House Engrossed Senate Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
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Second Regular Session
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CHAPTER 156

SENATE BILL 1162

AN ACT

AMENDING TITLE 35, CHAPTER 3, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 35-505; AMENDING SECTIONS 35-701, 35-705, 35-706, 35-721, 35-728, 35-729, 35-901, 35-904, 35-905, 35-906, 35-910 AND 35-913, ARIZONA REVISED STATUTES; RELATING TO INDUSTRIAL DEVELOPMENT FINANCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 35, chapter 3, article 6, Arizona Revised Statutes, is amended by adding section 35-505, to read:

35-505. Exemption; industrial development

THIS ARTICLE DOES NOT APPLY TO CORPORATIONS FORMED PURSUANT TO CHAPTERS 5 AND 6 OF THIS TITLE.

Sec. 2. Section 35-701, Arizona Revised Statutes, is amended to read:

35-701. Definitions

In this chapter, unless the context otherwise requires:

1. "Corporation" means any corporation organized as an authority as provided in this chapter.

2. "Designated area" means any area of this state which is either designated pursuant to section 36-1479 as a slum or blighted area as defined in section 36-1471, designated by regulation as a pocket of poverty or a neighborhood strategy area by the United States department of housing and urban development pursuant to title I of the housing and community development act of 1977 (P.L. ~~108-6~~ 95-128; 42 United States Code sections 5301 through 5320), as amended, and the department of housing and urban development act (P.L. ~~108-6~~ 89-174; 42 United States Code section 3535(d))~~,~~ OR designated by the United States department of housing and urban development as an empowerment or enterprise zone pursuant to the federal omnibus budget ~~and~~ reconciliation act of 1993 (P.L. ~~108-6~~ 103-66; 26 United States Code section 1391(g))~~,~~ or an area certified as an enterprise zone pursuant to section 41-1524, subsection B.

3. "Governing body" means:

(a) The board or body in which the general legislative powers of the municipality or the county are vested.

(b) The Arizona board of regents with respect to a corporation formed with the permission of the Arizona board of regents.

4. "Income" means gross earnings from wages, salary, commissions, bonuses or tips from all jobs, net earnings from such person's or family's own nonfarm business, professional practice or partnership, and net earnings from such person's or family's own farm. Income includes income, other than earnings, that consists of amounts received from social security or railroad retirement, interest, dividends, veterans payments, pensions and other regular payments, public assistance or welfare payments, including aid for dependent children, old age assistance, general assistance and aid to the blind or totally disabled, but excluding separate payments for hospital or other medical care.

5. "Manufactured house" means a structure that is manufactured in a factory after June 15, 1976, that is delivered to a homesite in more than one section and that is placed on a permanent foundation. The dimensions of the completed house shall not be less than twenty feet by forty feet, the roof must be sloping, the siding and roofing must be the same as those found in

site-built houses and the house must be eligible for thirty year real estate mortgage financing.

6. "Municipality" or "county" means the Arizona board of regents or any incorporated city or town, including charter cities, or any county in this state in which a corporation may be organized and in which it is contemplated the corporation will function.

7. "Persons of low and moderate income" means, for the purposes of financing owner-occupied single family dwelling units in areas which the municipality has found, pursuant to section 36-1479, to be slum or blighted areas, as defined in section 36-1471, persons and families whose income does not exceed two and one-half times the median family income of this state. In all other areas it means persons and families whose income does not exceed one and one-half times the median family income of this state.

8. "Project" means any land, any building or any other improvement and all real and personal properties, including machinery and equipment whether or not now in existence or under construction and whether located within or without THIS STATE OR the municipality or county approving the formation of the corporation, that are suitable for any of the following:

(a) With respect to a corporation formed with the permission of a municipality or county other than the Arizona board of regents:

(i) Any enterprise for the manufacturing, processing or assembling of any agricultural or manufactured products.

(ii) Any commercial enterprise for the storing, warehousing, distributing or selling of products of agriculture, mining or industry, or of processes related thereto, including research and development.

(iii) Any office building or buildings for use as corporate or company headquarters or regional offices or the adaptive use for offices of any building within this state that is on the national register of historic places or rehabilitation of residential buildings located in registered historic neighborhoods.

(iv) A health care institution as defined in section 36-401.

(v) Residential real property for dwelling units located within the municipality or county approving the formation of the corporation and, in the case of a county, whether or not also within a municipality that is within the county.

(vi) Repairing or rehabilitating single family dwelling units or constructing or repairing residential fences and walls.

(vii) Convention or trade show facilities.

(viii) Airports, docks, wharves, mass commuting facilities, parking facilities or storage or training facilities directly related to any of the facilities as provided in this item.

(ix) Sewage or solid waste disposal facilities or facilities for the furnishing of electric energy, gas or water.

(x) Industrial park facilities.

(xi) Air or water pollution control facilities.

(xii) Any educational institution that is operated by a nonprofit educational organization that is exempt from taxation under section 501(c)(3) of the United States internal revenue code and that is not otherwise funded by state monies, any educational institution or organization that is established under title 15, chapter 1, article 8 and that is owned by a nonprofit organization, any private nonsectarian school or any private nonsectarian organization established for the purpose of funding a joint technological education school district.

(xiii) Research and development facilities.

(xiv) Commercial enterprises, including facilities for office, recreational, hotel, motel and service uses if the facilities authorized by this item are to be located in a designated area.

(xv) A child welfare agency, as defined in section 8-501, owned and operated by a nonprofit organization.

(xvi) A transportation facility constructed or operated pursuant to title 28, chapter 22, article 1 or 2.

(xvii) A museum operated by a nonprofit organization.

(xviii) Facilities owned or operated by a nonprofit organization described in section 501(c) of the United States internal revenue code of 1986 ~~that is primarily engaged in delivering community services on that property consisting of fitness programs, camping programs, health and recreation services, youth programs, child care, senior citizen programs, individual and family counseling, employment and training programs, services for individuals with disabilities, meals, feeding programs or disaster relief~~.

(xix) New or existing correctional facilities ~~that contract exclusively with the state department of corrections or the department of juvenile corrections for the housing of inmates or committed youths~~ WITHIN THIS STATE.

