commission
31 reimburse the commission the amount of money so billed or be subject to
32 the penalties ~~as~~ prescribed in ~~subsection A of~~ section 27-527,
33 SUBSECTION A. The money so collected by the commission shall not be
34 subject to section 27-523 but shall be deposited, pursuant to sections
35 35-146 and 35-147, by the commission in the fund from which the
36 expenditure was originally made.

37 Sec. 18. Section 32-1301, Arizona Revised Statutes, is amended to
38 read:

39 32-1301. Definitions

40 In this chapter, unless the context otherwise requires:

- 41 1. "Accredited" means recognized or authorized by the American
42 board of funeral service education.
- 43 2. "Administrative costs and expenses" means the cost of copies,
44 transcripts, ~~court~~ CERTIFIED reporter and witness fees, reimbursement for
45 mileage and office of administrative hearings costs.

- 1 3. "Alternative container" means any unfinished wood box or other
2 nonmetal receptacle or enclosure, without ornamentation or a fixed
3 interior lining, that is designed for the encasement of human remains.
- 4 4. "Authorizing agent" means a person who is legally entitled to
5 order the cremation, disinterment or embalming of human remains pursuant
6 to section 32-1365.02.
- 7 5. "Beneficiary" means a person whose future funeral arrangements
8 will be handled by a funeral establishment pursuant to a prearranged
9 funeral agreement.
- 10 6. "Board" means the state board of funeral directors and
11 embalmers.
- 12 7. "Business entity" includes any corporation, association, limited
13 liability company, professional corporation, partnership, limited
14 partnership, sole proprietorship, business trust, trust, joint venture and
15 other business entity.
- 16 8. "Casket" means a rigid container that is designed to permanently
17 encase human remains and that is usually constructed of wood, metal or
18 synthetic substances and ornamented and lined with fabric.
- 19 9. "Change of ownership" means a transfer of a controlling legal or
20 equitable interest in a licensed funeral establishment or crematory
21 resulting from a sale or merger. If the establishment or crematory is
22 operated by a business entity, any transfer of the ownership of ten
23 percent or more of the entity constitutes a change of ownership.
- 24 10. "Conviction" means a criminal adjudication or conviction by any
25 state or federal court of competent jurisdiction, including a judgment
26 based on a no contest plea, without regard to whether civil rights have
27 been restored.
- 28 11. "Cremated remains" means the remaining bone fragments after
29 cremation.
- 30 12. "Cremation" means the heating process that reduces human
31 remains to bone fragments by combustion and evaporation.
- 32 13. "Cremation container" means a leak and spill resistant, rigid,
33 combustible, closed receptacle into which human remains are placed before
34 cremation.
- 35 14. "Cremationist" means a person who operates a crematory retort,
36 who performs the actual cremation of human remains and who may be licensed
37 pursuant to article 6 of this chapter.
- 38 15. "Crematory" means a building or portion of a building that is
39 licensed pursuant to article 6 of this chapter and that houses a retort in
40 which only human remains are cremated.
- 41 16. "Disciplinary action" means an action taken by the board to
42 revoke or suspend a license or registration, to impose probationary
43 requirements or civil penalties or to issue a letter of censure or
44 reprimand to any person who is subject to this chapter and who violates
45 any provision of this chapter or rules adopted by the board.

- 1 17. "Embalmer" means a person who is licensed pursuant to this
2 chapter and who is engaged in embalming.
- 3 18. "Embalmer's assistant" means a person who is registered
4 pursuant to this chapter and who is engaged in embalming without the
5 supervision of a licensed embalmer.
- 6 19. "Embalming" means the implementation of reconstructive
7 procedures and the process of disinfecting and preserving a dead human
8 body to retard organic decomposition by treating the body to reduce the
9 presence and growth of organisms.
- 10 20. "Financial institution" means a bank, savings and loan
11 association, trust company or credit union that is lawfully doing business
12 in this state and that is not affiliated with a funeral establishment.
- 13 21. "Fixed price prearranged funeral agreement funded by trust"
14 means any agreement or combination of agreements that establishes a fixed
15 price for funeral goods and services, that requires a funeral
16 establishment to provide those funeral goods and services at the price
17 levels in effect at the time of the execution of the agreement and that
18 requires the purchaser to convey all or a portion of the accrued interest
19 to the funeral establishment at the time that the funeral goods and
20 services are actually provided.
- 21 22. "Funded by insurance" means that monies for a prearranged
22 funeral agreement are paid directly to an insurance company licensed
23 pursuant to title 20 on behalf of the beneficiary of the agreement.
- 24 23. "Funeral directing" means arranging, directing or providing a
25 service in the disposition of dead human bodies for compensation.
- 26 24. "Funeral director" means a person who is licensed pursuant to
27 this chapter and who is engaged in funeral directing.
- 28 25. "Funeral establishment" means a business at a specific location
29 that is licensed pursuant to this chapter and that is devoted to the care,
30 storage or preparation for final disposition or transportation of dead
31 human bodies.
- 32 26. "Funeral goods and services" means any personal property or
33 services that are typically sold or provided in connection with the final
34 disposition of human remains, including caskets, alternative containers,
35 outer burial containers, cremation containers, transportation containers,
36 funeral clothing or accessories, monuments, grave markers, urns, embalming
37 services, funeral directing services and similar funeral or burial items.
38 Funeral goods and services do not include goods and services sold by
39 cemeteries.
- 40 27. "Good moral character" means that a person:
41 (a) Has not been convicted of a class 1 or 2 felony by a court of
42 competent jurisdiction.
43 (b) Has not, within five years of applying for licensure or
44 registration, been convicted of a felony or misdemeanor if the offense has

1 a reasonable relationship to the person's proposed area of licensure or
2 registration.

3 (c) Has not, within five years of applying for licensure or
4 registration, committed any act involving dishonesty, fraud,
5 misrepresentation, breach of fiduciary duty, gross negligence or
6 incompetence if the act has a reasonable relationship to the person's
7 proposed area of licensure or registration.

8 (d) Is not currently incarcerated in or on community supervision
9 after a period of imprisonment in a local, state or federal penal
10 institution or on criminal probation.

11 (e) Has not engaged in fraud or misrepresentation in connection
12 with an application for licensure or registration under this chapter or an
13 examination required for licensure or registration.

14 (f) Has not, within five years of applying for licensure or
15 registration, had a license, registration or endorsement revoked or
16 suspended by the board or by the funeral services licensing authority of
17 any other jurisdiction.

18 (g) Has not surrendered a license, registration or endorsement to
19 the board or the funeral licensing authority of any other jurisdiction in
20 lieu of disciplinary action.

21 (h) Has not practiced funeral directing or embalming without a
22 license in this state or any other jurisdiction that requires licensure to
23 perform these activities.

24 28. "Holding facility" means a designated area for the retention of
25 human remains.

26 29. "Human remains" means a lifeless human body or parts of a human
27 body that allow a reasonable inference that death occurred.

