[HiR-PL-1-51-222]

ARIZONA COUNTIES HIGHWAY MANUAL

Prepared by

JHK & Associates

Prepared for

Arizona Department of Transportation
Transportation Research Center

January, 1987

ACKNOWLEDGEMENTS

This publication was prepared by JHK & Associates, under contract to the Arizona Department of Transportation, Transportation Research Center.

This publication was prepared through the following steps: (1) The project team developed a Table of Contents for the Arizona Counties Manual, which was reviewed by the Project Committee, (2) all county engineers in the state were interviewed to ascertain what subjects should be included in the manual, (3) the manual materials were prepared, (4) the manual was submitted for review to the Arizona Transportation Research Center (ATRC) staff, (5) the manual was again reviewed internally and by the ATRC staff, and (6) a final review was made by Project Committee.

The authors wish to thank the Project Committee for their time and effort on this project. The Project Committee was composed of the following representatives:

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DISCLAIMER

This manual is prepared and intended to be used as an overall guide book, particularly for new county engineers. It is not intended to replace or be a substitute for the individual's own good engineering judgment nor to obviate the necessity for research. While thoroughness and completeness have been strived for, the State of Arizona makes no representations nor warranties that the manual is in any way complete and assumes no responsibility or liability for any claims arising out of actions taken based upon any of the materials contained in this manual. Any questions should be reviewed by local county attorneys and advice and counsel sought from other available sources.

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1. INTRODUCTION

The role of the county highway engineer has become increasingly important to ensure the safe movement of persons and goods in an increasingly mobile society. The practice of a county highway engineer has become increasingly complex. Therefore, this guidebook has been prepared to present practices used by county engineers in Arizona. A key element of this manual is the provision of legal statutes and court decisions referred to by county engineers. This work is particularly geared towards new county engineers, who will have questions on procedures, practices, and legal requirements.

It is important not only to report on highway engineering practices, but also to give a well-rounded picture of county government structure, including development of statutes and statutory basis of highways, role of the board of supervisors, functions of a county engineer, highway funding, budgets and programs, and intergovernmental relations. The other subjects refer to specific areas of practice, such as:

- o maintenance and operations
- o traffic signs, signals, and markings
- o traffic safety
- o right-of-way
- o coordination of utilities
- o highway improvement standards
- o procurement and management of county equipment
- o procurement of outside services
- o disaster and emergency assistance

Throughout this work, the legal basis (statutes and court decisions) for all actions is stressed. It is important to note however, that this work is not a legal standard. No lay person should attempt to interpret the law. This work points the way to applicable sources and guides. The following disclaimer applies:

> "This manual is prepared and intended to be used as an overall guide book, particularly for new county engineers. It is not intended to replace or be a substitute for the individual's own good engineering judgment nor to obviate the necessity for research. While thoroughness and

completeness have been strived for, the State of Arizona makes no representations nor warranties that the manual is in any way complete and assumes no responsibility or liability for any claims arising out of actions taken based upon any of the materials contained in this manual. Any questions should be reviewed by local county attorneys and advice and counsel sought from other available sources."

One important aspect in understanding statutes and standards and applying them to everyday practice is an understanding of the terms "shall," "should," and "may" as they are applied in text. Many reference sources quoted in this manual use these terms because they connote legal requirements. For instance, the Manual on Uniform Traffic Control Devices defines these terms as follows:

1. SHALL--A mandatory condition. Where certain requirements in the design or application of the device are described with the "shall" stipulation, it is mandatory when an installation is made that these requirements be met.

2. SHOULD--An advisory condition. Where the word "should" is used, it is considered to be advisable usage, recommended but not mandatory.

3. MAY--A permissive condition. No requirement for design or application is intended.

ORGANIZATION OF MANUAL

This manual is organized by chapter, with each chapter consisting of a discussion of the subject matter, accompanied by lists of references and statutes. The actual text of the statutes is listed and indexed in Chapter 20, Text of Statutes. Summaries of the court decisions and statutes, by chapter, are listed in Chapter 19, Summary of Statutes and Court Decisions. An appendix to this chapter is a list of reference sources such as county engineer names and addresses, selected state offices, Councils of Governments, and other organizations.

UPDATING THE MANUAL

This manual is published in a loose-leaf format so that periodic updates can be easily inserted. The revisions will be provided in the form of full page revisions, with the date of the revision placed at the bottom of the page. The original text is undated. A line will be drawn on the side of the margin, indicating the sentence or paragraph changed.

PURCHASING THE MANUAL

This publication is available for sale at and by mail order from:

Engineering Records Services
Arizona Department of Transportation
1655 West Jackson, Room 112F
Phoenix, Arizona 85007
(602) 255-7498

The cost of this publication is $30.00. Checks should be made payable to Arizona Department of Transportation. Sale of the publication is on a cash (check or money order) basis only, except that purchase orders of the Federal Government, states, and other political subdivisions may be honored.

APPENDIX - CHAPTER 1

LIST OF ORGANIZATIONS

County Engineers
Selected State Offices
Council of Governments
Other Organizations

COUNTY ENGINEERS

		Area Code (602)
APACHE COUNTY	Mr. Jesse M. Broadbent Apache County Engineer P.O. Box 238 St. Johns, AZ 85936	337-4364
COCONINO COUNTY	Mr. Jim Stalnaker Highway Director 219 East Cherry Street Flagstaff, AZ 86001	774-5011 Ext. 281
COCHISE COUNTY	Mr. Dave Mauthe Cochise County Engineer P.O. Drawer AJ Bisbee, AZ 85603	432-5703
GILA COUNTY	Mr. Terry E. Beydler Gila County Engineer 1400 East Ash Street Globe, AZ 85501	425-3231
GRAHAM COUNTY	Mr. James Moser Graham County Engineer 800 Main Street Safford, AZ 85546	428-0410
GREENLEE COUNTY	Mr. Tom Candeleria Greenlee County Public Works Director P.O. Box 908 Clifton, AZ 85533	865-4762
LA PAZ COUNTY	Mr. Alan Dent La Paz County Director, Public Works P.O. Box BP Parker, AZ 85344	667-3326
MARICOPA COUNTY	Mr. Robert Esterbrooks Maricopa County Engineer 3325 West Durango Street Phoenix, AZ 85009	233-8608
MOHAVE COUNTY	Mr. Harold J. Ganyo Mohave County Director of Engineering Courthouse-Fourth & Spring Street 119 E. Andy Devine Kingman, AZ 86401	753-9141
NAVAJO COUNTY	Mr. James Bruce Navajo County Engineer County Governmental Center South Highway 77 P.O. box 668 Holbrook, AZ 86025	524-6161
PIMA COUNTY	Mr. Charles Huckelberry Director, Pima County Transportation and Flood Control District 1313 South Mission Road Tucson, AZ 85713	882-2662
PINAL COUNTY	Mr. Charles B. Minter Pinal County Highway Director P.O. Box 727 Florence, AZ 85232	868-5801 Ext. 410

COUNTY ENGINEERS (CONTINUED)

SANTA CRUZ COUNTY	Mr. Frank Krupp Santa Cruz Director, Public Works 405 Briggs Street Nogales, AZ 85621	287-2211
YAVAPAI COUNTY	Mr. Gerrald Mumford Yavapai County Director, Public Works and County Engineer 255 East Gurley Street Prescott, AZ 86301	445-7450
YUMA COUNTY	Mr. Donald B. Fortney Yuma County Director, Public Works 2703 Avenue B Yuma, AZ 85364	726-5408

SELECTED STATE OFFICES

		Area Code (602)
ADMINISTRATION, DEPARTMENT OF	1700 West Washington, Room 809, Phoenix 85007	255-1751
ATTORNEY GENERAL	1275 West Washington, Phoenix 85007	255-4266
Administration Division		255-4266
Transportation Division		255-1680
Tucson Office	402 West Congress, Suite 315, Tucson 85701-1367	628-5501
COMMERCE, DEPARTMENT OF	1700 West Washington, 9th Floor, Phoenix 85007	255-5371
Development Division		255-5705
Planning Division		255-3833
Clearinghouse		255-5004
Block Grant Program		255-4920
Community Services Assistance		255-5834
New Business Development		255-4952
CORPORATION COMMISSION	P.O. Box 6019, Phoenix 85005	255-3026
ECONOMIC SECURITY, DEPARTMENT OF	1717 West Jefferson, Phoenix 85007	255-5678
Planning and Policy Development Division		255-3937
Employment and Rehabilitation Services Division		255-4910
Unemployment Insurance Administration		255-3667
EMERGENCY SERVICES, DIVISION OF	5636 East McDowell, Phoenix 85008	244-0504
GOVERNOR'S OFFICE	1700 West Washington, 9th Floor, Phoenix 85007	255-4331
Highway Safety Coordinator	1801 West Jefferson, Room 465, Phoenix 85008	255-3216
HEALTH SERVICES, DEPARTMENT OF		
Office of Program Administration		257-2307
Office of Emergency Response and Environmental Analysis		257-2306
Office of Waste and Water Quality Management		257-2305
Office of Air Quality Management		257-2285
HISTORICAL SOCIETY, PHOENIX	1242 North Central, Phoenix 85004	255-4479 or 255-4470
LEGISLATURE	1700 West Washington, Senate Wing, Phoenix 85007	
Senate		
President		255-4233
Administrative Assistant to President		255-4325
Secretary of the Senate		255-4231
Senate Research Coordinator		255-3171
House of Representatives	1700 West Washington, House Wing, Phoenix 85007	
Speaker of the House		255-5874
Chief Clerk's Office		255-3032
Auditor General	2700 North Central, Suite 700, Phoenix 85004	255-4385
Joint Legislative Budget Committee	1716 West Adams, Phoenix 85007	255-5491
Legislative Council	1700 West Washington, Suite 100, Phoenix 85007	255-4236
Library, Archives and Public Record, Department of		255-3701
Library Extension Service		255-4035
Records Management and Microfilming Center		255-3741
PARKS BOARD, ARIZONA STATE	1688 West Adams, Room 106, Phoenix 85007	255-4174
Outdoor Recreation Coordinating Commission		255-4174
REAL ESTATE DEPARTMENT	2005 North Central, Suite 700, Phoenix 85004	255-4345
REGISTRAR OF CONTRACTORS	1818 West Adams, Phoenix 85007	255-1525
Licenses and Records		255-1502

SELECTED STATE OFFICES (CONTINUED)

REVENUE, ARIZONA DEPARTMENT OF	1700 West Washington, Room 202, Phoenix 85007	255-3393
SECRETARY OF STATE	1700 West Washington, 7th Floor, Phoenix 85007	255-4286
SUPREME COURT	1700 West Washington, Room 201, West Wing, Phoenix 85007	255-4536
TRANSPORTATION, DEPARTMENT OF	1801 West Jefferson, Phoenix 85007	255-7011
Aeronautics Division		255-7691
Driver's License		255-7011
Highways Division	205 S. 17th Avenue, Phoenix 85007	255-7391
Motor Vehicle Division		255-7011
Transportation Planning Division	206 S. 17th Avenue, Phoenix 85007	255-7431

COUNCIL OF GOVERNMENTS

		Area Code (602)
CENTRAL ARIZONA ASSOCIATION OF GOVERNMENTS (CAAG)	1810 Main Street, Florence 85232 (Region V: Gila and Pinal Counties)	868-5878
NORTHERN ARIZONA COUNCIL OF GOVERNMENTS (NACOG)	P.O. Box 57, Flagstaff 86002 (Region III: Apache, Coconino, Navajo, and Yavapai Counties)	774-1395
PIMA ASSOCIATION OF GOVERNMENTS (PAG)	100 N. Stone, Suite 1100, Tucson 85701 (Region II: Pima County)	792-1093
MARICOPA ASSOCIATION OF GOVERNMENTS (MAG)	1739 W. Jackson, Phoenix 85007 (Region I: Maricopa County)	255-7867
SOUTHEASTERN ARIZONA GOVERNMENTS ORGANIZATION (SEAGO)	P.O. Box 208, Bisbee 85603 (Region VI: Cochise, Graham, Greenlee, and Santa Cruz Counties)	432-5301
YUMA METROPOLITAN PLANNING ORGANIZATION (YMPO)	180 W. 1st Street, Yuma 85364 (Region IV: Yuma Counties)	783-8911
WESTERN ARIZONA COUNCIL OF GOVERNMENTS	1018 S. 4th Avenue Yuma, Arizona 85364 (Region IV: Mohave, La Paz Counties)	782-1886

OTHER ORGANIZATIONS

		Area Code (602)
THE ARIZONA ASSOCIATION OF COUNTIES	1820 West Washington Street Phoenix, AZ 85007	252-6563
THE LEAGUE OF ARIZONA CITIES AND TOWNS	1820 West Washington Street Phoenix, AZ 85007	258-5786

2. OVERVIEW OF STATUTES AND POLICIES

INTRODUCTION

The Arizona Revised Statutes are a basis for legal decision-making in the state of Arizona and it is important for county engineers to be familiar with statutes relating to highway responsibilities and practices. This chapter discusses how the current Arizona Revised Statutes came into being, and describes how the statutes are organized.

DEVELOPMENT OF STATUTES AND POLICIES

The Arizona Revised Statutes were adopted and enacted into law in 1956, after an intense effort by the Code Commission to undertake the task of organizing statutes enacted by the Legislature and previous revised codes and causing them to be "revised, codified, and annotated."

The most recent version of the Arizona Revised Statutes supercedes previous versions, as described in A.R.S § 1-245. This statute states that:

> "When a statute has been enacted and has become a law, no other statute or law is continued in force because it is consistent with the statute enacted, but in all cases provided for by the subsequent statute, the statutes, laws and rules theretofore in force, whether consistent or not with the provisions of the subsequent statute, unless expressly continued in force by it, shall be deemed repealed and abrogated."

In a number of court cases it has been decided that if there is any conflict between two statutes, the more recent one must prevail (Gustafson v. Rajkovich (1953), McCarthy v. State ex rel. Harless (1940), State Board of Health v. Frohmiller (1933), and Willard v. Hubbs (1926)).

A.R.S. § 1-201 adopts common law as the rule of decision in Arizona. This statute states:

> "The common law only so far as it is consistent with and adapted to the natural and physical conditions of this state and the necessities of the people thereof, and not repugnant to or inconsistent with the constitution of the United States or the constitution or laws of this state, or established customs of the people of this state, is adopted and shall be the rule of decision in all courts of this state."

A number of court cases have found that "the common law remains in force in Arizona except as modified by statute or unsuited to state's local system or condition," (McClure v. Johnson (1937) and Lowell v. Lowell (1925)).

The adoption of the statutes shall not be construed to repeal or in any way to affect or modify the following (as per A.R.S. § 1-104):

"1. Any special, local or temporary laws.

"2. Any law making an appropriation.

"3. Any law affecting any bond issue or by which any bond issue may have been authorized.

"4. The running of the statutes of limitations in force at the time A.R.S. § 1-104 becomes effective.

"5. The continued existence and operation of any department, agency or office heretofore legally established or held.

"6. Any bond of any public officer.

"7. Any taxes, fees, assessments or other charges incurred or imposed.

"8. Any statutes authorizing, ratifying, confirming, approving, or accepting any compact or contract with any other state or with the United States or any agency or instrumentality thereof."

If a statute is repealed, a repealing act shall not affect the following laws or acts, as per A.R.S. § 1-248:

"1. Any law funding the territorial or state debt.

"2. Any law authorizing the issuance of, funding of, or payment of principal or interest on, territorial bonds, bonds of the state, bonds of an agency, institution, department or political subdivision of the state, or bonds of a county, city, town or municipal corporation.

"3. Any act incorporating or chartering municipal corporations."

INTERPRETING THE STATUTES

In interpreting the statutes, the meanings of the words "shall," "should," and "may" are vital to understanding the intent of the statutes.

It is extremely important to emphasize that often case law is contradictory in this area. Therefore, the county engineer should always work with the county attorney should questions arise. For example, in one case the court found that the word "may" is read as "shall" or "must" when used to impose a duty, performance of which involves protection of public or private interests (Pioneer Mutual Ben Association v. Corporation Commission (1942)).

USE OF STATUTES AND POLICIES

The Arizona Revised Statutes are arranged and classified according to a system of titles. Each title refers to a single subject. The titles themselves are divided into chapters, and the chapters are divided into articles. This system attempts to group all laws dealing with the same subject matter in the same location. However, in many cases, the same issue is dealt with in disparate titles. Therefore, it should be emphasized that the county attorney should be consulted whenever a question of statutory authority arises. The following titles comprise the Arizona Revised Statutes:

1. General Provisions
2. Aeronautics
3. Agriculture and Dairying
4. Alcoholic Beverages
5. Amusements and Sports
6. Banks and Financial Institutions
7. Bonds
8. Children
9. Cities and Towns
10. Corporations and Associations
11. Counties
12. Courts and Civil Proceedings
13. Criminal Code
14. Decedents' Estates, Guardianships, Protective Proceedings and Trusts
15. Education
16. Elections and Electors
17. Game and Fish
18. Highways and Bridges
19. Initiative, Referendum and Recall
20. Insurance
21. Juries
22. Justices of the Peace and Other Courts Not of Record
23. Labor
24. Livestock and Animals
25. Marital and Domestic Relations
26. Military Affairs and Emergency Services
27. Minerals, Oil and Gas
28. Transportation
29. Partnership
30. Power
31. Prisons and Prisoners
32. Professions and Occupations
33. Property
34. Public Buildings and Improvements
35. Public Finances
36. Public Health and Safety
37. Public Lands
38. Public Officers and Employees
39. Public Records, Printing and Notices
40. Public Utilities and Carriers
41. State Government
42. Taxation
43. Taxation of Income
44. Trade and Commerce
45. Waters
46. Welfare
47. Uniform Commercial Code
48. Special Taxing Districts

The report of the Chief Counsel of the Arizona Code Commission describes the statute numbering system:

> "A compound or hyphenated numbering system is used in the Revised Statutes. The digits to the left of the hyphen represent the number of the title in which the section appears. The digits to the right of the hyphen indicate the section number. The first section in each title is numbered 101: i.e., the first section in Title 1 is numbered § 1-101. The first section in Title 46 is numbered § 46-101.
>
> "Where appropriate, sections are divided into subsections, designated by a capital letter: i.e., Subsection A of § 1-105. Subsections are divided into paragraphs, designated by an Arabic numeral: i.e., Paragraph 1 of Subsection A. Paragraphs are divided into subdivisions, designated by a lower case letter enclosed by parentheses: i.e., Subdivision (a) of Paragraph 1. A few subdivisions are divided into items, designated by a lower case Roman numeral enclosed in parentheses: i.e., Item (i) of Subdivision (a)."

All statutes will be referred to as A.R.S. § XX-XXX in this volume. This citation form is mandated in A.R.S. § 1-101. Periodically, supplements or pocket parts to the revised statutes are printed and shall constitute a part of the Arizona Revised Statutes.

3. COUNTY HIGHWAYS - STATUTORY BASIS

INTRODUCTION

This chapter summarizes the statutory provisions relating to the establishment, alteration, and abandonment of highways. Of major importance is the fact that roads must be established by the board of supervisors in order to receive public funds.

ESTABLISHMENT, ALTERATION, OR ABANDONMENT OF HIGHWAYS

The board of supervisors is the body designated to establish, alter, or abandon highways and acquire real property by purchase, donation, dedication, condemnation, or other lawful means. This is expressed in A.R.S. § 18-201. This statute states that such highways may be established or altered by presentation of a petition signed by ten or more resident taxpayers of the county to the board of supervisors, or upon petition to the board by the governing body of a legal subdivision, the petition is a description of the beginning, terminus and general course and direction of the highway. The board may either reject the petition or act as prescribed in A.R.S. § 18-201.

Establishment of a Highway

Upon filing the petition, A.R.S. § 18-202 describes the survey of the highway and the setting of a date for the public hearing that must occur:

> "A. Upon filing the petition, the board shall direct the county engineer to make a survey of the proposed highway and file with the board a report of the proposed highway, together with a map as surveyed, showing thereon the legal subdivision of the lands traversed by the survey. If a survey and maps have already been made for any purpose, such data and maps may be used instead.
>
> "B. The board shall thereupon set a date for a public hearing on the petition. The board shall give notice to the public by advertising once a week for two consecutive weeks in a newspaper in the county. The notice shall state the purpose and the date of the ensuing hearing, and shall direct all persons desiring to object to the action prayed for in the petition to file with the board a statement in writing setting

forth their objection or opposition, and to show cause why the petition should not be granted."

A.R.S. § 18-203 describes the hearing process:

"A. At the hearing provided for in A.R.S. § 18-202 the board shall consider the feasibility, advantages and necessity of the highway sought to be established, and, if in the opinion of the board the proposed highway is a public necessity, the board may approve the establishment thereof by resolution, and may accept any right-of-way or property donated to the state or the county.

"B. A landowner or party affected may make and execute a written waiver or release of all compensation or any part thereof, or may grant an easement or other conveyance of property for such purposes."

In the court case State ex. rel. Herman v. Cardon, it was found that unless there had been an acceptance of streets by the board of supervisors, streets were not considered public highways.

Expenditure of public funds on highways or roads not established by the board is governed by the provisions of A.R.S. § 18-207:

"A. The board of supervisors may expend public funds for maintenance of public roads and streets other than legally designated state and county highways located without the limits of an incorporated city or town. Before expending public funds thereon, such roads or streets shall be laid out, opened and constructed without cost to the county, and fully completed in accordance with a plat approved pursuant to A.R.S. § 11-802 and A.R.S. § 11-806.01, and in accordance with standard engineering road specifications adopted by the county board of supervisors to insure uniform compliance."

This topic is further discussed in Chapter 10, Maintenance and Operations.

Eminent Domain

The exercise of eminent domain by a county to acquire land for a joint federal-county highway is described in A.R.S. § 18-206. This statute states that if the county has entered into an agreement with the Federal Government for acquiring a right-of-way, and the U.S. has constructed part of the highway, then condemnation proceedings may be used if the board of supervisors is unable to

acquire the right-of-way under the provisions of A.R.S. § 18-201 and A.R.S. § 18-202 (described earlier in this chapter).

Jurisdiction in Unincorporated Areas

A.R.S. § 18-209 clarifies the jurisdiction of streets in unincorporated towns; they

> "....shall be considered public highways and under control of the board of supervisors of the county in which the town is located. The board may designate what streets in such town shall be considered public highways and give appropriate names to them."

Subdivision Platting

The board of supervisors regulates the subdivision of all lands within its corporate limits, except subdivisions regulated by municipalities. Approval of the board must be obtained for a plat to be recorded by the county. Where a county planning and zoning commission exists, the commission first reviews the plat and submits recommendations to the board. The commission also develops rules and regulations of uniform application governing plats and subdivisions. These rules and regulations are adopted by the board of supervisors and govern the

> "...proper arrangement of streets, or other highways in relation to existing or planned streets, or highways or to the official map for adequate and convenient open spaces for traffic, utilities, drainage, access of fire fighting apparatus, recreation, light and air.
>
> "The regulations shall include provisions as to the extent to which streets and other highways shall be graded and improved and to which water, sewer or other utility mains, piping or other facilities shall be installed or provided for on the plat as a condition precedent to the approval of the final plat." (Excerpted from A.R.S. § 11-806.01)

Establishment by the board of streets with the plat is also discussed in A.R.S. § 11-806.01 as follows:

> H. "Approval of a plat shall not be deemed to constitute or effect an acceptance by the county for designation of any street, highway or other way or open space shown upon the plat into the county maintenance system except for hiking and equestrian trails which shall be constructed and maintained by the county. However, at such time as the streets, highways or other ways are fully completed in accordance with the

approved plat and written specifications made by the county board, the county shall accept such streets, highways and other ways into the county maintenance system within one year of completion."

Abandonment

With respect to the abandonment of streets and alleys, A.R.S. § 18-210 states:

"The board of supervisors may vacate and abandon streets, alleys and avenues outside the boundaries of incorporated cities and towns shown upon recorded plats as dedicated to the public, or to which the public or county may have received title by deed, in like manner and procedure as for abandoning county highways."

4. ROLE OF BOARD OF SUPERVISORS

INTRODUCTION

The board of supervisors in each county is elected once every four years, during the general election at which the U.S. President is elected. Counties which have a population of over 200,000 shall have a board consisting of five members and counties having a population of under 200,000 shall have a board consisting of three members. A three member board may be increased to five members if petitioned and approved in a special election.

This chapter explains the role of the board of supervisors, as defined by the Arizona Revised Statutes. This chapter includes a discussion of the authority, obligations, liability, and limitations of the board, as well as a short discussion on operating methods and intergovernmental operations.

AUTHORITY

The county board of supervisors is the body authorized by statute to establish and operate a system of county roads. A.R.S. § 11-251 is the statute which defines the powers of the board. With respect to county highways and related highway functions, A.R.S. § 11-251 states:

> "The board of supervisors, under such limitations and restrictions as are prescribed by law, may:
>
> "Lay out, maintain, control and manage public roads, ferries and bridges within the county and levy such tax therefore as may be authorized by law.
>
> "Enter into agreements for acquiring rights-of-way, construction, reconstruction or maintenance of highways in their respective counties, including highways which pass through Indian reservations, with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of Congress, except that the governing body of any Indian tribe whose lands are affected must consent to the use of its land, and any such agreements entered into prior to June 26, 1952 are validated and confirmed.
>
> "Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, and key such other taxes as are required to be levied by law.

"Direct and control the prosecution and defense of all actions to which the county is a party, and compromise them."

The term "lay out" with reference to roads and highways is clarified in the case Maricopa County v. Anderson (1957). The court said,

"The question of what is meant by the words "lay out," when used in reference to roads and highways, has frequently been before the courts, and it has practically universally been held that the term is comprehensive and includes all the steps necessary to establish a highway for public use, including the location of the road, the acquiring of the right-of-way, and the dedication to the public in the manner provided by law...."

To assist the board in fulfilling their role, A.R.S. § 11-561 authorizes the board to appoint a county engineer. Chapter 5, Functions of a County Engineer, describes, in detail, the role of the county engineer under the direction of the board.

In general, the powers of the board with respect to supervision of county personnel are described in A.R.S. § 11-251, under such limitations and restrictions as are prescribed by law:

"Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that such officers faithfully perform their duties, direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

"Examine and exhibit the accounts of all officers having the care, management, collection or disbursement of money belonging to the county or appropriated by law or otherwise for the use and benefit of the county.

"Examine, settle and allow all accounts legally chargeable against the county, order warrants to be drawn on the county treasurer therefore and provide for issuing the warrants."

The authority to establish, alter, or abandon county highways is granted to the county board of supervisors by A.R.S. § 18-201. This statute, which describes the statutory basis of county highways, is discussed in Chapter 3, County Highways-Statutory Basis.

If a petition is submitted requesting establishment of a county highway, a survey and public hearing process must occur prior to board approval.

Action by the board to establish a county highway allows the board to expend public funds on that highway. In State ex rel. Herman v. Cardon (1976) it was determined that streets are not public highways unless they have been accepted by the board of supervisors.

OBLIGATIONS, LIABILITY, LIMITATIONS

A.R.S. § 11-201 states general powers of a county, which are exercised by the board of supervisors. These powers reflect the obligations and liability of the county. This statute states:

> "A. The powers of a county shall be exercised only by the board of supervisors or by agents and officers acting under its authority and authority of law. It has the power to:
>
> 1. Sue and be sued.
>
> 2. Purchase and hold lands within its limits.
>
> 3. Make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers.
>
> 4. Make such orders for the disposition or use of its property as the interests of the inhabitants of the county require.
>
> 5. Levy and collect taxes for purposes under its exclusive jurisdiction as are authorized by law.
>
> "B. Except for the purposes of acting as an intermediary in a license transfer or sale, a county shall not own a commercial cable television system or any other pay television system.
>
> "C. A.R.S. § 11-251.05, subsection A, paragraph 1 does not authorize a county to levy and collect taxes for any purposes beyond those otherwise specifically authorized by statute."

Liability regarding highway engineering practice is discussed in Chapters 5, 10, 11, 12, and 15.

OPERATING METHODS

Typical actions of a board of supervisors to lay out, maintain, control and manage public roads and bridges are outlined below.

- Establish county highways by resolution.
- Establish a county highway (or transportation) department to operate, maintain and improve the county highway system.
- Hire and terminate employees of a county highway department.
- Appoint and give instructions to a county engineer and/or director to administer the county highway department.
- Authorize, through the county budgeting process, expenditure of funds for the purpose of operating, maintaining and improving county highways.
- Establish legal ordinances to regulate the use of county highways.
- Award contracts to private engineering firms for design of highways and bridges.
- Award contracts to private contractors for construction of highways and bridges.
- Establish operating and capital expenditure programs for maintenance and construction of highways and bridges.
- Review and approve or disapprove proposed subdivision plats including improved streets and highways.
- Establish standards of highway improvement required for acceptance of highways and bridges for county maintenance.
- Levy property taxes, as permitted by statute, for purposes of highway and bridge maintenance and improvement.
- Accept and utilize designated funds from state and federal sources for maintenance and improvement of highways and bridges.

INTERGOVERNMENTAL OPERATIONS

Counties are authorized by statute to enter into agreements with other public agencies. "Public agencies" include the Federal Government or any federal department or agency, Indian tribes, the state of Arizona, any other state, all departments, agencies, boards, and commissions of this state and any other state,

counties, school districts, cities, towns, all municipal corporations, and any other political subdivision of this state or any other state.

The requirements for entering into intergovernmental agreements and contracts is spelled out in A.R.S. § 11-952. This statute states, in part:

> "If authorized by their legislative or other governing bodies, two or more public agencies by direct contract or agreement may contract for services or jointly exercise any powers common to the contracting parties and may enter into agreements with one another for joint or cooperative action, except that if two or more school districts arrange to become contracting parties under the terms of this section, such contract shall first be approved by the state board of education.
>
> "Any such contract or agreement shall specify the following:
>
> Its duration.
>
> Its purpose or purposes.
>
> The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefore.
>
> The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
>
> Any other necessary and proper matters."

5. FUNCTION OF A COUNTY ENGINEER

INTRODUCTION

This chapter describes basic obligations of a county engineer from a legal standpoint, emphasizing such areas as record keeping, duties as an expert witness, and other basic responsibilities.

AUTHORITY

The county engineer is appointed by the board of supervisors under authorization of A.R.S. § 11-561. This statute states that "The board of supervisors may appoint a county engineer, who shall be a competent civil engineer and road builder." It is required that all county engineers obtain their Arizona Professional Engineer's license in order to maintain their job, as per Opinion No. 74-17 of the Attorney General.

RESPONSIBILITY

The basic responsibilities of the county engineer are expressed in A.R.S. § 11-562 as follows:

> "A. The county engineer shall be custodian of the records and property of the county relating to surveying, engineering and road construction.
>
> "B. Except where highways are being constructed under the direction of a highway commission, the county engineer shall, under the direction of the board, have charge of all highways, other engineering construction and improvement, alterations and repairs to county property, and shall make surveys, maps, plans and specifications required by the board."

Other duties may vary by county. In Maricopa County, the responsibilities of the county engineer are listed as follows:

- "The county engineer is the Highway Department head in addition to his other duties as director of public works.
- "The Highway Department is responsible for planning, design, construction, maintenance and repair of the Maricopa County highway system. This system includes all public road surfaces,

bridges, drainage structures, pavement markings, signs, traffic signals, and related supporting highway physical structures.

- "The Highway Department through its Real Estate Division, is also responsible for real estate transactions for all departments of the county and the Flood Control District. These include negotiations with landowners for highway rights-of-way, real property leases, acquisitions, disposals, and initiation of condemnation as appropriate.

- "Highway Department responsibilities include retention and maintenance of official records of the Highway Department and county real estate holdings. This is to ensure positive legal protection for the county for issues of property ownership, highway conditions, markings, signs and signals.

- "The Highway Department is responsible for rapid emergency response to minimize hazard to the public or damage to property in event of flood or any other emergency affecting the highway system. Response will include immediate installation of warning signs and barricades as appropriate, followed by necessary repairs."

LIMITATIONS

The only limitation on the county engineer that is noted in the statutes is the prohibition of private work while in office. A.R.S. § 11-563 states that "The county engineer shall not during his term of office engage in private engineering or surveying, except by permission of the board of supervisors, or be a member of a firm so engaged."

OBLIGATIONS AND LIABILITIES

This section describes aspects regarding legal obligations and liabilities. This section includes discussions of typical tort liability suits, and engineering practices that tend to minimize liability exposure.

Tort Liability

The county engineer may be requested by the county attorney to assist in the defense of his county agency in matters of civil tort liability law suits. Such lawsuits are alleged wrongdoings by the county, usually concerning county facilities.

The attorneys filing these lawsuits are usually requesting monetary rewards resulting from damages incurred by their clients; and, to be paid by the county or the county's insurance carrier. Public works-related cases most commonly involve traffic accidents on highways and are most often related to geometric design of those highways, and/or drainage and maintenance of the highways. Also, civil suits may involve traffic engineering control devices, including signing, striping and markings, traffic signals and their timing, and occasionally, lighting. Less frequently, these civil law suits might involve right-of-way access to or from county roads, right-of-way for private construction, and other construction practices. Chapters 11, 12, and 15 discuss liability concerns in these areas.

Engineering Practices to Minimize Liability Exposure

Because the loss of a tort liability suit can result in large financial settlements, the county engineer may consider instituting measures that become part of normal operating practice in order to minimize liability exposure for the county.

1. Every county should have an attorney that is available for consultation at the request of the county engineer. Preferably this attorney should have some experience in public works-related matters. A.R.S. § 11-532 states that among the duties of the county attorney is "when required, give his official opinion to county officers on matters relating to the duties of their offices." The county attorney is also responsible for defending actions brought against the county, as well as other duties.

2. The county should also be covered by some form of liability insurance policy. This may be done either through a private insurer or county self insurance.

3. Everyone within the county engineer's office should clearly understand their duties, responsibilities, and authority and how these relate to other people within the county engineer's office. Also, a knowledge of how the county engineering department relates to other departments is important. This particularly applies to new employees.

4. It is desirable to funnel all inquiries and complaints from outside the county engineer's office through one person if possible. This person should be made aware that legal implications may be involved in every inquiry. Any inquiry or request for information or records from an outside source that has clear legal implications should be responded to by or directed to the county engineer or the engineer's authorized designee. This is because the county engineer has the ultimate responsibility and is most likely to

be involved in any legal proceedings. In some instances, the county attorney might also be notified. Designating one person to handle outside complaints or questions makes not only good legal sense but it is good public relations. The person making the inquiries is also better served because if the same person is receiving those inquiries, they become experienced in replying or directing the person making the inquiry to the proper official or section of the county engineer's office.

5. A 1975 Arizona law states in general terms that all documents or records compiled during normal working hours are public records and should be made available upon public request. The law further states that persons may be personally held liable if such records are withheld or refused to be given out. The law does not, however, require that a comment be made either verbally or in writing when these records are given out. Therefore, it is important that records could be given out by someone in a central location, who has knowledge of the record content. Some records can be considered privileged from a legal standpoint. These would be records that are being prepared in anticipation of litigation or are contained in a file regarding a specific law suit that the county is involved with at the present time. These data can often be considered "privileged information." Remember, however, that if this information is given to anyone except the attorney with whom one is working, it can no longer be considered privileged. Such a file should not be set up without prior consultation with the county attorney or an attorney that is representing the county in a particular law suit.

6. The previously mentioned concept of having a central filing area makes sense not only from a tort liability viewpoint but from a good organizational viewpoint. Files can be checked out only on authorization of the specifically designated person, with checkout sheets showing people's names, addresses, phone numbers, etc. so that they can be kept track of and not lost. The person in charge of the central file area might be instructed not to be drawn into discussions where his opinions of information contained therein are requested. This person can be helpful as far as distributing general information, but when legal matters are clearly involved, a supervisor should be consulted.

7. Any tort liability case against the county or where the county is a defendant will be constructed in part by the amount and quality of records furnished the plaintiff's attorney(s). If a record does not exist, it cannot be used to build a case against the county; therefore, the county engineer might keep in mind when memo's or documents are written, that they could be subpoenaed and used in court. Memo's that criticize in-house county design, maintenance, or operational practices without proposing specific remedies that are intended to be implemented immediately, serve very little useful purpose. County engineering policies, procedures, manuals, and design standards that are developed specifically for a county, should be followed meticulously or not developed at all. Where possible, rely on manuals or guides previously developed by federal, state, or other county agencies. In particular, design guidelines for highways

and traffic should comply as much as possible with AASHTO design guidelines, ADOT design guidelines, and the Federal Highway Administration publication titled, Manual on Uniform Traffic Control Devices. Operations and maintenance procedures may also be found in publications by the National Association of County Engineers and the American Public Works Association.

8. Some of the federal government programs that provide funding for highway improvements require that priority lists of problem areas be developed so that funds may be allocated properly. That is, county projects can be meshed into a project priority list. If such a list is developed, the county engineer should continually update the list and show that an ongoing effort is being made to correct or make improvements where indicated. Items on the list should be improved as much as possible in their order of decreasing importance; that is, items at the top of the list should be improved prior to items at the bottom of the list. Occasionally, political considerations may require an item farther down on the list or in lower priority to be improved first. If the list is used in litigation, such a rearranging of priorities might be difficult to explain. Refer to the operating methods section of this chapter for information on record keeping that may assist in the processing of tort liability cases.

Expert Witness Procedures

The first hint of litigation the county engineer might receive may be a public inquiry. All responses to public inquiries should consider the possibility of litigation. When a tort claim is first filed against the county, the county engineer may not be notified immediately. Good relations between the county attorney and the county engineer are necessary to assure that litigation has not been filed without the knowledge of both parties.

One of the first documents the county engineer will receive is called an interrogatory. This is nothing more than a series of questions which have been prepared by the opposing attorney. Answers must be provided to these questions usually within 30 days of receipt. The answers are required to be written and must be signed and notarized as truthful statements. Interrogatories are only sent after a law suit has been filed. Before answering interrogatories, the county engineer should contact the county attorney or the liability insurance carrier's attorney.

Many interrogatories may seem unrelated to the incident or may seem personal in nature. The interrogatories are designed to help the opposing attorney to better understand the county and its operations, and to acquire knowledge of the

case involved. Interrogatories offer the respondent a chance to demonstrate to the opposition that they may not have a good case for their litigation against the county. There also is an opportunity to show that the county's methods and operations are under control and do have the public's best interest in mind. The county attorney also has the right to submit interrogatories to the opposing attorney. The county engineer may be requested to participate in developing these interrogatories for the county.

After the interrogatories are collected, the next legal document the county engineer could receive may be a subpoena to produce records, maps, photos, standards, manuals, or other documents that the opposing attorney(s) feels are relevant to the case. There may also be a request to give a deposition. A deposition is a recorded statement of all questions and replies given under oath in the presence of a court reporter and attorneys representing both sides of the case. It is usually taken in an attorney's office and can be used either partially or in whole in a court trial. If possible, the county engineer or anyone subpoenaed to give a deposition, should not appear for that deposition without an attorney representing the engineer or the county. This attorney can help to guide the engineer through the deposition process and help assure that the opposing attorney complies with certain legal rules.

Giving a deposition can often be an emotional experience. Try to remember not to take the questions personally. Remember that the county engineer is there to explain the county's position and to explain only the things that he knows about. It is extremely important to listen carefully to the questions, and not to anticipate them or to reply before the questions are completed. The county attorney may wish to interrupt or add a statement at the end of a question. If the question is not understood, ask that it be repeated or rephrased. The county engineer may also ask the attorney to assist him before answering the question. Remember that all of the testimony given must be the truth. The reply need not embellish the answer or question in any form. The question need only be answered in as few words as possible. However, the answer may be explained or relevant information added. Do not be afraid to reply, "I don't know," if this applies. Also, if the county engineer doesn't remember, recall, or have a record to substantiate an answer, this should be stated.

Arizona law permits a civil suit to be filed up to two years after an incident has occurred. In addition, it may take a year or two to be brought before the court. Thus, it may be three or four years from the time of an incident to the time a deposition is taken. Depositions are usually taken just prior to going to trial. The length of time described above means that good records should be kept of all operations, designs, and maintenance policies and procedures, as well as of each law suit from the time of it's inception.

Only a relatively small percentage of cases actually go to trial. The county's insurance carrier and attorneys will most likely be trying to settle a case before going to court. One reason for this is the expense of going to trial. If a county engineer or staff member is requested to appear in court to give testimony, or is subpoenaed for this purpose, the county attorney or attorney representing the county should be contacted. If possible, prior to appearing in court as an expert witness, all files concerning the case should be reviewed as well as previously taken depositions. The depositions of the county engineer should be reviewed, as well as those of other staff members, and the opposing expert witness(es). This review will not only refresh the expert witness's mind but will assist in identifying the issues of the case most likely to be questioned in court.

While waiting to be called either in the courtroom or outside the courtroom, the witness should refrain from discussing the case with anyone but the county attorney. When on the witness stand, the county engineer should be unemotional, attentive, respectful, and professional, and should answer the questions to the best of his/her ability. Once again, the questions should not be taken personally. The witness should explain the answers if he/she feels an explanation is necessary. Remember too, that the judge and the jury or other attorneys may not be familiar with technical terms used. The witness should try to respond using lay terms so that the replies may be understood. The witness should remember to listen very carefully and to wait after each question in case the county attorney has a comment to make before the witness responds. The witness should not be afraid to say, "I don't know," if this applies, or "I don't recall." Also, the witness should not be drawn out of his/her area of expertise or to speculate, for instance, on the policies of other departments of the county.

Finally, the county's attorney may ask the county engineer to participate in other aspects of the trial, such as determining trial strategy, jury selection, or preparing questions for opposing expert witnesses.

Documentation of Legal Opinions

Every county engineer's office should have a copy of the Arizona Revised Statutes with annotations and amendments or have access to a complete copy, either in the county library or the county attorney's office. Many of the laws contained therein do have annotations or discussions of legal opinions usually contained in the footnotes of those laws. These opinions would most likely be reviewed by your attorney; however, it is helpful for the county engineer to be familiar with these footnotes.

OPERATING METHODS

This section discusses operating methods used in organization of the county engineer's office. Such methods include record keeping and computerized information systems.

Record Keeping

Most county engineering departments could be expected to keep the following records.

1. An inventory of the infrastructure including highways; drainage facilities; traffic control devices; sewer, sewage and water systems; right-of-way and property legal descriptions; maintenance records; traffic accidents and traffic volumes; design and construction contracts and related documents; improvement district documents; records of all inquiries received either by telephone, personally, or in writing from either within the county organization or outside, and records including replies or disposition of such inquiries; as-built plans and specifications on any construction projects; agreements or contracts with other governmental agencies; records of land surveys and surveying monumentation within the county; planning reports or studies; county board of supervisor meeting minutes and actions affecting the county engineering department; files of legal actions in which the county is involved; and finally, departmental administrative records, including annual budget, personnel administration, accounting, and records related to other departments of the county.

Computerized Information Systems

Specific systems and programs are not presented herein. Many programs are available and information can be acquired about various systems from the data processing department or other government agencies. Generally, an accounting-type functional program (which may be in service at another department) can serve the purposes of the county engineer. Most records such as personnel, accounting, and management reports can be shared on various existing computerized information systems within the county. Other information that may be computerized could be right-of-way, land ownership records, land surveying and monument records, inventories of roads, drainage facilities, traffic control devices, and perhaps materials supply inventories. The National Association of County Engineers (NACE) has information available not only concerning specific information system programs, but can put the county engineer in contact with other county engineering offices that have unique computerized information systems in operation. Within the state of Arizona, the two largest counties, Maricopa and Pima, have sophisticated computerized information systems available, and could be contacted for assistance for implementing a new system.

Another option for information storage is the use of a private service bureau. In this case, only access terminals would be required by the county engineer's office to access the stored data. This may also apply if the mainframe hardware were located in another county building, such as the clerk's office.

PERSONNEL

The Arizona Revised Statutes specify in A.R.S. § 11-352 that any county may, by resolution of the board, adopt a limited county employee merit system. Upon adoption of a county employee merit system the board of supervisors shall appoint a five-member county employee merit system commission to assist in administering the system. The main aspects of the merit system, as discussed in the Arizona Revised Statutes, involve the hiring and firing of personnel. With regard to hiring practices, A.R.S. § 11-355 states that

"The minimum qualifications or standards prescribed for any class or grade of employment shall not be less than those prescribed by law for the class or grade of county officers and employees."

Dismissal Practices

Dismissal practices are covered in A.R.S. § 11-356 as follows:

"A. Any officer or employees in the classified civil service may be dismissed, suspended or reduced in rank or compensation by the appointing authority after appointment or promotion is complete only by written order, stating specifically the reasons for the action. The order shall be filed with the clerk of the board of supervisors and a copy thereof shall be furnished to the person to be dismissed, suspended or reduced.

"B. The officer or employee may within ten days after presentation to him of the order, appeal from the order through the clerk of the commission. Upon the filing of the appeal, the clerk shall forthwith transmit the order and appeal to the commission for hearing.

"C. Within twenty days from the filing of the appeal, the commission shall commence the hearing and either affirm, modify or revoke the order. The appellant may appear personally, produce evidence, have counsel and, if requested by the appellant, a public hearing.

"D. The findings and decision of the commission shall be final, and shall be subject to administrative review as provided in title 12, chapter 7, article 6."

Certain employment positions may be removed from the employee merit system, at the direction of the board. These positions include:

1. County manager.
2. Deputy county manager.
3. Assistant county manager.
4. Chief deputies to elected officials.
5. Department directors.
6. Deputy directors, not to exceed three in each department.
7. One position in each department which reports directly to the director or deputy director as designated by the director and deputy director.

Also, elected officials are not included in the merit system.

DEVELOPMENT OF ORDINANCES AND REGULATIONS

The powers of the board of supervisors, detailed in A.R.S. § 11-251, include the provision that the board shall "make and enforce all local, police, sanitary and other regulations not in conflict with the law." Therefore, the board of supervisors is authorized to pass ordinances and regulations. The county engineer may input on the need or desirability of ordinances in the area of traffic engineering and transportation.

REFERENCES

1. Morton, R., Engineering Law, Design, Liability, & Professional Ethics, San Carlos, California, Professional Publ. Co., 1984, 87p.

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3. Uniform Vehicle Code & Model Traffic Ordinance (w/Supplements to date), National Committee on Uniform Traffic Laws & Ordinances (NCUTLO), Charlottesville, Virginia, Michie Company, Revised 1976 edition.

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6. HIGHWAY FUNDING

INTRODUCTION

This chapter discusses local, state, and federal highway funding sources.

LOCAL FUNDING SOURCES

Property Tax Revenues

Once the board of supervisors has established a roadway, it may levy a real and personal property tax, not exceeding twenty-five cents per one hundred dollars of property, for road purposes. In counties having an assessed valuation of two hundred million dollars or over, a tax not to exceed twenty-five cents per one hundred dollars of assessed valuation may be levied in lieu of the above noted tax rate.

County Transportation Excise Tax

Counties may levy a transportation excise tax if approved by voters. There are variations in the plans based on the population of the county (i.e., the three categories are counties over 1.2 million population, counties between 400,000 and 1.2 million persons, and counties under 400,000 persons). In the largest population categories, the funds may be used for the design, right-of-way purchase or construction of controlled access highways which are included in the regional transportation plan of the county and which are accepted into the state highway system.

Also, a certain amount of funds collected from this tax are earmarked for the planning, preliminary engineering and design necessary to develop a regional public transportation system plan.

Other planning obligations include the listing of transportation corridors by priority in the regional transportation plan. The regional transportation plan may also provide a suggested construction schedule for the corridors. Another aspect of this tax is that bonds may be issued against the anticipated revenue from this tax, if required.

A regional public transportation authority must be established. This authority administers the public transportation fund and establishes and operates a regional bus system.

For counties with a population between 400,000 and 1.2 million, the transportation excise tax may also be used for the design, right-of-way purchase, construction, standard and reduced clearance grade separation, extension and widening of arterial streets and highways included in the regional transportation plan, in addition to the use of funds for the construction of controlled access highways and related grade separations which are included in the regional transportation plan. Therefore, medium-sized counties have a greater flexibility in the type of roadways that can be improved.

As in counties over 1.2 million population, a regional public transportation authority must be established. Also, the county, through their regional planning agency, shall list transportation corridors by priority in the regional transportation plan. This plan must be updated annually.

In counties with a population less than 400,000 persons, A.R.S. § 42-1484 describes the revenue distribution procedure:

> "The net revenues collected under this section shall be distributed to the individual county and to the individual cities and towns in the county in the manner determined by the county board of supervisors prior to the election and described in the publicity pamphlet for the election. The revenues distributed to each jurisdiction may only be used in a manner consistent with the use of revenues distributed from the Arizona highway user revenue fund under § 28-1598."

STATE COLLECTED TRANSPORTATION REVENUES

There are four types of revenues collected by the state for transportation funding. These are the motor vehicle fuel license tax, the vehicle license tax, the use fuel tax, and the local Transportation Assistance Fund. These revenue sources are described as follows:

Motor Vehicle Fuel License Tax

Distributors pay a license tax of 16 cents per gallon of motor fuel either possessed, refined, manufactured, produced, blended, or compounded in this state or

imported by the distributor. The tax primarily goes into the Arizona Highway Users Revenue Fund (except a small percentage of the tax on watercraft fuels is for ADOT administrative expenses in this area).

Vehicle License Tax

Motor vehicle owners pay a tax rate of $4.00 on each $100.00 of automobile assessed value. During the first 12 months of the life of the vehicle, the value is 60 percent of the manufacturers base retail price. During each succeeding 12 month period the value of the vehicle is 15 percent less than the value for the preceding 12 month period. The minimum tax is $10.00. The allocation of the tax is 31.5 percent to the Arizona Highway User Revenue Fund and 68.5 percent as follows:

- 10 percent general fund - state
- 10 percent State Highway User Fund
- 25 percent general fund - county
- 25 percent general fund - state (for school financial assistance)
- 25 percent incorporated cities and towns
- 5 percent special county fund

Use Fuel Tax

Vendors, restricted vendors, or users, pay a license tax of 16 cents for each gallon of motor vehicle fuel used in the propulsion of a motor vehicle on highways in the state. This tax is placed in the Highway User Revenue Fund.

Local Transportation Assistance Fund

This fund primarily consists of monies deposited from the state lottery fund, as per A.R.S. § 28-2601. These funds are distributed to any incorporated city or town that requests it. The funds are distributed to the city or town requesting funds in the proportion that the population of the city and town bears to the total population of cities and towns applying for funds.

DISTRIBUTION OF THE HIGHWAY USER REVENUE FUND

The majority of the taxes described in the previous section are deposited to the Highway User Revenue Fund. The formula for distribution to the fund and to counties, cities, and towns, is summarized as follows (defined in A.R.S. § 28-1598):

1. Three cents of the license tax for each gallon of motor vehicle fuel or use fuel collected (yearly distribution) is distributed by the following funding formula:

   a) 64 percent to the state highway fund.

   b) 31.5 percent to the counties.

   c) 4.5 percent to incorporated cities and towns located in counties with a population less than 400,000 persons.

2. Each fiscal year ADOT shall distribute all remaining revenues as follows:

   a) To the state highway fund, 50 percent.

   b) To the counties, 20 percent.

   c) To the incorporated cities and towns, 30 percent.

These distributions are subject to subsection M of A.R.S. § 28-1598, which states:

> "Beginning with fiscal year 1984-1985, if a county or incorporated city or town does not budget and expend local revenues, as defined in article IX, § 20, Constitution of Arizona, for street and highway purposes in an amount at least equal to the average amount of local revenues budgeted and expended for street and highway purposes for any four of the immediately preceding five fiscal years, the state treasurer shall not distribute to such county, city or town any amounts from the Arizona highway user revenue fund in excess of amounts distributed for fiscal year 1969-1970."

Additionally, subsection N of the statute states:

> "In determining the amount of local revenues budgeted and expended for street and highway purposes during any fiscal year pursuant to subsection M of this section, a county or incorporated city or town shall not consider any of the following:
>
> "1. Monies distributed from the Arizona Highway User Revenue Fund.

"2. Monies distributed from the local transportation assistance fund.

"3. Monies expended by the county or incorporated city or town for street and highway purposes directly necessitated by an emergency declared by the governor."

Another requirement of a county to receive full state funding, is to submit needs data and information concerning the status of transportation systems to the state department of transportation, for use in the preparation of the statewide transportation status and needs report. This report is presented every four years to the legislature and evaluates the status and condition of the state, city, and county transportation systems and analyzes all transportation needs of the state, counties, cities, and towns. Needs are projected for five and ten years. The reader is urged to consult A.R.S. § 28-1598 for a more detailed discussion of funding distribution and requirements.

FEDERAL AID HIGHWAY PROGRAM

There are a number of federal-aid highway programs, which are administered through the state of Arizona. One publication which describes the basic elements of the programs is a booklet entitled, "America on the Move" published by the Federal Highway Administration (1984). This volume describes basic programs. Excerpts from this document describe aspects of the program:

At the core of the federal-aid highway program are the federal-aid systems. These are designated routes upon which federal funds may be used. There are four such systems—the Interstate, Primary, Secondary, and Urban. The "functional classification" of routes or sections of routes is the basis for placing routes on one or the other of the federal-aid systems. Functional classification is concerned with three broad types of routes--arterial roads, collector roads, and local roads.

The Primary System consists of rural routes and their urban extensions that are classified as arterials. The Secondary System is comprised of rural routes that are classified as major collectors, such as farm-to-market roads, while the Urban System consists of arterial and collector routes in urban areas (places of 5,000 or more population) which are not on the Primary System.

The designation of a 40,000-mile Interstate System was authorized by Congress in 1944, and by 1947, 37,861 miles were approved. These miles were to be added to the Primary System mileage, thus effectively making the Interstate System part of the Primary System. This provision still exists, although the Interstate System generally is thought of as a separate system.

Interstate freeways are typically divided roadways with complete control of access. They have no traffic lights or stop signs, no intersections at grade, and no sharp curves or steep grades.

Designation of a road as part of a federal-aid system does not mean that the road is owned, operated, or maintained by the Federal Government. The designation simply is the first step in providing eligibility of selected state and local road systems for most of the federal assistance programs. The Federal Government does not own any roads except those on federal lands.

The largest portion of federal assistance for highways--about 80 percent of the total federal funds authorized--is distributed to the states for the construction, reconstruction, and improvement of roads on the federal-aid systems. The funds are made available through the following programs:

- Interstate
- Interstate 4R
- Primary
- Secondary
- Urban

These programs are described in more detail as follows:

Interstate Program

The Interstate program is the largest federal-aid highway program, in terms of funding. The federal share of these costs is 90 percent of the project's cost.

Until September 30, 1983, incompleted Interstate routes which were not essential for completion of a unified and connected Interstate System could be withdrawn from the System under certain conditions. Funds equivalent to the cost of the route withdrawn then became available to construct substitute highway

projects and/or mass transit projects. However, construction of all Interstate and substitution projects must be underway by September 30, 1986.

The Interstate transfer provision gives states and local governments the flexibility to choose the type of transportation projects which best suit their needs. The federal share for both substitute highway and mass transit projects is 85 percent. The DOT's Urban Mass Transportation Administration administers the funds for mass transit projects.

Interstate 4R Program

The Interstate 4R program provides funds for resurfacing, restoring, rehabilitating, and reconstructing the Interstate System. The 4R program provides for a much broader range of eligible activities and the federal share is 90 percent.

Primary Program

Primary routes, which are rural arterials and their extensions through urban areas, are chosen by the states with the approval of the Secretary of Transportation. The routes are owned and maintained by the states in most cases, or by local units of government.

The federal share for Federal-Aid Primary projects is 75 percent. Although these funds may be used for all types of highway construction projects on the Primary System, a requirement is that at least 40 percent of the funds be spent on 4R-type projects on existing highways. It should be noted that the Federal share may vary due to adjustments made for the amount of current federally owned acres in the state.

Secondary Program

Comprised originally of farm-to-market and feeder roads on state highways and county and local roads, and now including the more important intra-county routes, the Secondary System totals about 400,000 miles. The Secondary System cannot exceed the total mileage of rural major collector routes in each state. It consists of many locally owned and maintained routes, as well as minor state routes.

The federal share of the cost of projects is 75 percent. Although these funds may be used for all types of highway construction projects, a requirement is that at least 40 percent of the funds be spent on 4R-type projects on existing highways.

Urban Program

In 1970, a separate Federal-Aid Urban System was established as a network of supplementary roads to serve local urban transportation needs. Selection of the specific system sections in each urban area is made by local officials with the concurrence of the state highway or transportation agency. The federal share of project costs is 75 percent.

Urban System funds, in addition to the regular eligibilities of all federal-aid highway funds, may be used for the purchase of transit buses and rapid rail cars and for the construction, reconstruction, and improvement of fixed rail facilities. This broad use of highway funds is at the discretion of local and state officials. However, at least 40 percent of the funds must be spent on 4R-type projects. Further emphasizing the local nature of the Urban System program is the requirement that projects be selected by appropriate local officials (with the subsequent concurrence of the state). Under most other programs, projects are initiated by the state highway or transportation agency.

Special Purpose Programs

This section describes federal programs that are not tied to a specific type of roadway system. These programs are aimed at solving problems common to all roadway systems.

