State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 111

HOUSE BILL 2141

AN ACT

AMENDING SECTIONS 9-461.05, 9-461.06, 9-462.04, 11-806, 11-829, ARIZONA REVISED STATUTES; AMENDING SECTION 15-2002, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2003, CHAPTER 215, SECTION 3; REPEALING SECTION 15-2002, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2003, CHAPTER 264, SECTION 9; AMENDING SECTIONS 15-2041, 28-8461, 28-8480, 28-8481, 28-8482, 32-2113, 32-2181, 32-2183, 32-2195, 32-2195.03 AND 37-102, ARIZONA REVISED STATUTES; RELATING TO DEVELOPMENT NEAR MILITARY AIRPORTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 9-461.05, Arizona Revised Statutes, is amended to read:

9-461.05. General plans; authority; scope

A. Each planning agency shall prepare and the governing body of each municipality shall adopt a comprehensive, long-range general plan for the development of the municipality. The planning agency shall coordinate the production of its general plan with the creation of the state land department conceptual land use plans under title 37, chapter 2, article 5.1 and shall cooperate with the state land department regarding integrating the conceptual state land use plans into the municipality's general land use plan. The general plan shall include provisions that identify changes or modifications to the plan that constitute amendments and major amendments. The plan shall be adopted and readopted in the manner prescribed by section 9-461.06.

B. The general plan shall be so prepared that all or individual elements of it may be adopted by the governing body and that it may be made applicable to all or part of the territory of the municipality.

C. The general plan shall consist of a statement of community goals and development policies. It shall include maps, any necessary diagrams and text setting forth objectives, principles, standards and plan proposals. The plan shall include the following elements:

1. A land use element that:

(a) Designates the proposed general distribution and location and extent of such uses of the land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space and other categories of public and private uses of land as may be appropriate to the municipality.

(b) Includes a statement of the standards of population density and building intensity recommended for the various land use categories covered by the plan.

(c) Identifies specific programs and policies that the municipality may use to promote infill or compact form development activity and locations where those development patterns should be encouraged.

(d) Includes consideration of air quality and access to incident solar energy for all general categories of land use.

(e) Includes policies that address maintaining a broad variety of land uses including the range of uses existing in the municipality when the plan is adopted, readopted or amended.

(f) For cities and towns with territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, includes consideration of military airport OR ANCILLARY MILITARY FACILITY operations.

2. A circulation element consisting of the general location and extent of existing and proposed freeways, arterial and collector streets,

bicycle routes and any other modes of transportation as may be appropriate, all correlated with the land use element of the plan.

D. For cities and towns having a population of more than two thousand five hundred persons but less than ten thousand persons and whose population growth rate exceeded an average of two per cent per year for the ten year period before the most recent United States decennial census and for cities and towns having a population of ten thousand or more persons according to the most recent United States decennial census, the general plan shall include, and for other cities and towns the general plan may include:

1. An open space element that includes:

(a) A comprehensive inventory of open space areas, recreational resources and designations of access points to open space areas and resources.

(b) An analysis of forecasted needs, policies for managing and protecting open space areas and resources and implementation strategies to acquire additional open space areas and further establish recreational resources.

(c) Policies and implementation strategies designed to promote a regional system of integrated open space and recreational resources and a consideration of any existing regional open space plans.

2. A growth area element, specifically identifying those areas, if any, that are particularly suitable for planned multimodal transportation and infrastructure expansion and improvements designed to support a planned concentration of a variety of uses, such as residential, office, commercial, tourism and industrial uses. This element shall include policies and implementation strategies that are designed to:

(a) Make automobile, transit and other multimodal circulation more efficient, make infrastructure expansion more economical and provide for a rational pattern of land development.

(b) Conserve significant natural resources and open space areas in the growth area and coordinate their location to similar areas outside the growth area's boundaries.

(c) Promote the public and private construction of timely and financially sound infrastructure expansion through the use of infrastructure funding and financing planning that is coordinated with development activity.

3. An environmental planning element that contains ~~analysis~~ ANALYSES, policies and strategies to address anticipated effects, if any, of plan elements on air quality, water quality and natural resources associated with proposed development under the general plan. The policies and strategies to be developed under this element shall be designed to have community-wide applicability and shall not require the production of an additional environmental impact statement or similar analysis beyond the requirements of state and federal law.

4. A cost of development element that identifies policies and strategies that the municipality will use to require development to pay its

fair share toward the cost of additional public service needs generated by new development, with appropriate exceptions when in the public interest. This element shall include:

(a) A component that identifies various mechanisms that are allowed by law and that can be used to fund and finance additional public services necessary to serve the development, including bonding, special taxing districts, development fees, in lieu fees, facility construction, dedications and service privatization.

(b) A component that identifies policies to ensure that any mechanisms that are adopted by the municipality under this element result in a beneficial use to the development, bear a reasonable relationship to the burden imposed on the municipality to provide additional necessary public services to the development and otherwise are imposed according to law.

5. A water resources element that addresses:

(a) The known legally and physically available surface water, groundwater and effluent supplies.

(b) The demand for water that will result from future growth projected in the general plan, added to existing uses.

(c) An analysis of how the demand for water that will result from future growth projected in the general plan will be served by the water supplies identified in subdivision (a) of this paragraph or a plan to obtain additional necessary water supplies.

E. The general plan shall include for cities of fifty thousand persons or more and may include for cities of less than fifty thousand persons the following elements or any part or phase of the following elements:

1. A conservation element for the conservation, development and utilization of natural resources, including forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals and other natural resources. The conservation element may also cover:

(a) The reclamation of land.

(b) Flood control.

(c) Prevention and control of the pollution of streams and other waters.

(d) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(e) Prevention, control and correction of the erosion of soils, beaches and shores.

(f) Protection of watersheds.

2. A recreation element showing a comprehensive system of areas and public sites for recreation, including the following and, if practicable, their locations and proposed development:

(a) Natural reservations.

(b) Parks.

(c) Parkways and scenic drives.

(d) Beaches.
(e) Playgrounds and playfields.
(f) Open space.
(g) Bicycle routes.
(h) Other recreation areas.

3. The circulation element provided for in subsection C, paragraph 2 of this section shall also include for cities of fifty thousand persons or more and may include for cities of less than fifty thousand persons recommendations concerning parking facilities, building setback requirements and the delineations of such systems on the land, a system of street naming and house and building numbering and other matters as may be related to the improvement of circulation of traffic. The circulation element may also include:

(a) A transportation element showing a comprehensive transportation system, including locations of rights-of-way, terminals, viaducts and grade separations. This element of the plan may also include port, harbor, aviation and related facilities.

(b) A transit element showing a proposed system of rail or transit lines or other mode of transportation as may be appropriate.

4. A public services and facilities element showing general plans for police, fire, emergency services, sewage, refuse disposal, drainage, local utilities, rights-of-way, easements and facilities for them.

5. A public buildings element showing locations of civic and community centers, public schools, libraries, police and fire stations and other public buildings.

6. A housing element consisting of standards and programs for the elimination of substandard dwelling conditions, for the improvement of housing quality, variety and affordability and for provision of adequate sites for housing. This element shall contain an identification and analysis of existing and forecasted housing needs. This element shall be designed to make equal provision for the housing needs of all segments of the community regardless of race, color, creed or economic level.

7. A conservation, rehabilitation and redevelopment element consisting of plans and programs for:

(a) The elimination of slums and blighted areas.

(b) Community redevelopment, including housing sites, business and industrial sites and public building sites.

(c) Neighborhood preservation and revitalization.

(d) Other purposes authorized by law.

8. A safety element for the protection of the community from natural and artificial hazards including features necessary for such protection as evacuation routes, peak load water supply requirements, minimum road widths according to function, clearances around structures and geologic hazard mapping in areas of known geologic hazards.

9. A bicycling element consisting of proposed bicycle facilities such as bicycle routes, bicycle parking areas and designated bicycle street crossing areas.

F. The water resources element of the general plan does not require:

1. New independent hydrogeologic studies.

2. The city or town to be a water service provider.

G. The policies and strategies to be developed under these elements shall be designed to have community-wide applicability and this section does not authorize the imposition of dedications, exactions, fees or other requirements that are not otherwise authorized by law.

Sec. 2. Section 9-461.06, Arizona Revised Statutes, is amended to read:

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

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

B. The governing body shall:

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

(a) The broad dissemination of proposals and alternatives.

(b) The opportunity for written comments.

(c) Public hearings after effective notice.

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

(e) Consideration of public comments.

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

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

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

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

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

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

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

6. If the general plan or ~~a portion,~~ AN element or amendment of the general plan is applicable to territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, the military airport.

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

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

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

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

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

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

G. The adoption or readoption of the general plan or any amendment to such plan shall be by resolution of the governing body of the municipality, after notice as provided for in subsection D of this section. The adoption or readoption of or a major amendment to the general plan shall be approved by affirmative vote of at least two-thirds of the members of the governing body of the municipality. All major amendments to the general plan proposed for adoption by the governing body of a municipality shall be presented at a single public hearing during the calendar year the proposal is made. The general plan, or any amendment to the plan, shall be endorsed in the manner

provided by the governing body to show that it has been adopted by the governing body. If the motion to adopt or readopt a general plan or an amendment to the general plan fails to pass, the governing body may reconsider the motion in any manner allowed by the governing body's rules of procedure, but any subsequent motion for the adoption or readoption of the general plan or a major amendment to the general plan must be approved by an affirmative vote of at least two-thirds of the members of the governing body. For purposes of this subsection, "major amendment" means a substantial alteration of the municipality's land use mixture or balance as established in the municipality's existing general plan land use element. The municipality's general plan shall define the criteria to determine if a proposed amendment to the general plan effects a substantial alteration of the municipality's land use mixture or balance as established in the municipality's existing general plan land use element.

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

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

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

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

L. The governing body of a city or town having a population of more than two thousand five hundred persons but less than ten thousand persons and whose population growth rate exceeded an average of two per cent per year for the ten year period before the most recent United States decennial census, and any city or town having a population of ten thousand or more persons, shall submit each new general plan adopted pursuant to subsection J of this section to the voters for ratification at the next regularly scheduled

municipal election or at a special election scheduled at least one hundred twenty days after the governing body adopted the plan pursuant to section 16-204. The governing body shall include a general description of the plan and its elements in the municipal election pamphlet and shall provide public copies of the plan in at least two locations that are easily accessible to the public and may include posting on the municipality's official internet web site. If a majority of the qualified electors voting on the proposition approves the new plan, it shall become effective as provided by law. If a majority of the qualified electors voting on the proposition fails to approve the new plan, the current plan remains in effect until a new plan is approved by the voters pursuant to this subsection. The governing body shall either resubmit the proposed new plan, or revise the new plan as provided by this section, for subsequent submission to the voters at the next regularly scheduled municipal election or at a special election scheduled at least one hundred twenty days after the governing body readopted the new or revised new plan. All subsequent adoptions and submissions of the new plan or revised plans must comply with the procedures prescribed by this section until the plan is ratified.

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

Sec. 3. Section 9-462.04, Arizona Revised Statutes, is amended to read:

9-462.04. Public hearing required

A. If the municipality has a planning commission or a hearing officer, the planning commission or hearing officer shall hold a public hearing on any zoning ordinance. Notice of the time and place of the hearing including a general explanation of the matter to be considered and including a general description of the area affected shall be given at least fifteen days before the hearing in the following manner:

1. The notice shall be published at least once in a newspaper of general circulation published or circulated in the municipality, or if there is none, it shall be posted on the affected property in such a manner as to

be legible from the public right-of-way and in at least ten public places in the municipality. A posted notice shall be printed so that the following are visible from a distance of one hundred feet: the word "zoning", the present zoning district classification, the proposed zoning district classification and the date and time of the hearing.

2. In proceedings involving rezoning of land which abuts other municipalities or unincorporated areas of the county or a combination thereof, copies of the notice of public hearing shall be transmitted to the planning agency of such governmental unit abutting such land. In proceedings involving rezoning of land that is located within the territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, the municipality shall send copies of the notice of public hearing by first class mail to the military airport. In addition to notice by publication, a municipality may give notice of the hearing in such other manner as it may deem necessary or desirable.

3. In proceedings that are not initiated by the property owner involving rezoning of land which may change the zoning classification, notice by first class mail shall be sent to each real property owner, as shown on the last assessment of the property, of the area to be rezoned and all property owners, as shown on the last assessment of the property, within three hundred feet of the property to be rezoned.

4. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, notice shall be provided in the manner prescribed by paragraph 5:

(a) A ten per cent or more increase or decrease in the number of square feet or units that may be developed.

(b) A ten per cent or more increase or reduction in the allowable height of buildings.

(c) An increase or reduction in the allowable number of stories of buildings.

(d) A ten per cent or more increase or decrease in setback or open space requirements.

(e) An increase or reduction in permitted uses.

5. In proceedings governed by paragraph 4, the municipality shall provide notice to real property owners pursuant to at least one of the following notification procedures:

(a) Notice shall be sent by first class mail to each real property owner, as shown on the last assessment, whose real property is directly governed by the changes.

(b) If the municipality issues utility bills or other mass mailings that periodically include notices or other informational or advertising materials, the municipality shall include notice of such changes with such utility bills or other mailings.

(c) The municipality shall publish such changes prior to the first hearing on such changes in a newspaper of general circulation in the

municipality. The changes shall be published in a "display ad" covering not less than one-eighth of a full page.

6. If notice is provided pursuant to paragraph 5, subdivision (b) or (c), the municipality shall also send notice by first class mail to persons who register their names and addresses with the municipality as being interested in receiving such notice. The municipality may charge a fee not to exceed five dollars per year for providing this service and may adopt procedures to implement this paragraph.

7. Notwithstanding the notice requirements set forth in paragraph 4, the failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the actions of a municipality for which the notice was given.

B. If the matter to be considered applies to territory in a high noise or accident potential zone as defined in section 28-8461, the notice prescribed in subsection A of this section shall include a general statement that the matter applies to property located in the high noise or accident potential zone.

C. After the hearing, the planning commission or hearing officer shall render a decision in the form of a written recommendation to the governing body. The recommendation shall include the reasons for the recommendation and be transmitted to the governing body in such form and manner as may be specified by the governing body.

D. If the planning commission or hearing officer has held a public hearing, the governing body may adopt the recommendations of the planning commission or hearing officer without holding a second public hearing if there is no objection, request for public hearing or other protest. The governing body shall hold a public hearing if requested by the party aggrieved or any member of the public or of the governing body, or, in any case, if no public hearing has been held by the planning commission or hearing officer. In municipalities with territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, the governing body shall hold a public hearing if, after notice is transmitted to the military airport pursuant to subsection A of this section and before the public hearing, the military airport provides comments or analysis concerning the compatibility of the proposed rezoning with the high noise or accident potential generated by military airport OR ANCILLARY MILITARY FACILITY operations that may have an adverse impact on public health and safety, and the governing body shall consider and analyze the comments or analysis before making a final determination. Notice of the time and place of the hearing shall be given in the time and manner provided for the giving of notice of the hearing by the planning commission as specified in subsection A of this section. In addition a municipality may give notice of the hearing in such other manner as it may deem necessary or desirable.