(b) With respect to a corporation formed with the permission of the Arizona board of regents, any facility consisting of classrooms, lecture halls or conference centers or any facility for research and development or for manufacturing, processing, assembling, marketing, storing and transferring items developed through or connected with research and development or in which the results of such research and development are utilized, but only if the facility is located in an area designated as a research park by the Arizona board of regents.

9. "Property" means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds necessary to a project and any other personal properties deemed necessary in connection with a project.

10. "Research park" means an area of land that has been designated by the Arizona board of regents as a research park for a university and that, at the date of designation, is owned by this state or by the Arizona board of regents.

11. "Single family dwelling unit" includes any new, used or manufactured house that meets the insuring requirements of the federal housing administration, the veterans administration or any other insuring entity of the United States government or any private mortgage insurance or surety company that is approved by the federal home loan mortgage corporation or the federal national mortgage association.

Sec. 3. Section 35-705, Arizona Revised Statutes, is amended to read:

35-705. Board of directors

The authority shall have a board of directors in which all powers of the authority shall be vested and which shall consist of any number of directors, not less than three nor more than nine, all of whom shall be duly qualified electors of the municipality or county with respect to which the authority was formed. In the case of a corporation formed with the permission of the Arizona board of regents the directors must be qualified electors of this state. The directors shall serve as such without compensation, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties in the same manner as is provided for other state officers. No director shall be an officer or employee of the authorizing municipality or county. All directors shall declare any conflict of interest as provided in title 38, chapter 3, article 8. The directors shall be elected by the governing body of the authorizing municipality or county, and they shall be so elected that they shall hold office for overlapping terms. At the time of the election of the first board of directors the governing body of the municipality or the county shall divide the directors into three groups containing as nearly equal whole numbers as possible. The first term of the directors included in the first group shall be two years, the first term of the directors included in the second group shall be four years, the first term of the directors included in the third group shall be six years, and thereafter the terms of all directors shall be six years. THE GOVERNING BODY MAY REMOVE A DIRECTOR AT ANY TIME, WITH OR WITHOUT CAUSE.

Sec. 4. Section 35-706, Arizona Revised Statutes, is amended to read:

35-706. Corporate powers

A. In addition to the powers granted to an industrial development authority by law, the authority shall have the following powers, together with all powers incidental or necessary for the performance of the following:

1. To acquire, whether by purchase, exchange, gift, lease or otherwise establish, construct, improve, maintain, equip and furnish one or more projects.

2. To lease to others any or all of its projects, to charge and collect rent and to terminate any lease upon the failure of the lessee to comply with any of the obligations of the lease.

3. To sell, exchange, donate and convey to others any or all of its projects or properties upon terms and conditions as its board of directors may deem advisable, including the power to receive for any sale the note or

notes of the purchaser of the project or property, whenever its board of directors finds the action to further advance the interest of the corporation.

4. To issue its bonds for the purpose of carrying out any of its powers.

5. To mortgage and pledge any or all of its projects and properties, whether owned or acquired, and to pledge the revenues, proceeds and receipts or any portion of the revenues, proceeds and receipts from a project as security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith.

6. To contract with and employ others to provide and to pay compensation for professional services and other services as the board of directors deems necessary for the financing of projects and for the business of the corporation.

7. To refund outstanding obligations incurred by an enterprise to finance the cost of a project when the board of directors finds that the refinancing is in the public interest.

8. To invest and reinvest funds under the control of the corporation and bond proceeds pending application thereof to the purposes for which the bonds were issued, subject only to the provisions of any bond resolution, lease or other agreement entered into by the board of directors.

9. To make secured or unsecured loans for the purpose of financing or refinancing the acquisition, construction, improvement, equipping or operating of a project and to charge and collect interest on the loans and pledge the proceeds of loan agreements as security for the payment of the principal and interest of any bonds, or designated issues of bonds, issued by the corporation, and any agreements made in connection with the loan, whenever the board of directors finds the loans to further advance the interest of the corporation or the public.

10. To acquire and hold obligations of any kind to carry out any of its purposes.

11. Subject to ~~the provisions of~~ this section, to make loans to any bank, savings and loan institution, credit union or other mortgage lender, whether organized or existing under the laws of this state, another state or the United States, which is qualified to do business in this state, for the purpose of enabling the institutions to make loans to finance the acquisition, construction, improvement or equipping of projects which are owner-occupied single family dwelling units to be occupied by persons of low and moderate income, as determined by the corporation. The loans shall be fully secured in the same manner as deposits of public funds or by loans secured by mortgages, deeds of trust or other security instruments guaranteed or insured by the United States, or any instrumentality thereof, or by any private mortgage insurance or surety company which is approved by the federal home loan mortgage corporation or the federal national mortgage association and which is licensed to do business in this state, if the private mortgage

insurance shall be in a dollar amount sufficient to satisfy the mortgage insurance requirements for loans eligible to be purchased by the federal home loan mortgage corporation or the federal national mortgage association or any other agency or department of the United States. The security shall not be necessary if the bonds issued to make the loans are guaranteed or insured by an agency, department or instrumentality of the United States. Any bonds issued to make loans shall be ratable as "A" or better by a nationally recognized bond rating agency.

12. Subject to ~~the provisions of~~ this section, to purchase or enter into advance commitments to purchase loans or any loan interests secured by mortgages, deeds of trust or other security instruments relating to projects which are owner-occupied single family dwelling units from or with any bank, savings and loan institution, credit union or other mortgage lender, whether organized or existing under the laws of this state, another state or the United States, which is qualified to do business in this state, on terms and conditions as may be determined by the corporation. The purpose of the purchases shall be to finance directly or indirectly the acquisition, construction, improvement or equipping of projects which are owner-occupied single family dwelling units to be occupied by persons of low and moderate income. If the bonds issued to make purchases are not guaranteed or insured by an agency, department or instrumentality of the United States or secured by a letter of credit, insurance policy, surety bond or other credit facility from a financial institution or a combination of such instruments, the purchased loans shall be guaranteed or insured by the United States or any agency, department, or instrumentality thereof, or by any private mortgage insurance or surety company which is approved by the federal home loan mortgage corporation or the federal national mortgage association or secured by a letter of credit, insurance policy, surety bond or other credit facility from a financial institution or a combination of such instruments. In the case of private mortgage insurance, the insurance shall be in a dollar amount sufficient to satisfy the mortgage insurance requirements for loans eligible to be purchased by the federal home loan mortgage corporation or the federal national mortgage association or any other agency or department of the United States. Any bonds issued to purchase loans shall be ratable as "A" or better by a nationally recognized bond rating agency. If the purchased loans have not been originated on behalf of the corporation to directly finance projects, the corporation shall require that the institution receiving proceeds from the sale of the loans use the proceeds to make loans to finance or refinance the acquisition, construction, improvement or equipping of projects which are owner-occupied single family dwelling units to be occupied by persons of low and moderate income, as determined by the corporation.