28 30. "Intern" means a person who is licensed pursuant to this
29 chapter and who is engaged in either or both of the following:

30 (a) Embalming under the supervision of a licensed embalmer.

31 (b) Arranging and directing funerals under the supervision of a
32 licensed funeral director.

33 31. "Intern trainee" means a person who intends to enter training
34 as an intern and who is temporarily employed by a funeral establishment.

35 32. "License" means a written authorization that is issued by the
36 board and that entitles a person to act as a funeral director, embalmer or
37 intern or to operate a funeral establishment or crematory in this state.

38 33. "Licensee" means a person to whom the board has issued a
39 license to act as a funeral director, embalmer or intern or to operate a
40 funeral establishment or crematory in this state.

41 34. "Manage" means:

42 (a) That a responsible funeral director exercises control and
43 oversight over all employees of a funeral establishment and over funeral
44 transactions, including the care of dead human bodies, funeral services
45 and activities and the documentation and retention of records.

1 (b) That a responsible cremationist exercises control and oversight
2 over all employees of a crematory and crematory operations.

3 35. "National board examination" means the test or tests given by
4 the conference of funeral service examining boards to determine the entry
5 level knowledge and skills of a person regarding funeral directing and
6 embalming.

7 36. "Net interest" means interest earned on a prearranged funeral
8 trust account minus applicable taxes, reasonable and necessary charges
9 made by the financial institution and the annual service fee allowed to be
10 deducted by the funeral establishment according to section 32-1391.06,
11 subsection B.

12 37. "Outer burial container" means a container that is designed for
13 placement in a grave around a casket, including burial vaults, grave boxes
14 and grave liners.

15 38. "Owner" means a person who owns ten percent or more of a
16 business entity. Owner does not include shareholders of companies who
17 have a class of common equity stock listed or authorized to be listed on
18 the New York stock exchange or the American stock exchange or listed on
19 the NASDAQ stock market.

20 39. "Person legally responsible" means the person responsible for
21 burying a dead body as determined in section 36-831.

22 40. "Prearranged funeral agreement" means any agreement or
23 combination of agreements under which a payment is made before the death
24 of the intended beneficiary for funeral goods and services to be delivered
25 or performed after the death of the beneficiary.

26 41. "Prearranged funeral trust account" means a trust account that
27 is established at a financial institution and into which all monies paid
28 on behalf of a beneficiary pursuant to a prearranged funeral agreement are
29 deposited.

30 42. "Preparation" means washing, shaving, dressing or arranging
31 hair on, applying cosmetics to or positioning bodily features on a dead
32 human body and placing THE dead human body in a casket.

33 43. "Processed cremated remains" means cremated remains after they
34 are pulverized and cleaned, leaving primarily small bone fragments.

35 44. "Provisionally accredited" means granted candidacy status by
36 the American board of funeral service education.

37 45. "Registration" means a written authorization that is issued by
38 the board and that entitles a person to act as an assistant funeral
39 director, an embalmer's assistant or a prearranged funeral salesperson in
40 this state.

41 46. "Responsible cremationist" means a licensed cremationist who
42 manages a crematory.

43 47. "Responsible funeral director" means a person who is licensed
44 pursuant to this chapter, who is engaged in funeral directing and who
45 manages and is accountable for a funeral establishment.

1 48. "Retort" means an enclosed space within which cremation takes
2 place.

3 49. "State equivalent examination" means the test or tests that are
4 provided by the conference of funeral service examining boards and offered
5 by the board to determine the entry level knowledge and skills of a person
6 regarding funeral directing and embalming.

7 50. "Supervise" or "supervision" means that a licensed embalmer has
8 responsibility for and is within sight and sound of a licensed intern who
9 is embalming a dead human body or a student who is assisting in embalming
10 a dead human body.

11 51. "Temporary container" means a receptacle that is usually made
12 of cardboard, rigid plastic or another similar material and that is
13 designed to hold processed cremated remains until they are placed in an
14 urn or another permanent container.

15 52. "Trust funds" means all monies that are deposited on behalf of
16 a beneficiary of a prearranged funeral agreement funded by trust and all
17 accrued net interest. Trust funds shall be considered an account kept in
18 suspense until distributed to the beneficiary, the funeral establishment
19 or the estate of the beneficiary in accordance with this article.

20 53. "Universal precautions" means the universal blood and fluid
21 precautions recommended by the centers for disease control of the United
22 States public health service to prevent the transmission of bloodborne and
23 bodily fluid-borne infectious diseases.

24 54. "Unprofessional conduct" includes the following acts, whether
25 occurring in this state or elsewhere:

26 (a) Committing a class 1 or 2 felony.

27 (b) Committing a felony or misdemeanor if the offense has a
28 reasonable relationship to funeral directing or embalming. Conviction by
29 any court of competent jurisdiction or a plea of no contest is conclusive
30 evidence of the commission.

31 (c) Providing false, misleading or deceptive information on an
32 application for licensure or registration pursuant to this chapter or on
33 an examination required for licensure or registration.

34 (d) Bribing or offering to bribe, directly or indirectly, a member
35 of the board to influence the member's actions in performing the member's
36 duties.

37 (e) Wilfully interfering with an embalmer, funeral director or
38 cremationist who has lawful custody of a dead human body in performing the
39 embalmer's, funeral director's or cremationist's duty to embalm or prepare
40 the body for burial, transportation or cremation.

41 (f) Paying or causing money or other valuable consideration to be
42 paid to a person, other than an employee of a funeral establishment, to
43 secure business regulated pursuant to this chapter from or through the
44 person.

1 (g) Violating any law of this state or any rule adopted by the
2 department of health services that relates to embalming or preparing dead
3 human bodies.

4 (h) Certifying falsely to having embalmed or prepared a dead human
5 body that was embalmed by a person other than a licensed embalmer making
6 the certification or an intern under the supervision of a licensed
7 embalmer making the certification.

8 (i) Falsely advertising or labeling any service or merchandise with
9 the intention of deceiving the public.

10 (j) Shipping or delivering any merchandise or supplies that are not
11 the substantial equivalent of or superior in quality to merchandise or
12 supplies previously presented to the purchaser as samples.

13 (k) Committing any act involving dishonesty, fraud,
14 misrepresentation, breach of fiduciary duty, gross negligence or
15 incompetence if the act has a reasonable relationship to funeral directing
16 or embalming.

17 (l) Engaging in any conduct or practice that is reasonably related
18 to funeral directing or embalming and that is or may be harmful or
19 dangerous to the health, safety or welfare of the public.

20 (m) Within a period of five years, having a license, registration
21 or endorsement suspended or revoked by the board or by the funeral
22 services licensing authority of any other jurisdiction or surrendering a
23 license, registration or endorsement in lieu of disciplinary action.

24 55. "Urn" means a receptacle into which processed cremated remains
25 are placed for disposition.