E. A municipality may enact an ordinance authorizing county zoning to continue in effect until municipal zoning is applied to land previously zoned

by the county and annexed by the municipality, but in no event for longer than six months after the annexation.

F. A municipality is not required to adopt a general plan prior to the adoption of a zoning ordinance.

G. If there is no planning commission or hearing officer, the governing body of the municipality shall perform the functions assigned to the planning commission or hearing officer.

H. If the owners of twenty per cent or more either of the area of the lots included in a proposed change, or of those immediately adjacent in the rear or any side thereof extending one hundred fifty feet therefrom, or of those directly opposite thereto extending one hundred fifty feet from the street frontage of the opposite lots, file a protest in writing against a proposed amendment, it shall not become effective except by the favorable vote of three-fourths of all members of the governing body of the municipality. If any members of the governing body are unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be three-fourths of the remaining membership of the governing body, provided that such required number of votes shall in no event be less than a majority of the full membership of the legally established governing body.

I. In applying an open space element or a growth element of a general plan, a parcel of land shall not be rezoned for open space, recreation, conservation or agriculture unless the owner of the land consents to the rezoning in writing.

J. Notwithstanding the provisions of section 19-142, subsection B, a decision by the governing body involving rezoning of land which is not owned by the municipality and which changes the zoning classification of such land may not be enacted as an emergency measure and such change shall not be effective for at least thirty days after final approval of the change in classification by the governing body.

Sec. 4. Section 11-806, Arizona Revised Statutes, is amended to read:

11-806. Powers and duties; comprehensive plan

A. The commission shall act in an advisory capacity to the board and may from time to time, and shall, when requested by the board, make a report or recommendation in connection with any matter relating to the development of the county under the jurisdiction of the board. The commission shall make such investigations, maps, reports and recommendations in connection therewith as seem desirable within the limits of the funds available.

B. The commission shall prepare and recommend to the board a comprehensive plan of the area of jurisdiction of the county in the manner prescribed by article 2 of this chapter. The purpose of the plan is to bring about coordinated physical development in accordance with the present and future needs of the county. The comprehensive plan shall be developed so as to conserve the natural resources of the county, to ~~insure~~ ENSURE efficient expenditure of public funds, and to promote the health, safety, convenience,

and general welfare of the public. Such comprehensive plan may include but not be limited to, among other things, studies and recommendations relative to the location, character and extent of highways, railroads, bus and other transportation routes, bicycle facilities, bridges, public buildings, public services, schools, parks, open space, housing quality, variety and affordability, parkways, hiking and riding trails, airports, forests, wildlife areas, dams, projects affecting conservation of natural resources, air quality, water quality and floodplain zoning. For counties with territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, the commission shall also consider military airport OR ANCILLARY MILITARY FACILITY operations. Such comprehensive plan shall be a public record, but its purpose and effect shall be primarily as an aid to the county planning and zoning commission in the performance of its duties.

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

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

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

D. The board shall adopt a comprehensive plan and subsequently amend or extend the adopted plan as provided by article 2 of this chapter. Before the adoption, amendment or extension of the plan, the board shall hold at least one public hearing on the plan.

E. The board of supervisors shall:

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

(a) The broad dissemination of proposals and alternatives.

(b) The opportunity for written comments.

(c) Public hearings after effective notice.

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

(e) Consideration of public comments.

2. Consult with, advise and provide an opportunity for official comment by public officials and agencies, municipalities, school districts, associations of governments, public land management agencies, the military airport if the ~~county has~~ COUNTY'S AREA OF JURISDICTION INCLUDES territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, other appropriate government jurisdictions,

public utility companies, civic, educational, professional and other organizations, property owners and citizens generally to secure the maximum coordination of plans and to indicate properly located sites for all public purposes on the plan.

3. In counties having a population of less than four hundred thousand persons, receive petitions to form a rural planning area that are signed by persons who own real property in any specific portion of the county outside the corporate boundaries of any cities and towns. The petitions must be signed by owners of a majority of the acres of real property in the proposed planning area. Participation in the rural planning area is voluntary, and any person may withdraw real property owned by the person from the planning area. The board of supervisors shall encourage voluntary participation in the planning area and shall aid the planning areas in providing a sound factual and policy basis for planning. The recommendations of rural planning areas shall emphasize voluntary, nonregulatory incentives for compliance and accommodation of continuing traditional rural and agricultural enterprises. Rural planning areas shall transmit their recommendations to the board of supervisors for its consideration for inclusion in the county comprehensive plan.

F. In any county having a population of less than four hundred thousand persons, any cities and towns and the county sharing a multijurisdictional area with a combined population of more than fifty thousand but less than one hundred thousand persons, according to the most recent department of economic security estimates, may voluntarily form rural planning zones to develop coordinated and comprehensive regional plans.

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

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

1. Each municipality in the county.

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

3. The regional planning agency in the county.

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

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

6. If the comprehensive plan or ~~a portion,~~ AN element or amendment of the comprehensive plan is applicable to territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, the military airport.

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

Sec. 5. Section 11-829, Arizona Revised Statutes, is amended to read:

11-829. Amendment of ordinance or change of zoning district boundaries; definition

A. A property owner or authorized agent of a property owner desiring an amendment or change in the zoning ordinance changing the zoning district boundaries within an area previously zoned shall file an application for the amendment or change. All zoning and rezoning ordinances, regulations or specific plans adopted under this article shall be consistent with and conform to the adopted county plan. In the case of uncertainty in constructing or applying the conformity of any part of a proposed rezoning ordinance to the adopted county plan, the ordinance shall be construed in a manner that will further the implementation of, and not be contrary to, the goals, policies and applicable elements of the county plan. A rezoning ordinance conforms with the county plan if it proposes land uses, densities or intensities within the range of identified uses, densities and intensities of the county plan.

B. The board of supervisors shall adopt by ordinance a citizen review process that applies to all rezoning and specific plan applications that require a public hearing. The citizen review process shall include at least the following requirements:

1. Adjacent landowners and other potentially affected citizens will be notified of the application.

2. The county will inform adjacent landowners and other potentially affected citizens of the substance of the proposed rezoning.

3. Adjacent landowners and other potentially affected citizens will be provided an opportunity to express any issues or concerns that they may have with the proposed rezoning before the public hearing.

C. Upon receipt of the application the board shall submit it to the commission for a report. Prior to reporting to the board, the commission shall hold at least one public hearing thereon after giving at least fifteen days' notice thereof by one publication in a newspaper of general circulation in the county seat and by posting of the area included in the proposed change. If the matter to be considered applies to territory in a high noise or accident potential zone as defined in section 28-8461, the notice shall include a general statement that the matter applies to property located in the high noise or accident potential zone. In case of a rezoning, the posting shall be in no less than two places with at least one notice for each quarter mile of frontage along perimeter public rights-of-way so that the notices are visible from the nearest public right-of-way. The commission

shall also send notice by first class mail to each real property owner as shown on the last assessment of the property within three hundred feet of the proposed amendment or change and each county and municipality which is contiguous to the area of the amendment or change. In proceedings involving rezoning of land that is located within territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, the commission shall send copies of the notice of public hearing by first class mail to the military airport. The notice sent by mail shall include, at a minimum, the date, time and place of the hearing on the proposed amendment or change including a general explanation of the matter to be considered, a general description of the area of the proposed amendment or change, how the real property owners within the zoning area may file approvals or protests of the proposed rezoning, and notification that if twenty per cent of the property owners by area and number within the zoning area file protests, an affirmative vote of three-fourths of all members of the board will be required to approve the rezoning. The following specific notice provisions also apply:

1. In proceedings that are initiated by the commission involving rezoning, notice by first class mail shall be sent to each real property owner, as shown on the last assessment of the property, of the area to be rezoned and all property owners, as shown on the last assessment of the property, within three hundred feet of the property to be rezoned.

2. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, notice shall be provided in the manner prescribed by paragraph 3 of this subsection:

(a) A ten per cent or more increase or decrease in the number of square feet or units that may be developed.

(b) A ten per cent or more increase or reduction in the allowable height of buildings.

(c) An increase or reduction in the allowable number of stories of buildings.

(d) A ten per cent or more increase or decrease in setback or open space requirements.

(e) An increase or reduction in permitted uses.

3. In proceedings governed by paragraph 2 of this subsection, the county shall provide notice to real property owners pursuant to at least one of the following notification procedures:

(a) Notice shall be sent by first class mail to each real property owner, as shown on the last assessment, whose real property is directly affected by the changes.

(b) If the county issues utility bills or other mass mailings that periodically include notices or other informational or advertising materials, the county shall include notice of such changes with such utility bills or other mailings.

(c) The county shall publish such changes prior to the first hearing on such changes in a newspaper of general circulation in the county. The changes shall be published in a display advertisement covering not less than one-eighth of a full page.

4. If notice is provided pursuant to paragraph 3, subdivision (b) or (c) of this subsection, the county shall also send notice by first class mail to persons who register their names and addresses with the county as being interested in receiving such notice. The county may charge a fee not to exceed five dollars per year for providing this service and may adopt procedures to implement this paragraph.

5. Notwithstanding the notice requirements set forth in paragraph 2 of this subsection, the failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the actions of a county for which the notice was given.

D. If the planning commission or hearing officer has held a public hearing, the board may adopt the recommendations of the planning commission or hearing officer through use of a consent calendar without holding a second public hearing if there is no objection, request for public hearing or other protest. If there is an objection, a request for public hearing or a protest, the board shall hold a public hearing thereon at least fifteen days' notice of which shall be given by one publication in a newspaper of general circulation in the county seat and by posting the area included in the proposed change. In counties with territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, the board shall hold a public hearing if, after notice is mailed to the military airport pursuant to subsection C of this section and before the public hearing, the military airport provides comments or analysis concerning the compatibility of the proposed rezoning with the high noise or accident potential generated by military airport OR ANCILLARY MILITARY FACILITY operations that may have an adverse impact on public health and safety, and the board shall consider and analyze the comments or analysis before making a final determination. After holding the hearing the board may adopt the amendment, but if twenty per cent of the owners of property by area and number within the zoning area file a protest to the proposed change, the change shall not be made except by a three-fourths vote of all members of the board. If any members of the board are unable to vote on the question because of a conflict of interest, the required number of votes for the passage of the question is three-fourths of the remaining membership of the board, except that the required number of votes in no event shall be less than a majority of the full membership of the board. In calculating the owners by area, only that portion of a lot or parcel of record situated within three hundred feet of the property to be rezoned shall be included. In calculating the owners by number or area, county property and public rights-of-way shall not be included.

E. The planning commission may on its own motion propose an amendment to the zoning ordinance and may, after holding a public hearing as required by this chapter, transmit the proposal to the board which shall thereupon proceed as set forth in this chapter for any other amendment.

F. Notwithstanding the provisions of title 19, chapter 1, article 4, a decision by the governing body involving rezoning of land which is not owned by the county and which changes the zoning classification of such land or which changes the zoning standards of such land as set forth in subsection C, paragraph 2 of this section may not be enacted as an emergency measure and such a change shall not be effective for at least thirty days after final approval of the change in classification by the board. Unless a resident files a written objection with the board of supervisors, the rezoning may be enacted as an emergency measure that becomes effective immediately by a four-fifths majority vote of the board for those counties with five or more supervisors or a two-thirds majority vote of the board for those counties with less than five supervisors.

G. The legislature finds that a rezoning of land that changes the zoning classification of the land or that restricts the use or reduces the value of the land is a matter of statewide concern. Such a change in zoning that is initiated by the governing body or zoning body shall not be made without the express written consent of the property owner. In applying an open space element or a growth element of a county plan, a parcel of land shall not be rezoned for open space, recreation, conservation or agriculture unless the owner of the land consents to the rezoning in writing. For the purposes of this subsection, rezoning does not include the creation or expansion of overlay zones solely for the purpose of implementing airport safety and protection. Rezoning also does not include the redesignation of areas of the county to which the residential provisions of the county building codes or the state plumbing code apply or do not apply. The county shall not adopt any change in a zoning classification to circumvent the purpose of this subsection.

H. For the purposes of this section, "zoning area" means the area within three hundred feet of the proposed amendment or change.

Sec. 6. Section 15-2002, Arizona Revised Statutes, as amended by Laws 2003, chapter 215, section 3, is amended to read:

15-2002. Powers and duties; executive director; staffing; report

A. The school facilities board shall:

1. Make assessments of school facilities and equipment deficiencies pursuant to section 15-2021 and approve the distribution of grants as appropriate.

2. Develop a database for administering the building renewal formula prescribed in section 15-2031 and administer the distribution of monies to school districts for building renewal.

3. Inspect school buildings at least once every five years to ensure compliance with the building adequacy standards prescribed in section 15-2011 and routine preventative maintenance guidelines as prescribed in this section with respect to construction of new buildings and maintenance of existing buildings. The school facilities board shall randomly select twenty school districts every thirty months and inspect them pursuant to this paragraph.

4. Review and approve student population projections submitted by school districts to determine to what extent school districts are entitled to monies to construct new facilities pursuant to section 15-2041. The board shall make a final determination within six months of the receipt of an application by a school district for monies from the new school facilities fund.

5. Certify that plans for new school facilities meet the building adequacy standards prescribed in section 15-2011.

6. Develop prototypical elementary and high school designs. The board shall review the design differences between the schools with the highest academic productivity scores and the schools with the lowest academic productivity scores. The board shall also review the results of a valid and reliable survey of parent quality rating in the highest performing schools and the lowest performing schools in this state. The survey of parent quality rating shall be administered by the department of education. The board shall consider the design elements of the schools with the highest academic productivity scores and parent quality ratings in the development of elementary and high school designs. The board shall develop separate school designs for elementary, middle and high schools with varying pupil capacities.

7. Develop application forms, reporting forms and procedures to carry out the requirements of this article.

8. Review and approve or reject requests submitted by school districts to take actions pursuant to section 15-341, subsection F.

9. Submit an annual report by December 15 to the speaker of the house of representatives, the president of the senate, the superintendent of public instruction, the director of the Arizona state library, archives and public records and the governor that includes the following information:

(a) A detailed description of the amount of monies distributed by the school facilities board in the previous fiscal year.

(b) A list of each capital project that received monies from the school facilities board during the previous fiscal year, a brief description of each project that was funded and a summary of the board's reasons for the distribution of monies for the project.

(c) A summary of the findings and conclusions of the building maintenance inspections conducted pursuant to this article during the previous fiscal year.