13. To elect not to issue an amount of qualified mortgage revenue bonds which it may otherwise issue during any calendar year and to issue instead mortgage credit certificates pursuant to a qualified mortgage credit certificate program as defined in section 35-901.

14. To make loans to any person or entity owning residential property or to make loans to any bank, savings and loan association, credit union or other mortgage lender, or to purchase or enter into advance commitments to purchase funding for the repair or improvement of property related to residential or neighborhood improvement projects. An authority may issue its bonds or incur other obligations to fund loans or purchases. An authority shall establish the provisions relating to bonds or other obligations, including the security for the loans, and shall establish the guidelines for the approval, funding, purchasing and security of the loans.

15. To enter into contracts and execute any agreements or instrument and do any other act necessary or appropriate to carry out its purposes.

16. TO EXERCISE THE POWERS GRANTED BY THIS CHAPTER, INCLUDING THROUGH THE ISSUANCE OF BONDS, TO PROVIDE FINANCING OR REFINANCING FOR PROJECTS OTHER THAN A PROJECT AS DEFINED IN SECTION 35-701, PARAGRAPH 8, SUBDIVISION (a), ITEM (v), LOCATED IN WHOLE OR IN PART OUTSIDE THIS STATE, PROVIDED THAT THE BOARD OF DIRECTORS OF THE CORPORATION HAS DETERMINED THAT THE EXERCISE OF SUCH POWERS WILL PROVIDE A BENEFIT WITHIN THIS STATE.

B. The corporation shall not have the power to operate any project as a business other than as lessor or seller nor shall any corporation make any loans pursuant to subsection A, paragraph 9 of this section for projects which are owner-occupied single family dwelling units except by utilizing as its contract agent a mortgage lender, whether organized or existing under the laws of this state, another state or the United States, which is qualified to do business in this state. Any project established pursuant to subsection A, paragraph 14 of this section is not required to use a mortgage lender as its contract agent. The corporation shall not permit any funds derived from the sale of its bonds to be used, loaned or provided for the acquisition of any facilities of a public utility or public service corporation, except as provided in section 35-701. The corporation shall comply with ~~the provisions of~~ title 38, chapter 3, article 3.1.

C. A person's or family's eligibility for an owner-occupied single family dwelling unit financed pursuant to subsection A, paragraph 11, 12 or 13 of this section shall be determined by considering the person's or family's income. Owner-occupied single family dwelling units shall only be financed as provided in subsection A, paragraphs 11, 12 and 13 of this section unless the owner-occupied single family dwelling units are located in an area designated pursuant to section 36-1479 as a slum or blighted area as defined in section 36-1471 by a municipality having a population of more than two hundred fifty thousand persons according to the most recent United States decennial census or a special census conducted in accordance with section 42-5033.

D. In the exercise of its powers authorized in this section with respect to projects which are owner-occupied single family dwelling units to be occupied by persons of low and moderate income and financed pursuant to subsection A, paragraphs 11 and 12 of this section, the corporation shall

establish, subject to approval by the governing body of the authorizing county or municipality, standards and requirements applicable to the purchase of loans or the making of loans to mortgage lenders, including:

1. The eligibility of mortgage lenders, including the requirement that all mortgage lenders be approved as mortgagees by the federal housing administration and the veterans administration and be approved as sellers and servicers of mortgage loans by the federal national mortgage association or federal home loan mortgage corporation.

2. The time within which mortgage lenders must make commitments and disbursements for mortgage loans.

3. The character of residences to be financed by mortgage loans.

4. The eligibility of persons of low and moderate income, including the requirement that no person of low and moderate income may receive, more than once in a three year period, a mortgage loan financed directly or indirectly from the proceeds of bonds issued by the corporation.

5. The terms and conditions of mortgage loans to be acquired.

6. The amounts and types of insurance coverage required on residences, mortgages and bonds.

7. The representations and warranties of mortgage lenders confirming compliance with the standards and requirements.

8. Restrictions as to interest rate and other terms of mortgage loans and the return realized on mortgage loans by mortgage lenders.

9. The type and amount of collateral security to be provided to assure repayment of any loans from the corporation and to assure repayment of bonds.

10. Assignment of the mortgage loans to a trustee acting on behalf of the corporation which shall be either a bank or trust company doing business in this state, having an officially reported combined capital surplus, undivided profits and reserves of not less than fifteen million dollars. Trustees must be approved to sell mortgages to and service mortgages for the federal national mortgage association and the federal home loan mortgage corporation.

11. Any other matters related to the purchase of mortgage loans or the making of loans to mortgage lenders deemed relevant by the corporation. In establishing standards and requirements, the corporation shall be guided by the following standards:

(a) The amount of mortgage monies proposed to be made available in the area is to be reasonably related to the demand for mortgage monies.

(b) For projects of owner-occupied single family dwelling units to be occupied by persons of low and moderate income and financed pursuant to subsection A, paragraphs 11 and 12 OF THIS SECTION, at least ten per cent of all mortgage monies proposed to be made available by the corporations other than mortgage monies reserved for any period to finance mortgage loans on residences located within an area designated as a slum or blighted area as defined in section 36-1471 shall be reserved for at least a three month period for the financing of mortgage loans on manufactured housing unless the

department of commerce makes a determination that any bonds issued to make loans will not be ratable as "A" or better by a nationally recognized bond rating agency, in which case no such reservation is required. If all the mortgage monies reserved for manufactured housing are not committed or used to make mortgage loans during this three month period, the mortgage lender may allocate the remaining monies to finance mortgage loans on any single family dwelling unit.