Bridge Replacement and Rehabilitation Program

This program provides funds for the rehabilitation as well as replacement of deficient bridges. Funds may be applied to projects on all highway bridges on public roads, regardless of whether they are on or off a federal-aid system. (Between 15 and 35 percent of the regularly apportioned funds must be spent on off-system bridges.) The federal matching share is 80 percent of the eligible costs.

Highway Safety Program

Improved highway safety is the goal of several individual programs. One of these is the State and Community Highway Safety Program. The FHWA and the National Highway Traffic Safety Administration share responsibility for the program, and both provide states with federal funds for administering it. Aimed at making the driver, vehicle, and roadway safer, activities include driver education and licensing, periodic motor vehicle inspection, provision of emergency medical services, identification of accident locations, encouragement of safety belt usage, and improved highway design, construction, and maintenance practices.

Also under highway safety are the following programs relating to the physical safety aspects of roads and streets:

Hazard Elimination Program

This program has as its goals the correction of high hazard locations; the elimination of roadside obstacles which are a hazard to motorists or pedestrians; the improvement of signing and pavement marking; and the installation of traffic control or warning devices at high or potentially high accident locations. Projects may be on any public road other than a highway on the Interstate System. The federal share is 90 percent.

Rail-Highway Crossings Program

This program is aimed at eliminating hazards at railroad-highway crossings both on and off the federal-aid system. Funds for the program may be used for warning devices; such as, signs, flashing lights, or gates, or for any type of work which reduces or eliminates the potential conflict between trains and highway vehicles. However, at least half the apportioned funds must be used for installation of protective devices at railway-highway crossings. The federal share is 90 percent.

Interstate Substitutions

This program provides funds for the substitute highway projects which result from decisions to withdraw Interstate routes and replace them with other types of federal-aid projects. Construction of all interstate and substitution projects were to

have been underway by September 30, 1986, however. The Federal Highway Administration representative should be contacted regarding the latest transfer and substitution policies.

Emergency Relief Program

Emergency funds are available through this program to repair roads and bridges damaged by natural disasters or catastrophic failures from external causes. Eligible facilities may be on the federal-aid highway system including the Interstate System, or federal roads. Normally each state is limited to receiving a maximum of $30 million per disaster.

Federal Lands Highways Program

This program is of special federal interest because public roads improved under it provide access to federally owned lands. The program provides funds for forest highways, public lands highways, park roads, parkways, and Indian reservation roads. Financing these roads from regular federal-aid funds for other improvements would be unfair to the states. While the money comes out of the Highway Trust Fund, no state matching funds are required.

Congress authorizes funds for the individual subcategories (e.g., forest highways, park roads and parkways, public lands highways, and Indian reservation roads) within the Federal Lands Highways Program.

Planning and Research

Although not a construction-related program like the others listed, planning and research activities receive special funding. One and one-half percent of the federal-aid highway apportionment for most major programs can be used only for highway planning activities (e.g., engineering and economic surveys and investigations; studies of the economy, safety, and convenience of highway usage; and the overall planning, including financing, of future highway programs and local public transportation systems) and for highway research in such areas as maintenance, safety, and design.

There also is a one-half percent deduction from the authorizations for the systems related programs to finance urban transportation planning activities. These include developing transportation plans and programs in urban areas of more than 50,000 population. The foregoing activities are conducted by state and local units of government.

Demonstration Programs

The Congress often designates funds for use only on site specific projects. They are called demonstration projects because the authorizing language generally indicates that the purpose of the project is to demonstrate a technique or approach that could possibly be applied in similar projects elsewhere in the country.

County Designation of Federal Aid Secondary Highways

A.R.S. § 28-1867 discusses how to designate county federal aid secondary highways. This statute is quoted as follows:

> "A. Upon petition of the board of supervisors of a county, the board shall, if it decides that the public convenience is served and the designation will not interfere with the completion and upkeep of the present county highway system, submit to the federal highway administration a request that the road be placed on the county federal aid secondary system.
>
> "B. Federal-aid secondary county highways shall be ordered constructed, improved, repaired and maintained by the county with the department acting as agent for the counties for the receipt of federal-aid funds.
>
> "C. The costs of construction, improvement, repair and maintenance of federal-aid secondary state highways shall be borne by the department.
>
> "D. Matching funds for any county federal aid secondary project shall be the responsibility of the county and matching funds for state federal-aid secondary projects shall be the responsiblity of the department.
>
> "E. Any rural road in the state may be designated a federal-aid secondary road by approval of board with the concurrence of Federal Highway Administration.

"F. "Secondary roads" as used in this section means roads having secondary order of significance to primary roads which connect centers of population."

UMTA PROGRAMS

The Urban Mass Transportation Administration (UMTA) provides funding for public transit systems. Grant recipients are state and local governments and transit authorities. A summary of UMTA grant programs is summarized as follows (excerpted in part from the brochure "Federal Assistance for Urban Mass Transportation," (October 1984). The "sections" noted refer to sections of the 1982 Surface Transportation Assistance Act.

Discretionary Capital Grants

Since its inception in the 1960's, the Section 3 discretionary grant program has been the principal resource for capital investment in public transportation. With passage of the 1982 Surface Transportation Assistance Act, the Section 3 program consists of three investment categories: (1) modernization of older rail transit systems; (2) bus needs not met by formula funding; and, (3) new fixed guideway transit systems.

To qualify for capital grant funds, applicants must meet a number of federal requirements; such as, labor protection, civil rights, and environmental protection rules as well as participate in an approved planning process. Similarly, grant funds must be administered in accordance with federal record keeping, relocation and procurement requirements. Capital assistance grants are awarded for a maximum of 75 percent of project costs.

Technical Assistance

Sections 6, 10, and 11 permit UMTA to undertake research, development, demonstration, and training activities. The UMTA technical assistance programs, developed and implemented in consultation with the transit industry, state and local governments, and academic institutions carry out projects which identify and demonstrate innovation in technology, planning, safety, training, and management.

Planning and Technical Studies

Section 8 establishes a program of planning assistance grants intended to assure that transit projects are developed in accordance with regional transportation plans and that alternatives are examined in evaluating the costs and impacts of transportation investments. Planning grants are awarded on an 80/20 federal to local matching share basis.

Formula Grants

The Section 9 program makes federal resources available to urbanized areas for capital and operating assistance. Eligible projects include rehabilitation and replacement of rolling stock, construction and modernization of maintenance facilities, fleet expansion, and the purchase and installation of support equipment. Section 9 funds are apportioned to urbanized areas utilizing a formula accounting for population, population density, and factors representing services and ridership. Funds in this category are obtained through a grant application process and federal requirements for eligibility and grant administration must be met. Capital grants are funded on an 80 percent federal to 20 percent local matching basis.

Other Provisions of the UMTA Act

Section 12 contains the requirements for management of UMTA grants. Section 13 contains the labor protection requirement.

Section 14 outlines the environmental requirements which apply to federally funded transit projects. Section 15 establishes a data collection program for transit operational and financial statistics, while Section 16 states that federally funded transportation service must be available to the elderly and handicapped. Federal transit funds are made available to nonurbanized areas on a formula basis as described in Section 18.

Section 19 contains the prohibitions on discrimination which apply to UMTA and its grantees. Section 20 provides for human resource training and employment programs, including opportunities for women and minority owned businesses. The authorization levels for the various UMTA programs are found in Section 21.

Finally, UMTA's safety authority is described in Section 22 which entitles the Secretary of Transportation to investigate unsafe conditions in transit operations.

BONDS

Another form of roadway funding is the issuance of bonds for highway construction. The issuance of bonds must be approved in an election by real property owners who are qualified electors of the county. A bond election shall be called if 15 percent of the electors petition the county.

If the contemplated bond issue is $2 million or more, the board of supervisors shall appoint a county highway commission of three members. If the proposed bond issue is less than $2 million, the supervisors shall be ex officio county highway commissioners. According to A.R.S. § 18-233, the duties of the commission are as follows:

> "The county highway commission shall investigate situations with respect to highways which in their judgment the greatest public necessity and convenience require to be constructed or improved, and shall have prepared a map of the highways, showing the location, condition, connections and other information with respect thereto. The commission shall determine which of the public highways should be improved with funds derived from the sale of the bonds to be authorized and sold, the kind of improvements which should be made and shall procure an estimate of the cost of the improvement."

The bond monies are placed in a special fund called the "highway improvement fund," where they are paid out by the county treasurer only upon order of the commission. Any surplus in the fund after completion of the bond improvements shall be transferred to the general road fund of the county, and may be expended by the board either for repair of county roads or for construction of state highways or roads connecting with state highways (A.R.S. § 18-237).

Bonds also may be issued against the anticipated revenue from the transportation excise tax, if this tax was approved by voters.

SPECIAL ROAD DISTRICTS

Special road districts are formed if approved by an election by qualified electors of the proposed district. In a district, a special road tax can be levied on

all real property and mobile homes within the district, for the purposes of construction, maintenance, and repair of roads, driveways, highways, and bridges within the district. This tax shall not exceed (except by a special election approval process) 75 cents per $100 of assessed valuation of the real property and mobile homes in the district. This money is kept in a special fund designated for the road district. A special election may be called to determine whether bonds should be issued, if necessary. Trustees are designated, by election, who have the following duties, as designated by A.R.S. § 48-1405:

> "1. Have exclusive charge and control of the establishment, maintenance and repair of roads, driveways and bridges within the district, other than county and state highways, and to that end may, in the name of the district, hold and convey property for the use and benefit of the district.
>
> "2. Sue and be sued.
>
> "3. Make contracts, employ labor and purchase material for the construction, maintenance and repair of roads, driveways, highways and bridges within the district and keep such highways and bridges within the district free from obstructions.
>
> "4. Control the funds of the district, which shall be paid out only on written order containing an itemized statement of the charge for which the order is drawn, and signed by at least two members of the board of trustees."

The effect of the special road tax upon collection of general county tax within the district is described as follows in A.R.S. § 48-1412:

> "The levy and collection of the special road taxes within the district shall not exempt the property within the district from the levy and collection of the general county road tax by the board of supervisors, but the board shall appropriate annually to the use of the special road district an amount which in their judgment is equitable and just, not less than forty nor more than sixty-five percent of the amount of road tax levied and collected within the special road district."

Districts are dissolved by election; however, a district shall not be dissolved until all outstanding bonds and interest have been paid in full.

TOLL ROADS

A.R.S. § 18-401 defines a toll road as follows:

> "Toll road" includes trails for passage of saddle and pack animals and foot passengers, as well as roads designed for passage of vehicles, where the trails have been built in mountainous or precipitous places or in other places where building of roads for passage of vehicles would be impracticable."

In order to construct a toll road, the following basic procedure is required by statute:

- o A notice must be published in a newspaper once a week for six successive weeks, defining aspects of the toll road and the timing for the application of the facility.
- o Submit an application to the board of supervisors including an engineer's plat, proposed construction plans, and cost estimates.
- o The board shall hold a public hearing on the application.
- o The board may then grant or reject the application. The board fixes and regulates the rate of toll.

A.R.S. § 18-403 states that no application shall be granted if the highway commission files with the board a written statement that the proposed toll road will interfere with a state highway or state route existing or contemplated, or when the proposed toll road will interfere with a county highway, existing or contemplated. No franchise for a toll road shall be granted for a term exceeding ten years, subject to one extension period not exceeding ten years. Upon expiration of the franchise, the ownership is vested with the county or counties in which it is located.

REFERENCES

1. America on the Move, The Story of the Federal Aid Highway Program, Federal Highway Administration, Washington, D.C., September, 1984.

2. Deteriorating Highways & Lagging Revenues: A Need to Reassess the Federal Highway Program, General Accounting Office (GAO), Washington, D.C., 1981, vp.

3. Financing Federal-Aid Highways, U.S. Department of Transportation, Washington, D.C., September, 1983.

4. Highway Cost Allocation Study Plan, U.S. Department of Transportation, Washington, D.C., 1979.

5. Rao, K., "Managing State Highway Finance," NCHRP Synthesis-100, Washington, D.C.: Transportation Research Board, 1982.

6. Winfrey, R., Economic Analysis for Highways, Intl. Textbook, Scranton, Pennsylvania, 1969.

7. BUDGETS AND PROGRAMS

INTRODUCTION

This chapter describes statutory requirements regarding adoption of budgets and discusses budgeting procedures and types of budgets.

STATUTORY REQUIREMENTS

The Arizona Revised Statutes require each county board of supervisors to prepare a complete statement of the county's financial affairs for the preceding fiscal year and to estimate the amounts required to meet expenses for the upcoming fiscal year. These estimates are required on, or before, the third Monday in July of each year and must be fully itemized on forms supplied by the state's Auditor General. The board of supervisors must hold a public hearing and special board meeting for the purpose of hearing taxpayers and making tax levies. The estimates and notice of hearings must be published once a week for at least two consecutive weeks following the tentative adoption of the estimates in the official newspaper of the county, or in a newspaper of general circulation in the county. The public hearing and special board meeting shall be held on the seventh day before the day it levies taxes as designated in the published notice.

When the proposed expenditures set forth in the published proposal have been adopted, it will constitute the county budget for the fiscal year. The amounts in the budget may not exceed the total of amounts proposed in the published estimates. No expenditures may be made for any purposes not listed in such budget and no debt, obligation, or liability may be incurred or created in excess of the amount specified in the budget except as provided by law. The total legal requirements of these taxing, reporting, and budgeting procedures are found in A.R.S. § 42-301 and A.R.S. § 42-303.

A county highway department (or agency) is an integral part of the county legal requirements which are described above. The AASHTO Manual of Uniform Highway Accounting offers the definition that:

> "...budgeting is a work program, a conversion into money terms of program objectives, and a statement of the resources required to obtain these objectives."

Budgeting and accounting are necessarily closely related; therefore, both budgeting and accounting formats should be compatible, and provide ease of comparing and tracking account receipts and expenditures for control and timely execution of the budgeted work plan. A budget is an important tool of management in planning and in measuring the progress of the work process to achieve the goals and objectives authorized in the budget.

The management of county highways, as a responsibility of the individual board of supervisors is varied in Arizona. Some counties have established a highly organized and staffed county highway department or departments of transportation headed by a public works director or a county engineer as a chief responsible administrator. Other counties may retain or employ a county engineer as a technical chief engineer but do not assign this position total responsibility over county road work. Some counties do not employ a registered county engineer and each elected supervisor may direct the road work in his or her district through a road foreman. Though there are no statutory requirements for administering county road systems, the budgetary requirements are the same for each county. The details of budget preparation for county highway programs may vary from county to county; however, the annual statutory report of expenditures and budget for a new year are required on the State's Auditor General format and thus, end up in a similar final organized presentation.

ORGANIZATION OF BUDGET

The organization of a county budget for each of the elected or appointed offices or departments is presented in the basic format as follows:

A. Operating Budget
   - o Personal Services
   - o Supplies and Services
   - o Capital Outlay

B. Capital Improvement Projects

Personal services budgets contain all anticipated costs related to compensating employees, including salaries, wages, and benefits such as vacations, contributions for retirement, social security, sick pay, health insurance, workman's and unemployment compensation insurance, etc.

Supplies are described as expendable items required to operate the office or department function and include such costs as office supplies, equipment repair and parts, gasoline, minor building maintenance material, janitorial supplies, etc.

Services covers the expenses made for outside organizations such as communication charges, laboratory services, publishing legal notices, travel expenses, telephone, electricity, water, etc.

Capital outlays include all expenditures which result in the acquisition of an addition to fixed assets. Fixed assets can be defined as an item of equipment, machinery or furniture having a unit cost of more than $300 and an estimated useful life of more than one year.

The capital improvement project budget provides for the one time, non-recurring costs resulting in a tangible asset or facility of a planned extensive life span of utilization. Capital improvement projects include all elements of expenses such as acquisition of land, design, construction and include all the separate elements that when combined make a total project. Capital improvement projects must define the source of funds such as bonds, special taxes, Highway Users Revenue Funds (HURF), or general funds.

The county highway capital improvement project program is essentially divided into two parts.

1. Proposed road improvements to be constructed using fund resources under direct control of the board of supervisors.
2. Highway projects to be financed by use of federal aid secondary programming.

The financing of highways using federal funds in Arizona under the Federal Highway Administration is programmed in four general categories:

1. Federal projects for federal agencies.
2. Interstate projects (by ADOT).
3. Federal aid primary projects (by ADOT on the state highway system).
4. Federal aid secondary projects (by ADOT on selected state highway systems and on selected county highway systems).

Federal aid secondary projects on a county highway system are programmed by the Arizona Department of Transportation through a selection process coordinated through the county area council of governments or association of governments. A county highway capital improvement program should be scheduled for budgeting purposes over a multi-year (normally five years) span of time on a selected priority basis to accommodate the time requirements to accomplish right-of-way acquisitions, engineering design and any necessary public hearings, environmental assessment reports, and other time consuming factors to prepare a project for construction contract. In the implementation of county highway program projects, it is necessary to track the income from the various fund sources within income limitation and within staff capability to control.

ACCOUNTING SYSTEMS

Good budgeting practice is wholly dependent upon good cost records and a good accounting system. Accurate cost estimates of proposed activities or projects are a necessity if funds are to be allocated properly to reflect intended objectives. Most, if not all, county governments will have established accounting systems and budget development procedures. Essentially, most accounting systems utilize numerical codes that provide a way to distribute all expenditures by activity. These may be called functional or activity accounts. Another set of numerical codes will disclose the objective of the expenditure. The use of object accounts will, together with functional accounts, record the exact nature of each expenditure by each activity. The "Manual of Uniform Highway Accounting Procedures," published by AASHTO, does present a coding system for expenditure classifications for both functional and objective codes that can be useful in identifying expenditures.

Most budgeting procedures adopted by governmental agencies present data that compares what has been done with what is intended to be done. The last completed year's actual costs for each line item are shown along with the estimated costs of the current year to provide a comparison to evaluate the request for the next budget year. This is a standard procedure in presenting budget requests for operating budgets.

Estimating costs for capital improvement projects can only be efficiently accomplished by keeping good production records and constantly monitoring cost trends in the construction industry. This is also true concerning the equipment and materials manufacturing industry.

As an estimate of the operations and objectives to be achieved in a next fiscal year, an approved budget should be used as a guide to schedule and measure the progress of accomplishment. Budget reports routinely scheduled will show the financial position of the county road agency and provide essential managerial control data.

REFERENCES

1. Cost Records and Budgets, Action Guide Series Volume II, National Association of County Engineers, Washington, D.C., July, 1972.

2. F.Y. 1985-86 Annual Budget Preparation Manual, Maricopa County, Arizona.

8. INTERGOVERNMENTAL RELATIONS

INTRODUCTION

This chapter discusses intergovernmental agreements in general, and provides informational material on other branches of government and agencies that county engineers typically deal with.

STATUTORY AUTHORITY AND FORMS OF AGREEMENT

All agreements for services or joint arrangements with other public agencies shall be authorized by contract, as specified in the Arizona Revised Statutes. As discussed in Chapter 4, Role of Board of Supervisors, the county board of supervisors is authorized to make contracts as necessary to exercise its powers.

Intergovernmental agreements and contracts are covered in A.R.S. § 11-952. This statute states, in part:

> "A. If authorized by their legislative or other governing bodies, two or more public agencies by direct contract or agreement may contract for services or jointly exercise any powers common to the contracting parties and may enter into agreements with another for joint or cooperative action, except that if two or more school districts arrange to become contracting parties under the terms of this section, such contract shall first be approved by the state board of education.
>
> "B. Any such contract or agreement shall specify the following:
>
> 1. Its duration.
> 2. Its purpose or purposes.
> 3. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefore.
> 4. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
> 5. Any other necessary and proper matters.
>
> "C. No agreement made pursuant to this article shall relieve any public agency of any obligation or responsibility imposed upon it by law.

> "D. Every agreement or contract involving any public agency, board or commission made pursuant to this article shall, prior to its execution, be submitted to the attorney for each such public agency, board or commission, who shall determine whether the said agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency, board or commission."

One interesting court decision regarding this matter was the case of Board of Supervisors of Apache County versus Udall (1931). In this case it was decided that the board of supervisors could not bind themselves to perpetually maintain a state route, because this would conflict with the supervisors statutory authority to abandon county highways.

Examples of intergovernmental agreements are as follows:

1. Change of road status to or from county road, to or from federal agency, state, municipal government, or Indian tribe.

2. Exchanging excess odd right-of-way parcels.

3. Participation in joint road construction or maintenance projects, either financially, with force account labor, providing building materials, jointly paying for consulting services, or showing enforcement personnel.

4. Providing traffic control device services or maintenance for small cities that have no qualified staff. This includes signing, striping and traffic signal construction, operation, and maintenance.

5. Conducting studies on behalf of other counties or cities. This might include inventories of bridges, railroad crossings, traffic control devices, and traffic volume counts.

6. Water rights or hydrologic (stormwater) control studies or construction projects.

7. Water and/or air pollution control studies and/or improvement measures.

8. Research projects with the state regarding highway construction materials or traffic control devices.

COUNTY-FEDERAL RELATIONS

In general, the county, through the board of supervisors, is authorized by A.R.S. § 11-251 to enter into agreements for acquiring rights-of-way, construction, reconstruction, or maintenance of highways, with the government of the United

States. If the roads pass through Indian reservations, the governing body of the respective Indian tribe must consent to the use of its land. This statute also gives the county supervisors the power to sell or grant to the United States the title or interest of the county in any toll road or toll trail located in or partly within a national park.

Federal Highway Administration

County highway engineers typically interact with the Federal Highway Administration on a number of levels. With respect to design, the county must adhere to design standards promulgated by FHWA, if federal funds are used in the project. As will be discussed in the section on county-state relations, it is ADOT who distributes federal funds to the counties.

On a planning level, FHWA reviews the regional transportation plan, which the county is involved in developing. The periodic state and federal review is for the purpose of determining if an acceptable program of regional planning is being undertaken. The findings of this review determine whether the planning program achieves "certification," which is a requirement prior to federal funding of transportation projects.

U.S. Forest Service

The U.S. Forest Service (a branch of the Department of Agriculture) typically negotiates with counties (and also state D.O.T.'s) to determine who should maintain or improve roadways, depending on the purpose and use of the roadway, and who the road is serving (i.e., persons traveling within the county or to access a state route). Sometimes these negotiations will lead to a change in the roadway's status from a forest service highway to a county or state highway. The board of supervisors must vote to establish a road as a county highway (as described in Chapter 4, Role of Board of Supervisors.

National Park Service

The National Park Service (a branch of the Department of the Interior) also can negotiate with counties regarding road maintenance.

Bureau of Indian Affairs

The U.S. Department of the Interior, Bureau of Indian Affairs (BIA) has two area offices for Arizona. Each area office administers several agency field offices. The following is a list of the addresses of both the area offices and the agency offices which they administer.

Phoenix Area Office
P.O. Box 7007
Phoenix, Arizona 85011

Colorado River Agency
Parker, Arizona 85344

Fort Apache Agency
Whiteriver, Arizona 85941

Fort Defiance Agency
Fort Defiance, Arizona 86504

Hopi Agency
Kearns Canyon, Arizona 86034

Papago Agency
Sells, Arizona 85634

Pima Agency
Sells, Arizona 85634

Salt River Agency
Route 1, Box 907
Scottsdale, Arizona 85251

San Carlos Agency
San Carlos, Arizona 85550

Truxton Canyon Agency
Valentine, Arizona 86437

Navajo Area Office
Window Rock, Arizona 86515

Tuba City Agency
Tuba City, Arizona 86045

Chinle Agency
Chinle, Arizona 86503

Each BIA office has many branches or departments. The following is a partial list of branches county engineers may need to consult.

- roads
- public information
- employment assistance
- facility management (buildings)
- forestry
- land operations
- rights protection (water)
- property and supply (procurement, contracting, construction, and property management)
- safety
- tribal operations
- trust protection
- water rights
- real property management

If a county engineer has a question for the BIA, the first place to contact is the local agency office.

It is recommended that the individual Indian tribes or reservations be contacted at the same time as the BIA (see tribal addresses in Section 8.4, Tribal Relations, of this manual). The BIA cannot make tribal commitments. Some of Arizona's tribes have well developed internal government departments. Some prefer to operate as independently as possible from the BIA.

Intergovernmental agreements or contracts may be developed between the county and the BIA or the tribes independently.

While the major paved roads on a reservation are usually under ADOT, county, or BIA jurisdiction, some are owned by the tribe.

It is possible to have BIA assistance in the improvement of certain county roads leading to Indian reservations. The easiest forms of assistance are maintenance, materials, or construction. However, financial assistance might be arranged if the road is also on the BIA Branch of Roads priority list. Funding would have to be funneled through the Federal Highway Administration and Arizona Department of Transportation. It is also possible to have the BIA construct a road with the agreement that the county will accept it into the county system for county maintenance.

Legal authority for counties to enter into intergovernmental agreements with the BIA can be found in A.R.S. § 11-952, Intergovernmental Agreements.

Other Federal Agencies

There are a number of state and federal agencies which would interact with a county engineer, primarily during preparation of an environmental assessment study. These agencies, and the federal regulations these agencies are most involved in, are summarized in Table 8-1.

TRIBAL RELATIONS

The legal authority for counties to enter into intergovernmental agreements with the various Arizona Indian tribal councils can be found in A.R.S. § 11-952, Intergovernmental Agreements. The term "public agency," is defined in A.R.S. § 11-951 to include Indian Tribal Councils.

One of the more probable reasons to enter into an agreement with an Indian tribe involves roads. Thus, the following additional references may be useful: (1) A.R.S. § 18-201, Establishing, Altering and Abandoning Local Highways; and, (2) A.R.S. § 28-1902, Disposition of Unnecessary Public Roadways.

Other sections of the Arizona Revised Statutes concern themselves with tribal relations and possible county interaction. A.R.S. § 36-1865, Jurisdiction Over Indian Lands, states that:

> "Any duly authorized agent of the state or any political subdivisions may enter upon any public or private lands, including Indian lands, for the purpose of enforcing the laws relating to water pollution control."

Similarly, A.R.S. § 36-1801 permits this same access upon Indian lands for enforcing air pollution control laws.

Arizona Title 45, Waters, contains areas in which counties may interact with Indian tribes. These include A.R.S. § 45-181, Claim of Right to Withdraw, Divert or Use Public Waters. The Indians have some rights to water upon which the various counties may rely. In fact there have been 12,000 Indian claims filed for Arizona waters. Presently, there is a large judicial adjudication of these Indian rights, and the rights of others in Arizona. These issues may not be settled for several years. Indian water rights claims primarily involve surface water. However, groundwater studies are under way, particularly on the Navajo and Hopi reservations, that may be

Table 8-1

AGENCY CONTACTS

Federal Regulations	Authority	Contact
1. NEPA, 1969	Environmental Protection Agency	ADOT, Environmental Planning, 205 S. 17th Ave., Phoenix 255-7768
2. FHPM 7-7-2 (Social Economic, and Environmental)	FHWA	ADOT, Environmental Planning, 205 S. 17th Ave., Phoenix 255-7768
3. FHPM 7-7-3 (Noise Studies)	FHWA	ADOT, Environmental Planning, 205 S. 17th Ave., Phoenix 255-7769
4. FHPM 7-7-9 (Air Quality)	FHWA	ADOT, Environmental Planning, 205 S. 17th Ave., Phoenix 255-7769
5. Threatened and Endangered Species Act	U.S. Fish & Wildlife Service	Division of Ecological Services, 2934 W. Fairmont Ave., Phoenix 241-2493
6. Floodplain Management Executive Order 11988	Water Resources Council	Local Flood Control District Office
7. Wetlands Protection Executive Order 11990	U.S. Fish & Wildlife Service	Division of Ecological Services, 2934 W. Fairmont Ave., Phoenix, 241-2493
8. Historic Preservation Act of 1966 (Section 106)	Advisory Council on Historic Preservation	State Historic Preservation Office, 1688 W. Adams, Phoenix 255-4174
9. Section 404 (Dredged & Fill Materials)	U.S. Army Corps of Engineers	Corps of Engineers Los Angeles District (213) 688-5606
10. Farmlands (prime, unique, or statewide importance)	U.S. Soil Conservation Service	201 E. Indianola, Phoenix or local field office 241-2969
11. Wild and Scenic Rivers Act	U.S. Forest Service	Local Forest Service Office
12. CEQ Guidelines	Council on Environmental Quality	ADOT, Environmental Planning, 205 S. 17th Ave., Phoenix 255-7768
13. U.S. Department of Transportation Act of 1966 (Section 4f)	FHWA	ADOT, Environmental Planning, 205 S. 17th Ave., Phoenix 255-7768
14. Sole Source Aquifer-Safe Drinking Water Act (Section 1424(e))	Environmental Protection Agency	ADOT, Environmental Planning, 205 S. 17th Ave., Phoenix 255-7768

used as a basis for Indian claims on Arizona groundwater. If a county is interested or involved, the county attorney is probably aware of these water rights issues.

Title 41, State .Government, Chapter 3, Administrative Boards and Commissions, Article 4, Indian Affairs Commission, established a commission consisting of the governor, key state department heads and seven Indian tribal members. The Commission had broad duties to secure cooperation from federal, state, and local governments for the promotion of Indian welfare. However, this commission was terminated under sunset laws on July 1, 1986. However, re-emergences of this commission or a similar board is possible in the future. County-Indian road problems could conceivably be a topic for discussion. A check with the governor's office is recommended when the need arises.

Below are two lists that may be useful when tribal contacts become necessary. The first is a list of the reservations found in each of the counties. The second is the official name of each tribe and the mailing address of the tribal council or governing board.

ARIZONA INDIAN RESERVATIONS IN ARIZONA COUNTIES

Counties	Reservations
Apache	Navajo and Fort Apache
Cochise	None
Coconino	Navajo, Hopi, Kaibab, Havasupai and Hualapai
Gila	Fort Apache and San Carlos
Graham	San Carlos
Greenlee	None
La Paz	Colorado River
Maricopa	Gila River, Gila Bend, Salt River, Fort McDowell and Papago
Mohave	Kaibab, Hualapai, and Fort Mojave
Navajo	Navajo, Hopi, and Fort Apache
Pima	Papago, San Xavier, and Pascua Yaqui
Pinal	Gila River, Maricopa Ak-Chin, and Papago
Santa Cruz	None
Yavapai	Yavapai and Camp Verde
Yuma	Cocopah

The following is a list of the various tribal councils and addresses in Arizona:

Ak-Chin Indian Community Council
Route 2, Box 27, Maricopa, Arizona 85239

Chemehuevi Tribal Council
Box 1976, Havasu Lake, California 92363

Cocopah Tribal Council
Bin G, Somerton, Arizona 85350

Colorado River Tribal Council
Rt. 1, Box 23-B, Parker, Arizona 85344

Fort Mojave Tribal Council
500 Merriman Avenue, Needles, California 92363

Gila River Indian Community
P. O. Box 97, Sacaton, Arizona 85247

Havasupai Tribal Council
P. O. Box 10, Supai, Arizona 86435

Hopi Tribal Council
P. O. Box 123, Kykotsmovi, Arizona 86039

Hualapai Tribal Council
P. O. Box 168, Peach Springs, Arizona 86434

Kaibab Band of Paiute Indians
P. O. Box 302, Fredonia, Arizona 86022

Mohave-Apache Community Council (Ft. McDowell)
P. O. Box 17779, Fountain Hills, Arizona 85268

Navajo Tribal Council
Window Rock, Arizona 86515

Pascua Yaqui Tribal Council
7474 S. Camino De Oeste, Tucson, Arizona 85746

Quechan Tribal Council
P. O. Box 1352, Yuma, Arizona 85364

Salt River Pima-Maricopa Indian Community Council
Route 1, Box 216, Scottsdale, Arizona 85256

San Carlos Council
P. O. Box O, San Carlos, Arizona 85550

Tohono O'odham Council (Papago)
P. O. Box 837, Sells, Arizona 85634

Tonto Apache Tribal Council
Tonto Reservation No. 30, Payson, Arizona 85541

White Mountain Apache Tribal Council
P. O. Box 700, Whiteriver, Arizona 85941

Yavapai-Apache Community Council
P. O. Box 1188, Camp Verde, Arizona 86322

Yavapai-Prescott Board of Directors
P. O. Box 348, Prescott, Arizona 86301

In addition, the San Carlos irrigation district provides electric power to parts of Pinal County. The address is P.O. Box 250, Coolidge, Arizona 85228. Also, the Hopi Partitioned Lands Office is concerned with lands in Navajo and Coconino Counties. The address is P.O. Box 7007, Phoenix, Arizona 85011.

The counties should be aware that some of the tribes require permits and/or licenses to enter their reservations for purposes such as conducting studies, surveying, maintenance, or construction activities. Some tribes assess taxes for doing business and, especially, for construction contractors. County forces may not be exempt from these fees or taxes. Tribal inquiries are recommended prior to such activities in order not to strain relations. Remember, too, that some tribes consider themselves separate nations and, therefore, at variance with some state and federal laws. One of the most well organized tribes is the Navajo. They are the largest tribe in the U.S.A. with over 100,000 members. They have their own departments of justice and water resources.

Other considerations to keep in mind when negotiating with the various tribes are:

- Their value systems may be different.
- Not all tribes are progressive, in the sense that economic gain from commercialization or tourists may not be a tribal goal.

- Raw land is usually embodied deeply into Indian tradition and values. Requests for land to be used for highway purposes may meet resistance because of this. Retaining land in its natural state is sometimes a tribal goal.

- Negotiations are usually conducted quietly and over a longer period of time than may normally be expected.

COUNTY-STATE RELATIONS

General

Because the county's powers are determined only by state statute, it could almost be presumed that the counties have a special relationship with all state agencies. The counties appear to be quasi-state agencies themselves, from a legal sense. A.R.S. § 11-101 addresses the division of the state into counties. The state is divided into counties named and bounded as provided in this article. The important part of this article is found in the notes on legal decisions in the law cases of Transamerica Title Insurance Company versus Cochise County, 1976, and Maricopa County versus Anderson, 1957. Note 1 states in general, that "lawmaking powers of counties are entirely derivative and the only powers possessed by county boards of supervisors are those expressly conferred on them by statute or necessarily implied therefrom. Counties can only exercise those powers strictly ceded to them by the legislature. A county is a creature of state and while no part of sovereignty is vested in county, it may be given the right to exercise that power but in doing so it is acting as agent of the sovereign state."

Many notes on court decisions are found directly after A.R.S. § 11-251, Section 2, Powers of Supervisors. These state similar conclusions as recorded above. For instance, "County supervisors possess only powers expressly conferred by statute or necessarily implied therefrom." "County commissioners can exercise only those powers conferred upon them by organic or statutory laws or, such as may arise by necessary implications from an expressed power." "County boards of supervisors have only such powers as have been expressly or by necessary implication delegated to them by the state legislature." "Implied powers of county board of supervisors did not exist independently of legislative grant or of expressed powers since the only function of an implied power was to aid in carrying into effect a power expressly

granted." "County supervisors can exercise no powers except those specifically granted by statute and in the manner fixed by statute." (State Board of Control versus Buck Stege, 1916.)

Arizona Department of Transportation

A.R.S. § 28-104, states, in part, that the Arizona Department of Transportation shall have the "exclusive control and jurisdiction over state highways, state routes, state airports, and all state-owned transportation systems or modes of travel in the state of Arizona." ADOT also has control over the distribution of all federal funds relating to transportation within Arizona. Consequently, counties will find themselves involved with the Arizona Department of Transportation whenever federal funds are sought for roads or transportation improvements. A.R.S. § 28-104, Paragraph B2, states that the department shall "do multimodal state transportation planning, cooperate and coordinate transportation planning with local governments, and establish annually updated priority program of capital improvements for all transportation modes." Paragraph 4 states, the department shall "investigate new transportation systems and cooperate with and advise local governments concerning the development and operation of public transit systems." Paragraph 5 states that the department shall "have administrative jurisdiction of transportation safety programs and implement them in accordance with applicable law." This paragraph refers to the administration of the Federal Surface Transportation Act. Responsibility for many of the traffic engineering safety programs is covered under this paragraph, including studies for hazardous locations, roadside obstacles, railroad crossings, traffic signal improvements, signing, striping and pavement markings.

Title 28 of the Arizona Revised Statutes also establishes a transportation board with a responsibility to distribute monies within the state. The transportation board has broad powers when it comes to funding airport facilities. The duties of the board are defined in A.R.S. § 28-106. Paragraph B2 states, the board shall "determine which state highway routes or portions of such routes shall be accepted into the state highway system and which state highway routes shall be improved." Paragraph 3 of A.R.S. § 28-106 says that the board shall "establish, open, relocate, alter, vacate or abandon any portion of a state route or state highway."

The counties will find themselves involved with both of these duties of the transportation board. In the past, the state has abandoned or vacated the responsibility for state highways and these highways have sometimes reverted to the county road systems. The converse action has also occurred where county roads have been taken over by the state and included in the state highway system.

Subsection F, A.R.S. § 28-106, states that any airport that involves county land (and this is quite common) will also be under the control of the transportation board. A.R.S. § 28-106.1 states that no new airport shall be constructed within the boundaries of any urbanized area or within 24 statute miles of the exterior boundary of any urbanized area without approval of the transportation board. Thus, duties of the transportation board appear to cover both city and county jurisdictions.

A.R.S. § 28-108 covers the powers and duties of the director of the Arizona Department of Transportation. Paragraph 7 of this section states that the director shall "prescribe standard board and road signs or other devices and provide a uniform system of marking and signaling on state routes and state highways, which shall correlate with and so far as possible conform to the system as approved by the American Association of State Highway Officials and regulate the use of advertising sign boards and road signs on state roads or state highways." The AASHTO system of road signs and traffic control devices referred to in this paragraph is the Manual on Uniform Traffic Control Devices (MUTCD) as published by the U.S. Department of Transportation Federal Highway Administration. As pointed out elsewhere in this manual, it has been argued successfully in court cases that the MUTCD controls local government standards as well, including counties. Therefore, when dealing in matters of traffic control devices, the MUTCD should be followed.

Paragraph A8 under A.R.S. § 28-108 also indicates that the director of the transportation board shall "prescribe rules and regulations for closing state highways under construction or repair." When this occurs, traffic may be detoured to county roads; therefore, agreements would have to be made between the county and the state transportation board or Arizona Department of Transportation.

Paragraph A11 of A.R.S. § 28-108 states that the director shall enter into agreements on behalf of the state with counties for the improvement or maintenance of mass transit systems. Similar to airports, mass transit appears to be

an area where close intergovernmental relations are required with the transportation board.

Paragraph A16 of A.R.S. § 28-108 again points out that the director shall "plan, build, and develop in conjunction with local authorities, airports, airport terminals, and other related navigational facilities."

Paragraph A18 of A.R.S. § 28-108 states that the director shall "enter into agreements on behalf of the state with counties, cities, towns, or rural districts for the improvement or maintenance of state routes or for joint improvement or maintenance thereof." Some state routes appear to have joint jurisdiction with county highways.

Subsection B of A.R.S. § 28-108 states that "the director may provide technical transportation planning expertise to local governments when requested, coordinate local government transportation planning with regional and state transportation planning, and guide local transportation planning to assure compliance with federal requirements. Such planning authority shall not, however, preempt planning responsibilities and decisions of local governments." It is suggested that the counties make use of these transportation planning services of the Arizona Department of Transportation. Also, some transportation planning services are offered through the local councils of government such as Maricopa Association of Governments and Pima Association of Governments.

Finally, Subsection C of A.R.S. § 28-108 states that "if the Governor declares a state of emergency the director (of the transportation board) may, as necessary, contract and do other things necessary to provide emergency transportation services for residents in the affected area whether such emergency transportation is by streets, by rail, or by air." Apparently, in emergency situations, the state can exercise some jurisdictional control over county facilities.

A.R.S. § 28-112 deals with acceptance and expenditure of federal funds. Subsection B states, "The department may contract and do all things necessary to secure the full benefits available to this state for transportation purposes under federal law and in so doing may cooperate with federal, state, and local government agencies, private and public organizations, and private individuals."

Arizona Transportation Research Center - Technology Transfer Program

The Arizona Transportation Research Center is a branch of ADOT that was established by agreement with Arizona State University in 1979. The primary functions of this organization are research in the design and construction of pavements and efficient management of construction and maintenance, and also to serve the community in a broader transportation sense. This group is serving the county engineers and rural transportation agencies as well as state agencies.

Research funding for the Arizona Transportation Research Center (ATRC) consists of HPR funds and N-800 state funds, the administrative budget and federal highway demonstration project monies. Approximately 65 percent of ADOT's research expenditures are in areas of pavement research; however, general transportation research and development problems are addressed in the areas of management, safety, economics, environment, planning, structures, traffic, geometrics, hydraulics, hydrology, and waterways.

This Arizona Counties Highway Manual was developed through the Arizona Transportation Research Center. The ATRC is a resource available to county engineers and its programs are broad enough so that counties' research needs might be implemented by ATRC in the future.

Other State Agencies

There are a number of state agencies which would interact with a county engineer, primarily during preparation of an environmental assessment study. These agencies, and the state regulations and programs that these agencies are most involved in, are summarized in Table 8-2.

State Lands

All Arizona state lands are administered by the state land department whose powers and duties are listed in the Arizona Revised Statutes under A.R.S. § 37-102. These include lands owned, belonging to, or under the control of the state for whatever reason. The state land department has control of sale, exchange, or long-term leasing of state lands. From time to time, the county could be involved in these transactions. State lands also control road material borrow pits from which

Table 8-2

STATE AGENCIES ADMINISTERING
ENVIRONMENTAL REGULATIONS AND PROGRAMS

State Regulations and Programs	Contact
1. Arizona Native Plant Law	Arizona Commission of Agriculture & Horticulture, 1688 W. Adams, Phoenix 255-4373
2. Water Quality Controls	Arizona Department of Health Services Bureau of Water Quality Control 1740 W. Adams, Phoenix 255-1172
3. Flood Control	Local Flood Control District Office
4. State Game & Fish Management	Arizona Game & Fish Department 2222 W. Greenway Road, Phoenix 942-3000
5. Air Quality Implementation Plan	Arizona Department of Health Services 2005 N. Central Avenue, Phoenix 257-0022 or county office
6. Noise Studies (where applicable)	ADOT, Environmental Planning 205 S. 17th Avenue Phoenix 255-7769
7. Natural Areas	Arizona State Parks Board 1688 W. Adams, Phoenix 255-4174
8. State Trails Program	Arizona State Parks Board 1688 W. Adams, Phoenix 255-4174
9. Scenic Roads and Parkways	ADOT, Roadside Development Services 205 S. 17th Avenue, Phoenix 255-7357
10. Arizona Historic Preservation Law	State Historic Preservation Office 1688 W. Adams, Phoenix 255-4174

the counties may wish to obtain road construction materials such as crushed aggregate.

A.R.S. § 37-132 lists the powers and duties of the state land commissioner. Of note, Paragraph 2 states that the state land commissioner shall exercise the powers of surveyor general. County surveying should be tied into the state plane coordinate system wherever possible. Information regarding the state plane coordinate system can be obtained through the office of the state land commissioner as well as the Arizona Department of Transportation.

Paragraph 3 states that the state land commissioner shall "make long-range plans for future use of state lands in cooperation with other state agencies, local planning agencies, and political subdivisions."

Paragraph 5 states that the state land commissioner may make grants of right-of-way to governmental agencies or political subdivisions of this state for cash without public auction and these shall be made only for public roads or highways or for municipal or county airports or community college purposes; and, on condition of reversion to this state if the right-of-ways cease to be used for this purpose. Occasionally, counties find it necessary to extend new roads across state land. The State Land Department would obviously have an interest. The state land commissioner has the duty to determine all disputes or grievances pertaining to the administration of state lands.

Subection B says that the commissioner may take evidence relating to and may require of the various county officers, information on any matter which he has the power to investigate or determine. When a private developer is developing a subdivision on leased state land within a county, the county engineer should at least coordinate road dedications with the state land commissioner.

The state also has a state real estate department and A.R.S. § 32-2181 indicates that before offering subdivided lands for sale or lease, the owner, agent, or subdivider shall notify the state real estate commissioner in writing of his intention and the notice shall contain some of the following requirements which involve the counties. For instance, Paragraph 6 indicates that 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, is required. Paragraph 8 states that this notice shall contain

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. Of special note are access or road easements.

Paragraph 17 says that this notice shall include a true statement of assurances for the installation of off-site improvements such as roads and utilities and approval thereof by the political subdivision having such authority. Paragraph 20 states that a true statement of the availability of sewage disposal facilities and other public utilities including water, electricity, gas, and telephone facilities in the subdivision is required. Also, the estimated schedule for their installation and the estimated costs related to such facilities and utilities which will be borne by purchasers of lots in the subdivision are required. Note also that under Subsection B the state real estate commissioner, upon application, may grant a subdivider of ten or less lots or parcels within a subdivision previously approved by the commissioner, an exemption from all or part of the notification requirements of Subsection A (which lists the 23 items required in the subdivision notification).

Additional Arizona Revised Statutes that may be referenced regarding land are A.R.S. § 11-702, County Improvement Districts, and A.R.S. § 11-806.01, regarding county regulations. In particular, attention is directed to the court decision notes regarding definition of a subdivision, especially in the case of Transamerica Title Insurance Co. versus Cochise County, 1976, and other decisions found in the annotations (through 1986) at the end of this section. Additional land and road references are included in A.R.S. § 18-207, Public Roads, and Title 18, Highways and Bridges (Chapters 2 and 3).

A.R.S. § 26-322 is titled, "Determination of Eligibility for Flood Relocation and Land Exchange." Provisions are listed for the exchange of lands specified as being within a floodplain and eligibility for flood relocation assistance and exchange for state lands. The area within the floodplain has to be certified by the Director of the State Department of Water Resources.

Emergency Services

The county should be familiar with the Department of Military Affairs and Emergency Services, Division of Emergency Services, Office of Disaster Preparedness. This state agency is in charge of federal disaster assistance. Most specifically, it handles federal assistance that comes to the state through the Federal Emergency Administration (FEMA) as a result of flood damage. The Division of Emergency Services has broad duties to prepare for and coordinate those emergency services which may be required to reduce the impact of disaster on persons or property.

The duties of the director of emergency services include coordinating the cooperative effort of all governmental agencies, including the federal government with this state and its political subdivisions and providing the necessary direction and control of state personnel and equipment to alleviate suffering and loss resulting from disaster. These duties are described in A.R.S. § 26-305.

The director of emergency services is also the state director for civil defense and the state director for emergency preparedness. This is stated in A.R.S. § 26-306. The director's duties under Paragraph 4 include the effective mobilization and management of personnel and equipment of the state. This can include county maintenance equipment such as road graders and dump trucks, bulldozers, and communications equipment.

Alternately, the political subdivision, (the county in this case), can ask for emergency services support from the Division of Emergency Services and receive state help with equipment, services, and facilities including search and rescue operations. The director's duties include maintaining a current list of public inventory facilities, equipment, and supplies that are available in each county. The director is also charged with the duty of developing, testing, and maintaining a plan pursuant to A.R.S. § 26-305.01 for response by agencies of this state and its political subdivisions to an accident at a commercial nuclear generating station. In 1986, only Maricopa County had a nuclear generating station.

Attention is directed to A.R.S. § 26-307 which is titled, "Power of counties, cities, towns, and state agencies designated by the governor to make orders, rules, and regulations." Section A states that "state agencies, when designated by the

governor and counties, cities and towns may make, amend and rescind orders, rules and regulations necessary for emergency functions but shall not be inconsistent with orders, rules and regulations, promulgated by the Governor." Subsection D states that "in the absence of specific authority in state emergency plans and programs, the governing body of each county, city, and town of the state shall take emergency measures as necessary to carry out the provisions of this chapter."

Attention is also directed to A.R.S. § 26-314, "Immunity of state political subdivisions and officers, agents, and employees; limitation." This section puts forth in broad terms the immunities of county officials from discretionary functions and acts of good faith connected with the maintenance or use of equipment or supplies during an emergency.

Department of Public Safety

A.R.S. § 41-1711 establishes a department of public safety which is responsible for creating and coordinating services for use by local enforcement agencies in protecting the public safety. The department shall, however, in no way preempt the authority and jurisdiction of established agencies of political subdivisions of the state.

The Department of Public Safety has in the past shared in revenues from the state highway fund which have been derived from highway user fees statewide and are allocated to the Arizona Department of Transportation, and city and county highway departments.

A.R.S. § 41-1742 describes the powers of the Highway Patrol Division of the Department of Public Safety. One of these powers as listed in Paragraph 3, is to "cause signs to be erected and maintained as are necessary to give notice of any special restrictions on state highways." Paragraph B states that the director of the Department of Transportation may grant authority to the Highway Patrol Division Superintendent to fix temporary speed limits or apply other temporary restrictions when emergency conditions exist or when congested traffic or other conditions require restrictions for public safety. Because the counties are legally a quasi-state organization, the Highway Patrol may have authority to exercise the duties listed above on county roads.

One of the duties of the Highway Patrol, as listed under A.R.S. § 41-1743, is to investigate traffic accidents which occur on highways. Records have been kept in the past on all accidents within the state. This is useful information to county engineers for highway improvement planning purposes. Traffic accident data may be obtained from the local county sheriff, the Highway Patrol Division of the Department of Public Safety, or from the Arizona Department of Transportation Division of Highways, Traffic Engineering Section.

A.R.S. § 41-1743.01 describes the use in emergencies of the Highway Patrol when ordered by the Governor to assist cities and counties.

COUNTY-CITY COOPERATION

In certain cases, the County Board of Supervisors may expend public funds for maintenance of roads and streets other than legally designated state and county highways. These roads, according to A.R.S. § 18-207:

> "Shall be laid out, opened and constructed without cost to the county, and fully completed in accordance with a plat approved pursuant to § 11-802 and § 11-806.01, and in accordance with standard engineering road specifications adopted by the County Board of Supervisors to insure uniform compliance.
>
> "Public funds may be expended by the Board of Supervisors for maintenance of public roads and streets laid out, constructed and opened prior to June 13, 1975, even if such roads and streets were not constructed in accordance with subsection A of this section.
>
> "Maintenance on public roads and streets shall not be construed to include purchasing or laying rock products, cement or petroleum product materials, except that maintenance on public roads and streets which are paved with cement or petroleum product materials may include seal coating and patching."

A.R.S. § 18-208 states that the board of supervisors may enter into an agreement with a city or town for the lease of:

- County equipment for use to construct, improve or maintain highways located within the boundaries of the city or town; or
- City or town equipment for use to construct, improve or maintain roads located within the boundaries of the county.

COG'S OR ASSOCIATIONS OF GOVERNMENTS

Councils of Governments (COG's) or Associations of Governments are regional multimodal transportation planning agencies. Urbanized areas with a population of over 200,000 are required by the Federal Aid Highway Acts, Urban Mass Transportation Act, Surface Transportation Act, and the Arizona Transportation Finance Act to have a continuing transportation planning program to establish eligibility for federal and state assistance in funding system improvements. Areas of planning include streets and highways, mass transit, bikeways, and aviation systems. The governor of the state of Arizona, by Executive Order 70-2 (July 8, 1970), established six planning regions in the state of Arizona. These are shown in Figure 8-1.

The main objective of the COG's, or Association of Governments, is to maintain a long-range transportation plan to be reconsidered annually by responsible local officials with major reevaluations every five years. The governing body is the regional council, whose membership consists of one elected official from each of the member jurisdictions, including a county representative.

A description of the major steps in the planning process are described below. This description notes the type of information that is available to county highway engineers.

Surveillance

Maintain annual inventories of existing conditions. Measure travel demand, population, and land use. Analyze and evaluate urban growth and the interrelationship of urban activities and travel as a prerequisite to forecasting.

Forecasts

Project population and land use and translate into future travel demand. Create and maintain models (mathematical equations) to enable simulation of future travel over alternative transportation systems.

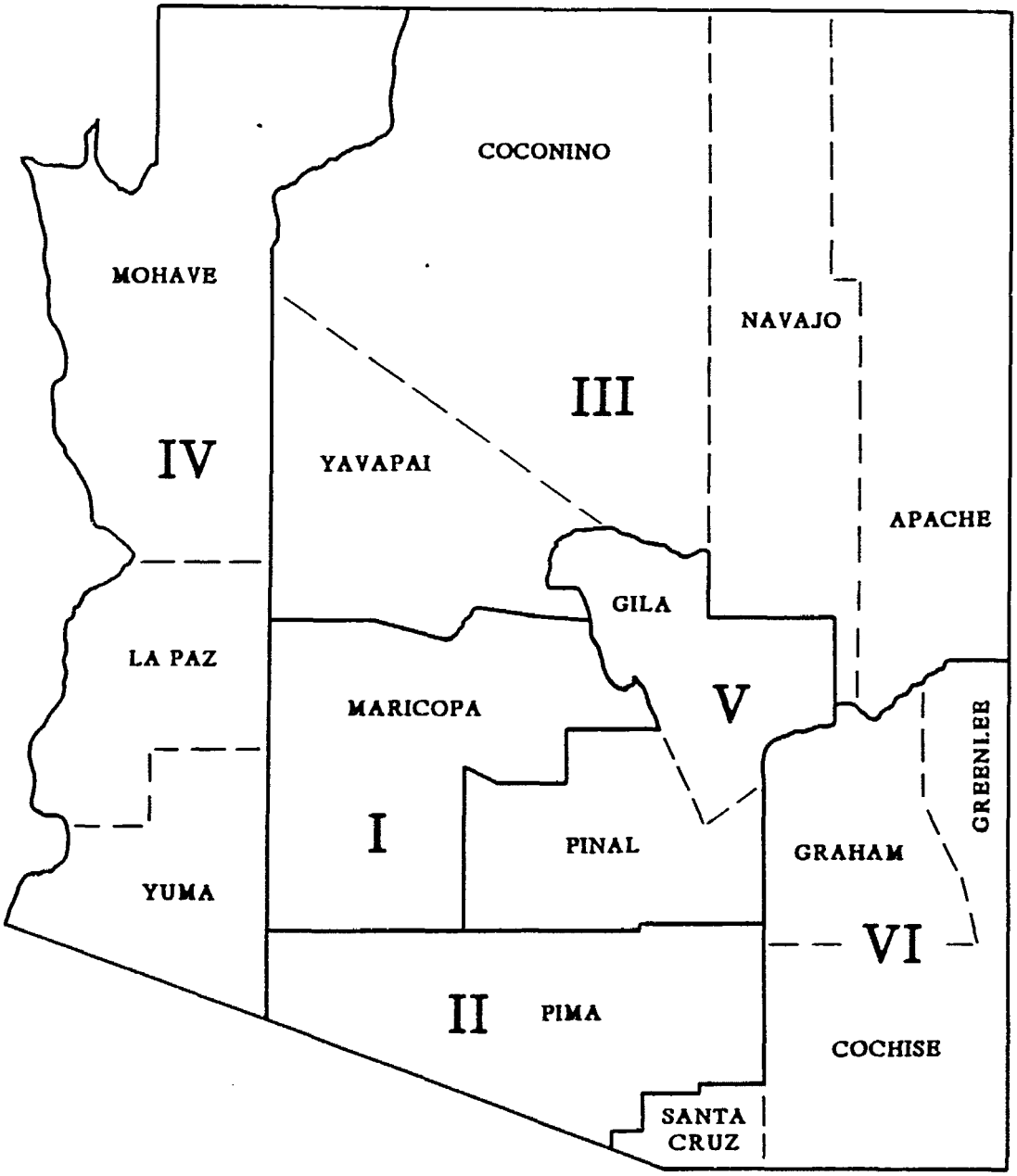


Figure 8-1

STATE PLANNING AND DEVELOPMENT REGIONS

Plan Development and Reappraisal

Evaluate urban growth in relation to forecasts. Revise forecasts if surveillance indicates major changes are occurring or have occurred. Determine through simulation if transportation plan requires revision. Reappraise transportation plan annually.

Plan Implementation

Provide a regional unified priority program to guide and utilize transportation improvement programming for short-range plan implementation. Provide future volume data for physical design purposes.

COUNTY SHERIFF DEPARTMENT

Coordination between the county engineer and the county sheriff's department is important primarily in the areas of traffic accident investigation, apprehension of traffic violators, and direction of traffic. The county engineer must base street improvements on accident data supplied by the sheriff's department. Use and types of accident data are described in Chapter 12, Traffic Safety.

With sound accident data, the traffic engineer can recommend needed improvements which will reduce the number of traffic accidents.

REFERENCES

1. Cost Records and Budgets, Action Guide Series, Volume II, National Association of County Engineers, Washington, D.C., July, 1972, Appendix A, pp. 59-62.

2. Information Profiles of Indian Reservations in Arizona, Nevada, and Utah, Bureau of Indian Affairs, Phoenix Area Office, 1981.

3. Management and Organization Development for Property Acquisition Programs, International Right-of-Way Association, 1972.

9. PLANNING AND ZONING

INTRODUCTION

Zoning defines the types of uses that are permitted in an area. Zoning is important in order to protect the public from undesirable land uses, for reasons of health, welfare, and safety. This chapter describes typical planning and zoning procedures.

COORDINATION PROCEDURE

In general, the control of land subdivision is accomplished by the following three-step procedure, as defined by the National Association of County Engineers in their Action Guide Series (Volume V):

- "The state delegates authority to the county."
- "The county government, as directed or authorized by the state legislation, formulates standards and regulations for proposed subdivisions."
- "The county agency and/or agencies administering the standards and regulations then determines if a proposed subdivision meets these standards and regulations. They also make the necessary inspections during subdivision construction."

