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**Jane Dee Hull
Secretary of State**

CHAPTER 110

SENATE BILL 1009

AN ACT

AMENDING SECTIONS 26-102, 26-151, 26-153, 28-384 AND 41-2501, ARIZONA REVISED STATUTES; RELATING TO NATIONAL GUARD FINANCING.

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

2 Section 1. Section 26-102, Arizona Revised Statutes, is amended to
3 read:

4 26-102. Powers and duties of the adjutant general

5 A. The adjutant general shall serve as head of the department. The
6 governor as commander in chief shall administer and control the national
7 guard, and the adjutant general is responsible to the governor for execution
8 of all orders relating to the militia, organization, activation,
9 reactivation, inactivation and allocation of units, recruiting of personnel,
10 public relations and discipline and training of the national guard and those
11 members of the militia inducted into the service of this state as provided
12 in this chapter. The adjutant general shall act as military chief of staff
13 to the governor and chief of all branches of the militia. The adjutant
14 general may belong to the national association and other organizations for
15 the betterment of the national guard, subscribe to and obtain periodicals,
16 literature and magazines of such other organizations and pay dues and charges
17 from monies of this state appropriated for that purpose. Except for the
18 authority expressly reserved for the governor, the adjutant general is
19 responsible for emergency management and all emergency activities are subject
20 to the approval of the adjutant general.

21 B. The adjutant general, as the military chief of staff, shall:

1 1. Act as military advisor to the governor and perform, as the
2 governor prescribes, military duties not otherwise designated by law.

3 2. Adopt methods of administration for the national guard that are not
4 inconsistent with laws and regulations of the United States department of
5 defense or any subdivision of the United States department of defense.

6 3. Supervise and direct the organization, regulation, instruction and
7 other activities of the national guard.

8 4. Attest and record all commissions issued by the governor and
9 maintain a register of all commissioned personnel.

10 5. Keep a record of all orders and regulations pertaining to the
11 national guard and all other writings and papers relating to reports and
12 returns of units comprising the national guard and militia.

13 6. Superintend the preparation of returns, plans and estimates
14 required by this state, by the department of the army, air force or navy and
15 by the secretary of defense.

16 7. Control the use of and care for, preserve and maintain all military
17 property belonging to or issued to this state and pay from monies
18 appropriated by the legislature for these purposes the necessary expenses for
19 labor and material incurred in the repair of military property.

20 8. Dispose of unserviceable military property belonging to this state,
21 account for the proceeds and transmit them to the ~~unit allowance as provided~~
22 ~~in~~ MORALE, WELFARE AND RECREATIONAL FUND ESTABLISHED BY section 26-153.

23 9. Authenticate with the seal of the office of the adjutant general
24 all orders and copies of orders issued by the adjutant general's office. An
25 authenticated copy has the same force and effect as the original.

26 10. Present to the governor before each regular session of the
27 legislature, or as otherwise required, an estimate of the financial
28 requirements for state monies for operation of the department and the
29 national guard during the next fiscal year.

30 C. The adjutant general, as head of the department, shall:

31 1. Be the administrator of the department.

32 2. Coordinate the functions of the divisions and offices of the
33 department.

34 3. Appoint, suspend, demote, promote or dismiss employees of the
35 department subject to the provisions of title 41, chapter 4, article 5 and
36 employees who are exempt from state personnel administration. The adjutant
37 general may delegate this authority.

38 4. Appoint an auditor for the department to conduct periodic financial
39 and compliance audits of each division and office in the department and
40 perform such other duties as prescribed by law. At least annually the
41 auditor shall audit accounts that are open for more than twelve months. The
42 auditor shall determine within the department compliance with purchase and
43 bidding procedures prescribed by law.

1 5. Adopt, with the approval of the governor, rules necessary for the
2 operation of the department.

3 6. Establish and administer accounts for federal, state or other
4 monies made available to carry out the functions of the department.

5 7. As deemed necessary, appoint to peace officer status members of the
6 Arizona national guard who have been awarded a United States army military
7 occupational specialty as military policeman or a United States air force
8 specialty code as security policeman. Prior to appointment as peace
9 officers, such individuals must successfully complete a course of study to
10 be prescribed by the Arizona law enforcement advisory council. Individuals
11 appointed as peace officers pursuant to this section, when performing duties
12 at facilities or on land operated or controlled by or under the jurisdiction
13 of the adjutant general, shall have all the powers, privileges and immunities
14 of peace officers provided by law. Individuals appointed as peace officers
15 pursuant to this section are not eligible to participate in funding provided
16 by the peace officers' training fund established by section 41-1825 or in the
17 public safety personnel retirement system.