(c) Any departure from the level of commitment fees, origination fees or servicing fees normally charged by a mortgage lender is to be justified in the context of the transaction.

(d) The costs, fees and expenditures associated with the issuance of bonds are to be reasonably related to the services provided.

E. Only corporations, the formations of which have been approved by the governing body of a county~~,~~ having a population of more than nine per cent of the total state population computed according to the most recent United States decennial census or by the governing body of a municipality having a population of more than nine per cent of the total state population computed~~,~~ according to the most recent United States decennial census, shall have the powers granted in subsection A, paragraphs 11, 12 and 13 of this section. Except as provided in section 35-913, subsections E and F, a corporation shall not exercise the powers granted in subsection A, paragraphs 11, 12 and 13 of this section outside of its jurisdiction. For the purposes of a refunding of any mortgage revenue bond issued before January 1, 2000, the proceeds from the refunding may be used outside the jurisdiction of the corporation issuing the refunding bonds except the corporation issuing the refunding bonds shall obtain the consent from another corporation with powers granted in subsection A, paragraphs 11, 12 and 13 of this section if the proceeds of the refunding are to be used within the jurisdiction of that corporation. For the purposes of exercising the powers granted in subsection A, paragraphs 11, 12 and 13 of this section, the jurisdiction of a corporation formed on behalf of a county includes all incorporated and unincorporated territory in the county.

F. A corporation may not permit proceeds of bonds or a qualified mortgage credit certificate program to be used to finance projects which are owner-occupied single family dwelling units within the corporate limits of an incorporated city or town unless the governing body of the city or town has approved the general location and character of the residences to be financed. The corporation ~~shall~~, prior to the issuance of bonds or mortgage credit certificates for that purpose, SHALL give written notice to the governing body of each city or town in which it intends to permit proceeds of an issue of bonds or mortgage credit certificates to be used to finance projects which are owner-occupied single family dwelling units and of the general location and character of the residences which may be financed. The governing body of the city or town shall be deemed to have given its approval unless it has denied approval by formal action of the governing body within

twenty-one days after receiving the written notice from the corporation. Approvals given or deemed to have been given with respect to use of proceeds of an issue of bonds or mortgage credit certificates under this subsection may not be withdrawn. Denials may be withdrawn by the governing body of a city or town and approval may be given thereafter if the corporation issuing the bonds or mortgage credit certificates approves the withdrawal of the denial.

G. Two or more corporations with the powers granted by subsection E of this section may provide:

1. That a corporation, the formation of which was approved by the governing body of a county or city, may exercise the powers granted in subsection A, paragraphs 11, 12 and 13 of this section, with respect to owner-occupied single family dwelling units located in all counties and cities which are parties to a cooperative agreement.

2. For the joint exercise by two or more corporations, each formed with the approval of a governing body executing the cooperative agreement, of the powers granted in subsection A, paragraphs 11, 12 and 13 of this section, with respect to owner-occupied single family dwelling units located in all counties and cities which are parties to the cooperative agreement. The agreement shall specify the calendar year or years for which it is effective, the means by which the agreement may be terminated prior to the expiration of the calendar year or years and the aggregate principal amount of bonds which may be issued by the designated corporation or corporations to exercise the powers pursuant to the agreement. The corporation or corporations designated in the agreement to exercise the powers in the counties and cities which are parties to the agreement are the only corporation or corporations authorized and having jurisdiction to exercise the powers and to issue bonds to carry out the powers in the counties and cities while the agreement is in effect. The combined jurisdictions of all the counties and cities which are parties to the cooperative agreement are the jurisdictions of the corporation or corporations designated to exercise the powers granted in subsection A, paragraphs 11, 12 and 13 of this section within the meaning of the mortgage subsidy bond tax act of 1980 (P.L. 96-499; 26 United States Code section 103A).

H. It shall not be a conflict of interest under title 38, chapter 3, article 8, and this chapter, for any trustee or any mortgage lender to enter into loan agreements with, or to sell mortgage loans to, the corporation as contemplated in subsection A, paragraphs 11, 12 and 13 of this section, act for or under contract with the corporation as a mortgage originator, servicer, paying agent or depository, act as holder or dealer of bonds of the corporation~~,~~ OR have as a director, officer or employee any member of the board of directors of the corporation or any combination.

I. The department of economic security shall once in each calendar year on or before March 1 determine the median family income of this state for the purposes of this chapter.

J. All areas in this state which are either designated pursuant to section 36-1479 as slum or blighted areas as defined in section 36-1471 or designated as pockets of poverty by the United States department of housing and urban development are designated as areas of chronic economic distress within the meaning of the mortgage subsidy bond tax act of 1980 (P.L. 96-499; 26 United States Code section 103A).

K. Any corporation that is described in subsection E of this section and that desires to exercise the powers granted in subsection A, paragraphs 11, 12 and 13 of this section, with respect to owner-occupied single family dwelling units located in two or more counties, may do so if the corporation, before issuing bonds or mortgage credit certificates for that purpose, gives written notice to the governing bodies of the other counties and their respective corporations, if any, of its intent to permit the proceeds of an issue of bonds or mortgage credit certificates to finance projects within its jurisdiction which are owner-occupied single family dwelling units. The governing body of a county and its respective corporation, if any, which have been given notice are deemed to have approved the use of the proceeds or mortgage credit certificates for owner-occupied single family dwelling units within their jurisdiction and approved the use of any state ceiling, as defined in section 35-901, unless approval is denied by formal action of the governing body or the board of directors of the corporation, if any, within twenty-one days after receiving written notice from the corporation. Absent a denial of approval as stated in this subsection, a cooperative agreement providing for the exercise of the powers granted in subsection A, paragraphs 11, 12 and 13 of this section is deemed to exist among the applicable counties or corporations. Approvals given or deemed to have been given with respect to the matters stated in this subsection may not be withdrawn. Denials by the governing body of a county apply only to the unincorporated areas of the county. Denials may be withdrawn by the governing body of a county and approval may be given thereafter if the corporation issuing the bonds or mortgage credit certificates approves the withdrawal of the denial. Mortgage credit certificates and bond proceeds issued pursuant to this subsection shall be available on an equitable basis within each of the participating counties.