Subdivision Regulation - General

Subdivision regulation is described in A.R.S. § 11-806.01, excerpted here in part:

> "E. The commission shall recommend to the board and the board shall adopt general rules and regulations of uniform application governing plats and subdivisions of land within its area of jurisdiction. The regulations adopted shall secure and provide for the proper arrangement of streets, or other highways in relation to existing or planned streets, or highways or to the official map for adequate and convenient open spaces for traffic, utilities, drainage, access of fire fighting apparatus, recreation, light and air. The board may adopt general rules and regulations to provide for the proper arrangement of hiking and equestrian trails in relation to existing or planned streets or highways and if adopted, such hiking and equestrian trails shall conform to the official map for adequate and convenient open spaces for traffic, utilities,

drainage, access of fire fighting apparatus, recreation, light and air. The general rules and regulations may provide for modification by the commission in planned area development or specific cases where unusual topographical or other exceptional conditions may require such action. The regulations shall include provisions as to the extent to which streets and other highways shall be graded and improved and to which water, sewer or other utility mains, piping or other facilities shall be installed or provided for on the plat as a condition precedent to the approval of the final plat.

"F. "Boards of supervisors of counties shall prepare specifications and make orders, inspections, examinations and certificates as may be necessary to protect and complete the provisions and make them effective. The regulations shall require the posting of performance bonds, assurances or such other security as may be appropriate and necessary to assure the installation of required street, sewer, electric and water utilities, drainage, flood control and improvements meeting established minimum standards of design and construction.

"H. Approval of a plat shall not be deemed to constitute or effect an acceptance by the county for designation of any street, highway or other way or open space shown upon the plat into the county maintenance system except for hiking and equestrian trails which shall be constructed and maintained by the county. However, at such time as the streets, highways or other ways are fully completed in accordance with the approved plat and written specifications made by the county board, the county shall accept such streets, highways and other ways into the county maintenance system within one year of completion."

Plan Submission Process

Volume V of the NACE Action Guide Series, Planning County Road Systems, has a very clear description of the procedures and regulations that should be followed by the county and developer for creating new subdivisions. The four procedural steps are the submission of (1) preapplication, (2) preliminary subdivision plans, (3) construction plans, and (4) final plans. These steps are summarized in Figure 9-1.

The preapplication is the submission of an informal plan and provides an opportunity for the developer to talk to county staff informally. The next step is the preliminary subdivision plan, which is a detailed plan of the proposed development. This plan is circulated to county departments for review, including

STEP 1 PREAPPLICATION

Economic Feasibility Analysis
Location Analysis
Survey of Site

a) Developer prepares and discusses informal plan with responsible government agency. Contact utilities and private businesses.

b) County reviews informal plan relating to comprehensive plan, design standards, improvements, other conditions for plat approval.

c) After these preliminaries, developer gets requirements from local and state agencies, title company, financial sources, etc.

STEP 2 PRELIMINARY SUBDIVISION PLAN

a) Developer submits preliminary subdivision plan, with letter of intent, if necessary, to county.

b) County sends plan to its planning commission, engineer, traffic department, health and water departments, park authorities, other government agencies.

c) County acts after reports and recommendations from each agency:

1. Rejects with reasons
2. Approves with conditions
3. Approves without conditions

STEP 3 CONSTRUCTION PLANS

Note: This step may go on concurrently with Step 4, providing this step is completed before Step 4.

a) Developer details plans and cost estimates for construction of facilities to county requirements.

b) Developer submits plans and estimates to county.

c) County refers plans to its planning commission, engineer and traffic department, health and water departments, park authorities, other governmental agencies.

d) County acts after reports and recommendations from each agency:

1. Rejects with reasons
2. Approves with conditions
3. Approves without conditions

STEP 4 FINAL PLAN

a) Developer develops subdivision on preliminary approved plan. He improves or submits security to guarantee improvements.

b) Developer authorizes an engineer to prepare final plat, other documents.

c) Developer submits final plat to county.

d) County reviews and approves or rejects with reasons.

e) Final plan referred, if required, to county legislative body for approval.

f) With approval, developer or county records final plat and other documents.

g) Developer proceeds with his development plans.

Source: Planning County Road Systems, NACE Action Guide Series, Vol. V

Figure 9-1

PROCEDURE STEPS

the county engineer, health office, county assessor, and other county agencies. In A.R.S. § 11-803, the role of the county engineer with regard to the county planning and zoning commission is stated:

> "The county assessor, county engineer, county health officer and county attorney shall serve in an advisory capacity to the commission and to the boards of adjustment."

The subdivision review must determine that the subdivision streets adhere to generally accepted standards for construction. An example of review procedures is excerpted from Maricopa County, as follows:

"A. The County Highway Department, in coordination with the Planning and Development Department, will review all zoning and subdivision requests to ensure compatibility and adequacy of proposed road and street developments with the basic county transportation network. The authority of the Board of Supervisors to regulate subdivision development is provided in A.R.S. Section 11-806.01.

"B. All subdivision roadway improvements will be constructed in accordance with latest Maricopa Association of Governments (MAG) Standards supplemented by:

1. Maricopa County Special Provisions.

2. Maricopa County Highway Department Supplement to MAG Standard Specifications and details.

3. Maricopa County Highway Department Improvement of Perimeter Roads."

In the event of conflict, the terms of the resolutions by the Maricopa County Board of Supervisors will be primary.

"C. All access and design criteria will:

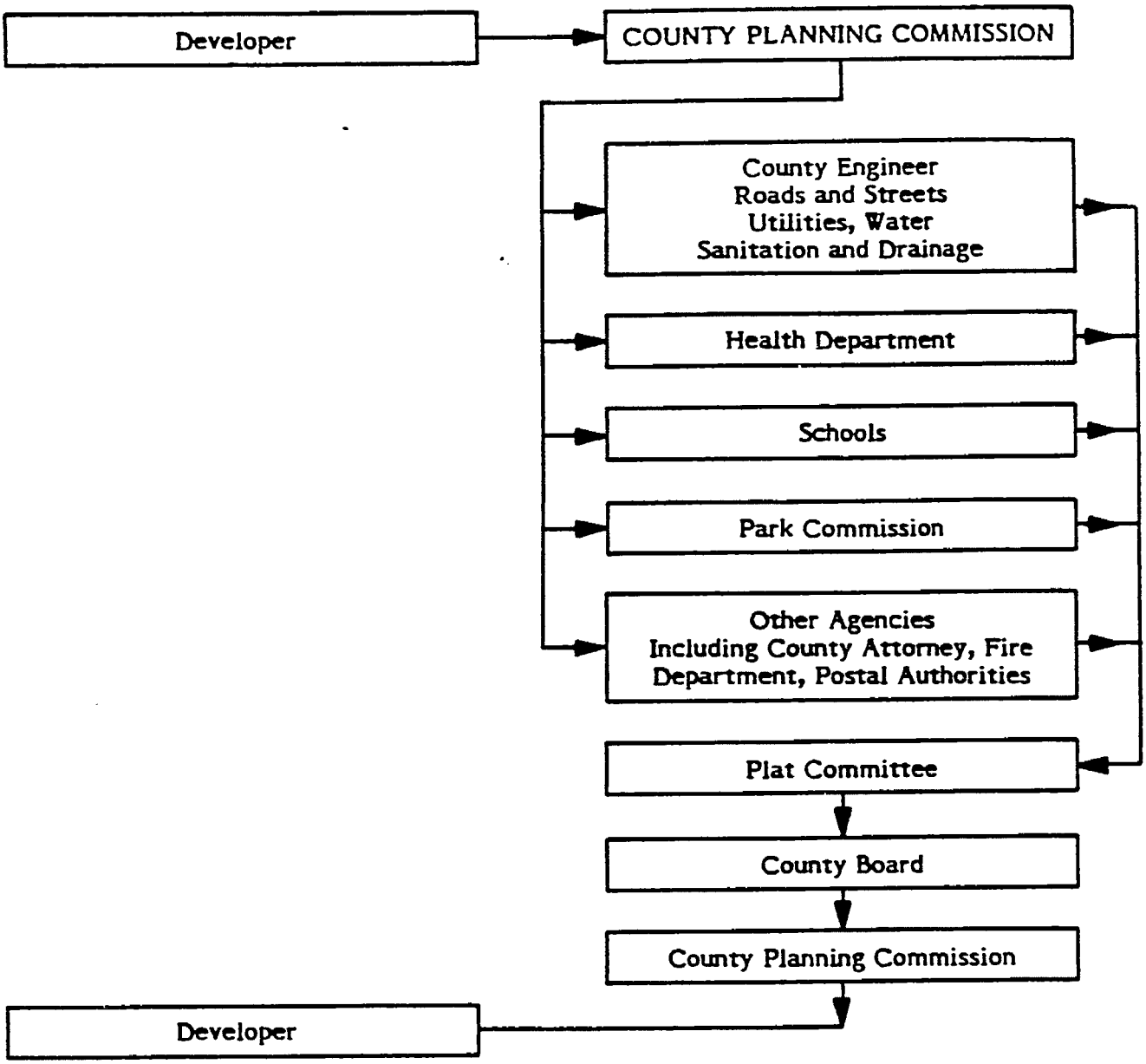
1. Minimize penetrations onto arterial roads to limit conflicts and aid in traffic control.

2. Conform to recommendations in Subdivision Regulations for the Unincorporated area of Maricopa County adopted by the board of supervisors."

"D. All work in Maricopa County right-of-way will require a permit from the Highway Department per Resolution of the board of supervisors."

The preliminary subdivision plans may be approved with or without conditions, or rejected for stated reasons. A typical review routing is shown in Figure 9-2. After approval of the preliminary subdivision plans, the developer prepares construction plans for approval. The plans include detailed plans and cost estimates. Construction plans are reviewed by the county engineer as well as other governmental agencies. These plans are either approved (with or without conditions) or rejected for stated reasons. The development of construction plans may be accomplished concurrently with the development of the final plan, as long as the construction plans are completed first.

In the final plan stages, the subdivision may begin to be developed according to the preliminary approved plans. The property is either improved or security is posted to guarantee improvements. Then, application for approval of the final plat is submitted in writing to the county. Before approval of the plat, the developer must complete the improvements required by the county to the satisfaction of all county agencies. Once the final plan is approved, it is forwarded to the county board of supervisors for approval and is subsequently recorded by the county.



Source: Planning County Road Systems
National Association of County Engineers Action Guide Series, Vol. V
(Each county should adjust routing to fit requirements)

Figure 9-2

SAMPLE ROUTING OF SUBDIVISION PLANS

REFERENCES

1. Planning County Road Systems, Action Guide Series Volume V, National Association of County Engineers, Washington, D.C., July, 1972.

10. MAINTENANCE AND OPERATIONS

INTRODUCTION

The physical maintenance of a highway has been described by AASHTO as: "The preservation and upkeep of a highway, including all of its elements, in as nearly as practicable its original as-constructed condition or as its subsequently improved condition." It can, therefore, be said that the condition of the highway elements is a measure of highway maintenance quality. AASHTO also defines traffic services as: "The operation of the highway facility and the services incidental thereto to provide safe, convenient, and economical highway transportation." The legislative authority of a county to maintain county roadways has been discussed in Chapter 4, Role of Board of Supervisors, and is expressed in A.R.S. § 11-251 and A.R.S. § 18-201. This chapter discusses legal implications regarding maintenance and operation programs and emphasizes important elements in such programs.

LEGAL IMPLICATIONS

Arizona counties are now more and more frequently confronted with lawsuits as a result of alleged road defects or allegations with respect to signing and road conditions in their highway maintenance activities. Even when lawsuits are won the costs and the efforts which go into the defense of such cases are formidable. It is becoming increasingly more important to train highway personnel about the causes of the growing number of lawsuits and to take steps which will ultimately reduce the number and amount of judgments as well as the costs of defense in these types of law cases.

Establishment of Formal Road and Sign Program

It is essential that each county establish some kind of formal road and sign inspection and maintenance program. The county attorney should be solicited to provide advice and guidelines regarding the laws involved.

It is most important to keep and maintain records with respect to maintenance of roads and signs. One of the most difficult problems faced in the defense of these cases is that quite often the facts are meager or there is no record of maintenance

whatsoever. This ultimately results in calling upon either employees or witnesses with respect to their recollections. This is often a very inadequate type of evidence. Sign records can be kept on computer or card files and should include every new installation and/or repair.

Public Education

A public campaign can be used to educate the public about vandalism and the need for reporting alleged defective roads or sign conditions. A public campaign should also encourage the public to appreciate the problems associated with the maintenance of roads.

Coordination

Coordination and cooperation between the county highway departments and local police officials is encouraged. The police can be very helpful in the initial investigation of cases which can result in suits against the county. A very thorough investigation and preservation of evidence can be crucial to the ultimate defense of a case. With good cooperation, the sheriff's department can furnish the highway department officials notification as soon as possible of defective road conditions or accidents involving defective road conditions. Police officials should also be advised to report only the facts in their reports of accidents and not to surmise possible causes of accident without sufficient supporting facts. In recent years, counties have had to defend cases where the police inaccurately reported that signs were defective in some manner or that road conditions caused the accident.

Coordination of legal effort is also necessary. It is important in the defense of lawsuits against the county for all attorneys involved -- county, state, insurance companies, etc. -- to coordinate their efforts and put forth the same defense.

Inspection Program

The lack of maintenance, improper maintenance, and failure to make timely response, are probably the most common reasons for assigning liability to a county. Once a road has been constructed or a control device installed, county maintenance personnel must use every means at their disposal to maintain it

properly. To assist in reducing the occurrence of lawsuits against the county, it is necessary to maintain inspection programs. Good maintenance records are a tool in defending against a liability law suit. In addition to the normally good maintenance records required of daily activities, it is also necessary to have a complete record of all alleged road or signing faults that come to the organization's attention. Records of these occurrences should include who made the complaint, the time it was received by the dispatcher, the time it was given to the repair crew, the time the repair crew responded, the time the repair was completed, what trouble was found including other defects found by the maintenance personnel, what repairs were made, and what materials were used. All such information will assist the defense attorneys in tort liability actions.

In many cases (Walker v. Coconino County, City of Phoenix v. Kenly, Matts v. City of Phoenix) a county is negligent if it knows, in the exercise of reasonable care, about a defect, and then fails to correct it.

COMMON ELEMENTS OF MAINTENANCE AND OPERATIONS PROGRAMS

Realistically, county highway departments do more than just perform pure maintenance functions in conformance with the AASHTO definitions. The expenditure of highway funds for these activities should be fully understood by both the public and by county officials. All work performed by the county highway department personnel should be defined in specific programs. Definitions of typical programs and their categories are summarized below.

Maintenance (per AASHTO definition)

- o Preventive
  - Potential failures are identified and work, materials, and methods are applied to prevent failure from occurring.
  - Renewing the physical resistance to deterioration from abrasion, loads, water, sun, and etc., further considered as normal wear and tear and weathering.
- o Corrective
  - Repair of physical structures or material failures.

- Reconstruction of storm damage or natural catastrophes.

- Reconstruction of inadequately designed facilities.

o Operational

- Housekeeping - mowing, vegetation control, cleaning, sweeping, litter collection, etc.

- Snow and ice removal and control.

- Traffic device maintenance - striping, signing, and signalization.

Betterments

o A "betterment project" is a single project at a specific location for the purpose of improving an existing facility or structure. A betterment project may, for instance, add a few feet of pavement width without changing the original pavement structure; enlarge a culvert capacity; or widen or realign a sharp curve.

o A betterment project will improve an existing facility for a defined purpose, such as adding safety or capacity. However, it is not a repair project nor is it construction of a whole facility.

Rehabilitation

o Rehabilitation defines an action that will make "like new" an existing portion of a highway or a major structure. Thick full width overlays of an asphalt concrete pavement, or removal, recycling, and replacing an asphalt concrete surfacing are examples of a rehabilitation project.

o Rehabilitation normally does not add capacity or improve grade lines. It renews existing roadways to top condition.

Construction

o Construction is to build or to reconstruct a whole highway facility. It includes all of the highway structure and its component parts.

Work for Others

o Most county highway departments perform various forms of activities for projects not on the highway system for others. Since highway-dedicated funds by statute cannot be used for such purposes, such projects must be budgeted or costed out of other prescribed fund sources.

Preventive maintenance needs, together with betterment, rehabilitation and construction projects can be anticipated, budgeted, and programmed. These functions can be executed by either contract or by county maintenance forces. Corrective and operational maintenance needs are more abstract, and the analysis of the activities and costs is a more sophisticated procedure.

PLANNING AND ORGANIZING A MAINTENANCE PROGRAM

Planning and organizing together might be described as defining the "what, who, how, when, and where" of a highway maintenance program. A work program fully describes the street or highway system and defines what kind of work and how much work is needed to keep the system at an acceptable level of repair for safe use. The resources required to perform this work must be determined and the expected results defined. The component parts of the work program are as follows:

- o Work Activities
- o Maintenance Inventory
- o Quantity Standards
- o Quality Standards
- o Performance Requirements

Work Activities

Maintenance work is divided into activities which have definable and distinct characteristics both from standpoint of the nature or objective of the work and the work method involved. Only that work which is performed frequently and which requires a significant work effort is identified as a separate maintenance work activity, and is considered a component of the total maintenance program.

Work measurement units for maintenance work activities must be readily identifiable and measurable by field personnel. This will provide a basis for describing how much work is planned or how much work was accomplished. Work may be measured in cubic yards, square yards, miles, feet, number, passes or swaths, lane miles, etc.

A maintenance feature is defined as a distinct feature of the roadway system for which one or more work activities will be required to maintain it in as good a

condition as possible with resources available. A maintenance feature must be definable with work measurement units and work activities and must be easily identifiable both in the field and from records or collected data.

Maintenance Inventory

A physical inventory must be prepared that lists all of maintenance features of the highway or street system requiring periodic maintenance work. This inventory must quantify each item of the highway structure or environment requiring maintenance attention. The first step in preparing an inventory is to establish a location identification system. The state of Arizona uses a milepost system which is simple, but expensive to establish. A simple road section system may be used that defines and numbers a section of road between identifiable objects, locations, or features. Post office address systems, if completely organized, may be used, or perhaps, a county coordinate map program may exist. In any case, the location system used must identify and locate each feature on the roadway in an easily understood manner. For ease of documenting maintenance features at described locations, the inventory items may be classified into continuous features (miles, lane miles, feet, etc.) and discrete features (numbers, acres, each, etc.).

Quantity Standards

A quantity standard is a measurement of the average expected production of each work activity. A realistic basis must be developed for estimating the amount of each work activity required during the year to maintain a desired standard of service. When applied to the maintenance feature inventory, quantity standards determine the annual workload.

Performance Requirements

A performance requirement summarizes quantity and quality standards to make a statement about each maintenance activity as it is to be applied to each maintenance feature. The rate at which work is accomplished and the effectiveness with which resources are utilized, depends on the manner in which crews are staffed

and equipped, and the work methods employed in performing work activities. Performance standards provide a factor to define the resource requirements to perform an annual work program at a predetermined level of service desired. Performance standards for each work activity specify:

- Name and number of the activity.
- Description and purpose of the activity.
- Scheduling emphasis (time of year).
- Work quantity limitations.
- Determination of need.
- The number and classification of personnel required for a typical crew.
- The kinds and numbers of equipment best suited for the work.
- The kinds and quantity of material needed.
- The step-by-step work methods necessary to assure the desired quality of workmanship.
- A realistic estimate of the daily production range expressed in terms of work units to be accomplished (where applicable).

NONROUTINE MAINTENANCE PROGRAMS

As described earlier, there are certain work classifications (betterments, preventive maintenance, rehabilitation, and construction) that can easily be done by county forces. These kinds of projects can be budgeted within their own limits and need not conform to the annual maintenance work program design. Such projects can be described as "non-routine maintenance" and might include:

- Projects covering maintenance which do not occur with enough constancy or frequency to establish performance standards nor to be routinely scheduled.
- Projects to improve roadway safety and appearance.
- Projects to eliminate maintenance trouble spots, and thereby, reduce routine maintenance.
- Projects for initial installation of maintenance features; such as, right-of-way fences, signs, cattleguards, new pavement markings, etc.
- Projects that do not fit routine activity schedules or standards established for the annual work program.

o Special projects requiring individual cost compilation.

Some amount of project work is useful in balancing or leveling resource demand during periods of low seasonal demand in the annual routine maintenance program. Resources for this kind of work must be carefully calculated and provided in addition to resources required for routine maintenance.

STAFFING

Most existing county highway departments' staffing organization is the result of a historical growth with annual adjustments made for each budget year. With budget preparations normally supervised by cash flow cost accountants, a normal addition of full-time personnel is analyzed by the limitation of the percent of increase allowed in personnel or in payroll. In most instances, the justifications for additional personnel are ill-prepared and lack objective rationale with the result of many understaffed highway maintenance organizations.

Using a file of "performance requirements," one can calculate the manhours and the equipment complement required to accomplish an annual work program in an organized manner. This approach will clearly show that reduction of the level of work activities provides a reduced level of service and will require fewer workers and equipment. Conversely, an increase in the feature inventory (a new road, for instance) or an improved level of service (increase in work activity frequency) will justify an increase in staffing.

PERFORMANCE BUDGET

The AASHTO Manual of Uniform Highway Accounting offers this definition: "...budgeting is a work program, a conversion into money terms of program objectives, and a statement of the resources required to obtain these objectives."

The annual work program must be expressed in financial terms. The resource requirement of each maintenance activity must be converted into dollar requirements. This requires a compilation of costs for labor, equipment, and materials for all activities.

The specific compilation of individual payroll rates is not necessary. In fact, these rates change during the year with attrition, promotions, and other changes. A standard labor rate is identified for productive manhours. The following example will illustrate calculations for a standard labor rate.

Gross manhours in 52 weeks x 40 manhours/week = 2,080 manhours

Average holiday and leave time:
Holidays = 10 x 8 manhours/day = 80 manhours
Annual Leave = 10.66 manhours/month x 12 months = 128 manhours
Sick Leave = 8 manhours/month x 12 months = 96 manhours

Total average holiday and leave time = 304 manhours

Gross manhours less average holiday and leave time = Annual productive manhours = 2,080 minus 304 = 1,776 manhours

(The values shown are for illustration only.)

The unit cost of a productive manhour is determined by dividing the total annual expenditure for personnel performing work under maintenance activities, including salaries and employee-related expenses (social security, retirement, industrial insurance, etc.) by the total productive manhours available (number of employees times productive annual hours calculated above). The resulting hourly unit cost should be adjusted to accommodate any increases anticipated during the budget year.

Hourly rates for equipment classes as assigned to maintenance must be established or assumed at some defensible rate (see Chapter 16, Procurement and Management of County Equipment).

Material unit costs can be based on actual contract costs or other sources but must be utilized as an annual average unit cost. The unit costs developed are then used to calculate labor, equipment, material, and total costs for a standard crew day of work on each activity listed in the performance standards.

An annual work program is now prepared by multiplying each performance standard by the number of times or days it will be applied, or scheduled, during the year to meet the planned level of service.

By applying the calculated average crew day unit costs for all resources to the summation of the crew days for each activity, a total budget is defined. This is called a "performance budget." This proposed budget must be adjusted to include:

- Project budget costs planned (special projects).
- Anticipated increases or decreases in maintenance responsibilities (new miles, bridges, or other maintenance features) planned to come on-line during the proposed budget year.
- Other forecast cost increases or decreases, and any overtime allowance for emergencies or planned overtime.

WORK SCHEDULING

The most effective tool for ensuring efficiency of work performance is the development of work schedules well in advance of the work. The schedule should be based on a work emphasis calendar which indicates the months of the year the various work activities should be performed because of weather occurrences, temperature, growing season, or other seasonal factors. Using the work emphasis calendar, an annual work schedule can be developed to serve as a guide for preparing actual weekly or monthly schedules.

To schedule work activities, each activity should be grouped into categories that reflect the way they are treated: emergency, seasonal, and fill-in.

- Emergency - Work that must be performed as soon as possible to schedule because of a dangerous or hazardous condition.
- Seasonal - Activities directly related to weather occurrences, growing seasons, ambient temperatures, moisture, or other seasonal factors.
- Fill-In - Activities that can reasonably be performed almost anytime of year when resources are not required for emergency or seasonal work.

A "Maintenance Needed" reporting system will ensure the work scheduling process is also responding to the needs of the highway system. All employees engaged in the highway maintenance work force should report any maintenance needs or problems observed during their workday. In addition, a regularly scheduled inspection of the road network by responsible supervisors will keep the work scheduling process on target with the annual guide schedule. Effective guidelines to

scheduling work are contained in the performance standards, the work schedule calendar, maintenance needed reports, the inspection reports, and previous work schedules. Additional factors requiring consideration in preparing schedules are:

- The degree of conformity with performance standards required for each activity.
- The number of men available for work.
- Weather forecast conditions.
- Availability of equipment.
- Special requirements for work directed by management or the Board of Supervisors.

MAINTENANCE RECORDS

The preparation, collecting, and filing of data and records of all highway maintenance activities is the responsibility of all supervisors and managers of a county highway organization. Because of fiscal responsibility and the constant exposure to tort liability (see Chapter 5, Function of a County Engineer), the importance of maintenance records cannot be overemphasized.

For fiscal purposes, mandatory reports include employee time reports, equipment utilization reports, and material used reports. These reports document the daily expenditures in performing road maintenance. Employee time reports show name of each employee, attendance or leaves of absence, regular time, and any overtime, and are used to prepare payrolls and other cost assignments. Equipment utilization reports should itemize time of use, miles or hours consumed of each item of equipment utilized on each activity performed. Material reports document the amount and cost of all material used on each activity.

Work activity documentation provides data for accomplishments compared to planning values and establishes a record of efficiency of a work program. Documentation of work activity is also essential in providing factual data as evidence in tort liability proceedings. Work activity documentation reports time (day, month, and year) and location (route or highway name and specific location or area) of each activity performed, and who performed the work. Some organizations

have developed reporting formats that register on one document all of the foregoing reporting data for each activity and for each day of the week. The data gathering from the above-mentioned reports can be utilized to develop several types of useful reports to measure or analyze performance, program adequacy, planning values, utilization, and program or activity costs. These report capabilities can be useful to management in evaluating programs and budget needs.

MAINTENANCE/CONSTRUCTION WORK ZONE SAFETY

A significant portion of accidents resulting in liability claims against state and local highway agencies involve maintenance and/or construction work sites. Consequently, it behooves all involved agencies to carefully plan and implement traffic control techniques in these areas. The five fundamental principles of work area traffic control include:

- o Safety: Maintenance work should be planned and performed with the safety of the driver, pedestrian, and worker in mind at all times and in conformance with accepted standards and procedures.

- o Smooth Traffic Flow: Traffic through work areas should flow as smoothy as possible avoiding frequent or abrupt changes in roadway geometrics which would require the driver to make rapid or unexpected maneuvers.

- o Motorist Guidance: Drivers approaching and traveling through work zones should be guided in a clear and positive manner through the use of appropriate markings, signs, and channelizing devices to assure adequate warning and delineation of the traveled way.

- o Inspection: Effective inspection of traffic control at work sites includes careful monitoring under varying conditions of traffic volumes, weather, and light to assure the traffic control elements conform to safety standards.

- o Maintenance: During the life of a maintenance project, constant attention is necessary to make sure all necessary traffic control devices are in proper working order and are in place, particularly those devices vulnerable to knockdowns, vandalism, or run-off-the-road incidents.

The standards to which traffic control devices must conform are set forth in Part IV of the Manual of Uniform Traffic Control Devices (Ref. 2). Guidelines for applying these standards are provided in the Traffic Control Devices Handbook (Ref. 4). Examples of a typical work site and plans for a traffic control zone are

provided in a later chapter of this manual. Another important reference is the ADOT publication "Traffic Control Manual for Highway Construction and Maintenance" (Ref. 5).

The Arizona Legislature has mandated that all work on roads, streets, and highways utilize proper traffic control devices as follows:

A.R.S. § 28-650 Warning devices at construction sites:

> "Any contractor, firm, corporation or political subdivision performing work on roads, streets or highways shall post and maintain at the work site until the work is completed or until such time as the governing body authorizes removal, such warning signs, signals, markers and barricades in compliance with the manual and specifications for uniform system of traffic control devices adopted by the director to warn those using such street or highway."

It is imperative that proper traffic control be used when any maintenance work activities are being performed on or near the traveled roadway surface. Effective traffic control must satisfy the following needs:

- o Protect the workers and traveling public.
- o Command attention of the driver.
- o Convey a simple but clear understanding to the driver of what he is to do.
- o Allow the driver adequate time to react.

Factors to be Considered

Before any roadway maintenance work begins, there are several factors that should be examined and understood in planning and designing traffic control through areas. These include type of work, location on roadway, time involved to accomplish work, type of roadway, the speed and volume of traffic.

The type of work is defined in terms of stationary operations, moving operations, and mobile operations. Stationary operations, as the name implies, is performed at one specific site such as the repair of a concrete bridge deck. This type of work usually requires rerouting, channelization, and other restrictive traffic control techniques. Whether the job is considered short-term or long-term, it will usually disrupt traffic in some way.

A moving operation is one in which workers and equipment move slowly down the roadway. Striping is an example of this type of operation. Truck or trailer-mounted arrow-boards or other warning device moving in front and behind the equipment are usually more effective than ground-mounted signs.

Activities that can be completed in a short time at any one spot are termed mobile operations. Examples are sign maintenance, litter pick-up, and surveying when only brief stops are necessary.

The location of the work site is very important as there is a vast difference between working on the roadway itself, on the shoulder, or just within the right-of-way. Each site location has its own set of safety requirements as well as traffic control procedures. The time to complete the work is also of importance and will depend on the nature of the work to be accomplished and the resources (equipment and crew) available.

The type of roadway must be thoroughly understood in terms of shoulder or curb treatment, number of lanes, and natural sight obstructions like hills or curves.

The final two critical factors are traffic speed and traffic volume. The safety problem is obviously quite different for heavy traffic moving at 55 mph than for low volume traffic on a residential street with a 25 mph speed limit.

FEDERAL BRIDGE INSPECTION REQUIREMENTS

Under federal law, all bridges existing on a public road must be inspected and a report filed with the Federal Highway Administration every two years. The Arizona Department of Transportation (ADOT) is charged with directing the inspection program for all bridge structures in Arizona subject to these federal regulations. All inspections must be performed by specifically qualified personnel. Each county is responsible for properly programming the inspection schedule for bridges on their county highway system. The actual inspection activity may be accomplished by the county's own personnel, by a consulting professional engineer or by the ADOT structural section inspection team under contract to the county.

Highway Bridge Replacement and Rehabilitation Program are included in the Appendix to this Chapter 10. Also, in the Appendix is the proposed procedure of the ADOT Local Government Section for programming Highway Bridge Replacement and Rehabilitation. Additional reference is made to the "AASHTO Manual for Maintenance Inspection of Bridges, 1978."

MAINTENANCE POLICIES FOR NONCOUNTY ROADS

Maintenance policies for roads that are not on a county-designated system are described in A.R.S. § 18-207 and A.R.S. § 18-208. A.R.S. § 18-207 allows for maintenance of public roads on streets which are not a part of the county designated system, and which are not within an incorporated city or town. There are certain restrictions for such maintenance activities, such as, the expenditure of public funds for certain roadway materials. The complete statute states:

> A.R.S. § 18-207. Maintenance of public roads and streets not within city or town.
>
> "A. The board of supervisors may expend public funds for maintenance of public roads and streets other than legally designated state and county highways located without the limits of an incorporated city or town. Before expending public funds thereon, such roads or streets shall be laid out, opened and constructed without cost to the county, and fully completed in accordance with a plat approved pursuant to A.R.S. § § 11-802 and 11-806.01, and in accordance with standard engineering road specifications adopted by the county board of supervisors to insure uniform compliance.
>
> "B. Public funds may be expended by the board of supervisors for maintenance of public roads and streets laid out, constructed and opened prior to June 13, 1975 even if such roads and streets were not constructed in accordance with subsection A of this section.
>
> "C. Maintenance on public roads and streets shall not be construed to include purchasing or laying rock products, cement or petroleum product materials, except that maintenance on public roads and streets which are paved with cement or petroleum product materials may include seal coating and patching."

The above statute refers to A.R.S. § 11-802 and A.R.S. § 11-806.01 regarding plat standards. These standards are discussed in Chapter 9, Planning and Zoning.

A.R.S. § 18-208 allows for the maintenance of streets that are within an incorporated city or town. The same requirements apply as are enumerated in A.R.S. § 18-207. A.R.S. § 18-208 reads as follows:

A.R.S. § 18-208. Improvement of highway within city or town limit

"A. That part of a highway lying within an incorporated city or town may through cooperation be constructed, improved or maintained under the provisions of this article in the same manner as if lying without an incorporated city or town.

"B. As part of such cooperation, the board of supervisors may enter into an agreement with the governing body of a city or town for the lease of:

1. County equipment for use to construct, improve or maintain highways located within the boundaries of the city or town.

2. City or town equipment for use to construct, improve or maintain roads located within the boundaries of the county."

In summary, the law does not require the county to perform maintenance of roads that are not on the county designated road system which has been approved by the board of supervisors. Such maintenance is clearly a perogative of the board of supervisors. On the designated system maintenance is mandatory.

Maintenance policies for non-county roads vary from county to county. Counties with well developed professional staffs tend to develop such policies in accordance within the legal guidance of the Arizona Revised Statutes. Well developed legal staffs, an awareness of law suit potential by elected officials, and a confidence by elected officials in their professional staff tend to support a more well-defined policy.

APPENDIX - CHAPTER 10

SELECTED MAINTENANCE ACTIVITY DEFINITIONS & WORK UNITS

This list of selected maintenance work activity definitions and work units illustrates the varied work activities county highway maintenance entails. The list is by no means complete nor will some items be necessary in all organizations. Records needed to satisfy both fiscal and legal details as well as planning data should cover any work activity, as illustrated here, that is a substantial cost to perform.

Description of Work Activities	Work Unit
PAVED SURFACE MAINTENANCE	
Hand Patch With Premix - Hand patching of potholes, severe depressions, edge raveling and breaks in road and shoulder surfaces using bituminous premix.	Cubic Yards of Premix
Level With Premix - Leveling of badly distorted and rutted areas of the pavement and shoulder.	Cubic Yards of Premix
Fill Cracks - Cleaning and sealing cracks in bituminous pavement with liquid sealant.	Gallons of Sealant
Spot Seal Patching - Patching of short sections or isolated areas of cracked and raveled surfaces with liquid asphalt and cover material.	Gallons of Asphalt and Cubic Yards of Cover Material (or square yards)
Surface/Base Replacement - Removal and replacement of badly cracked and broken asphalt surface and deteriorated base with new material.	Cubic Yards of Material
Seal Coating (Major) - The surface treatment of full surface width on continuous sections of bituminous pavement with one application of liquid asphalt and cover material to seal the surface and to restore surface life, flexibility and skid resistance.	12' Lane Miles
Seal Coating (Minor) - The surface treatment of full surface width on short sections of bituminous pavement with one application of liquid asphalt and cover material to seal the surface and to restore surface life, flexibility and skid resistance.	12' Lane Miles
Flush Coating - An application of emulsified petroleum resin or liquid asphalt to continuous sections of asphaltic concrete as a flush coat to reconstitute aged asphalt, deter surface deterioration and seal surface of new construction.	12' Lane Miles

Spot Flush Coating - An application of emulsified petroleum resin or liquid asphalt to short or isolated sections of asphaltic concrete as a flush coat to reconstitute aged asphalt, deter surface deterioration and seal new surface replacements.	Gallons
Temporary Hand Patching - Make temporary repairs to roadway surfaces using patching materials to eliminate hazardous condition until permanent repairs can be made.	Cubic Yards of Premix
Fill Cracks with Asphalt-Rubber Sealant - The routing, cleaning, filling of cracks in bituminous or P.C.C. pavements to prevent passage of water through pavements and into the base or subgrade.	Pounds of Sealant
GRAVEL AND DIRT SURFACE MAINTENANCE	
Blade Gravel or Dirt Roads - Grading of gravel or dirt roads or to retore proper shape and smoothness.	Miles Bladed or Pass Miles Bladed
Spot Recondition Gravel Road - To restore sections of gravel surface to original condition by adding additional material as used originally or add a better material if available.	Cubic Yards of Material
Other Gravel and Dirt Surface Maintenance - Miscellaneous gravel and dirt surface maintenance activities.	Manhours
UNPAVED SHOULDER MAINTENANCE	
Blade Gravel or Dirt Shoulders - Blading and reshaping of gravel or dirt shoulders and drainage ditches to correct pavement drop off.	Miles or Pass Miles of Shoulder Bladed
Shoulder and Slope Repair - Adding and compacting material to shoulder and slope to eliminate pavement drop off, rutted or eroded conditions.	Cubic Yards
VEGETATION	
Swath Machine Mowing - Machine mowing of roadside areas for purposes of controlling weeds, eliminating snow drift lines, and improving roadside appearance. Does not include mowing of lawns.	Swath Miles
Chemical Control of Vegetation - Applying chemicals to vegetation along the roadside to eradicate, prevent or retard the growth of vegetation.	Gallons or Pounds of Mixed Chemical
Tumbleweed Disposal - The removal and disposal of tumbleweeds which have accumulated along fences, in cuts, in and around drainage structures, etc.	Lineal Miles

Tree and Brush Removal - The cutting, trimming and removal of brush and trees which are encroaching onto or overhanging the shoulder of the highway.	Lineal Feet of Shoulders Cleared
Other Vegetation Control - Miscellaneous vegetation control maintenance activities.	Manhours

ROADSIDE

Accident Maintenance and Repair - This activity covers all effort expended by maintenance personnel which occurs as a direct result of an accident, except guardrail replacement and repair and delineator and milepost maintenance. Examples: A. Roadway surface repair B. Fence repair C. Removal and disposal of dead animals D. Flagging E. Fence repair F. After-accident cleanup	Manhours
Full-Width Litter Pickup - The scheduled litter pickup of the full width of right-of-way to remove unsightly objects and those potentially dangerous to mowing equipment.	Right-of-way Miles
Spot Litter and Debris Pickup - The removal of isolated areas of debris and litter from the roadway and right-of-way.	Manhours
Accident Guardrail Maintenance - Repair and replacement of guardrails damaged by accidents only.	Guardrail Panels Repaired
Annual Fence Inspection - The inspection and minor repair of right-of-way fencing.	Miles of Fence Inspected
Routine Fence Maintenance - The maintenance and replacing of right-of-way fencing with the exception of repairs required because of accidents.	Panels or Lined Feet or Fence Repaired
Cattle Guard Maintenance - Maintaining and reparing cattle guards.	Cattle Guard Grilles Serviced
Urban Curb Sweeping - The sweeping of the curbed portion of the roadway with a self-propelled sweeper in urban area.	Curb Miles
Other Roadside Maintenance - Miscellaneous roadside maintenance activities. Such as: A. Removal of marking on rocks and walls B. Sidewalk maintenance C. Seeding, sodding and mulching D. Roadside retaining wall maintenance E. Viewpoint maintenance	Manhours

DRAINAGE AND STRUCTURES

Routine Drainage Maintenance - The removal of debris from pipes, boxes and bridge culverts.	Drain Openings
Emergency Drainage Maintenance - Emergency maintenance of culverts and catch basins, roadway dips and their inlets and outlets.	Drain Openings
Clean Cuts - The removal of material from roadway cuts and restoration of drainage.	Lineal Feet
Minor Slide Removal - The removal of minor rock, or mud as required to insure drainage.	Number of Slide Areas
Routine Major Structure Maintenance - The repair, maintenance and cleaning of decks, joints, bridge footings, abutments, wingwalls, superstructures and rails performed by maintenance personnel.	Structures
Storm and Rock Patrol - Patrol of roadways during storms and periods of expected rockfall for the removal of rocks and debris from the roadway.	Manhours
Other Drainage Maintenance - Miscellaneous drainage maintenance activities. Such as:	Manhours

A. Minor sand drift removal
B. Minor channel and dike repair
C. Occasional blading of crown or diversion ditches
D. Cleaning or reshaping grader ditches
E. Minor rip rap and bank protection repair
F. Retaining wall, cribbing repair

SNOW AND ICE CONTROL

Plowing, Sanding and Salting - The plowing of snow and/or application of chemicals and abrasives to the roadway.	Miles
Snow and Ice Patrol - Patrolling critical snow and ice removal areas to determine the development of hazardous conditions requiring maintenance attention.	Manhours
Other Snow and Ice Control - Miscellaneous snow and ice control activities, such as:	Manhours

A. Equipment preparation before storm (mounting plows and spreaders, etc.)
B. Equipment cleanup after storm
C. Mounting and preparation of snow and ice signs
D. Setting up and manning road blocks
E. Filling sand barrels
F. Removing snow from urban streets
G. Removing snow from bridges
H. Emergency operation of radio

I. Cleanup after storm, sweeping, etc.
J. Mixing salt and cinder
K. Opening or closing ice signs
L. Loader operator for heavy storms
M. Erecting and dismantling snowfence
N. Emergency supervision (other than crew supervisor)
P. Repair and maintain snow fence
R. Repair snowmarkers

Major Damage and Disaster Maintenance - The type of work covered under this activity are major slides, slipouts, washouts, flooding, structural damage, etc. of an extra-ordinary nature. Damages or failures which are unexpected and are of such size and scope as not to be handled on a routine work activity. — Manhours

LANDSCAPE MAINTENANCE

Lawn Mowing - Mowing of landscaped roadside lawn areas. — Acres

Edging and Trimming Lawns - The edging of lawns along curb areas and the trimming of grass around trees. — Manhours

Trimming Shrubs and Trees - Trimming of shrubs and trees in landscaped areas. — Trees

Fertilize Lawns - Fertilizing of lawns. — Pounds of Fertilizer

Manual Weed Control - The hoeing, cutting and hauling of grasses and weeds growing in tree, shrub and ground cover beds. — Weed Units

Chemical Weed Control - The application of chemicals for the control of weeds. — Gallons Sprayed

Manual Irrigation - The watering of trees, shrubs and ground coverings in landscape areas with either a water truck or a manual water system. — Waterings

Irrigation System Maintenance - The maintenance and adjustment of all irrigation systems. — Manhours

Policing Landscaped Areas - Policing and removal of litter and debris from the landscape areas. — Landscaped Acres

Fertilizing Trees and Shrubs - The fertilizing of trees and shrubs.Fertilizer — Pounds of

Other Landscape Maintenance - Landscape maintenance activities, such as: — Manhours

A. Insect treatment/rodent control/special plant treatment
B. Repair of berms and basins
C. Sweep grass clippings

D. Removal and replacment of trees and shrubs
E. Mowing weed areas
F. Hand mowing
G. Following day pickup and disposal
H. Removal of dead shrubs and trees only

TRAFFIC SIGNING AND STRIPING

Maintaining Delineators and Mileposts - The maintenance of delineators and mileposts as required to insure readability, visibility, good appearance and alignment.	Del. & M.P. Units
Paint Guidelines - The painting of traffic lines.	Gallons of Paint or Pass Miles
Special Pavement Marking - Painting of crosswalks, channelizations, and other pavement messages and markings.	Gallons of Paint
Sign Inspection Maintenance and Installation - Inspection, repair and replacement of existing signs and installation of signs.	Sign Work Units
Other Traffic Maintenance - Miscellaneous traffic and signing activities, such as:	Use Manhours or Other Appropriate
A. Raised pavement marking maintenance B. Spotting centerline and edgeline prior to striping C. Sweeping for striping D. Night inspection of paint reflectivity E. Paintbarrel handling and recycling F. Night sign inspection G. Removal of highway paint H. Washing signs and delineators	Units of Measurement

GENERAL

Supervision - Planning, scheduling work activities under the responsibility of maintenance.	Manhours
Record Keeping - Assisting the foreman, part-time, in keeping records for maintenance. Not to be used by individuals whose full time duties are clerical.	Manhours
Building and Yard Maintenance - The maintenance of buildings surrounding grounds performed by maintenance personnel, including minor repair.	Manhours
Equipment Servicing - The servicing of equipment performed by maintenance personnel.	Equipment Units
Training - Attending schools, conferences, meetings, films, and training programs for maintenance personnel.	Manhours
Leave - All annual, sick and leave without pay taken by maintenance personnel.	Manhours

Standby - Time lost, 1/2 day or more, due to equipment breakdown, weather or other reasons beyond control. A. Equipment breakdown B. Weather Conditions C. Other Reasons	Manhours
Work for Other Divisions or Departments - Work performed by maintenance personnel outside of their identified responsibility.	Use Manhours or Other Appropriate Units of Measurement
Transporting Equipment - The transporting of equipment for use in performing maintenance activities.	Manhours
Material Handling - The hauling and handling of supplies and materials.	Manhours
Work for Equipment Shops - Mechanical work performed on equipment by maintenance personnel and described on an equipment repair order is to be reported on this activity. The work must be performed with approval and under direction of the shop foreman. A. Transporting to and from shop B. Transporting to turn in C. Making minor repairs D. Help equipment shops with repairs E. Maintenance and repair of shop facilities	Manhours
Administration and Supervision of Contract Maintenance	Manhours
NONROUTINE MAINTENANCE	
Nonroutine Maintenance - This activity applies to maintenance work which does not fall under the routine work program: work of a size or scope which does not warrant letting to contract; projects which would improve roadway safety and appearance, reduce routine maintenance, eliminate maintenance trouble spots; and installation of new or additional features.	Manhours
MATERIAL PROCESSING	
Plant Screening - The screening of material by large capacity plants.	Cubic Yards
Making Premix Material - The windrowing, applying liquid asphalt and mixing.	Cubic Yards
Stockpiling Material - The hauling and stockpiling of material.	Cubic Yard Miles
Screening - Screening of material using a truck screen.	Cubic Yards
Straightening Guardrail and Sign Posts - The straightening of bent guardrail or sign posts.	Lineal Feet

REFERENCES

1. Highway Maintenance Management Manual, Arizona Department of Transportation, Maintenance Section, Phoenix, Arizona, vp.

2. Manual on Uniform Traffic Control Devices for Streets and Highways, Revised to 1984, U.S. Department of Transportation, Washington, D.C., 1984, vp.

3. Pivnik, Sheldon I., Legal Liability in Traffic Engineering.

4. Traffic Control Devices Handbook (GPO 1983 0-409-573), Federal Highway Administration, Washington, D.C.,1983, vp.

5. Traffic Control Manual for Highway Construction and Maintenance, Arizona Department of Transportation, Traffic Engineering Department, Phoenix, Arizona, vp.

6. Transportation and Traffic Engineering Handbook, 2nd Edition, Chapter 27, Institute of Traffic Engineers, Washington, D.C., 1982.

11. TRAFFIC CONTROL

INTRODUCTION

This chapter gives a basic overview of signs, signals, markings, and traffic control including those used through construction zones. Basic reference sources are given.

RESPONSIBILITY

The control of vehicular or pedestrian traffic along a county roadway is the vested responsibility of the local authorities; that is, the county, municipal, and other local board or body exercising jurisdiction over the roadway under the construction and laws of the state. This is clearly spelled out in A.R.S. § 28-643 entitled, "Local Traffic Control Devices":

> "Local authorities in their respective jurisdictions shall place and maintain such traffic-control devices upon highways under their jurisdiction as they deem necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn, or guide traffic. All traffic-control devices erected shall conform to the state manual and specifications."

In the case State vs. Watson (1967), it was noted that the manual is proper either as evidence of standard custom or usage in this country. Devices used to control traffic include all signs, signals, markings, and devices placed on, over, or adjacent to the roadway and used to regulate, warn, or guide the traffic. Other powers of local authorities with respect to traffic control are summarized in A.R.S. § 28-627. This statute authorizes local authorities to regulate traffic through a number of ways; such as, speed limits, restricting turns, etc. A complete version of this lengthy statute is given in Chapter 20. Per A.R.S. § 28-1801, local authorities are defined as every county, municipal, and other local board or body exercising jurisdiction over highways under the constitution and laws of the state. Therefore, all regulatory traffic control devices are approved by the County Board of Supervisors (usually by resolution).

UNIFORMITY

Uniformity in the use of traffic control devices is a critical consideration and a nationwide objective. To achieve this objective, the United States' Uniform Vehicle Code (UVC) has the following provision in U.V.C. § 15-104 for the adoption of a uniform manual:

> "The (State Highway Agency) shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this act for use upon highways within this State. Such uniform system shall correlate with and so far as possible conform to the system set forth in the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, and other standards issued or endorsed by the Federal Highway Administrator. Under authority granted by Congress in 1966, the Secretary of Transportation has decreed that traffic control devices on all streets and highways in each State shall be in substantial conformance with standards issued or endorsed by the Federal Highway Administrator."

Accordingly, the State of Arizona has adopted the Manual of Uniform Traffic Control Devices (MUTCD) developed by the National Joint Committee on Uniform Traffic Control Devices and published by the Federal Highway Administration, with some exceptions, as the official standard for use on all streets and highways open to public travel. This is described in A.R.S. § 28-641:

A.R.S. § 28-641. State sign manual

> "The director shall adopt a manual and specifications for a uniform system of traffic control devices for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system set forth in the most recent edition of the manual on uniform traffic control devices for streets and highways prepared by the national joint committee on uniform traffic control devices."

A.R.S. § 28-643 describes requirements for local traffic control devices:

A.R.S. § 28-643. Local traffic control devices

> "Local authorities in their respective jurisdictions shall place and maintain such traffic-control devices upon highways under their jurisdiction as they deem necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn or guide traffic. All traffic-control devices erected shall conform to the state manual and specifications."

The concern with uniformity and conformance thereto may be viewed from two perspectives: From the drivers perspective, uniformity promotes recognition, comprehension, and predictable behavior which, in turn, promotes driver safety and convenience. From the perspective of the county agency, the proper uniform application of traffic control devices protects the agency from adverse judgments in tort liability cases. It is important to understand that while the "shall" stipulation indicates a mandatory situation, there are many instances where the courts have ruled that a "should" stipulation in some specific situations is, in effect, mandatory to provide "reasonable care." A full discussion of the legal implications under current liability law involving traffic control devices is presented in the Traffic Control Devices Handbook (TCDH), (Ref. 5).

SIGNS

Signs, in the context of this manual, convey a message to the driver that will result in the orderly and predictable movement of traffic. There are three basic types of signs: Regulatory, Warning, and Guide. Table 11-1 indicates the purpose and typical uses of each of these.

Several design elements work together to provide visibility, and a clear meaning to the driver. These include color, shape, legend or symbol, lettering size, size of sign, and reflectorization or illumination. To assure uniformity across the nation as well as within the state, these are four basic reference sources that should be available in every county engineering office within Arizona:

- o The MUTCD, Part II: This is a national standard describing the dimensions and appearance of the various types of signs, warrants for usage and other application guidelines, location, design, and size to be used (Ref. 7).

- o The Traffic Control Devices Handbook: This is a companion document to the MUTCD and provides guidelines for implementing the standards called for in the MUTCD (Ref. 5).

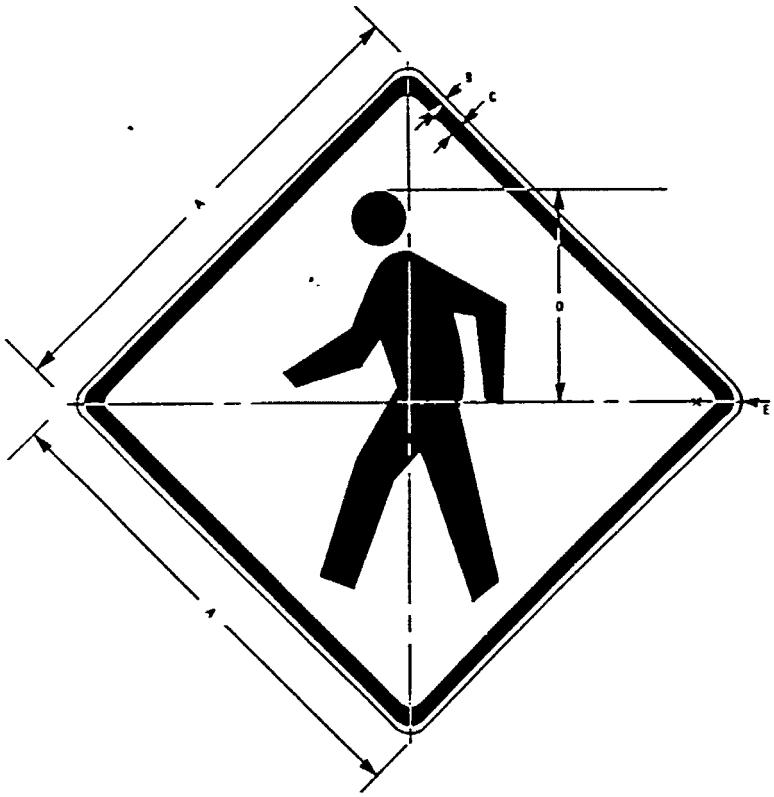
- o ADOT Manual of Approved Signs: Published by ADOT, this document (Ref. 2) presents the dimension, lettering size, and precise color detail for each individual sign used in the state (see Figure 11-1).

Table 11-1

SIGN TYPES

Sign Type	Intended Use	Typical Use
Regulatory	To inform users of traffic laws and regulations which apply at definite locations and at specific times.	o Intersection control o Definition of right-of-way o Speed limits o Turning movement control o Pedestrian control o Exclusions and prohibitions o Parking control and limits o Regulations for maintenance and construction
Warning	To warn traffic of unusual or potentially hazardous condition(s) on or adjacent to a street or highway.	o Horizontal and vertical alignment o School areas o Crossings and entrances to streets, highways, and freeways o Intersection areas o Road construction and maintenance
Guide	To provide simple and specific information to aid motorists in reaching their destination.	o Route markings o Destination signing o Information signing o General services o Parks and recreational signing

Source: Traffic Control Devices Handbook



SIGN	DIMENSIONS (INCHES)															
	A	B	C	D	E	F	G	H	J	K	L	M	N	P	Q	R
BIKE																
MIN	24	3/8	5/8	11	1 1/2											
STD.	30	1/2	3/4	13 1/2	1 7/8											
EXPWY.	36	5/8	7/8	16	2 1/4											
FWY.																
SPECIAL	48	3/4	1 1/4	22	3											

COLORS

LEGEND – BLACK (NON-REFL)

BACKGROUND – YELLOW (REFL)

Source: Arizona Department of Transportation
Manual of Approved Signs, revised to 1986

Figure 11-1

SAMPLE ILLUSTRATION FROM THE MANUAL OF APPROVED SIGNS

- o ADOT Signing and Marking Standard Drawings: This document provides typical plans for signing requirements for numerous locations and applications (Ref. 3).

The current MUTCD was originally published in 1978, but is updated and revised periodically. Both the MUTCD and the TCDH can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. In use of state reference sources as well as federal, care should be exercised to assure that the latest, revised editions are on hand.

An additional source of signing data is the Uniform Standard Details for Public Works Construction, sponsored and distributed by the Maricopa Association of Governments (1979) (Ref. 8). This document includes a Standard Detail for Street Sign Base (Detail No. 131) and for barricades (Detail No. 130). Also published by MAG is the Uniform Standard Specifications for Public Works Construction, which includes standard specifications for bidding on Public Works Projects.

85th Percentile Speed Determination

As stated in the Traffic Control Devices Handbook, "in the context of sign application, the '85th percentile speed' is the critical factor. This speed factor is defined as 'that speed below which 85 percent of all vehicles travel and above which 15 percent travel.' The 85th percentile speed is nationally recognized and accepted as the basis of posting speed limits unless there is a combination of unusual geometrics, high accident conditions, limited sight distance, or other extenuating circumstances." (Also, be aware of a federally-mandated speed limit.)

The procedure for determining the 85th percentile speed is described in many engineering texts. This is one of many traffic engineering studies included in the "Manual of Traffic Engineering Studies" (fourth edition), available from ITE. This is an excellent source manual which should be available to all county engineers. Some of the major aspects involved in this procedure include:

- o The speed sample should be taken in good weather during off-peak hours to measure relatively free moving vehicles.
- o The desired sample size is at least 100 vehicles. In rural areas and low volume roadways this may be difficult to achieve in a reasonable time period. The sample size may be lowered accordingly in these cases.

Should this present a problem, the prevailing traffic speeds can be estimated by driving the route.

- Methods for measuring speeds are varied and have inherent advantages and disadvantages. Commonly used methods include the radar meter, 20-pen graphic recorder, and enoscope.

A sample study procedure to calculate the 85th percentile and average speeds is illustrated in Figure 11-2. The requirement of obedience to signs is detailed in A.R.S. § 28-644. This statute reads as follows:

> "A. The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exemptions granted the driver of an authorized emergency vehicle in this chapter.
>
> "B. No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. When a particular section does not state that signs are required, that section shall be effective even though no signs are erected or in place."

MARKINGS

Roadway markings are used to provide visual information to the driver so that the vehicle may be driven along a safe and appropriate path of travel. They may also be used to supplement the regulations and warnings of other traffic control devices. In effect, markings constitute a traffic-regulation system and, consequently, must be readily seen, recognized, and understood in daylight and darkness, and in periods of adverse weather such as rain and fog.