18 8. Establish, abolish or reorganize the positions or organizational
19 structure within the department, subject to legislative appropriation, if,
20 in the adjutant general's judgment, the modification would make the operation
21 of the department more efficient, effective or economical.

22 9. Submit to the governor annually by October 1 a report for the
23 department including the strength and condition of the national guard, the
24 business transactions of the department, a detailed statement of expenditures
25 for all military and civilian purposes and the disposition of all military
26 and civilian property on hand or issued.

27 D. The adjutant general, with the approval of the governor, may:

28 1. Enter into contracts with individuals, this state, political
29 subdivisions of this state or the federal government and its agencies for the
30 purchase, acquisition, rental or lease of lands, buildings or military
31 materiel and take title in the name of this state for the establishment and
32 maintenance of armories, subject to legislative appropriation for these
33 purposes.

34 2. Procure and contract for procurement of equipment and its issuance
35 to members of the militia inducted into the service of this state.

36 3. Enter into agreements and plans with the state universities,
37 community colleges or any educational institution supported by federal or
38 state monies for promotion of the best interests of the national guard and
39 military training of students of the institutions.

40 4. Lease property acquired under this chapter for any public purpose
41 for a period of one year that is renewable.

42 5. Convey for any public purpose in the name of this state easements
43 on real property acquired under this chapter.

1 6. Enter into contracts or agreements with the federal government that
2 are deemed to be in the best interest of this state and the national guard.

3 7. Delegate the powers and duties in this section.

4 Sec. 2. Section 26-151, Arizona Revised Statutes, is amended to read:

5 26-151. Acceptance of national defense act; adoption of other
6 federal acts and regulations pertaining to national
7 guard

8 A. The state accepts the benefits of sections 109 and 110 of the
9 national defense act ~~approved June 3, 1916, and amendments thereto~~ (32 UNITED
10 STATES CODE SECTIONS 109 AND 110). Officers who are required to comply with
11 the provisions of the act shall be qualified as prescribed therein and shall
12 be subject to its provisions pertaining to appointment and retirement.

13 B. The rules and regulations of the armed forces of the United States
14 and the national guard, the national defense act, and other acts of Congress,
15 ~~and amendments thereto, so~~ INCLUDING PROVISIONS RELATING TO THE ESTABLISHMENT
16 OF FINANCIALLY SELF-SUPPORTING MORALE, WELFARE AND RECREATIONAL PROGRAMS,
17 AS far as they apply to national guards of states, shall apply to the
18 national guard of Arizona, as fully as if set forth and incorporated in this
19 article.

20 Sec. 3. Section 26-153, Arizona Revised Statutes, is amended to read:

21 26-153. Morale, welfare and recreational fund; sources of
22 monies; exemptions

23 A. A MORALE, WELFARE AND RECREATIONAL FUND IS ESTABLISHED AS A STATE
24 FUND FOR MORALE, WELFARE AND RECREATIONAL ACTIVITIES AND SUPPORT PERSONNEL
25 FOR THE NATIONAL GUARD. SUPPORT PERSONNEL SHALL BE EMPLOYEES OF THE FUND AND
26 NOT OF THIS STATE. THE ADJUTANT GENERAL SHALL ADMINISTER THE FUND PURSUANT
27 TO REGULATIONS OF THE GENERAL STAFF, SUBJECT TO APPROVAL OF THE GOVERNOR.
28 MONIES SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE FUND
29 FROM THE FOLLOWING SOURCES:

30 ~~A. Subject to appropriation by the legislature, each federally~~
31 ~~recognized unit of the air and army national guard that is allocated to this~~
32 ~~state and accepted by the governor shall receive not less than six dollars~~
33 ~~per member per fiscal year, based on authorized unit strength as of June 30~~
34 ~~of the preceding fiscal year.~~

35 ~~B.~~ 1. Monies transmitted to the state treasurer by the director of
36 the department of transportation pursuant to section 28-384 ~~shall be~~
37 ~~deposited in the unit allowances.~~

38 ~~C.~~ 2. Monies transmitted to the state treasurer pursuant to
39 section 26-102, subsection B, paragraph 8 or monies generated from recycling
40 activities consistent with federal recycling policies ~~shall be deposited as~~
41 ~~unit allowances and are exempt from the provisions of section 35-190 relating~~
42 ~~to lapsing of appropriations.~~

1 3. ANY OTHER NONAPPROPRIATED MONIES RECEIVED BY THE NATIONAL GUARD
2 FROM STATE AND FEDERAL REVENUE PRODUCING MILITARY ACTIVITIES RELATING TO
3 MORALE, WELFARE AND RECREATION.