26 Sec. 19. Section 32-3632, Arizona Revised Statutes, is amended to
27 read:

28 32-3632. Hearing and judicial review; costs and fees; appeal

29 A. The hearing on the charges shall be at a time and place
30 prescribed by the SUPERINTENDENT and shall be in accordance with title 41,
31 chapter 6, article 10.

32 B. If a case proceeds to a hearing before either the superintendent
33 or an administrative law judge, both of the following apply:

34 1. If the department sustains its burden of proof and prevails on
35 the merits of the case, the department may collect from the respondent
36 applicant, registered trainee appraiser, appraiser or property tax agent
37 the department's costs and expenses associated with the formal hearing,
38 including reasonable attorney fees, expert testimony and preparation fees,
39 investigative costs and expenses and costs incurred relating to the office
40 of administrative hearings and ~~court~~ CERTIFIED reporters. All monies
41 collected pursuant to this paragraph shall be deposited in the department
42 revolving fund established by section 6-135.

1 2. If the department does not sustain its burden of proof and the
2 respondent applicant, registered trainee appraiser, appraiser or property
3 tax agent prevails on the merits of the case, the respondent applicant,
4 registered trainee appraiser, appraiser or property tax agent may collect
5 from the department fees and other costs associated with the formal
6 hearing.

7 C. Except as provided in section 41-1092.08, subsection H, any
8 final decision or order of the superintendent may be appealed to the
9 superior court pursuant to title 12, chapter 7, article 6.

10 Sec. 20. Section 32-4004, Arizona Revised Statutes, is amended to
11 read:

12 32-4004. Board of certified reporters

13 A. The board of certified reporters is established consisting of
14 the following members:

15 1. The chief justice of the supreme court or the chief justice's
16 designee.

17 2. One judge of the court of appeals who is appointed by the chief
18 justice of the supreme court.

19 3. One superior court judge who is appointed by the chief justice
20 of the supreme court.

21 4. Two certified reporters who are residents of this state, who
22 have been official ~~court~~ CERTIFIED reporters for at least five years and
23 who are appointed by the chief justice of the supreme court.

24 5. Two certified reporters who are residents of this state, who
25 have been freelance reporters for at least five years and who are
26 appointed by the chief justice of the supreme court.

27 6. One attorney who is a resident of this state, who has been
28 licensed to practice law in this state for at least five years and who is
29 appointed by the chief justice of the supreme court.

30 7. One public member who is appointed by the chief justice of the
31 supreme court.

32 B. Members who are appointed pursuant to subsection A, paragraphs 2
33 through 7 OF THIS SECTION serve ~~five-year~~ FIVE-YEAR terms. The chief
34 justice shall fill a vacancy for any unexpired portion of a term in the
35 same manner as the original appointment.

36 C. A majority of the members shall elect a chairperson.

37 D. Public members of the board are not eligible to receive
38 compensation but are eligible to receive reimbursement for expenses
39 pursuant to title 38, chapter 4, article 2.

40 E. The board shall ~~assure~~ ENSURE that a record of its meetings and
41 all official actions, a register of all applicants for certification and a
42 roster of all certified reporters are maintained. The board shall
43 designate the location where it maintains the register and roster.

1 Sec. 21. Section 32-4022, Arizona Revised Statutes, is amended to
2 read:

3 32-4022. Examination; requirements; exemption

4 A. A person shall not be admitted to an examination without
5 presenting satisfactory evidence to the board that before the date on
6 which the application for an examination was filed the person has done at
7 least one of the following:

8 1. Obtained one year of experience in making verbatim records of
9 meetings, conferences, hearings or judicial or related proceedings by
10 means of written symbols or abbreviations in shorthand, machine writing or
11 voice writing and in transcribing these records.

12 2. Obtained a verified certificate of the satisfactory completion
13 of a prescribed course of study from a court reporting school or a
14 certificate from a school that evidences the equivalent proficiency and
15 the ability to make a verbatim record of material that is dictated
16 pursuant to rules adopted by the supreme court.

17 3. Obtained a national court reporters association's registered
18 professional reporter or registered merit reporter certificate.

19 4. Obtained a valid certificate to practice court reporting that is
20 issued by a state other than this state if the other state's requirements
21 and certifying examination are substantially similar to or more stringent
22 than those in this state.

23 5. Demonstrated reasonable proficiency in making verbatim records
24 of trial or judicial or other related proceedings by passing an approved
25 examination for certification pursuant to rules adopted by the supreme
26 court.

27 B. The examination for certification consists of the following two
28 parts:

29 1. A national court reporters association's registered professional
30 reporter examination, a national verbatim reporters association's
31 certified verbatim reporters association examination or an alternative
32 demonstration of proficiency approved by the supreme court.

33 2. A written knowledge test of rules of the supreme court of
34 Arizona and statutes of this state relating to ~~court~~ CERTIFIED reporters.

35 C. The board shall review the content and subject matter of the
36 examination and shall make changes as deemed necessary.

37 D. The supreme court shall specify a date and place for the
38 examinations.

39 E. Pursuant to rules adopted by the supreme court, an applicant who
40 presents proof of having passed an examination approved by the supreme
41 court including a national court reporters association's registered
42 professional reporter examination, a national court reporters
43 association's registered merit reporter examination, a national verbatim
44 reporters association's certified verbatim reporters association
45 examination or an alternative demonstration of proficiency approved by the

1 supreme court and the test prescribed by subsection B, paragraph 2 OF THIS
2 SECTION may apply for certification without taking and passing the
3 examination prescribed by subsection B, paragraph 1 OF THIS SECTION.

4 F. An applicant who fails to pass the examination prescribed by
5 subsection B, paragraph 2 OF THIS SECTION may apply for reexamination at
6 any time.

7 G. An applicant shall be disqualified from taking any future
8 examination if the board determines that the applicant engaged in fraud,
9 dishonesty or corruption while taking the examination.

10 Sec. 22. Section 36-539, Arizona Revised Statutes, is amended to
11 read:

12 36-539. Conduct of hearing; record; transcript

13 A. The medical director of the evaluation agency shall issue
14 instructions to the physicians or the psychiatric and mental health nurse
15 practitioner of the evaluation agency who is treating the proposed patient
16 to take all reasonable precautions to ensure that at the time of the
17 hearing the proposed patient shall not be so under the influence of or so
18 suffer the effects of drugs, medication or other treatment as to be
19 hampered in preparing for or participating in the hearing. If the
20 proposed patient is being treated as an inpatient by the evaluation
21 agency, the court at the time of the hearing shall be presented a record
22 of all drugs, medication or other treatment that the person has received
23 during the seventy-two hours immediately before the hearing.