Roadway markings are generally either longitudinal lines (such as, center lines, lane lines, edge lines) or transverse markings (such as, crosswalks, stop bars, and islands). Words and symbols are also considered markings when used to communicate information; such as, speed limit, directional arrows, and approach warnings (e.g., STOP AHEAD, PED XING). Another form of markings are those used to define parking stalls on the roadway. Painted curbs are used to supplement signs. Table 11-2 describes the various types of pavement stripes.

Speed Study

MPH			MPH			MPH	
16			36	𝍸 I	(3[illegible] x [illegible] = 216)	56	
17			37	𝍸 II	(3[illegible] x [illegible] = 259)	57	
18			38	𝍸	(38 x 5 = 190)	58	
19			39	IIII	(39 x 4 = 156)	59	
20			40	IIII	(40 x 4 = 160)	60	
21			41	III	(41 x 3 = 123)	61	
22			42			62	
23			43			63	
24			44			64	
25			45			65	
26			46			66	
27			47			67	
28			48			68	
29			49			69	
30	𝍸 II	(30 x 7 = 210)	50			70	
31	𝍸 III	(31 x 8 = 248)	51			71	
32	𝍸 𝍸 𝍸 𝍸	(32 x 20 = 640)	52			72	
33	𝍸 𝍸 𝍸 𝍸 II	(33 x 22 = 726)	53			73	
34	𝍸 𝍸 𝍸 II	(34 x 17 = 578)	54			74	
35	𝍸 𝍸 II	(35 x 12 = 420)	55				

MUNICIPALITY CITY OF ANYTOWN

DATE 8-8-80 TIME 10:30 AM - 11:45 AM

LOCATION "A" STREET BETWEEN 10TH & 11TH STREETS

DIRECTION OF CLOCKED VEHICLE NORTHBOUND

WEATHER CLEAR ROAD CONDITION DRY

RECORDER JOE DOE 85 PERCENTILE 37 M.P.H.

Total Vehicles = 115
85% Tol. Veh. = 97.75 Say 98
85% Speed = 37 mph

Total Vehicle M.P.H. = 3926
3926 ÷ 115 = Avg. Spd. 34 m.p.h.

Procedures

1. Add up the number of vehicles for each individual speed and place it at the extreme right end of the line for that particular speed.

2. Add up the total number of vehicles for all speeds.

3. Multiply the total number by 0.85.

4. The total determined in # 3 is the number of vehicles traveling at the 85 percentile speed or less.

5. Beginning at the lowest recorded speed, begin adding up the individual number of vehicles until the total in # 4 is reached. The speed to the left of this number is the speed at which 85 percent of the total number of vehicles are traveling at or less.

Figure 11-2

SAMPLE SPEED STUDY

Table 11-2

TYPES OF PAVEMENT STRIPES

DESCRIPTION	*COLOR*	*WIDTH*	*APPLICATION*
Single Broken	White	4"	Separation of lanes on which travel is in the same direction, with crossing from one to the other permitted; i.e., lane lines on multilane roadways.
	Yellow	4"	Separation of lanes on which travel is in opposite directions, and where overtaking with care is permitted; i.e., centerline on 2-lane, 2-way roadways.
Single Solid	White	4"	Separation of lanes, or of a lane and shoulder, where lane changing is discouraged; i.e., lane lines at intersection approaches, right edge stripes.
		6"	Lane lines separating a motor vehicle lane from a bike lane.
		8"	Delineation of locations where crossing is strongly discouraged; i.e., separation of special turn lanes from through lanes, gore areas at ramp terminals, paved turnouts.
	Yellow	4"	Delineation of left edge lines on divided highways, one-way roads, and ramps.
Double Yellow	White	4-3-4"*	Separation of lanes on which travel is in the same direction, with crossing from one side to the other prohibited; e.g., channelization in advance of obstructions which may be passed on either side.
	Yellow	4-3-4"*	Separation of lanes on which travel is in opposite directions, where overtaking is prohibited in both directions. Left turn maneuvers across this marking are permitted. Also used in advance of obstructions which may be passed only on the right side.
Solid plus Broken	Yellow	4-3-4"*	Separation of lanes on which travel is in opposite directions, where overtaking is permitted with care for traffic adjacent to the broken line, but prohibited for traffic adjacent to solid line. Used on 2-way roadways with 2 or 3 lanes. Also used to delineate edges of a two-way left turn lane—solid lines on the outside, broken lines on the inside.
Double Broken	Yellow	4-3-4"*	Delineates the edges of reversible lanes.
Single Dotted	Either	4"	Extension of lane lines through intersections. Color same as that of line being extended. Also used to extend right edge line of freeway shoulder lanes through off-ramp diverging areas in problem locations.
	White	8"	Separation of through lane and auxiliary lane or dropped lane.
Transverse	White	12"	Limit lines or STOP bars; also crosswalk edge lines (minimum 6 ft apart) when not in the vicinity of school grounds.
Diagonal	White	12"	Crosshatch markings, placed at an angle of 45°, at varying distances apart, on shoulders or channelization islands to add emphasis to these roadway features.

* 4-3-4" indicates typical width of stripes and gap between them. This spacing may vary among states.

Source: Traffic Control Devices Handbook

In addition to the roadway markings defined above, post-mounted delineators and object markers are generally considered a part of the "markings" system. These devices are retroreflective and should be visible under normal night conditions for 1,000 feet. The post-delineators consist of reflective devices or materials usually mounted on a three- to four-foot post and are specifically used to outline the edge of the road and guide the driver through critical locations, such as curves or turns.

Object markers consist of various arrangements of reflectorized devices or materials on or next to obstructions within or near the roadway; such as, the approach end of medians, bridge piers, guardrails, culvert walls, etc. These markers serve to alert and warn drivers that such objects exist.

The ideal form of roadway markings and the best material to be used are those that provide the most guidance and warning, particularly in periods of darkness and adverse weather.

The materials most generally used are:

- Paint
- Thermoplastic
- Raised retroreflective markers

A number of factors must be considered in determining the most cost-effective materials for a given location. In addition to visibility, pavement surface, and durability considerations, climate exerts a vital influence on the type of material to be selected. Painted markings are the least expensive, but do not provide the high degree of visibility during rain that is available with raised markers or even thermoplastic. Blowing sand can not only reduce visibility and obscure the markings, it can damage paint, thermoplastic, and reflective lenses through an abrasive sandpaper effect. In summer heat, thermoplastic tends to crawl or distort when surface temperatures reach 120° F. However, some paint and thermoplastics have been specially formulated to withstand these extreme heats.

Raised markers are the most expensive in their original application, but in some cases cost less to maintain over time. Their value lies in the increased visibility at night during adverse weather combined with the rumble effect created when a vehicle passes over.

There are three basic reference sources on markings that should be available in each county traffic engineering office:

- The Manual on Uniform Traffic Control Devices. Part III of the MUTCD provides usage standards for the application of pavement markings, object markers, and post-mounted delineators (Ref. 7).

- The Traffic Control Devices Handbook. Part III provides comprehensive guidelines on applications, materials, installation, and operations and maintenance (Ref. 5).

- ADOT Signing and Marking Standard Drawings. This state document provides typical layout plans for markings and striping implementation (Ref. 3).

Other standard reference sources are listed in Chapters 12 and 15. Price estimates for marking materials and reflectors are available from ADOT's contract and specification services.

SIGNALS

The MUTCD describes a highway traffic signal as "any power-operated traffic control device, other than a barricade warning light or steady burning electric lamp, by which traffic is warned or directed to take some specific action." There are various classifications of signals according to their purpose as characterized below:

- Traffic Control Signals are used to control the assignment of right-of-way at locations where possible conflicts exist or where passive devices, such as signs and markings, do not provide the necessary flexibility of control to properly move traffic in a safe and efficient manner. The definition of traffic control signal legends are detailed in A.R.S. § 28-645.

- Hazard Identification Beacons warn motorists of unexpected conditions in or immediately adjacent to the roadway (such as a bridge pier in the center of the road), or which supplement passive control devices (such as flashing beacons at stop sign controlled intersections).

- Lane-Use Control Signals are used to indicate and control the direction of travel on reversible lanes or adjacent lanes; for example, one or more lanes where traffic can proceed in one direction during a certain time of day and in the reverse direction during another.

- Freeway Ramp Control Signals are a special application of traffic control signals installed on freeway entrance ramps to limit, or "meter," the amount of traffic entering the freeway.

- Movable Bridge Signals are used to stop traffic on approaches to drawbridge sections when the bridge is not available for use by highway traffic.

- Railroad Crossing Signals are used to warn traffic of an approaching train at railroad grade crossings.

The key issue in the use of signals is to determine whether or not they are needed (warranted). The primary references for the application of traffic control signals include:

- Manual on Uniform Traffic Control Devices. Part IV addresses the accepted standards on signal indications: number, size, design, and arrangement of signal faces; vehicle change interval; and installation requirements (Ref. 7).

- Traffic Control Devices Handbook. Signal warrants and the required engineering studies are explained in Part IV. It also provides guidelines on operational requirements, signal equipment and hardware, signal timing, and operations and maintenance (Ref. 5).

- The Arizona Department of Transportation's General Specifications for Traffic Signals and Overhead Lighting. Detailed specifications are provided for signal implementation (Ref. 1).

- The Arizona Department of Transportation's Standard Drawings for Traffic Signals and Lighting. Detailed specifications are provided for signal implementation (Ref. 4).

TRAFFIC CONTROL THROUGH CONSTRUCTION ZONES

When construction, maintenance, or similar activities are conducted on or near the roadway, traffic control is needed to safely guide and protect motorists, pedestrians, and construction workers. A significant majority of the liability cases brought against state and local traffic agencies involve accidents occurring in or around construction zones. The proper application of traffic control devices in work areas is, therefore, of vital concern. The Arizona Revised Statutes mandate traffic control to be in compliance with the MUTCD, as per A.R.S. § 28-65, Warning Devices at Construction Sites:

> "Any person, contractor or political subdivision performing work on roads, streets, or highways shall post and maintain at the work site until the work is completed or until such time as the governing body authorizes removal, such warning signs, signals, markers and barricades

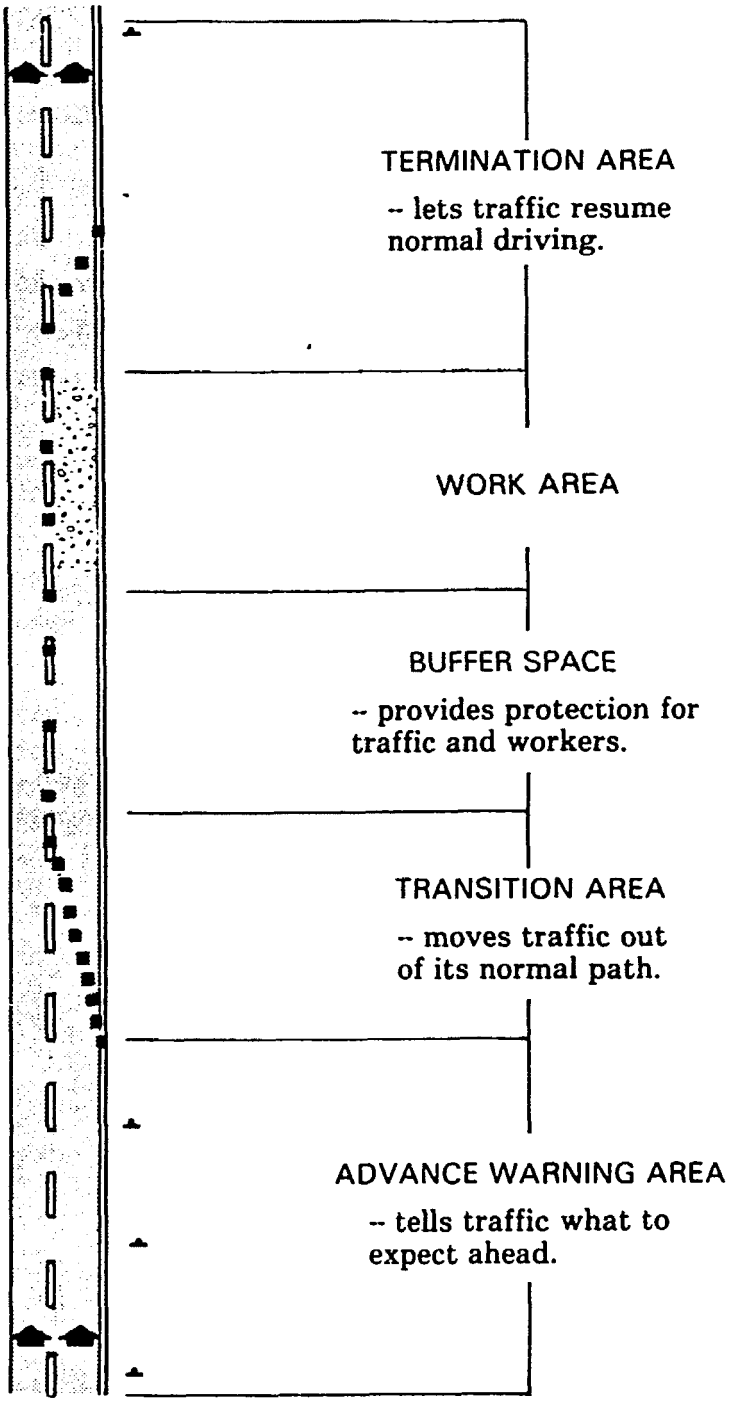
in compliance with the manual and specifications for uniform system of traffic control devices adopted by the director to warn those using such street, road or highway."

The construction or work site is termed a traffic control zone and is divided into the various parts shown in Figure 11-3. Various forms of traffic control devices are combined and applied as a function of the work location. Table 11-3 summarizes the type of devices for typical work locations for each area of a traffic control zone.

The principal reference sources that should be used in designing and implementing traffic control though construction include:

- Manual on Uniform Traffic Control Devices. Part VI provides the standard specifications for signs, barricades and channeling devices, markings, and lighting devices (Ref. 7).

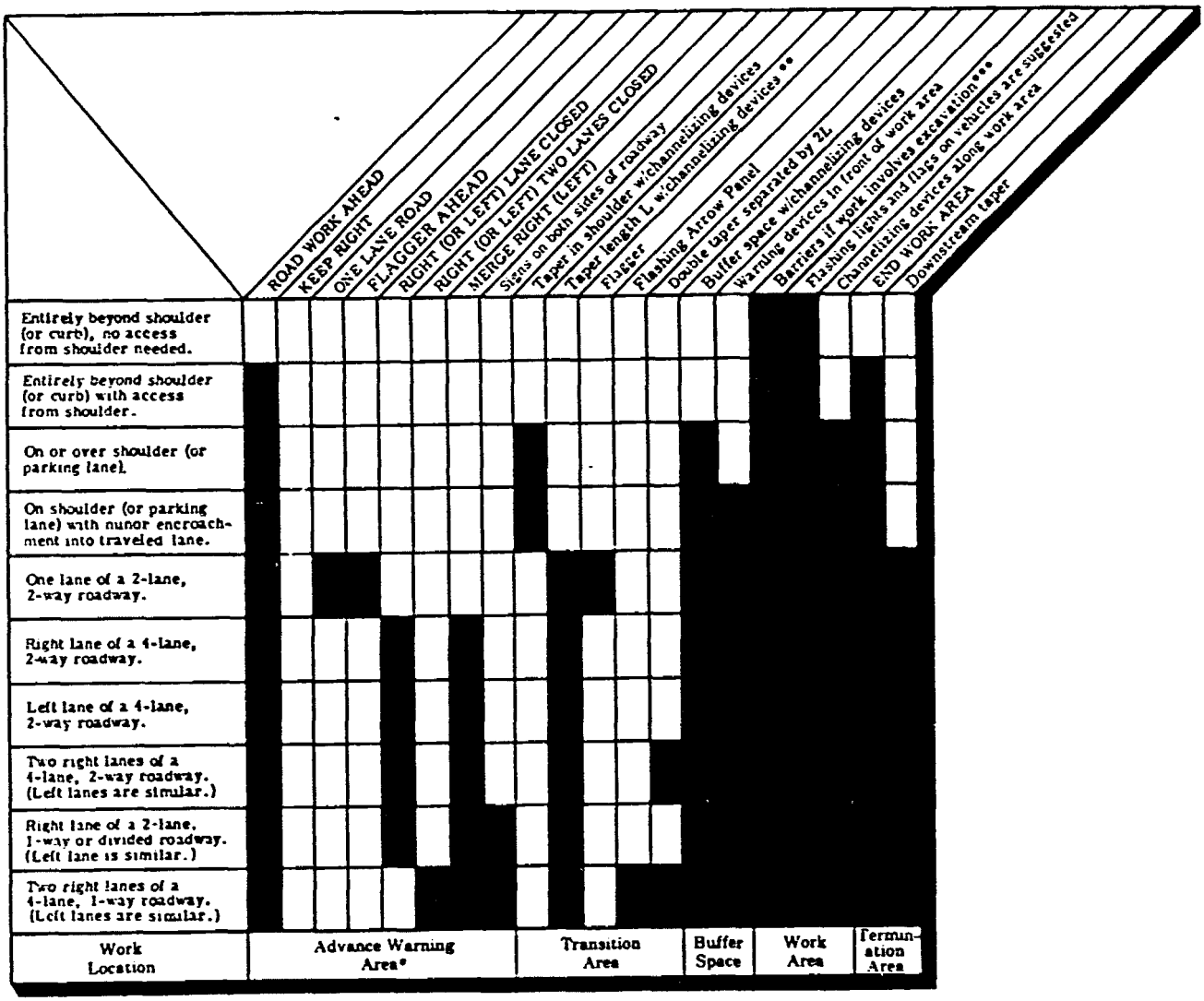
- Traffic Control Devices Handbook. Part VI of the Traffic Control Devices Handbook provides extensive guidelines for the application, installation, maintenance, and inspection of traffic control devices (Ref. 5). It also provides typical plans such as those shown in Figures 11-4 and 11-5.



Source: Traffic Control Devices Handbook

Figure 11-3

AREAS IN A TRAFFIC CONTROL ZONE



* A consistent pattern of messages is shown in this figure. Refer to MUTCD for other acceptable messages or symbol signs.

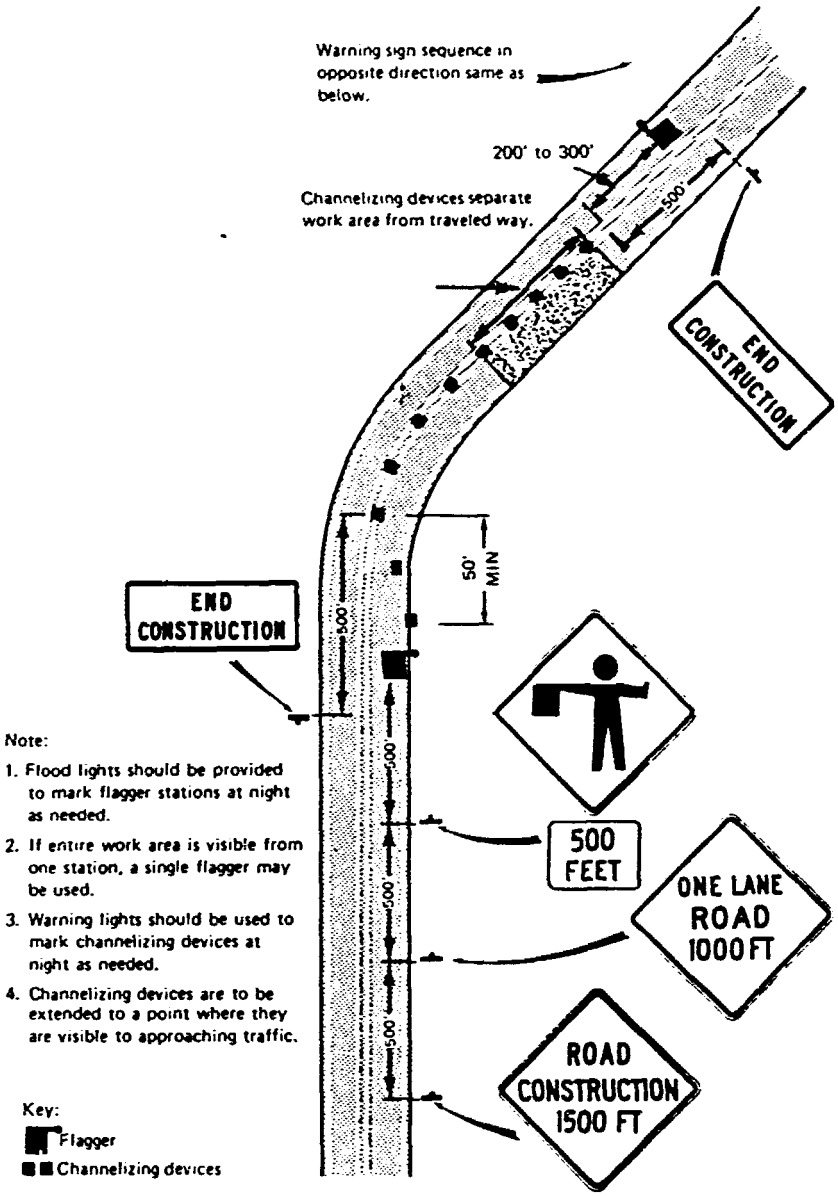
** Old pavement markings should be removed and new markings placed in transition area for longer-term activities.

*** The use of barriers is determined by an engineering analysis of the need for positive protection.

Source: Adapted from Traffic Control Devices Handbook

Table 11-3

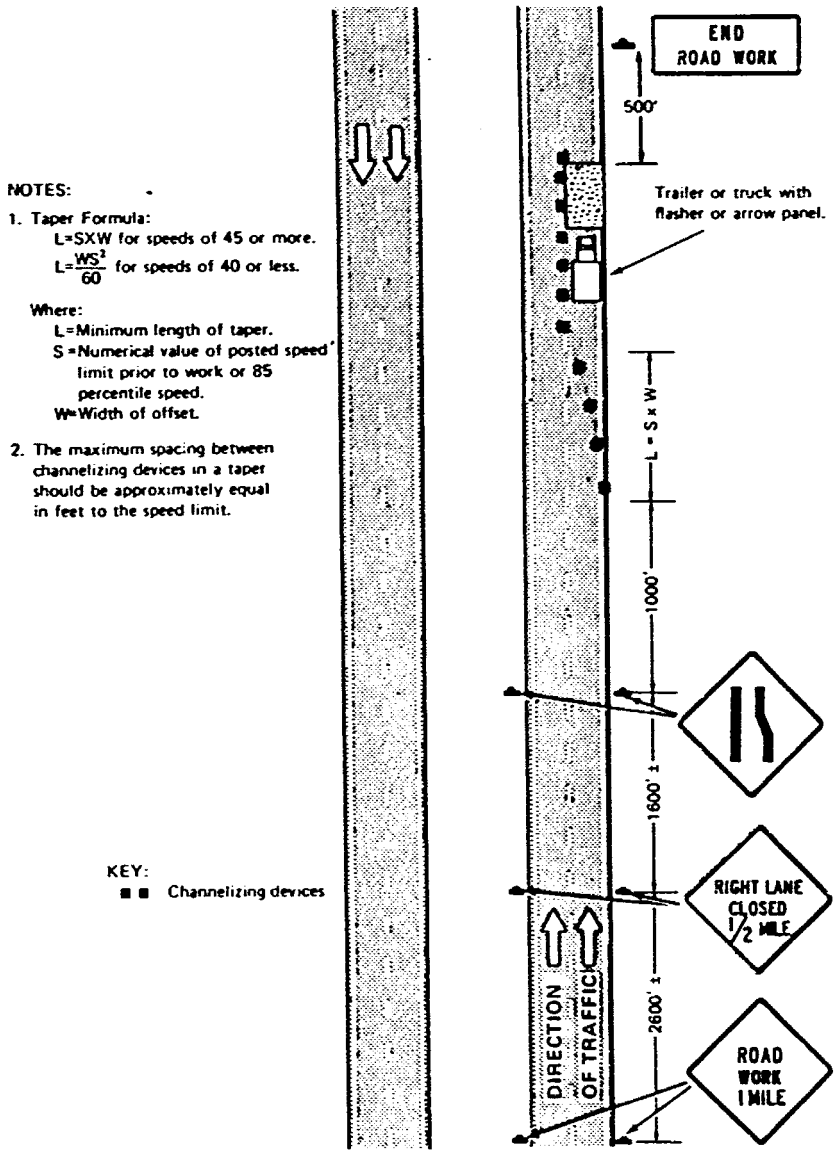
TRAFFIC CONTROL DEVICES FOR VARIOUS LOCATIONS OF WORK



Source: Traffic Control Devices Handbook

Figure 11-4

TYPICAL APPLICATION OF TRAFFIC CONTROL DEVICES ON A TWO-LANE HIGHWAY WHERE ONE LANE IS CLOSED AND FLAGGING IS PROVIDED



Source: Traffic Control Devices Handbook

Figure 11-5

TYPICAL APPLICATION OF TRAFFIC CONTROL DEVICES ON A TWO-LANE HIGHWAY

REFERENCES

1. General Specifications for Traffic Signals, Arizona Department of Transportation, Phoenix, Arizona, 1973, vp.

2. Manual of Approved Signs, Arizona Department of Transportation, Phoenix, Arizona, 1983, vp.

3. Signing and Marking Standard Drawings, Arizona Department of Transportation, Phoenix, Arizona, 1983, vp.

4. Traffic Signals and Lighting Standard Drawings, Arizona Department of Transportation, Phoenix, Arizona, 1984, vp.

5. Traffic Control Devices Handbook (GPO 1983 0-409-573), Federal Highway Administration, Washington, D.C., 1983, vp.

6. Manual of Traffic Engineering Studies, Fourth Edition, Institute of Transportation Engineers, 1976.

7. Manual on Uniform Traffic Control Devices for Streets and Highways, revised to 1984, U.S. Department of Transportation, Washington, D.C., 1984, vp.

8. Uniform Standard Details for Public Works Construction, revised to date, Maricopa Association of Governments, 1979.

12. TRAFFIC SAFETY

INTRODUCTION

Statewide accident statistics indicate that approximately 11 percent of all accidents and 23 percent of all fatal accidents in the state of Arizona occur on county roads. A great majority of accidents on county roads typically occur in rural areas, on low volume roads constructed to older design standards. Narrow lanes, narrow (or no) shoulders, sharp curves, and inadequate sight distances contribute to a majority of the accidents on county roads.

County highway agencies are responsible for maintaining acceptable levels of safety and operational efficiency on the road system under their jurisdiction. Failure to adequately meet this responsibility can result in significant losses in terms of lives, injuries, and property damage resulting from traffic accidents. If the courts find that the highway agency is negligent in carrying out its duties, the agency can be held liable for damages suffered by those involved in traffic accidents under the legal concept known as tort liability.

Most county highway agencies recognize their safety responsibilties and are aware of the consequences for failures to meet such responsibilities. However, county agencies face a number of challenges in the implementation of a comprehensive safety program. Among these challenges are limited manpower and funds for identifying safety problems and implementing safety improvements, small and often inadequately trained staffs, insufficient time to address highway safety problems except on an "after-the-fact" basis, and physical constraints such as narrow right-of-way and inadequate bridge structures. This chapter describes basic procedures for implementing a traffic safety program.

HIGHWAY SAFETY IMPROVEMENT PROGRAM

County highway agencies are encouraged to develop and implement, on a continuing basis, a Highway Safety Improvement Program (HSIP). Transportation safety programs are under the administrative jurisdiction of ADOT, as per A.R.S. § 28-104. Such a program will help the agency to fulfill its responsibility of

providing a safe roadway system, maintaining efficient traffic operations, and minimizing governmental liability from tort claims that may arise from accidents.

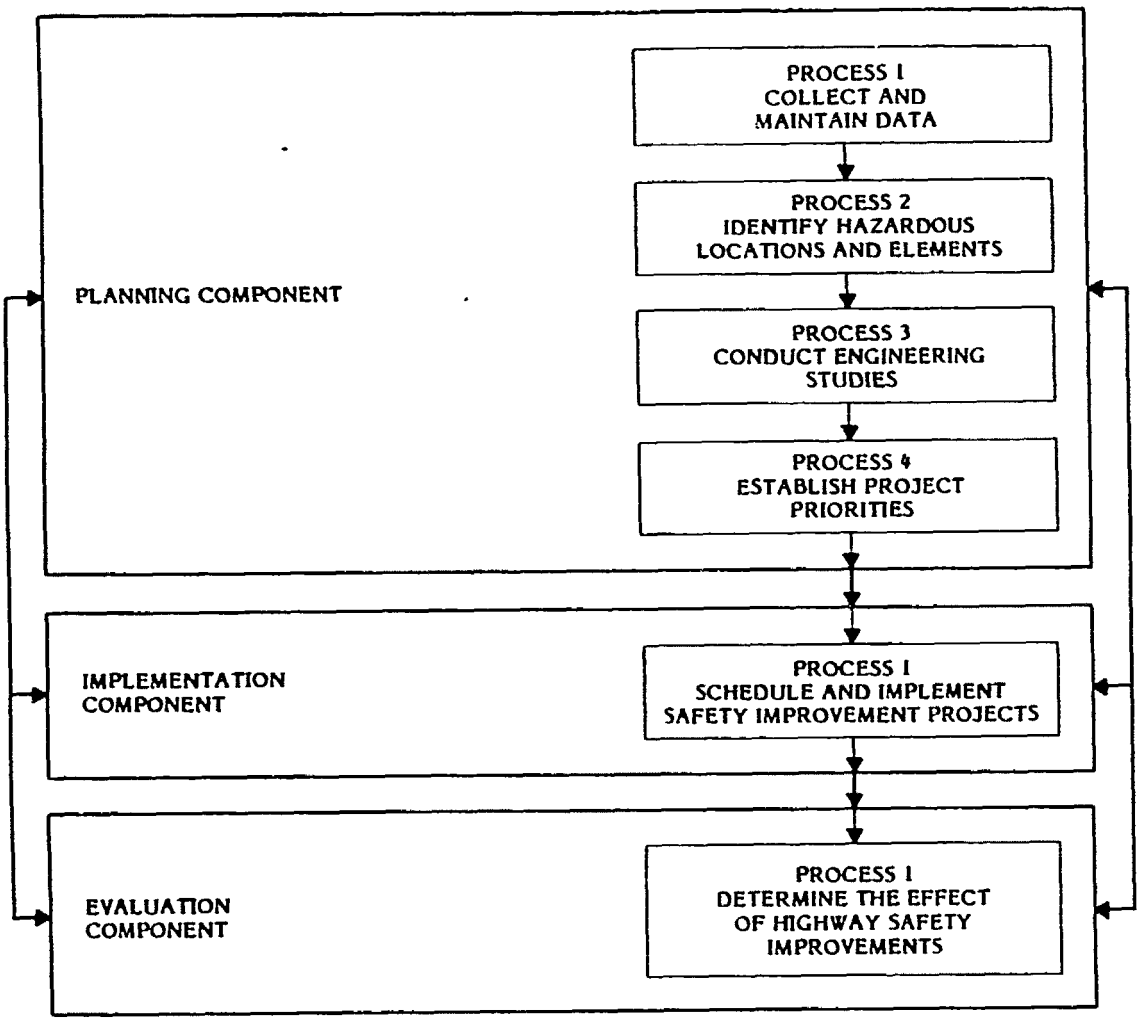
A highway safety improvement program is defined as a systematic process for identifying and correcting safety deficiencies on the county road system. The objectives of a county HSIP are to reduce the number and severity of traffic accidents and decrease the potential for accidents.

The Federal Highway Administration recommends that the HSIP consist of three components: planning, implementation, and evaluation. The arrangement of these components within the HSIP is shown in Figure 12-1. The following sections describe the processes that comprise each component.

Planning Component

The purpose of the planning component is to identify safety problems and develop remedial safety treatments. Safety problems may be identified using a variety of procedures. The simplest method involves the use of accident statistics to identify candidate accident locations. The Traffic Records Unit of the Arizona Department of Transportation (ADOT) generates listings of high accident intersection and non-intersection (road segment) locations. It is mandated by A.R.S. § 28-667 that a copy of every accident report be forwarded to ADOT. A.R.S. § 28-674 states that, "The department shall tabulate and may analyze all accident reports, and shall publish annually, or at more frequent intervals, statistical information based thereon as to the number and circumstances of traffic accidents. Figures 12-2 and 12-3 show examples of ADOT listings for intersections and road segments. These listings are submitted by ADOT to all county and local jurisdictions on an annual basis for accidents occurring in the preceding calendar year. Detailed accident printouts for specific intersections and road segments may be obtained from ADOT on request.

Since ADOT high accident listings are available only on an annual basis, it is advisable to use supplemental procedures for identifying safety problems on an on-going basis throughout the year. This is accomplished in many county agencies through the use of accident pin maps. Pin maps are maintained by the highway agency or the law enforcement agency and updated on either a weekly or monthly



Source: Highway Safety Improvement Programs FHWA-TS-81-218, 1981

Figure 12-1

HIGHWAY SAFETY IMPROVEMENTS PROGRAM STRUCTURE

SP961-974-1
TOP 10 INTERSECTIONS BASED ON ACCIDENT RATE
MESA
8401841201LYNN01G050717
PREPARED BY SAFETY PROJECTS SERVICES - ARIZONA DEPARTMENT OF TRANSPORTATION
FROM 01-01-84 TO 12-31-84
RUN ON 12-19-85
PAGE 1

ON STREET	X ##	X INTERSECT ##STREET	X ###	RATE A/MV	ANGLE	PEDS	LEFT TURN	REAR END	SIDE SWIPE	TOTAL	NIGHT ANGLE	NIGHT TOTAL	CLASS	PREDOMINANT TYPE	DI	APPROA VOLUME
ARIZONA	AV	GUADALUPE	RD	5.07	1	0	2	1	0	5	0	0	-	LEFT TURN	S	2,700
BASELINE	RD	STAPLEY	DR	4.09	2	0	1	1	0	5	1	3	-	ANGLE	E	3,350
BASELINE	RD	GILBERT	RD	3.82	3	0	2	2	0	9	0	0	-	ANGLE	N	6,450
BUSH	HW	UNIVERSITY	DR	3.10	1	0	2	2	0	6	0	0	-	LEFT TURN	S	5,300
BROADWAY	RD	63RD	ST	2.14	6	0	2	0	0	10	0	0	-	ANGLE	W	12,800
BASELINE	RD	PRICE	RD	2.06	3	1	2	10	0	18	2	6	M-M	REAR-END	E	23,900
BROWN	RD	LINDSAY	RD	2.03	3	0	7	1	0	12	0	3	-	LEFT TURN	S	16,200
MAIN	ST	SOSSAMAN	RD	1.94	3	0	1	4	0	10	0	0	-	REAR-END	W	14,100
BASELINE	RD	LONGMORE		1.80	3	0	8	3	0	17	2	8	-	LEFT TURN	E	25,900
GREENFIELD	RD	UNIVERSITY	DR	1.74	4	0	4	1	1	12	1	4	-	ANGLE	N	18,850

Source: Arizona Department of Transportation- Safety Project Services

Figure 12-2

INTERSECTION LISTING RANKED
ACCORDING TO ACCIDENT RATE

SP961-936-1
MID-BLOCK CONCENTRATIONS
MESA
RATE
PREPARED BY TRAFFIC STUDIES BRANCH - ARIZONA DEPARTMENT OF TRANSPORTATION
FROM 01-01-84 TO 12-31-84
RUN ON 12-17-85
PAGE 1

ON STREET	X ##FROM:		X ###	TO:	X ###	C L S	LAST 12 MO VALUE	1982 12 MO	1983 12 MO	1984 12 MO	TOTL	NIGHT TIME	ALLY TOTL	DRWY TOTL	PREDOMINANT TYPE	LGTH (MI)	VOLUME (ADT)
HORNE	ST	UNIVERSITY	DR	4TH	PL	C	20.25	1	1	4	6	4	0	7	SINGLE VEHICLE	0.066	8,200
8TH	AV	PUEBLO	AV	2 ALMA SCHOOL	RD	C	16.28	0	0	4	4	2	0	2	SINGLE VEHICLE	0.099	6,800
GILBERT	RD	BROWN	RD	GREENWAY	ST	M	13.27	6	3	5	14	2	0	9	REAR-END	0.086	12,000
GILBERT	RD	BROADWAY	RD	3RD	DR	M	11.71	3	5	7	15	2	0	18	ANGLE	0.065	25,200
ALMA SCHOOL	RD	0000		PEPPER	PL	M	11.34	2	1	9	12	3	0	2	REAR-END	0.083	26,200
COUNTRY CLU	DR	UNIVERSITY	DR	4TH	PL	M	10.96	2	2	8	12	1	0	3	REAR-END	0.368	29,400
BROWN	RD	MESA	DR	MARCH	CI	M	9.11	3	3	5	11	1	0	5	REAR-END	0.085	17,700
GREENFIELD	RD	0000		UNIVERSITY	DR	M	8.62	10	7	13	30	1	0	31	ANGLE	0.498	8,300

Source: Arizona Department of Transportation- Safety Project Services

Figure 12-3

ROAD SEGMENT LISTING RANKED
ACCORDING TO ACCIDENT RATE

basis using hard copy accident reports. Clusters of accident pins can be easily identified and action can be taken to investigate the cause of the identified safety problem. Other procedures that have been successfully used to identify safety problems include maintaining records of citizen complaints and creating a system whereby other divisions of the county government (i.e., law enforcement, public works, sanitation, and administrative) notify appropriate highway personnel when hazardous conditions are identified on the roadway system.

Once identified, high accident locations should be investigated to determine the probable cause of the safety problem. These investigations may consist of performing accident analyses, traffic engineering studies, and field reconnaissance at identified high accident locations. Guidelines for conducting these studies are contained in several documents including the Manual of Traffic Engineering Studies (Fourth Edition), the Traffic and Transportation Engineering Handbook, and the Highway Safety Engineering Studies Procedural Guide.

Using the identified causes of the safety problems, countermeasures should be developed for alleviating the safety problem. Countermeasure look-up tables and engineering judgment are commonly used in the development of accident countermeasures. These tables may be found in the FHWA guide, Highway Safety Engineering Studies.

The outcome of the planning component is a list of safety projects to be implemented.

Implementation Component

The purpose of the implementation component is to design and construct the safety projects that were selected in the planning component. Typically, a majority of accident countermeasures may be classified as "low-cost" countermeasures and may be designed and constructed with in-house forces. Other more complex countermeasures may require the use of outside contractors for design and construction. Limited safety funds are available to support the design and construction of safety improvements. These funds are typically administered through the Governor's Office of Highway Safety. Details on funding availability and application procedures may be obtained from this agency.

The result of the implementation component is completed and functioning safety projects.

Evaluation Component

The purpose of the evaluation component is to perform effectiveness evaluations of the implemented safety projects. Results of the evaluation component is information that improves future highway safety planning and implementation activities by providing data on the accident-reducing capabilities of implemented safety projects. Guidelines for conducting effectiveness evaluations of completed safety projects are contained in the FHWA procedural guide entitled, Highway Safety Evaluation (Ref. 3). The procedures contained in this guide emphasize the need to conduct statistically valid evaluations using statistical tests.

The feedback of information from evaluation procedures to the other components of the highway safety improvement program produces a continuing process which has the potential for becoming more efficient and effective with time.

Guidelines for the development of a highway safety improvement program may be obtained in the FHWA publication, Highway Safety Improvement Program (HSIP) (Ref. 2). Useful information is also contained in a series of FHWA guidelines entitled, Highway Safety for Rural and Small Urban Areas. This series consists of written guidelines specifically for the development of highway safety improvement programs for county and local agencies.

ACCIDENT RECORDS

Traffic accident records are the primary source of traffic safety information. Traffic accident reports are used in the following safety-related procedures:

- Identification of high accident locations
- Investigation of accident causes
- Selection of accident countermeasures
- Evaluation of the effectiveness of safety projects
- Justification for requesting safety improvement funds

Traffic accident reports prepared by state, county, and local law enforcement agencies are submitted to the Arizona Department of Transportation (ADOT) and are entered into a computerized accident records system referred to as ALISS (Accident Location Identification Surveillance System.) Table 12-1 describes the types of computer printouts that are available from ADOT upon request.

In addition to the computer printouts, local agencies are encouraged to maintain accident information in ways that will allow for easy access of information, monitoring of accident occurrences, and identification of problem locations. Several methods of maintaining accident records at the local level are described below.

- File accidents by location. Most agencies file accident reports according to the accident date. However, a location filing system should be developed for filing reports according to the "intersection" and "road segment" on which the accident occurs. This allows easy access to all accidents at a particular location that may exhibit abnormally high numbers of accidents and also enables a quick review of accidents at a location in response to citizen complaints.

- Pin maps. Pin maps are prepared by indicating the location of an accident occurrence on area maps with pins or stick-on dots. Color coding is often used to indicate accident severity, type of accident (motor vehicle, bicycle, pedestrian), time of day (daytime versus nighttime), or pavement surface conditions (wet, dry, icy). Spot maps are maintained on an annual basis after which time they are photographed or stored for future reference.

- Collision diagrams. A collision diagram is a schematic illustration of accidents that occur at a particular location. The direction of travel, location of the collision, and the severity of the accident, and other information are shown on the diagram. An example of a collision diagram is shown in Figure 12-4. Collision diagrams are useful in identifying accident patterns and trends at a location.

- Computerized data base. There is an increasing trend to maintain accident data bases at the local level on microcomputer systems. Such systems allow easy access to detailed accident information; however, may require sizable commitments in personnel to enter data and maintain the system.

- Accident Cards. A card is set up for every major intersection, and accidents are recorded by location.

Table 12-1

REPORTS AVAILABLE FROM ARIZONA'S TRAFFIC ACCIDENT RECORD SYSTEM

REPORT NO.	TITLE	DESCRIPTION
TD261-602	ACCIDENTS BY LOCATED ROUTE AND MILEPOST FOR STATE HIGHWAY SYSTEM	State Highway System accidents by route and milepost for a specified time period selected by user. (Dates available 1968 to current date.) Data includes: Route, Milepost, Accident Identification Number, Light and Weather Condition, Total Injured or Killed, Road Alignment, Accident Lane, Accident Type, Collision Manner, etc. Includes all Route/Milepost-referenced Accidents plus "Located" in Urban Areas.
SP961-611	SUMMARY TABLES OF MOTOR VEHICLE ACCIDENTS FOR SPECIFIC JURISDICTIONS	Thirty Seven General Statistical Tables are produced for a specified jurisdiction and time period. Tables include: Total Number of Accidents by Type and Severity and Total Number of fatal Accidents and fatalities. Specific Tables are: Accidents by First Harmful Event, Accidents by Month, Accidents by Day and Hour, People Killed or Injured by Age, Drivers Killed or Injured by Age, Motorcyclists Killed or Injured by Age, Accidents by Type of Motor Vehicle, Multi-Vehicle Manner of Collision, Intersection Accidents for Two or More Vehicles, Non-Intersection Accidents for Two or More Vehicles, Hit and Run Driver Involved Accidents, Contributing Circumstances for Driver Errors, Age of Driver, Sex of Driver, Residence of Driver, Physical Condition of Driver, Road Surface Type, Road Surface Condition, Road Grade Type, Unusual Road Condition, Weather Conditions, Night Conditions, Special Locations, Traffic Control Devices, Class of Trafficway, Type of Jurisdiction, Investigated at Scene, Citations Issued by Type of Jurisdiction, Physical Condition of Pedestrian, Actions and Age of Pedestrians, Vehicle Actions in Pedestrian Accidents.
SP961-611 Drinking Drivers (Modified)	SUMMARY TABLES OF DRINKING DRIVING MOTOR VEHICLE ACCIDENTS FOR SPECIFIC JURISDICTIONS	Nineteen General Statistical Tables are produced for a specified jurisdiction and time period. Tables include: Total Number of Accidents by Type and Severity and Total Number of fatal Accidents and fatalities. Specific Tables are: Type of Motor Vehicle Accident, Class of Trafficway, Age of Casualty, Two Motor Vehicle Intersection Accidents, Two Motor Vehicle Non-Intersection Accidents, Pedestrian Accidents, Single Vehicle Accidents, Pedestrian Actions by Age, Age and Sex of Driver, Residence of Driver, Contributing Circumstances, Type of Motor Vehicle, Road Surface Condition, Light Collision, Manner of Collision, Pedestrian Action, Road Character, Day of Week and Hour of Day.

Source: Arizona Department of Transportation

Table 12-1 (Continued)

REPORTS AVAILABLE FROM ARIZONA'S TRAFFIC ACCIDENT RECORD SYSTEM

REPORT NO.	TITLE	DESCRIPTION
SP961-612	NUMBER OF ACCIDENTS, FATAL ACCIDENTS, AND FATALITIES BY CITY AND COUNTY	Fatal Accidents, Injury Accidents, Property Damage Accidents and Fatalities are listed for every incorporated city and county in Arizona.
SP961-612	NUMBER OF DRINKING DRIVING ACCIDENTS, FATAL ACCIDENTS AND FATALITIES BY CITY AND COUNTY	Same as 612 above, only Drinking Driving Accidents Listed.
SP961-617	SELECTIVE ENFORCEMENT REPORT OF HIGH ACCIDENT INTERSECTIONS	Ranks Intersections by Number of Accidents for a specified jurisdiction and Time Period. The Number of Intersections produced can be selected by the User. Data includes Accident Identification, Action of each Vehicle, Physical Condition, Violation and Vehicle Type.
SP961-631	ACCIDENTS AT SPECIFIED INTERSECTIONS OR STREET SEGMENTS WITH OR WITHOUT A COLLISION PLOT	This program will produce a report of accidents on the State Highway System or on local streets. The report is in the same format as the 981 General Accident Report. Specified time periods are selected by user. This same program can produce an intersection or segment collision diagram plot.
SP961-936	HIGH ACCIDENT LOCATION REPORT--MID-BLOCK	For a specified jurisdiction and time period, this program selects the top 40 mid-block Accident Locations by Number of Accidents or Average Accident rates. Provides Data on the Total Number of Accidents for the desired year, the last 12-month Accident Rates, Nighttime Accidents, Alley Accidents, Driveway Accidents, Accident Type, Road Length, and Average Daily Traffic.

Table 12-1 (Continued)

REPORTS AVAILABLE FROM ARIZONA'S TRAFFIC ACCIDENT RECORD SYSTEM

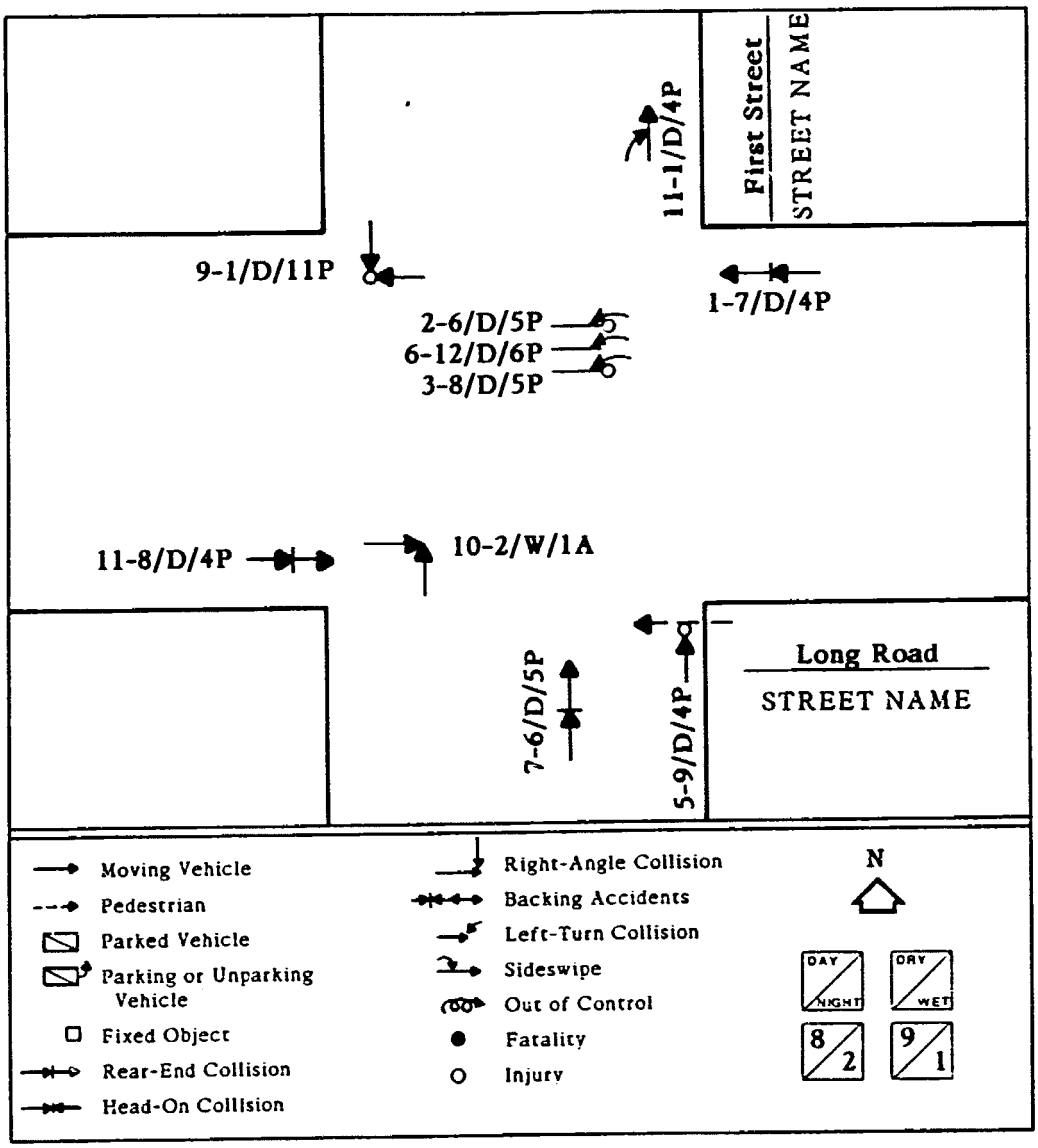
REPORT NO.	TITLE	DESCRIPTION
SP961-971 SP961-972	ACCIDENT FREQUENCY REPORT FOR STATE HIGHWAY SYSTEM	Lists State Highway System Accidents by Route and Milepost. Data includes: Accident Description, Route, Direction of Travel, Milepost, Accident Identification Number, Day of Week, Number Killed and Injured, Weather Condition, Driver Conditions, Manner of Collision, Road and Light Condition. The Number of Accidents, and the Total Persons Killed and Injured are Summarized by Ten-Mile Segment. Includes all Route/Milepost-referenced Accidents, plus "located" Accidents in Urban Areas. The 971 Report is by D.P.S. District, and the 972 Report is for ADOT Engineering Districts.
SP961-974	HIGH ACCIDENT LOCATION REPORT--INTERSECTIONS	For a specified Jurisdiction and time period, ranks Intersections by Number of Accidents or Accident Rate. Provides data on the Number of Angle Accidents, Pedestrian or Pedalcyclist Accidents, Left-Turn Accidents, Rear-End Accidents, Sideswipe Accidents, Night Angle Accidents, Night Accidents and Total Number of Accidents that occurred for each Intersection listed. In addition, where applicable, the report also lists the Accident Rate per Million Vehicles Passing through the Intersection, the Intersection Street Classification Type, the Intersection's Average Daily Traffic Count (Approach Volume), the Predominant Accident Type, and the Predominant Direction of Travel of Accident-Involved Vehicles for Each Intersection Listed.
SP961-981	GENERAL ACCIDENT LISTING	Listing of Accidents That Occurred Within Specified Jurisdictions and during a time period specified by User. Includes listing of All Accidents--Fatal Accidents, Construction Zone Accidents, School Zone Accidents, Railroad Crossing Accidents, Animal Accidents, Pedestrian Accidents, Pedalcyclist Accidents, and Fixed Object Accidents.

Intersection: First Street and Long Road

Location: Castlebury, U.S.A.

Conditions: Clear Date: Jan. 1979 To Dec. 1979

Checked by: MAF



Source: Highway Safety Engineering Studies FHWA-TS-81-220, 1981

Figure 12-4

COLLISION DIAGRAM FORM

- An accident card system. Each card is filed by intersection or roadway segment, and covers only one calendar year of reported accidents. Only pertinent information is given on the card for engineering use. A new card file is started each year (see examples attached).

AGENCY INTERACTION

Maintaining a safe and efficient roadway system requires the participation and interaction of many individuals and agencies. The administrative and management level must endorse and support the development of procedures that emphasize highway safety in all county road functions. Technical level functions must include the implementation of safety programs such as the Highway Safety Improvement Program. This may require obtaining outside training in highway safety procedures. Enforcement level involvement can play a major role in the maintenance of accident records, identifying problems, and developing solutions to safety problems. Field maintenance personnel have special responsibilities and duties in the area of safety. Much of the current safety hardware such as guard rails and sign supports, is relatively complex, and it must be installed properly and in line with the design specifications. Attention to details is essential. A common problem facing maintenance personnel is to determine whether to replace damaged roadside hardware, or to attempt to repair it.

In summary, a total commitment should be made to integrate traffic safety into the management and maintenance of the roadway.

REFERENCES

1. Highway Safety Engineering Studies Procedural Guide, (FHWA-TS-81-220), Federal Highway Administration, Washington, D.C., 1981.

2. Highway Safety Improvement Program (HSIP), (FHWA-TS-81-218), Federal Highway Administration, Washington, D.C., 1981

3. Highway Safety Evaluation' Procedural Guide, (FHWA-TS-81-219), Federal Highway Administration, Washington, D.C., 1981.

4. Manual of Traffic Engineering Studies, Fourth Edition, Institute of Transportation Engineers, Washington, D.C., 1976.

5. A Policy on Geometric Design of Highways and Streets, American Association of State Highway and Transportation Officials, Washington, D.C., 1984.

6. Transportation and Traffic Engineering Handbook, Second Edition, Institute of Transportation Engineers, Washington, D.C., 1982.

13. RIGHT-OF-WAY

INTRODUCTION

Right-of-way is a general term denoting land, property, or an interest therein, usually in a strip, acquired for or devoted to a specific purpose. The methods for acquiring right-of-way are discussed in this chapter, as well as, the procedure for vacation or abandonment of right-of-way. The Appendix contains a comprehensive glossary of right-of-way terminology.

STATUTORY AUTHORITY

The authority to establish county road rights-of-way is defined in A.R.S. § 11-251, Powers of Board (of Supervisors), Paragraph 4, to "Lay out, maintain, control, and manage public roads, ferries, and bridges, within the county and levy such tax, therefore, as may be authorized by law." Additionally, A.R.S. § 11-251, Paragraph 28, enables the board of supervisors to enter into agreements for acquiring rights-of-way, construction.....etc.

ESTABLISHMENT BY BOARD ACTION

The establishment of a county highway by a board of supervisors as provided under A.R.S. § 18-201 does not create a public or county owned right-of-way. This action, by a board of supervisors, defines the intent to create, acquire legal rights-of-way, construct, and maintain a highway route of defined description for public benefit. Such action is also required prior to expending any public funds on such a roadway for right-of-way acquisition and construction.

The steps required to establish a county highway are:

1. Present to the board of supervisors a petition signed by ten or more resident taxpayers of the county.
2. The board of supervisors may accept or reject the petition.
3. If accepted, the board of supervisors must schedule a public hearing (normally, scheduled on the agenda of a regularly scheduled board meeting.
4. The county engineer must make a survey of the proposed highway.

5. The county engineer must file a report to the board of supervisors which includes a map of the proposed highway including the legal subdivision of lands traversed by the survey (existing maps and data may be used).

6. The board shall give notice of the public hearing by advertising once a week for two consecutive weeks in a newspaper in the county. The notice shall direct all persons objecting to the petition to file written statements of their objections or opposition.

7. The board determines the public necessity and may establish the petitioned roadway by resolution. This resolution also directs the acquisition of right-of-way.

These steps are described in A.R.S. § 18-202 and A.R.S. § 18-203.

At the completion of the statutory requirements listed in the above steps, the board of supervisors is enabled to spend public funds for rights-of-way acquisition, construction, and maintenance of the described segment of a county highway.

ESTABLISHMENT BY USE

Many roads and highways that presently exist on both county and state systems began as simple trails meandering between points of desired travel and following a direction based on ease of negotiating terrain in the most comfortable way. In the early days of settlement of Arizona, very little land was in described private ownership. Since land values were very low, formal road rights-of-way were not even conceived. Continued settlement brought about the homestead acts and eventually barbed wire to define property. Land values increased and it became necessary to provide for the right of the public to reserve travel routes and public access to their land parcels. At first, homesteaded parcels had no easements or public ways reserved for access to individual parcels. As this need was recognized, the Federal Government began requiring 33 feet along all section lines and sometimes along half-section lines as public easements. (33 feet equals one-half of the length of a surveyor's chain.) This provision provided a roadway right-of-way width of 66 feet (one surveyor's chain). However, because of topography, a practical road route could not always follow a section line, and road routes came into being through constant use by the public. Due to the growing settlements and increased use, particularly with the advent of the motorized vehicle, the state legislature enacted laws in 1927 which established public rights to those roads that had

been in open use for a period of two years (A.R.S. § 28-1862, as is currently numbered). Subsequent legislation has provided that all highways, roads, or streets, that have been in constant use for ten years or more prior to January 1, 1960, are declared public highways (Section 28-1861, Paragraph B).