Sec. 5. Section 35-721, Arizona Revised Statutes, is amended to read:

35-721. Bonds of the corporation

A. All principal and interest of bonds issued by the corporation shall be payable solely out of the revenues, proceeds and receipts derived from the corporation's sale of property, loan repayments or lease rentals, or out of the proceeds of bonds issued hereunder, or of any revenues, proceeds and receipts thereof as shall be specified in the proceedings of the board of directors under which the bonds shall be authorized to be issued.

B. The proceedings under which such bonds are to be issued shall require the approval of the governing body of each issuance of bonds.

C. The bonds prescribed by subsection A may:

1. Be executed and delivered by the corporation at any time and from time to time. ~~, and~~

2. Be in such form and denominations and of such tenor and maturities. ~~, and~~

3. Be in registered or bearer form either as to principal or interest or both. ~~, and~~

4. Be payable in such installments and at such time or times not exceeding forty years from the date thereof. ~~, and~~

5. Be payable at such place or places within or without the state of Arizona. ~~, and~~

6. Bear interest at such rate or rates, payable at such time or times and at such place or places and evidenced in such manner. ~~, and~~

7. Be executed by such officers of the corporation and in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided in the proceedings of the board of directors whereunder the bonds are authorized to be issued.

D. If deemed advisable by the board of directors, there may be retained in the proceedings under which any bonds of the corporation are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and as may be briefly recited on the face of the bonds, but nothing in this article shall be construed to confer on the corporation any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued.

E. Any bonds of the corporation may be sold at public or private sale in such manner and from time to time as may be determined by the board of directors of the corporation to be most advantageous, and the corporation may pay all expenses, premiums and commissions which its board of directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the corporation of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same project or any other project, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the corporation at any time outstanding may at any time and from time to time be refunded by the corporation by the issuance of its refunding bonds in such amount as the board of directors may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby with the

consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same projects or separate projects, and regardless of whether or not the bonds proposed to be refunded shall be payable at the same date or different dates or shall be due serially or otherwise. All such bonds and the interest coupons applicable thereto are hereby made and shall be construed to be negotiable instruments.

F. The corporation shall notify the attorney general of its intention to issue bonds. Such notification shall adequately describe the project. The attorney general shall inform the corporation within ten days if in his opinion the project sought to be financed does not come within the purview of this chapter. If after ten days the attorney general has not issued an opinion that the project does not so conform, the corporation may issue such bonds. If the attorney general's negative opinion is issued within ten days, such bonds shall not be issued. No action shall be brought questioning the legality of any contract, lease, mortgage, proceedings or the issuance of bonds hereunder from and after ~~three months~~ NINETY CALENDAR DAYS from the date the bonds are authorized to be issued by the governing body.

Sec. 6. Section 35-728, Arizona Revised Statutes, is amended to read:

35-728. Additional powers; allocating low-income housing tax credits; report; definition

A. In addition to the other powers granted to the department, the department may:

1. Adopt rules for the conduct of its business and its review of the activities described in this article.

2. Contract with, retain or designate financial consultants, attorneys and such other consultants and independent contractors as it determines necessary or appropriate to carry out the purposes of this article.

3. Undertake and carry out or authorize the completion of studies and analyses of housing conditions and needs within this state relevant to the purposes of this section to the extent not otherwise undertaken by other departments or agencies of this state satisfactory for such purpose.

B. The department is designated the housing credit agency for this state for purposes of section 42 of the United States internal revenue code and is responsible for allocating the federal low-income housing tax credits available to this state. After reviewing applications the department may assess the applicant a reasonable fee in connection with processing the applications and monitoring compliance with the program. Beginning on October 1, 2002, the department shall remit the fees to the state treasurer for deposit in the Arizona department of housing program fund established by section 41-3957.

C. For the activities authorized in this section, the department shall notify a city, town, county or tribal government that a multifamily rental project is planned for its jurisdiction and, before proceeding, shall request and obtain written consent from the governing body of the city, town, county

or tribal government or an official authorized by the governing body of the city, town, county or tribal government. The department shall not interfere with or attempt to override the local jurisdiction's planning, zoning or land use regulations. This subsection shall not be interpreted to interfere in any way with the requirements of state or federal fair housing laws.

D. The department shall provide to the governor, the president of the senate, the speaker of the house of representatives and the auditor general not later than September 30 of each year a report of the activities of the department during the preceding fiscal year. The report shall include information on the following matters:

1. An assessment of the number and geographic location of housing units or developments financed or otherwise assisted by the department or by the corporations reporting to the department.

2. An assessment of the assistance in obtaining housing provided by the department or by the corporations reporting to the department to persons of low or moderate income and to other persons.

3. An assessment of the approximate amount of money used in the housing industry as a result of the department's activities.

E. For the purposes of this section, "department" means:

~~1. Through September 30, 2002, the office of housing development in the governor's office.~~

~~2. Beginning on October 1, 2002,~~ the Arizona department of housing.

Sec. 7. Section 35-729, Arizona Revised Statutes, is amended to read:

35-729. Exemption from procurement code

For purposes of this article and chapter 7 of this title, the following are exempt from title 41, chapter 23 or other restrictions on the procedure for entering into contracts:

1. The department of commerce.

~~2. Through September 30, 2002, the office of housing development in the governor's office.~~

~~3. Beginning on October 1, 2002,~~

2. The Arizona department of housing.

Sec. 8. Section 35-901, Arizona Revised Statutes, is amended to read:

35-901. Definitions

In this chapter, unless the context otherwise requires:

1. "Bond" means any obligation which is subject to the provisions of section 146 of the code, excluding obligations that received a carry-forward allocation in a prior year.

2. "Business day" means between the hours of 8:00 a.m. and 5:00 p.m., mountain standard time, any day of the week other than a Saturday, a Sunday or a legal holiday or a day on which the department is authorized or obligated by law or executive order to close.

3. "Carry-forward project" means any project receiving a carry-forward allocation pursuant to section 35-907.

