

REFERENCE TITLE: **geologists; landscape architects; regulatory repeal**

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

HB 2410

Introduced by
Representative Mosley

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

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

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

C. On or before the seventh day after the date the department makes a progress payment, if the consultant or contractor contracted with subconsultants or subcontractors to perform the work for which the department made the progress payment, the consultant or contractor shall pay the subconsultants or subcontractors for the work performed to the extent of each subconsultant's or subcontractor's contractual interest in the progress payment. If any subconsultant or subcontractor

contests the amount paid by a consultant or contractor from a progress payment made under subsection A of this section, the subconsultant or subcontractor shall notify the department in writing within thirty days after receiving the payment from the consultant or contractor. This subsection does not apply if the contract between the consultant or contractor and the subconsultant or subcontractor expressly provides that the prompt payment provisions of this subsection do not apply to the agreement between the consultant or contractor and the subconsultant or subcontractor.

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

E. A subconsultant or subcontractor may submit a written request to the department asking the department to notify the subconsultant or subcontractor of each subsequent progress payment made to the consultant or contractor. If the department receives a written request under this subsection, the department shall send the requesting party a written notice by first class mail of each subsequent progress payment within five days of making the progress payment.

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

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

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

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

28-7361. Definitions

In this article, unless the context otherwise requires:

1. "Architect services" means those professional architect services that are within the scope of architectural practice as provided in title 32, chapter 1.
2. "Construction-manager-at-risk" means a project delivery method in which:
 - (a) There is a contract for construction services that is separate from the contract for design services, except that instead of a single contract for construction services, the department may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.
 - (b) Design services are performed under a separate design services contract, except that as to bridges and other transportation facilities the department may perform with its own employees or force account preliminary design and either:
 - (i) In the case of bridges only, all design services up to final design.
 - (ii) In the case of other transportation facilities, up to twenty per cent of the design work.
 - (c) The contract for construction services may be entered into at the same time as the design services are commenced or at a later time.
 - (d) Design and construction of the project may be either:
 - (i) Sequential with the entire design complete before construction commences.
 - (ii) Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
 - (e) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
3. "Construction services" means either of the following for construction-manager-at-risk and job-order-contracting project delivery methods:
 - (a) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
 - (b) A combination of construction and, as elected by the department, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definition of construction-manager-at-risk or job-order-contracting.
4. "Contract" means all types of department agreements, regardless of what they are called, for procurements pursuant to this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. Heading change

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

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

32-101. Purpose; definitions

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

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

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

2. "Alarm" or "alarm system":

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

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

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

3. "Alarm agent":

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

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

- (i) Is performed in connection with an alarm system located on the person's own property or the property of the person's employer.
- (ii) Is acting on behalf of an alarm business whose work duties do not include visiting the location where an alarm system installation occurs.

4. "Alarm business":

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

- (i) Providing alarm monitoring services.
 - (ii) Selling, leasing, renting, maintaining, repairing or installing a nonproprietary alarm system or service.
- (b) Does not include any of the following:

- (i) A person or company that purchases, rents or uses an alarm that is affixed to a motor vehicle.
- (ii) A person who owns or conducts a business of selling, leasing, renting, installing, maintaining or monitoring an alarm that is affixed to a motor vehicle.
- (iii) A person who installs a nonmonitored proprietor alarm for a business that the person owns, is employed by or manages.
- (iv) The installation or monitoring of fire alarm systems.
- (v) An alarm system that is operated by a city or town.

5. "Alarm subscriber" means any person who:

- (a) Leases, rents or purchases any monitored alarm system or service from an alarm business.
- (b) Leases or rents an alarm system.
- (c) Contracts with an alarm business for alarm monitoring, installation, repair or maintenance services.

6. "Architect" means a person who, by reason of knowledge of the mathematical and physical sciences and the principles of architecture and architectural engineering acquired by professional education and practical experience, is qualified to engage in the practice of architecture and is registered as an architect pursuant to this chapter.