The 1927 Act provided such declared roads to be 66 feet wide; however, the 1960 Act is silent on width. As a result of this silence, considerable litigation has occurred at specific locations in determining the public's specific rights, particularly as to the width of right-of-way. In general, the courts have held that the public's right to use is restricted to the actual traveled roadbed width. This should be interpreted to include drainage ditches.

In modern practice, it is wise, when encountering such "establishment by use" roads or highways, to clarify the legal standing by reestablishment through board of supervisor action, and, if appropriate, to acquire such rights-of-way described in the establishment petitions from the abutting property owners of record.

DEDICATION OF HIGHWAY RIGHT-OF-WAY

Dedication is described by the National Association of County Engineers (NACE) as, "The setting apart by the owner and acceptance by the public for highway use, in accordance with statutory or common law practice." Such highway right-of-way dedications are made by a conveyance described as a "written instrument by which a title, estate, or interest in property is transferred."

Dedication By Deed

A deed is "a duly attested, written instrument, under seal, conveying real property or interest therein," (NACE). A properly executed right-of-way deed document conveys the described property or specific interest to the appropriate government (state, county, or city), or to the public with the appropriate government as the trustee. Dedication by deed removes the described land parcel from the tax rolls. Property acquired by deed is described as held in "fee simple."

Dedication By Plat

A plat is a drawn plan, map or chart of a specific land area showing boundaries with their dimensions, bearings, ownerships, and other pertinent information, such as, street, road or highway rights-of-way, and other encumbrances on the land area described. Plats are often used to dedicate specific use to the public for street or highway use. There are several types of plats serving this purpose.

A parcel plat is defined (NACE) as, "A map of a single parcel of property or portion thereof needed for highway purposes, showing the boundaries, areas, the remainder, improvements, access, ownership, and other pertinent information." The parcel plat will contain a description or statement of dedication.

A subdivision plat is a map of a land parcel which is being divided into several smaller parcels. Title 32, Professions and Occupations, A.R.S. § 32-2181 makes very detailed requirements of a land owner who proposes to subdivide land. One requirement is to file a plat with the County Recorder which must be approved by the board of supervisors and must show any streets, roads, highways or other public uses and contain a dedication to public use.

A survey plat may also be used to show and define street or highway right-of-way dedication. A survey plat may include several parcels through which a proposed right-of-way may pass. In such case, all owners having interests described in the land areas shown must sign and attest the dedications being made.

Dedication By Easement

An easement may be defined (NACE) as, "A right acquired by public authority to use or control property for a designated highway purpose." Webster defines easement in broader terms - "An acquired privilege or right of use or enjoyment which one person may have in the land of another."

Court decisions have held that only the specific purposes and limitations specified in an easement document may be enjoyed by the easement holder. It is, therefore, extremely important in preparing highway easement documents to fully state all qualifications of use.

Other types of easements are frequently utilized to serve highway construction or maintenance needs. Some of these special easements are:

- Drainage Easement (NACE) "An easement for directing the flow of water." A drainage easement may be used for constructing a channel from and to culverts or bridges to a point of intersection with a natural channel. Maintenance of a natural channel on private property adjacent to the highway right-of-way is another use of a drainage easement.

- Planting Easement (NACE) "An easement for reshaping roadside areas and establishing, maintaining, and controlling plant growth thereon."

- Scenic Easement (NACE) "An easement for conservation and development of roadside views and natural features."

- Sight Line Easement (NACE) "An easement for maintaining or improving sight distance."

- Slope Easement (NACE) "An easement for cuts or fills." Such easements may be permanent or for temporary construction use of either cuts or fills that extend beyond the normal right-of-way line or for added space to provide the construction need beyond the actual cut or fill.

- Construction easements are frequently used for temporary construction purposes; such as, detours, equipment storing sites, and other construction needs of adjacent private property to highway rights-of-way. It is important to specify time periods, restoration requirements, and any other conditions as may be required for a temporary use of a construction easement.

An easement for public road or highway right-of-way does not remove the area from the underlying title of the parcel from which it came. Any cessation of use of the purpose described in the easement causes the land area to return to its parent property and voids the easement. Property tax may be assessed to a property owner for a highway right-of-way easement along with the parent property unless specifically relieved by the county assessor in agreement with the county highway agency as approved by the board of supervisors.

In Maricopa County, the rights to use irrigation water within the Salt River Project Area is tied to the land area ownership. Maricopa County utilizes the highway easement format in 90 plus percent of its right-of-way acquisition. Thus, the water rights remain with the parent land.

PURCHASE OF HIGHWAY RIGHT-OF-WAY

A.R.S. § 18-201 enables a board of supervisors in Arizona counties to acquire real property for highway rights-of-way by purchase, donation, dedication, condemnation, or other lawful means. In past years, much right-of-way was acquired by donation as part of an agreement between property owners and a board of supervisors to schedule certain highway improvements. In programming Federal Aid Secondary projects for improvement, the Federal Highway Administration began to require evidence that each property owner had been fairly compensated for any project rights-of-way acquired or taken. Since this federal policy was adopted, the purchase of rights-of-way for highway projects of all classes has been more prominent.

A typical procedure for the acquisition of right-of-way in a county highway project can be described as follows:

Pre-Acquisition Stage

- Right-of-way and engineering personnel make a joint review and inspection of the project to ascertain if there are any special problems needing to be addressed.
- A strip map is prepared showing all parcels required and tied to project engineering stationing.
- Title reports are ordered for all property affected as shown on the strip map.
- Appraisals of each parcel to be taken must be prepared. If qualified property appraisers are not on the county staff, a contract with an independent fee appraiser must be prepared.
- Title reports and appraisal reports must be reviewed for completeness and accuracy.
- Legal descriptions for each parcel are prepared.
- Easements and agreements for highway purposes are prepared and proofed.

Acquisition Stage

- Offer letters for each of the parcels to be acquired are presented to the owners.
- Negotiations may occur which require action to relocate, reconstruct, or replace some property feature.
- Acquisition is continued by personal contact to a conclusion of signing the easements, deeds, or other agreements as required.
- In case the property owner refuses offers and agreement cannot be negotiated, a condemnation package is presented to the county attorney's office with a request to commence action in eminent domain.
- Cooperation with the county attorney is required in pursuing condemnation as necessary.

CONDEMNATION

Condemnation is "the process by which property is acquired for highway purposes through legal proceedings under power of eminent domain" (NACE).

A.R.S. § 18-201 enables a county board of supervisors to acquire private property by condemnation among other methods of acquisition. A.R.S. § 18-206 provides for the exercise of eminent domain by a county to obtain right-of-way for a federal-county highway. This statute requires the county attorney to proceed with eminent domain procedures upon demand of a responsible federal agent for a highway project when such project is being performed under agreement with a board of supervisors.

A.R.S. § 12-1111 defines the many public purposes for which eminent domain may be exercised and by whom it enables the exercise of such action.

Of particular interest are statutory comments on entry and survey of property. Where land is required for public use, the state or its agents may enter land to make examinations, surveys and maps.

The process in exercising the power of eminent domain is provided in A.R.S. § 12-1111 through A.R.S. § 12-1128.

VACATION OR ABANDONMENT

The status of a highway location or alignment may change for many reasons, so therefore, the statutes have provided procedures for a board of supervisors to make such changes. Some of the changes that occur are:

- Partial or entire alignment changes in rights-of-way.
- Existing rights-of-way in excess of that required for public purpose.
- Replatting of an existing subdivision resulting in the changing of streets dedicated to the public.
- Rights-of-way dedicated to public use which are no longer required for public use.

A.R.S. § 18-201 enables a board of supervisors to alter or abandon rights-of-way in the county and other subdivisions.

Title 28, Chapter 14, Disposition of Public Roadways, A.R.S. § 28-1901 through A.R.S. § 28-1908 establishes the procedures and defines the resulting ownership qualifications for the disposition of public roadways. If the land or right-of-way is owned or held in fee title, the county may:

- Exchange it with an abutting owner for all or part of a new public roadway.
- Sell and by quitclaim, convey that portion disposed. The statutes prescribe an advertising procedure and give preference to an abutting property owner.
- Vacate by resolution to the ownership to the same extent to which the original right-of-way was acquired.

A roadway in a platted planned development may be vacated to a property owners association under specified statutory conditions. Any easements for utility or similar purposes that may exist within a vacated roadway continue to exist unchanged. A right-of-way easement may only be extinguished by the governing body's resolution. A roadway cannot be vacated so as to leave any parcel without an established public access or easement for ingress and egress.

A state highway (part of the state highway system) may be abandoned to a county or to an incorporated city or town.

PUBLIC UTILITIES

The accommodation of utilities on highway and street rights-of-way has been provided for by the legislature in several measures by both franchised public utilities authorized by a board of supervisors and by special districts and cooperatives. While the legislature has granted the use of public highway rights-of-way for utilities, they delegated to the board of supervisors the responsibility to control these uses for the benefit of the public. Thus, the location of a specific utility in, under or over the right-of-way, must be carefully coordinated by the county engineer (Chapter 14, Coordination With Utilities) for the mutual benefit of all users.

Some of the statutory provisions for the accommodation of public utilities in public roadway right-of-way are described as follows:

- A.R.S. § 10-827, Powers of a Generation and Transmission Cooperative, Paragraph 9, states:

  > "9. Construct, maintain and operate electric transmission lines along, on, under and across publicly owned lands and public thoroughfares, including all roads, highways, streets, alleys, bridges and causeways, and acquire for such purposes franchises, licenses, permits, easements, rights-of-way, and all similar rights and privileges relating to such purposes."

- A.R.S. § 10-836, Use of Roads and Streets; Notice; Protest, this statute states in part:

  > "A. A generation and transmission cooperative has the use of, and the right is expressly granted to it to use, the public highways, county highways and streets and alleys in any area of this state. The generation and transmission cooperative may construct and operate lines connecting any points within this state and connect at the state boundary with like lines.
  >
  > "B. Within the confines of municipal corporations, the use and occupancy of streets shall be under such rights as are required by franchises according to law and subject to control and regulation by municipal authorities, and the use of public highways, except state highways, by generation and transmission cooperatives not within the confines of an incorporated city or town shall be regulated by the board of supervisors of the county by license or franchise."

- A.R.S. § 30-359, Use of Public Rights-of-Way, describes the authority of power districts.

- In describing the powers of sanitary districts, A.R.S. § 48-2012, Rights-of-Way, a right-of-way in or across public property, highways, or streets within a sanctuary district is granted to the district whenever found by the board of directors to be necessary or convenient for performing any work authorized by this article.

RIGHT OF ACCESS

The right of access from one's property to a public way or through an easement or private way to a public way historically is an inalienable right. If the public causes the lack of access, it is the public's responsibility to provide such access to a public way. If an access to a public way is reversed through no fault of the public or owner (such as a division of property by a third party sold without providing access). A.R.S. § 12-1201 and A.R.S. § 12-1202 provides the right of eminent domain through condemnation for a private way of necessity.

CONTROL OF ACCESS

A.R.S. § 28-602 Definitions, Paragraph 1, "Controlled-Access Highway" means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from except at such points only and in the manner determined by the public authority having jurisdiction over the highway, street, or roadway.

In the case of a freeway or controlled access highway, it is necessary for the responsible governing agency to purchase or condemn access rights if such highway or freeway falls over an existing highway where previous rights of access existed. In right-of-way acquisition for a freeway or controlled access highway, proper consideration to the limited access is given in right-of-way negotiations.

USE PERMITS

Right-of-way use or encroachment permits are a device used by a board of supervisors as authorized by law to control and manage public roads. As described in Chapter 14, Coordination With Utilities, the board of supervisors may impose

such restrictions and limitations in the use of the public roads as deemed best for the public safety and welfare. In implementing this responsibility, the board of supervisors usually delegates the administrative and surveillance duties to the county engineer through the county highway department.

Most, if not all, Arizona counties have developed formal procedures and permit systems to control and ensure compliance of all permitted use of the public right-of-way. Some counties have established fee systems to cover the cost or partial cost in meeting this responsibility. Detailed specifications for locations and materials are published and made a part of the issued permits. To ensure adequate public safety, welfare, and protection of the public investment in street and roadway facilities, constant surveillance by the county engineer and/or county highway department is necessary.

PLANNING AND ZONING CASES/SPECIAL USE PERMIT

Arizona statutes require that the board of supervisors regulate the subdivision of all land within its county except land within corporate municipal limits. In addition, the statutes enable the board of supervisors to create a planning and zoning commission to act in an advisory capacity to the board of supervisors. This planning and zoning commission also evaluates and advises on such matters as building permits, zoning classifications, and special use permits. In order to ensure the harmonious development of a county, the approval of a particular zoning case, building permit or a special use permit, the county board of supervisors, through recommendations of its planning and zoning commission may require certain street or highway right-of-way dedications to the public as a condition of approval of the request of the applicant.

SIGNS

Many counties, as a part of their planning and zoning regulations have established advertising sign controls to prevent the unsightly proliferation of advertising signs. Such regulated signs are located on private land with intent to be viewed from the public right-of-way. A.R.S. § 28-648 disallows any sign that may imitate or become confused with a traffic regulatory sign.

The Beautification of Highways, Chapter 16, Title 28, was passed by the Arizona Legislature in concert with a similar act by Congress. These acts provide for the regulation of certain advertising displays and certain junkyards visible from the federal interstate highways, the declared primary system, and includes the secondary system in the regulation of outdoor advertising (A.R.S. § 28-2101 through A.R.S. § 28-2110).

Outdoor advertising authorized under this act conforming to the standards prescribed are required to bear permits issued by the state along interstate, primary, and secondary highways. Secondary (FAS) highways on the county systems need only bear permits issued by the county in which the highway is located.

A.R.S. § 28-2107 further provides that a county or municipality may control all outdoor advertising along the interstate, primary, and secondary highway systems by requesting and certifying to the director (ADOT) and to the secretary of transportation (federal) that it has enacted a comprehensive zoning ordinance that is not less restrictive than the state or federal law.

APPENDIX - CHAPTER 13

RIGHT-OF-WAY TERMS

Abstract of Title. A document showing the condensed history of the title to property, containing portions of all conveyances or other pertinent instruments relating to the estate of interest in the property, and all liens, charges, encumbrances and releases.

Abandonment. Cessation of use of right-of-way or activity thereon with no intention to reclaim or use again for highway purposes. (Sometimes called Vacation.)

Acquisition or Taking. The process of obtaining right-of-way, or that which is acquired or taken.

Appropriation (or Expropriation). The taking of private property for public use in the exercise of the power of eminent domain.

Before and After Method of Appraisal. A determination of the value of property acquired for public purposes based on the difference between the value of the whole parcel before the taking and the value of the portion remaining after the taking.

Capitalization Method of Appraisal. A determination of the value of property acquired for public purposes based upon the present value of its expected net yield of income.

Certification of Title. A document based on a title search stating that title or interest in property is vested in a designated person and showing outstanding liens, charges, or other encumbrances.

Comparative Cost Method of Appraisal. A determination of the value of property acquired for public purposes based upon its comparison with the value of like property under as similar circumstances as possible.

Condemnation. The process by which property is acquired for highway purposes through legal proceedings under power of eminent domain.

Condemnation Appraisal. An appraisal made for use in a condemnation proceeding.

Consequential Damages. Loss in value of a parcel, no portion of which is acquired, resulting from a highway improvement.

Conveyance. A written instrument by which a title, estate, or interest in property is transferred.

Damages. Compensation awarded by law to one injured in his person or property.

Dedication. The setting apart by the owner and acceptance by the public of property for highway use, in accordance with statutory or common law provisions.

Deed. A duly attested written instrument, under seal, conveying real property or interest therein.

Direct Compensation. Payment for land or interest in land and improvements actually acquired for highway purposes. (Sometimes called direct damages.)

Direct Damages. Damages for land or improvements actually acquired for public purposes.

Donation. The voluntary conveyance of private property to public ownership and use, without compensation to the owner.

Drainage Easement. An easement for directing the flow of water.

Easement. A right acquired by public authority to use or control property for a designated highway purpose.

Eminent Domain. The power to take property for public use with just compensation therefor.

Escrow. A deed, bond, or other written instrument, deposited with a third party, to be delivered to the grantee only upon the performance or fulfillment of some condition.

Fee Simple. An absolute estate or ownership in property including unlimited power of alienation.

General Benefit. Advantage acruing from a given highway improvement to a community as a whole, applying to all property similarly situated.

Group Condemnation. Condemnation of a number of separate parcels by a single suit or proceeding.

Guarantee Title. A title, the validity of which is insured by an abstract, title or indemnity company. (Sometimes called Insured Title.)

Highest and Best Use. The most productive use, reasonable but not speculative or conjectural, to which property may be put in the near future.

Highway Development Right. The right of abutting property owners to make changes in the use of their property, which, if exercised, would be inconsistent with present and future highway needs.

Indirect Damages. Damages to the remainder of a parcel, resulting from an acquisition.

Inverse Condemnation. The legal process by which a property owner may claim and receive compensation for the taking of, or payment for damages to, his property as a result of a highway improvement.

Just Compensation. A full and fair equivalent for the loss sustained by the owner as a result of taking or damaging of private property for highway purposes.

Leasehold Damages. Damages to an estate in realty held for a fixed term.

Market Value. The highest price for which property can be sold in the open market by a willing seller to a willing purchaser, neither acting under compulsion and both exercising reasonable judgment.

Negotiation. The process by which property is sought to be acquired for highway purposes through discussion, conference, and final agreement upon the terms of a voluntary transfer of such property.

Option. A written agreement granting a privilege to acquire property or interest therein at a fixed price within a specified period.

Parcel Plat. A map of a single parcel of property or portion thereof needed for highway purposes, showing the boundaries, areas, the remainder, improvements, access, ownership and other pertinent information.

Partial Taking. The acquisition of a portion of a parcel of property.

Planting Easement. An easement for reshaping roadside areas and establishing, maintaining, and controlling plant growth thereon.

Plottage Damages. Damage to a parcel by reason of the acquisition of such portion of it as to impair the value of the remainder because of the diminished size or resulting character of such remainder, in terms of highest or best use.

Pre-Negotiation Appraisal. An appraisal made before negotiation.

Private Driveway. A way in private ownership used for vehicular travel by the owner of those having express or implied permission from the owner.

Property Description. A characterization of a given parcel of property in legal terms, metes and bounds, by lot and block, by plane coordinates, or by the quarter system.

Quitclaim Deed. A deed conveying, without warranty, any title, interest, or claim which the grantor may have in the estate conveyed.

Realignment. Establishment of a highway not substantially removed from the existing highway.

Relocation. Establishment of a highway on a new location substantially removed from the existing highway.

Remainder. The portion of a parcel retained by the owner after a part of such parcel has been acquired.

Remnant. A remainder so small or irregular that it usually has little or no economic value to the owner.

Reproduction Cost-Less Depreciation Method of Appraisal. A determination of the value of property acquired for public purposes based on the market value of the land and the replacement cost new of improvements less depreciation.

Right of Access. The right of ingress to a highway from abutting land and egress from a highway to abutting land. (See control of access under Types of Highways.)

Right of Immediate Possession. The right to occupy property for highway purposes, after preliminary steps for acquisition have been taken and before final settlement.

Right of Survey Entry. The right to enter property temporarily to make surveys and investigations for proposed highway improvements.

Right-of-Way. A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to a highway.

Right-of-Way Appraisal. A determination of the market value of property including damages, if any, as of a specified date, resulting from an analysis of facts; also commonly the report setting forth such determination.

Right-of-Way Estimate. An approximation of the market value of property including damages, if any, in advance of an appraisal.

Right-of-Way Strip Map. A plan of a highway improvement showing its relation to adjacent property, the parcels or portions thereof needed for highway purposes, and other pertinent information.

Riparian Rights. The rights of an owner of water-fronting lands in the bed, banks, accretions, water, access, moorage, and related items.

Roadside Control. The public regulation of the roadside to improve highway safety, expedite the free flow of traffic, safeguard present and future highway investment, conserve abutting property values, or preserve the attractiveness of the landscape.

Roadside Zoning. The application of zoning for roadside control.

Scenic Easement. An easement for conservation and development of roadside views and natural features.

Setback Line. A line outside the right-of-way, established by public authority, on the highway side of which the erection of buildings or other permanent improvements is controlled. By Maricopa County definition, the setback line is the future right-of-way line.

Severance Damages. Loss in value of the remainder of a parcel resulting from an acquisition. (Sometimes called Indirect Damages.)

Sight Line Easement. An easement for maintaining or improving the sight distance.

Slope Easement. An easement for cuts or fills.

Special Benefit. Advantage accruing from a given highway improvement to a specific property and not to others generally.

Summation Method of Appraisal. A determination of the value of property acquired for public purposes based upon the total of the divisible parts of a given parcel, each valued individually.

Title. The evidence of a person's right to property or the right itself.

Title Opinion. An analysis and interpretation of title search concerning present ownership, encumbrances, and other interests.

Title Search. An investigation of public records and documents to ascertain the history and present status of title to property, including ownership, liens, charges, encumbrances, and other interests.

Torrens Title. A certificate of title issued by a public authority under a system wherein all deeds and documents affecting real property are registered.

Warranty Deed. A deed containing covenants by the grantor, for himself and his heirs, to the grantee of his heirs, to warrant and defend the title and possession of the estate conveyed.

Windshield Appraisal. A superficial determination of the value of property acquired for public purposes, made without a thorough examination of the premises, as by a cursory inspection while passing by.

Zoning. The division of an area into districts and the public regulation of the character and intensity of use of the land and improvements thereon.

REFERENCES

1. Cost Records and Budgets, Volume II, National Association of County Engineers Action Guide Series - National Association of County Engineers, Appendix A, Definitions, Washington, D.C., July 1972, pp. 59-62.

2. An Information Guide for a Training Program of Right-of-Way Personnel, American Association of State Highway and Transportation Officials, Washington, D.C., June 1975.

3. Management and Organization Development for Property Acquisition Programs, International Right of Way Association, 1972.

14. COORDINATION WITH UTILITIES

INTRODUCTION

This chapter describes the regulations governing utilities on public highways and discusses the franchise system under which public utilities operate.

COORDINATION WITH UTILITIES ON COUNTY HIGHWAYS

Most public rights-of-way under the jurisdiction of a county board of supervisors contain public or private utilities which are both underground and overhead. The rights of such utilities to occupy these public rights-of-way are well established by law and existing practice. The responsibility to control these right-of-way uses for the benefit of the public lies with the board of supervisors.

Public utilities operate under a franchise system of defined boundaries granted by each county board of supervisors. In effect, this establishes a monopoly for a specific utility to operate within the defined boundaries for a particular utility service. For example, A.R.S. § 10-771 states with respect to electric cooperatives:

> "B. Within the confines of municipal corporations however, use and occupancy of streets shall be under such rights as may be acquired by franchises according to law, and subject to control and regulation by municipal authorities, and the use of public highways, except state highways, by cooperatives not within the confines of an incorporated city or town, shall be regulated by the board of supervisors of the county, by license or franchise. The board of supervisors in granting the license or franchise, or any time after it is granted, may impose such restrictions and limitations as to the use of the public roads as may be deemed best for the public safety or welfare. Every franchise granted under this section shall include provisions requiring the grantee to bear all expenses, including damage and compensation for any alteration of the direction, surface, grade or alignment of any county road, made for the purpose of such franchise.
>
> "C. The board of supervisors before granting the privileges contemplated by this section, shall give public notice of its intention to make the grant, by publishing notice in some newspaper of general circulation, published within the county, for at least once a week for three weeks prior to the day set for the consideration of such action. If, on or before such date, more than fifty per cent of the qualified electors of the

> county petition the board of supervisors to deny the privilege, they shall so act, and any privilege granted contrary to the petition shall be void."

After being granted a franchise, a private utility company or a public utility agency must apply for and receive a "Certificate of Convenience and Necessity" from the Arizona Corporation Commission.

In most counties, the rules and procedures to properly control the use of the right-of-way are established through a resolution of the board of supervisors and administered by the county engineer. Many of these counties have a use permit system. The development and administration of a use permit program should consider that the "rate payer" and the "taxpayer" are the same persons served by both utilities and transportation needs. This underlines the necessity of willing coordination between utility organizations and county departments.

The Arizona legislature has recognized for many years that private and public owned utilities have a similar public serving function to the highway and street system of the various levels of government. As a result, several statutes define and provide the right of these utility organizations to share in the use of these public highway rights-of-way. The American Association of State Highway and Transportation Officials (AASHTO) has published a "Guide" as a model for policies on utility accommodation and the Federal Highway Administration (FHWA) in their Federal-Aid Highway Program Manual has set forth policy requirements for FHWA financed projects regarding utilities within public rights-of-way. These guides and policies recognize the dual interest in the use of the highway rights-of-way and attempt to provide clear cut direction needed to enhance highway safety and utilization without conflict with the utility use of the same space. Each county highway department should develop a utility policy for efficient and safe dual use of the rights-of-way. Such policy should consider locations, specifications, and control systems and should be jointly developed with the various utility companies or organizations to achieve maximum benefit to all parties concerned.

One of the best ways to avoid conflicts is for the county to develop a planned space allocation for the various right-of-ways. This plan would identify the various public utilities occupying the public right-of-way as well as any highway improvement projects, existing or planned, that involve the right-of-way. This also

emphasizes the need for a highway and street planning program which includes such items as functional highway classification, standard cross section design for each functional classification, and a short- and long-term highway improvement priority schedule.

Excavations in unmarked underground utility locations are the greatest cause of damage to such facilities. To counter this problem, utility companies, municipal corporations, and county governments through cooperative efforts have established "blue stake centers" as provided for by legislation in 1973. Article 6.5, Paragraph B of A.R.S. § 40-360.22 states in part:

> "Every public utility, municipal corporation, or other person having the right to bury underground facilities shall file with the County Clerk and recorder in each county it is doing business, the job title, address and telephone number of the person or persons from whom the necessary information may be obtained."

Legislation in 1985 authorized the Arizona Corporation Commission to enforce the provisions of the statutes. The law provides that an excavator must notify each utility of proposed excavation in the public right-of-way and allow two working days for the concerned utilities to either mark the location (blue stake) or advise that marking is not necessary. In the court case Sedona Self Realization Group versus Sun-Up Water Co., it was decided that there was liability for damage for excavating before determining the location of utilities.

A major source of citizen complaints to a county engineer's office is the pavement replacement of an underground utility cut across an otherwise good pavement surface. The specifications for the pavement replacement may contain very little technical guidance or may be very complicated with several technical engineering alternatives. Whatever the cause, the results are often a rough spot on the pavement surface. Many public agencies (including counties) have traditionally required Portland Cement Concrete (PCC) caps over backfilled trenches.

It is to the benefit of all parties to develop trench backfill and pavement replacement standard details and specifications which are appropriate for the environment, traffic type and volume and related conditions of the region. Whenever possible, these requirements should be uniform and accepted by all jurisdictions in the region.

To insure quality workmanship for trenches and pavement replacement some jurisdictions monitor the trench and pavement patch over a one year period and require corrective measures within that period on the part of the permittee.

Agencies have begun to develop a policy of utility "ownership" of the trench beyond a one year period until the pavement is overlayed or reconstructed during a major road improvement project.

During the 1950's and 1960's, the rapid growth and population increase in the Salt River Valley caused a great concern with regards to the proper location of the various utilities and the necessary installation procedures. A "Utility Coordinating Committee," composed of staff engineers from the various utility companies and the public street agencies in the Salt River Valley area was formed. This committee evaluated, studied, and prepared recommended practices for utility locations within the public rights-of-way and for engineering specifications under which utility permits for roads and street cuts would be permitted. These specifications contained various soil compaction requirements under various conditions and would also allow complete trench backfill of ABC (crushed aggregate base material). After the formation of Maricopa Association of Governments (MAG), the Council of Governments (COG) for the Salt River Valley, most of the public agencies in the Salt River Valley adopted the committee's recommendations. The old "Utility Coordinating Committee" specification recommendations or some improved version thereof have long been in practice in the urban areas of the Salt River Valley and Maricopa County and similar specifications have taken effect in other urban counties in Arizona.

Construction project design plans customarily indicate the location of underground utility equipment based on available "as-built" plans. Unfortunately, these locations are seldom accurate or up to date, and little or no information is provided on the installation depth of underground equipment.

The unreliability of these data has caused serious construction problems and costly rework. Long abandoned manholes or underground sewers, etc., will not appear on current as-built plans and their sudden, unexpected discovery during construction may require rerouting and/or relocation of conduit or other underground equipment. In addition, when underground utilities are not known, a

contractor may inadvertently cut or otherwise disable the utility equipment and thus be responsible for expensive repair work.

The requirement of preparation and submittal of "as-built" plans following construction by any owner is a practice which should be considered in an attempt to direct agencies and private utilities toward the goal of accurate utility maps.

REFERENCES

1. "Accommodation of Utility Plant Within the Rights-of-Way of Urban Streets and Highways State-of-the-Art," Special Report No. 44, American Public Works Association, July 1974.

2. Federal-Aid Highway Program Manual, Volume 6, Engineering and Traffic Operations, Chapter 6, Railroads and Utilities, Section 3, Utilities, Subsection 2, Accommodation of Utilities Transmittal 389, HNG-12, published in 23 CFR 645 B, U.S. Department of Tranpsortation, September 6, 1985.

3. A Guide for Accommodation Utilities on Highway Rights-of-Way, American Association of State Highway and Transportation Officials, October 1969.

4. "Pavement Cuts for Utilties: A Field Guide to Their Accomplishment and Maintenance," Publication H-84-7, Purdue University Technology Transfer Center.

5. "Pavement Cuts for Utilities: A Guide for Their Management," Publication H-84-6, Purdue University Technology Transfer Center.

6. "Policy for Accommodation of Utilities on Highway Rights-of-Way," NCHRP Synthesis No. 34, Transportation Research Board, Washington, D.C., 1976.

7. A Policy on the Accommodation of Utilities Within Freeway Right-of-Way, American Association of State Highway and Transportation Officials, Standing Committee on Highways, 1982.

15. HIGHWAY IMPROVEMENT GUIDES AND POLICIES

INTRODUCTION

The design of roadways must ensure the safe and efficient movement of vehicles. In order to accomplish this objective, design should be based on sound engineering practices of the time. Some typical guides and policies used in design are listed as follows:

POLICIES

1. A Policy on Geometric Design of Highways and Streets, American Association of State Highway and Transportation Officials, 1984. (Noted in text as the AASHTO Green Book).

2. Manual on Uniform Traffic Control Devices for Streets and Highways, U.S. Department of Transportation, Federal Highway Administration, 1978.

GUIDES

3. AASHTO Interim Guide for Design of Pavement Structure, American Association of State Highway and Transportation Officials, 1972.

4. Transportation and Traffic Engineering Handbook - Second Edition, Institute of Traffic Engineers, 1982.

5. Uniform Standard Specifications for Public Works Construction and Uniform Standard Details for Public Works Construction, Maricopa Association of Governments, 1979, together with current revisions as accepted by the Maricopa County Board of Supervisors together with Board approved supplements thereto.

6. ADOT Standards and Specifications:

   Standard Drawings

   Part (1) Construction Details, Plans Services, 1983
   Part (2) Structures, Structures Section, 1983
   Part (3) Traffic Signals and Lighting, Traffic Engineering, 1984
   Part (4) Signing and Marking, Traffic Engineering, 1983

   Roadway

   Roadway Guides for use in Field and Office (Design Standards), Plans Services, 1982
   Drafting Guides for use in Office and Field, Plans Services, 1982
   General Specifications for Traffic Signals, Traffic Engineering, 1973
   Standard Specifications for Road and Bridge Construction, Contracts & Specifications, 1982

This chapter describes major considerations regarding guides and policies for highway improvement.

It is important to note that for all Federal Aid projects, the Federal Highway Administration's position on project implementation makes reference to the AASHTO Green book regarding thirteen controlling design criteria:

1. Design Speed
2. Lane Width
3. Shoulder Width
4. Bridge Width
5. Structural Capacity
6. Horizontal Alignment
7. Vertical Alignment
8. Grades
9. Stopping Sight Distance
10. Cross Slope
11. Superelevation
12. Horizontal Clearance
13. Vertical Clearance

Deviations from the AASHTO Green Book will require a formal "design exceptions" approval from the Federal Highway Administration.

Chapter 11, Traffic Control, deals specifically with design guides and policies for traffic control, which is not covered in this chapter. Reference guides and policies for safety studies are discussed in Chapter 12, Traffic Safety.

STREET CLASSIFICATIONS

Street classifications are necessary in transportation planning and design. In transportation planning, the use of a functional classification scheme enables a balanced transportation system to be provided. Balance refers to the degree of access provided. With respect to design, the use of a functional classification system aids in determining which design guides to use in the determination of cross sections, spacing of driveways, number of median openings, spacing of intersections, etc.

The functional classification system most commonly used is based on the Federal Highway Administration publication, Highway Functional Classification: Concepts, Criteria, and Procedures. The classification scheme is excerpted from this publication and from the ITE Transportation and Traffic Engineering Handbook:

"**Urban minor arterial street system.** Streets and highways interconnecting with and augmenting the urban principal arterial system and providing service to trips of moderate length at a somewhat lower level of travel mobility. The system places more emphasis on land access and distributes travel to geographic areas smaller than those identified with the higher system. It includes all arterials not classified as principal.

"**Urban collector street system.** Streets penetrating neighborhoods, collecting traffic from local streets in the neighborhoods, and channeling it into the arterial systems. A minor amount of through traffic may be carried on collector streets, but the system primarily provides land access service and carries local traffic movements within residential neighborhoods, commercial, and industrial areas. It may also serve local bus routes.

"**Urban local street system.** Streets not classified in a higher system, primarily providing direct access to abutting land and access to the higher systems. They offer the lowest level of mobility and usually carry no bus routes. Service to through traffic is deliberately discouraged.

"**Rural principal arterial system.** A connected rural network of continuous routes having the following characteristics:

1. Serves corridor movements having trip length and travel density characteristics indicative of substantial statewide or interstate travel
2. Serves all, or virtually all, urban areas of 50,000 and over population, and a large majority of those with population of 25,000 and over
3. Provides an integrated network without stub connections except where there are unusual geographic or traffic flow conditions

"The principal arterial system is further divided into interstate and other principal arterials.

"**Rural minor arterial road system.** Routes whose design should be expected to provide relatively high overall travel speeds, with minimum interference to through movement, and all remaining routes on the rural network not included as "rural principal" having the following characteristics:

1. Links cities and larger towns and other traffic generators, for example, major resort areas, that are capable of attracting travel over long distances and forms an integrated network providing interstate and intercounty service
2. Spaced at such intervals, consistent with population density, that all developed areas of the state are within reasonable distances of an arterial highway
3. Provides service to corridors with trip lengths and travel density greater than those predominantly served by rural collectors or local systems

"**Rural collector road system.** Routes generally serving intra-county rather than statewide travel and on which average trip lengths and travel speeds are less than on arterial routes. The rural collector road system is subdivided into major collector roads and minor collector roads.

"**Rural local road system.** Routes generally serving to provide access to adjacent land and provide service to travel over relatively short distances as compared to collectors or other higher systems and not classified in a higher system.

"**Urban principal arterial system.** Streets and highways serving major metropolitan activity centers, the highest traffic volume corridors, the longest trip desires, and a high proportion of total urban area travel on a minimum of mileage. Service to abutting land should be subordinate to the provision of travel service to major traffic movements. This system carries the major portion of trips entering and leaving an urban area, as well as the majority of through movements desiring to bypass the central city, and normally will carry important intraurban as well as intercity bus routes."

After a road or street has been classified, a design speed must be set before any design can be started. The design speed is described in the following section.

DESIGN SPEED

Design speed is defined by AASHTO as "the maximum safe speed that can be maintained over a specified section of highway when conditions are so favorable that the design features of the highway govern." The design speed must be set before any design can be started, because design elements are related to the design speed in order to obtain a balanced design in terms of driving safety, comfort, and mobility.

The design speed chosen should be consistent with the speed based on a functional classification of the highway facility. Some features, such as curvature, superelevation, and sight distance, are directly related to, and vary appreciably with, design speed. The AASHTO Green Book should be consulted for the design speed, as one of the controlling design criteria.

STREET DESIGN ELEMENTS

Sight Distance

One of the most basic controlling design elements is the provision of adequate sight distances. As the AASHTO Green Book states, "For safety on highways the designer must provide sight distance of sufficient length that drivers can control the operation of their vehicles to avoid striking an unexpected object on the traveled way."

The roadway classification is an important criteria in determining how much sight distance needs to be provided. For example, on a two-lane rural highway, passing sight distance should be frequently provided. The AASHTO Green Book discusses sight distance in four steps:

> "(1) the distances required for stopping, applicable on all highways; (2) the distances required for the passing of overtaken vehicles, applicable only on two-lane highways; (3) the distances needed for decisions at complex locations; and (4) the criteria for measuring these distances for use in design."

Types of sight distances include:

1. Stopping.
2. Passing.
3. Entering a through street from a stop.
4. Entering a through street from a yield.
5. Entering an uncontrolled intersection.

Horizontal Alignment

Horizontal alignment refers to tangents and horizontal curves. The proper design of horizontal curves depends on the following relationship between vehicle

speed, rate of roadway superelevation, vehicle side friction, and the radius of the curve:

$$e + f = \frac{V^2}{15R}$$

where: e = rate of roadway superelevation, ft/ft;

f = side friction factor;

V = vehicle speed, mph; and

R = radius of curve, ft.

The AASHTO Green Book states that,

> "From accumulated research and experience, limiting values have been established for e and f. Using e_{max} value with a conservative f value in the basic formula permits determination of minimum curve radii for various design speeds. For a given design speed, use of curves with radii longer than the minimum calls for balance in the factors involved to determine the desirable superelevation rates below the maximum."

An e_{max} should be determined for an area and used on all designs of similar roads within that area. This makes two similarly sharp curves drive the same and feel the same to both the driver and passengers. Therefore, an engineer must research the correct values to use for the superelevation, and side friction factor, based on the design speed. Also, there are a number of general controls recognized in practice. The engineer should refer to the AASHTO Green Book for a discussion of these controls.

Vertical Alignment

Vertical alignment refers to tangent grades and vertical curves. Maximum grades are related to the effect on truck speeds. Guidelines are available regarding grade controls for each functional class of highway. It is also necessary to consider the "critical length of grade" which is the "maximum length of a designated upgrade on which a loaded truck can operate without an unreasonable reduction in speed." The AASHTO Green Book describes the procedure to determine design values for critical length of grade.

Vertical curves are either sag or crest types. The main criteria in designing vertical curves is the provision of adequate sight distance. Specific and general design controls and formulas for computing the length of curves are found in the

AASHTO Green Book. Crest vertical curves are controlled by the driver's eye height (approximately 3.5 feet) and an object height (0.5 feet) and the driver being able to see the object over the hill and stopping before hitting it. The sag vertical curve is controlled by what the headlights will hit.

Combination of Horizontal and Vertical Alignment

It is important that horizontal and vertical roadway components be designed together, as they complement each other. General design controls are excerpted from the Green Book:

> "1. Curvature and grades should be in proper balance. Tangent alignment or flat curvature at the expense of steep or long grades and excessive curvature with flat grades are both poor design. A logical design that offers the most in safety, capacity, ease and uniformity of operation, and pleasing appearance within the practical limits of terrain and area traversed is a compromise between the two extremes.
>
> "2. Vertical curvature superimposed on horizontal curvature, or vice versa, generally results in a more pleasing facility, but it should be analyzed for effect on traffic. Successive changes in profile not in combination with horizontal curvature may result in a series of humps visible to the driver for some distance, a hazardous condition as previously discussed. The use of horizontal and vertical alignments in combination, however, may also result in certain hazardous arrangements, as discussed later in this section.
>
> "3. Sharp horizontal curvature should not be introduced at or near the top of a pronounced crest vertical curve. This condition is hazardous in that the driver cannot perceive the horizontal change in alignment, especially at night when the headlight beams go straight ahead into space. The hazard of this arrangement is avoided if the horizontal curve leads the vertical curvature, i.e., the horizontal curve is made longer than the vertical curve. Suitable design can also be made by using design values well above the minimums for the design speed.
>
> "4. Somewhat allied to the above, sharp horizontal curvature should not be introduced at or near the low point of pronounced sag vertical curve. Because the road ahead is foreshortened, any but flat horizontal curvature assumes an undesirably distorted appearance. Further, vehicular speeds, particularly of trucks, often are high at the bottom of grades, and erratic operation may result, especially at night.

"5. On two-lane roads and streets the need for safe passing sections at frequent intervals and for an appreciable percentage of the length of the roadway often supersedes the general desirability for combination of horizontal and vertical alignment. In these cases it is necessary to work toward long tangent sections to secure sufficient passing sight distance in design.

"6. Horizontal curvature and profile should be made as flat as feasible at intersections where sight distance along both roads or streets is important and vehicles may have to slow or stop.

"7. On divided highways and streets, variation in width of median and the use of separate profiles and horizontal alignments should be considered to derive design and operational advantages of one-way roadways. Where traffic justifies provision of four lanes, a superior design without additional cost generally results from the concept and logical design basis of one-way roadways.

"8. In residential areas the alignment should be designed to minimize nuisance factors to the neighborhood. Generally, a depressed facility makes a highway less visible and less noisy to adjacent residents. Minor horizontal adjustments can sometimes be made to increase the buffer zone between the highway and clusters of homes.

"9. The alignment should be designed to enhance attractive scenic views of the natural and manmade environment, such as rivers, rock formations, parks, outstanding buildings, and golf courses. The highway should head into rather than away from those views that are outstanding, it should fall toward those features of interest at a low elevation, and it should rise toward those features best seen from below or in silhouette against the sky."

The ADOT publication, Roadway Guides for use in Office and Field, lists useful design guides for designing curves and other geometric design criteria.

CROSS SECTION

The AASHTO Green Book is the source for controlling criteria such as lane widths, shoulder widths, and bridge widths. Other cross-sectional elements include pavement specifications, curbs, walkways, drainage channels, traffic barriers, medians, frontage roads, and outer separations. Additional considerations may include noise control, roadside control, tunnels, pedestrian crossings, bicycle

facilities, bus turnouts, and on-street parking. Design considerations regarding these elements may be found in the AASHTO Green Book, and also in the ADOT Construction Standard Drawings.

INTERSECTION DESIGN ELEMENTS

The main objective of intersection design is to reduce the number of conflicts among vehicle and pedestrian movements. The AASHTO Green Book (p. 722) lists the following basic elements which enter into design considerations of at-grade intersections:

"A. Human factors

1. Driving habits
2. Ability to make decisions
3. Driver expectancy
4. Decision and reaction time
5. Conformance to natural paths of movement
6. Pedestrian use and habits

"B. Traffic considerations

1. Design and actual capacities
2. Design-hour turning movements
3. Size and operating characteristics of vehicle
4. Variety of movements (diverging, merging, weaving, and crossing)
5. Vehicle speeds
6. Transit involvement
7. Accident experience

"C. Physical elements

1. Character and use of abutting property
2. Vertical alinements at the intersection
3. Sight distance
4. Angle of the intersection
5. Conflict area
6. Speed-change lanes
7. Geometric features
8. Traffic control devices
9. Lighting equipment
10. Safety features

"D. Economic factors

1. Costs of improvements
2. Effects of controlling or limiting rights-of-way on abutting residential or commercial properties where channelization restricts or prohibits vehicular movements
3. Energy consumption"

SAFETY AND OTHER DESIGN CONSIDERATIONS

In Chapter 12, Traffic Safety, a program for determining hazardous roadway locations was described. The results of these studies should be used as a basis for determining needed safety improvements. The following table, excerpted from NCHRP Report No. 162, Methods for Evaluating Highway Safety Improvements, lists a number of potential improvement strategies:

EXAMPLE CHECKLIST OF POTENTIAL IMPROVEMENTS

Sections

- o Eliminate parking
- o Install delineators
- o Add guardrail-embankments
- o Add guardrail-fixed objects
- o Remove fixed objects
- o Flatten fill slopes
- o Add painted or raised median
- o Deslicking, improving skid resistance
- o Resurfacing
- o Widen traveled way
- o Reconstruction
- o Install or improve edge marking
- o Install or improve warning and/or directional signs
- o Install median barrier
- o Breakaway sign and light standards
- o Install lighting
- o Shoulder stabilization
- o Widen shoulders
- o Eliminate median crossovers
- o Add climbing lanes

Curves

- o Install delineators
- o Add guardrail
- o Resurfacing
- o Install warning signs
- o Reconstruct curve
- o Provide adequate super elevation

Bridge/Underpass

- Install delineators
- Install lighting
- Energy absorption devices
- Add guardrails, bridge approach rail and flare
- Bridge widening

Intersections

- Install or improve warning and/or directional signs
- Install minor leg stop control
- Install lighting
- Install pedestrian signals
- Improve signals
- Install new signals
- Install warning signals
- Install stop ahead signs
- Install yield sign
- Install all-way stop signs
- Install warning signals
- Curtail left-turn movements
- Provide for left-turn movements
- Deslicking, improve skid resistance
- Install rumble strips

SOCIAL, ECONOMIC, AND ENVIRONMENTAL IMPACTS OF DESIGN

In order to evaluate alternative designs, it is important to consider how each facility will impact the surrounding community and how cost effective each alternative is. Figure 15-1 gives an example of the factors and their associated measures that were analyzed for a major environmental impact statement of alternatives.

For projects requiring federal funding, an environmental assessment must be prepared. If significant social, economic, or environmental effects are found, then a more detailed environmental impact statement must be prepared. The contents of a draft environmental assessment are summarized as follows:

Draft Environmental Assessment

Part 1. Need for the Proposed Action

Existing facility, if any; land use; current and projected traffic data, etc.

Factor	Measure	Value of Measure By Alternative						
		North-South Segment:			East-West Segment:			No Build
		A	B	C	D	E	F	
Natural and Scenic	Loss of ecological communities (in acres)	38	36	50	50	61	0	0
	Number of new overpass structures	2	1	1	1	1	0	0
Relocation	Residential	0	0	0	7	0	0	0
	Commercial/Industrial (no. of bldgs. acquired)	0	0	0	0	0	0	0
Social and Neighborhoods	No. of neighborhood areas impacted by displacement	0	0	0	1	0	0	0
	Neighborhood areas or districts traversed by alignment	3	3	3	1	0	0	0
Economics possible business loss	Employment opportunities (jobs)	0	0	0	0	0	0	0
	Annual wages (millions of dollars)	0	0	0	0	0	0	0
Historic Resources	Impacts to historic and archaeologic resources (no. of sites)	0	0	0	0	0	0	0
Schools and Cultural Features	Schools impacted (attendance areas)	4	4	4	2	2	0	0
	Cultural features impacted (no. of bldgs. or areas)	2	2	2	1	1	0	0
Air Quality	Avg. 8-hour midblock CO concentration at R/W (9.0 is maximum)	2.0 to 5.0	1.8 to 5.0	2.4 to 5.0	1.8 to 2.6	1.9 to 2.6	3.2 to 3.5	1.6 to 3.9
	Exceedances at major intersections (no. of locations)	1	1	1	0	0	0	1
Noise	Maximum midblock at grade levels 30 ft. beyond R/W (design maximum 67/72)	74	74	74	73	73	76	75
Resource Consumption	Percent (%) metro area annual consumption (avg. of 3 key materials)	7	6	6	5	5	3	0
Energy Consumption	Construction	0.6	0.5	0.5	0.3	0.3	0.1	0
	Vehicle operation (millions of gallons of gasoline)	35.9	32.7	38.4	19.7	20.4	9.5	16.1
Stream Modification and Flood Hazard	Stream modification (no. of locations)	5	5	5	2	2	0	0
	No. of drainageways crossed	7	7	6	3	4	0	0
Construction	Impacts to local access air quality and noise levels (in months)	18	15	15	15	15	12	0
Interstate Traffic Volume*	Year 2000 daily volumes south of Valencia	58,000	58,000	58,000	58,000	58,000	62,000	50,000
	west of Wilmot	43,000	48,000	48,000	48,000	48,000	55,000	44,000
	east of Kolb	47,000	45,000	43,000	47,000	47,000	47,000	41,000
Interstate Interchanges	No. of new or rebuilt interchanges	1	0	0	1	1	1	0

Figure 15-1

SAMPLE ENVIRONMENTAL IMPACT SUMMARY

Part 2. Description of the Proposed Action

Project location, include appropriate maps; description of design parameters and major design features; tentative costs and construction schedule, etc.

Part 3. Alternatives Considered

The Do-Nothing alternative and other alternatives studied; include appropriate map(s).

Part 4. Social, Economic and Environmental Effects of the Proposed Action

Adverse and beneficial effects upon the human environment, with special consideration to involvements regarding public parks, recreation and wildlife areas, historic and archaeological properties, and minority groups (Reference Title VI); include basis for the negative impact declaration.

Part 5. Coordination with Other Agencies and the Public

Coordination during the study process; public forums, where applicable, etc.; anticipated future coordination by way of public forums, public hearings, etc.

Final Environmental Assessment

Add any project revisions and public hearing data to above Draft Environmental Assessment; indicate the selected alternate(s).

As applicable, the following social, economic and environmental considerations should be discussed.

a. Land Use (existing and proposed)
b. Land Ownership
c. Social (includes schools, churches, medical facilities, police, fire houses, residences, relocations, etc.)

d. Economics (includes commercial and industrial enterprises, employment, local tax base, etc.)
e. Minority (neighborhoods, businesses, residences, etc.)
f. Natural Resources (water, lands, air, etc.)
g. Section 4(f) (parks, recreation, wildlife refuges, lakes, streams, school playgrounds, etc.)
h. Cultural Resources (includes historical and archaeological)
i. Farmlands (prime, unique, statewide importance)
j. Water Quality
k. Section 404 (dredged and fill materials)
l. Endangered Species (plants and wildlife)
m. Native Plants (State Native Plant Law)
n. Floodplains
o. Wetlands
p. Air Quality Report
q. Noise Study Report
r. Wild and Scenic Rivers
s. Natural Areas and Trails
t. Scenic Roads and Parkways
u. Local Traffic Pattern
v. Existing and any additional right-of-way
w. Energy Usage
x. Construction Impacts (of temporary nature)
y. Pedestrian/Bicycle/Equestrian Facilities
z. Visual Qualities
a.a. Material Pits and Haul Roads
a.b. Utilities
a.c. Erosion Control
a.d. Other Modes of Transportation
a.e. Sole Source Aquifer

Agencies to contact during preparation of environmental studies are discussed in Chapter 8, Intergovernmental Relations.

STANDARDS FOR PARKWAYS AND HISTORIC AND SCENIC ROADWAYS

The Arizona Revised Statutes allow an exemption from normal construction standards on parkways, historic, and scenic roadways, as long as the roads provide safe travel facilities. A.R.S. § 41-516, "Exemption from standards for parkways and historic and scenic roads," reads as follows:

> "To ensure the protection and enhancement of the special features for historic roads, parkways and scenic roads, the department of transportation, the federal highway administration, the county or the city may allow an exemption from the standards normally applied to the construction and maintenance of the roads and parkways. Revised construction and maintenance procedures for such designated roads and

parkways may be developed to reasonably provide for the safety and service of the traveling public."

REFERENCES

1. ADOT Standards and Specifications:

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   Part (2) Structures, Structures Section, 1983
   Part (3) Traffic Signals and Lighting, Traffic Engineering, 1984
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5. Traffic Control Devices Handbook (GPO 1983 0-409-573), Federal Highway Administration, Washington, D.C., 1983, vp.

6. Transportation and Traffic Engineering Handbook, 2nd Edition, Institute of Traffic Engineers, Washington, D.C., 1982, Chapter 27.

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16. PROCUREMENT AND MANAGEMENT OF COUNTY EQUIPMENT

INTRODUCTION

The assigned responsibilities of a county highway department require that the department acquire, operate, maintain, and control a wide variety of both on-road and off-road equipment. To assure the proper use of the county's fleet of vehicles and equipment, each county should have a fully documented set of policies and procedures. These policies and procedures should be endorsed by the board of supervisors and should be fully understood by all employees of the county involved with such equipment. The county population served, the size of the county fleet, and the number of county employees, will determine the level of detail and sophistication needed for adequate policies and procedures.

This chapter sets forth some general guidelines that should be considered in either establishing new policies and procedures or upgrading existing policies.

TYPES OF EQUIPMENT

The types of vehicles and equipment required by a county are those needed to meet the objectives, assignments, or the legal mandates of county government. The maintenance of county highways is one of those mandates that require a heavy investment in terms of equipment.

The fundamental purpose of highway maintenance is to provide safe, convenient, and economical public highway facilities. Equipment is a crucial element in highway maintenance. The proper selection and use of modern mechanical equipment can improve the quality of road maintenance and increase productivity. Equipment ownership comprises 25 to 35 percent of all road maintenance costs. It becomes obvious that an evaluation of each road maintenance activity or function is of great importance in the selection of equipment types.

Highway maintenance equipment can be categorized as a function of purpose: transportation of people; transportation of material and equipment; and managing or handling of material. Each work function needs to be carefully analyzed to insure that each equipment item considered for purchase meets the best return for the investment to be made. The analysis should consider such values as utilization

(percent of use), economy of operation (fuel, repair), type of work or product accomplished.

The most common types of equipment utilized in county highway maintenance, by purpose, include:

- o Transportation of people
  - Sedans (full size, mid-size and compact, etc.)
  - Pick-Up Trucks (full size, 1/2 ton, 3/4 ton, 1 ton, mid-size, compact, special body, 2-wheel drive and 4-wheel drive)
  - Station Wagons
  - Carry Alls
  - Vans
  - Buses
- o Transportation of material and equipment
  - Dump Trucks (various combination of drive axles; wheels, body capacities and load capacities)
  - Truck Tractors (various combinations)
  - Tank Trucks
  - Flat Bed Trucks (and other truck chassis with special bodies)
- o Material Managing or Handling
  - Motorgraders
  - Bulldozers
  - Loaders
  - Cranes
  - Pugmills
  - Mixers
  - Scrapers

The relatively large investment necessary to equip the county highway maintenance function makes choosing the proper equipment type in all classifications a most important task. Under utilized equipment as well as equipment with capacity more than required for work demands result in wasteful expenditures. As a general rule, equipment can be compared by the manufacturer's shipping weight in terms of cost. Over the years it has been found that the price per pound of manufactured iron in any one year will be relatively the same regardless of size or type of equipment being compared. This factor will assist in analysis between various equipment types in addition to other evaluation factors.

EQUIPMENT FUNDING

Counties in Arizona generally follow the same historical budgeting procedure. Funding requests are presented in three categories: Personnel, Operating (or services and supplies), and Capital Outlay. New equipment is budgeted under capital outlay and competes for funds with all other capital outlay programs. Some counties, however, purchase their highway department capital items from fuel tax funds.

The board of supervisors have only written justifications by department heads to assist them in their judgements between the many competing requests for limited funds. Because of this competition for funds, many county equipment fleets are inefficient and costly to maintain due to age.

Many state, city, and county highway agencies have implemented controlled equipment management programs that incorporate vehicle and equipment charge back systems. Under these programs, the division managing the equipment fleet has no budget; it is supported by revenue derived from rental charged to other departments. The department using the equipment (i.e., traffic engineering, etc.) budgets vehicle or equipment use in accordance with the anticipated miles or hours of use required by their work assignments. In this manner the equipment cost is assigned to the work function and is part of the work function budgeting procedure.

The rental rates reflect, by equipment class, the total cost of operating, maintaining, and owning the equipment. The purchase price of new items is recovered through a depreciation schedule amortized through the life of the equipment item plus an assumed interest rate on the investment. Equipment rental rate systems provide the board of supervisors with an objective decision making tool that not only displays the true cost of owning equipment but also reveals cost of each work function.

EQUIPMENT OPERATIONS

The county's policies and procedures should be documented and used to familiarize county employees with expected performance in the operation of any county-owned vehicle or equipment. The employee's conduct and manner in which the county's vehicle or equipment is operated will establish a reputation of courtesy, service, and efficiency for the county.

Qualifications of a Driver/Operator

All operators of a county motor vehicle are required to have a valid State of Arizona operator or chauffeur license in their possession at all times while operating such vehicle. Renewal of the operator's or chauffeur's license is the responsibility of each individual employee operating such equipment.

Authorization to Operate

All county employees whose duties require the use of a county vehicle or operation of special or heavy equipment are required to have an "Approved Operator's Card" issued by the appropriate or designated county official. This card will be issued for the period that coincides with the expiration date of employee's Arizona operator's license. This card certifies the operator has read the policy and procedures, any other safety rules or instructions, and that he/she is qualified to safely operate and maintain the assigned equipment. Employees expected to drive a vehicle of one ton or more must take a driving test and follow all other established qualification procedures. Those employees operating heavy or special equipment may be required to demonstrate adequate proficiency with assigned equipment before an "Approved Operator's Card" is issued. Upon leaving county employment the "Approved Operator's Card" should be returned to the issuing county official.

Proper and Improper Use

It should be clearly understood that county-owned vehicles are for county business ONLY. This generally includes:

- Conducting normal daily activities between office and job locations.
- Transporting officials or employees representing the county to and from approved activities or functions directly related to county responsibilities.