4. "Certificate of closing" means the certificate of closing adopted for use by and to be filed with the department declaring that bonds were issued or that a qualified mortgage credit certificate program has been established.

5. "Code" means the United States internal revenue code of 1986, as amended, and its applicable regulations.

6. "Confirmation" means the allocation confirmation which confirms an allocation to a project in the form adopted for use by the department.

7. "Department" means the department of commerce.

8. "Director" means the director of the department and any other person authorized to act on behalf of the department.

9. "Issued" means, ~~delivered and paid for~~ WITH RESPECT TO A BOND OR BONDS, EITHER OF THE FOLLOWING:

(a) THE BOND OR BONDS HAVE BEEN DELIVERED AND PAID FOR IN FULL.

(b) FOR BONDS ISSUED PURSUANT TO A DRAW-DOWN LOAN FOR WHICH A BOND PURCHASER HAS AGREED TO RECEIVE AND PAY FOR THE BONDS OF THE ISSUE IN INCREMENTS FROM TIME TO TIME, ALL OF THE BONDS ARE TREATED AS ISSUED ON THE FIRST DATE ON WHICH THE AGGREGATE PRINCIPAL AMOUNT OF SUCH BONDS DELIVERED AND PAID FOR EXCEEDS THE LESSER OF FIFTY THOUSAND DOLLARS OR FIVE PER CENT OF THE AGGREGATE ISSUE PRICE OF THE ISSUE.

10. "Issuer" means an entity or person issuing bonds.

11. "Manufacturing project" means a project as described in section 35-701, paragraph 8, subdivision (a), item (i), (ii), (x) or (xiii).

12. "Mortgage credit certificate" means a certificate as described in section 25(c)(1) of the code.

13. "Nonurban area" means all areas of this state not within the boundaries of the urban cities.

14. "Notice of intent" means the notice of intent to be filed with the department in the form adopted for use by the department.

15. "Project" means a qualified mortgage credit certificate program or any construction, acquisition, planned expenditure or other activity, including all phases of a multiphased project which requests allocations in the same year and including costs of issuance, capitalized interest and discounts, financed with bonds and located in this state or directly benefiting residents of this state. All qualified mortgage credit certificate programs and qualified mortgage revenue bonds, or combinations of such programs and bonds, of a single issuer or group of issuers acting together, constitute a single project for the purposes of this paragraph.

16. "Qualified mortgage credit certificate program" means a qualified mortgage credit certificate program as described in section 25(c)(2) of the code.

17. "Qualified mortgage revenue bonds" means an issue of bonds as described in section 143(a) of the code.

18. "Qualified student loan project" means an issue of bonds as described in section 144(b) of the code.

19. "Request" means the request for allocation to be filed with the department in the form adopted for use by the department.

20. "Security deposit" means cash, a bank cashier's check, a surety bond, a letter of credit or any other form of security approved by the director in favor of the department which is received by the department from an issuer or user to secure or extend an allocation.

21. "State ceiling" means the dollar limit of the aggregate amount of private activity bonds which may be issued in this state pursuant to section 146 of the code for each calendar year, beginning in 1988.

22. "Tax reform act of 1986" means P.L. 99-514 enacted by the ninety-ninth Congress, second session in 1986.

23. "Urban city" means a city having a population of not less than one hundred thousand persons according to the most recent United States decennial or special census. The area of each urban city is the boundary of the city as of January 1 of the current calendar year.

24. "Year" means the calendar year.

Sec. 9. Section 35-904, Arizona Revised Statutes, is amended to read:

35-904. Obtaining and issuing confirmations

A. Subject to section 35-905, a confirmation allocating a portion of the state ceiling to a project must be obtained before the sale or issuance of bonds or mortgage credit certificates by the issuer. A confirmation may be obtained by filing with the department a request and filing with the department evidence of an inducement resolution or other official action taken by the issuer in connection with the project. Requests filed by mail are deemed to be filed with the department at 5:00 p.m. on the day the request is actually received at the department. All requests received on the same date and at the same time shall be dated and numbered by lot and confirmations to those requests shall be issued in the order determined by lot.

B. On and after the first business day of each year, a request may be prepared and filed by the issuer or on behalf of the issuer by bond counsel or any other interested person.

C. Except as provided in section 35-902, subsection I, section 35-909 and subsection D of this section, a confirmation issued before 5:00 p.m. on June 30 expires and no allocation is deemed to be made unless the applicable bonds have been issued or a qualified mortgage credit certificate program has been established and a certificate of closing has been actually filed, not merely postmarked, with the department no later than ~~sixty~~ NINETY days after the date of the confirmation or the first business day after the ~~sixtieth~~ NINETIETH day if the ~~sixtieth~~ NINETIETH day is not a business day. The confirmation may be extended as provided in section 35-910 beyond such ~~sixty~~ NINETY day period or 5:00 p.m. on June 30.

D. Notwithstanding subsection C of this section, a confirmation issued for a project to be funded in part with an urban development action grant to be made under section 119 of the housing and community development act of

1974 (P.L. 93-383; 88 Stat. 633) or a housing development grant to be made under section 301 of the housing and urban-renewal recovery act of 1983 (P.L. 98-181, title III, section 301, 97 Stat. 1196 and amended October 17, 1984, P.L. 98-479, title III, section 103, 98 Stat. 2223) expires and no allocation is deemed to be made unless the applicable bonds have been issued and a certificate of closing and evidence satisfactory to the director of the commitment to make an urban development action grant or a housing development grant with respect to such project have been actually filed, not merely postmarked, with the department no later than 5:00 p.m. on December 26.

E. Subject to ~~the provisions of~~ this section and section 35-909, the confirmation shall assure allocation in the manner prescribed by the code for a dollar amount of bonds or a qualified mortgage credit certificate program not in excess of the amount set forth in the confirmation.