7. "Architectural practice" means any professional service or creative work requiring architectural education, training and experience, and the application of the mathematical and physical sciences and the principles of architecture and architectural engineering to such professional services or creative work as consultation, evaluation, design and review of construction for conformance with contract documents and design, in connection with any building, planning or site development. A person shall be deemed to practice or offer to practice architecture who in any manner represents that the person is an architect or is able to perform any architectural service or other services recognized by educational authorities as architecture.

8. "Board" means the state board of technical registration.

9. "Controlling person":

- (a) Means a person who is designated by an alarm business.
- (b) Does not include an alarm agent.

10. "Engineer" means a person who, by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design acquired by professional education and practical experience, is qualified to practice engineering and is registered as a professional engineer pursuant to this chapter.

11. "Engineering practice" means any professional service or creative work requiring engineering education, training and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, research investigation, evaluation, planning, surveying as defined in paragraph 29 17, subdivisions (d) and (e) of this subsection, design, location, development, and review of construction for conformance with contract documents and design, in connection with any public or private utility, structure, building, machine, equipment, process, work or project. Such services and work include plans and designs relating to the location, development, mining and treatment of ore and other minerals. A person shall be deemed to be practicing or offering to practice engineering if the person practices any branch of the profession of engineering, or by verbal claim, sign, advertisement, letterhead, card or any other manner represents that the person is a professional engineer or is able to perform or does perform any engineering service or other service recognized by educational authorities as engineering. A person employed on a full-time basis as an engineer by an employer engaged in the business of developing, mining and treating ores and other minerals shall not be deemed to be practicing engineering for the purposes of this chapter if the person engages in the practice of engineering exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any engineering services for persons other than the person's employer.

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

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

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

~~15. "Geologist" means a person, not of necessity an engineer, who by reason of special knowledge of the earth sciences and the principles and methods of search for and appraisal of mineral or other natural resources acquired by professional education and practical experience is qualified to practice geology as attested by registration as a professional geologist. A person employed on a full-time basis as a geologist by an employer engaged in the business of developing, mining or treating ores and other minerals shall not be deemed to be engaged in geological practice for the purposes of this chapter if the person engages in geological practice exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any geological services for persons other than the person's employer.~~

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

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

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

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

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

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

- (a) Measurement of land to determine the position of any monument or reference point that marks a property line, boundary or corner for the purpose of determining the area or description of the land.
- (b) Location, relocation, establishment, reestablishment, setting, resetting or replacing of corner monuments or reference points which identify land boundaries, rights-of-way or easements.
- (c) Platting or plotting of lands for the purpose of subdividing.
- (d) Measurement by angles, distances and elevations of natural or artificial features in the air, on the surface and immediate subsurface of the earth, within underground workings and on the surface or within bodies of water for the purpose of determining or establishing their location, size, shape, topography, grades, contours or water surface and depths, and the preparation and perpetuation of field note records and maps depicting these features.
- (e) Setting, resetting or replacing of points to guide the location of new construction.

~~21. 18. "Land surveyor" means a person who by reason of knowledge of the mathematical and physical sciences, principles of land surveying and evidence gathering acquired by professional education or practical experience, or both, is qualified to practice land surveying as attested by registration as a land surveyor. A person employed on a full-time basis as a land surveyor by an employer engaged in the business of developing, mining or treating ores or other minerals shall not be~~

deemed to be engaged in land surveying practice for purposes of this chapter if the person engages in land surveying practice exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any land surveying services for persons other than the person's employer.

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

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

~~24.~~ ~~"Landscape architectural practice" means the performance of professional services such as consultations, investigation, reconnaissance, research, planning, design or responsible supervision in connection with the development of land and incidental water areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings of and approaches to buildings, structures, facilities or other improvements, natural drainage and the consideration and the determination of inherent problems of the land relating to erosion, wear and tear, light or other hazards. This practice shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this paragraph but shall not include the making of cadastral surveys or final land plats for official recording or approval, nor mandatorily include planning for governmental subdivisions.~~

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

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

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

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

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

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

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

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

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

1. Two architects.

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

3. One public member.

~~4.~~ ~~One landscape architect.~~

~~5.~~ ~~One geologist.~~

~~6.~~ **4.** One land surveyor.