24 B. The patient and the patient's attorney shall be present at all
25 hearings, and the patient's attorney may subpoena and cross-examine
26 witnesses and present evidence. The patient may choose to not attend the
27 hearing or the patient's attorney may waive the patient's presence. The
28 evidence presented by the petitioner or the patient shall include the
29 testimony of two or more witnesses acquainted with the patient at the time
30 of the alleged mental disorder, which may be satisfied by a statement
31 agreed on by the parties, and testimony of the two physicians who
32 participated in the evaluation of the patient, which may be satisfied by
33 stipulating to the admission of the evaluating physicians' affidavits as
34 required pursuant to section 36-533, subsection B. The physicians shall
35 testify as to their personal observations of the patient. They shall also
36 testify as to their opinions concerning whether the patient is, as a
37 result of mental disorder, a danger to self or to others or has a
38 persistent or acute disability or a grave disability and as to whether the
39 patient requires treatment. Such testimony shall state specifically the
40 nature and extent of the danger to self or to others, the persistent or
41 acute disability or the grave disability. If the patient has a grave
42 disability, the physicians shall testify concerning the need for
43 guardianship or conservatorship, or both, and whether or not the need is
44 for immediate appointment. Other persons who have participated in the
45 evaluation of the patient or, if further treatment was requested by a

1 mental health treatment agency, persons of that agency who are directly
2 involved in the care of the patient shall testify at the request of the
3 court or of the patient's attorney. Witnesses shall testify as to
4 placement alternatives appropriate and available for the care and
5 treatment of the patient. The clinical record of the patient for the
6 current admission shall be available and may be presented in full or in
7 part as evidence at the request of the court, the county attorney or the
8 patient's attorney.

9 C. If the patient, for medical or psychiatric reasons, is unable to
10 be present at the hearing and cannot appear by other reasonably feasible
11 means, the court shall require clear and convincing evidence that the
12 patient is unable to be present at the hearing and on such a finding may
13 proceed with the hearing in the patient's absence.

14 D. The requirements of subsection B of this section are in addition
15 to all rules of evidence and the Arizona rules of civil procedure, not
16 inconsistent with subsection B of this section.

17 E. A verbatim record of all proceedings under this section shall be
18 made ~~by stenographic means by a court reporter if a written request for a~~
19 ~~court reporter is made by any party to the proceedings at least~~
20 ~~twenty-four hours in advance of such proceedings. If stenographic means~~
21 ~~are not requested in the manner provided by this subsection, electronic~~
22 ~~means shall be directed by the presiding judge. The stenographic notes or~~
23 ~~electronic tape shall be~~ AND retained as provided by statute.

24 F. A patient who has been ordered to undergo treatment may request
25 a certified transcript of the hearing. To obtain a copy, the patient
26 shall pay for a transcript or shall file an affidavit that the patient is
27 without means to pay for a transcript. If the affidavit is found true by
28 the court, the expense of the transcript is a charge on the county in
29 which the proceedings were held, or, if an intergovernmental agreement by
30 the counties has required evaluation in a county other than that of the
31 patient's residence, such expense may be charged to the county of the
32 patient's residence or in which the patient was found before evaluation.

33 Sec. 23. Section 36-727, Arizona Revised Statutes, is amended to
34 read:

35 36-727. Hearings; procedure; confidentiality

36 A. The afflicted person or, if a minor or incapacitated person, the
37 afflicted person's parent or guardian and that person's attorney have the
38 right to be present at all hearings, subject to any conditions or
39 procedures that are deemed appropriate or necessary by order of the court
40 to protect the health and safety of all participants. The afflicted
41 person may waive any appearance before the court.

42 B. If the afflicted person is unable or unwilling to be present at
43 the hearing or the hearing cannot be reasonably conducted where the
44 afflicted person is being treated or confined or cannot be reasonably

1 conducted in the afflicted person's presence, the court shall enter a
2 finding and may proceed with the hearing on the merits of the petition.

3 C. The court may impose conditions or procedures that it deems
4 necessary to protect the health and safety of all participants in the
5 hearing and to ensure humane treatment with due regard to the comfort and
6 safety of the afflicted person and others. These measures may include
7 video or telephonic conference appearances. If necessary the court shall
8 provide language interpreters and persons skilled in communicating with
9 vision impaired and hearing impaired persons pursuant to applicable law.

10 D. Parties to the proceedings may present evidence and subpoena and
11 cross-examine witnesses. The evidence presented may include the testimony
12 of experts on infectious diseases or public health matters or a physician
13 who performed an examination or evaluation of the afflicted person. The
14 petitioner may prove its case on the affidavit or affidavits filed in
15 support of the initial petition. The clinical record of the afflicted
16 person for the current admission shall be available and may be presented
17 in full or in part as evidence at the request of the court, the afflicted
18 person or the afflicted person's attorney or any party in interest.

19 E. At the hearing the court shall be advised of any drugs known to
20 have been administered to the afflicted person before the hearing that
21 would affect the afflicted person's judgment or behavior.

22 F. Persons appointed to conduct an examination and evaluation of
23 the afflicted person shall make their reports in writing to the
24 court. The reports shall include a recommendation as to the least
25 restrictive alternative measures available to the court.

26 G. A verbatim record of all proceedings under this section shall be
27 made ~~by stenographic or electronic means. The stenographic notes or~~
28 ~~electronic tape shall be~~ AND retained as provided by statute.

29 H. The court hearing shall not be open to the public and all
30 records, notices, exhibits and other evidence are confidential and shall
31 not be released to the public. The court may order any portion released
32 or a public hearing to be held on a request from the afflicted person or,
33 if a minor or incapacitated person, the afflicted person's parent or
34 guardian or the afflicted person's attorney. The court's records and
35 exhibits are available to the petitioner, the afflicted person, the
36 department, the tuberculosis control officer, the local health officer or
37 a legal representative of any of these persons or agencies.

38 I. An afflicted person who is ordered by the court to undergo
39 examination, monitoring, treatment, isolation or quarantine or, if a minor
40 or incapacitated person, the afflicted person's parent or guardian may
41 request a certified transcript of the hearing. To obtain a copy the
42 person shall pay for the transcript or shall file an affidavit that the
43 afflicted person cannot afford to pay for a transcript. If the affidavit
44 is found true by the court, the court shall charge the expense of the
45 transcript to the county in which the proceedings were held. If an

1 intergovernmental agreement by the counties has required an evaluation in
2 a county other than that of the afflicted person's residence, this expense
3 may be charged to the county of the afflicted person's residence or in
4 which the afflicted person was found before the evaluation.

5 Sec. 24. Section 38-317, Arizona Revised Statutes, is amended to
6 read:

7 38-317. Compensation of impeachment personnel

8 A. The senators composing the court of impeachment and the managers
9 representing the house of representatives shall be paid during the
10 impeachment trial the compensation, mileage, and subsistence provided by
11 law for members of the legislature when convened in regular session.

12 B. The managers shall be allowed the same compensation for the time
13 required in preparing the proceedings for presentation to the court of
14 impeachment together with their actual and necessary expenses. ~~such~~
15 Expenses shall include the personal or subsistence expenses of the
16 managers. In addition, ~~the managers may~~ during the preparation of the
17 proceedings and the trial thereof THE MANAGERS MAY also employ legal,
18 stenographic, clerical and other assistance as is required and fix their
19 compensation.