Without exception, county-owned vehicles are NOT to be used for personal convenience. Vehicles may be taken to the domicile of a county official or employee and parked overnight only with written approval by the board of supervisors or other delegated authority. When it is to the benefit of the county, an employee whose duties involve frequent emergency calls, or whose duty station is remote, should note the overnight use on the "Approved Operator's Card" or on a

special overnight use card. County-owned vehicles are not to be parked on a public street overnight.

Passengers in county-owned vehicles are limited to county employees or other persons actually engaged in county business. Casual "hitchhikers" are not to be transported by county vehicles; however, it is permissible and desirable to assist the traveling public in case of an accident or other emergency. A.R.S. § 28-623 requires public employees to obey the traffic laws stated in Chapter 6 of Title 28 of the Arizona Revised Statutes, except in circumstances noted (i.e., the actual engagement of road work).

Out-of-County Use

Requests to take county-owned vehicles outside of the state of Arizona or outside of the (owner) county must be approved by the board of supervisors or other delegated county official. All county employees must use the proper "Travel Authorization and Expense Report," properly filled in, when requesting the above permission.

Operator Responsibilities

County vehicles shall never be operated above the posted speed limit. An exception to this rule is for authorized operators of emergency vehicles, when running under emergency lights and/or siren in performance of their duties, find it necessary to exceed the posted speed limit, or when needed to do traffic engineering studies.

The operator should not allow a gasoline engine to idle for more than 30 seconds. It is more fuel efficient to shut the engine off and restart it when needed. A diesel engine with turbochargers will require a three-minute (or more) idle period prior to shutdown. (Refer to manufacturer's manual on idle shutdown requirements).

Employees who operate the same vehicle daily should be alert to a change in engine performance. An engine which is not running properly wastes fuel. When an operator becomes aware of degraded performance, the vehicle should be checked by the appropriate mechanical services as soon as possible. Adherence to the county's vehicle preventive maintenance schedule is a necessity and will help ensure the reliability and efficiency of the county fleet.

Underinflated tires also reduce fuel efficiency. Tire pressure should be checked visually on a daily basis. Tires should be inflated or repaired as needed to conform to pressure noted on the tire sidewall. Fast starts and stops should be avoided as this not only wastes fuel but also increases tire wear.

The use of air conditioning generally reduces vehicle mileage by one mile per gallon; therefore, it should be used only when necessary.

County employees will be held personally responsible for their physical conditions when operating county vehicles or equipment. No employee should operate vehicles when driving ability has been impaired for any reason. Under no condition should a county employee operate equipment or drive while under the influence of intoxicants, drugs, or narcotics of any nature. Any employee seriously affected by illness, overwork, or drowsiness should stop all operations and notify his/her immediate supervisor for relief.

Reporting Accidents

In case of accident in a county vehicle, the involved county employee should notify the nearest sheriff's office, Department of Public Safety Highway Patrol, or police department, immediately. If a wrecker is needed, the appropriate county agency or office should be notified.

The county operator should provide name, address, car license, and county vehicle number to the other driver. In addition, he/she should obtain the name, address, and license number of the other driver, injured personnel, witnesses, and the name of their insurance company. In the event of injury, the county risk management office should be advised as soon as possible. All vehicular accidents on the public highways must be reported in writing on appropriate forms as soon as possible to the county's risk management office.

Proof of registration for all unmarked county vehicles must be kept in the glove compartment. On vehicles and equipment displaying county license plates and identification, proof of registration is not required.

Reporting Vehicle Failure

Equipment failure shall be immediately reported by radio or telephone to the appropriate county office or agency, giving a description of the problem and vehicle identification number. The operator should either stay with the disabled vehicle until assistance arrives, or make sure the disabled vehicle is in a safe location out of traffic and is securely locked before leaving.

Management Responsibilities

The county board of supervisors and/or other delegated county officials should consider developing additional policy and procedure on county fleet management to provide the county employee with specific direction and expectation. Because of the broad difference in organization of Arizona counties and the individual board of supervisor philosophies, the following topics have not been addressed.

- Vehicle assignments.
- Car Pools - A county or a county department car pool will provide necessary transportation to employees who need only occassional vehicle use or to serve those activities that generate low accumulation of vehicle miles. By this system, efficiencies in vehicle purchases and operating cost are achieved while still meeting county transportation needs.
- Vehicle Preventive Maintenance Program (PM) - All mechanical equipment requires periodic maintenance. The scheduling and performance of regular engine oil changes, drivetrain and other lubrication service along with tire and other mechanical surveillance is a necessary activity to insure reliable and efficient performance.

EQUIPMENT MANAGEMENT AND MAINTENANCE PROGRAMS

The primary objective of equipment management should be to obtain maximum productivity from equipment for least cost. An Equipment Management and Maintenance program may be described as a formal process of information and data collection to provide a factual basis for formulating appropriate decisions. These data are specifically intended for managers directly responsible for planning, budgeting, controlling, operating, and maintaining the various complements of highway maintenance equipment. An equipment management system manual, developed by FHWA, is described in Appendix A, at the end of this chapter.

Equipment Control

The equipment manager is called upon daily to make decisions that require specific information about the identity, location, condition, and plans for a given unit. For purposes of administrative control, these requirements can be satisfied by an equipment control system that:

- Aids the monitoring of current equipment deployment.
- Permits the short-term evaluation of equipment assignment and reassignment.
- Tracks the implementation of various equipment management programs such as a disposal program or an overhaul program.
- Supports other administrative requirements such as answering inquires from the board of supervisors or locating a specific piece of equipment for an emergency.

To satisfy these information requirements, the equipment control system should have the capability to file and generate reports on the identity, current location, condition, and availability of each unit of equipment and inventory. The system should aid in the administration of the fleet in maintaining licensing data and scheduling safety inspections. It should also provide a record of recent assignments and dates of transfer.

The equipment control system can also be used to establish the equipment classification plan that will be used to collect and evaluate operating and cost data for all other aspects of the equipment management function. This classification plan should form the basis of all records and systems pertaining to a given unit of equipment, and should permit identification of the unit according to a number of functional and cost-related characteristics.

Equipment Planning

To better communicate the need for highway maintenance equipment, equipment managers should establish a specific process for the evaluation of equipment needs. This process should be designed to relate the equipment plans and budget specifically to justifiable needs for additional or replacement equipment and to highlight opportunities for equipment reduction. It should be designed to identify and communicate the interrelations of operating costs and capital expenditures.

The first step in establishing equipment availability levels is to develop an equipment acquisition and replacement plan. The availability levels should be based on user demand or requirements for equipment. Evaluations should begin with a maintenance and construction program work plan, resulting from a highway maintenance management system or some other means of maintenance planning. Plans should be correlated to the volume and distribution of the equipment hours that users will require to carry out their work plan. Levels established should also reflect a number of operational factors, such as peak load requirements and the geographic deployment of equipment.

Equipment replacement planning describes a process for determining the most economical point at which equipment should be considered for replacement. It also establishes equipment replacement standards. The objective of this process is twofold: 1) to keep the total cost of equipment ownership and repair at the lowest level possible, and 2) to plan for the timely replacement of equipment.

Development of a replacement plan should be based on an economic model that permits consideration of key factors governing age, condition, and utility of equipment. As vehicles and equipment age, their failure rates increase, and greater expenditure for parts and maintenance resources is required. In addition, as failure rates increase, the availability of equipment for scheduled programs in maintenance and construction is reduced. In some cases, maintenance capacity and parts inventory must be significantly increased. In other cases, the overall size of the fleet may have to be increased to make up for lost utilization of existing equipment. All of these effects have direct cost implications and each should be carefully evaluated before replacing equipment.

The primary cost of fleet ownership includes the acquisition and maintenance of vehicles and equipment. The ownership cost of the unit is the original purchase price, less its resale value, spread over the level of utilization of the unit during the time span of its assignment in the fleet. This cost represents a portion of the net purchase outlay attributed to holding and using a vehicle or piece of equipment for an additional unit of utilization whether measured in terms of miles or hours. This ownership cost is normally treated as depreciation, which is determined on the basis of age for ease of accounting. However, a certain level of annual usage is always

implicit. Depreciation schedules should be established on expectations for economically usable life span rather than on financial convention. Thus, schedules of ownership costs for a fleet unit differ according to the useful life or replacement cycle selected for the unit.

Ownership cost may also be thought of as the cost to replace equipment, since an equipment inventory is assumed to be a permanent requirement. Depreciation alone may be inadequate to properly analyze replacement. In an untaxed organization, depreciation is nothing more than a reserve for replacement. Moreover, depreciation is normally computed on incurred costs and does not take into account inflation. Ownership costs can be thought of as the cost of owning a unit of equipment capacity for as long as the inventory exists, expressed in cost per unit of utilization. Treatment of ownership costs in this manner will permit comparison of outright replacement with alternatives such as major overhauls.

Maintenance costs, which include labor and parts, are incurred every year that a unit remains in the fleet, and they generally increase as the unit grows older. Direct labor should include all overhead costs. Within limits, direct mechanic labor varies more readily with changes in workload resulting from fleet age and condition than do shop operating and supervisory costs. Part costs are costs for items furnished from inventory stock, purchased directly from outside sources or made in-house. Maintenance costs in making replacement decisions include only those for unscheduled or corrective maintenance. Labor and parts cost for regular preventive maintenance are not considered because noncorrective preventive maintenance consists primarily of routine servicing. Older units of a given type of vehicle generally see the same amount of service as do new units. Direct operating costs such as those for gasoline and lubricants, are not normally considered in an economic analysis of equipment replacement because they are a direct and relatively constant function of usage; however, the new fuel efficient engines can reduce operating costs. This should be taken into consideration.

The costs of maintenance and ownership vary over time, and there is a point at which the total of these costs per hour or mile of use is lower than at any other point of the equipment's useful life. Costs are highest when a unit is replaced before it attains a satisfactory level of utilization. Conversely, when a unit is kept

beyond this level of utilization, the costs of owning and maintaining it generally rise. Consequently, it is appropriate to replace the unit at the level of utilization when its total costs are at a minimum.

Equipment Maintenance

Effective equipment maintenance programs require the use of detailed records of the direct cost of operating and maintaining equipment on a unit-by-unit basis. These data are the only means to evaluate the effectiveness of, and minimize expenditures in, key equipment maintenance programs, while still providing the level of equipment availability and use required.

Direct Costs

Direct costs result from both the operation and the maintenance of equipment. These costs are the most important costs to consider in analyzing maintenance program effectiveness, maintenance staffing, equipment replacement, etc.

Other closely related data required would include expenditures of repair and maintenance manhours, equipment mileage, and fuel consumption. Most maintenance and operating costs are stated in terms of dollars per mile or hour of use. Therefore, mileage utilization and manhour data are necessary to develop workload and maintenance staffing plans and job standards.

Two primary documents are generally utilized to collect equipment operating and maintenance costs. These are fuel and servicing tickets and equipment work orders for repair shop use. Because these two documents collect a large volume of data, it is most certainly desirable to utilize an automated system for storing data and for generating equipment reports. Appendix B shows a number of forms which might be utilized to record maintenance costs.

Equipment Utilization Data

Accurate equipment utilization data is required for a number of equipment planning and scheduling functions and should be reported by users at least monthly. Utilization data is required to plan appropriate levels of equipment availability, scheduled maintenance and inspections, and to develop and charge equipment

charges or rental rates. Adequate equipment planning and maintenance require both hours or miles of actual equipment use to plan and cost maintenance.

Scheduling Equipment Maintenance

Equipment maintenance work must be balanced between scheduled maintenance, preventive maintenance, and nonscheduled repair. Different methods of scheduling are applied to each of these categories of equipment maintenance work. How these categories are scheduled has a significant effect on the utilization of mechanic labor, which represents the most costly equipment support resource. Because nonscheduled repair must be accomplished as it occurs to minimize equipment downtime, this category of work tends to take precedence over preventive maintenance. However, the level of nonscheduled repairs can be controlled somewhat by implementing effective preventive maintenance programs.

To control repair backlogs it is necessary to identify each equipment unit as it is programmed into the shop for repair. The data should include the hours estimated to complete each type of repair, the date on which it was received, and the assigned priority of repair.

An effective method for scheduling work in process is the use of a shop control board. In this format, work in process is measured from the time that repairs begin and shows the assignment of equipment by hour of day either to shop facilities or to an individual completing the repairs. The board is divided into a number of segments representing work days, each divided into a number of work hours per day with space permitted for possible overtime. Using this type of control board, it is possible to schedule work for the current day and for several days in advance. Sufficient capacity for nonscheduled and priority repairs should be allowed. The procedure for this type of scheduling balances personnel and facility resources against the total demand for maintenance work.

It is appropriate that equipment managers and users be regularly apprised of the general equipment maintenance performance. Summary reports that communicate a general level of equipment downtime, specific equipment units that have been down for excessive periods, and shop work in process need to be monitored continuously by the equipment management team.

Two specific items of information which help the equipment manager assess the efficiency of the equipment shop are maintenance-related down time and the volume of work in process. Knowledge of the general levels of down time permits the equipment manager to:

- o Evaluate planned levels of equipment service.
- o Review equipment service standards established for replacement plans and operating budgets.
- o Identify a need to modify budgets.

Similarly, reported work in process trends provide the equipment manager and the shop foreman with the knowledge of the adequacy of shop resources versus work loads and permit them to evaluate work load trends and their possible impact on actual and budgeted operating expense.

Preventive maintenance has the dual objective of: 1) reducing the level of wear and, hence, the total level of repair necessary to maintain equipment, and 2) diagnosing and accomplishing repair on a scheduled basis in advance of breakdowns. Regular attention to routine service, especially for heavier and specialized equipment, is meant to prevent excessive wear and the erratic servicing of critical systems that will lead directly to breakdowns and costly repairs. Such servicing can be done inexpensively in the field and at field shops and subshops. With a further program of regular inspection, systems that show excessive wear can be identified and replacements made. The use of oil analysis on heavier trucks and construction equipment can assist in the evaluation of major components and aid in planning major repairs or replacement.

Manpower Planning

The number of mechanics, etc., needed can best be determined by analyzing direct and indirect labor of employees who work directly on vehicles. By comparing this information with the available labor hours, one can then determine how each employee is spending his time. If all employees are spending as much time as possible working on vehicles and vehicle downtime is excessive, then additional employees are clearly needed.

Of course, there are other factors that could be causing increased downtime; such as, the age of vehicles in miles/hours, the suitability of the equipment for the job, how the equipment is operated, and the efficiency of the preventive maintenance program.

As to the quality and quantity of work performed, this can only be evaluated by the supervisor.

Final steps in the manpower planning process would involve the evaluation of manpower by season to identify peak work loads. Staffing should not be planned to handle peak work loads. Rather, it should be based on some realistic level of continuous utilization, and alternatives other than permanent staff resources should be identified and evaluated for handling peak loads. Such resources might be the use of commercial shops or the use of part-time labor.

EQUIPMENT ACQUISITION

The acquisition of vehicles and equipment by counties is regulated by A.R.S. § 18-217 which provides that any expenditures in excess of $5,000 for equipment must be advertised in a prescribed manner. The board of supervisors may then award a bid to the lowest responsible bidder who made a qualified bid.

The managers of county equipment acquisition must then concisely describe details of the equipment or vehicle needed to achieve minimum performance expected to meet their working needs. Specification writing is a required talent to ensure adequate equipment satisfactory for the county's needs. The following guidelines are intended to assist in the preparation of specifications for equipment acquisition.

Instructions to the Bidder

Specifications usually start with a page or two of instructions to bidders which are, in effect, the rules of the game. These instructions cover such items as general information required in the bid or for qualification of the bid and do not have anything to do with the item itself. This section of the bid is generally referred to as "cast iron." Such items as intent of the bid, tax statements, compliance with

laws and regulations, vendor requirements, errors and omissions, general guarantee statements, delivery, etc., are normally in the "cast iron" section and all statements generally apply to every bid proposal sought.

Types of Specification

Specification writers normally approach the task by the "hardware method," however, there is a growing body of writers who favor the "performance method." A mixture of the two methods is sometimes seen today. Vehicle performance specifications, while highly desirable, require extensive research. Care must be taken when mixing the two methods so that the mixture is compatible.

Specification writers must first make a complete analysis of the purpose the proposed equipment must serve. The variety of tasks, the nature of the terrain, or the environment it must perform in, are some of the characteristics that must be known.

Weight and Capacity

According to federal law, all vehicle manufacturers must attach a vehicle certification label to the vehicle before its delivery. Each subsequent manufacturing unit (such as special equipment or body) must furnish any altering information. This certifying label will give the as delivered GAWR (gross axle weight rating) and the GVWR (gross vehicle weight rating). Since these ratings include the vehicle weight and the payload it is intended to carry, the specification writer must carefully analyze the intended use including passengers, fuel, added equipment, tools, and cargo loads. The GAWR for both front and rear axles is based upon the least rated of their supporting systems (axle, springs, tires, wheels or suspension for the rear axle). Thus, the first step is to determine the GAWR for both front and rear axles and the final GVWR.

Engine and Power Train

To select a proper engine, the horsepower required to perform the intended work purpose must be determined. For the GVWR selected, three factors must be calculated:

- Rolling resistance horsepower - Depends on the type of road surface, gross weight and road speed.
- Grade resistance horsepower - Depends on steepness of grade, gross weight and road speed.
- Air resistance horsepower - Depends on vehicle's frontal area and the road speed.

The required engine horsepower can be calculated using the chart in Table 16-1. It should be noted that manufacturers now have computers available that all the variables can be input (i.e., payload, tire size, engine, etc.), which will print out gradability, gear and road speeds, all of which are very accurate and will allow specifying the proper drive train.

Engine Type

Only the user can make the decision of what engine fits the needs desired for a particular use. It should be noted that with the new diesel engines developed in the past 6 years for light- and medium-duty trucks, operating costs (fuel) can be greatly reduced, thus justifying the additional cost. The following chart also highlights differences between the two types of engines.

ENGINE EVALUATION CHART

Item	Diesel	Gasoline
Initial cost	High	Low
Weight	High	Low
Governed speed (flexibility)	Low	High
Cost of overhaul	High	Low
Torque (cost of power train components)	High	Low
Cold weather starting characteristics	Poor	Good
Availability of qualified mechanics	Poor	Good

Table 16-1

HORSEPOWER REQUIREMENTS, ROLLING, GRADE, AND AIR

A. Rolling Resistance Horsepower - 1st Class Highway

Gross Weight (lbs)	10 mph	20 mph	30 mph	40 mph	50 mph	55 mph	60 mph
20,000	7.3	14.6	21.9	29.2	36.5	40.2	43.8
25,000	9.1	18.2	27.3	36.4	45.5	50.1	54.6
30,000	11.0	22.0	33.0	44.0	55.0	60.1	66.0
35,000	12.8	26.6	38.4	51.2	64.0	70.4	76.8
40,000	14.6	29.2	43.8	56.4	73.0	80.3	87.6
45,000	16.4	32.8	49.2	65.6	82.0	90.2	98.4
50,000	18.3	36.6	54.9	73.2	91.5	100.7	109.8
55,000	20.0	40.0	60.0	80.0	100.0	110.0	120.0
60,000	21.9	43.8	65.7	87.6	109.5	120.5	131.4

B. Grade Resistance Horsepower - 1 Percent Grade

Gross Weight (lbs)	10 mph	20 mph	30 mph	40 mph	50 mph	55 mph	60 mph
20,000	5.3	10.7	16.0	21.4	26.7	29.4	32.1
25,000	6.6	13.4	20.0	26.7	33.4	36.7	40.1
30,000	8.0	16.0	24.0	32.0	40.0	44.0	48.0
35,000	9.4	18.8	28.2	37.6	47.0	51.7	56.4
40,000	10.7	21.4	32.1	42.7	53.4	58.7	64.2
45,000	12.0	24.0	36.0	48.0	60.0	66.0	72.0
50,000	13.4	26.7	41.0	53.4	66.7	73.4	80.2
55,000	14.7	29.4	44.1	58.8	73.5	80.9	88.2
60,000	16.0	32.0	48.0	64.0	80.0	88.0	96.0

C. Multiplication Factor for Grades Greater than 1 Percent

% Grade	Multiply By	% Grade	Multiply By	% Grade	Multiply By
2	2.00	7	7.00	20	19.60
3	3.00	8	8.00	25	23.80
4	4.00	9	9.00	30	28.70
5	5.00	10	9.90	35	33.00
6	6.00	15	14.80	40	37.20

D. Air Resistance Horsepower

Square Feet	10 mph	20 mph	30 mph	40 mph	50 mph	55 mph	60 mph
64	0.3	2.5	8.4	19.7	38.4	51.1	66.4
76	0.4	10.0	10.0	23.4	45.6	60.7	78.8

ENGINE EVALUATION CHART (Continued)

Item	Diesel	Gasoline
Fuel consumption	Low	High
Electric ignition system (requires maintenance)	No	Yes
Mileage between overhauls	High	Low
Idling characteristics	Good	Poor
Starting torque (battery size)	High	Low

Transmission and Differential

The remaining parts of the power train must be selected to match the engine horsepower transmission to the wheels. Automatic and standard transmissions are available to meet all needs. Short trips with stop and go operations cause short clutch life as do inadequately trained drivers. In such a case, an automatic transmission will probably pay off, however, its initial cost can be approximately $2,000 over the cost of a mechanical transmission. The selection of a rear axle ratio depends upon work requirements. A wrong selection can cause the engine to lug or to overspeed, which in turn can cause failure of engine components prematurely. The lowest rear axle ratio providing the highest legal speed at the desired engine RPM is optimal.

Other Vehicle Components

The frame specifications should include the minimum acceptable section modulus which represents the frame depth, flange width, material thickness, and load, and a minimum acceptable resisting bending moment (RBM) of the frame. RBM is a measure of the frame rail strength and is calculated by multiplying the section modulus by the yield strength of the frame material expressed, in inch-pounds. Different types of uses or bodies must be analyzed to determine the frameload application. A flatbed truck can be assumed, when loaded, to apply a uniform load on the portion of the frame it rests upon. A dumptruck will have point loadings on the frame at the hoist attachments and at the pivot pins when dumping.

Brakes

Braking systems need to be balanced in accordance with its weight distribution. Brakes must be capable of absorbing 30 percent more horsepower than the engine develops. Federal regulations require high standards for vehicle brake manufacturing, so a review of those Department of Transportation regulations should be made. Non-asbestos linings should be specified.

Balance Components

Some units of equipment are standardized as manufactured and their estimated work capabilities can be determined by their printed specifications. To add special components to standard equipment or vehicles can add unjustified costs to the items. Some equipment, such as heavy duty trucks, are made up of components with the assembling manufacturer gathering together component parts from many other manufacturers. In this case, all component parts must be tightly specified to result in a well balanced unit for its intended work purpose.

Other Components and Accessories

A vehicle or equipment unit will have one or more work assignments. A careful review of each accessory requirement in relation to the work, weather, terrain or other affecting environmental factors is required. Batteries, alternators, and electrical operated accessories need to be coordinated. Vehicles' instruments, tire requirements, and lubrication systems must be carefully examined to ensure adequacy of work purpose. To accept less than is needed in any component or accessory will restrict utilization in work performance and to over specify is a waste of investment.

Review Tentative Specifications

After a tentative set of specifications has been prepared, it is wise to check into the numerous federal and state regulations that affect the use of equipment and vehicles by both industry and governmental agencies. Occupational, Safety, and Health Administration (OSHA) have published large volumes of rules and regulations which must be adhered to in the manufacturing and utilization of equipment and

vehicles. The manufacturing industry, who must comply with appropriate parts of OSHA regulations, publish specification sheets on each model they make. Generally speaking, most models are well-balanced for intended work assignments within average values. Fine print on manufacturers specification sheets should be checked closely to determine if the various statements made about machine performance requires optional equipment, ballast, etc. It is incumbent on the specification writer to insure his specified minimum values for each component or accessory can be met by two or more potential bidders to ensure competition. Keep in mind the vendor will design his bid proposal on the least expensive configuration of components and accessories he can qualify to the bid proposal.

A specification that results in a "one-of-a-kind" unit that only one manufacturer can meet will tend to raise bid prices through lack of competition. It is well to examine the results of your specifications developed with what manufacturers offer prior to the bid call to ensure price competition among two or more vendors.

Direct Bidding

As stated in the section on Equipment Funding, most new equipment funding for counties comes under the "Capital Outlay" portion of the budget. The successful low bid vendor is paid for all units at one time. This could be called direct bidding. Such a transaction meets all aspects of the state statutes.

Total Cost Bidding

During the last couple of decades there has been more use of purchasing equipment under a "Total Cost Bidding" plan. Total cost bidding includes the base price of the unit bid on; plus the maximum cost of repairs the owner will incur during a specified time and use (in hours or miles); plus a maximum cost of maintenance the owner will incur over the specified time and use (in hours or miles); less a guaranteed minimum repurchase price in trade or bid at a public auction. Proponents of this type of bidding claim a higher quality of equipment can be bid in competition with lower valued machines. Some users of "Total Cost Bidding" sometimes break the bids into several optional portions allowing acceptance by the

agency of only those portions desired. Under this bid form the vendor assumes all expenses over the bid price for repair and maintenance costs. This kind of specifications requires a very careful recordkeeping during the equipment life. However, such recordkeeping should be done for all equipment anyway.

APPENDIX A - CHAPTER 16

EQUIPMENT MANAGEMENT SYSTEM MANUAL

The FHWA equipment management manual describes a general equipment management system that could be used by any jurisdiction responsible for highway maintenance as a model to develop its own system, incorporating some changes dictated by local needs. The manual consists of two pars and a technical appendix, describing briefly in the following. More information on the manual is available from the Implementation Division (HDV-22) or the Construction and Maintenance Division (HHO-34), Federal Highway Administration, Washington, D.C. 20590.

Part I—Equipment Management Opportunities and Information System Benefits

Part I describes some current equipment management practices and the effects of a general lack of adequate management information. It describes how the information reported by systems developed in the manual can help to improve management practices and estimates the value of management improvements.

Part I also outlines a role for top management in developing an adequate equipment management system. This part is designed as an executive summary for top officials in a transportation agency.

Part II—Equipment Management Information Reports and Their Use

Part II is the key section of the manual. It illustrates sample reports produced by the model equipment system, describes how these reports are used in normal equipment management decision processes, and describes the operational objectives to which they relate. This part is aimed at equipment engineers and managers and their immediate subordinates, senior data system analysts, equipment user representatives, and fiscal managers.

Appendix—Technical Guide to Equipment Management Systems Development

The appendix describes the structure of equipment management systems, including system flow diagrams and system interfaces, file structures, and processing requirements, and indicates priorities for system development. This

section is directed primarily to the project manager whose aim is to develop and implement an equipment management system, and to data system analysts.

APPENDIX B - CHAPTER 16

EQUIPMENT MAINTENANCE FORMS

Excerpted from Cost Records and Budgets, National Association of County Engineers Action Guide Series, Volume II.

p. 12, County Highway Department Repair Order

p. 15, Monthly Equipment Log Record

p. 19, Equipment Control Record

Date In _____ 19____

Date Out _____ 19____

Mileage _____

EQUIPMENT NO. _____ Make _____ Driver _____

MECHANIC (Initials)	DESCRIPTION OF WORK	DATE	LABOR HRS.	LABOR AMOUNT

REASON FOR DELAY IN REPAIR			QTY.	COST
(1) Awaiting Parts		Total Labor		
(2) Other Repair Work		Total Parts		
(3) Inadequate Tools		Grease		
(4) Emergency Service Call(s)		Oil		
(5) Other (Specify)		TOTAL COST		

PARTS USED

QTY.	DESCRIPTION	PRICE
	Battery	
	Blades	
	Points	
	Spark Plugs	
	Tires	
	Tubes	

Released by _____

COUNTY HIGHWAY DEPARTMENT REPAIR ORDER

Month MAY

Year

DATE (a)	OPERATOR (b)	SPEEDOMETER READING (c)	HRS. (d)	OPERATING EXPENSES: FUEL Type (e)	FUEL Gallons (f)	FUEL Cost (g)	OIL Quarts (h)	OIL Cost (i)	TIRES-TUBES COST (j)	MAINT. EXPENSES: MISCELLANEOUS (k)	MAINT. EXPENSES: REPAIR COST (l)	MAINT. EXPENSES: OTHER SERVICES (m)	STORAGE COST (n)	REMARKS (o)
1	CEB	27526	8	GAS	20		1							
4	CEB	27570	8											
5	CEB	27663	8	GAS	21									
6	CEB													
7	CEB													
8	CEB													
11	JAR	27834		GAS	20		1			3.75				FAN BELT - P.O. 507
30	JAR	28501	8											GREASE JOB *
TOTAL			176	GAS	139	*	3	*						TOTAL EXPENSES

Monthly operating data for equipment log to be kept with equipment. Totals are transferred to perforated tear-out sheet, which is then forwarded to the headquarters office.

* COSTS FURNISHED IN OFFICE

16-26

MONTHLY EQUIPMENT LOG RECORD

_____ COUNTY

DEPARTMENT OF HIGHWAYS

DEPT. EQUIP. NO. _____

MANUFACTURERS NO. _____

MAKE OF EQUIPMENT

KIND OF EQUIPMENT

BODY STYLE, CAPACITY OR SIZE

MODEL NUMBER

PURCHASED FROM

ADDRESS

PURCHASE ORDER NO.

DATE PURCHASED

DELIVERY DATE

DEPT. EQUIP. NO. _____

COST

TRADE IN ALLOWANCE

NET COST

SALVAGED ( ) OR SOLD TO

ADDRESS

DATE

PURCHASE ORDER NO.

AMOUNT REALIZED

APPLIED TO PURCHASE OF DEPARTMENT EQUIPMENT NO.

DESCRIPTION

ATTACHMENTS

ENGINE CHANGES

MONTH	YEAR	NEW NO.
XX	XX	

YEAR	MILES	HOURS	OPERATING COSTS										REPAIRS		DEPRECIATION	TOTAL ALL COST	RENTAL EARNED	GAIN OR LOSS
			FUEL		OIL		GREASING		TIRES TUBES		CLEANING		ACCESSORIES		LABOR	PARTS		
			GALS	COST	QTS	COST												

OVERHAUL RECORD

DATE	SERVICE ORDER NO.	ESTIMATED COST	ACTUAL COST

SUMMARY OF OPERATIONS

YEAR	DAYS IN SERVICE	DAYS UNDER REPAIR	DAYS NOT USED

INSPECTION RECORD

DATE INSPECTED	INSPECTED BY	FINDINGS

EQUIPMENT CONTROL RECORD

APPENDIX C - CHAPTER 16

REGULATIONS AND STANDARD REFERENCES

ADOT specifications frequently incorporate by reference various regulatory requirements, engineering standards and industry association recommended practices.

A. If a Federal Motor Vehicle Safety Standard (FMVSS) is incorporated, that standard is a part of the Code of Federal Regulations, title part 571. (49 CFR 571)

B. If a Federal Motor Carrier Safety Regulation (FMCSR) is incorporated, that regulation is a part of the Code of Federal Regulations, title 49, parts 390 to 398. (49 CFR 390 - 398)

C. If an Occupational Safety and Health Administration (OSHA) standard or regulation is incorporated, that standard or regulation is a part of the Code of Federal Regulations, title 29, parts 1900-1910 and 1920. (29 CFR 1900-1910 and 29 CFR 1920)

D. If a Mine Safety and Health Administration (MSHA) standard or regulation is incorporated, that standard or regulation is a part of the Code of Federal Regulations, title 30, part 32. (30 CFR 32)

All Codes of Federal Regulations may be obtained from:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

Further, the Phoenix Central Public Library, Business and Science Reference desk maintains a complete file of the Code of Federal Regulations books.

There are Phoenix offices of Federal OSHA and MSHA at:

3221 N. 16th Street
Phoenix, Arizona 85016

E. If an Arizona Revised Statute (ARS) is incorporated, that statute is a part of ARS title 28, The Transportation Laws of the State of Arizona.

ARS Title 28 may be obtained from:

Engineering Records Services
Arizona Department of Transportation
206 South 17th Avenue, Room 134
Phoenix, Arizona 85007

Further, the law library in the Maricopa County Courts building, as well as most public libraries maintain current ARS information.

F. If an SAE standard or recommended practice is incorporated, that standard or recommended practice is a part of the 1984 SAE handbook.

The SAE handbook may be obtained from:

Society of Automotive Engineers
400 Commonwealth Drive
Warrendale, Pennsylvania 15096

Further, the Phoenix Central Public Library, Business and Science Reference desk can provide the SAE handbook.

G. If a Regular Common Carrier Conference (RCCC) recommended practice is incorporated, a technical description of that practice is a part of the RCCC Maintenance Committee Recommended Practices Manual.

The RCCC Manual may be obtained from:

The Maintenance Council
American Trucking Associations, Inc.
1616 P Street, N.W.
Washington, D.C. 20036

REFERENCES

1. Equipment Management Manual (Project 70-1), Institute for Equipment Services and APWA Research Foundation, Chicago, Illinois, September 1975.

2. Equipment Management System, Parts I, II, and III, (FHWA-IP-78-11), Federal Highway Administration, Washington, D.C., June 1978, Reprinted December 1979.

3. Equipment Management System Training Course, Federal Highway Administration, Washington, D.C., November 1979, Second Printing,

4. "Management and Selection Systems for Highway Maintenance Equipment," NCHRP Synthesis of Practice 52, Washington, D.C., 1978.

5. Operations Report, Equipment Services Department, Maricopa County, Arizona, 1984-1985 Fiscal Year.

17. PROCUREMENT OF OUTSIDE SERVICES

INTRODUCTION

This chapter describes the statutory basis for bidding procedures for highway and facilities construction and professional service contracts.

Typical sources of outside services are summarized as follows:

1. Private consulting services for: engineering; architecture; surveying; construction administration; property appraisals, negotiations or procurement; computer system implementation, purchasing large capital items; such as, computers, construction equipment or buildings; personnel administrative matters; such as, job reclassifications, salaries or fringe benefit studies, or finding key professional staff.

2. Outside services may also come from other governmental agencies. These may be in the form of federal or state funds, city services not provided by the county (i.e., transit bus service, water supply, sewage treatment, law enforcement). Also, cost savings by purchasing materials along with another agency (road building, traffic control devices, computers). Sharing unused computer capacity with another agency. Using training facilities or programs or seminars put on by other agencies to train personnel. ADOT sometimes offers such in-house training seminars to county staffs.

REQUIREMENTS FOR HIGHWAY AND FACILITIES CONSTRUCTION CONTRACTS

The Arizona Revised Statutes describe the procedures required to obtain bids for construction, reconstruction, equipment, or supplies. A.R.S. § 18-217 describes this procedure with respect to county highways. For counties having a population of 150,000 persons or over, the statute applies to all items of construction or reconstruction involving an expenditure equal to or greater than $35,000, as well as all acquisition of equipment involving an amount over $5,000 and all purchases of supplies and materials involving an expenditure of $2,500 or over. The requests for bids must be advertised in a newspaper of general circulation published within the county for two consecutive insertions if it is a weekly newspaper, or for two insertions not less than six or more than ten days apart, if it is a daily newspaper. Advertisement shall specify the work to be done, and the kind and quality of materials or supplies to be furnished.

The board of supervisors, upon the public opening and receipt of satisfactory bids, shall aware the contract to the lowest responsible bidder. The board may also reject any or all bids and readvertise, if desired.

A.R.S. § 11-254 describes procedures for counties regarding supplies and building construction, and states, that for books, stationery and supplies exceeding $5,000 in value, and for erections of, repairs to and alterations in county buildings exceeding $1,500, shall be let by contract after advertisement made for bids. The advertisement shall state that sealed bids will be received until the named date and that specifications may be seen at the office of the board, or the county may call for specifications and bids.

A.R.S. § 11-254.01 describes alternative county purchasing procedures involving invitations to bid. This statute states that for purchases over $5,000 (excluding professional services), that invitations for bids may be issued. The invitation for bids and specifications must be issued in sufficient time before the purchase is made and in sufficient detail to permit free competition. Copies of the invitation and specifications shall be supplied to and bids shall be solicited from the maximum number of qualified sources consistent with the item to be purchased, including all qualified suppliers who before the issuance of the invitation notify the purchasing department in writing that they desire to bid.

At the public bid opening, the county purchasing agent shall make awards to the bidder whose bid conforms to the invitation and whose bid is the most advantageous to the county concerning price, conformity to the specifications and other factors. The board may reject all bids if the county purchasing agent determines that rejection is in the public interest.

Other parts of A.R.S. § 11-251.01 state that if the board of supervisors elects to make county purchases using this system, it applies to all purchases of supplies, materials, equipment and contractual services, except professional services, made by the county purchasing agent for any budget unit. For purchases of five thousand dollars or less, each county shall develop procedures for competitive bidding or comply with the uniform accounting system prescribed by the auditor general under A.R.S. § 41-1279.21.

It should be noted that Attorney General's Opinion No. 67-34-6 stated that:

> "Where there is no daily newspaper published in county, advertisements must be published at least once each week for four consecutive weeks to constitute compliance with A.R.S. § 39-204(C)(2) requiring such publication if in a weekly newspaper and A.R.S. § 11-254 requiring advertisement for bids for not less than 10 days nor more than four weeks in the official newspaper of the county."

With regard to bid requirements for the employment of contractors on public buildings and improvements, A.R.S. § 34-201 states that the published notice of work should include the nature of the work required, the type, purpose and location of the proposed building, and where the plans, specifications and full information as to the proposed work may be obtained.

This statute also describes bonding requirements and work which may be done without advertising for bids. This section of the statute states:

> "C. If the agent believes the work can be done more advantageously by day work or force account, any building, structure, addition or alteration may be constructed without advertising for bids provided that the total cost of the work, excluding materials and equipment previously acquired by bid, does not exceed:
>
> 1. In fiscal year 1985-1986, ten thousand five hundred dollars.
> 2. In fiscal year 1986-1987 and each fiscal year thereafter, the amount provided in paragraph 1 of this subsection adjusted by the annual percentage growth in the GNP price deflator as defined in A.R.S. § 41-563, subsection E.
>
> D. "Force account work may be performed only by the agent's regularly employed personnel."

Contract requirements are covered in A.R.S. § 34-221 for contractors on public buildings and facilities. This statute is summarized, in part, as follows (full text of this statute is listed in Chapter 20, Text of Statutes):

> A.R.S. § 34-221. Contract with successful bidder; payments to contractor; security
>
> A. The agent shall enter into a contract with the lowest responsible bidder whose proposal is satisfactory, the terms of which shall include the following items:

1. A surety company bond or bonds as required under the provisions of this article.
2. The owner by mutual agreement may make progress payments as provided for in this paragraph.
3. Ten percent of all estimates shall be retained by the agent as a guarantee for complete performance of the contract, to be paid to the contractor within sixty days after completion or filing notice of completion of the contract.
4. In any instance where the agent has accepted substitute security as provided in paragraph 3 of this subsection, any subcontractor undertaking to perform any part of such public work shall be entitled to provide substitute security to the contractor upon terms and conditions similar to those described in paragraph 3, and such security shall be in lieu of any retention under the subcontract.

B. "The contract shall be signed by the agent and the contractor."

Information on surety bond requirements and payment bond provisions are listed in A.R.S. § 34-222 and A.R.S. § 34-223, respectively. Preference of awarding public contracts to contractors who have paid state or county taxes is discussed in A.R.S. § 34-241. This statute states that, for bids within five percent of each other, contractors who have paid state and county taxes for at least two consecutive years shall have preference over contractors not paying such taxes.

Preference is also to be given to locally manufactured materials, as discussed in A.R.S. § 34-242 (see Title 34 for further details).

Conflicts with federal aid contract provisions are discussed in A.R.S. § 34-244:

"A.R.S. §34-244. Provisions inapplicable to federal aid contracts when federal law conflicts

Text as amended by Laws 1984, Ch. 251, A.R.S. § 20, effective January 1, 1985

A. "If any provision or condition of this article or A.R.S. § 34-301, or 38-481 conflicts with any provision of federal law or any rule or regulation made under federal law pertaining to federal aid contracts, such provision or condition shall not apply on federal aid contracts to the extent that conflict exists, but all provisions or conditions of sections with which there is no conflict shall apply to federal aid contracts.

B. "Political subdivisions shall, when federal law, rules or regulations permit, enter into and perform any contract subject to the provisions or conditions of this article and

A.R.S. § 34-301, 34-302 and 38-481, and shall obligate from such funds the amount that the representatives of the federal government require to be deducted from the federal aid funds allotted to the contract by reason of the application of the provisions and conditions of such sections."

With respect to eligibility for employees on public works, A.R.S. § 34-301 states that in general:

"A person not a citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal works or employment."

With regards to residency, A.R.S. § 34-302 states:

"A.R.S. § 34-302. Residence requirements for employees

A. "In performing contracts for public work executed by the state or a political subdivision thereof, and in the performance of any work by the state or a political subdivision thereof, there shall be employed only persons who are and have been for not less than one year bona fide residents of the state.

B. "Contractors or subcontractors may employ on such work not to exceed three regularly employed nonresident executives and technical experts, or when bona fide residents of the state are not available for such employment and the authorized representative of the industrial commission so certifies, persons who are not qualified under this section may be employed until there are available a sufficient number of employees who qualify."

PROCUREMENT OF CONSULTANT SERVICES

The selection of architects and engineering consultants is based on experience and qualifications, as opposed to fee.

The process used in selection and fee negotiation for architect/engineer consultants is based on requirements described in Section 34 of the Arizona Revised Statutes. A.R.S. § 34-102 describes the employment of an engineer or architect:

A.R.S. § 34-102. Employment of architect or engineer for work on public buildings and structures; contract

A. "When authority is given by law to an agent to construct a building or structure, or additions to or alterations of existing buildings or structures, an architect or engineer, or both, as

warranted by the type of construction, shall be employed by the agent if the work is deemed of a nature warranting such employment.

B. "When an engineer is employed, the agent may enter into a contract with the engineer, and fix his compensation."

"Agent" in this context means the county.

A.R.S. § 34-226 states that indemnity agreements in architect/engineer contracts are void:

A. "A covenant, clause or understanding in, collateral to or affecting a construction contract or architect-engineer professional service contract which purports to indemnify or hold harmless the promisee against liability for loss or damage resulting from the sole negligence of the promisee, his agents, employees or indemnitee is void.

B. "Nothing contained in this section shall prevent a contractor responsible for the performance of a construction contract from fully indemnifying a person, firm, corporation, state or other agency for whose account the construction contract is not being performed but who, as an accommodation, enters into an agreement with the contractor permitting such contractor to enter upon or adjacent to its property for the purpose of performing such construction contract for others.

C. "In this section "architect-engineer contract" means a written or oral agreement relating to the design of any construction, alteration, repair, maintenance, moving, demolition or excavation of a structure, highway, appurtenance or other development or improvement to land.

D. "In this section "construction contract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, moving, demolition or excavation of a structure, highway, appurtenance or other development or improvement to land."

CONTRACT TYPES

This section discusses contract types commonly used in county government. The three types are:

1. Fixed-price contract, except fixed price cost incentive contract;
2. Lease; and

3. Lease with purchase option.

Criteria for using each of these types of contracts is summarized as follows: (excerpted from Maricopa County Procurement Code)

A fixed-price contract may be used if:

1. The extent and type of work necessary to meet county requirements can be reasonably specified; and

2. The cost can be reasonably estimated.

A firm fixed-price contract may be used if prices advantageous to the county can be established at the outset of the contract.

Fixed-Price Contract with Price Adjustment

1. The solicitation for a fixed-price contract with price adjustment and the contract shall specify the basis for determining the price adjustment.

2. Notice of price adjustment shall be given by the contractor in the manner and within the time specified in the contract.

A lease may be entered into only after the Procurement Officer determines in writing that:

1. A lease is advantageous to the county;

2. All conditions for renewal and cost determination are set forth in the lease; and

3. The lease is not used to circumvent required procurement procedures.

All leases shall be signed by the Chairman or Acting Chairman of the Board of Supervisors.

A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals and only after the Procurement Officer determines in writing that the exercise of the purchase option is advantageous to the county based upon estimated costs and benefits of alternative methods of procuring comparable materials.

18. DISASTER AND EMERGENCY PLANNING

INTRODUCTION

All communities within the state of Arizona are vulnerable to the adverse effects of peacetime or wartime disasters. To reduce the loss of life, social disruption, and property damage' associated with such disasters, the Federal Government has mandated that all states prepare and maintain an emergency response plan to provide and manage the resources needed to deal with these emergencies. The Federal Emergency Management Assistance Agency (FEMA) developed prototype plans for use by the state in developing their individual plans. The State, in turn, has prepared a prototype plan for use by local agencies. FEMA provides the funding to develop and maintain these state and local plans.

Initially, the major thrust on the federal level was directed toward civil defense preparedness. Over the past decades, the emphasis has shifted toward peacetime disasters; such as, floods, earthquakes, windstorms, fire, hazardous material incident, etc. The current (1982) Emergency Response Plan for the State of Arizona (peacetime disasters) was developed under the following authority:

Chapter 2, Title 26, Arizona Revised Statutes
Chapter 1, Title 35, Section 192, Arizona Revised Statutes
Executive Order 76-7

Essentially, the plan is structured to define and organize the resources that can be mobilized against the threat or occurrence of any type of disaster. Figure 18-1 shows the basic organizations and their responsibilities.

On both a state and county level, almost all agencies are involved to some extent in emergency response. Figure 18-2 shows the major components of the Emergency Response Plan, the various agencies involved, and their level of responsibility.

A.R.S. § 26-307 states that "state agencies, when designated by the governor, and counties, cities and towns may make, amend and rescind orders, rules, and regulations necessary for emergency functions but such shall not be inconsistent with orders, rules and regulations promulgated by the governor.

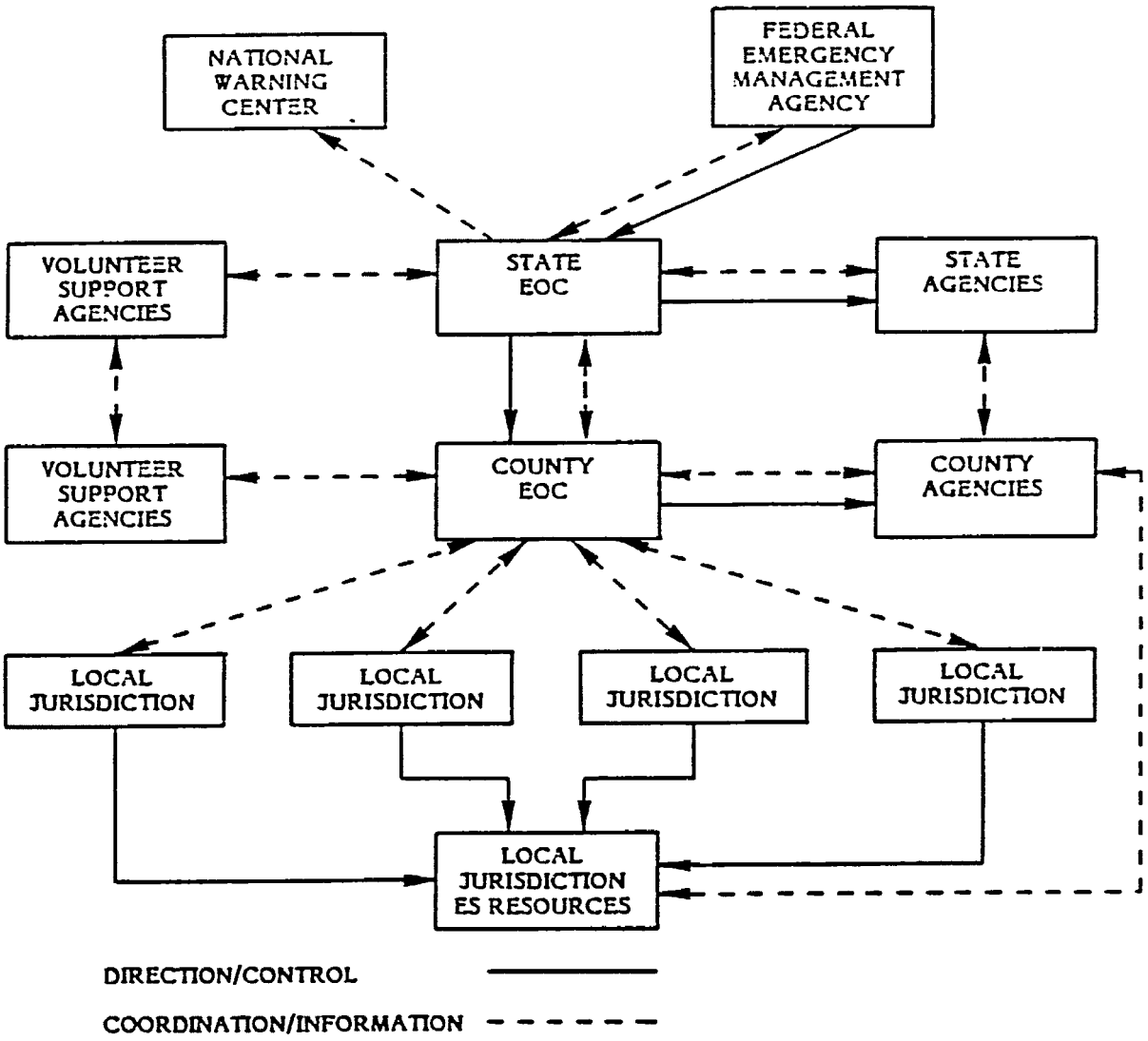

Figure 18-1

STATE OF ARIZONA EMERGENCY OPERATIONS
DIRECTION/COORDINATION/CONTROL

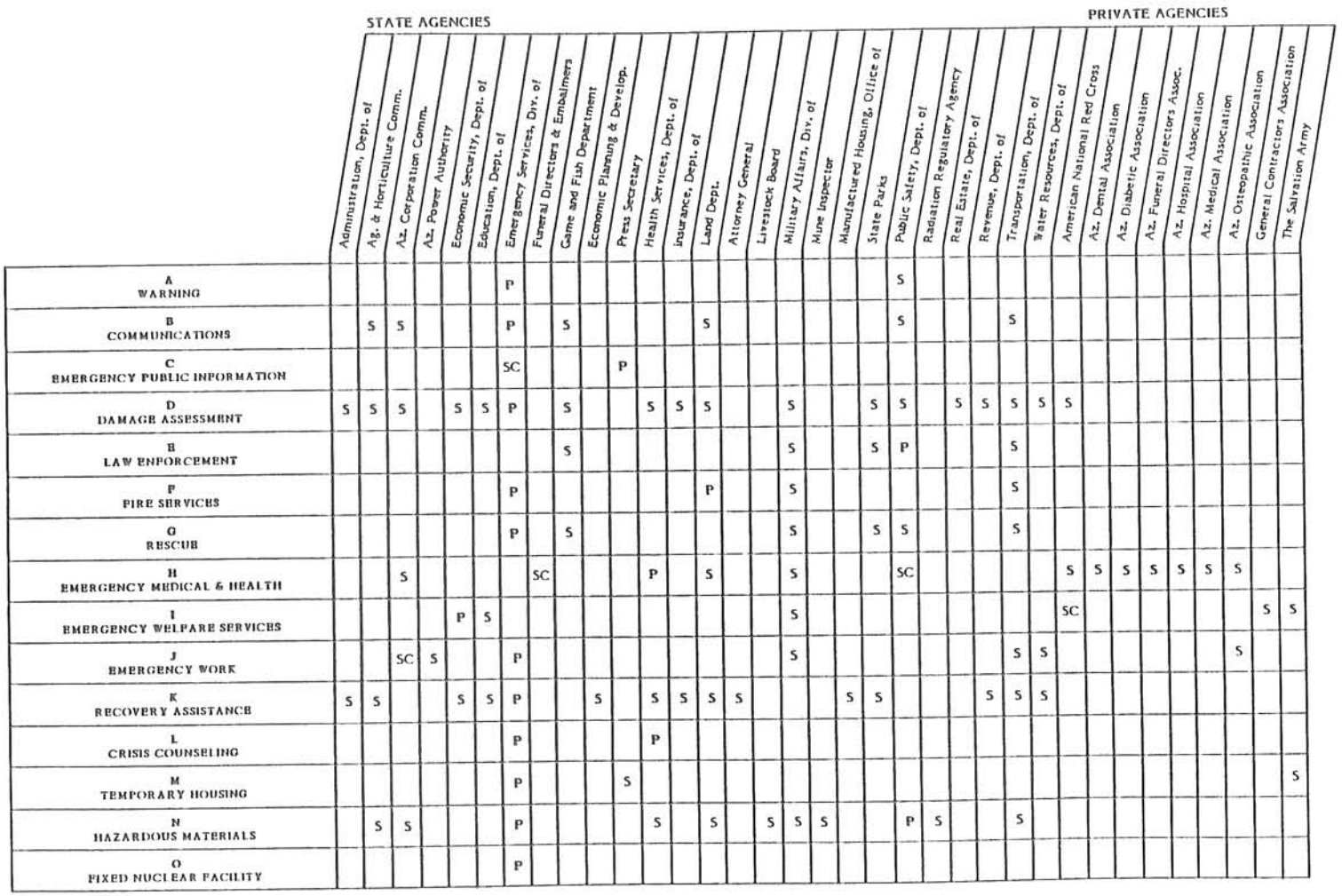

Figure 18-2

AGENCIES INVOLVED IN EMERGENCY RESPONSE PLAN

This chapter abstracts those sections of the Emergency Response Plan of particular relevance to the county highway engineer. It should be stressed that every county government should have a local form of this plan and that the county highway engineering or public works staff be familiar with its contents as well as their individual responsibilities.

TYPES OF DISASTERS

Any natural or man-caused event that may result in the loss of life, social disruption, and property damage, may be considered a state of disaster. Some forms of disaster are predictable prior to occurrence; such as, windstorms, snowstorms, etc., while others may occur without warning, e.g., earthquakes. Some of the possible hazards that could potentially create a disaster are summarized below.

Floods

Floods caused by local thunderstorms are the most frequent severe natural statewide hazard in Arizona. Periodically, overbank flows of rivers or streams result in partial or complete inundation of the adjacent floodplain. Transportation corridors, recreation areas or communities within flood plain areas are also highly vulnerable to flash floods. Flash floods are of short duration on streams or washes, while ravine floods occur on river systems whose tributaries drain large geographic areas and encompass several independent river basins and may last for days. Rain-caused flash floods are difficult to predict as to time and/or location. Over 80 flood-prone communities have been designated in Arizona. Dam failure is a possible disaster agent similar to extreme flash flooding downstream from any of more than 300 dams in Arizona. Flooding of a less severe nature may also be caused by controlled releases from dams.

Earthquakes

Earthquakes are infrequent, but could be potentially devastating (particularly in Gila, Coconino, Yuma, Cochise, and Greenlee Counties). Damaging secondary effects from earthquakes include landslides, dam failure, fire, explosion, utility failure, and environmental contamination. Lack of capability to accurately predict

earthquakes requires immediate initiation of lifesaving measures, mitigation of secondary effects, and major recovery actions.

Nuclear

Potential radiation leaks may occur from nuclear generating facilities.

Windstorms

Windstorms with windspeeds up to tornado force occur in Arizona during the summer months. Warning time is minimal and often dependent on local sightings. Dust storms (sands blown upon high winds) are also extremely hazardous, particularly in the desert counties.

Snowstorms

Snowstorms frequently occur in the higher elevations and upper plateaus of northern Arizona during the winter months. These are relatively predictable.

Fire

Both structural and wilderness fires are potentially disastrous especially under drought conditions with low humidity and high winds as occur in periods from April to mid-July and from late September through October.

Hazardous Material Events

The manufacture, transport, storage, use, and disposal of hazardous materials creates a substantial risk. It is possible that, at some time, control over such material will break down causing a spill or other dangerous condition. In such event, it is likely that the first person on the scene will be unfamiliar with the precautionary procedures necessary to protect the public and the environment. It is also likely that local agencies will not be equipped with the specialized knowledge and tools to cope with the situation. Response, therefore, must involve the timely reporting and coordinating mechanisms to state and federal agencies and the private sector to mitigate the effects of hazardous materials.

RESPONSIBILITIES

It is the responsibility of county government to plan for a coordinated mitigation of, and response to, disaster in accordance with known local hazards and local studies of vulnerability to disasters. Peacetime disasters frequently result in damage to public facilities; such as, roadways, bridges, drainage and flood control facilties, etc. In addition, large accumulations of debris may develop which could increase vulnerability and impede emergency operations. Such disruption and damage can imperil local inhabitants. It is, therefore, critical that rapid restoration and repair be undertaken in a well-coordinated, timely way. These efforts will generally include such public works activities as removing debris from roadways, repairing roads and bridges, sandbagging for flood control, and implementing road closures or detours.

A.R.S. § 26-308 defines the responsibilities of each county's emergency services organization:

1. "Establish and maintain a current and detailed roster of public and private organizations within the county which have personnel trained and available for assisting in meeting emergency needs including search or rescue.

2. "Establish and maintain a current detailed inventory of facilities, equipment, supplies and other resources within the county available for use in meeting emergency needs including search or rescue.

3. "Provide a summary of the information required in paragraphs 1 and 2 to the state director of emergency services."