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

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

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

32-103. Qualifications of members

A. Each professional member of the board shall:

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

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

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

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

32-122. Qualifications for in-training registration

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

1. Be of good moral character and repute.
 2. Be a graduate of a school approved by the board or have four years or more, or if an applicant for in-training registration as an architect, five years or more, of education or experience, or both, in work in the profession in which registration is sought that meets standards specified by the board in its rules.
 3. Unless exempt under section 32-126, subsection D, pass the in-training examination in the profession in which registration is sought.
- B. An applicant for in-training registration as a land surveyor shall:**
1. Be a graduate of a school and curriculum approved by the board, or have four years or more of education or experience, or both, in work in the profession in which registration is sought that meets standards specified by the board in its rules.
 2. Unless exempt under section 32-126, subsection D, pass the in-training examination in the profession in which registration is sought.
 3. An applicant for in-training registration as a home inspector-in-training shall meet the requirements of section 32-122.02, subsection A, paragraphs 1 through 7.

Sec. 8. Repeal

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

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

32-122.01. Qualifications for professional registration

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

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

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

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

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

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

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

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

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

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

32-142. Public works

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

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

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

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

32-143. Exceptions

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

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

34-101. Definitions

In this title, unless the context otherwise requires:

1. "Agent":

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

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

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

3. "Construction":

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The first contract is for design services.

(c) The second contract is for construction.

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

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

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

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

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

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

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

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

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

11. "Design requirements":

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

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

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

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

(b) May include:

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

(ii) Additional design information or documents that the agent elects to include.

12. "Design services" means architect services, engineer services or landscape architect services.

13. "Direct selection" means the selection of a technical registrant without the requirement of advertising or the use of a current register.

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

15. "Finance services" means financing for a construction services project.

16. "Horizontal construction" means construction of highways, roads, streets, bridges, canals, floodways, earthen dams, landfills, light rail and airport runways, taxiways and aprons. For the purposes of this paragraph, light rail does not include any related rail stations, maintenance facilities or parking facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41-2503. Definitions

In this chapter, unless the context otherwise requires:

1. **"Architect services"** means those professional architect services that are within the scope of architectural practice as provided in title 32, chapter 1.
2. **"Business"** means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or other private legal entity.
3. **"Change order"** means a written order that is signed by a procurement officer and that directs the contractor to make changes that the changes clause of the contract authorizes the procurement officer to order.
4. **"Construction"**:
 - (a) Means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property.
 - (b) Does not include:
 - (i) The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.
 - (ii) The investigation, characterization, restoration or remediation due to an environmental issue of existing facilities, structures, buildings or real property.
5. **"Construction-manager-at-risk"** means a project delivery method in which:
 - (a) There is a separate contract for design services and a separate contract for construction services, except that instead of a single contract for construction services, the purchasing agency may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.
 - (b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
 - (c) Design and construction of the project may be either:
 - (i) Sequential with the entire design complete before construction commences.
 - (ii) Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
 - (d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
6. **"Construction services"** means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:
 - (a) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
 - (b) A combination of construction and, as elected by the purchasing agency, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this section.
7. **"Contract"** means all types of state agreements, regardless of what they may be called, for the procurement of materials, services, construction, construction services or the disposal of materials.
8. **"Contract modification"** means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
9. **"Contractor"** means any person who has a contract with a state governmental unit.
10. **"Data"** means documented information, regardless of form or characteristic.
11. **"Department"** means the department of administration.
12. **"Design-bid-build"** means a project delivery method in which:
 - (a) There is a sequential award of two separate contracts.
 - (b) The first contract is for design services.
 - (c) The second contract is for construction.
 - (d) Design and construction of the project are in sequential phases.
 - (e) Finance services, maintenance services and operations services are not included.
13. **"Design-build"** means a project delivery method in which:
 - (a) There is a single contract for design services and construction services, except that instead of a single contract for design services and construction services, the purchasing agency may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.
 - (b) Design and construction of the project may be either:
 - (i) Sequential with the entire design complete before construction commences.
 - (ii) Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
 - (c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

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

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

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

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

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

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

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

(b) May include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Participating in the development of a procurement.