F. The director shall decline to issue confirmations at such time as the aggregate amount of bonds or mortgage credit certificates allocated under all confirmations previously issued and not expired, together with the proposed issue of bonds or mortgage credit certificates as to which a request has been received, would, through 5:00 p.m. on June 30, exceed the respective aggregate amount allocated under section 35-902, subsection C, D, E, F or G for such purpose, and from July 1, exceed the aggregate amount of the state ceiling that is not allocated under an unexpired confirmation nor within the discretion of the director pursuant to section 35-902, subsection B. On expiration of a confirmation or release of an allocation, the director shall issue a confirmation to the next numbered request which is equal to or less than the then available portion of the state ceiling or to the next numbered request if the principal amount of such request is reduced to an amount equal to or less than the then available portion of the state ceiling available for such purpose. The director may only issue a single confirmation for each request.

G. A confirmation made pursuant to the director's discretion may be accompanied by a certificate executed by the director. The director, on request, shall execute a certificate stating that the confirmation was not made in consideration of any bribe, gift, gratuity or direct or indirect contribution to any political campaign. The director may require such oaths or affirmations as the director deems necessary to verify the accuracy of the certificate.

H. The director shall attempt to issue confirmations within three business days of receipt and shall issue confirmations in the order of receipt of fully and properly completed requests within the limitations of subsection F of this section. The department shall notify the issuer or other contact person listed in the request in writing, by telefacsimile or by telephone of the issuance of a confirmation. The department is not responsible for returning confirmations to the filing party. A confirmation shall be available for pickup at the department after issuance of the confirmation.

Sec. 10. Section 35-905, Arizona Revised Statutes, is amended to read:

35-905. Restrictions on confirmations

A. Before April 1 of each year, seventy per cent of the allocation to manufacturing projects described in section 35-902, subsection F is reserved for manufacturing projects located in nonurban areas, and the remaining thirty per cent of the allocation to manufacturing projects described in section 35-902, subsection F shall be reserved for urban areas. Before July 1 of each year, seventy per cent of the allocation available for confirmation pursuant to the director's discretion as described in section 35-902, subsection B is reserved for projects located in nonurban areas, and the remaining thirty per cent of the allocation to the director's discretion as described in section 35-902, subsection B, shall be reserved for urban areas.

B. Before December 17, a confirmation shall not be allocated to a project in an amount greater than ~~twenty~~ THIRTY-FIVE million dollars, except that this subsection does not apply to any project that is eligible to receive an allocation pursuant to section 35-902, subsection B, C or E. For THE purposes of this subsection, the amount of allocation to a project shall also include any other state ceiling allocation received by any related person to the project. For THE purposes of this subsection, "related person" has the same meaning as provided in section 147(a)(2) of the code, except that all references to fifty per cent shall be changed to twenty-five per cent.

Sec. 11. Section 35-906, Arizona Revised Statutes, is amended to read:

35-906. Allocations obtained after June 30 through 5:00 p.m. December 16

A. Any portions of the state ceiling, including any portions of the state ceiling subject to a confirmation for which bonds have not been issued or for which a qualified mortgage credit certificate program has not been established by 5:00 p.m. on June 30, other than confirmations extended pursuant to section 35-910 and the state ceiling allocated to the discretion of the director pursuant to section 35-902, subsection B, shall be pooled and are subject to allocation among requests on a first come, first served basis.

B. Obtaining and issuing confirmations on or after July 1 through 5:00 p.m. December 16 shall occur as provided in section 35-904, subject to the following restrictions and changes:

1. Requests may be filed on or after July 1 of each year.

2. A confirmation issued on or after July 1 through 5:00 p.m. December 16 expires and no issuer is deemed to have been allocated any portion of the state ceiling unless the issuer's bonds have been issued or a qualified mortgage credit certificate program has been established and a certificate of closing has been actually filed, and not merely postmarked, with the department no later than ~~sixty~~ NINETY days after the date of the confirmation or the first business day after the ~~sixtieth~~ NINETIETH day if the ~~sixtieth~~ NINETIETH day is not a business day, or before 5:00 p.m. December 16,

whichever occurs first. The confirmation may be extended as provided in section 35-910.

3. Before the director issues the confirmation, the department must receive a security deposit in the amount of one per cent of the principal amount stated in the request. The security deposit is forfeited to the department if the bonds are not issued before the expiration of the confirmation or any extension. The security deposit shall not be required pursuant to this paragraph if the direct beneficiary of the bond proceeds is this state or a county, city, town or nonprofit entity, the issuer is a student loan corporation or the project will include urban development action grant or housing development grant financing, is a qualified mortgage revenue bond or is a qualified mortgage credit certificate program.

4. Except as provided in section 35-910, after June 30 of each year, the director shall not issue confirmations for any request for allocations submitted directly or indirectly in connection with a qualified mortgage certificate program or qualified mortgage revenue bonds.

Sec. 12. Section 35-910, Arizona Revised Statutes, is amended to read:

35-910. Extension of confirmations

A. A confirmation may be extended one time for up to ~~sixty~~ NINETY days but not later than December 16 on providing the department with a security deposit equal to one per cent of the principal amount set forth in the confirmation. The security deposit and request for extension shall be submitted to the department before the expiration of the confirmation. Except as provided in subsection B, all extensions granted pursuant to this section expire on the earlier of ~~sixty~~ NINETY days from the date of the extension or at 5:00 p.m. December 16. No security deposit is required pursuant to this section if the project is a qualified student loan project, is a qualified mortgage revenue bond, is a qualified mortgage credit certificate program or is for home improvement and rehabilitation. Requests shall not be extended.

B. A confirmation or extension of confirmation which expires at 5:00 p.m. December 16 may be extended to 5:00 p.m. December 26 by filing with the department on or before 5:00 p.m. on December 16 a certificate certifying that the bonds will be issued before 5:00 p.m. December 26, and providing the department with an additional security deposit equal to one per cent of the principal amount stated in the confirmation. All extensions granted pursuant to this subsection expire at 5:00 p.m. December 26.

C. All security deposits received by the department pursuant to this section are forfeited in favor of the department if bonds are not issued before the expiration of the extension.

Sec. 13. Section 35-913, Arizona Revised Statutes, is amended to read:

35-913. Special allocations for mortgage revenue bonds and mortgage credit certificates; definitions

A. This section governs allocations of the state ceiling made by the director of the department of commerce pursuant to section 35-902, subsection C.