The county engineer's office should have in place an operation procedure that would go into effect as soon as an alert or warning is received. For example, areas likely to flood should be monitored to determine if, and when, street closures or detours are needed. Required resources; such as, barriers, warnings signs, sandbags, etc., should be easily accessible together with available staff to properly and safely implement the response.

DAMAGE ASSESSMENT

Effective disaster response and recovery operations require immediate, accurate, and comprehensive appraisal of existing or developing conditions in the

disaster area. Damage assessment can be defined as the process of gathering, compiling, and evaluating information so that a realistic appraisal of the situation can be formulated. This process is usually undertaken within the first 48 hours after a disaster has occurred.

Local preliminary damage reconnaissance produces descriptive measures of the severity and magnitude of the disaster. This reconnaissance determines:

- Response requirements and capabilities
- Effectiveness of initial response activities
- Requirement for supplemental assistance

Some disaster-prone counties should have a standing damage assessment team that has been assigned and trained in the function of damage reconnaissance. This team will generally be responsibility for the following activities:

- Conduct damage reconnaissance using resources under their control.
- Assist incorporated cities and towns upon request.
- If state assistance is anticipated, assist in consolidating data and accurately reporting information to the Division of Emergency Services as soon as possible. This includes identifying and annotating damaged sites on maps for use by the State Damage Assessment Teams.
- Provide knowledgeable county personnel to assist State Team, as requested.

The detailed roles and responsibilities of local, state, and federal agencies are defined in Annex D of the Emergency Response Plan (peacetime) for the state or Arizona.

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3. Hicks, H., et al., Practical Guide for Public Safety Crisis Relocation Planning, Santa Barbara, CA., Ryland Research, 1980, vp.

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7. Presby, R.A., Crisis Relocation Planning Bibliography, San Francisco, JHK & Associates, 1982, vp.

19. SUMMARY OF STATUTES AND COURT DECISIONS

This chapter contains summaries of statutes and legal citations. These references are keyed to the chapters of the Arizona Counties Highway Manual. The Summary of Statutes lists, in numerical order, the statutes referred to in each chapter of the manual. To the right of each statute is the specific section of the Arizona Counties Highway Manual which contains material referring to the statute. Below each summary of statutes, if applicable, is a summary of court decisions. To the left of each citation is the specific section of the Arizona Counties Highway Manual which contains related subject matter referring to the citation. Also listed is a statute reference to each citation. It should be noted that the citation list contains only some of the citations in each subject. This list is not intended to be all inclusive nor is it intended to replace needed consultation with a qualified attorney.

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 2

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 1 General		
Chapter 1	Arizona Revised Statutes	
1-101	Designation and citation	Chapter 2 - Use of Statutes and Policies
1-102	Repealing clause	Chapter 2 - Development of Statutes and Policies
1-104	Effect of repealing clause and construction of act	Chapter 2 - Development of Statutes and Policies
Chapter 2	Law and Statutes	
1-201	Adoption of common law; exceptions	Chapter 2 - Development of Statutes and Policies
1-211	Rules of construction and definitions	Chapter 2 - Interpreting Statutes
1-245	Subsequent statute as superceding former law	Chapter 2 - Development of Statutes and Policies
1-248	Repealing acts; certain laws not affected	Chapter 2 - Development of Statutes and Policies
1-249	Repealing act; effect on pending action or accrued right	Chapter 2 - Development of Statutes and Policies

SUMMARY OF COURT DECISIONS

Statute Reference	Arizona Counties Highway Manual Reference	Citation and Summary
1-201	Chapter 2 - Development of Statutes and Policies	McClure v. Johnson (1937) 50 Ariz. 76, 69 P. 2d 573 and Lowell v. Lowell (1925) 29 Ariz. 138, 240 P. 280 - The common law remains in effect except as modified by statute or unsuited to state's local system or condition.
1-211	Chapter 2 - Interpreting Statutes	Walter v. Northern Arizona Title Co. (1967) 6 Ariz. App. 506, 433 P. 2d 998 - A mandatory statute should be literally construed and strictly applied, in general.
1-211	Chapter 2 - Interpreting Statutes	Pioneer Mut. Ben. Ass'n v. Corporation Commission (1942) 59 Ariz. 112, 123 P. 2d 828 - The word "may" is read as "shall" or "must" when used to impose a duty, performance which involves protection of interests, either public or private.
1-245	Chapter 2 - Development of Statutes and Policies	Gustafson v. Rajkovich (1953) 76 Ariz. 280, 263 P. 2d 540, 40 A.L.R. 2d 520: McCarthy v. State ex rel. Harless (1940) 55 Ariz. 328, 101 P. 2d 449: State Board of Health v. Frohmiller (1933) 42 Ariz. 231, 23 P. 2d 941; Willard v. Hubbs (1926) 30 Ariz. 417, 248 P. 32. - If there is a conflict between two statutes, the more recent one must prevail.

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 3

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 11 Counties		
Chapter 6	County Planning and Zoning	
11-806.01	Subdivision regulations; platting rules; penalty	Chapter 3 - Establishment
Title 18 Highways and Bridges		
Chapter 2	County Highways	
18-201	Establishing, altering, or abandoning local highways	Chapter 3 - Establishment
18-202	Survey of proposed highway; notice of hearing	Chapter 3 - Establishment
18-203	Hearing	Chapter 3 - Establishment
18-206	Exercise of eminent domain by county to obtain right-of-way for federal-county highway	Chapter 3 - Establishment
18-207	Maintenance of public roads and streets not within city or town	Chapter 3 - Establishment
18-209	Jurisdiction of streets in unincorporated towns	Chapter 3 - Establishment
18-210	Abandonment of streets and alleys	Chapter 3 - Establishment

SUMMARY OF COURT DECISIONS

Statute Reference	Arizona Counties Highway Manual Reference	Citation and Summary
18-201	Chapter 3 - Establishment	State ex rel. Herman v. Cardon (1976) 112 Ariz. 548, 544 P.2d 657. Streets are not public highways unless they have been accepted by the board of supervisors.
18-202	Chapter 3 - Establishment	City of Tucson v. Melnykovich (1969) 10 Ariz. App. 145, 457 P.2d 307. Generally, planning or plotting of public improvement does not amount to taking of affected property, in general.

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 4

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 11 Counties		
Chapter 2	Board of Supervisors	
11-201	Powers of county	Chapter 4 - Obligations, Liability, Limitations
11-211	Membership; qualifications; term	Chapter 4 - Introduction
11-251	Powers of board	Chapter 4 - Authority
Chapter 7	Intergovernmental Operations	
11-951	Definitions	Chapter 4 - Intergovernmental Operations
11-952	Intergovernmental agreements and contracts	Chapter 4 - Intergovernmental Operations
Title 18 Highways and Bridges		
Chapter 2	County Highways	
18-201	Establishing, altering, or abandoning local highways	Chapter 4 - Authority

SUMMARY OF COURT DECISIONS

Statute Reference	Arizona Counties Highway Manual Reference	Citation and Summary
11-251	Chapter 4 - Powers of Board	Maricopa County v. Anderson (1957) 81 Ariz. 339, 306 P. 2d 268 - Decision clarifies the term "layout" when used in reference to roads and highways.
18-201	Chapter 4 - Authority	State ex rel. Herman v. Cardon (1976) 112 Ariz. 548, 544 P. 2d 657 - Streets are not public highways unless they have been accepted by the board of supervisors.

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 5

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 11 Counties		
Chapter 2 Board of Supervisors		
11-251	Powers of board	Chapter 5 - Development of Ordinances and Regulations
11-352	Adoption of limited county employee merit system by resolution; removal of certain administrative positions by resolution	Chapter 5 - Personnel
11-353	County employee merit system commission; members; terms; vacancies	Chapter 5 - Personnel
11-354	Powers and duties of the commission	Chapter 5 - Personnel
11-355	Minimum qualifications for employment	Chapter 5 - Personnel
11-356	Dismissal, suspension, or reduction in rank of employees, appeals; hearings	Chapter 5 - Personnel
Chapter 3 County Officers		
11-532	County attorney - powers and duties	Chapter 5 - Obligations and Liabilities
11-561	Qualifications; salary	Chapter 5 - Authority
11-562	Duties	Chapter 5 - Responsibility
11-563	Private work prohibited	Chapter 5 - Limitations

SUMMARY OF COURT DECISIONS

Statute Reference	Arizona Counties Highway Manual Reference	Citation and Summary
11-561	Chapter 5 - Authority	Op. Atty. Gen. No. 74-17. County engineers must be registered with the state board of technical registration to maintain their office.

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 6

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 18 Highways and Bridges		
Chapter 2	County Highways	
18-216	Tax levy for county highway improvements; additional tax for highway purposes	Chapter 6 - Taxation
18-231	Bonds for highway construction; authorization for issuance	Chapter 6 - Bonds
18-232	County highway commission; members; term; compensation; bond	Chapter 6 - Bonds
18-233	Commission powers and duties; report; publication; call for election	Chapter 6 - Bonds
18-234	Semiannual report of commission; publication	Chapter 6 - Bonds
18-235	Expenses of commission	Chapter 6 - Bonds
18-236	Road bond election precincts; conduct of election	Chapter 6 - Bonds
18-237	Sale of bonds; disposition of proceeds; use of surplus funds	Chapter 6 - Bonds
18-238	Contract for proposed work; cooperative contracts with United States; bond	Chapter 6 - Bonds
18-401	Toll road defined	Chapter 6 - Other
18-402	Notice; application; hearing	Chapter 6 - Other
18-403	Approval or rejection of application; effective date; term and reversion of franchise	Chapter 6 - Other
Title 18 Highways and Bridges		
Chapter 4	Toll Roads, Ferries and Bridges	
18-404	Interference with highways or other toll roads	Chapter 6 - Other
18-405	Acquiring land for toll road; manner of construction; guide posts	Chapter 6 - Other
18-406	Commencement and completion of road	Chapter 6 - Other
18-407	Toll rates; violation; penalties; state tax	Chapter 6 - Other
Title 28 Transportation		
Chapter 9	Taxes	
28-1501	Imposition of tax; rate	Chapter 6 - State Collected Transportation Revenues
28-1502	Payment; distribution of proceeds	Chapter 6 - State Collected Transportation Revenues
28-1552	Imposition of use fuel tax; bulk storage	Chapter 6 - State Collected Transportation Revenues
28-1557	Payment of tax; distribution of proceeds	Chapter 6 - State Collected Transportation Revenues
28-1591	Distribution of vehicle license tax	Chapter 6 - State Collected Transportation Revenues
28-1594.01	Distribution of transportation excise tax in counties with population of one million two hundred thousand or more persons; regional area road fund; accounts; bonds; definitions	Chapter 6 - County Transportation Excise Tax
28-1594.02	Distribution of transportation excise tax in counties with population in excess of four hundred thousand but fewer than one million two hundred thousand persons; regional area road fund; accounts; bonds; definitions	Chapter 6 - County Transportation Excise Tax
28-1598	Distribution of highway user revenues; budget and expenditure of local tax revenues required; definitions	Chapter 6 - Distribution of State Collected Revenues

SUMMARY OF STATUTES
(Continued)

28-1867	Designation of state and count federal aid secondary highways	Chapter 6 - Federal Aid Highway Programs
28-2501	Definitions	Chapter 6 - County Transportation Excise Tax
28-2502	Regional public transportation authority in counties with population of one million two hundred thousand or more persons; establishment; fund	Chapter 6 - County Transportation Excise Tax
28-2503	Board of directors in counties with population of one million two hundred thousand or more persons; appointment	Chapter 6 - County Transportation Excise Tax
28-2504	Regional public transportation authority in counties with population in excess of four hundred thousand but fewer than one million two hundred thousand persons; establishment; fund	Chapter 6 - County Transportation Excise Tax
28-2505	Board of directors in counties with population in excess of four hundred thousand but fewer than one million two hundred thousand persons; appointment	Chapter 6 - County Transportation Excise Tax
28-2511	Planning by the board in counties with population of one million two hundred thousand or more persons	Chapter 6 - County Transportation Excise Tax
28-2512	Powers and duties of boards in counties with population of one million two hundred thousand or more persons	Chapter 6 - County Transportation Excise Tax
28-2513	Contracts; counties with population of one million two hundred thousand or more persons; eminent domain	Chapter 6 - County Transportation Excise Tax
28-2521	Regional bus system in counties with population of one million two hundred thousand or more persons	Chapter 6 - County Transportation Excise Tax
28-2522	Regional bus system in counties with population in excess of four hundred thousand but fewer than one million two hundred thousand persons	Chapter 6 - County Transportation Excise Tax
28-2531	Definitions	Chapter 6 - County Transportation Excise Tax
28-2532	Issuance of bonds	Chapter 6 - County Transportation Excise Tax
28-2533	Unlawful interest in real property by board member or employee; violation; classification	Chapter 6 - County Transportation Excise Tax
28-2601	Local transportation assistance fund	Chapter 6 - State Collected Transportation Revenues
28-2602	Distribution from fund; definitions	Chapter 6 - State Collected Transportation Revenues

Title 42 Taxation

Chapter 3.3 County Transportation Taxes

42-1482	County transportation excise tax for roads; counties with population of one million two hundred thousand or more persons	Chapter 6 - County Transportation Excise Tax
42-1483	County transportation excise tax for roads; counties with population exceeding four hundred thousand but fewer than one million two hundred thousand persons	Chapter 6 - County Transportation Excise Tax
42-1484	County transportation excise tax for roads; counties with population of four hundred thousand or fewer persons	Chapter 6 - County Transportation Excise Tax
42-1485	Administration	Chapter 6 - County Transportation Excise Tax
42-1491	County public transportation excise tax; counties with population of one million two hundred thousand or more persons	Chapter 6 - County Transportation Excise Tax

SUMMARY OF STATUTES
(Continued)

Title 48 Special Taxing Districts

Chapter 10 Special Road Districts

48-1401	Petition to form district; call for election	Chapter 6 - Special Road Districts
48-1402	Qualifications of voters; ballots	Chapter 6 - Special Road Districts
48-1403	Formation of district; appointment of trustees; land	Chapter 6 - Special Road Districts
48-1404	Election of trustees; vacancies	Chapter 6 - Special Road Districts
48-1405	Powers and duties of trustees	Chapter 6 - Special Road Districts
48-1406	Special road tax; limitation on amount; election to exceed limits	Chapter 6 - Special Road Districts
48-1407	Road improvement bonds; call for special election	Chapter 6 - Special Road Districts
48-1408	Notice of election	Chapter 6 - Special Road Districts
48-1409	Conduct of election	Chapter 6 - Special Road Districts
48-1410	Issuance of bonds	Chapter 6 - Special Road Districts
48-1411	Payment of bonds; tax levy	Chapter 6 - Special Road Districts
48-1412	Effect of special road tax upon collection of general county tax within district	Chapter 6 - Special Road Districts
48-1413	Dissolution of district	Chapter 6 - Special Road Districts

SUMMARY OF COURT DECISIONS

Statute Reference	Arizona Counties Highway Manual Reference	Citation and Summary
28-1591	Chapter 6 - State Collected Transportation Revenues	Op. Atty. Gen. No. 180-34 - Population figures for distribution of highway user revenues to a city which includes a newly annexed area must be based on the decennial or special census; the date of annexation of a new area by a city is not relevant.
28-1598	Chapter 6 - Distribution of State Collected Revenues	Op. Atty. Gen. No. 184-087 - Highway user revenues which are subject to restrictions of Const. Art. 9 § 14 may be used to construct county highway offices, storage buildings, garages, appurtenances, fencing, and other related facilities to house county highway officials and employees if the duties of the officials and employees are directly related to the quoted phase.
48-1401	Chapter 6 - Special Road Districts	Blount v. MacDonald (1916) 18 Ariz. 1, 155 P. 736 - Property that was part of a road district at the time the district issued bonds, and later was annexed by a city, is still subject to a tax to pay the bonds or interest.

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 7

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 42 Taxation		
Chapter 2	Real Property and Secured Personal Property Taxes	
42-301	Levy limits for counties, cities, towns, and community college districts	Chapter 7 - Statutory Requirements
42-303	Hearing on estimates; adoption of proposed budget; transfer of funds in an emergency	Chapter 7 - Statutory Requirements

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 8

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 11 Counties		
Chapter 1	Extent and Location of County Seats	
11-101	Division of state into counties	Chapter 8 - County-State Relations
Chapter 2	Board of Supervisors	
11-201	Powers of county	Chapter 8 - Statutory Authority and Forms of Agreement
11-251	Powers of board	Chapter 8 - Statutory Authority and Forms of Agreement
11-952	Intergovernmental agreements and contracts	Chapter 8 - Statutory Authority and Forms of Agreement
Title 18 Highways and Bridges		
18-201	Establishing, altering or abandoning local highways	Chapter 8 - Statutory Authority and Forms of Agreement
18-207	Maintenance of public roads and streets not within city or town	Chapter 8 - County-City Cooperation
18-208	Improvement of highway within city or town limit	Chapter 8 - County-City Cooperation
Title 26 Military Affairs, Etc.		
Chapter 2	Emergency Services	
26-305	Division of emergency services; duties; director; term; qualifications; compensation	Chapter 8 - County-State Relations
26-305.01	Nuclear emergency plan; duties of division and director	Chapter 8 - County-State Relations
26-306	Powers and duties of the director of emergency services	Chapter 8 - County-State Relations
26-307	Power of counties, cities, towns, and state agencies designated by the governor to make orders, rules, and regulations; procedure	Chapter 8 - County-State Relations
26-314	Immunity of state, political subdivisions and officers, agents and employees; limitation	Chapter 8 - County-State Relations
26-322	Determination of eligibility for flood relocation and land exchange	Chapter 8 - County-State Relations
Title 28 Transportation		
Chapter 1	Definitions and Penalties	
28-104	Department jurisdiction; organization	Chapter 8 - County-State Relations
28-106	Powers and duties of the board; definition	Chapter 8 - County-State Relations
28-106.01	Construction of new airports; approved by board; criteria; definitions	Chapter 8 - County-State Relations
28-108	Powers and duties	Chapter 8 - County-State Relations
28-112	Acceptance and expenditure of federal funds; limitations	Chapter 8 - County-State Relations
Title 32 Professions and Occupations		
Chapter 20	Real Estate	
32-2101	Definitions	Chapter 8 - County-State Relations
32-2181	Notice to commissioner of intention to subdivide lands; fractional interests; exceptions	Chapter 8 - County-State Relations

SUMMARY OF STATUTES
(Continued)

Title 37 Public Lands

Chapter 1 State Agencies and Officers

37-102	State land department; powers and duties	Chapter 8 - County-State Relations
37-131	State land commissioner; term; removal; compensation	Chapter 8 - County-State Relations
37-132	Powers and duties	Chapter 8 - County-State Relations

Title 41 State Government

Chapter 12 Public Safety

41-1711	Department of public safety; purpose; location; qualifications of director; responsibilities	Chapter 8 - County-State Relations
41-1713	Powers and duties of director	Chapter 8 - County-State Relations
41-1742	Powers of the division	Chapter 8 - County-State Relations
41-1743	Duties of the highway patrol	Chapter 8 - County-State Relations
41-1743.01	Use in emergencies when ordered by governor; assistance to cities and counties	Chapter 8 - County-State Relations
41-1744	Arizona highway patrol reserve	Chapter 8 - County-State Relations

SUMMARY OF COURT DECISIONS

Statute Reference	Arizona Counties Highway Manual Reference	Citation and Summary
11-101	Chapter 8 - County-State Relations	Transamerica Title Insurance Co. v. Cochise County (1976) 26 Ariz. App. 323, 548 P. 2d 416 - Counties can only exercise powers ceded by legislature.
11-251	Chapter 8 - County-State Relations	State Board of Control v. Buckstegge (1916) 18 Ariz. 277, 158 P. 837 - County supervisors can exercise no powers except those granted by statute.

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 9

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 11 Counties		
Chapter 6	Planning; Zoning; Building Codes	
11-802	County planning and zoning	Chapter 9 - Coordination Procedure
11-803	County planning and zoning commission; membership; terms; advisory officers	Chapter 9 - Coordination Procedure
11-804	Organization of commission	Chapter 9 - Coordination Procedure
11-806	Powers and duties; comprehensive plan	Chapter 9 - Coordination Procedure
11-806.01	Subdivision regulation; platting roles; penalty	Chapter 9 - Coordination Procedure

SUMMARY OF COURT DECISIONS

Statute Reference	Arizona Counties Highway Manual Reference	Citation and Summary
11-802	Chapter 9	Pima County v. Arizona Title Ins. & Trust Co. (App. 1977) 115 Ariz. 344, 565 P. 2d 524 - Where original approved tentative plat, which did not require paved streets, had lapsed, the second tentative plat was subject to county regulations regarding paving. The regulation was adopted before the second plat was filed.

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 10

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 11 Counties		
Chapter 2	Board of Supervisors	
11-251	Powers of Board	Chapter 10 - Introduction
Title 18 Highways and Bridges		
Chapter 2	County Highways	
18-201	Establishing, alterning or abandoning local highways	Chapter 10 - Introduction
18-207	Maintenance of public roads and streets not within city or town	Chapter 10 - Courtesy Maintenance
18-208	Improvement of highway within city or town limit	Chapter 10 - Courtesy Maintenance
Title 28 Transportation		
Chapter 6	Uniform Act Regulating Traffic on Highways	
28-650	Warning devices at construction sites	Chapter 10 - Introduction

SUMMARY OF COURT DECISIONS

Statute Reference	Arizona Counties Highway Manual Reference	Citation and Summary
18-201	Chapter 10 - Legal Implications	Matts v. City of Phoenix (App. 1983) 137 Ariz. 116, 669 P.2d 94, action dismissed 137 Ariz. 111, 669 P.2d 89. For a municipality to be liable for failure to repair a street, it must have received notice of the defect.
18-201	Chapter 10 - Legal Implications	City of Phoenix v. Kenly (1974) 21 Ariz. App. 394, 519 P.2d 1159. Municipality has a duty to exercise reasonable care so that its streets are safe for use by traveling public. When municipality knows, or, in the exercise of reasonable care, should know that a street is unsafe and fails to remedy the situation, it is negligent.
18-201	Chapter 10 - Legal Implications	Walker v. Coconino County (1970) 12 Ariz. App. 547, 473 P.2d 472. To determine whether a municipality is liable for injuries sustained because of icy street conditions, due regard must be given to whether icy conditions were general or isolated, whether the government body had notice, and whether reasonable time for correcting condition elapsed after notice.
18-201	Chapter 10 - Legal Implications	Jensen v. Maricopa County (1974) 22 Ariz. App. 27, 522 P.2d 1096. The duty to keep roads reasonably safe for the traveling public extends to obstructions and hazards that impede the normal use of roads.
18-201	Chapter 10 - Legal Implications	Op. Atty. Gen. No. 61-59. County could not establish design standards as a prerequisite to extending maintenance of public roads outside incorporated cities and towns.

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 11

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 28 Transportation		
Chapter 6	Uniform Act Regulating Traffic on Highways	
28-602	Definitions	Chapter 11 - All sections
28-611	Powers of Governor	Chapter 11 - All sections
28-621	Provisions of chapter refer to vehicles upon the highways, exceptions	Chapter 11 - All sections
28-623	Public officers and employees to obey chapter; exceptions	Chapter 11 - All sections
28-626	Provisions of chapter uniform throughout state	Chapter 11 - All sections
28-627	Powers of local authorities	Chapter 11 - All sections
28-641	State sign manual	Chapter 11 - All sections
28-642	Signs on state highways	Chapter 11 - All sections
28-643	Local traffic control devices	Chapter 11 - All sections
28-644	Obedience to and required traffic control devices	Chapter 11 - All sections
28-645	Traffic control signal legend	Chapter 11 - Signals
28-646	Pedestrian control signals	Chapter 11 - Signals
28-647	Flashing signals	Chapter 11 - Signals
28-648	Display of unauthorized signs, signals, or markings	Chapter 11 - All sections
28-649	Interference with official traffic control devices or railroad signs or signals	Chapter 11 - All sections
28-650	Warning devices at construction sites	Chapter 11 - Traffic Control Through Construction Zones

SUMMARY OF COURT DECISIONS

Statute Reference	Arizona Counties Highway Manual Reference	Citation and Summary
28-624	Chapter 11 - All sections	Op. Atty. Gen. No. 61-64 - Where state and local regulation exist on a subject, both may regulate; however, where state legislature has acted, its declaration is binding. If legislature has delegated authority to local authorities, the local authorities may act within limits imposed.
28-641	Chapter 11 - All sections	State v. Watson (1967) 7 Ariz. App. 81, 436 p. 2d 175 - Manual is proper as evidence of standard custom or usage.
28-643	Chapter 11 - All sections	Rodgers v. Ray (1969) 10 Ariz. App. 119, 457 P. 2d 281 - There is a duty to warn citizens of hazardous conditions on a public road.

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 12

SUMMARY OF STATUTES

Statute	Reference to Arizona Counties Highway Manual
Title 28 Transportation	
Chapter 1 Definitions and Penalties	
28-104 Department jurisdiction; organization	Chapter 12 - Agency Interaction
28-106 Powers and duties of the board; definition	Chapter 12 - Agency Interaction
Chapter 6 Uniform Ad Regulating Traffic on Highways	
28-666 Immediate reports of accidents	Chapter 12 - Accident Records
28-667 Written reports of accidents	Chapter 12 - Accident Records
28-669 Accident report forms	Chapter 12 - Accident Records
28-674 Department to tabulate and analyze accident reports	Chapter 12 - Accident Records
28-675 Any incorporated city may require accident reports	Chapter 12 - Accident Records
Title 11 Counties	
Chapter 5 County Improvement Districts	
11-562 Duties	Chapter 12 - Introduction

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 13

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 10 Corporations and Associations		
Chapter 2 Corporations and Associations Not for Profit		
10-827	Powers of a generation and transmission cooperative	Chapter 13 - Public Utilities
10-836	Use of roads and streets; notice; protest	Chapter 13 - Public Utilities
Title 11 Counties		
Chapter 2 Board of Supervisors		
11-251	Powers of board	Chapter 13 - Statutory Authority
Title 12 Courts and Civil Proceedings		
Chapter 8 Special Actions and Proceedings Relating to Property		
12-1111	Purposes for which eminent domain may be exercised	Chapter 13 - Condemnation
12-1112	Prerequisites to taking property by condemnation	Chapter 13 - Condemnation
12-1113	Estates in land subject to condemnation	Chapter 13 - Condemnation
12-1114	Private property subject to condemnation	Chapter 13 - Condemnation
12-1115	Right of state to enter and survey property for public use	Chapter 13 - Condemnation
12-1116	Actions for condemnation; immediate possession; money deposit	Chapter 13 - Condemnation
12-1117	Complaint	Chapter 13 - Condemnation
12-1118	Joint or separate actions; consolidations	Chapter 13 - Condemnation
12-1119	Summons; contents; service	Chapter 13 - Condemnation
12-1120	Right to defend action	Chapter 13 - Condemnation
12-1121	Powers of court; precedence	Chapter 13 - Condemnation
12-1122	Ascertainment and assessment of value, damages and benefits	Chapter 13 - Condemnation
12-1123	Accrual of right to compensation and damages; limitation	Chapter 13 - Condemnation
12-1124	Payment of compensation; effect of failure to pay	Chapter 13 - Condemnation
12-1125	Payment of damages in proceedings by railroad	Chapter 13 - Condemnation
12-1126	Final order of condemnation; recording; vesting of property	Chapter 13 - Condemnation
12-1127	Possession by plaintiff after judgment or pending appeal; receipt of payment as abandonment; custody of money paid into court; costs of new trial	Chapter 13 - Condemnation
12-1128	Costs and jury fees	Chapter 13 - Condemnation
12-1201	Private way of necessity defined	Chapter 13 - Right of Access
12-1202	Right to private way of necessity; limitation	Chapter 13 - Right of Access

SUMMARY OF STATUTES
(Continued)

Title 18 Highways and Bridges		
Chapter 2 County Highways		
18-201	Establishing, altering, or abandoning local highways	Chapter 13 - Establishment by Board Action
18-202	Survey of proposed highway; notice of hearing	Chapter 13 - Establishment by Board Action
18-203	Hearing	Chapter 13 - Establishment by Board Action
18-206	Exercise of eminent domain by county to obtain right-of-way for federal-county highway	Chapter 13 - Establishment by Board Action
Title 28 Transportation		
Chapter 6 Uniform Act Regulating Traffic on Highways		
28-602	Definitions	Chapter 13 - Control of Access
Chapter 13 Highway Division		
28-1861	State highways and routes defined	Chapter 13 - Dedication of Highway Right-of-Way
28-1862	Width of highways; errors in establishing	Chapter 13 - Dedication of Highway Right-of-Way
Chapter 14 Disposition of Public Roadways		
28-1901	Definitions	Chapter 13 - Vacation or Abandonment
28-1902	Disposition of unnecessary public roadways; application to other public uses; sale to abutting owners; vacation with title vesting in abutting owner; vacation with title vesting in owners association	Chapter 13 - Vacation or Abandonment
28-1903	Reservation of easements	Chapter 13 - Vacation or Abandonment
28-1904	Notice; hearing; appraisal	Chapter 13 - Vacation or Abandonment
28-1905	Disposition by joint action	Chapter 13 - Vacation or Abandonment
28-1906	Resolution of disposition; effective when recorded	Chapter 13 - Vacation or Abandonment
28-1907	Extinguishment of easements	Chapter 13 - Vacation or Abandonment
28-1908	Access to public road	Chapter 13 - Vacation or Abandonment
Chapter 16 Beautification of Highway		
28-2101	Definitions	Chapter 13 - Signs
28-2107	Control of advertising displays along interstate, secondary, and primary highways by municipality or county	Chapter 13 - Signs
Title 32 Professions and Occupations		
Chapter 20 Real Estate		
32-2181	Notice to commissioner of intension to subdivide lands; fractional interests; exceptions; deed restrictions	Chapter 13 - Establishment by Use
Title 48 Special Taxing Districts		
Chapter 19 Sanitary Districts		
48-1550	Use of public rights-of-way	Chapter 13 - Public Utilities
48-2012	Rights-of-way	Chapter 13 - Public Utilities

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 14

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 10 Corporations and Associations		
Chapter 2 Electric Cooperatives		
10-770	Use of roads and streets; notice; protest	Chapter 14 - Coordination with Utilities on County Highways
10-827	Powers of a generation and transmission cooperative	Chapter 14 - Coordination with Utilities on County Highways
10-828	Membership in a generation and transmission cooperative; voting; nonliability	Chapter 14 - Coordination with Utilities on County Highways
10-836	Use of roads and streets; notice; protest	Chapter 14 - Coordination with Utilities on County Highways
Title 18 Highways and Bridges		
Chapter 2 County Highways		
18-201	Establishing, altering, or abandoning local highways	Chapter 14 - Coordination with Utilities on County Highways
Title 28 Transportation		
Chapter 14 Disposition of Public Roadways		
28-1903	Reservation of easements	Chapter 14 - Coordination with Utilities on County Highways
Title 30 Power		
Chapter 1 Arizona Power Authority		
30-123	Development programs for utilization of power; use of state property; right of eminent domain	Chapter 14 - Coordination with Utilities on County Highways
Title 40 Public Utilities and Carriers		
Chapter 2 Public Service Corporations Generally		
40-283	Construction and operation of transportation lines within state; control and regulation of use of streets in municipal corporations; franchises or licenses granted by municipal authorities; notice by board of supervisors of consideration of franchise; action by electors	Chapter 14 - Coordination with Utilities on County Highways
40-332	Power of commission to order joint use of facilities belonging to public service corporation	Chapter 14 - Coordination with Utilities on County Highways
40-337	Power of commission over railroad crossings	Chapter 14 - Coordination with Utilities on County Highways
40-337.01	Installation of automatic warning devices; agreements for sharing cost; apportionment of cost	Chapter 14 - Coordination with Utilities on County Highways
40-337.02	Allocation of funds for automatic warning signals at railroad crossings	Chapter 14 - Coordination with Utilities on County Highways
40-337.03	Determination of location of automatic warning signals	Chapter 14 - Coordination with Utilities on County Highways
40-360.22	Excavations; determining location of underground facilities; providing information	Chapter 14 - Coordination with Utilities on County Highways
40-360.23	Making excavation in careful, prudent manner; liability for negligence	Chapter 14 - Coordination with Utilities on County Highways
40-360.24	Notice of damage to underground facility	Chapter 14 - Coordination with Utilities on County Highways
40-360.25	Injunction; mandamus	Chapter 14 - Coordination with Utilities on County Highways

SUMMARY OF STATUTES
(Continued)

Chapter 2 Public Service Corporations Generally		
40-360.26	Damage of underground facility; liability to owner; homeowner exemption	Chapter 14 - Coordination with Utilities on County Highways
40-360.27	Liability for attorney's fee	Chapter 14 - Coordination with Utilities on County Highways
40-360.28	Civil penalty; liability	Chapter 14 - Coordination with Utilities on County Highways
40-360.29	Charters and ordinances of governments not affected	Chapter 14 - Coordination with Utilities on County Highways
40-360.41	Definitions	Chapter 14 - Coordination with Utilities on County Highways
40-360.42	Activity near overhead line; safety restrictions	Chapter 14 - Coordination with Utilities on County Highways
40-360.43	Activity in close proximity to lines; clearance arrangements; procedure; payment; notice	Chapter 14 - Coordination with Utilities on County Highways
40-360.44	Violation	Chapter 14 - Coordination with Utilities on County Highways
40-360.45	Exemptions	Chapter 14 - Coordination with Utilities on County Highways
40-443	Pipeline safety revolving fund	Chapter 14 - Coordination with Utilities on County Highways
Title 48 Special Taxing Districts		
Chapter 11 Power Districts		
48-1550	Use of public rights of way	Chapter 14 - Coordination with Utilities on County Highways
48-1551	Construction of works across private and public property	Chapter 14 - Coordination with Utilities on County Highways
Chapter 12 Electrical Districts		
48-1702	Petition for organization	Chapter 14 - Coordination with Utilities on County Highways
48-1749	Right to use public ways; nature of use	Chapter 14 - Coordination with Utilities on County Highways
Chapter 14 Sanitary Districts		
48-2012	Rights of Way	Chapter 14 - Coordination with Utilities on County Highways

SUMMARY OF COURT DECISIONS

Statute Reference	Arizona Counties Highway Manual Reference	Citation and Summary
48-1550 40-283	Chapter 14	Op. Atty. Gen. No 58-91 - When a street right-of-way becomes a state highway right-of-way, it is not necessary to reimburse the utility for costs of moving utilities to a new location within the state's right-of-way.
40-283	Chapter 14	Paradise Valley Water Co. v. Hart (1964) 96 Ariz. 361, 395 P. 2d 716. A public utility was required to relocate its facilities at its own expense when county improvement district paved road under which utility's facilities lay. The utility's franchise imposed the condition that board of supervisors has the power to impose restrictions and regulations on roads as deemed best for the public.

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 15

SUMMARY OF STATUTES

Statute	Reference to Arizona Counties Highway Manual
Title 41 State Government	
Chapter 3 Administrative Boards and Commissions	
41-516 Exemption from standards for parkways and historic and scenic roads	Chapter 15 - Standards for Parkways, Historic and Scenic Roads

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 16

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 11 Counties		
Chapter 2	Board of Supervisors	
11-251	Powers of board	Chapter 16 - All Sections
11-254	Contracts for supplies and buildings; competitive bids	Chapter 16 - Equipment Acquisition
Chapter 3	County Officers	
11-562	Duties	Chapter 16 - All Sections
Chapter 4	Fiscal Provisions	
11-651	Lease-purchase agreements; terms and conditions	Chapter 16 - Equipment Acquisition
Title 18 Highways and Bridges		
Chapter 2	County Highways	
18-217	Bids for construction, reconstruction, equipment or supplies; procedures; bond	Chapter 16 - Equipment Acquisition
Title 28 Transportation		
Chapter 6	Uniform Act Regulating Traffic on Highways	
28-623	Public officers and employees to obey chapter; exceptions	Chapter 16 - Equipment Operations

SUMMARY OF COURT DECISIONS

Statute Reference	Arizona Counties Highway Manual Reference	Citation and Summary
11-251	Chapter 16 - Equipment Acquisition	Neil B. McGinnis Equipment Co. v. Riggs (1967) 4 Ariz. App. 556, 422 P. 2d 187 - County's call for bids for equipment which included condition that county could require successful bidder to repurchase the equipment at a guaranteed price was improper.

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 17

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Manual
Title 11 Counties		
Chapter 2	Board of Supervisors	
11-254	Contracts for supplies and buildings; competitive bids	Chapter 17 - Requirements for Highway and Facilities Construction Contracts
11-254.01	Alternative county purchasing procedures; purchases to be based upon competitive bids; content and issuance of invitations and specifications; basis of award and rejection of bids; applicability	Chapter 17 - Requirements for Highway and Facilities Construction Contracts
Title 18 Highways and Bridges		
Chapter 2	County Highways	
18-217	Bids for construction, reconstruction, equipment or supplies; procedure; bond	Chapter 17 - Requirements for Highway and Facilities Construction Contracts
Title 34 Public Buildings		
Chapter 1	Employment of Special Services	
34-101	Definition of agent, authorized representatives	Chapter 17 - Procurement of Consultant Services
34-102	Employment of architect or engineer for work on public buildings and structures; contract	Chapter 17 - Procurement of Consultant Services
Chapter 2	Employment of Contractors	
34-201	Notice of intention to receive bids and enter contract; procedure; doing work without advertising for bids	Chapter 17 - Requirements for Highways and Facilties Construction Contracts
34-221	Contract with successful bidder; payments to contractor; security	Chapter 17 - Requirements for Highways and Facilities Construction Contracts
34-222	Surety bond required; suit on bond; limitations	Chapter 17 - Requirements for Highways and Facilities Construction Contracts
34-223	Payment bond provisions	Chapter 17 - Requirements for Highways and Facilities Construction Contracts
34-226	Indemnity agreements in construction and architect-engineer contracts void; definition	Chapter 17 - Requirements for Highways and Facilities Construction Contracts
34-241	Eligibility of contractors on public works; preferred contractors; eligibility of subcontractor; qualifying definitions	Chapter 17 - Requirements for Highways and Facilities Construction Contracts
34-242	Preference for locally manufactured materials in awarding contracts for furnishing materials	Chapter 17 - Requirements for Highways and Facilities Construction Contracts
34-244	Provisions inapplicable to federal aid contracts when federal law conflicts	Chapter 17 - Requirements for Highways and Facilities Construction Contracts
34-301	Employment of aliens on public works prohibited	Chapter 17 - Requirements for Highways and Facilities Construction Contracts
34-302	Residence requirements for employees	Chapter 17 - Requirements for Highways and Facilities Construction Contracts

SUMMARY OF COURT DECISIONS

Statute Reference	Arizona Counties Manual Reference	Citation and Summary
34-101	Chapter 17 - Requirements for Highways and Facilities Construction Contracts	School Dist. No. One of Pima County V. Hastings (1970) 106 Ariz. 175, 472 p.2d 44 - Where contract is incompatible with statute, statute governs.
34-201	Chapter 17 - Requirements for Highways and Facilities Construction Contracts	Op. Atty. Gen. No. 180-15 - Splitting a purchase must have a reasonable basis and may not be used to avoid bidding requirements.
34-201	Chapter 17 - Requirements for Highways and Facilities Construction Contracts	Op. Atty. Gen. No. 75-11, p.66, 1975-1976 - Use of proprietary specifications where competitive bidding is required is unlawful except where supported by strong technological justifications.
34-241	Chapter 17 - Requirements for Highways and Facilities Construction Contracts	City of Scottsdale V. Deem (1976) 27 Ariz. App. 480, 556 p.2d328 - There is no inherent conflict between federal funding and Arizona preference statute.

STATUTES AND COURT DECISIONS KEYED TO CHAPTER 18

SUMMARY OF STATUTES

Statute		Reference to Arizona Counties Highway Manual
Title 26 Military Affairs and Civil Defense		
Chapter 2 Emergency Service		
26-301	Definitions	Chapter 18 - Background
26-307	Powers of counties, cities, towns, and state agencies designated by the governor to make orders, rules, and regulations; procedure	Chapter 18 - Background
26-308	Powers of local government, local emergency services establishment, organization	Chapter 18 - Responsibilities
26-309	Mutual aid, responsibilities of agencies and officials, interstate and federal agreements	Chapter 18 - Responsibilities
26-311	Local emergency, power of political subdivisions, state agency assistance	Chapter 18 - Responsibilities
26-314	Immunity of state, political subdivisions and officers, agents and employees, limitation	Chapter 18 - Responsibilities
Title 35 Public Finances		
Chapter 1 Budgetary and Fiscal Provisions for State Agencies		
35-192	Authorization for declaration of disaster, authorization for liabilities and expenses, priority and limitations, review and report of expenditures	Chapter 18 - Responsibilities

20. TEXT OF STATUTES

This chapter contains selected sections from the Arizona Revised Statutes, updated 1985. Users are reminded that the Arizona Counties Highway Manual has been compiled for information and reference purposes. In the event of differences between the laws contained in this edition and the laws contained in the Arizona Revised Statutes, the Arizona Revised Statutes shall take precedence.

The order of the statutes is keyed to the chapters of the Arizona Counties Highway Manual. It should be noted that there are no statutes referred to in Chapter 1 of the Arizona Counties Highway Manual, therefore the statutes begin with those referred to in Chapter 2.

Readers should note that the statutes are printed in two type styles, depending on whether the statute was printed in the supplementary pamphlet or in the original text. The statutes printed from the supplementary pamphlet have a smaller and more condensed typestyle, while the statutes printed from the original text have a larger typestyle.

TEXT OF STATUTES KEYED TO CHAPTER 1

No statutes related to Chapter 1.

TEXT OF STATUTES KEYED TO CHAPTER 2

Title 42 Taxation

Chapter 2 Real Property and Secured Personal Property Taxes

42-301 Levy limits for counties, cities, towns, and community college districts

42-303 Hearing on estimates; adoption of proposed budget; transfer of funds in an emergency

Title 42 Taxation

§ 42-301. Levy limits for counties, cities, towns and community college districts

A. In addition to any other limitations that may be imposed, the counties, cities, including charter cities, towns and community college districts shall not levy primary property taxes in any year after 1980 in excess of an aggregate amount computed as follows:

1. Determine the maximum allowable levy of primary property taxes for such jurisdiction for the prior tax year plus taxes for the prior year collectible pursuant to § 42-236.

2. Multiply the dollar amount determined in paragraph 1 by 1.02.

3. Determine the assessed value for the current tax year of all property in such entity that was subject to tax in the preceding tax year. The assessed value shall include the estimate of the assessed value upon which the taxes collectible pursuant to § 42-236 and included in paragraph 1 are based.

4. Divide the dollar amount determined in paragraph 3 by 100 and then divide the dollar amount determined in paragraph 2 by the resulting quotient.

5. Determine the finally equalized valuation of all property, less exemptions, appearing on the tax roll for the current tax year including an estimate of the unsecured property tax roll determined pursuant to § 42-304.01.

6. Divide the dollar amount determined in paragraph 5 by one hundred and then multiply the resulting quotient by the rate determined in paragraph 4. The resulting product shall be the maximum allowable levy of primary property taxes for the current fiscal year.

B. If the governing board of a county or community college district determines that the amounts permitted to be raised by primary property taxes in any year pursuant to subsection A of this section are insufficient for the purpose of providing revenue to the jurisdiction, the governing board may adopt a resolution by an affirmative vote of at least two-thirds of the membership of the board to conduct an override election to supplement the amount to be raised by the levy of primary property taxes by an additional amount. The maximum permitted additional amounts that the board may request the voters to approve pursuant to this subsection are ten per cent of the amounts permitted to be levied by subsection A of this section. The resolution adopted shall contain the additional amounts to be raised which the board is requesting the voters to authorize to be levied and the date the election is to be held. If a majority of the qualified electors voting at the election approves, the governing body may levy the additional amount as authorized in the override election. The additional amount approved by the voters shall not be included in the computation of the levy limitation for any subsequent year, shall be a levy of secondary property taxes and shall not be subject to the limitations on taxes specified in article IX, § 18, Constitution of Arizona.

C. If an override election is called pursuant to subsection B of this section, the governing body of the community college district or the board of supervisors of the county shall submit the question to the qualified electors of the county or district at a special election held on the third Tuesday in May. Except as otherwise specified in this section, the election shall be held in accordance with the provisions applying to bond issuance elections in title 35, chapter 3, article 3.[1]

D. If no primary property taxes were levied for the previous tax year by the county, city, town or community college district, a proposed amount to be raised by primary property taxes shall be submitted for approval of the voters at an election to be held on the third Tuesday in May prior to the beginning of the fiscal year in as nearly as practicable the same manner as provided in title 35, chapter 3, article 3. The ballot shall state that the amount to be raised by primary property taxes for that fiscal year shall be the base for determining levy limitations for the county, city, town or community college district for subsequent fiscal years. If a majority of the qualified electors voting approves the proposed levy amount for primary property taxes, it shall be the levy applicable for the county, city, town or community college district for the next fiscal year. If the proposed levy amount is not approved, a levy amount shall be determined by the governing body of the county, city, town or community college district to be as nearly as practicable the same amount as the primary property tax levy limitation of an existing county, city, town or community college district with a similar population, geographic

features and service levels, but in no event in excess of ninety-five per cent of the disapproved levy amount.

E. The limitations provided in this section shall not apply to levies made pursuant to § 15-994.

F. The levy limitation for counties, cities, towns and community college districts is deemed to be increased each year to the maximum permissible limit pursuant to subsection A of this section, whether or not the county, city, town or community college district actually levies taxes in any year up to the maximum permissible amount.

G. The county assessor shall transmit and certify to the governing board of each county, city, town and community college district within the county the values necessary to calculate the levy limit provided in subsection A of this section. The values shall be transmitted on or before the tenth day prior to the day the county, city, town or community college district is required to fix, levy and assess the amount to be raised from primary property taxation. To assist the county school superintendent in computing equalization assistance for education as provided in § 15-991, the county assessor shall determine the limited property value for the current tax year of each school district in the county and transmit the values to the county school superintendent. The county assessor shall transmit the values on or before the tenth day prior to the day the board of supervisors is required to levy school district taxes as provided in § 15-992.

H. The governing board of each county, city, town and community college district, on or before the seventh day prior to the day the county, city, town or community college district is required to fix, levy and assess the amount to be raised from primary property taxation, shall make available for public inspection the values determined in each numbered paragraph of subsection A of this section.

I. Any monies received from primary property taxation in excess of the sum of the amount of taxes collectible pursuant to § 42-236 and the maximum allowable levy as determined pursuant to subsection A of this section shall be maintained in a separate fund and shall be used to reduce the primary property tax levy in the following year.

§ 42-303. Hearing on estimates; adoption of proposed budget; transfer of funds in an emergency

A. The governing board of the county, city or town shall hold a public hearing and special board meeting on the seventh day before the day on which it levies taxes as designated in the notice provided by § 42-302, subsection F, and any taxpayer may appear and be heard in favor of or against any proposed expenditure or tax levy.

B. When the hearing is concluded, the governing board shall convene in a special board meeting and finally determine and adopt estimates of proposed expenditures for the various purposes set forth in the published proposal and such adopted estimates shall constitute the budget of the county, city or town for the current fiscal year.

C. The total amounts in the budget proposed for expenditure shall not exceed the total of amounts proposed for expenditure in the published estimates.

D. No expenditures shall be made for a purpose not included in such budget, and no expenditure shall be made nor debt, obligation or liability incurred or created, in any fiscal year in excess of the amount specified for each purpose in the budget for such fiscal year as finally adopted except as provided by law, whether or not the county, city or town has at any time received, or has on hand, funds or revenue in excess of those required to meet expenditures, debts, obligations and liabilities incurred under such budget.

E. In the case of an emergency, the governing board, on the affirmative vote of a majority of the members at a public meeting, may authorize the transfer of funds between budget items of an adopted budget if the funds are available and the transfer does not result in a violation of the limitations provided in article IX, §§ 19 and 20, Constitution of Arizona.

TEXT OF STATUTES KEYED TO CHAPTER 3

Title 11 Counties

Chapter 6 County Planning and Zoning

11-806.01 Subdivision regulations; platting rules; penalty

Title 18 Highways and Bridges

Chapter 2 County Highways

18-201 Establishing, altering, or abandoning local highways

18-202 Survey of proposed highway; notice of hearing

18-203 Hearing

18-206 Exercise of eminent domain by county to obtain right-of-way for federal-county highway

18-207 Maintenance of public roads and streets not within city or town

18-209 Jurisdiction of streets in unincorporated towns

18-210 Abandonment of streets and alleys

Title 11 Counties

§ 11-806.01. Subdivision regulation; platting rules; violation; classification

A. The county board of supervisors shall regulate the subdivision of all lands within its corporate limits, except subdivisions which are regulated by municipalities.

B. No plat of a subdivision of land within the area of jurisdiction of such county shall be accepted for recording or recorded until it has been approved by the board. The approval of the board shall be endorsed in writing on the plat and shall also include specific identification of and approval of the assurances except those for hiking and equestrian trails required by this section. Where a county planning and zoning commission exists, the plat shall first have been referred to such commission for its consideration and the board shall have received the recommendation of the commission. If the subdivision is within a groundwater active management area, as defined in § 45-402, the plat shall not be approved unless accompanied by a certificate of assured water supply issued by the director of water resources, unless the subdivision is located within an area designated as having an assured water supply by the director of water resources pursuant to § 45-576, subsection D, E, G or I or is exempt from such requirement pursuant to § 45-576, subsection K. The board shall note on the face of the plat that a certificate of assured water supply has been submitted with the plat or that the proposed subdivision is within an area designated as having an assured water supply, pursuant to § 45-576, subsection D, E, G or I.

C. Any person causing a final plat to be recorded without first submitting the plat and obtaining approval of the board shall be guilty of a class 2 misdemeanor. No county recorder shall accept for recording or record any plat which has not been approved as provided by this article.

D. The ground of refusal or approval of any plat submitted, including citation of or reference to the rule or regulation violated by the plat, shall be stated upon the record of the board.

E. The commission shall recommend to the board and the board shall adopt general rules and regulations of uniform application governing plats and subdivisions of land within its area of jurisdiction. The regulations adopted shall secure and provide for the proper arrangement of streets, or other highways in relation to existing or planned streets, or highways or to the official map for adequate and convenient open spaces for traffic, utilities, drainage, access of fire fighting apparatus, recreation, light and air. The board may adopt general rules and regulations to provide for the proper arrangement of hiking and equestrian trails in relation to existing or planned streets or highways and if adopted, such hiking and equestrian trails shall conform to the official map for adequate and convenient open spaces for traffic, utilities, drainage, access of fire fighting apparatus, recreation, light and air. The general rules and regulations may provide for modification by the commission in planned area development or specific cases where unusual topographical or other exceptional conditions may require such action. The regulations shall include provisions as to the extent to which streets and other highways shall be graded and improved and to which water, sewer or other utility mains, piping or other facilities shall be installed or provided for on the plat as a condition precedent to the approval of the final plat.

F. Boards of supervisors of counties shall prepare specifications and make orders, inspections, examinations and certificates as may be necessary to protect and complete the provisions and make them effective. The regulations shall require the posting of performance bonds, assurances or such other security as may be appropriate and necessary to assure the installation of required street, sewer, electric and water utilities, drainage, flood control and improvements meeting established minimum standards of design and construction.

G. Before adoption of rules and regulations by the board or any amendment thereof as provided in this article, a public hearing shall be held by the commission. A copy of the rules and regulations shall be certified by the commission to the county board of supervisors which shall hold a public hearing after notice of time and place has been given by one publication fifteen days prior to the public hearing in a newspaper of general circulation in the county.

H. Approval of a plat shall not be deemed to constitute or effect an acceptance by the county for designation of any street, highway or other way or open space shown upon the plat into the county maintenance system except for hiking and equestrian trails which shall be constructed and maintained by the county. However, at such time as the streets, highways or other ways are fully completed in accordance with the approved plat and written specifications made by the county board, the county shall accept such streets, highways and other ways into the county maintenance system within one year of completion.

Title 18 Highways and Bridges

§ 18-201. Establishing, altering or abandoning local highways

The board of supervisors may establish, alter or abandon highways in the county and other legal subdivisions, and acquire real property for such purposes by purchase, donation, dedication, condemnation or other lawful means. Such highways may be established or altered by presentation of a petition signed by ten or more resident taxpayers of the county to the board of supervisors, or upon petition to the board by the governing body of a legal subdivision, praying that a highway be established or altered and giving its beginning, terminus and its general course and direction. The board may either reject the petition or act thereon as prescribed by this article. The board may abandon or vacate such highways by resolution as provided in title 28, chapter 14, article 1.[1]

§ 18-202. Survey of proposed highway; notice of hearing

A. Upon filing the petition, the board shall direct the county engineer to make a survey of the proposed highway and file with the board a report of the proposed highway, together with a map as surveyed, showing thereon the legal subdivision of the lands traversed by the survey. If a survey and maps have already been made for any purpose, such data and maps may be used instead.

B. The board shall thereupon set a date for a public hearing on the petition. The board shall give notice to the public by advertising once a week for two consecutive weeks in a newspaper in the county. The notice shall state the purpose and the date of the ensuing hearing, and shall direct all persons desiring to object to the action prayed for in the petition to file with the board a statement in writing setting forth their objection or opposition, and to show cause why the petition should not be granted.

§ 18-203. Hearing

A. At the hearing provided for in § 18-202 the board shall consider the feasibility, advantages and necessity of the highway sought to be established, and, if in the opinion of the board the proposed highway is a public necessity, the board may approve the establishment thereof by resolution, and may accept any right of way or property donated to the state or the county.

B. A landowner or party affected may make and execute a written waiver or release of all compensation or any part thereof, or may grant an easement or other conveyance of property for such purposes.

§ 18-206. Exercise of eminent domain by county to obtain right of way for federal-county highway

A. When a board of supervisors enters into an agreement with the United States acting through its duly authorized officers or agents, pursuant to an act of congress for acquiring a right of way for a highway in a county, and the United States has constructed a part of the highway described in the agreement, but the board of supervisors has been unable under the provisions of §§ 18-201 and 18-202 to acquire a right of way necessary for completion of the highway, it is the duty of the county attorney of the county upon demand by the agent of the United States having charge of the work to be done by the United States under the agreement, and upon resolution by the board of supervisors directing him so to do, to file in the superior court of the county in which the land is located, proceedings for condemnation as provided in § 12-1116 in the name of the county.

B. The county treasurer shall make the deposit required by the court as provided by § 12-1116, and upon final judgment by the court assessing the value of the lands sought to be condemned and the damages, if any, to pay the amount found due. If the money so deposited or paid by the treasurer has not been appropriated or set aside for that purpose by the board of supervisors, the board shall set up the amount in its next budget and levy a tax for that purpose.

C. The provisions of this section shall not apply to highways designated as national highways, state highways or state routes.

§ 18-207. Maintenance of public roads and streets not within city or town

A. The board of supervisors may expend public funds for maintenance of public roads and streets other than legally designated state and county highways located without the limits of an incorporated city or town. Before expending public funds thereon, such roads or streets shall be laid out, opened and constructed without cost to the county, and fully completed in accordance with a plat approved pursuant to §§ 11-802 and 11-806.01, and in accordance with standard engineering road specifications adopted by the county board of supervisors to insure uniform compliance.

B. Public funds may be expended by the board of supervisors for maintenance of public roads and streets laid out, constructed and opened prior to June 13, 1975 even if such roads and streets were not constructed in accordance with subsection A of this section.

C. Maintenance on public roads and streets shall not be construed to include purchasing or laying rock products, cement or petroleum product materials, except that maintenance on public roads and streets which are paved with cement or petroleum product materials may include seal coating and patching.

§ 18-209. Jurisdiction of streets in unincorporated towns

The streets of an unincorporated town shall be considered public highways and under control of the board of supervisors of the county in which the town is located. The board may designate what streets in such towns shall be considered public highways and give appropriate names to them.

§ 18-210. Abandonment of streets and alleys

The board of supervisors may vacate and abandon streets, alleys and avenues outside the boundaries of incorporated cities and towns shown upon recorded plats as dedicated to the public, or to which the public or county may have received title by deed, in like manner and procedure as for abandoning county highways.

TEXT OF STATUTES KEYED TO CHAPTER 4

Title 11 Counties

Chapter 2 Board of Supervisors

11-201 Powers of county

11-211 Membership; qualifications; term

11-251 Powers of board

Chapter 7 Intergovernmental Operations

11-951 Definitions

11-952 Intergovernmental agreements and contracts

Title 18 Highways and Bridges

Chapter 2 County Highways

18-201 Establishing, altering, or abandoning local highways

Title 11 Counties

§ 11-201. Powers of county

A. The powers of a county shall be exercised only by the board of supervisors or by agents and officers acting under its authority and authority of law. It has the power to:

1. Sue and be sued.

2. Purchase and hold lands within its limits.

3. Make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers.

4. Make such orders for the disposition or use of its property as the interests of the inhabitants of the county require.

5. Levy and collect taxes for purposes under its exclusive jurisdiction as are authorized by law.

B. Except for the purposes of acting as an intermediary in a license transfer or sale, a county shall not own a commercial cable television system or any other pay television system.

C. Section 11-251.05, subsection A, paragraph 1 does not authorize a county to levy and collect taxes for any purposes beyond those otherwise specifically authorized by statute.