(d) A summary of the findings of common design elements and characteristics of the highest performing schools and the lowest performing

schools based on academic productivity including the results of the parent quality rating survey.
For the purposes of this paragraph, "academic productivity" means academic year advancement per calendar year as measured with student-level data using the statewide nationally standardized norm-referenced achievement test.

10. By December 1 of each ~~even-numbered~~ year, report to the joint committee on capital review the ~~estimated~~ amounts necessary to fulfill the requirements of sections 15-2021, 15-2022, 15-2031 and 15-2041 for the following ~~two~~ fiscal ~~years~~ YEAR. ~~By December 1 of each odd-numbered year, the board shall provide to the joint committee on capital review an update of~~ AND the estimated amounts necessary to fulfill the requirements of sections 15-2021, 15-2022, 15-2031 and 15-2041 for the ~~following~~ fiscal year FOLLOWING THE NEXT FISCAL YEAR. No later than January 1 of each year, the board shall instruct the state treasurer as to the amounts under the transaction privilege tax to be credited in equal quarterly installments for the following state fiscal year. The board shall provide copies of both reports to the president of the senate, the speaker of the house of representatives and the governor.

11. Adopt minimum school facility adequacy guidelines to provide the minimum quality and quantity of school buildings and the facilities and equipment necessary and appropriate to enable pupils to achieve the educational goals of the Arizona state schools for the deaf and the blind. The school facilities board shall establish minimum school facility adequacy guidelines applicable to the Arizona state schools for the deaf and the blind by December 31, 2000.

12. Beginning August 15, 2004, and each even-numbered year thereafter, report to the joint committee on capital review the amounts necessary to fulfill the requirements of sections 15-2031 and 15-2041 for the Arizona state schools for the deaf and the blind for the following two fiscal years. Notwithstanding paragraph 10 of this subsection or any other law, the school facilities board shall not include these amounts in the building renewal or new school facilities transfer instructions to the state treasurer. The Arizona state schools for the deaf and the blind shall incorporate the findings of the report in any request for building renewal monies and new school facilities monies. Any monies provided to the Arizona state schools for the deaf and the blind for building renewal and for new school facilities are subject to legislative appropriation.

13. By October 15 of each year, the school facilities board shall submit information regarding demographic assumptions, a proposed construction schedule and new school construction cost estimates for the following fiscal year to the joint committee on capital review for its review.

B. The school facilities board may contract for private services in compliance with the procurement practices prescribed in title 41, chapter 23.

C. The governor shall appoint an executive director of the school facilities board pursuant to section 38-211. The executive director is eligible to receive compensation as determined pursuant to section 38-611 and may hire and fire necessary staff as approved by the legislature in the budget. The executive director shall have demonstrated competency in school finance, facilities design or facilities management, either in private business or government service. The executive director serves at the pleasure of the governor. The staff of the school facilities board is exempt from title 41, chapter 4, articles 5 and 6. The executive director:

1. Shall analyze applications for monies submitted to the board by school districts.

2. Shall assist the board in developing forms and procedures for the distribution and review of applications and the distribution of monies to school districts.

3. May review or audit, or both, the expenditure of monies by a school district for deficiencies corrections, building renewal and new school facilities.

4. Shall assist the board in the preparation of the board's annual report.

5. Shall research and provide reports on issues of general interest to the board.

6. May aid school districts in the development of reasonable and cost-effective school designs in order to avoid statewide duplicated efforts and unwarranted expenditures in the area of school design.

7. May assist school districts in facilitating the development of multijurisdictional facilities.

8. Shall assist the board in any other appropriate matter or method as directed by the members of the board.

9. Shall establish procedures to ensure compliance with the notice and hearing requirements prescribed in section 15-905. The notice and hearing procedures adopted by the board shall include the requirement, with respect to the board's consideration of any application filed after July 1, 2001 OR AFTER DECEMBER 31 OF THE YEAR IN WHICH THE PROPERTY BECOMES TERRITORY IN THE VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY AS DEFINED IN SECTION 28-8461 for monies to fund the construction of new school facilities proposed to be located in territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY ~~as defined in section 28-8461~~, that the military airport receive notification of the application by first class mail at least thirty days before any hearing concerning the application.

10. May expedite any request for funds in which the local match was not obtained for a project that received preliminary approval by the state board for school capital facilities.

11. Shall expedite any request for funds in which the school district governing board submits an application that shows an immediate need for a new school facility.

12. Shall make a determination as to administrative completion within one month after the receipt of an application by a school district for monies from the new school facilities fund.

13. Shall provide technical support to school districts as requested by school districts in connection with the construction of new school facilities and the maintenance of existing school facilities.

D. When appropriate, the school facilities board shall review and use the statewide school facilities inventory and needs assessment conducted by the joint committee on capital review and issued in July, 1995.

E. The school facilities board shall contract with one or more private building inspectors to complete an initial assessment of school facilities and equipment provided in section 15-2021 and shall inspect each school building in this state at least once every five years to ensure compliance with section 15-2011. A copy of the inspection report, together with any recommendations for building maintenance, shall be provided to the school facilities board and the governing board of the school district.

F. The school facilities board may consider appropriate combinations of facilities or uses in making assessments of and curing deficiencies pursuant to subsection A, paragraph 1 of this section and in certifying plans for new school facilities pursuant to subsection A, paragraph 5 of this section.

G. The board shall not award any monies to fund new facilities that are financed by class A bonds that are issued by the school district.

H. The board shall not distribute monies to a school district for replacement or repair of facilities if the costs associated with the replacement or repair are covered by insurance or a performance or payment bond.

I. The board may contract for construction services and materials that are necessary to correct existing deficiencies in school district facilities as determined pursuant to section 15-2021. The board may procure the construction services necessary pursuant to this subsection by any method including construction-manager-at-risk, design-build, design-bid-build or job-order-contracting as provided by title 41, chapter 23. The construction planning and services performed pursuant to this subsection are exempt from section 41-791.01.

J. The school facilities board may enter into agreements with school districts to allow school facilities board staff and contractors access to school property for the purposes of performing the construction services necessary pursuant to subsection I of this section.

K. By October 1, 2002, each school district shall develop routine preventative maintenance guidelines for its facilities. The guidelines shall be submitted to the school facilities board for review and approval by February 1, 2003. If upon inspection by the school facilities board it is determined that a school district facility was inadequately maintained pursuant to the school district's routine preventative maintenance

guidelines, the school district shall use building renewal monies pursuant to section 15-2031, subsection J to return the building to compliance with the school district's routine preventative maintenance guidelines. Once the district is in compliance, it no longer is required to use building renewal monies for preventative maintenance.

L. The school facilities board may temporarily transfer monies between the capital reserve fund established by section 15-2003, the deficiencies correction fund established by section 15-2021, the emergency deficiencies correction fund established by section 15-2022, the building renewal fund established by section 15-2031 and the new school facilities fund established by section 15-2041 if all of the following conditions are met:

1. The transfer is necessary to avoid a temporary shortfall in the fund into which the monies are transferred.

2. The transferred monies are restored to the fund where the monies originated as soon as practicable after the temporary shortfall in the other fund has been addressed.

3. The school facilities board reports to the joint committee on capital review the amount of and the reason for any monies transferred.

Sec. 7. Repeal

Section 15-2002, Arizona Revised Statutes, as amended by Laws 2003, chapter 264, section 9, is repealed.

Sec. 8. Section 15-2041, Arizona Revised Statutes, is amended to read:

15-2041. New school facilities fund; capital plan

A. A new school facilities fund is established consisting of monies appropriated by the legislature and monies credited to the fund pursuant to section 37-221 or 42-5030.01. The school facilities board shall administer the fund and distribute monies, as a continuing appropriation, to school districts for the purpose of constructing new school facilities. On June 30 of each fiscal year, any unobligated contract monies in the new school facilities fund shall be transferred to the capital reserve fund established by section 15-2003.

B. The school facilities board shall prescribe a uniform format for use by the school district governing board in developing and annually updating a capital plan that consists of each of the following:

1. Enrollment projections for the next five years for elementary schools and eight years for middle and high schools, including a description of the methods used to make the projections.

2. A description of new schools or additions to existing schools needed to meet the building adequacy standards prescribed in section 15-2011. The description shall include:

(a) The grade levels and the total number of pupils that the school or addition is intended to serve.

(b) The year in which it is necessary for the school or addition to begin operations.

(c) A timeline that shows the planning and construction process for the school or addition.

3. Long-term projections of the need for land for new schools.

4. Any other necessary information required by the school facilities board to evaluate a school district's capital plan.

5. If a school district pays tuition for all or a portion of the school district's high school pupils to another school district, the capital plan shall indicate the number of pupils for which the district pays tuition to another district. If a school district accepts pupils from another school district pursuant to section 15-824, subsection A, the school district shall indicate the projections for this population separately. This paragraph does not apply to a small isolated school district as defined in section 15-901.

C. If the capital plan indicates a need for a new school or an addition to an existing school within the next four years or a need for land within the next ten years, the school district shall submit its plan to the school facilities board by September 1 and shall request monies from the new school facilities fund for the new construction or land. Monies provided for land shall be in addition to any monies provided pursuant to subsection D of this section.

D. The school facilities board shall distribute monies from the new school facilities fund as follows:

1. The school facilities board shall review and evaluate the enrollment projections and either approve the projections as submitted or revise the projections. In determining new construction requirements, the school facilities board shall determine the net new growth of pupils that will require additional square footage that exceeds the building adequacy standards prescribed in section 15-2011. If the projected growth and the existing number of pupils exceeds three hundred fifty pupils who are served in a school district other than the pupil's resident school district, the school facilities board, the receiving school district and the resident school district shall develop a capital facilities plan on how to best serve those pupils. A small isolated school district as defined in section 15-901 is not required to develop a capital facilities plan pursuant to this paragraph.

2. If the approved projections indicate that additional space will not be needed within the next two years for elementary schools or three years for middle or high schools in order to meet the building adequacy standards prescribed in section 15-2011, the request shall be held for consideration by the school facilities board for possible future funding and the school district shall annually submit an updated plan until the additional space is needed.

3. If the approved projections indicate that additional space will be needed within the next two years for elementary schools or three years for middle or high schools in order to meet the building adequacy standards

prescribed in section 15-2011, the school facilities board shall provide an amount as follows:

(a) Determine the number of pupils requiring additional square footage to meet building adequacy standards. This amount for elementary schools shall not be less than the number of new pupils for whom space will be needed in the next year and shall not exceed the number of new pupils for whom space will be needed in the next five years. This amount for middle and high schools shall not be less than the number of new pupils for whom space will be needed in the next four years and shall not exceed the number of new pupils for whom space will be needed in the next eight years.

(b) Multiply the number of pupils determined in subdivision (a) of this paragraph by the square footage per pupil. The square footage per pupil is ninety square feet per pupil for preschool children with disabilities, kindergarten programs and grades one through six, one hundred square feet for grades seven and eight, one hundred thirty-four square feet for a school district that provides instruction in grades nine through twelve for fewer than one thousand eight hundred pupils and one hundred twenty-five square feet for a school district that provides instruction in grades nine through twelve for at least one thousand eight hundred pupils. The total number of pupils in grades nine through twelve in the district shall determine the square footage factor to use for net new pupils. The school facilities board may modify the square footage requirements prescribed in this subdivision for particular schools based on any of the following factors:

(i) The number of pupils served or projected to be served by the school district.

(ii) Geographic factors.

(iii) Grade configurations other than those prescribed in this subdivision.

(iv) Compliance with minimum school facility adequacy requirements established pursuant to section 15-2011.

(c) Multiply the product obtained in subdivision (b) of this paragraph by the cost per square foot. The cost per square foot is ninety dollars for preschool children with disabilities, kindergarten programs and grades one through six, ninety-five dollars for grades seven and eight and one hundred ten dollars for grades nine through twelve. The cost per square foot shall be adjusted annually for construction market considerations based on an index identified or developed by the joint legislative budget committee as necessary but not less than once each year. The school facilities board shall multiply the cost per square foot by 1.05 for any school district located in a rural area. The school facilities board may modify the base cost per square foot prescribed in this subdivision for particular schools based on geographic conditions or site conditions. For THE purposes of this subdivision, "rural area" means an area outside a thirty-five mile radius of a boundary of a municipality with a population of more than fifty thousand persons according to the most recent United States decennial census.

(d) Once the school district governing board obtains approval from the school facilities board for new facility construction funds, additional portable or modular square footage created for the express purpose of providing temporary space for pupils until the completion of the new facility shall not be included by the school facilities board for the purpose of new construction funding calculations. On completion of the new facility construction project, if the portable or modular facilities continue in use, then the portable or modular facilities shall be included as prescribed by this chapter, unless the school facilities board approves their continued use for the purpose of providing temporary space for pupils until the completion of the next new facility that has been approved for funding from the new school facilities fund.

4. For projects approved after December 31, 2001, and notwithstanding paragraph 3 of this subsection, a unified school district that does not have a high school is not eligible to receive high school space as prescribed by section 15-2011 and this section unless the unified district qualifies for geographic factors prescribed by paragraph 3, subdivision (b), item (ii) of this subsection.

E. Monies for architectural and engineering fees shall be distributed on the completion of the analysis by the school facilities board of the school district's request. After receiving monies pursuant to this subsection, the school district shall submit a design development plan for the school or addition to the school facilities board before any monies for construction are distributed. If the school district's request meets the building adequacy standards, the school facilities board may review and comment on the district's plan with respect to the efficiency and effectiveness of the plan in meeting state square footage and facility standards before distributing the remainder of the monies. The school facilities board may decline to fund the project if the square footage is no longer required due to revised enrollment projections.

F. The school facilities board shall distribute the monies needed for land for new schools so that land may be purchased at a price that is less than or equal to fair market value and in advance of the construction of the new school. If necessary, the school facilities board may distribute monies for land to be leased for new schools if the duration of the lease exceeds the life expectancy of the school facility by at least fifty per cent. The proceeds derived through the sale of any land purchased or partially purchased with monies provided by the school facilities board shall be returned to the state fund from which it was appropriated and to any other participating entity on a proportional basis. If a school district acquires real property by donation at an appropriate school site approved by the school facilities board, the school facilities board shall distribute an amount equal to twenty per cent of the fair market value of the donated real property that can be used for academic purposes. The school district shall place the monies in the unrestricted capital outlay fund and increase the

unrestricted capital outlay limit by the amount of monies placed in the fund. Monies distributed under this subsection shall be distributed from the new school facilities fund. A school district shall not pay a consultant a percentage of the value of any of the following:

1. Donations of real property, services or cash from any of the following:

(a) Entities that have offered to provide construction services to the school district.

(b) Entities that have been contracted to provide construction services to the school district.

(c) Entities that build residential units in that school district.

(d) Entities that develop land for residential use in that school district.