20 C. The members, officers, employees of the court, the board of
21 managers and all employees of the board of managers shall be paid on
22 verified claims approved by the presiding justice of the court and
23 attested by its clerk.

24 D. ~~Court~~ CERTIFIED reporters employed by the court may be paid the
25 compensation provided by law for reporting proceedings before
26 magistrates, and shall also receive from the party ordering a transcript
27 of the proceedings the compensation provided by law for such services.

28 E. In lieu of the procedures prescribed by the terms of subsection
29 D of this section, the court may provide by contract for the reporting of
30 such proceedings and for the transcripts thereof.

31 Sec. 25. Section 38-424, Arizona Revised Statutes, is amended to
32 read:

33 38-424. Use of certified reporters and electronic devices

34 This state or any agency of this state, including the judiciary, and
35 each political subdivision of this state, including any courts of law, may
36 for any purpose use ~~tape recorders or other recording devices~~ ELECTRONIC
37 DEVICES in lieu of CERTIFIED reporters or stenographers. ~~This section~~
38 ~~does not apply if the matter to be recorded arises out of~~ FOR court
39 proceedings. ~~and~~ Either party ~~requests that~~ MAY PROVIDE a ~~court~~ CERTIFIED
40 reporter or stenographer ~~be~~ IN ADDITION TO THE ELECTRONIC DEVICES used BY
41 A COURT TO RECORD THE PROCEEDINGS. THE OFFICIAL RECORD OF THE PROCEEDINGS
42 IS THE RECORD PREPARED BY THE COURT PURSUANT TO RULES ADOPTED BY THE
43 SUPREME COURT.

1 Sec. 26. Section 40-360.04, Arizona Revised Statutes, is amended to
2 read:

3 40-360.04. Hearings; procedures

4 A. The chairman of the committee ~~shall~~, within ten days after
5 receiving an application, ~~SHALL~~ provide public notice as to the time and
6 place of a hearing on the application and provide notice by certified mail
7 to the affected areas of jurisdiction at least twenty days ~~prior to~~ BEFORE
8 a scheduled hearing. If the committee subsequently proposes to condition
9 the certificate on the use of a site other than the site or alternative
10 sites generally described in the notice and considered at the hearing, a
11 further hearing shall be held thereon after public notice. The hearing or
12 hearings shall be held not less than thirty days nor more than sixty days
13 after the date notice is first given and shall be held in the general area
14 within which the proposed plant or transmission line is to be located or
15 at the state capitol at Phoenix as determined by the chairman, at ~~his~~ THE
16 CHAIRMAN'S discretion.

17 B. The committee may conduct the hearing or may appoint an attorney
18 as a hearing officer. To be eligible for appointment the attorney must
19 reside in a county other than the county in which the proposed site is
20 located and have been admitted to practice in this state for not less than
21 five years.

22 C. The committee or hearing officer shall receive under oath and
23 before a ~~court~~ CERTIFIED reporter the material, nonrepetitive evidence and
24 comments of the parties to the proceedings and any rebuttal evidence of
25 the applicant, and the committee or hearing officer may require the
26 consolidation of the representation of nongovernmental parties having
27 similar interests.

28 D. The committee shall review and consider the transcript of the
29 public hearing or hearings and shall by a decision of a majority of the
30 members issue or deny a certificate of environmental compatibility within
31 one hundred eighty days after the application has been filed with or
32 referred to the committee.

33 E. Should the estimated cost of the facilities or site be increased
34 as a result of the action of the committee, ~~such~~ THE increase, as
35 determined by an independent engineering firm selected jointly by the
36 committee and applicant, shall be reflected in the certificate issued by
37 the committee. The engineering firm shall include a registered
38 professional engineer experienced in utility construction.

39 Sec. 27. Section 41-324, Arizona Revised Statutes, is amended to
40 read:

41 41-324. Certified reporters; notarial acts

42 A. ~~Court~~ CERTIFIED reporters who administer oaths and affirmations
43 in judicial proceedings are exempt from the provisions of this chapter
44 other than section 41-315. ~~Court~~ CERTIFIED reporters who are commissioned
45 as notaries and who perform notarial acts outside of judicial proceedings

1 are subject to all provisions of this chapter and of other laws of this
2 state that regulate notaries public.

3 B. A ~~court~~ CERTIFIED reporter who prepares a transcript of a
4 judicial proceeding shall attach a certificate page to the transcript. On
5 the certificate page, the ~~court~~ CERTIFIED reporter shall attest to the
6 fact that the CERTIFIED reporter administered an oath or affirmation to
7 each witness whose testimony appears in the transcript.

8 C. An affidavit of nonappearance that is prepared by a ~~court~~
9 CERTIFIED reporter does not need to be witnessed by a notary.

10 Sec. 28. Section 41-1092.01, Arizona Revised Statutes, is amended
11 to read:

12 41-1092.01. Office of administrative hearings; director;
13 powers and duties; fund

14 A. An office of administrative hearings is established.

15 B. The governor shall appoint the director pursuant to section
16 38-211. At a minimum, the director shall have the experience necessary
17 for appointment as an administrative law judge. The director also shall
18 possess supervisory, management and administrative skills, as well as
19 knowledge and experience relating to administrative law.

20 C. The director shall:

21 1. Serve as the chief administrative law judge of the office.

22 2. Make and execute the contracts and other instruments that are
23 necessary to perform the director's duties.

24 3. Subject to chapter 4, article 4 of this title, hire employees,
25 including full-time administrative law judges, and contract for special
26 services, including temporary administrative law judges, that are
27 necessary to carry out this article. An administrative law judge employed
28 or contracted by the office shall have graduated from an accredited
29 college of law or shall have at least two years of administrative or
30 managerial experience in the subject matter or agency section the
31 administrative law judge is assigned to in the office.

32 4. Make rules that are necessary to carry out this article,
33 including rules governing ex parte communications in contested cases.

34 5. Submit a report to the governor, speaker of the house of
35 representatives and president of the senate by November 1 of each year
36 describing the activities and accomplishments of the office. The
37 director's annual report shall include a summary of the extent and effect
38 of agencies' utilization of administrative law judges, ~~court~~ CERTIFIED
39 reporters and other personnel in proceedings under this article and
40 recommendations for changes or improvements in the administrative
41 procedure act or any agency's practice or policy with respect to the
42 administrative procedure act. The director shall provide a copy of the
43 report to the secretary of state.

1 6. Secure, compile and maintain all decisions, opinions or reports
2 of administrative law judges issued pursuant to this article and the
3 reference materials and supporting information that may be appropriate.

4 7. Develop, implement and maintain a program for the continuing
5 training and education of administrative law judges and agencies in regard
6 to their responsibilities under this article. The program shall require
7 that an administrative law judge receive training in the technical and
8 subject matter areas of the sections to which the administrative law judge
9 is assigned.

10 8. Develop, implement and maintain a program of evaluation to aid
11 the director in the evaluation of administrative law judges appointed
12 pursuant to this article that includes comments received from the public.