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

(iii) Approving a procurement or an evaluation tool.

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

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

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

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

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

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

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

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

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

41-2571. Definitions

In this article, unless the context otherwise requires:

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

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

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

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

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

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

42-5075. Prime contracting classification; exemptions; definitions

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

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

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

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

3. The sales price of furniture, furnishings, fixtures, appliances and attachments that are not incorporated as component parts of or attached to a manufactured building or the setup site. The sale of such items may be subject to the taxes imposed by article 1 of this chapter separately and distinctly from the sale of the manufactured building.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Section 42-5061, subsection B.

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

(d) Section 42-5159, subsection B.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The department may prescribe a form for the certificate described in paragraph 1, subdivision (b) of this subsection. The department may also adopt rules that describe the transactions with respect to which a person is not entitled to rely solely on the information contained in the certificate provided in paragraph 1, subdivision (b) of this subsection but must instead obtain such additional information as required in order to be entitled to the deduction.

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

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

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

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

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

H. For the purposes of section 42-5032.02, from and after September 30, 2013, the department shall separately account for revenues reported and collected under the prime contracting classification from any prime contractor engaged in the construction of any buildings and associated improvements that are for the benefit

of a manufacturing facility. For the purposes of this subsection, "associated improvements" and "manufacturing facility" have the same meanings prescribed in section 42-5032.02.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) Master schedule updates.
- (ii) Modification work cash flow projection updates.
- (iii) Site reports made on a periodic basis.
- (iv) Identification of discrepancies, conflicts or ambiguities in modification work documents that require resolution.
- (v) Identification of any health and safety issues that have arisen in connection with the modification work.
- (h) Preparation of daily logs of modification work, including documentation of personnel, weather conditions and on-site occurrences.
- (i) Preparation of any submittals or shop drawings used by the prime contractor to illustrate details of the modification work performed.
- (j) Administration or supervision of any other activities for which a prime contractor receives a certificate for payment or certificate for final payment based on the progress of modification work performed on the project.

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

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

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

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

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

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

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

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

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

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

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

(vi) Any bond and insurance premiums.

(vii) Any applicable taxes.

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

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

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

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

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

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

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

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

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

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

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

1. If any part of the contract for sale of the property specifies amounts to be paid to the original owner for the modifications to be made in the period subsequent to the transfer of title, the amounts are included in the original owner's gross proceeds of sale or gross income under this section. Proceeds from the sale of the property that are received after transfer of title and that are unrelated to the modifications made subsequent to the transfer of title are not considered gross proceeds of sale or gross income from the modifications.

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

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

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

R. For the purposes of this section:

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

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

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

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

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

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

(c) Project elements may not be artificially separated from a contract to cause a project to qualify as an alteration. The department has the burden of proof that project elements have been artificially separated from a contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Wells drilled before June 12, 1980 which are not abandoned or capped or wells which were not completed on June 12, 1980 but for which a notice of intention to drill was on file with the Arizona water commission on such date are subject to subsections J, K and L of this section and must be registered pursuant to section 45-593. If two or more wells in an active management area are exempt under this paragraph and are used to serve the same non-irrigation use at the same location, the aggregate quantity of groundwater withdrawn from the wells shall not exceed fifty-six acre-feet per year.

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

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

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

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

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

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

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

1. The landowner submitted a written request for service to the municipal provider that operates the distribution system and the municipal provider did not provide written verification to the landowner within thirty calendar days after receipt of the request that water service is available to the landowner after payment of any applicable fee to the municipal provider.

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

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

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

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

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

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

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

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

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

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

1. Because of its location, the first exempt well is not capable of consistently producing more than three gallons per minute of groundwater when equipped with a pump with a maximum capacity of thirty-five gallons per minute.

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

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

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

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

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

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

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

M. For the purposes of this section:

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

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

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

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

45-596. Notice of intention to drill; fee

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

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

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

1. The name and mailing address of the person filing the notice.

2. The legal description of the land on which the well is proposed to be drilled and the name and mailing address of the owner of the land.

3. The legal description of the location of the well on the land.

4. The depth, diameter and type of casing of the proposed well.

5. Such legal description of the land on which the groundwater is proposed to be used as may be required by the director to administer this chapter.