2. Monies received from the school facilities board on behalf of the school district.

3. Monies paid by the school facilities board on behalf of the school district.

G. In addition to distributions to school districts based on pupil growth projections, a school district may submit an application to the school facilities board for monies from the new school facilities fund if one or more school buildings have outlived their useful life. If the school facilities board determines that the school district needs to build a new school building for these reasons, the school facilities board shall remove the square footage computations that represent the building from the computation of the school district's total square footage for purposes of this section. If the square footage recomputation reflects that the school district no longer meets building adequacy standards, the school district qualifies for a distribution of monies from the new school construction formula in an amount determined pursuant to subsection D of this section. Buildings removed from a school district's total square footage pursuant to this subsection shall not be included in the computation of monies from the building renewal fund established by section 15-2031. The school facilities board may modify the base cost per square foot prescribed in this subsection under extraordinary circumstances for geographic factors or site conditions.

H. School districts that receive monies from the new school facilities fund shall establish a district new school facilities fund and shall use the monies in the district new school facilities fund only for the purposes prescribed in this section. By October 15 of each year, each school district shall report to the school facilities board the projects funded at each school in the previous fiscal year with monies from the district new school facilities fund and shall provide an accounting of the monies remaining in the new school facilities fund at the end of the previous fiscal year.

I. If a school district has surplus monies received from the new school facilities fund, the school district may use the surplus monies only

for capital purposes for the project for up to one year after completion of the project. If the school district possesses surplus monies from the new school construction project that have not been expended within one year of the completion of the project, the school district shall return the surplus monies to the school facilities board for deposit in the new school facilities fund.

J. The board's consideration of any application filed after July 1, 2001 OR AFTER DECEMBER 31 OF THE YEAR IN WHICH THE PROPERTY BECOMES TERRITORY IN THE VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY AS DEFINED IN SECTION 28-8461 for monies to fund the construction of new school facilities proposed to be located in territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY ~~as defined in section 28-8461~~ shall include, if after notice is transmitted to the military airport pursuant to section 15-2002 and before the public hearing the military airport provides comments and analysis concerning compatibility of the proposed school facilities with the high noise or accident potential generated by military airport OR ANCILLARY MILITARY FACILITY operations that may have an adverse effect on public health and safety, consideration and analysis of the comments and analysis provided by the military airport before making a final determination.

K. If a school district uses its own project manager for new school construction, the members of the school district governing board and the project manager shall sign an affidavit stating that the members and the project manager understand and will follow the minimum adequacy requirements prescribed in section 15-2011.

L. The school facilities board shall establish a separate account in the new school facilities fund designated as the litigation account to pay attorney fees, expert witness fees and other costs associated with litigation in which the school facilities board pursues the recovery of damages for deficiencies correction that resulted from alleged construction defects or design defects that the school facilities board believes caused or contributed to a failure of the school building to conform to the building adequacy requirements prescribed in section 15-2011. Attorney fees paid pursuant to this subsection shall not exceed the market rate for similar types of litigation. Monies recovered as damages pursuant to this subsection shall be used to offset debt service on the correction of existing deficiencies as prescribed by section 15-2021. The joint committee on capital review shall conduct an annual review of the litigation account, including the costs associated with current and potential litigation.

M. Until the state board of education and the auditor general adopt rules pursuant to section 15-213, subsection J, the school facilities board may allow school districts to contract for construction services and materials through the qualified select bidders list method of project delivery for new school facilities pursuant to this section.

Sec. 9. Section 28-8461, Arizona Revised Statutes, is amended to read:

28-8461. Definitions

In this article, unless the context otherwise requires:

1. "Accident potential zone one" means an area three thousand feet wide by five thousand feet long that starts at the end of each clear zone and that is centered and measured on the extended runway centerline, terminating eight thousand feet from the end of each runway AND, FOR AN ANCILLARY MILITARY FACILITY, INCLUDES AN AREA DELINEATED AS ACCIDENT POTENTIAL ZONE ONE IN THE MAP DESCRIBED IN PARAGRAPH 7 OF THIS SECTION.

2. "Accident potential zone two" means an area three thousand feet wide by seven thousand feet long that starts at the end of each accident potential zone one and that is centered and measured on the extended runway centerline, terminating fifteen thousand feet from the end of each runway, except that, for political subdivisions described in paragraph ~~8~~ 9, subdivision (a) OF THIS SECTION, accident potential zone two extends thirty thousand feet southwest from the end of each runway AND, FOR AN ANCILLARY MILITARY FACILITY, INCLUDES AN AREA DELINEATED AS ACCIDENT POTENTIAL ZONE TWO IN THE MAP DESCRIBED IN PARAGRAPH 7 OF THIS SECTION.

3. "Airport" means an area of land or water that is designed and set aside for the landing and taking off of aircraft and that is utilized or to be utilized in the interest of the public for those purposes.

4. "Airport hazard" means a structure, tree or use of land that obstructs the air space required for flight of aircraft in taking off or landing at an airport or that is otherwise hazardous to aircraft taking off or landing.

5. "Airport hazard area" means an area of land or water on which an airport hazard might be established if not prevented as provided in this article.

6. "Airstrip" means a strip of ground that is artificially or naturally surfaced and that is designed and used at an airport or landing field for the landing and takeoff of aircraft.

7. "ANCILLARY MILITARY FACILITY" MEANS, FOR POLITICAL SUBDIVISIONS DESCRIBED IN PARAGRAPH 9, SUBDIVISION (a) OF THIS SECTION, THE MILITARY AUXILIARY AIRFIELD THAT IS IDENTIFIED ON THE MAP THAT IS DESIGNATED AS LUKE AIR FORCE BASE AUXILIARY AIRFIELD #1, THAT IS DATED MARCH 1, 2004 AND THAT IS ON FILE IN PRINTED FORMAT AT THE STATE LAND DEPARTMENT ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION PURSUANT TO SECTION 37-102.

~~7.~~ 8. "Clear zone" means an area three thousand feet long measured along the extended runway centerline beginning at the end of all main military runways and three thousand feet wide centered on and measured at right angles to the extended runway centerline AND, FOR AN ANCILLARY MILITARY FACILITY, INCLUDES AN AREA DELINEATED AS A CLEAR ZONE IN THE MAP DESCRIBED IN PARAGRAPH 7 OF THIS SECTION.

~~8.~~ 9. "High noise or accident potential zone" means any property located in the following zones:

(a) In political subdivisions located in a county with a population of two million or more persons, within the 1988 noise contours developed and recognized by the regional planning agency in that county that includes the arrival and departure corridor that is the accident potential zone one and accident potential zone two plus the land area described as follows: starting two hundred feet from the south end of the westernmost runway at a width of one thousand five hundred feet west and two thousand five hundred feet east, measured perpendicular to the centerline of the runway, and extending southwesterly parallel to the runway for a distance of thirty thousand feet.

(b) In political subdivisions located in a county with a population of more than eight hundred thousand persons but less than two million persons, the area southeast of the runway within the noise contours established by the most recent air installation compatible use zone report recognized by the military airport and political subdivisions in that county, including the arrival and departure corridor that is the accident potential zone one and accident potential zone two plus the land area described as follows: starting two hundred feet from the southeast runway end at a width of two thousand feet and extending outward thirty thousand feet to a width of ten thousand four hundred feet.

(c) In political subdivisions located in a county with a population of eight hundred thousand persons or less, within the noise contours established by the most recent air installation compatible use zone report recognized by the military airport and political subdivisions in that county, including the arrival and departure corridor that is the accident potential zone one and accident potential zone two plus the land area described as follows: starting two hundred feet from the end points of the main runways and at a width of three thousand feet and symmetrical about a centerline between the runways extending outward to a point thirty thousand feet from the point of beginning. The outer width is seventeen thousand five hundred feet.

(d) FOR AN ANCILLARY MILITARY FACILITY, THE LAND AREA INSIDE THE F-16 NOISE CONTOUR LINES AND THE ARRIVAL AND DEPARTURE CORRIDORS DESIGNATED AS THE ACCIDENT POTENTIAL ZONE ONE AND THE ACCIDENT POTENTIAL ZONE TWO ON THE MAP DESCRIBED IN PARAGRAPH 7 OF THIS SECTION.

~~9.~~ 10. "Military airport" means an airport that is operated by an armed force of the United States and that is primarily used for military fixed wing aircraft operations, excluding a runway or airstrip that is not immediately adjacent to facilities primarily used for operational control, maintenance and permanent parking of aircraft.

~~10.~~ 11. "Occupied building" means any building where people live, work or are otherwise received.

~~11.~~ 12. "Person" means an individual, firm, partnership, corporation, company, association, joint stock association or body politic, including any

trustee, receiver, assignee or other representative of a trustee, receiver or assignee.

~~12.~~ 13. "Political subdivision" means a city, town or county and includes a school district.

~~13.~~ 14. "Previous reporting period" means from July 1 of the year before the report is due through June 30 of the year the report is due.

~~14.~~ 15. "Runway" means an artificially surfaced strip of ground that is designed and used at an airport for the landing and takeoff of aircraft.

~~15.~~ 16. "School" means any public institution established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve.

~~16.~~ 17. "School district" means a political subdivision of this state with geographic boundaries organized for the purpose of the administration, support and maintenance of the public schools or an accommodation school.

~~17.~~ 18. "School district development plan" means any proposal to build or expand a school but does not include repairing, maintaining or remodeling an existing school.

~~18.~~ 19. "Structure" means an object that is constructed or installed by a human including a building, tower, smokestack or overhead transmission line.

~~19.~~ 20. "Territory in the vicinity ~~of a military airport~~" means any property located in the following zones:

(a) In counties that have a population of two million or more persons, the zone is ten miles to the north, south and west and four miles to the east parallel from the center of the main runway of a military airport.

(b) In counties that have a population of more than eight hundred thousand but less than two million persons, the zone is five miles to the northwest along a line extending from the end of the northwest runway, one and one-half miles to the southwest, six and one-half miles to the northeast and perpendicular to the runway centerline and ten miles to the southeast along a line extending from the end of the southeast runway of a military airport.

(c) In counties that have a population of eight hundred thousand persons or less, the zone is five miles to the north, south and west and ten miles to the east of the center of the main runway of a military airport.

(d) FOR AN ANCILLARY MILITARY FACILITY, THE LAND DESIGNATED AS THE TERRITORY IN THE VICINITY OF A MILITARY AIRPORT IN THE MAP DESCRIBED IN PARAGRAPH 7 OF THIS SECTION.

~~20.~~ 21. "Tree" means an object of natural growth.

Sec. 10. Section 28-8480, Arizona Revised Statutes, is amended to read:

28-8480. Military airport continuation; land acquisition

In addition to authority granted pursuant to other provisions of law, a political subdivision may acquire, by exchange, purchase, lease, donation, devise or condemnation, land or interests in land for the continued operation of a military airport OR ANCILLARY MILITARY FACILITY.

Sec. 11. Section 28-8481, Arizona Revised Statutes, is amended to read:

28-8481. Planning and zoning; military airport operation compatibility; compliance review; penalty; definition

A. A political subdivision that has territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY that includes property in a high noise or accident potential zone shall adopt comprehensive and general plans and school district development plans, if applicable, for property in the high noise or accident potential zone to assure development compatible with the high noise and accident potential generated by military airport AND ANCILLARY MILITARY FACILITY operations that have or may have an adverse effect on public health and safety. Each political subdivision, excluding school districts, shall adopt and enforce zoning regulations for property in the high noise or accident potential zone to assure development compatible with the high noise and accident potential generated by military airport AND ANCILLARY MILITARY FACILITY operations that have or may have an adverse effect on public health and safety.

B. A political subdivision that has territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY shall incorporate sound attenuation standards pursuant to section 28-8482 into any building code in existence on or adopted after July 1, 2001 OR AFTER JULY 1 OF THE YEAR IN WHICH THE LAND BECOMES TERRITORY IN THE VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY. This section does not affect or require the modification of any building permit issued before July 1, 2001 OR BEFORE JULY 1 OF THE YEAR IN WHICH THE LAND BECOMES TERRITORY IN THE VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY.

C. A political subdivision that has territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY that includes property in a high noise or accident potential zone shall adopt, administer and enforce the zoning regulations or school district development plans authorized by subsection A of this section in the same manner as the comprehensive zoning ordinance or school district development plans of the political subdivision as provided by law, except that a variance shall not be granted without a specific finding that the purpose of military airport OR ANCILLARY MILITARY FACILITY compatibility is preserved.

D. This section does not affect the existing authority of a political subdivision to plan and zone on the basis of noise or accident potential in the vicinity of an airport owned or controlled by the political subdivision or to adopt restrictions or limitations in addition to those required by this section applicable to territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY.

E. This section does not restrict, limit or modify, or authorize or require any political subdivision to restrict, limit or modify, the right of a landowner to undertake and complete development and use of any property under the terms and conditions of a development plan or school district development plan approved on or before December 31, 2000, OR ON OR BEFORE DECEMBER 31 OF THE YEAR IN WHICH THE DEVELOPMENT'S PROPERTY BECOMES TERRITORY IN THE VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY OR PURSUANT TO A WRITTEN DETERMINATION OF COMPATIBILITY ISSUED BY THE MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY ON OR BEFORE DECEMBER 31, 2004, by the political subdivision in whose territory OR AREA OF JURISDICTION the property is located, except that the development must comply with the sound attenuation standards and specifications incorporated into any building code adopted pursuant to section 28-8482 by the political subdivision in whose territory OR AREA OF JURISDICTION the development is located. ~~For purposes of this section, "development plan":~~

~~1. Means a plan submitted to and approved by the governing body of the political subdivision pursuant to a zoning ordinance or regulation adopted pursuant to title 9, chapter 4, article 6.1 or title 11, chapter 6 and that describes with reasonable certainty the density and intensity of use for a specific parcel or parcels of property.~~

~~2. Includes a planned community development plan, a planned area development plan, a planned unit development plan, a development plan that is the subject of a development agreement adopted pursuant to section 9-500.05 or 11-1101, a site plan, a subdivision plat or any other land use approval designation that is the subject of a zoning ordinance adopted pursuant to title 9, chapter 4, article 6.1 or title 11, chapter 6.~~

F. THIS SECTION DOES NOT RESTRICT, LIMIT OR MODIFY, OR AUTHORIZE OR REQUIRE ANY POLITICAL SUBDIVISION TO RESTRICT, LIMIT OR MODIFY, THE RIGHT OF A LANDOWNER TO UNDERTAKE AND COMPLETE DEVELOPMENT AND USE OF ANY PROPERTY LOCATED IN A HIGH NOISE OR ACCIDENT POTENTIAL ZONE THAT IS APPURTENANT TO AN ANCILLARY MILITARY FACILITY UNDER THE TERMS AND CONDITIONS OF A DEVELOPMENT PLAN OR SCHOOL DISTRICT DEVELOPMENT PLAN APPROVED ON OR BEFORE DECEMBER 31, 2004 BY THE POLITICAL SUBDIVISION IN WHOSE TERRITORY OR AREA OF JURISDICTION THE PROPERTY IS LOCATED OR PURSUANT TO A WRITTEN DETERMINATION OF COMPATIBILITY ISSUED BY THE MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY ON OR BEFORE DECEMBER 31, 2004, EXCEPT THAT THE DEVELOPMENT SHALL COMPLY WITH THE SOUND ATTENUATION STANDARDS AND SPECIFICATIONS INCORPORATED INTO ANY BUILDING CODE ADOPTED PURSUANT TO SECTION 28-8482 BY THE POLITICAL

SUBDIVISION IN WHOSE TERRITORY OR AREA OF JURISDICTION THE DEVELOPMENT IS LOCATED.