B. If the portion of a corporation's allocation computed pursuant to subsection C of this section is less than ten million dollars, the director of the department of commerce shall first award ten million dollars of the state allocation to that corporation. Thereafter, the director of the department of commerce shall award the remaining state allocation in the same proportion that the population of each of the remaining corporations' jurisdictions bears to the population of this state according to the census, minus the population of the corporations receiving a ten million dollar allocation pursuant to this subsection.

C. Each corporation that is described in section 35-706, subsection E and that submits a request for allocation pursuant to section 35-902, subsection C shall receive a portion of the allocation made by the director of the department of commerce in the same proportion that the population of that corporation's jurisdiction bears to the population of this state, according to the census but in no event less than ten million dollars.

D. At any time before submitting a formal request for allocation, but no later than January 31, a corporation described in section 35-706, subsection E may submit to the director an allocation reservation for an amount not to exceed that portion of the allocation to which the corporation is entitled pursuant to this subsection. The allocation reservation may include an offer to use additional allocation amounts described in subsection E of this section for rural areas. On or before January 31, the Arizona housing finance authority may submit to the director an allocation reservation for the amounts described in subsection E of this section for rural areas. The allocation reservation does not constitute a formal request for allocation and does not obligate the Arizona housing finance authority or a corporation to submit a request for allocation.

E. The director shall require that one or more qualified mortgage revenue bond or qualified mortgage credit certificate programs benefit the residents of rural areas. Between February 1 and March 1, an allocation of the unreserved portion of the state ceiling under section 35-902, subsection C shall be made by the director for this purpose. The recipient of this allocation shall be the Arizona housing finance authority, or the Arizona housing finance authority and one or more corporations, or one or more corporations that have executed a cooperative agreement and that have jointly submitted an allocation reservation pursuant to subsection C of this section. The director shall determine the recipient of the allocation described in this subsection by March 1 from the Arizona housing finance authority or one or more of those corporations that have offered to use the allocation

described in this subsection in an allocation reservation submitted before February 1. If neither the Arizona housing finance authority nor any corporation offers an allocation reservation to use this allocation before February 1 the director shall select the Arizona housing finance authority or a corporation for that purpose.

F. If the director selects the Arizona housing finance authority, or the Arizona housing finance authority and one or more corporations or one or more corporations to serve rural areas, the Arizona housing finance authority, the Arizona housing finance authority and one or more corporations or the corporation or corporations shall receive confirmation of the allocation described in subsection E of this section before March 1. Mortgage credit certificates or the proceeds of qualified mortgage revenue bonds made available through the portion of the state ceiling allocated pursuant to subsection E of this section shall be reserved for at least a one hundred eighty day period exclusively for the financing of single family dwelling units in rural areas. The director may extend the one hundred eighty day period at the time of allocation or a later time based on market conditions. The director at any time may modify any extension based on market conditions at the time. After the one hundred eighty day period or any extension, whichever is later, the director may allocate any reservation that has not been used for use within the jurisdiction of any corporation that is described in section 35-706, subsection E and that gives its consent.

G. The validity of a confirmation for qualified mortgage revenue bonds or a qualified mortgage credit certificate program to benefit residents of part of the state shall not be affected by reason of qualified mortgage revenue bonds or a qualified mortgage credit certificate program receiving a confirmation to benefit residents of another part of the state not being issued.

H. Except as provided in subsections F and G of this section, a corporation shall not exercise the powers granted under section 35-706, subsection A, paragraphs 11, 12 and 13 outside of its own jurisdiction.

I. At the time a confirmation is issued the director shall determine in writing the allocation amounts in the manner described in this section. In determining the recipient or recipients for the allocation described in subsection E of this section, the director may consider the effectiveness of alternative program structures in rural areas. No action may be brought questioning the accuracy of any determination made by the director pursuant to this section without a finding of the director's bad faith or wilful misconduct.

J. Confirmations of the state ceiling under section 35-902, subsection C may be applied toward a qualified mortgage revenue bond program or qualified mortgage credit certificate program in any combination deemed appropriate by the issuing corporation with the approval of its governing body or by the board of the Arizona housing finance authority for a program for rural areas established by the Arizona housing finance authority.

K. Denial of approval of the use of qualified mortgage revenue bond proceeds or qualified mortgage credit certificates in a city or town pursuant to section 35-706 or subsection L of this section does not affect the validity of the allocation or affect the amount of state allocation that is allocated for that purpose.

L. The Arizona housing finance authority may not permit proceeds of bonds or a qualified mortgage credit certificate program in rural areas to be used to finance projects that are owner-occupied single family dwelling units within the corporate limits of an incorporated city or town, the unincorporated area of a county or a reservation for an Indian tribe, unless the governing body of the city, town, county or tribe has approved the general location and character of the residences to be financed. Before the issuance of bonds or mortgage credit certificates for that purpose, the authority shall give written notice to the governing body of each city, town, county or tribal reservation in which it intends to permit proceeds of an issue of bonds or mortgage credit certificates to be used to finance projects that are owner-occupied single family dwelling units and of the general location and character of the residences that may be financed. The governing body of the city, town, county or tribe is deemed to have given its approval unless it denies approval by formal action of the governing body within twenty-one days after receiving the written notice from the authority. Approvals given or deemed to have been given with respect to use of proceeds of an issue of bonds or mortgage credit certificates under this subsection may not be withdrawn. Denials may be withdrawn by the governing body of a city, town, county or tribe and approval may be given after a denial is withdrawn if the authority approves the withdrawal of the denial.

M. For THE purposes of this section:

1. "Census" means the most recent United States decennial census or the special census conducted in accordance with section 42-5033 if it is more recent than the most recent United States decennial census.

2. "Director" means~~:~~

~~(a) Through September 30, 2002, the director of the office of housing development in the governor's office.~~

~~(b) Beginning on October 1, 2002,~~ the director of the Arizona department of housing.

3. "Population" of a corporation's jurisdiction means population according to the census. The population of a corporation formed on behalf of a county equals the population of the county minus the population of any other corporation that is within the county, that is described in section 35-706, subsection E and that submits a request for allocation pursuant to section 35-902, subsection C.

4. "Rural areas" means all of the area of this state that is not located within the jurisdiction of a corporation described in section 35-706, subsection E.

APPROVED BY THE GOVERNOR APRIL 17, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2006.