6. When construction is to begin.

7. The proposed uses to which the groundwater will be applied.

8. The name and well driller's license number of the well driller who is to construct the well.

9. The design pumping capacity of the well.

10. If for a replacement well, the maximum capacity of the original well and the distance of the replacement well from the original well.

11. Proof that the director determines to be satisfactory that the person proposing to construct the well holds a valid license issued by the registrar of contractors pursuant to title 32, chapter 10 and that the license is of the type necessary to construct the well described in the notice of intention to drill. If the proposed well driller does not hold a valid license, the director may accept proof that the proposed well driller is exempt from licensing as prescribed by section 32-1121.

12. If any water from the proposed well will be used for domestic purposes as defined in section 45-454, evidence of compliance with the requirements of subsection F of this section.

13. If for a second exempt well at the same location for the same use pursuant to section 45-454, subsection I, proof that the requirements of that subsection are met.

14. If for a well to obtain geophysical, mineralogical or geotechnical data within a single section of land, the information prescribed by this subsection for each well that will be included in that section of land before each well is drilled.

15. Such other information as the director may require.

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

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

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

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

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

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

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

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

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

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

G. Before approving a well site plan submitted pursuant to subsection F of this section, the county or local health authority or the department of water resources, as applicable, pursuant to subsection F of this section, shall review the well site plan and determine whether the proposed well location complies with applicable local laws, ordinances and regulations and any laws or rules adopted under this title and title 49 regarding the placement of wells and the proximity of wells to septic tanks or sewer systems. If the health authority or the department of water resources, as applicable, pursuant to subsection F of this section, finds that the proposed well location complies with this title and title 49 and with local requirements, it shall endorse the site plan and the proposed well placement in a manner indicating approval. On endorsement, the director of water resources shall approve the construction of the well, if all remaining requirements have been met. If the health authority is unable to determine whether the proposed well location complies with this title and title 49 and local requirements, it shall indicate this on the site plan and the decision to approve or reject the proposed construction rests with the director of water resources. If parcel size, geology or location of improvements on the property prevents the well from being drilled in accordance with this title and title 49 or local requirements, the property owner may apply for a variance. The property owner shall make the request for a variance to the county or local authority if a county or local law, ordinance or regulation prevents the proposed construction. If a law or rule adopted under this title or title 49 prevents the proposed construction, the property owner shall make the request for a variance directly to the department of water resources. The request for a variance shall be in the form and shall contain the information that the department of water resources, county or local authority may require. The department of water resources, or the county or local authority whose law, ordinance or regulation prevents the proposed construction, may expressly require that a particular variance shall include certification by a registered professional engineer or **A PROFESSIONAL** geologist that the location of the well will not pose a health hazard to the applicant or surrounding property or inhabitants. If all necessary variances are obtained, the director of water resources shall approve the construction of the well if all remaining requirements have been met.

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

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

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

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

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

- (b) The site of a corrective action undertaken pursuant to title 49, chapter 6.
- (c) The site of a voluntary remediation action undertaken pursuant to title 49, chapter 1, article 5.

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

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

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

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

- 1. The proposed well is located within a remedial action site.
- 2. The proposed well is located within one mile of any of the following remedial action sites:

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

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

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

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

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

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

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

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

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

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

49-1052. Noncorrective actions; baseline assessment

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

- 1. Elect to conduct a baseline assessment pursuant to this section.
- 2. Request a grant to cover costs associated with the baseline assessment pursuant to section 49-1071.
- 3. Request the department to perform the baseline assessment under section 49-1017.02.

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

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

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

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

- 1. The owner, operator or person that meets the requirements of section 49-1016, subsection C shall comply with the reporting requirements pursuant to section 49-1004 and shall initiate corrective actions pursuant to section 49-1005.**
- 2. Unless documentation is provided to the department that demonstrates that the operating underground storage tank is not the source of the release, the department shall require tightness testing.**
- 3. If continued operation of the underground storage tank may result in a continued release, the department may initiate delivery prohibition as prescribed in section 49-1023.**