~~F.~~ G. On or after July 1, 2001 OR ON OR AFTER DECEMBER 31 OF THE YEAR IN WHICH THE PROPERTY BECOMES TERRITORY IN A HIGH NOISE OR ACCIDENT POTENTIAL ZONE, a political subdivision that has territory in a high noise or accident potential zone shall notify the owner or owners of property in the high noise and accident potential zone of any additions or changes under this section to the general plan, comprehensive plan, zoning regulations or school district development plan of the political subdivision applicable to property in the high noise or accident potential zone. The political subdivision shall provide a notice of such additions or changes by publication as provided in section 9-462.04, subsection A or section 11-829, subsection C, including a statement that the property is located in a high noise or accident potential zone, at least thirty days before final approval of the addition to or change in the general plan, ~~comprehensive plan~~ PERMITTED LAND USES, zoning regulation or school district development plan and within thirty days following the final approval of such an addition to or change in the general plan, ~~comprehensive plan~~ PERMITTED LAND USES, zoning regulation or school district development plan.

~~G.~~ H. Any property owner described in subsection ~~F~~ G of this section shall notify potential purchasers of the property and any potential lessees or renters that the property is located in a high noise and accident potential zone and is subject to the requirements of this section.

~~H.~~ I. On or before August 15 of each year, each political subdivision that has territory that includes property in a high noise or accident potential zone or that is otherwise subject to the requirements of section 28-8482 shall file with the attorney general, and with each political subdivision that has territory in the vicinity of the military airport OR ANCILLARY MILITARY FACILITY, a report that demonstrates compliance with this section and section 28-8482 during the previous reporting period. Compliance shall be determined with regard to the law in effect on June 30 of the year in which the report is due. The report shall include the following information regarding the territory in the high noise or accident potential zone, except the school district's report shall not include the information in paragraphs 1, 2, 3, 4 and 7 of this subsection:

1. Zoning map amendments within the high noise or accident potential zone.

2. Zoning or subdivision ordinance or regulation text amendments applicable to property within the high noise or accident potential zone.

3. Preliminary and final plat approvals for property within the high noise or accident potential zone.

4. Variances from zoning or subdivision ordinances for property within the high noise or accident potential zone.

5. Comprehensive, general or specific plan or school district development plan amendments for property within the high noise or accident potential zone.

6. A statement that the political subdivision complied with the notification requirements of subsection ~~F~~ G of this section.

7. A statement that the political subdivision adopted or amended building code provisions pursuant to section 28-8482.

~~I.~~ J. If the attorney general has not received a report or affidavit from a political subdivision that is required to file a report pursuant to subsection ~~H~~ I of this section within thirty days after the date the report or affidavit was required to be filed pursuant to subsection ~~H~~ I or ~~J~~ K of this section, the attorney general shall send a written notice by certified mail, return receipt requested, to the political subdivision stating that the attorney general has not received the report or affidavit as required by this section.

~~J.~~ K. If a political subdivision that is required to file a report pursuant to subsection ~~H~~ I of this section has previously filed a report in compliance with subsection ~~H~~ I of this section and that political subdivision has not taken any of the actions described in subsection ~~H~~ I of this section since filing that report, the political subdivision shall file with the attorney general an affidavit stating that no actions were taken by the political subdivision during that period.

~~K.~~ L. The attorney general shall determine compliance with this section in accordance with the following requirements applicable to zoning and development in a high noise or accident potential zone and to zoning and development in accident potential zone one and accident potential zone two. Compliance with respect to territory located in the arrival and departure corridor but outside the accident potential zone one, two and noise contour lines as described in section 28-8461, paragraph ~~8~~ 9, subdivisions (b) and (c) shall be determined in accordance with the requirements applicable to territory located in the 65-69 day-night sound level as listed below. This subsection shall not preclude a determination of compliance if the political subdivision and the military airport OR ANCILLARY MILITARY FACILITY mutually agree that an individual use is compatible and consistent with the high noise or accident potential of the military airport OR ANCILLARY MILITARY FACILITY, AS APPLICABLE. ALTERNATIVELY, FOR AN INDIVIDUAL USE OR A PLAN FOR DEVELOPMENT SUBMITTED TO A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY BEFORE DECEMBER 31, 2004, THIS SUBSECTION DOES NOT PRECLUDE THE MILITARY AIRPORT FROM DETERMINING THAT THE INDIVIDUAL USE OR PLAN FOR DEVELOPMENT IS COMPATIBLE AND CONSISTENT WITH THE HIGH NOISE OR ACCIDENT POTENTIAL ZONE OF THE MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY.

Zoning and development in high noise or accident potential zone	Day-night sound level in decibels high noise or accident potential zone (18)						
	65-69	70-74	75-79	80-84	85 or over	APZ one	APZ two
Residential							
Residential uses other than the residential uses listed below	No[13]	No[13]	No[13]	No[13]	No	No	No
Single family residential that is the subject of zoning approved on or before December 31, 2000, OR ON OR BEFORE DECEMBER 31 OF THE YEAR IN WHICH THE PROPERTY BECOMES TERRITORY IN THE VICINITY OF A MILITARY AIRPORT, that permits one dwelling unit per acre or less	Yes[9]	Yes[10]	Yes[11]	No[13]	No[13]	No	No[13]
Single family residential that is the primary residence for persons engaging in agricultural use and ancillary residential buildings incident to the primary agricultural use	Yes[9]	Yes[10]	Yes[11]	Yes[12]	No[13]	No	No[13]
Transportation, communications and utilities							
Railroad and rapid rail transit	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes[15]
Highway and street right-of-way	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Motor vehicle parking	Yes	Yes	Yes	Yes	Yes	Yes[15]	Yes[09]
Communications (noise sensitive)	Yes	Yes[2]	Yes[3]	No	No	Yes[15]	Yes[09]
Utilities	Yes	Yes	Yes	No	No	Yes[15]	Yes[09]
Other transportation, communications and utilities	Yes	Yes[5]	Yes[6]	Yes[7]	Yes[8]	Yes[15]	Yes[09]
Commercial/retail trade							
Wholesale trade	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes
Building materials-retail	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes
General merchandise-retail	Yes	Yes[1]	Yes[2]	No	No	No	No
Food-retail	Yes	Yes [1]	Yes [2]	No	No	No	No

1	Automotive and marine	Yes	Yes[5]	Yes[6]	No	No	No	No/Yes[17]
2	Apparel and accessories-retail	Yes	Yes [1]	Yes [2]	No	No	No	No
3	Eating and drinking places	Yes	Yes [1]	Yes [2]	No	No	No	No
4	Furniture and home	Yes	Yes [1]	Yes [2]	No	No	No	No/Yes[17]
5	furnishings-retail							
6	Other retail trade	Yes	Yes [1]	Yes [2]	No	No	No	No
7	Personal and business services							
8	Finance, insurance and real estate	Yes	Yes [1]	Yes [2]	No	No	No	Yes
9	Personal services	Yes	Yes [1]	Yes [2]	No	No	No	Yes
10	Business services	Yes	Yes [1]	Yes [2]	No	No	No	Yes
11	Repair services	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes
12	Contract construction services	Yes	Yes[5]	Yes[6]	No	No	No	Yes
13	Indoor recreation services	Yes	Yes[5]	Yes[6]	No	No	No	Yes
14	Other services	Yes	Yes[5]	Yes[6]	No	No	No	Yes
15	Industrial/manufacturing							
16	Food and kindred products	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes[09]
17	Textile mill products	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes[09]
18	Apparel	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes[09]
19	Lumber and wood products	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes[09]
20	Furniture and fixtures	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes[09]
21	Paper and allied products	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes[09]
22	Printing and publishing	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes[09]
23	Chemicals and allied products	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	No
24	Petroleum refining and	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	No
25	related industries							
26	Rubber and miscellaneous plastic	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes[09]
27	Stone, clay and glass products	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes[09]
28	Primary metal industries	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes[09]
29	Fabricated metal products	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes[09]
30	Professional, scientific and	Yes	Yes[1]	Yes[2]	No	No	No	No
31	controlling instruments							
32	Miscellaneous manufacturing	Yes	Yes[5]	Yes[6]	Yes[7]	No	No	Yes[09]
33	Public and quasi-public							
34	services							
35	Government services	Yes[1]	Yes[2]	Yes[2]	No	No	No	Yes[09]
36	Cultural activities,	Yes(1)	Yes(2)	No	No	No	No	No
37	including churches							
38	Medical and other health							
39	services	Yes[1]	Yes[2]	No	No	No	No	No
40	Cemeteries	Yes[5]	Yes[6]	Yes[7]	No	No	No	Yes
41	Nonprofit organizations	Yes[1]	Yes[2]	No	No	No	No	Yes
42	Correctional facilities	Yes[1]	Yes[2]	Yes[3]	Yes[4]	No	No	Yes
43	Other public and quasi-public	Yes[1]	Yes[2]	No	No	No	No	Yes[09]
44	services							

Outdoor recreation							
Playgrounds and neighborhood parks	Yes	Yes	No	No	No	Yes[15]	Yes
Community and regional	Yes	Yes	No	No	No	Yes[15]	Yes
Nature exhibits	Yes	No	No	No	No	No	No
Spectator sports, including arenas	Yes[14]	Yes[14]	No	No	No	No	No
Golf courses and riding stables	Yes	Yes[5]	Yes[6]	No	No	Yes[15]	Yes
Water based recreational areas	Yes	Yes[5]	Yes[6]	No	No	No	No
Resort and group camps	Yes[1]	Yes[2]	No	No	No	No	No
Auditoriums and concert halls	Yes[6]	Yes[7]	No	No	No	No	No
Outdoor amphitheaters and music shells	Yes[14]	Yes[14]	Yes[14]	No	No	No	No
Other outdoor recreation	Yes	Yes[14]	Yes[14]	No	No	No	No
Resource production, extraction and open space							
Agriculture (except livestock)	Yes[9]	Yes[10]	Yes[11]	Yes[12]	Yes[13]	Yes[13]	Yes[19]
Livestock farming and animal breeding	Yes[9]	Yes[10]	Yes[11]	Yes[12]	Yes[13]	Yes[13]	Yes[13]
Forestry activities	Yes[9]	Yes[10]	Yes[13]	Yes[13]	Yes[13]	No	Yes
Fishing activities and related services	Yes	Yes	No	No	No	No	No
Mining activities	Yes	Yes	Yes	Yes	Yes	No	Yes[20]
Permanent open space	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Water areas (not incidental to farming)	Yes	Yes	No	No	No	No	No

(1) Measures to achieve an outdoor to indoor noise reduction level of twenty-five decibels pursuant to an ordinance adopted under section 28-8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of approval; that use of noise reduction level criteria will not alleviate outdoor noise.

(2) Measures to achieve an outdoor to indoor noise reduction level of thirty decibels pursuant to an ordinance adopted under section 28-8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of approval, that use of noise reduction level criteria will not alleviate outdoor noise.

(3) Measures to achieve an outdoor to indoor noise reduction level of thirty-five decibels pursuant to an ordinance adopted under section 28-8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of the approval, that use of noise reduction level criteria will not alleviate outdoor noise.

(4) Measures to achieve an outdoor to indoor noise reduction level of forty decibels pursuant to an ordinance adopted under section 28-8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of the approval, that use of noise reduction level criteria will not alleviate outdoor noise.

(5) Measures to achieve an outdoor to indoor noise reduction level of twenty-five decibels must be incorporated into the design and construction of portions of buildings where the public is received, office areas, noise sensitive areas or where normal noise level is low.

(6) Measures to achieve an outdoor to indoor noise reduction level of thirty decibels must be incorporated into the design and construction of portions of buildings where the public is received, office areas, noise sensitive areas or where normal noise level is low.

(7) Measures to achieve an outdoor to indoor noise reduction level of thirty-five decibels must be incorporated into the design and construction of portions of buildings where the public is received, office areas, noise sensitive areas or where normal noise level is low.

(8) Measures to achieve an outdoor to indoor noise reduction level of forty decibels must be incorporated into the design and construction of portions of buildings where the public is received, office areas, noise sensitive areas or where normal noise level is low.

(9) Measures to achieve an outdoor to indoor noise reduction level of twenty-five decibels must be incorporated into the design and construction of new residential buildings or expansions of existing residential buildings.

(10) Measures to achieve an outdoor to indoor noise reduction level of thirty decibels must be incorporated into the design and construction of new residential buildings or expansions of existing residential buildings.

(11) Measures to achieve an outdoor to indoor noise reduction level of thirty-five decibels must be incorporated into the design and construction of new residential buildings or expansions of existing residential buildings.

(12) Measures to achieve an outdoor to indoor noise reduction level of forty decibels must be incorporated into the design and construction of new residential buildings or expansions of existing residential buildings.

(13) No new residential buildings or expansions of existing residential buildings are permitted.

(14) Compatible if special sound reinforcement systems are installed.

(15) No aboveground buildings or structures.

(16) No new buildings or improvements or expansion of nonagriculture buildings or improvements for uses that result in the release of any substance into the air that would impair visibility or otherwise interfere with operating aircraft, such as any of the following:

(a) Steam, dust and smoke.

(b) Direct or indirect reflective light emissions.

(c) Electrical emissions that would interfere with aircraft and air force communications or navigational aid systems or aircraft navigational equipment.

(d) The attraction of birds or waterfowl such as operation of sanitary landfills or maintenance of feeding stations.

(e) Explosives facilities or similar activities.

(17) If located in the extended portion of accident potential zone two in territory of a political subdivision described in section 28-8461, paragraph ~~8~~ 9, subdivision (a).

(18) Uses not listed are presumed to not be compatible. This does not preclude a determination of compliance if the political subdivision and the military airport mutually agree that an individual use is compatible and consistent with the high noise or accident potential of the military airport OR ANCILLARY MILITARY FACILITY.