13 9. Annually report the following to the governor, the president of
14 the senate and the speaker of the house of representatives and provide a
15 copy of this report to the secretary of state by December 1 for the prior
16 fiscal year:

17 (a) The number of administrative law judge decisions rejected or
18 modified by agency heads.

19 (b) By category, the number and disposition of motions filed
20 pursuant to section 41-1092.07, subsection A to disqualify office
21 administrative law judges for bias, prejudice, personal interest or lack
22 of expertise.

23 (c) By agency, the number and type of violations of section
24 41-1009.

25 10. Schedule hearings pursuant to section 41-1092.05 on the request
26 of an agency or the filing of a notice of appeal pursuant to section
27 41-1092.03.

28 D. The director shall not require legal representation to appear
29 before an administrative law judge.

30 E. Except as provided in subsection F of this section, all state
31 agencies supported by state general fund sources, unless exempted by this
32 article, and the registrar of contractors shall use the services and
33 personnel of the office to conduct administrative hearings. All other
34 agencies shall contract for services and personnel of the office to
35 conduct administrative hearings.

36 F. An agency head, board or commission that directly conducts an
37 administrative hearing as an administrative law judge is not required to
38 use the services and personnel of the office for that hearing.

39 G. Each state agency, and each political subdivision contracting
40 for office services pursuant to subsection I of this section, shall make
41 its facilities available, as necessary, for use by the office in
42 conducting proceedings pursuant to this article.

43 H. The office shall employ full-time administrative law judges to
44 conduct hearings required by this article or other laws as follows:

1 1. The director shall assign administrative law judges from the
2 office to an agency, on either a temporary or a permanent basis, at
3 supervisory or other levels, to preside over contested cases and
4 appealable agency actions in accordance with the special expertise of the
5 administrative law judge in the subject matter of the agency.

6 2. The director shall establish the subject matter and agency
7 sections within the office that are necessary to carry out this
8 article. Each subject matter and agency section shall provide training in
9 the technical and subject matter areas of the section as prescribed in
10 subsection C, paragraph 7 of this section.

11 I. If the office cannot furnish an office administrative law judge
12 promptly in response to an agency request, the director may contract with
13 qualified individuals to serve as temporary administrative law judges.
14 These temporary administrative law judges are not employees of this state.

15 J. The office may provide administrative law judges on a contract
16 basis to any governmental entity to conduct any hearing not covered by
17 this article. The director may enter into contracts with political
18 subdivisions of this state, and these political subdivisions may contract
19 with the director for the purpose of providing administrative law judges
20 and reporters for administrative proceedings or informal dispute
21 resolution. The contract may define the scope of the administrative law
22 judge's duties. Those duties may include the preparation of findings,
23 conclusions, decisions or recommended decisions or a recommendation for
24 action by the political subdivision. For these services, the director
25 shall request payment for services directly from the political subdivision
26 for which the services are performed, and the director may accept payment
27 on either an advance or reimbursable basis.

28 K. The office shall apply monies received pursuant to subsections E
29 and J of this section to offset its actual costs for providing personnel
30 and services.

31 L. The office shall receive complaints against a county, a local
32 government as defined in section 9-1401 or a video service provider as
33 defined in section 9-1401 or 11-1901 and shall comply with the duties
34 imposed on the office pursuant to title 9, chapter 13 for complaints
35 involving local governments and title 11, chapter 14 for complaints
36 involving counties.

37 Sec. 29. Section 41-1092.07, Arizona Revised Statutes, is amended
38 to read:

39 41-1092.07. Hearings

40 A. A party to a contested case or appealable agency action may file
41 a nonperemptory motion with the director to disqualify an office
42 administrative law judge from conducting a hearing for bias, prejudice,
43 personal interest or lack of technical expertise necessary for a hearing.

1 B. The parties to a contested case or appealable agency action have
2 the right to be represented by counsel or to proceed without counsel, to
3 submit evidence and to cross-examine witnesses.

4 C. The administrative law judge may issue subpoenas to compel the
5 attendance of witnesses and the production of documents. The subpoenas
6 shall be served and, on application to the superior court, enforced in the
7 manner provided by law for the service and enforcement of subpoenas in
8 civil matters. The administrative law judge may administer oaths and
9 affirmations to witnesses.

10 D. All parties shall have the opportunity to respond and present
11 evidence and argument on all relevant issues. All relevant evidence is
12 admissible, but the administrative law judge may exclude evidence if its
13 probative value is outweighed by the danger of unfair prejudice, by
14 confusion of the issues or by considerations of undue delay, waste of time
15 or needless presentation of cumulative evidence. The administrative law
16 judge shall exercise reasonable control over the manner and order of
17 cross-examining witnesses and presenting evidence to make the
18 cross-examination and presentation effective for ascertaining the truth,
19 avoiding needless consumption of time and protecting witnesses from
20 harassment or undue embarrassment.

21 E. All hearings shall be recorded. The administrative law judge
22 shall secure either a ~~court~~ CERTIFIED reporter or an electronic means of
23 producing a clear and accurate record of the proceeding at the agency's
24 expense. Any party that requests a transcript of the proceeding shall pay
25 the costs of the transcript to the ~~court~~ CERTIFIED reporter or other
26 transcriber.

27 F. Unless otherwise provided by law, the following apply:

28 1. A hearing may be conducted in an informal manner and without
29 adherence to the rules of evidence required in judicial proceedings.
30 Neither the manner of conducting the hearing nor the failure to adhere to
31 the rules of evidence required in judicial proceedings is grounds for
32 reversing any administrative decision or order if the evidence supporting
33 the decision or order is substantial, reliable and probative.

34 2. Copies of documentary evidence may be received in the discretion
35 of the administrative law judge. On request, parties shall be given an
36 opportunity to compare the copy with the original.

37 3. Notice may be taken of judicially cognizable facts. In
38 addition, notice may be taken of generally recognized technical or
39 scientific facts within the agency's specialized knowledge. THE parties
40 shall be notified either before or during the hearing or by reference in
41 preliminary reports or otherwise of the material noticed including any
42 staff memoranda or data and ~~they~~ THE PARTIES shall be afforded an
43 opportunity to contest the material so noticed. The agency's experience,
44 technical competence and specialized knowledge may be used in the
45 evaluation of the evidence.

1 4. On application of a party or the agency and for use as evidence,
2 the administrative law judge may permit a deposition to be taken, in the
3 manner and on the terms designated by the administrative law judge, of a
4 witness who cannot be subpoenaed or who is unable to attend the hearing.
5 ~~THE ADMINISTRATIVE LAW JUDGE MAY ORDER~~ subpoenas for the production of
6 documents ~~may be ordered by the administrative law judge~~ if the party
7 seeking the discovery demonstrates that the party has reasonable need of
8 the materials being sought. All provisions of law compelling a person
9 under subpoena to testify are applicable. Fees for attendance as a
10 witness shall be the same as for a witness in court, unless otherwise
11 provided by law or agency rule. Notwithstanding section 12-2212,
12 subpoenas, depositions or other discovery shall not be permitted except as
13 provided by this paragraph or subsection C of this section.