4 B. MONIES IN THE FUND ARE FROM NONAPPROPRIATED SOURCES, ARE NOT
5 SUBJECT TO LEGISLATIVE APPROPRIATION AND ARE EXEMPT FROM THE PROVISIONS OF
6 SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS. THE ADJUTANT GENERAL
7 MAY ESTABLISH BANK ACCOUNTS FOR MONIES WITHDRAWN FROM THE FUND TO ADMINISTER
8 THE OPERATIONS OF THE MORALE, WELFARE AND RECREATIONAL PROGRAMS.

9 C. ON NOTICE FROM THE ADJUTANT GENERAL, THE STATE TREASURER SHALL
10 INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND
11 MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

12 D. EXPENDITURES OF MONIES IN THE FUND ARE SUBJECT TO GENERAL STAFF
13 REGULATIONS AND ARE EXEMPT FROM THE PROCUREMENT CODE REQUIREMENTS OF TITLE
14 41, CHAPTER 23.

15 Sec. 4. Section 28-384, Arizona Revised Statutes, is amended to read:

16 28-384. National guard member special plates

17 A. The department shall issue national guard member special plates to
18 a person who submits satisfactory proof to the department that he is or has
19 been a member of the Arizona national guard or the spouse of a person who is
20 or has been a member of the Arizona national guard.

21 B. Of the twenty-five dollar fee required by section 28-205 for
22 original national guard member special plates and for renewal of national
23 guard member special plates, eight dollars is a special plate administration
24 fee and seventeen dollars is a national guard member special plate annual
25 donation.

26 C. The director of the department of transportation shall transmit all
27 special plate administration fees and all national guard special plate annual
28 donations collected pursuant to this section to the state treasurer. The
29 state treasurer shall deposit the special plate administration fees in the
30 special fund established by section 28-301.03 and shall deposit the national
31 guard member special plate annual donations in the ~~unit allowances~~ MORALE,
32 WELFARE AND RECREATIONAL FUND established by section 26-153.

33 D. The department shall not issue number plates pursuant to this
34 section to a person or to the spouse of a person who was discharged from the
35 armed forces under conditions less than honorable.

36 Sec. 5. Section 41-2501, Arizona Revised Statutes, is amended to read:

37 41-2501. Applicability

38 A. This chapter applies only to procurements initiated after January
39 1, 1985 unless the parties agree to its application to procurements initiated
40 before such date.

41 B. This chapter applies to every expenditure of public monies,
42 including federal assistance monies except as otherwise specified in section
43 41-2637, by this state, acting through a state governmental unit as defined
44 in this chapter, under any contract, except that this chapter does not apply

1 to either grants or contracts between this state and its political
2 subdivisions or other governments, except as provided in article 10 of this
3 chapter. This chapter also applies to the disposal of state materials.
4 Nothing in this chapter or in rules adopted under this chapter shall prevent
5 any state governmental unit or political subdivision from complying with the
6 terms and conditions of any grant, gift, bequest or cooperative agreement.

7 C. All political subdivisions and other local public agencies of this
8 state may adopt all or any part of this chapter and the rules adopted
9 pursuant to this chapter.

10 D. The Arizona board of regents, the legislative and judicial branches
11 of state government and the state compensation fund are not subject to the
12 provisions of this chapter except as prescribed in subsection E of this
13 section.

14 E. The Arizona board of regents and the judicial branch shall adopt
15 rules prescribing procurement policies and procedures for themselves and
16 institutions under their jurisdiction. The rules must be substantially
17 equivalent to the policies and procedures prescribed in this chapter.

18 F. The Arizona state lottery commission is exempt from the provisions
19 of this chapter for procurement relating to the design and operation of the
20 lottery or purchase of lottery equipment, tickets and related materials. The
21 executive director of the Arizona state lottery commission shall adopt rules
22 substantially equivalent to the policies and procedures in this chapter for
23 procurement relating to the design and operation of the lottery or purchase
24 of lottery equipment, tickets or related materials. All other procurement
25 shall be as prescribed by this chapter.