~~L.~~ M. The attorney general shall notify a political subdivision by certified mail, return receipt requested, if, from the content of the report filed by the political subdivision pursuant to subsection ~~H~~ I of this section or other evidence, the attorney general has probable cause to believe that the political subdivision has not complied with the requirements set forth in subsection A, C, ~~F~~ G or ~~K~~ L of this section or section 28-8482. Nothing in this section shall authorize or permit a finding of probable cause of noncompliance with respect to territory that is the subject of a development plan as ~~defined~~ DESCRIBED in subsection E OR F of this section ~~approved on or before December 31, 2000~~ except under section 28-8482 if applicable. A political subdivision that receives a notice from the attorney general pursuant to this subsection shall demonstrate compliance with subsection A, C, ~~F~~ G or ~~K~~ L of this section or section 28-8482 within forty-five days after receipt of the notice. If a political subdivision fails to demonstrate compliance with subsection A, C, ~~F~~ G or ~~K~~ L of this section or section 28-8482 within forty-five days after receipt of the notice, the attorney general shall bring an enforcement action under this section.

~~M.~~ N. The attorney general shall provide to all political subdivisions with territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY a copy of the report prepared and submitted by the attorney general pursuant to subsection ~~S~~ T of this section indicating those political subdivisions that are in compliance or noncompliance with subsection A, C, ~~F~~ G or ~~K~~ L of this section and section 28-8482. If a political subdivision files in a timely manner a report or affidavit required under subsection ~~H~~ I or ~~J~~ K of this section and any zoning map amendment, zoning or subdivision ordinance or regulation text amendment, final plat approval, variance from zoning or subdivision ordinance or comprehensive, general or specific plan or school district development plan amendment that has occurred during the reporting period is consistent with subsection ~~K~~ L of this section and the political subdivision provided the notice required

pursuant to subsection ~~F~~ G of this section or the attorney general fails to provide notice of probable cause of noncompliance pursuant to subsection ~~L~~ M of this section on or before November 15 of that year, the political subdivision is deemed to have complied with the requirements of this section and section 28-8482 during the period covered by the report or affidavit.

~~N.~~ O. If any owner of property that is the subject of a report filed pursuant to subsection ~~H~~ I of this section or political subdivision that is required to file a report pursuant to subsection ~~H~~ I of this section disagrees with a determination of the attorney general of probable cause of noncompliance pursuant to subsection ~~L~~ M of this section, the owner of property or political subdivision may appeal the determination of the attorney general to the superior court in the county in which the affected property or territory is located within thirty days after providing the attorney general written notice of the appeal by certified mail.

~~O.~~ P. The following apply to enforcement actions brought under this section:

1. The attorney general may institute a civil action in the name of this state in the superior court in the county of the alleged violation against a political subdivision that is required to file a report pursuant to subsection ~~H~~ I of this section to restrain, enjoin, correct or abate a violation of this section or section 28-8482, to collect a civil penalty ordered pursuant to this section and to collect attorney fees and costs ordered pursuant to this section if any of the following applies:

(a) The political subdivision fails to file a report or affidavit required by this section within thirty days after the political subdivision receives the written notice from the attorney general that a report has not been filed.

(b) From the content of the report filed by the political subdivision, or other evidence, the attorney general has determined that there is probable cause to believe that the political subdivision has not complied with the requirements set forth in subsection A, C, ~~F~~ G or ~~K~~ L of this section or section 28-8482 and forty-five days have passed since the political subdivision received written notice from the attorney general pursuant to subsection ~~L~~ M of this section.

(c) The attorney general has probable cause to believe that any change, variance or exemption made by a political subdivision that is required to file a report pursuant to subsection ~~H~~ I of this section to its general plan, ~~or~~ comprehensive plan or school district development plan applicable to property within the high noise or accident potential zone violates this section and forty-five days have passed since the political subdivision received written notice from the attorney general pursuant to subsection ~~L~~ M of this section.

2. The court shall award reasonable attorney fees and other costs in favor of the prevailing party for any civil enforcement action brought under this section. If the attorney general prevails, monies awarded pursuant to

this paragraph shall be retained by the attorney general and are continuously appropriated.

3. The court may assess civil penalties in favor of this state to be deposited in the state general fund as follows:

(a) For failure of a political subdivision to file a report or affidavit required by subsection ~~H~~ I or ~~J~~ K of this section within thirty days after receiving notice from the attorney general, the political subdivision is liable for a civil penalty of up to two hundred dollars for each day after the first thirty days and up to three hundred dollars for each subsequent day up to a maximum of ten thousand dollars.

(b) For failure of a political subdivision that is required to file a report pursuant to subsection ~~H~~ I of this section to comply with the requirements of subsection A, C, ~~F~~ G or ~~K~~ L of this section or section 28-8482, the political subdivision is liable for a civil penalty of up to five hundred dollars for each day for the first ten days and up to five thousand dollars for each subsequent day up to a maximum of fifty thousand dollars. If the political subdivision demonstrates compliance with subsections A, C, ~~F~~ G and ~~K~~ L of this section and section 28-8482 within forty-five days after receipt of a notice of noncompliance from the attorney general pursuant to subsection ~~L~~ M of this section, the accrued penalties shall be waived. If the political subdivision demonstrates a good faith effort to comply with subsections A, C, ~~F~~ G and ~~K~~ L of this section and section 28-8482, as applicable, within forty-five days after receipt of a notice of noncompliance from the attorney general pursuant to subsection ~~L~~ M of this section, the attorney general may waive accrued penalties.

~~P.~~ Q. A political subdivision that has territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY that includes property in a high noise or accident potential zone shall submit any proposed comprehensive, general or school district development plan or amendments that are applicable to property within the high noise or accident potential zone to the attorney general at least fifteen days before the first public hearing required pursuant to section 9-461.06 or 11-806.

~~Q.~~ R. On written request of the attorney general, a political subdivision shall provide records kept pursuant to this section or section 28-8482 within thirty days after the request.

~~R.~~ S. The attorney general may investigate any complaint received that a political subdivision that has territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY is not in compliance with subsection A, C, ~~F~~ G or ~~K~~ L of this section or section 28-8482.

~~S.~~ T. On or before November 15 of each year, the attorney general shall submit to the Arizona military airport preservation committee established by section 41-3301 a report indicating those political subdivisions that are in compliance with subsections A, C, ~~F~~ G and ~~K~~ L of this section and section 28-8482, those political subdivisions that are not in compliance with subsections A, C, ~~F~~ G and ~~K~~ L of this section and

section 28-8482 and the actions that the attorney general is taking, or intending to take, to bring those political subdivisions not in compliance with subsections A, C, ~~F~~ G and ~~K~~ L of this section or section 28-8482 into compliance.

U. A POLITICAL SUBDIVISION SHALL NOT PERMIT OR APPROVE A DIVISION OF LAND ZONED FOR RESIDENTIAL USE THAT IS IN A HIGH NOISE OR ACCIDENT POTENTIAL ZONE OF AN ANCILLARY MILITARY FACILITY IF THE DIVISION WOULD RESULT IN A LOT, PARCEL OR FRACTIONAL INTEREST BEING FOUR ACRES OR LESS UNLESS THE LAND DIVISION IS PART OF A DEVELOPMENT PLAN OR A DEVELOPMENT AGREEMENT APPROVED BEFORE JULY 30, 2004 OR IS DETERMINED BY THE MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY TO BE COMPATIBLE WITH ITS OPERATIONS BEFORE DECEMBER 31, 2004. A POLITICAL SUBDIVISION MAY GRANT A WAIVER FROM THIS SUBSECTION.

V. FOR THE PURPOSES OF THIS SECTION, "DEVELOPMENT PLAN":

1. MEANS A PLAN THAT IS SUBMITTED TO AND APPROVED BY THE GOVERNING BODY OF THE POLITICAL SUBDIVISION PURSUANT TO A ZONING ORDINANCE OR REGULATION ADOPTED PURSUANT TO TITLE 9, CHAPTER 4, ARTICLE 6.1 OR TITLE 11, CHAPTER 6 AND THAT DESCRIBES WITH REASONABLE CERTAINTY THE DENSITY AND INTENSITY OF USE FOR A SPECIFIC PARCEL OR PARCELS OF PROPERTY.

2. INCLUDES A PLANNED COMMUNITY DEVELOPMENT PLAN, A PLANNED AREA DEVELOPMENT PLAN, A PLANNED UNIT DEVELOPMENT PLAN, A DEVELOPMENT PLAN THAT IS THE SUBJECT OF A DEVELOPMENT AGREEMENT ADOPTED PURSUANT TO SECTION 9-500.05 OR 11-1101, A SITE PLAN, A SUBDIVISION PLAT OR ANY OTHER LAND USE APPROVAL DESIGNATION THAT IS THE SUBJECT OF A ZONING ORDINANCE ADOPTED PURSUANT TO TITLE 9, CHAPTER 4, ARTICLE 6.1 OR TITLE 11, CHAPTER 6.

3. MEANS A CONCEPTUAL PLAN FOR DEVELOPMENT THAT GENERALLY DEPICTS DENSITIES ON A PARTICULAR PROPERTY THAT A MILITARY AIRPORT, AS DESCRIBED IN PARAGRAPH 9, SUBDIVISION (a), DEEMS IS COMPATIBLE WITH THE OPERATION OF THE ANCILLARY MILITARY FACILITY.

Sec. 12. Section 28-8482, Arizona Revised Statutes, is amended to read:

28-8482. Incorporation of sound attenuation standards in building codes

A. A political subdivision that has territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY shall incorporate the sound attenuation standards and specifications prescribed in this section into any building code in existence on or adopted after December 31, 2001 OR ADOPTED ON OR AFTER THE DATE THE LAND BECOMES TERRITORY IN THE VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY. These standards and specifications apply to new development and alterations for first occupancy that are the subject of building permits issued after December 31, 2001 OR AFTER DECEMBER 31 OF THE YEAR IN WHICH THE LAND BECOMES TERRITORY IN THE VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY and that are located on property within the territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY and do not apply to new development and alterations that are located on property within corporate limits of a

municipality but outside territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY.

B. Not later than December 31, 2001 OR NOT LATER THAN DECEMBER 31 OF THE YEAR IN WHICH THE LAND BECOMES TERRITORY IN THE VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY, a political subdivision that has territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY shall adopt an ordinance that requires a noise level reduction to be incorporated in the design and construction of any residential building or portions of buildings where the public is received, office areas and where normal noise level is low for first occupancy, including libraries, schools and churches, pursuant to building permits issued after December 31, 2001 in order to achieve a maximum interior noise level of forty-five decibels in areas within the noise contours described in section 28-8461, paragraph ~~8~~ 9, subdivision (a), (b), ~~or~~ (c) OR (d), as applicable. In order to comply with this section, an ordinance shall require that all residential buildings in territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY but outside the noise contours as described in this section shall be constructed with a minimum of R18 exterior wall assembly, a minimum of R30 roof and ceiling assembly, dual-glazed windows and solid wood, foam-filled fiberglass or metal doors to the exterior or, if the specified building standards are not met, the political subdivision may approve, as an alternative, a certification by an architect or engineer registered pursuant to title 32, chapter 1 to achieve a maximum interior noise level of forty-five decibels at the time of final construction. A sound attenuation ordinance adopted by a political subdivision pursuant to this subsection shall not require a maximum interior noise level that is less than the maximum interior noise level required by this subsection.

C. The sound attenuation requirements of this section do not apply to ancillary buildings used in agricultural land use.

D. If the gross floor area of a structure or project is expanded by less than fifty per cent, the requirements of this section apply only to the area of expansion. If the gross floor area of a structure or project is expanded by fifty per cent or more, the requirements of this section apply to the entire structure, except for single family, mobile home, manufactured housing unit or duplex dwellings or any multifamily property used for residential purposes.

E. For the purposes of this section, political subdivision does not include a school district.

Sec. 13. Section 32-2113, Arizona Revised Statutes, is amended to read:

32-2113. Recorded disclosure for territory in the vicinity of a military airport or ancillary military facility

A. The commissioner shall execute and record in the office of the county recorder in each county in this state that includes territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in

section 28-8461 a document, applicable to property located within territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY, with the following disclosure: "this property is located within territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY and may be subject to increased noise and accident potential."

B. The attorney general shall prepare in recordable form the document that is executed and recorded by the commissioner pursuant to this section.

C. The document that is executed and recorded by the commissioner shall include a legal description of the territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY ~~as defined in section 28-8461~~. The military airport shall cause the legal description to be prepared and shall provide the legal description to the commissioner in recordable form in twelve point font on eight and one-half inch by eleven inch paper.

Sec. 14. Section 32-2181, Arizona Revised Statutes, is amended to read:

32-2181. Notice to commissioner of intention to subdivide lands; unlawful acting in concert; exceptions; deed restrictions; definition

A. Before offering subdivided lands for sale or lease, the subdivider shall notify the commissioner in writing of the subdivider's intention. The notice shall contain:

1. The name and address of the owner. If the holder of any ownership interest in the land is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of any interest of each principal in the entity. For the purposes of this section, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.

2. The name and address of the subdivider.

3. The legal description and area of the land.

4. A true statement of the condition of the title to the land, including all encumbrances on the land, and a statement of the provisions agreed to by the holder of any blanket encumbrance enabling a purchaser to acquire title to a lot or parcel free of the lien of the blanket encumbrance on completion of all payments and performance of all of the terms and provisions required to be made or performed by the purchaser under the real estate sales contract by which the purchaser has acquired the lot or parcel. The subdivider shall file copies of documents acceptable to the department containing these provisions with the commissioner before the sale of any subdivision lot or parcel subject to a blanket encumbrance.

5. The terms and conditions on which it is intended to dispose of the land, together with copies of any real estate sales contract, conveyance,

lease, assignment or other instrument intended to be used, and any other information the owner or the owner's agent or subdivider desires to present.

6. A map of the subdivision which has been filed in the office of the county recorder in the county in which the subdivision is located.

7. A brief but comprehensive statement describing the land on and the locality in which the subdivision is located.

8. A statement of the provisions that have been made for permanent access and provisions, if any, for health department approved sewage and solid waste collection and disposal and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.

9. A statement as to the location of the nearest public common and high schools available for the attendance of school age pupils residing on the subdivision property.

10. A statement of the use or uses for which the proposed subdivision will be offered.

11. A statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision, together with copies of any restrictive covenants affecting all or part of the subdivision.

12. The name and business address of the principal broker selling or leasing, within this state, lots or parcels in the subdivision.

13. A true statement of the approximate amount of indebtedness which is a lien on the subdivision or any part of the subdivision and which was incurred to pay for the construction of any on-site or off-site improvement, or any community or recreational facility.

14. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area or assessment district, within the boundaries of which the subdivision, or any part of the subdivision, is located, and which is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to the subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision or any part of the subdivision.

15. A true statement as to the approximate amount of annual taxes, special assessments or fees to be paid by the buyer for the proposed annual maintenance of common facilities in the subdivision.