14 5. Informal disposition may be made by stipulation, agreed
15 settlement, consent order or default.

16 6. Findings of fact shall be based exclusively on the evidence and
17 on matters officially noticed.

18 7. A final administrative decision shall include findings of fact
19 and conclusions of law, separately stated. Findings of fact, if set forth
20 in statutory language, shall be accompanied by a concise and explicit
21 statement of the underlying facts supporting the findings. Conclusions of
22 law shall specifically address the agency's authority to make the decision
23 consistent with section 41-1030.

24 G. Except as otherwise provided by law:

25 1. At a hearing on an agency's denial of a license or permit or a
26 denial of an application or request for modification of a license or
27 permit, the applicant has the burden of persuasion.

28 2. At a hearing on an agency action to suspend, revoke, terminate
29 or modify on its own initiative material conditions of a license or
30 permit, the agency has the burden of persuasion.

31 3. At a hearing on an agency's imposition of fees or penalties or
32 any agency compliance order, the agency has the burden of persuasion.

33 4. At a hearing held pursuant to chapter 23 or 24 of this title,
34 the appellant or claimant has the burden of persuasion.

35 H. Subsection G of this section does not affect the law governing
36 burden of persuasion in an agency denial of, or refusal to issue, a
37 license renewal.

38 Sec. 30. Section 48-704, Arizona Revised Statutes, is amended to
39 read:

40 48-704. Hearing on objections

41 A. Within thirty days after adoption of the resolution of intent to
42 form a district, any person claiming an interest in real property that the
43 resolution discloses is situated in the district may file a written
44 objection with the clerk before 5:00 p.m. on the business day preceding

1 the date and time set for the hearing on the question of formation of the
2 district. The objection may raise one or more of the following:

3 1. That the objector's property would not be benefited from the
4 improvements set forth in the general plan and that the property should be
5 excluded from the district.

6 2. That the district should not be formed, stating the specific
7 reasons.

8 3. That the general plan should be modified, stating the reasons
9 for modification.

10 B. At the hearing, including any adjournments or continuances, the
11 governing body shall hear and pass only on the written objections and the
12 testimony and evidence presented in support of or opposition to the
13 objections. The hearing shall be either transcribed by a ~~court~~ CERTIFIED
14 reporter or recorded by a tape recorder. The ~~court~~ CERTIFIED reporter's
15 transcript or a transcription of the tape recording certified to be true
16 and correct by the clerk shall be filed in the official records of the
17 governing body.

18 C. In furtherance of the hearing, the clerk, on written request or
19 praecipe being presented, shall issue subpoenas or subpoenas duces tecum
20 to compel the attendance and testimony of any person or the submission of
21 any documents at the hearing. Compliance with the subpoena shall be
22 enforced as if the subpoena were issued by a clerk of the superior court.

23 D. Testimony at the hearing need not be under oath, unless
24 requested by any owner or required by the governing board. Requests by
25 owners that the testimony be under oath must be made in writing and be
26 filed with, or served on, the clerk before the hearing begins or the
27 request is deemed waived.

28 E. The minutes or a copy of a written transcript or a tape
29 recording of the proceedings of a hearing conducted pursuant to this
30 section shall be open to public inspection three working days after the
31 conclusion of a hearing. Any person may request to examine or be
32 furnished copies, printouts, photographs, transcripts or recordings of a
33 hearing during regular office hours of the governing body. The custodian
34 of the records shall furnish the copies, printouts, photographs,
35 transcripts or recordings and may charge a reasonable fee that does not
36 exceed the actual cost of reproducing the item requested.

37 Sec. 31. Section 48-1034, Arizona Revised Statutes, is amended to
38 read:

39 48-1034. Objections; hearing on formation

40 A. Any person claiming an interest in real property ~~which~~ THAT the
41 resolution discloses is in the district may file a written objection with
42 the clerk before 5:00 p.m. on the business day preceding the date set for
43 the hearing. The objection may raise one or more of the following:

44 1. That the objector's property should be excluded from the
45 district and stating the specific reasons.

1 2. That the district should not be formed, stating the specific
2 reasons.

3 3. That the proposed rural road improvements should be modified,
4 stating the reasons for modification.

5 B. At the hearing, including any adjournments or continuances, the
6 board of supervisors shall hear and pass only on the written objections
7 and the testimony and evidence presented with respect to those
8 objections. The hearing shall be either transcribed by a ~~court~~ CERTIFIED
9 reporter or recorded by a tape recorder. The ~~court~~ CERTIFIED reporter's
10 transcript or a transcription of the tape recording certified to be true
11 and correct by the clerk shall be filed in the board of supervisor's
12 official records.

13 C. At the hearing the board of supervisors may hear and consider
14 proposals to add areas to the proposed district on notice to owners of
15 land both in the original proposed district and in the proposed addition.

16 D. In furtherance of the hearing, the clerk, on written request or
17 praecipe being presented, shall issue subpoenas or subpoenas duces tecum
18 to compel the testimony of any person or the submission of any documents
19 at the hearing. Compliance with the subpoena shall be enforced as if the
20 subpoena were issued by a clerk of the superior court.

21 E. Testimony at the hearing need not be under oath, unless
22 requested by any owner or required by the board of supervisors. Requests
23 by owners that the testimony be under oath must be made in writing and be
24 filed with, or served on, the clerk before the hearing begins or the
25 request is deemed waived.

26 Sec. 32. Section 49-287.06, Arizona Revised Statutes, is amended to
27 read:

28 49-287.06. Allocation hearing

29 A. Ninety days after the issuance of notice pursuant to section
30 49-287.05, subsection A, the director shall issue a notice to each person
31 who has not settled its liability with the department of the start of an
32 allocation proceeding. The director shall propose the names of at least
33 three allocators taken from a list maintained by the director. The
34 director shall be entitled to be represented in the allocation proceeding
35 but may waive this right. If all parties have settled, the director's
36 notice shall advise all persons notified pursuant to section 49-287.05
37 that no allocation hearing will be held pursuant to this section.

38 B. Within fifteen days ~~of~~ AFTER receipt, each person receiving the
39 notice of allocation proceeding shall respond to the director regarding
40 the acceptability of any of the allocators on the director's list. If all
41 of the parties cannot agree on one of the allocators proposed by the
42 director, each party may provide the names of up to three other proposed
43 allocators. If the director and all of the parties cannot agree on a
44 proposed allocator within thirty days after the issuance of the director's
45 notice pursuant to this section, the director shall request the presiding

1 civil judge of the superior court in the county where the site is located
2 to select an allocator. Within thirty days after the request, the
3 presiding civil judge shall select an allocator and advise the director of
4 the selection.

5 C. The director shall give all parties written notice of the
6 selection of the allocator. The allocator shall set the date for hearing
7 at least sixty and not more than one hundred twenty days after the date of
8 the notice of selection of the allocator pursuant to this section. The
9 allocator may continue the date of the hearing for good cause. Ex parte
10 contact with the allocator regarding any of the evidence or issues in the
11 allocation is prohibited.