26 G. The Arizona health care cost containment system administration is
27 exempt from the provisions of this chapter for provider contracts pursuant
28 to section 36-2904, subsection A and contracts for goods and services
29 including program contractor contracts pursuant to title 36, chapter 29,
30 articles 2 and 3. All other procurement, including contracts for the
31 statewide administrator of the program pursuant to section 36-2903,
32 subsection C, shall be as prescribed by this chapter.

33 H. Arizona industries for the blind is exempt from the provisions of
34 this chapter for purchases of finished goods from members of national
35 industries for the blind and for purchases of raw materials for use in the
36 manufacture of products for sale pursuant to section 41-1972. All other
37 procurement shall be as prescribed by this chapter.

38 I. Arizona correctional industries is exempt from the provisions of
39 this chapter for purchases of raw materials and supplies to be used in the
40 manufacture of products for sale entered into pursuant to section 41-1622.
41 All other procurement shall be as prescribed by this chapter.

42 J. The state transportation board and the director of the department
43 of transportation are exempt from the provisions of this chapter for the

1 procurement of construction or reconstruction, including engineering
2 services, of transportation facilities or highway facilities.

3 K. The Arizona highways magazine is exempt from the provisions of this
4 chapter for contracts for the production, promotion, distribution and sale
5 of the magazine and related products and for contracts for sole source
6 creative works entered into pursuant to section 28-1883, subsection A,
7 paragraph 5. All other procurement shall be as prescribed by this chapter.

8 L. The secretary of state is exempt from the provisions of this
9 chapter for contracts entered into pursuant to section 41-1012 to publish and
10 sell the administrative code. All other procurement shall be as prescribed
11 by this chapter.

12 M. The provisions of this chapter are not applicable to contracts for
13 professional witnesses if the purpose of such contracts is to provide for
14 professional services or testimony relating to an existing or probable
15 judicial proceeding in which this state is or may become a party or to
16 contract for special investigative services for law enforcement purposes.

17 N. The head of any state governmental unit, in relation to any
18 contract exempted by this section from the provisions of this chapter, has
19 the same authority to adopt rules, procedures or policies as is delegated to
20 the director pursuant to this chapter.

21 O. Agreements negotiated by legal counsel representing this state in
22 settlement of litigation or threatened litigation are exempt from the
23 provisions of this chapter.

24 P. The provisions of this chapter are not applicable to contracts
25 entered into by the department of economic security with a provider licensed
26 or certified by an agency of this state to provide child day care services
27 or with a provider of family foster care pursuant to section 8-503 or 36-554,
28 to contracts entered into with area agencies on aging created pursuant to the
29 older Americans act of 1965, 42 U.S.C. section 3001, as amended, or to
30 contracts for services pursuant to title 36, chapter 29, article 2.

31 Q. The department of health services may not require that persons with
32 whom it contracts follow the provisions of this chapter for the purposes of
33 subcontracts entered into for the provision of the following:

- 34 1. Mental health services pursuant to section 36-189, subsection B.
- 35 2. Services for the seriously mentally ill pursuant to title 36,
36 chapter 5, article 10.
- 37 3. Drug and alcohol services pursuant to section 36-141.
- 38 4. Domestic violence services pursuant to title 36, chapter 30,
39 article 1.

40 R. The department of health services is exempt from the provisions of
41 this chapter for contracts for services of physicians at the Arizona state
42 hospital.

1 S. Contracts for goods and services approved by the fund manager of
2 the public safety personnel retirement system are exempt from the provisions
3 of this chapter.

4 T. The Arizona department of agriculture is exempt from this chapter
5 with respect to contracts for private labor and equipment to effect cotton
6 or cotton stubble plow-up pursuant to rules adopted under title 3, chapter
7 2, article 1. On or before September 1 each year the director of the
8 department of agriculture shall establish and announce costs for each acre
9 of cotton or cotton stubble to be abated by private contractors.

10 U. The state parks board is exempt from the provisions of this chapter
11 for purchases of guest supplies and items for resale such as food, linens,
12 gift items, sundries, furniture, china, glassware and utensils for the
13 facilities located in the Tonto natural bridge state park.

14 V. The state parks board is exempt from the provisions of this chapter
15 for the purchase, production, promotion, distribution and sale of
16 publications, souvenirs and sundry items obtained and produced for resale.

17 W. EXPENDITURES OF MONIES IN THE MORALE, WELFARE AND RECREATIONAL FUND
18 ESTABLISHED BY SECTION 26-153 ARE EXEMPT FROM THE PROVISIONS OF THIS CHAPTER.

APPROVED BY HTE GOVERNOR APRIL 9, 1996.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 1996.