16. A statement of the provisions for easements for permanent access for irrigation water where applicable.

17. A true statement of assurances for the completion of off-site improvements, such as roads, utilities, community or recreational facilities and other improvements to be included in the offering or represented as being in the offering, and approval of the offering by the political subdivision with authority. This statement shall include a trust agreement or ANY other evidence of assurances for delivery of the improvements and a statement of the provisions, if any, for the continued maintenance of the improvements.

18. A true statement of the nature of any improvements to be installed by the subdivider, the estimated schedule for completion and the estimated costs related to the improvements which will be borne by purchasers of lots in the subdivision.

19. A true statement of the availability of sewage disposal facilities and other public utilities including water, electricity, gas and telephone facilities in the subdivision, the estimated schedule for their installation, and the estimated costs related to the facilities and utilities which will be borne by purchasers of lots in the subdivision.

20. A true statement as to whether all or any portion of the subdivision is located in an open range or area in which livestock may roam at large under the laws of this state and what provisions, if any, have been made for the fencing of the subdivision to preclude livestock from roaming within the subdivided lands.

21. If the subdivider is a subsidiary corporation, a true statement identifying the parent corporation and any of the following in which the parent or any of its subsidiaries ~~are~~ IS or ~~have~~ HAS been involved within the past five years:

(a) Any subdivision in this state.

(b) Any subdivision, wherever located, for which registration is required pursuant to the federal interstate land sales full disclosure act.

(c) Any subdivision, wherever located, for which registration would have been required pursuant to the federal interstate land sales full disclosure act but for the exemption for subdivisions whose lots are all twenty acres or more in size.

22. A true statement identifying all other subdivisions, designated in paragraph 21 OF THIS SUBSECTION, in which any of the following ~~are~~ IS or, within the last five years, ~~have~~ HAS been directly or indirectly involved:

(a) The holder of any ownership interest in the land.

(b) The subdivider.

(c) Any principal or officer in the holder or subdivider.

23. A true statement as to whether all or any portion of the subdivision is located in territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, in territory in the vicinity of a public airport as defined in section 28-8486 ~~or~~, on or after July 1, 2001, in a high noise or accident potential zone as defined in section 28-8461 OR ON OR AFTER JULY 1 OF THE YEAR IN WHICH THE SUBDIVISION BECOMES LOCATED IN A HIGH NOISE OR ACCIDENT POTENTIAL ZONE. The statement required pursuant to this paragraph does not require the amendment or refiling of any notice filed before July 1, 2001 OR BEFORE JULY 1 OF THE YEAR IN WHICH THE SUBDIVISION BECOMES LOCATED IN A HIGH NOISE OR ACCIDENT POTENTIAL ZONE.

24. If the subdivision is a conversion from multifamily rental to condominiums as defined in section 33-1202, a true statement as to the following:

(a) That the property is a conversion from multifamily rental to condominiums.

(b) The date original construction was completed.

25. Other information and documents and certifications as the commissioner may reasonably require.

B. The commissioner, upon application, may grant a subdivider of lots or parcels within a subdivision for which a public report was previously issued by the commissioner an exemption from all or part of the notification requirements of subsection A of this section. The subdivider shall file a statement with the commissioner indicating the change of ownership in the lots or parcels together with any material changes occurring subsequent to the original approval of the subdivision within which the lots or parcels are located. The statement shall further refer to the original approval by the commissioner.

C. If the subdivision is within a groundwater active management area, as defined in section 45-402, the subdivider shall accompany the notice with a certificate of assured water supply issued by the director of water resources, unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576. If the subdivider has submitted a certificate of assured water supply to a city, town or county prior to approval of the plat by the city, town or county and this has been noted on the face of the plat, the submission constitutes compliance with this subsection.

D. It is unlawful for a person or group of persons acting in concert to attempt to avoid the provisions of this article by acting in concert to divide a parcel of land or sell subdivision lots by using a series of owners or conveyances or by any other method which ultimately results in the division of the lands into a subdivision or the sale of subdivided land. The plan or offering is subject to the provisions of this article. Unlawful acting in concert pursuant to this subsection with respect to the sale or lease of subdivision lots requires proof that the real estate licensee or other licensed professional knew or with the exercise of reasonable diligence should have known that property which the licensee listed or for which the licensee acted in any capacity as agent was subdivided land subject to the provisions of this article.

E. A creation of six or more lots, parcels or fractional interests in improved or unimproved land, lots or parcels of any size is subject to the provisions of this article except when:

1. Each of the lots, parcels or fractional interests represents, on a partition basis, thirty-six acres or more in area of land located in this

state including to the ~~center line~~ CENTERLINE of dedicated roads or easements, if any, contiguous to the land in which the interests are held.

2. The lots, parcels or fractional interests are the result of a foreclosure sale, the exercise by a trustee under a deed of trust of a power of sale or the grant of a deed in lieu of foreclosure. This paragraph does not allow circumvention of the requirements of this article.

3. The lots, parcels or fractional interests are created by a valid order or decree of a court pursuant to and through compliance with title 12, chapter 8, article 7 or by operation of law. This paragraph does not allow circumvention of the requirements of this article.

4. The lots, parcels or fractional interests consist of interests in any oil, gas or mineral lease, permit, claim or right therein and such interests are regulated as securities by the United States or by this state.

5. The lots, parcels or fractional interests are registered as securities under the laws of the United States or the laws of this state or are exempt transactions under the provisions of section 44-1844, 44-1845 or 44-1846.

6. The commissioner by special order exempts offerings or dispositions of any lots, parcels or fractional interests from compliance with the provisions of this article upon written petition and upon a showing satisfactory to the commissioner that compliance is not essential to the public interest or for the protection of buyers.

F. In areas outside of groundwater active management areas established pursuant to title 45, chapter 2, article 2, if the director of water resources, pursuant to section 45-108, reports an inadequate on-site supply of water to meet the needs projected by the developer or if no water is available, the state real estate commissioner shall require that all promotional material and contracts for the sale of lots in subdivisions approved by the commissioner adequately display the director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.

G. The commissioner may require the subdivider to supplement the notice of intention to subdivide lands and may require the filing of periodic reports to update the information contained in the original notice of intention to subdivide lands.

H. The commissioner may authorize the subdivider to file as the notice of intention to subdivide lands, in lieu of some or all of the requirements of subsection A of this section, a copy of the statement of record filed with respect to the subdivision pursuant to the federal interstate land sales full disclosure act if the statement complies with the requirements of the act and the regulations pertinent to the act.

I. Neither a real estate sales contract, conveyance, lease, assignment or other instrument to transfer any interest in subdivided land nor any covenant or restriction affecting real property shall contain any provision limiting the right of any party to appear or testify in support of

or opposition to zoning changes, building permits or any other official acts affecting real property before a governmental body or official considering zoning changes, building permits or any other official acts affecting real property, whether the property is located within or outside of the boundaries of the subdivision. All contractual provisions which conflict with this subsection are declared to be contrary to public policy. Nothing contained in this subsection shall prohibit private restrictions on the use of any real property.

J. Before offering subdivided lands for lease or sale the subdivider who makes any promises through any form of advertising media that the subdivided lands will be exclusively a retirement community or one which is limited to the residency of adults or senior citizens shall include the promises in the deed restrictions affecting any interest in real property within the subdivided lands.

Sec. 15. Section 32-2183, Arizona Revised Statutes, is amended to read:

32-2183. Subdivision public reports; denial of issuance; unlawful sales; voidable sale or lease; order prohibiting sale or lease; investigations; hearings; summary orders

A. Upon examination of a subdivision, the commissioner ~~shall~~, unless there are grounds for denial, SHALL issue to the subdivider a public report authorizing the sale or lease in this state of the lots, parcels or fractional interests within the subdivision. The report shall contain the data obtained in accordance with section 32-2181 and any other information which the commissioner determines is necessary to implement the purposes of this article. If any of the lots, parcels or fractional interests within the subdivision are located within territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, the report shall include, in bold twelve point font block letters on the first page of the report, the statements required pursuant to section 28-8484, subsection A and, if the department has been provided a map prepared pursuant to section 28-8484, subsection B, the report shall include a copy of the map. These report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2001 OR ON OR BEFORE DECEMBER 31 OF THE YEAR IN WHICH THE LOTS, PARCELS OR FRACTIONAL INTERESTS WITHIN A SUBDIVISION BECOME TERRITORY IN THE VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY. The commissioner shall require the subdivider to reproduce the report, make the report available to each prospective customer and furnish each buyer or lessee with a copy before the buyer or lessee signs any offer to purchase or lease, taking a receipt therefor.

B. Notwithstanding subsection A of this section, a subdivider may elect to prepare a final public report for use in the sale of improved lots as defined in section 32-2101, as follows:

1. The subdivider shall prepare the public report and provide a copy of the report to the commissioner with the submission of the notification required by sections 32-2181 and 32-2184 and shall comply with all other requirements of this article.

2. An initial filing fee of five hundred dollars or an amended filing fee of two hundred fifty dollars shall accompany the notification required by paragraph 1 of this subsection.

3. The department shall assign a registration number to each notification and public report submitted pursuant to this subsection and shall maintain a ~~data base~~ DATABASE of all of these submissions. The subdivider shall place the number on each public report.

4. The department shall determine within fifteen business days after the receipt of the notification and public report whether the notification and public report are administratively complete. The commissioner ~~may~~ either MAY issue a certification that the notification and public report are administratively complete or may deny issuance of the certification if it appears that the application or project is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or project presents an unnecessary risk of harm to the public.

5. A subdivider may commence sales or leasing activities as permitted under this article after obtaining a certificate of administrative completeness from the commissioner.

6. Before or after the commissioner issues a certificate of administrative completeness, the department may examine any public report, subdivision or applicant that has applied for or received the certificate. If the commissioner determines that the subdivider or subdivision is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under section 32-2154 or 32-2157. If the subdivider immediately corrects the deficiency and comes into full compliance with state law, the commissioner shall vacate any action that the commissioner may have commenced pursuant to section 32-2154 or 32-2157.

7. The department shall provide forms and guidelines for the submission of the notification and public report pursuant to this section.

C. The commissioner may suspend, revoke or deny issuance of a public report on any of the following grounds:

1. Failure to comply with any of the provisions of this article or the rules of the commissioner pertaining to this article.

2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to deliver title or other interest contracted for.

4. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for completion of all streets, sewers, electric, gas and water utilities, drainage and flood

control facilities, community and recreational facilities and other improvements included in the offering.

5. Failure to make a showing that the lots, parcels or fractional interests can be used for the purpose for which they are offered.

6. The owner, agent, subdivider, officer, director or partner, subdivider trust beneficiary holding ten per cent or more direct or indirect beneficial interest or, if a corporation, any stockholder owning ten per cent or more of the stock in the corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud or dishonesty or involving conduct of any business or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts or campgrounds, or securities or involving consumer fraud or the racketeering laws of this state.

(c) Had an administrative order entered against him by a real estate regulatory agency or security regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business or transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(e) Disregarded or violated any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.

(f) Controlled an entity to which subdivision (b), (c), (d) or (e) applies.

7. Procurement or an attempt to procure a public report by fraud, misrepresentation or deceit or by filing an application for a public report which is materially false or misleading.

8. Failure of the declaration for a condominium created pursuant to title 33, chapter 9, article 2 to comply with the requirements of section 33-1215 or failure of the plat for the condominium to comply with the requirements of section 33-1219. The commissioner may require an applicant for a public report to submit a notarized statement signed by the subdivider or an engineer or attorney licensed to practice in this state certifying that the condominium plat and declaration of condominium are in compliance with the requirements of sections 33-1215 and 33-1219. If the notarized statement is provided, the commissioner is entitled to rely on this statement.

9. Failure of any blanket encumbrance or valid supplementary agreement executed by the holder of the blanket encumbrance to contain provisions that enable the purchaser to acquire title to a lot or parcel free of the lien of the blanket encumbrance, on completion of all payments and performance of all of the terms and provisions required to be made or performed by the purchaser under the real estate sales contract by which the

purchaser has acquired the lot or parcel. The subdivider shall file copies of documents acceptable to the commissioner containing these provisions with the commissioner before the sale of any subdivision lot or parcel subject to a blanket encumbrance.

10. Failure to demonstrate permanent access to the subdivision lots or parcels.

11. The use of the lots presents an unreasonable health risk.

D. It is unlawful for a subdivider to sell any lot in a subdivision unless one of the following occurs:

1. All proposed or promised subdivision improvements are completed.

2. The completion of all proposed or promised subdivision improvements is assured by financial arrangements acceptable to the commissioner. The financial arrangements may be made in phases for common community and recreation facilities required by a municipality or county as a stipulation for approval of a plan for a master planned community.

3. The municipal or county government agrees to prohibit occupancy and the subdivider agrees not to close escrow for lots in the subdivision until all proposed or promised subdivision improvements are completed.

4. The municipal or county government enters into an assurance agreement with any trustee not to convey lots until improvements are completed within the portion of the subdivision containing these lots, if the improvements can be used and maintained separately from the improvements required for the entire subdivision plat. The agreement shall be recorded in the county in which the subdivision is located.

E. If the subdivision is within a groundwater active management area, as defined in section 45-402, the commissioner shall deny issuance of a public report or the use of any exemption pursuant to section 32-2181.02, subsection B unless the subdivider has been issued a certificate of assured water supply by the director of water resources, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576.

F. ~~No~~ A subdivider shall NOT sell or lease or offer for sale or lease in this state any lots, parcels or fractional interests in a subdivision without first obtaining a public report from the commissioner except as provided in section 32-2181.01 or 32-2181.02. Unless exempt, the sale or lease of subdivided lands prior to issuance of the public report or failure to deliver the public report to the purchaser or lessee shall render the sale or lease rescindable by the purchaser or lessee. An action by the purchaser or lessee to rescind the transaction shall be brought within three years of the date of execution of the purchase or lease agreement by the purchaser or lessee. In any rescission action, the prevailing party is entitled to reasonable attorney fees as determined by the court.

G. Any applicant objecting to the denial of a public report ~~may~~, within thirty days after receipt of the order of denial, MAY file a written request for a hearing. The commissioner shall hold the hearing within twenty days after receipt of the request for a hearing unless the party requesting the hearing has requested a postponement. If the hearing is not held within twenty days after a request for a hearing is received, plus the period of any postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

H. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that the subdivider or the subdivider's agent is violating any provision set forth in this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of subdivided lands or deviated from the provisions of the public report, THE COMMISSIONER may investigate the subdivision project and examine the books and records of the subdivider. For the purpose of examination, the subdivider shall keep and maintain records of all sales transactions and funds received by the subdivider pursuant to the sales transactions and shall make them accessible to the commissioner upon reasonable notice and demand.

I. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that any person has violated any of the provisions of this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of subdivided lands or deviated from the provisions of the public report or special order of exemption, or has been indicted for fraud or against whom an information for fraud has been filed or has been convicted of a felony, before or after the commissioner issues the public report as provided in subsection A of this section, THE COMMISSIONER may conduct an investigation of the matter, issue a summary order as provided in section 32-2157, or hold a public hearing and, after the hearing, may issue the order or orders the commissioner deems necessary to protect the public interest and ~~insure~~ ENSURE compliance with the law, rules or public report or the commissioner may bring action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging in or doing any act or acts in furtherance of the violation. The court may make orders or judgments, including the appointment of a receiver, necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any monies or property, real or personal, that may have been acquired by means of any practice in this article declared to be unlawful.

J. When it appears to the commissioner that a person has engaged in or is engaging in a practice declared to be unlawful by this article and that the person is concealing assets or self or has made arrangements to conceal assets or is about to leave the state, the commissioner may apply to the superior court, ex parte, for an order appointing a receiver of the assets of the person or for a writ of ne exeat, or both.

K. The court upon receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and other evidence that the commissioner may present the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ of ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. If the court determines that the interests of the public will not be harmed by the giving of notice, the court shall set a time for a hearing and require notice be given as the court deems satisfactory.

L. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served upon the person engaged in or engaging in a practice declared to be unlawful under this article by delivering the order to the last address of the person which is on file with the STATE real estate department. The order shall inform the person that the person has the right to request a hearing within ten days of the date of the order and, if requested, the hearing shall be held within thirty days from the date of the order.

Sec. 16. Section 32-2195, Arizona Revised Statutes, is amended to read:

32-2195. Notice to commissioner of intention before offering for sale or lease of unsubdivided land; definition

A. Prior to the offering for sale or lease of unsubdivided land the owner or agent shall notify the commissioner in writing of the owner's or agent's intention to offer such parcels for sale or lease.

B. The notice required by this section shall contain the following information:

1. The name and address of the owner. If the holder of any ownership interest in the land is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity. For the purposes of this section, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.

2. The name and address of the agent.

3. The legal description and area of the lands.

4. A true statement of the condition of the title to the land, including all encumbrances thereon.

5. A true statement of the terms and conditions under which such lands are to be offered to the public.

6. A statement of the use or uses for which the land will be offered or a statement that it is offered for no specific use.

7. A true statement of the provisions made for permanent access.

8. A true statement setting out the availability of water or lack thereof.

9. A true statement of the availability to the land of sewage disposal facilities and other public utilities including water, electricity, gas and telephone facilities.

10. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, taxing area or assessment district within the boundaries of which the unsubdivided lands are located, and which is to pay for the construction or installation of any improvements to that land.

11. A true statement as to whether all or any portion of the unsubdivided land is located in an open range or area in which livestock may roam at large under the laws of this state and what provisions, if any, have been made for the fencing of the unsubdivided land to preclude livestock from roaming within such land.

12. If the owner or agent is a subsidiary corporation, a true statement identifying the parent corporation and any of the following in which the parent or any of its subsidiaries are or have been involved within the past five years:

(a) Any subdivision in this state.

(b) Any subdivision, wherever located, for which registration is required pursuant to the federal interstate land sales full disclosure act.

(c) Any subdivision, wherever located, for which registration would have been required pursuant to the federal interstate land sales full disclosure act but for the exemption for subdivisions whose lots are five acres or more in size.

13. A true statement identifying all other subdivisions, designated in paragraph 12, in which any of the following are or, within the last five years, have been directly or indirectly involved:

(a) The holder of any ownership interest in the land.

(b) The agent.

(c) Any principal or officer in the holder.

14. A true statement as to whether all or any portion of the unsubdivided land is located in territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, in territory in the vicinity of a public airport as defined in section 28-8486

or, on or after July 1, 2001, in a high noise or accident potential zone as defined in section 28-8461 OR ON OR AFTER JULY 1 OF THE YEAR IN WHICH THE LAND BECOMES LOCATED IN A HIGH NOISE OR ACCIDENT POTENTIAL ZONE. The statement required pursuant to this paragraph does not require the amendment or refiling of any notice filed before July 1, 2001 OR BEFORE JULY 1 OF THE YEAR IN WHICH THE LAND BECOMES LOCATED IN A HIGH NOISE OR ACCIDENT POTENTIAL ZONE.

15. Such other information and such other documents and certifications as the commissioner may reasonably require for the protection of the public.

C. Copies of original promotional and advertising material to be used with such offering shall be attached to the notice.

D. It shall be unlawful for any owner or agent to make any offerings regulated by this section without the written authorization of the commissioner. The commissioner shall issue a public report thereon and require a copy of the public report to be furnished to each offeree at the time of such offering.

E. It shall be unlawful to offer any lands regulated by this article without provisions having been made for permanent access over terrain on which roads could be established for conventional motor vehicles unless such provision is waived by the commissioner.

F. Satisfactory proof or evidence that access meets the requirements of subsection E of this section shall be furnished to the department in a report by a licensed engineer or land surveyor of this state.

G. The commissioner may terminate any authorization issued upon the grounds and in the manner set out in section 32-2183.

H. If the director of water resources has issued a water availability report, the state real estate commissioner shall require that all promotional material and contracts for the sale of such unsubdivided lands adequately display the director of water resources' report or a brief summary of the results prepared by the developer and approved by the real estate commissioner. If no report has been prepared by the director of water resources and the availability of water is unknown, the real estate commissioner shall require that all promotional material and contracts adequately display that no report has been prepared and that the availability of water is unknown.

I. Neither any real estate sales contract, conveyance, lease, assignment or other instrument to transfer any interest in unsubdivided land nor any covenant or restriction affecting real property shall contain any provision limiting the right of any party to appear or testify in support of or opposition to zoning changes, building permits or any other official acts affecting real property before a governmental body or official considering zoning changes, building permits or any other official acts affecting real property, whether such property is located within or outside of the boundaries of the unsubdivided land. All contractual provisions which conflict with this subsection are declared to be contrary to public policy.

Nothing contained in this subsection shall prohibit private restrictions on the use of any real property.

Sec. 17. Section 32-2195.03, Arizona Revised Statutes, is amended to read:

32-2195.03. Unsubdivided land reports; denial of issuance; order prohibiting sale or lease; investigations; hearings; summary orders

A. Upon examination of unsubdivided land, the commissioner ~~shall~~, unless there are grounds for denial, SHALL prepare and issue to the owner or agent a public report authorizing the sale or lease of the unsubdivided lands in this state. The report shall contain the data obtained in accordance with section 32-2195 and any other information which the commissioner determines is necessary to implement the purposes of this article. If any of the unsubdivided land is located within territory in the vicinity of a military airport OR ANCILLARY MILITARY FACILITY as defined in section 28-8461, the report shall include, in bold twelve point font block letters on the first page of the report, the statements required pursuant to section 28-8484, subsection A and, if the department has been provided a map prepared pursuant to section 28-8484, subsection B, the report shall include a copy of the map. These report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2001 OR ON OR AFTER DECEMBER 31 OF THE YEAR IN WHICH THE UNSUBDIVIDED LAND BECOMES TERRITORY IN THE VICINITY OF A MILITARY AIRPORT OR ANCILLARY MILITARY FACILITY. The commissioner shall require the owner or agent to reproduce the report and furnish each prospective buyer with a copy before the buyer signs an offer to purchase, taking a receipt therefor.

B. Notwithstanding any provision of subsection A of this section, an owner may prepare a final public report for use in the sale of unsubdivided lands as defined in section 32-2101, as follows:

1. The owner shall prepare the public report and provide a copy of the report to the commissioner with the submission of the notification required by sections 32-2195 and 32-2195.10 and shall comply with all other requirements of this article.

2. An initial filing fee of five hundred dollars or an amended filing fee of two hundred fifty dollars shall accompany the notification required by paragraph 1 of this subsection.

3. The department shall assign a registration number to each notification and public report submitted pursuant to this subsection and shall maintain a ~~data base~~ DATABASE of all of these submissions. The owner shall place the number on each public report.

4. The department shall determine within fifteen business days after the receipt of the notification and public report whether the notification and public report are administratively complete. The commissioner may either issue a certification that the notification and public report are administratively complete or may deny issuance of the certification if it

appears that the application or project is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or project presents an unnecessary risk of harm to the public.

5. An owner may commence sales or leasing activities as permitted under this article after obtaining a certificate of administrative completeness from the commissioner.

6. Before or after the commissioner issues a certificate of administrative completeness, the department may examine any public report, development or applicant that has applied for or received the certificate. If the commissioner determines that the owner or development is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under section 32-2154 or 32-2157. If the owner immediately corrects the deficiency and comes into full compliance with state law, the commissioner shall vacate any action that he may have commenced pursuant to section 32-2154 or 32-2157.

7. The department shall provide forms and guidelines for the submission of the notification and public report pursuant to this section.

C. The commissioner may deny issuance of a public report on any of the following grounds:

1. Failure to comply with any of the provisions of this article or the rules of the commissioner pertaining to this article.

2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to deliver title or other interest contracted for.

4. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for installation of all streets, sewers, electric, gas and water utilities, drainage, flood control and other similar improvements included in the offering.

5. Failure to make a showing that the parcels can be used for the purpose for which they are offered.

6. Failure to provide in the contract or other writing the use or uses, if any, for which the parcels are offered, together with any covenants or conditions relative to the parcel.

7. Failure to demonstrate that adequate financial arrangements have been made for any guaranty or warranty included in the offering.

8. The owner or agent, officer, director or partner or trust beneficiary holding a ten per cent or more beneficial interest, or, if a corporation, any stockholder owning ten per cent or more of the stock in the corporation has:

(a) Been convicted of a felony or misdemeanor involving fraud or dishonesty or involving conduct of any business or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts or campgrounds, or securities or involving consumer fraud or the racketeering laws of this state.

(c) Had an administrative order entered against him by a real estate regulatory agency or security regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.

(e) Disregarded or violated any of the provisions of this chapter or the rules of the commissioner pertaining to this chapter.

(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d) or (e) applies.

D. No owner or agent may sell or lease or offer for sale or lease unsubdivided lands without first obtaining a public report from the commissioner. Any sale or lease of unsubdivided lands prior to issuance of the public report shall be voidable by the purchaser. An action by the purchaser to void the transaction shall be brought within three years of the date of execution of the purchase agreement by the purchaser. In any voidance action the prevailing party is entitled to reasonable attorney fees as determined by the court.

E. Any applicant objecting to the denial of a public report ~~may~~, within thirty days after receipt of the order of denial, MAY file a written request for a hearing. The commissioner shall hold the hearing within twenty days after receipt of the request for a hearing unless the party requesting the hearing requests a postponement. If the hearing is not held within twenty days after a request for a hearing is received plus the period of any postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

F. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that the owner or agent is violating any provision set forth in this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of unsubdivided lands or deviated from the provisions of the public report, THE COMMISSIONER may investigate the subdivision project and examine the books and records of the owner or agent. For the purpose of examination, the owner or agent shall keep and maintain records of all sales transactions and funds received by the owner or agent pursuant to the sales transactions and shall make them accessible to the commissioner upon reasonable notice and demand.

G. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that grounds exist as

provided in subsection C of this section or that any person has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of unsubdivided lands or deviated from the provisions of the public report, THE COMMISSIONER may conduct an investigation of the matter, issue a summary order as provided in section 32-2157, or hold a public hearing and, after the hearing, may issue the order or orders the commissioner deems necessary to protect the public interest and ~~insure~~ ENSURE compliance with the law, rules or public report. If, after the hearing, the violation of the law, rules or public report continues, the commissioner may bring an action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging in or doing any act or acts in furtherance of the violation.

Sec. 18. Section 37-102, Arizona Revised Statutes, is amended to read:

37-102. State land department; powers and duties

A. The state land department shall administer all laws relating to lands owned by, belonging to~~,~~ and under the control of the state.

B. The department shall have charge and control of all lands owned by the state, and timber, stone, gravel and other products of such lands, except lands under the specific use and control of state institutions and the products of such lands.

C. The department ~~may~~, in the name of the state, MAY commence, prosecute and defend all actions and proceedings to protect the interest of the state in lands within the state or the proceeds thereof. Actions shall be commenced and prosecuted at the request of the department by the attorney general, a county attorney~~,~~ or a special counsel under the direction of the attorney general.

D. The department shall be the official representative of the state in any communication between the state and the United States government in all matters respecting state lands or any interest of the state in or to the public lands within the state.

E. The summons in any action against the state respecting any lands of the state or the products of such lands and all notices concerning such lands or products shall be served upon the commissioner. Summonses, warrants or legal notices served on behalf of the department may be served by the commissioner or ~~his~~ THE COMMISSIONER'S deputy, or by the sheriff or a constable of any county of the state.

F. The department shall maintain as a public record in each of its offices a public docket and index of all matters before the department which may be subject to appeal to the board of appeals or to the courts and all sale, exchange and lease transactions subject to bidding by the public. The department shall list a matter on the public docket immediately after an application or other request for department action is received by the department. The department shall include in the public docket every formal action and decision affecting each matter in question. The department shall

establish by rule a means by which any person may obtain a copy of the public docket at the current copying cost.

G. The department shall reappraise or update its original appraisal of property to be leased, exchanged or sold if the board of appeals' approval of the lease or sale occurred more than one hundred eighty days before the auction.

H. WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, THE STATE LAND DEPARTMENT SHALL MAKE A MAP OF THE ANCILLARY MILITARY FACILITY DEFINED IN SECTION 28-8461 AVAILABLE TO THE PUBLIC IN PRINTED OR ELECTRONIC FORMAT AND SHALL PROVIDE THE MAP IN PRINTED OR ELECTRONIC FORMAT TO THE STATE REAL ESTATE DEPARTMENT.

I. THE DEPARTMENT SHALL SUBMIT THE MAP DESCRIBED IN THIS SECTION TO THE COUNTY IN WHICH THE ANCILLARY MILITARY FACILITY IS LOCATED IN EITHER PRINTED OR ELECTRONIC FORMAT.

Sec. 19. Applicability

Notwithstanding any other law, this act does not apply to property that either is in escrow before January 1, 2005 or is the subject of a pending zoning application filed before January 1, 2005.

APPROVED BY THE GOVERNOR APRIL 19, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 2004.

Passed the House March 15, 2004, by the following vote: 58 Ayes, 0 Nays, 2 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 13, 2004, by the following vote: 30 Ayes, 0 Nays, 0 Not Voting

Ken Bennett
President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20___,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20___,

at _____ o'clock _____ M.

_____
Secretary of State

H.B. 2141

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 15, 2004,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

16th day of April, 2004,

at 10:24 o'clock a. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 19 day of

April, 2004,

at 11:45 o'clock A. M.

Jt Napolitano
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 19 day of April, 2004,

at 4:30 o'clock P. M.

Janice K. Brewer
Secretary of State

H.B. 2141