12 D. The allocator shall conduct an allocation hearing and, on
13 request of one or more of the parties, may conduct a mediation or
14 settlement conference before the allocation hearing. The allocator has
15 the power to administer oaths or affirmations to witnesses. In conducting
16 the allocation hearing, the allocator has discretion to determine the
17 procedures to be followed, except that:

18 1. Each party shall provide the allocator, the director and all
19 parties with a disclosure statement at least thirty days before the date
20 of the first scheduled hearing. The disclosure statement shall comply
21 with rule 26.1, Arizona rules of civil procedure, and shall include a
22 statement of the method of allocation proposed, a description of evidence
23 supporting the factors listed in section 49-285, subsections E and F
24 intended to be presented at the hearing and a description of any other
25 relevant evidence known to the party, including information regarding the
26 responsibility of any other person. Copies of any documentary evidence
27 shall be included with the disclosure statement unless already in the
28 department's public file on the site or a disclosure statement previously
29 filed pursuant to this paragraph. Evidence that is not disclosed in a
30 party's disclosure statement is inadmissible by that party at the
31 hearing. Evidence that a party failed to provide the director pursuant to
32 a request under section 49-288 is inadmissible by that party at the
33 hearing. The liability allocation notice issued by the director pursuant
34 to section 49-287.05, subsection A and the public record on file at the
35 department may serve as the disclosure statement of the director and any
36 persons who have settled their liability with the director. The director
37 may supplement the liability allocation notice up to thirty days ~~prior to~~
38 **BEFORE** the first scheduled hearing date. The allocator shall resolve
39 disputes regarding the adequacy of disclosure statements.

40 2. The director has the burden of proving that all other parties
41 are responsible parties under this article. The allocator shall allow
42 each party to present evidence relevant to the liability and proportionate
43 share of liability of any person, except as provided in paragraphs 8 and 9
44 of this subsection. There is no burden of proof as to the proportionate
45 share of any person. The allocator shall hear all of the evidence and

1 assign the proportionate shares in accordance with the considerations as
2 specified in section 49-285, subsections E and F.

3 3. The allocator shall allow each party to cross-examine any other
4 party's witnesses, except that the allocator may limit cross-examination
5 to avoid needless delay or a needless presentation of cumulative evidence
6 or to expedite the hearing.

7 4. The allocator may issue subpoenas to compel the attendance of
8 witnesses and the production of documents. The subpoenas shall be served
9 and, on application to the superior court, enforced in the manner provided
10 by law for the service and enforcement of subpoenas in civil actions.
11 Service of the subpoena is the responsibility of the person requesting the
12 subpoena. Discovery shall not be ~~permitted~~ ALLOWED except on a showing of
13 good cause and due diligence as determined by the allocator.

14 5. The allocator may request any additional information from any
15 party if the allocator believes that this information is necessary to
16 assist in making a determination regarding liability or the share of any
17 person.

18 6. If, during the hearing or at its conclusion, the allocator
19 believes that additional information is necessary to issue a report, the
20 allocator may order the parties to exchange additional information and
21 submit posthearing evidence for a period of not more than sixty days.

22 7. The allocator shall use the Arizona rules of civil procedure as
23 guidance for hearing procedures, but may depart from these rules as prompt
24 and fair resolution of the issues demand, and shall honor all privileges
25 recognized under Arizona law. The allocator may allow any relevant
26 evidence, including hearsay evidence, to be admitted and shall give
27 appropriate weight to all of the evidence. The allocator may impose time
28 limits on individual presentations and may require the consolidation of
29 presentations or cross-examination if this consolidation can be justified
30 by commonality of interests. The disclosure statements and the liability
31 allocation notice sent by the director pursuant to section 49-287.05 shall
32 be admitted as evidence. The proceeding shall be recorded by a ~~court~~
33 CERTIFIED reporter ~~upon~~ ON request by any party who agrees to pay the
34 costs.

35 8. Except on a showing of good cause and due diligence as
36 determined by the allocator, a party may not allege that a person is
37 responsible for a share of liability unless that person was named in the
38 director's list of liable persons issued pursuant to section 49-287.05 or
39 was identified as a potentially liable person pursuant to section
40 49-287.04.

41 9. A party may not introduce evidence at the hearing regarding the
42 liability or share of liability of any person under this article unless
43 the director was notified of the existence of the information pursuant to
44 section 49-287.04. The allocator may allow the introduction of that
45 evidence if the party acquired the information after that time and if the

1 party shows good cause and due diligence as determined by the allocator,
2 if the party provided the evidence to the director promptly after it was
3 acquired.

4 E. Within sixty days after the hearing or, if applicable, the end
5 of the period for submitting posthearing evidence, the allocator shall
6 issue a written allocation report identifying the persons who are liable
7 and the proportionate share of liability of each person in accordance with
8 section 49-285, subsections E and F in percentages adding up to one
9 hundred ~~per cent~~ PERCENT. The allocator shall send a copy of the report
10 to each party.

11 F. All parties to the allocation shall bear an equal share of the
12 allocator's fees and costs, which shall be specified in the allocator's
13 report.

14 G. The director shall serve notice of the issuance of the
15 allocator's report on all persons notified pursuant to subsection A of
16 this section and on the persons who filed an appeal of the record of
17 decision pursuant to section 49-287.04. The notice shall state that there
18 shall be a period of ninety days after service of the notice for
19 settlement discussions, that the allocator's findings are final unless a
20 challenge is filed pursuant to section 49-287.07 and the period for
21 challenging the allocator's findings as provided in section 49-287.07,
22 subsection B.

23 H. The findings regarding liability and the proportionate share of
24 liability for each person as set forth in the allocator's report are final
25 unless a timely challenge regarding a person's liability or proportionate
26 share is filed as provided in section 49-287.07, subsection B. The
27 director or any other person with a claim for recovery of remedial action
28 costs against a responsible party whose proportionate share as found by
29 the allocator has become final pursuant to this subsection may obtain a
30 judgment based on the proportionate share determined in the allocator's
31 report. In any action to obtain ~~such~~ a judgment, the responsible party
32 whose allocated share has become final may not dispute its proportionate
33 share of liability as determined by the allocator, and the plaintiff may
34 recover its costs and attorney fees incurred in obtaining and enforcing
35 the judgment. The liability of any person that has become final pursuant
36 to this subsection is not affected by any subsequent determination by a
37 court in any action.

38 I. If all parties settle during a proceeding pursuant to this
39 section, the director shall terminate the proceedings. If all parties,
40 not including the director, fail or refuse to participate, the director
41 may proceed with the allocation hearing or may terminate the
42 proceedings. If the director terminates the proceedings, the director
43 shall provide written notice within thirty days of termination of
44 proceedings pursuant to this section to all persons who received notice
45 pursuant to section 49-287.05.