§ 11-211. Membership; qualifications; term

A. There shall be in each county having a population of two hundred thousand or more as determined by the latest United States decennial census a board of supervisors consisting of five members who shall be qualified electors of their supervisorial district, and who shall be elected at a general election at which the president of the United States is elected. In each county having a population of less than two hundred thousand as determined by the latest United States decennial census, a board of supervisors shall consist of three members, except as prescribed by subsection B, who shall be qualified electors of their supervisorial district and who shall be elected at a general election at which the president of the United States is elected. They shall enter upon their duties on January 1 subsequent to their election, and shall hold office for four years. No person holding any other county or precinct office is eligible to the office of supervisor.

B. Any county having a population of less than two hundred thousand shall call an election to change from a three-member to a five-member board of supervisors, or from a five-member to a three-member board of supervisors, upon receipt by the board of supervisors of a petition signed by not less than ten per cent of the qualified voters who voted at the preceding general election at which a president of the United States was elected. The board shall submit to the electors in such county, at a special election called for such purpose, the question whether or not such county shall elect five members or three members to the board of supervisors. The election shall be held before the first Monday in January preceding the next general election. The ballots shall contain the words: "Five Supervisors, Yes. Five Supervisors, No." or "Three Supervisors, Yes. Three Supervisors, No." If the majority of the qualified electors voting on the question

vote in the affirmative, the board of supervisors shall redistrict the county in accordance with the provisions of § 11-212. The county shall thereafter elect the prescribed number of members to the board of supervisors who shall have the same qualifications as provided in subsection A for a board of supervisors with a population of two hundred thousand or more, and shall hold office for a term of four years to commence on January 1.

§ 11-251. Powers of board

The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

1. Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that such officers faithfully perform their duties, direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

2. Divide the counties into such districts or precincts as required by law, change them and create others as convenience requires.

3. Establish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof.

4. Lay out, maintain, control and manage public roads, ferries and bridges within the county and levy such tax therefor as may be authorized by law.

5. Provide for the care and maintenance of the indigent sick of the county, erect and maintain hospitals therefor and, in their discretion, provide a farm in connection with the county hospital and adopt regulations for working the farm.

6. Provide suitable rooms for county purposes.

7. Purchase, receive by donation or lease real or personal property necessary for the use of the county prison and take care of, manage and control it, but no purchase of real property shall be made unless the value has been previously estimated by three disinterested citizens of the county, appointed by the board for that purpose, and no more than the appraised value shall be paid therefor.

8. Cause to be erected and furnished a courthouse, jail, hospital and such other buildings as necessary, and construct and establish a branch jail, when necessary, at a point distant from the county seat.

9. Sell at public auction, after thirty days' previous notice given by publication in a newspaper of the county, stating the time and place of the auction, and convey to the highest bidder, for cash or contract of purchase extending not more than ten years from date of sale and upon such terms and conditions and for such consideration as the board shall prescribe, any property belonging to the county which the board deems advantageous for the county to sell, or which the board deems unnecessary for use by the county, and shall pay the proceeds thereof into the county treasury for use of the county, except that personal property need not be sold but may be used as a trade-in on the purchase of personal property when the board deems this disposition of the personal property to be in the best interests of the county. When the property for sale is real property, the board shall have such property appraised by a qualified independent fee appraiser who has an office located in this state. The appraiser shall establish a minimum price which shall in no instance be less than ninety per cent of the appraised value. The notice regarding the sale of real property shall be published in the county where the property is situated and may be published in one or more other counties, and shall contain, among other things, the appraised value, the minimum acceptable sale price, and the common and legal description of the real property. Notwithstanding the requirement for a sale at public auction prescribed in this paragraph, a county may with unanimous consent of the board, without a public auction, sell or lease any county property to any other duly constituted governmental entity, including the state, cities, towns and other counties. A county may with unanimous consent of the board, without public auction, sell or lease any county

property for a specific use to any solely charitable, social or benevolent nonprofit organization incorporated in or operating in this state.

10. Examine and exhibit the accounts of all officers having the care, management, collection or disbursement of money belonging to the county or appropriated by law or otherwise for the use and benefit of the county.

11. Examine, settle and allow all accounts legally chargeable against the county, order warrants to be drawn on the county treasurer therefor and provide for issuing the warrants.

12. Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, and levy such other taxes as are required to be levied by law.

13. Equalize assessments.

14. Direct and control the prosecution and defense of all actions to which the county is a party, and compromise them.

15. Insure the county buildings in the name of and for the benefit of the county.

16. Fill by appointment all vacancies occurring in county or precinct offices.

17. Adopt provisions necessary to preserve the health of the county, and provide for the expenses thereof.

18. Contract for county printing and advertising, and provide books and stationery for county officers.

19. Provide for rebinding county records, or, if necessary, the transcribing of county records.

20. Make and enforce necessary rules and regulations for the government of their body, the preservation of order and transaction of business.

21. Adopt a seal for the board, a description and impression of which shall be filed by the clerk in the office of the county recorder, and the secretary of state.

22. Establish, maintain and conduct or aid in establishing, maintaining and conducting, public aviation fields, purchase, receive by donation or lease any property necessary therefor, lease, at a nominal rental if desired, sell such aviation fields or property to the United States or any department thereof, or sell or lease such aviation fields to a city, exchange lands acquired pursuant to this section for other lands, or act in conjunction with the United States in maintaining, managing and conducting all thereof, and, when any such property or part thereof is not needed for the purposes herein mentioned, it shall be sold by the board and the proceeds paid into the general fund of the county.

23. Acquire and hold property for the use of county fairs, and conduct, take care of and manage them.

24. Authorize the sheriff to offer a reward, not exceeding ten thousand dollars in one case, for information leading to the arrest and conviction of persons charged with crime.

25. Contract for the transportation of insane persons to the state hospital or direct the sheriff to transport such persons. The county is responsible for such expense to the extent the expense is not covered by any third party payor.

26. Bury deceased indigents and mark their graves with a stone, giving the name, age and date of death.

27. Sell or grant to the United States the title or interest of the county in any toll road or toll train in or partly within a national park, upon such terms and consideration as may be agreed upon by the board and the secretary of the interior of the United States.

28. Enter into agreements for acquiring rights-of-way, construction, reconstruction or maintenance of highways in their respective counties, including highways which pass through Indian reservations, with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of Congress, except that the governing body of any Indian tribe whose lands are affected must consent to the use of its land, and any such agreements entered into prior to June 26, 1952 are validated and confirmed.

29. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government.

30. Make and enforce all local, police, sanitary and other regulations not in conflict with general law.

31. Budget for funds for foster home care during the school week for mentally retarded and otherwise handicapped children who reside within the county and attend a school for the handicapped in a city or town within such county.

32. Do and perform all acts necessary to enable the county to participate in the "Economic Opportunity Act of 1964" (P.L. 88–452; 78 Stat. 508, as amended).[1]

33. Provide a plan or plans for their employees which provide tax deferred annuity and deferred compensation plans as authorized pursuant to title 26, United States code annotated.[2] Such plans shall allow voluntary participation by all employees of the county. Participating employees shall authorize the board to make reductions in their remuneration as provided in an executed deferred compensation agreement.

34. Adopt and enforce standards for shielding and filtration of commercial or public outdoor portable or permanent light fixtures in proximity to astronomical or meteorological laboratories.

35. Subject to the prohibitions, restrictions and limitations as set forth in § 11–830, adopt and enforce standards for excavation, landfill and grading to prevent unnecessary loss from erosion, flooding and landslides.

36. Make and enforce necessary rules and regulations for the operation and licensing of any establishment not in the limits of an incorporated city or town in which is carried on the business of providing baths, showers or other forms of hydrotherapy or any service of manual massage of the human body.

37. Provide pecuniary compensation as salary or wages for overtime work performed by county employees, including those employees covered by the provisions of title 23, chapter 2, article 9.[3] In so providing, the board may establish salary and wage plans incorporating classifications and conditions prescribed by the federal Fair Labor Standards Act.[4]

38. Establish, maintain and operate medical clinics as defined in title 36, chapter 24, article 1.[5]

39. Enact ordinances under its police authority prescribing reasonable curfews in unincorporated areas of the county for persons under the age of eighteen and fines not to exceed the fine for a petty offense for violation of such ordinances on the request or petition of either:

(a) A homeowners' association which represents a majority of the homeowners in the area covered by the association and to which the curfew would apply.

(b) A majority of the residents of the area to which the curfew would apply.

40. Lease or sublease personal property owned by the county to other political subdivisions of this state to be used for a public purpose.

41. In addition to the agreements authorized by § 11–651, enter into long-term agreements for the purchase of personal property, provided that the board may cancel any such agreement at the end of a fiscal year, at which time the seller may repossess the property and the agreement shall be deemed terminated.

42. Make and enforce necessary regulations not in conflict with the laws of this state to control air pollution generated by motor vehicles operating for recreational purposes within the county, including dust pollution generated by motor vehicles operating for recreational purposes in dry washes and riverbeds.

§ 11–951. Definitions

For the purposes of this article, the term "public agency" shall include the federal government or any federal department or agency, Indian tribe, this state, any other state, all departments, agencies, boards and commissions of this state or any other state, counties, school districts, cities, towns, all municipal corporations, and any other political subdivisions of this state or any other state.

§ 11-952. Intergovernmental agreements and contracts

A. If authorized by their legislative or other governing bodies, two or more public agencies by direct contract or agreement may contract for services or jointly exercise any powers common to the contracting parties and may enter into agreements with one another for joint or cooperative action, except that if two or more school districts arrange to become contracting parties under the terms of this section, such contract shall first be approved by the state board of education.

B. Any such contract or agreement shall specify the following:

1. Its duration.

2. Its purpose or purposes.

3. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.

4. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

5. Any other necessary and proper matters.

C. No agreement made pursuant to this article shall relieve any public agency of any obligation or responsibility imposed upon it by law.

D. Every agreement or contract involving any public agency, board or commission made pursuant to this article shall, prior to its execution, be submitted to the attorney for each such public agency, board or commission, who shall determine whether the said agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency, board or commission.

E. Any agreement or contract submitted to the attorney general shall be filed with the secretary of state and shall become effective on the date provided in the agreement, but in no event prior to the date it is filed with the secretary of state. The secretary of state shall prepare a cross-index of the names of all public agencies which coordinate with the attorney general and secretary of state and file an agreement under this section.

F. Any agreement or contract submitted to an attorney other than the attorney general shall be filed with the secretary of state if the agreement affects more than one county and shall be filed with the county recorder if only one county is affected and shall become effective on the date provided in the agreement but in no event prior to the date it is filed with the proper officer.

G. Appropriate action by ordinance, resolution or otherwise pursuant to the laws applicable to the governing bodies of the participating agencies approving or extending the duration of the agreement or contract shall be necessary before any such agreement, contract or extension may be filed or become effective.

H. If a school district is a party to an agreement made pursuant to subsection A, the parties to such agreement may extend the duration of the agreement by notification to the proper officer with whom the agreement is filed pursuant to subsection E or F and the state board of education. Such agreement may be extended as many times as is desirable, but each extension may not exceed the duration of the previous agreement.

I. Payment for services under this section shall not be made unless pursuant to a fully approved written contract.

J. A person who authorizes payment of any monies in violation of this section is liable for the monies paid plus twenty per cent of such amount and legal interest from the date of payment.

K. Notwithstanding any other provision of law, public agencies may enter into a contract or agreement pursuant to this section with the superior court, justice courts, police courts [1] for related services and facilities of such courts for a term not to exceed ten years, with the approval of such contract or agreement by the presiding judge of the superior court of the county in which the court or courts which provide the facilities or services are located.

Title 18 Highways and Bridges

§ 18-201. Establishing, altering or abandoning local highways

The board of supervisors may establish, alter or abandon highways in the county and other legal subdivisions, and acquire real property for such purposes by purchase, donation, dedication, condemnation or other lawful means. Such highways may be established or altered by presentation of a petition signed by ten or more resident taxpayers of the county to the board of supervisors, or upon petition to the board by the governing body of a legal subdivision, praying that a highway be established or altered and giving its beginning, terminus and its general course and direction. The board may either reject the petition or act thereon as prescribed by this article. The board may abandon or vacate such highways by resolution as provided in title 28, chapter 14, article 1.[1]

TEXT OF STATUTES KEYED TO CHAPTER 5

Title 11 Counties

Chapter 2 Board of Supervisors

11-251	Powers of board
11-352	Adoption of limited county employee merit system by resolution; removal of certain administrative positions by resolution
11-353	County employee merit system commission; members; terms; vacancies
11-354	Powers and duties of the commission
11-355	Minimum qualifications for employment
11-356	Dismissal, suspension, or reduction in rank of employees, appeals; hearings

Chapter 3 County Officers

11-532	County attorney - powers and duties
11-561	Qualifications; salary
11-562	Duties
11-563	Private work prohibited

Title 11 Counties

§ 11-251. Powers of board

The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

1. Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that such officers faithfully perform their duties, direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

2. Divide the counties into such districts or precincts as required by law, change them and create others as convenience requires.

3. Establish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof.

4. Lay out, maintain, control and manage public roads, ferries and bridges within the county and levy such tax therefor as may be authorized by law.

5. Provide for the care and maintenance of the indigent sick of the county, erect and maintain hospitals therefor and, in their discretion, provide a farm in connection with the county hospital and adopt regulations for working the farm.

6. Provide suitable rooms for county purposes.

7. Purchase, receive by donation or lease real or personal property necessary for the use of the county prison and take care of, manage and control it, but no purchase of real property shall be made unless the value has been previously estimated by three disinterested citizens of the county, appointed by the board for that purpose, and no more than the appraised value shall be paid therefor.

8. Cause to be erected and furnished a courthouse, jail, hospital and such other buildings as necessary, and construct and establish a branch jail, when necessary, at a point distant from the county seat.

9. Sell at public auction, after thirty days' previous notice given by publication in a newspaper of the county, stating the time and place of the auction, and convey to the highest bidder, for cash or contract of purchase extending not more than ten years from date of sale and upon such terms and conditions and for such consideration as the board shall prescribe, any property belonging to the county which the board deems advantageous for the county to sell, or which the board deems unnecessary for use by the county, and shall pay the proceeds thereof into the county treasury for use of the county, except that personal property need not be sold but may be used as a trade-in on the purchase of personal property when the board deems this disposition of the personal property to be in the best interests of the county. When the property for sale is real property, the board shall have such property appraised by a qualified independent fee appraiser who has an office located in this state. The appraiser shall establish a minimum price which shall in no instance be less than ninety per cent of the appraised value. The notice regarding the sale of real property shall be published in the county where the property is situated and may be published in one or more other counties, and shall contain, among other things, the appraised value, the minimum acceptable sale price, and the common and legal description of the real property. Notwithstanding the requirement for a sale at public auction prescribed in this paragraph, a county may with unanimous consent of the board, without a public auction, sell or lease any county property to any other duly constituted governmental entity, including the state, cities, towns and other counties. A county may with unanimous consent of the board, without public auction, sell or lease any county property for a specific use to any solely charitable, social or benevolent nonprofit organization incorporated in or operating in this state.

10. Examine and exhibit the accounts of all officers having the care, management, collection or disbursement of money belonging to the county or appropriated by law or otherwise for the use and benefit of the county.

11. Examine, settle and allow all accounts legally chargeable against the county, order warrants to be drawn on the county treasurer therefor and provide for issuing the warrants.

12. Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, and levy such other taxes as are required to be levied by law.

13. Equalize assessments.

14. Direct and control the prosecution and defense of all actions to which the county is a party, and compromise them.

15. Insure the county buildings in the name of and for the benefit of the county.

16. Fill by appointment all vacancies occurring in county or precinct offices.

17. Adopt provisions necessary to preserve the health of the county, and provide for the expenses thereof.

18. Contract for county printing and advertising, and provide books and stationery for county officers.

19. Provide for rebinding county records, or, if necessary, the transcribing of county records.

20. Make and enforce necessary rules and regulations for the government of their body, the preservation of order and transaction of business.

21. Adopt a seal for the board, a description and impression of which shall be filed by the clerk in the office of the county recorder, and the secretary of state.

22. Establish, maintain and conduct or aid in establishing, maintaining and conducting, public aviation fields, purchase, receive by donation or lease any property necessary therefor, lease, at a nominal rental if desired, sell such aviation fields or property to the United States or any department thereof, or sell or lease such aviation fields to a city, exchange lands acquired pursuant to this section for other lands, or act in conjunction with the United States in maintaining, managing and conducting all thereof, and, when any such property or part thereof is not needed for the purposes herein mentioned, it shall be sold by the board and the proceeds paid into the general fund of the county.

23. Acquire and hold property for the use of county fairs, and conduct, take care of and manage them.

24. Authorize the sheriff to offer a reward, not exceeding ten thousand dollars in one case, for information leading to the arrest and conviction of persons charged with crime.

25. Contract for the transportation of insane persons to the state hospital or direct the sheriff to transport such persons. The county is responsible for such expense to the extent the expense is not covered by any third party payor.

26. Bury deceased indigents and mark their graves with a stone, giving the name, age and date of death.

27. Sell or grant to the United States the title or interest of the county in any toll road or toll train in or partly within a national park, upon such terms and consideration as may be agreed upon by the board and the secretary of the interior of the United States.

28. Enter into agreements for acquiring rights-of-way, construction, reconstruction or maintenance of highways in their respective counties, including highways which pass through Indian reservations, with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of Congress, except that the governing body of any Indian tribe whose lands are affected must consent to the use of its land, and any such agreements entered into prior to June 26, 1952 are validated and confirmed.

29. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government.

30. Make and enforce all local, police, sanitary and other regulations not in conflict with general law.

31. Budget for funds for foster home care during the school week for mentally retarded and otherwise handicapped children who reside within the county and attend a school for the handicapped in a city or town within such county.

32. Do and perform all acts necessary to enable the county to participate in the "Economic Opportunity Act of 1964" (P.L. 88-452; 78 Stat. 508, as amended).[1]

33. Provide a plan or plans for their employees which provide tax deferred annuity and deferred compensation plans as authorized pursuant to title 26, United States code annotated.[2] Such plans shall allow voluntary participation by all employees of the county. Participating employees shall authorize the board to make reductions in their remuneration as provided in an executed deferred compensation agreement.

34. Adopt and enforce standards for shielding and filtration of commercial or public outdoor portable or permanent light fixtures in proximity to astronomical or meteorological laboratories.

35. Subject to the prohibitions, restrictions and limitations as set forth in § 11-830, adopt and enforce standards for excavation, landfill and grading to prevent unnecessary loss from erosion, flooding and landslides.

36. Make and enforce necessary rules and regulations for the operation and licensing of any establishment not in the limits of an incorporated city or town in which is carried on the business of providing baths, showers or other forms of hydrotherapy or any service of manual massage of the human body.

37. Provide pecuniary compensation as salary or wages for overtime work performed by county employees, including those employees covered by the provisions of title 23, chapter 2, article 9.[3] In so providing, the board may establish salary and wage plans incorporating classifications and conditions prescribed by the federal Fair Labor Standards Act.[4]

38. Establish, maintain and operate medical clinics as defined in title 36, chapter 24, article 1.[5]

39. Enact ordinances under its police authority prescribing reasonable curfews in unincorporated areas of the county for persons under the age of eighteen and fines not to exceed the fine for a petty offense for violation of such ordinances on the request or petition of either:

(a) A homeowners' association which represents a majority of the homeowners in the area covered by the association and to which the curfew would apply.

(b) A majority of the residents of the area to which the curfew would apply.

40. Lease or sublease personal property owned by the county to other political subdivisions of this state to be used for a public purpose.

41. In addition to the agreements authorized by § 11-651, enter into long-term agreements for the purchase of personal property, provided that the board may cancel any such agreement at the end of a fiscal year, at which time the seller may repossess the property and the agreement shall be deemed terminated.

42. Make and enforce necessary regulations not in conflict with the laws of this state to control air pollution generated by motor vehicles operating for recreational purposes within the county, including dust pollution generated by motor vehicles operating for recreational purposes in dry washes and riverbeds.

§ 11-352. Adoption of limited county employee merit system by resolution; removal of certain administrative positions by resolution

A. Any county may by resolution of the board adopt a limited county employee merit system for any and all county appointive officers and employees. Elected officers shall not be included in such merit system.

B. Any county may by resolution of the board remove certain administrative positions from the county employee merit system. The positions which may be removed from the county employee merit system are:

1. County manager.
2. Deputy county manager.
3. Assistant county manager.
4. Chief deputies to elected officials.
5. Department directors.

6. Deputy directors, not to exceed three in each department.

7. One position in each department which reports directly to the director or deputy director as designated by the director and deputy director.

8. An administrative position declared exempt after the effective date of this section. The number of positions declared exempt under this paragraph shall not exceed five per cent of the total number of county appointive officers and employees.

C. Any employee who was included as a covered employee in the county employee merit system at the time he assumed his present position and whose position becomes exempt under the provisions of subsection B may elect to remain included under the merit system, but if terminated the employee must be afforded the opportunity to accept another vacant position within the merit system for which the employee is qualified.

§ 11-353. County employee merit system commission; members; terms; vacancies

A. Upon the adoption of a county employee merit system the board of supervisors shall appoint a county employee merit system commission to assist in administering the system. The commission shall consist of five members, each of whom shall hold office for a term of four years and until his successor is appointed and qualified. Of the members first appointed, two shall serve for a two-year term, two for a three-year term and one shall serve a four-year term, and such members shall determine by lot the length of their terms. Appointment to fill a vacancy caused by other than expiration of term shall be for the unexpired portion of the term.

B. Members of the commission shall be selected from among the qualified electors of the county. No more than three of such members shall be from the same political party.

§ 11-354. Powers and duties of the commission

The commission shall perform such duties and exercise such powers as are necessary to carry out the provisions of this article.

§ 11-355. Minimum qualifications for employment

The minimum qualifications or standards prescribed for any class or grade of employment shall not be less than those prescribed by law for the class or grade of county officers and employees.

§ 11-356. Dismissal, suspension or reduction in rank of employees; appeals; hearings

A. Any officer or employeee in the classified civil service may be dismissed, suspended or reduced in rank or compensation by the appointing authority after appointment or promotion is complete only by written order, stating specifically the reasons for the action. The order shall be filed with the clerk of the board of supervisors and a copy thereof shall be furnished to the person to be dismissed, suspended or reduced.

B. The officer or employee may within ten days after presentation to him of the order, appeal from the order through the clerk of the commission. Upon the filing of the appeal, the clerk shall forthwith transmit the order and appeal to the commission for hearing.

C. Within twenty days from the filing of the appeal, the commission shall commence the hearing and either affirm, modify or revoke the order. The appellant may appear personally, produce evidence, have counsel and, if requested by the appellant, a public hearing.

D. The findings and decision of the commission shall be final, and shall be subject to administrative review as provided in title 12, chapter 7, article 6.[1]

§ 11-532. Powers and duties

A. The county attorney is the public prosecutor of the county. He shall:

1. Attend the superior and other courts within the county and conduct, on behalf of the state, all prosecutions for public offenses.

2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when he has information that the offenses have been committed.

3. When not engaged in criminal proceedings in the superior court, attend upon the magistrates in cases of arrest when required by them, and attend before and give advice to the grand jury.

4. Draw indictments and informations, defend actions brought against the county and prosecute actions to recover recognizances forfeited in courts of record and actions for recovery of debts, fines, penalties and forfeitures accruing to the state or county.

5. Deliver receipts for monies or property received in his official capacity and file duplicates thereof with the clerk of the board.

6. On the first Monday of January, April, July and October in each year, file with the board of supervisors an account, verified by oath, of all monies received by him in his official capacity during the preceding three months, and at the same time pay it to the county treasurer.

7. When required, give his written opinion to county officers on matters relating to the duties of their offices.

8. Keep a register of official business, and enter therein every action prosecuted, criminal or civil, and of the proceedings therein.

9. Act as the legal advisor to the board of supervisors, attend their meetings and oppose claims against the county which he deems unjust or illegal.

10. Act as attorney for school districts except as provided in § 15-343, or except in any lawsuits involving a conflict of interest with other county offices at which time the attorney general may represent the school district.

11. Act as attorney for the community college district except as provided in § 15-1448 or except in any lawsuits involving a conflict of interest with other county offices, at which time the attorney general may represent the community college district.

B. Upon receipt of an appellant's brief in a criminal appeal, the county attorney shall furnish the attorney general with a true statement of the facts in the case, together with the authorities and citations which he has available and which are responsive to the assignments or specifications of error.

C. The county attorney may represent a school district governing board member against whom an action is brought in his individual capacity until such time as it is established as a matter of law that the alleged activity or events which form the basis of the complaint were not performed, or not directed to be performed, within the scope or course of the member's duties.

D. Notwithstanding the provisions of article 12 of this chapter,[1] in connection with the investigation or prosecution of any matter involving the death of a person, the county attorney may request that the medical examiner, for the county in which the prosecution will take place, conduct the medical examination.

§ 11-561. Qualifications; salary

A. The board of supervisors may appoint a county engineer, who shall be a competent civil engineer and road builder.

B. The county engineer shall receive such salary as the board of supervisors fixes, payable from the road fund of the county.

§ 11-562. Duties

A. The county engineer shall be custodian of the records and property of the county relating to surveying, engineering and road construction.

B. Except where highways are being constructed under the direction of a highway commission, the county engineer shall, under the direction of the board, have charge of all highways, other engineering construction and improvements, alterations and repairs to county property, and shall make surveys, maps, plans and specifications required by the board.

§ 11-563. Private work prohibited

The county engineer shall not during his term of office engage in private engineering or surveying, except by permission of the board of supervisors, or be a member of a firm so engaged.

TEXT OF STATUTES KEYED TO CHAPTER 6

Title 18 Highways and Bridges

Chapter 2 County Highways

18-216	Tax levy for county highway improvements; additional tax for highway purposes
18-231	Bonds for highway construction; authorization for issuance
18-232	County highway commission; members; term; compensation; bond
18-233	Commission powers and duties; report; publication; call for election
18-234	Semiannual report of commission; publication
18-235	Expenses of commission
18-236	Road bond election precincts; conduct of election
18-237	Sale of bonds; disposition of proceeds; use of surplus funds
18-238	Contract for proposed work; cooperative contracts with United States; bond
18-401	Toll road defined
18-402	Notice; application; hearing
18-403	Approval or rejection of application; effective date; term and reversion of franchise

Title 18 Highways and Bridges

Chapter 4 Toll Roads, Ferries and Bridges

18-404	Interference with highways or other toll roads
18-405	Acquiring land for toll road; manner of construction; guide posts
18-406	Commencement and completion of road
18-407	Toll rates; violation; penalties; state tax

Title 28 Transportation

Chapter 9 Taxes

28-1501	Imposition of tax; rate
28-1502	Payment; distribution of proceeds
28-1552	Imposition of use fuel tax; bulk storage
28-1557	Payment of tax; distribution of proceeds
28-1591	Distribution of vehicle license tax
28-1594.01	Distribution of transportation excise tax in counties with population of one million two hundred thousand or more persons; regional area road fund; accounts; bonds; definitions
28-1594.02	Distribution of transportation excise tax in counties with population in excess of four hundred thousand but fewer than one million two hundred thousand persons; regional area road fund; accounts; bonds; definitions
28-1598	Distribution of highway user revenues; budget and expenditure of local tax revenues required; definitions

TEXT OF STATUTES KEYED TO CHAPTER 6

(Cont'd.)

Title 28 Transportation (Continued)

28-1867	Designation of state and count federal aid secondary highways
28-2501	Definitions
28-2502	Regional public transportation authority in counties with population of one million two hundred thousand or more persons; establishment; fund
28-2503	Board of directors in counties with population of one million two hundred thousand or more persons; appointment
28-2504	Regional public transportation authority in counties with population in excess of four hundred thousand but fewer than one million two hundred thousand persons; establishment; fund
28-2505	Board of directors in counties with population in excess of four hundred thousand but fewer than one million two hundred thousand persons; appointment
28-2511	Planning by the board in counties with population of one million two hundred thousand or more persons
28-2512	Powers and duties of boards in counties with population of one million two hundred thousand or more persons
28-2513	Contracts; counties with population of one million two hundred thousand or more persons; eminent domain
28-2521	Regional bus system in counties with population of one million two hundred thousand or more persons
28-2522	Regional bus system in counties with population in excess of four hundred thousand but fewer than one million two hundred thousand persons
28-2531	Definitions
28-2532	Issuance of bonds
28-2533	Unlawful interest in real property by board member or employee; violation; classification
28-2601	Local transportation assistance fund
28-2602	Distribution from fund; definitions

Title 42 Taxation

Chapter 8.3 County Transportation Taxes

42-1482	County transportation excise tax for roads; counties with population of one million two hundred thousand or more persons
42-1483	County transportation excise tax for roads; counties with population exceeding four hundred thousand but fewer than one million two hundred thousand persons
42-1484	County transportation excise tax for roads; counties with population of four hundred thousand or fewer persons
42-1485	Administration
42-1491	County public transportation excise tax; counties with population of one million two hundred thousand or more persons

TEXT OF STATUTES KEYED TO CHAPTER 6
(Cont'd.)

Title 48 Special Taxing Districts

Chapter 10 Special Road Districts

48-1401	Petition to form district; call for election
48-1402	Qualifications of voters; ballots
48-1403	Formation of district; appointment of trustees; land
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Title 18 Highways and Bridges

§ 18-216. Tax levy for county highway improvement: additional tax for highway purposes

A. The board of supervisors may levy a real and personal property tax, not exceeding twenty-five cents per one hundred dollars of property in the county as valued for tax purposes, for road purposes, to be levied and collected at the same time and manner as other primary property taxes are levied and collected.

B. The money when collected shall be paid into the county treasury for the benefit of the highways within the county and, together with other money received for those purposes, expended by the board for improvement of roads of the county.

C. In counties having an assessed valuation of two hundred million dollars or over, an amount not to exceed twenty-five cents per one hundred dollars assessed valuation may be budgeted, levied, collected, and expended for road purposes, independently of, and in addition to any other amounts lawfully available for road purposes, all other laws to the contrary notwithstanding. Such levy shall be in lieu of the levy permitted under subsection A of this section.

§ 18-231. Bonds for highway construction; authorization for issuance

The bonds of a county authorized and issued for construction or improvement of public highways may be issued by complying with this article. The board of supervisors may, and upon petition of fifteen per cent of the qualified electors of the county, shall, order an election by the real property taxpayers who are qualified electors of the county to determine whether the indebtedness shall be authorized.

§ 18-232. County highway commission; members; term; compensation; bond

A. If the contemplated bond issue is two million dollars or more, the board of supervisors shall appoint a county highway commission consisting of three members, and if for an amount less than two million dollars the supervisors shall be ex officio county highway commissioners and shall have all the powers and duties of the commission.

B. The commissioners shall be bona fide residents and freeholders in the county of their appointment for the previous three years, and shall be appointed for a term of two years, removable by the board for cause. If the proposition to issue the bonds fails to carry, or when the improvements are completed, or the money arising from the sale of the bonds voted at the election has been expended, the term of office of the commissioners shall end.

C. The salary of each commissioner shall be ten dollars for each day actually and necessarily engaged in the duties of the office. Each supervisor shall receive, in addition to his regular compensation, three dollars for each day actually and necessarily engaged as a commissioner.

D. Each commissioner shall give bond to the county in such sum as the board requires to be approved by the board. When the board acts as commissioners, each member shall give an additional bond to the county of five thousand dollars, conditioned and approved as official bonds of supervisors.

§ 18-233. Commission powers and duties; report; publication; call for election

A. The county highway commission shall investigate situations with respect to highways which in their judgment the greatest public necessity and convenience require to be constructed or improved, and shall have prepared a map of the highways, showing the location, condition, connections and other information with respect thereto. The commission shall determine which of the public highways should be improved with funds derived from the sale of the bonds to be authorized and sold, the kind of improvements which should be made and shall procure an estimate of the cost of the improvement.

B. The commission may employ an engineer, and at least twenty days before the day appointed for the election, shall make its report to the board, which the board of supervisors shall publish six times in a daily or twice in a weekly newspaper in the county at least two weeks before the election.

C. The call for the election shall be limited to the construction and improvement of the public highways that are included in the report and maps prepared by the commission.

§ 18-234. Semiannual report of commission; publication

The commission shall, at least once every six months, make and file with the board a detailed statement showing the amount of money in the highway improvement fund at the time of its last statement, the amounts since received and the purpose for which deposited, the amount since expended and for which it was expended, the balance remaining, the contracts entered into or completed since its last statement and the condition of the work under each contract. The statement shall be published by the board, the cost to be paid from the highway improvement fund.

§ 18-235. Expenses of commission

The traveling and other incidental expenses of members of the commission, actually and necessarily incurred, and all other expenses incurred, either by the board or by the commission, under the provisions of this article, shall be paid from the general fund of the county until there is sufficient money in the highway improvement fund de-

§ 18-236. Road bond election precincts; conduct of election

The board of supervisors in conducting the election called under the provisions of § 18-233 may form road bond election precincts by consolidating not exceeding six general election precincts into one road bond election precinct, and shall appoint one inspector, two

judges and one clerk for each road bond election precinct. The election shall be conducted as other county bond elections, but notice of the election and the ballots prepared therefor shall state whether the proceeds of the bonds proposed to be sold are to be used in the improvement of the roads of the county generally, or only upon those roads which are specifically described in the notice of election and upon the ballots prepared for use at the election.

§ 18-237. Sale of bonds; disposition of proceeds; use of surplus funds

A. All bonds issued under this article shall be sold by the board in the same manner as other county bonds, and the proceeds shall be placed in a special fund denominated the "highway improvement fund" to be paid out by the county treasurer only upon order of the commission, and shall be used only for the purpose for which they were authorized at the election.

B. Any surplus remaining in the fund after completion of the improvement for which the bonds were voted, shall be transferred to the general road fund of the county, and may be expended by the board either for repair of county roads or for construction of state highways or roads connecting with state highways.

C. If the commission at any time determines that a surplus in excess of one hundred thousand dollars remains in the fund after completion of all work under the contract, then it may report that fact in writing to the board. The board shall direct the commission to expend the surplus upon designated state highways or roads connecting with state highways without waiting for completion of the work on the improvement of the highways for which the bonds were voted, and the expenditure shall be under the direction of the commission.

§ 18-238. Contract for proposed work; cooperative contracts with United States; bond

A. The work for which the bonds are issued shall be done under supervision and direction of the commission.

B. As soon as the proceeds of the bond sale are deposited in the treasury, the commission shall prepare plans, specifications and profiles for the work, and shall advertise for bids for the work, or any part thereof, by publishing a notice calling for bids thereon.

C. Every contract for doing any part of the work shall be let after advertisement to the lowest and best responsible bidder, who will give bond or bonds as required under the provisions of title 34, chapter 2, article 2,[1] but the commission may contract for any part of the work the cost of which does not exceed one thousand dollars without calling for bids, and may reject any and all bids received, and readvertise.

D. The commission may enter into cooperative contracts and agreements for construction of roads with the United States or any of its departments or agencies, under and in accordance with the pro-

visions of an act of congress. As to such contracts the provisions relating to methods of expending funds derived from the sale of the bonds shall not apply, and any money in the county treasury subject to the disposition or control of the commission required under such a contract or agreement shall, upon order of the commission, be deposited by the county treasurer in a United States depository designated by the officer of the United States authorized by law to enter into the contract, to the credit of and to be expended by such officer under the terms of the contract.

§ 18-401. Toll road defined

"Toll road" includes trails for passage of saddle and pack animals and foot passengers, as well as roads designed for passage of vehicles, where the trails have been built in mountainous or precipitous places or in other places where building of roads for passage of vehicles would be impracticable.

§ 18-402. Notice; application; hearing

A. A person desiring to construct a toll road, bridge or ferry within one or more counties shall publish a notice in a newspaper published in each of the counties, once each week for six successive weeks, specifying:

1. The type and character of the road.

2. The terminals.

3. The general route and each city, town or village through which it is proposed to construct it.

4. The time when the application required by this section will be made, which shall not be more than ten days after the last publication of the notice.

B. On the day specified in the notice, written application shall be made to the respective boards of supervisors of the counties for authority to take the necessary land and construct the road described in the notice. The application shall be in triplicate and each copy accompanied by an engineer's plat of the route of the proposed road showing the proposed center line and right of way lines and giving engineer's stations and ties to legal subdivision lines of the regions traversed, together with proposed construction plans and details, and estimates of cost.

C. When the application is filed with the clerk of the board, he shall immediately set the application for hearing before the board not less than fifteen nor more than thirty days thereafter, and forward a copy of the application and accompanying papers, instruments and documents, with notice of the date of hearing, by registered mail to the highway commission. The clerk shall cause notice of the hearing to be published one time not less than ten days before the day of the hearing in the same newspaper in which notice of application was published.

D. At the hearing all persons interested may appear and be heard. The board may take testimony and adjourn the hearing from time to time.

§ 18-403. Approval or rejection of application; effective date; term and reversion of franchise

A. If it appears to the board of supervisors that the public interest will be promoted thereby, it may grant the application, in whole or in part, or as revised.

B. No application shall be granted if the highway commission files with the board a written statement that the proposed toll road will interfere with a state highway or state route existing or contemplated, or when the proposed toll road will interfere with a county highway, existing or contemplated.

C. No order granting an application shall become effective until a copy of the order, together with an engineer's plat of the road approved in writing by the board, is filed with the county recorder within thirty days from the date the order is made.

D. No franchise for a toll road shall be granted for a term exceeding ten years, subject to the right of extension for one additional period not exceeding ten years.

E. Upon expiration or forfeiture of a toll road franchise the ownership with all rights and privileges appurtenant thereto shall vest in the county or counties in which it is located, and the board may declare it a free highway or collect tolls.

§ 18-404. Interference with highways or other toll roads

No toll road shall interfere with a highway in general use by the traveling public, but where a toll road is established, or where the prior right to maintain it has been acquired, no other toll road shall be constructed or maintained within one mile of either side of the road.

§ 18-405. Acquiring land for toll road; manner of construction; guide posts

A. Lands necessary for construction of toll roads or appurtenances thereto may be acquired by condemnation.

B. A toll road shall be laid out at least fifty feet wide. If the road is a plank road the track shall be constructed eighteen feet wide of timber, plank or other hard material. If the road is a turnpike, the track shall be bedded with stone, gravel or other hard material found on the line thereof to the width of eighteen feet, and faced with broken stone or gravel. A common wagon road shall be graded at least twelve feet in width, and constructed with necessary turnouts to permit vehicles to pass conveniently. The roads shall be ditched on the sides when practicable, have proper and necessary drainage, and shall be so constructed that vehicles may pass on and off the

track at intersections of roads.

C. No tollgate, tollhouse or other building shall be erected within one hundred sixty-five feet of the front of any dwelling house, barn or outhouse, without written consent of the owner. No toll road shall be constructed within the limits of an incorporated city or town, or through an orchard four years old so as to injure the fruit trees, or through a garden which has been cultivated four years, or a dwelling house, or yard or enclosure necessary thereto, without written consent of the owner.

D. There shall be a guide post at every intersection of the toll road and a public road. The guide post shall disclose the name and direction of the place to which the public road leads. The owner shall at all times keep the guide post in good condition, and if he fails to do so, his franchise may be forfeited on information in the nature of quo warranto, and he shall also be liable for damages sustained thereby by parties passing over the road.

§ 18-406. Commencement and completion of road

A. The work of constructing the road shall be commenced within thirty days from the date of the order approving the application and shall continue with all reasonable dispatch until completed.

B. When the road is completed, the owner of the franchise shall file with the county recorder a certificate that the road is completed and conforms to the requirements of law.

§ 18-407. Toll rates; violation; classification; state tax

A. When the certificate of completion is filed tollgates may be erected and tolls collected.

B. The board of supervisors shall fix and regulate the rates of tolls for franchises granted under the provisions of this article within the limits of its county, giving due regard to the cost of construction, magnitude of structure and expenses incident thereto and maintenance. The rates may be changed from time to time after notice to the owners and the public given by posting notice on the property and after a hearing. The rates of tolls so fixed shall be printed or painted in a plain and legible manner on a bulletin board posted at each tollgate on the road.

C. A person who knowingly demands or collects a higher rate of toll than fixed by the board is guilty of a class 2 misdemeanor.

D. If a person traveling upon a toll road attempts to run by, or go around a tollgate established thereon, with the intention of avoiding the payment of toll, he is guilty of a petty offense.

E. The owner shall keep an accurate account of the gross receipts and expenditures of the road, and make a quarterly report thereof, under oath, to the department of administration, accompanied by two per cent of the gross proceeds from the road, which shall be paid into the state treasury.

Title 28 Transportation

§ 28-1501. Imposition of tax; rate

Text of section pending conditional amendment

Until January 1, 1986, every distributor shall pay to the state, in addition to all other taxes provided by law, a license tax of thirteen cents for each gallon of motor vehicle fuel possessed, refined, manufactured, produced, blended or compounded in this state by the distributor or imported by the distributor, whether in the original package or container in which it was imported or otherwise. From and after December 31, 1985 through June 30, 1990, the license tax is sixteen cents per gallon. From and after June 30, 1990, the license tax is seventeen cents per gallon.

For text of conditional amendment, see § 28-1501, post.

§ 28-1501. Imposition of tax; rate

Text of conditional amendment

Until January 1, 1986, every distributor shall pay to the state, in addition to all other taxes provided by law, a license tax of thirteen cents for each gallon of motor vehicle fuel possessed, refined, manufactured, produced, blended or compounded in this state by the distributor or imported by the distributor, whether in the original package or container in which it was imported or otherwise. From and after December 31, 1985 through June 30, 1990, the license tax is sixteen cents per gallon.

For text of section pending conditional amendment, see § 28-1501, ante.

Conditional Enactment

Laws 1985, Ch. 308, § 35 provides:

"A. The following do not become effective unless the federal excise tax on small cigarettes is reduced from eight dollars per thousand to four dollars per thousand on or before June 30, 1990:

"1. Section 11 of this act.

"2. Section 13 of this act.

"3. Section 18 of this act.

"4. Title 42, chapter 7, article 1.2, Arizona Revised Statutes, as added by this act.

"B. The sections prescribed in subsection A of this section become effective on the date the federal excise tax reduction becomes effective."

Laws 1982, Ch. 5, § 6, effective February 26, 1982, amended Laws 1981, 2nd S.S., Ch. 2 § 38 by, inter alia, deleting subsecs. C and D, which had read:

"C. On or before December 15, 1982, the director shall reduce the rate of the motor vehicle fuel tax and the use fuel tax for the six months beginning January 1, 1983, determined pursuant to § 28-1501, Arizona Revised Statutes, by the amount rounded to the nearest tenth of one cent determined as follows:

"1. Compute the sum of the amounts credited to the highway user revenue fund, pursuant to subsections A and B of this section.

"2. Divide the sum computed in paragraph 1 by the number of gallons of motor vehicle fuel and use fuel subject to the tax imposed on such fuels by title 28, chapter 8, articles 1 and 2, [Sections 28-1301 et seq. and 28-1341 et seq.] Arizona Revised Statutes, during the period from July 1, 1981 through June 30, 1982.

"D. On or before June 15, 1983, the director shall reduce the rate for the six months beginning July 1, 1983, determined pursuant to § 28-1501, Arizona Revised Statutes, by the quotient determined pursuant to subsection C, paragraph 2 of this section."

Laws 1981, 2nd S.S., Ch. 2, § 39, subsec. E provides:

"E. Sections 19 and 21 of this act are effective from and after December 31, 1981."

Laws 1981, 2nd S.S., Ch. 2, § 19 amended this section, but, due to an exercise of the referendum power, the amendment was to be referred to a vote of the qualified electors, and, therefore, the amendment could have become law only upon approval by a majority of the voters in an election thereon and upon a procla-

mation by the governor. Prior to such an election, Laws 1982, Ch. 5, § 2, effective February 26, 1982, repealed Laws 1981, 2nd S.S., Ch. 2, §§ 19 and 20.

As amended by Laws 1981, 2nd S.S., Ch. 2, § 19, this section read:

"A. Until January 1, 1983, every distributor shall pay to the state, in addition to all other taxes provided by law, a license tax of nine and six-tenths cents for each gallon of motor vehicle fuel possessed, refined, manufactured, produced, blended or compounded in this state by the distributor or imported by the distributor, whether in the original package or container in which it was imported or otherwise. Beginning January 1, 1983, the rate shall be based on eight per cent of the average retail selling price rounded to the nearest tenth of one cent as determined by the director pursuant to § 28-1501.01.

"B. On or before December 15, 1983 and each December 15 thereafter, the director shall reduce the rate for the six months beginning the subsequent January 1, determined pursuant to § 28-1501.01, by the amount rounded to the nearest one-tenth of one cent determined as follows:

"1. Compute the sum of the amount distributed to the highway user revenue fund, pursuant to §§ 42-1342.02, subsection C, and 28-1591, subsection E, if any.

"2. Divide the amount computed in paragraph 1 by the number of gallons of motor vehicle fuel and use fuel subject to the tax imposed on such fuels by article 2 of this chapter [section 28-1551 et seq.] and this article during the twelve-month period preceding the preceding July 1.

"C. On or before June 15, 1984 and each June 15 thereafter, the director shall reduce the rate for the six months beginning the subsequent July 1, determined pursuant to § 28-1501.01, by the amount determined pursuant to paragraph 2 of subsection B of this section on or before the preceding December 15."

1980 Reviser's Note:

Pursuant to authority of § 41-1304.02, the words "; shrinkage allowance" were deleted from the section heading.

Cross References

Fuel, transaction business tax, exemption, see § 42-1321.

Transaction privilege taxes, exemption of motor vehicle fuel, see § 42-1321.

Use fuel tax, motor vehicles, see § 28-1552.

based on eight per cent of the average retail selling price determined by the survey, which shall be the motor vehicle fuel tax rate per gallon for the ensuing six-month period beginning January 1, 1983, and adjusted each July 1 and January 1 thereafter. The director shall give notice of the rate per gallon to each licensed distributor at least fifteen days before the date the new rate per gallon becomes effective. The new rate per gallon shall apply to all motor vehicle fuel possessed, refined, manufactured, produced, blended or compounded in this state by the distributor, whether in the original package or container in which it was imported or otherwise, on and after the effective date until a new rate per gallon is established.

"C. For the purposes of this section, the retail selling price of motor vehicle fuel shall not include federal and state fuel taxes.

"D. The director may adopt rules and regulations necessary to carry out the provisions of this article."

§ 28-1502. Payment; distribution of proceeds

The license tax accrued in any calendar month shall be paid on or before the twenty-fifth day of the next succeeding calendar month to the assistant director for the motor vehicle division, who shall promptly make the distribution pursuant to § 28-1502.01 of the amount of money collected as a license tax on sales of motor vehicle fuel used in propelling watercraft commencing with the month following the conclusion of the survey conducted pursuant to § 28-1502.01, and then shall promptly pay all remaining monies to the state treasurer to be placed in the Arizona highway user revenue fund or the state aviation fund as determined from the reports filed pursuant to § 28-1503. The assistant director for the motor vehicle division shall deduct all exemptions and refunds before paying the monies to the state treasurer.

§ 28-1552. Imposition of use fuel tax; bulk storage

A. For the purpose of partially compensating the state for the use of its highways, an excise tax is imposed at the same rate per gallon as the motor vehicle fuel license tax determined under § 28-1501 on use fuel used in the propulsion of a motor vehicle on any highway within this state, such tax to be collected and remitted to this state or paid to this state as follows:

1. By a vendor, measured by the volume of use fuel either:

(a) Delivered by the vendor into the fuel tank of a motor vehicle not operated by the vendor.

(b) Used by the vendor on the highways of this state in the propulsion of a use class motor vehicle operated by the vendor.

2. By a restricted vendor, measured by the volume of use fuel delivered into the fuel tank of a light class motor vehicle.

3. By a user, measured by the volume of use fuel imported into this state or acquired without payment of tax to a vendor within this state, and used in the propulsion of a use class motor vehicle on the highways of this state.

B. The tax, with respect to fuel acquired by any fuel user in any manner other than delivery by a vendor into a fuel tank of a motor vehicle, attaches at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of this state and shall be paid over to the director by the fuel user with the report required and in accord with other applicable provisions of this article.

C. The tax on light class motor vehicles attaches at the time fuel is delivered in this state into the motor vehicle fuel tank and is payable to the director by either the vendor or restricted vendor with the report required and in accord with other applicable provisions of this article. With respect to light class motor vehicles, the director shall not issue a refund for use fuel purchased in this state and consumed on the highways of another state nor shall the director tax use fuel acquired in another state and consumed on the highways of this state.

D. The director may authorize a person with bulk storage of use fuel in this state to pay to the director the use fuel tax based upon the gallons delivered into bulk storage. The tax attaches at the time the use fuel is delivered into the bulk storage inventory and is payable to the director by the person with the use fuel vendor's or restricted vendor's report required and in accord with other applicable provisions of this article.

§ 28-1557. Payment of tax: distribution of proceeds

A. The excise tax accrued in any calendar month shall be paid on or before the twenty-fifth day of the next succeeding month to the director who shall transfer the proceeds of such tax to the state treasurer to be placed in the Arizona highway user revenue fund.

B. All fees imposed by this article and received by the director shall be transmitted to the state treasurer and credited by him to the Arizona highway user revenue fund.

§ 28-1591. Distribution of vehicle license tax

Text of section pending conditional amendment

A. Except as provided in subsection F of this section, the license tax imposed by article IX, § 11 of the Constitution of Arizona shall be collected by the registering officer at the time of application for and before registration of the vehicle each year and be promptly deposited with the county treasurer of the county in which the vehicle is registered. The license tax rate is four dollars on each one hundred dollars in value. During the first twelve months of the life of the vehicle as determined by its initial registration the value of the vehicle is sixty per cent of the manufacturer's base retail price of the vehicle. During each succeeding twelve-month period the value of the vehicle is fifteen per cent less than the value for the preceding twelve-month period. The minimum amount of the license tax computed under this section shall be ten dollars per year for each vehicle subject to the tax.

B. The director may register or reregister a vehicle for less than a twelve-month period prorating the annual license tax, when in his opinion such proration tends to fulfill the purpose of the monthly registration system. The director shall initially register every vehicle for which application of registration is made on or after the fifteenth day of the month for less than a thirteen-month period prorating the annual license tax. Such proration shall exclude the time remaining in the month of initial application. No vehicle license tax may be collected retroactively for any period of nonregistration if the current owner of such vehicle was not the owner of the vehicle during any part of the nonregistration period.

C. Within five days of the close of each business day the county treasurer shall distribute thirty-one and one-half per cent of the monies deposited with the county treasurer pursuant to subsection A of this section during that day to the state treasurer, to be placed in the highway user revenue fund. The county treasurer, not later than the fifteenth day of each month, shall distribute the remaining monies as follows:

1. Ten per cent to the state treasurer, to be placed in the general fund of the state for general purposes subject to subsection E of this section, except that from and after June 30, 1990, twenty per cent shall be distributed to the state treasurer to be placed in the general fund of the state for general purposes subject to subsection E of this section.

2. Ten per cent to the state treasurer, to be placed in the state highway fund, except that from and after June 30, 1990 no monies shall be distributed to the state highway fund.

3. Twenty-five per cent to the general fund of the county.

4. Twenty-five per cent to the state treasurer, to be placed in the state general fund to aid in school financial assistance.

5. Twenty-five per cent to the several incorporated cities and towns of the county, apportioned in proportion to the population of each as shown by the most recent United States census.

6. Five per cent to the county assessor to be placed in the special fund established pursuant to § 28–301, subsection C, except that no monies shall be distributed to the county assessor if the county has entered into an agreement pursuant to § 28–301.02, in which case five per cent shall be placed in the department's special fund pursuant to § 28–301.03.

D. If any incorporated city or town has had no federal enumeration, the supervisors shall appoint a qualified person to take an accurate census of the incorporated city or town, and the supervisors shall certify the results to the county treasurer, whereupon the incorporated city or town shall share in the distribution as provided by this section.

E. The state treasurer shall, on or before August 15, 1983 and each year thereafter, determine if the amounts distributed pursuant to subsection C, paragraphs 1 and 2 and subsection F, paragraphs 1 and 2 of this section, in the preceding fiscal year exceed the amounts distributed pursuant to subsection C, paragraphs 1 and 2 and subsection F, paragraphs 1 and 2 of this section, in the next preceding fiscal year by more than seven per cent. If so, the state treasurer shall, from the amount credited to the general fund of the state, pursuant to subsection C, paragraphs 1 and 2 and subsection F, paragraphs 1 and 2 of this section, deposit each month for the next nine months in the highway user revenue fund one-ninth of the amount computed as follows:

1. Compound twelve million seven hundred thousand dollars by an annual rate of seven per cent for each fiscal year since fiscal year 1980–1981.

2. Subtract the amount computed in paragraph 1 of this subsection from the amount distributed pursuant to subsection C, paragraphs 1 and 2 and subsection F, paragraphs 1 and 2 of this section, in the preceding fiscal year.

F. If the director acts as the registering officer the director shall distribute, within five days of the close of each business day, thirty-one and one-half per cent of the monies collected by the director pursuant to subsection A of this section during that day to the state treasurer, to be placed in the highway user revenue fund. The director, not later than the fifteenth day of each month, shall distribute the remaining monies as follows:

1. Ten per cent to the state treasurer, to be placed in the general fund of this state for general purposes, except that from and after June 30, 1990, twenty per cent shall be distributed to the state treasurer to be placed in the state general fund for general purposes subject to subsection E of this section.

2. Ten per cent to the state treasurer, to be placed in the state highway fund, except that from and after June 30, 1990, no monies shall be distributed to the state highway fund.

3. Twenty-five per cent to the general fund of the county.

4. Twenty-five per cent to the state treasurer, to be placed in the state general fund to aid school financial assistance.

5. Twenty-five per cent to the county treasurer to be distributed to the several incorporated cities and towns of the county apportioned in proportion to the population of each as shown by the most recent United States census.

6. Five per cent to be placed in the special fund established pursuant to § 28–301.03.

§ 28-1591. Distribution of vehicle license tax

Text of conditional amendment

A. Except as provided in subsection F of this section, the license tax imposed by article IX, § 11 of the Constitution of Arizona shall be collected by the registering officer at the time of application for and before registration of the vehicle each year and be promptly deposited with the county treasurer of the county in which the vehicle is registered. The license tax rate is four dollars on each one hundred dollars in value. During the first twelve months of the life of the vehicle as determined by its initial registration the value of the vehicle is sixty per cent of the manufacturer's base retail price of the vehicle. During each succeeding twelve-month period the value of the vehicle is fifteen per cent less than the value for the preceding twelve-month period. The minimum amount of the license tax computed under this section shall be ten dollars per year for each vehicle subject to the tax.

B. The director may register or reregister a vehicle for less than a twelve-month period prorating the annual license tax, when in his opinion such proration tends to fulfill the purpose of the monthly registration system. The director shall initially register every vehicle for which application of registration is made on or after the fifteenth day of the month for less than a thirteen-month period prorating the annual license tax. Such proration shall exclude the time remaining in the month of initial application. No vehicle license tax may be collected retroactively for any period of nonregistration if the current owner of such vehicle was not the owner of the vehicle during any part of the nonregistration period.

C. Within five days of the close of each business day the county treasurer shall distribute thirty-one and one-half per cent of the monies deposited with the county treasurer pursuant to subsection A of this section during that day to the state treasurer, to be placed in the highway user revenue fund. The county treasurer, not later than the fifteenth day of each month, shall distribute the remaining monies as follows:

1. Twenty per cent to the state treasurer, to be placed in the general fund of the state for general purposes subject to subsection E of this section.

2. Twenty-five per cent to the general fund of the county.

3. Twenty-five per cent to the state treasurer, to be placed in the state general fund to aid in school financial assistance.

4. Twenty-five per cent to the several incorporated cities and towns of the county, apportioned in proportion to the population of each as shown by the most recent United States census.

5. Five per cent to the county assessor to be placed in the special fund established pursuant to § 28-301, subsection C, except that no monies shall be distributed to the county assessor if the county has entered into an agreement pursuant to § 28-301.02, in which case five per cent shall be placed in the department's special fund pursuant to § 28-301.03.

D. If any incorporated city or town has had no federal enumeration, the supervisors shall appoint a qualified person to take an accurate census of the incorporated city or town, and the supervisors shall certify the results to the county treasurer, whereupon the incorporated city or town shall share in the distribution as provided by this section.

E. The state treasurer shall, on or before August 15, 1983 and each year thereafter, determine if the amounts distributed pursuant to subsection C, paragraph 1 and subsection F, paragraph 1 of this section, in the preceding fiscal year exceed the amounts distributed pursuant to subsection C, paragraph 1 and subsection F, paragraph 1 of this section, in the next preceding fiscal year by more than seven per cent. If so, the state treasurer shall, from the amount credited to the general fund of the state, pursuant to subsection C, paragraph 1 and subsection F, paragraph 1 of this section, deposit each month for the next nine months in the highway user revenue fund one-ninth of the amount computed as follows:

1. Compound twelve million seven hundred thousand dollars by an annual rate of seven per cent for each fiscal year since fiscal year 1980-1981.

2. Subtract the amount computed in paragraph 1 of this subsection from the amount distributed pursuant to subsection C, paragraph 1 and subsection F, paragraph 1 of this section, in the preceding fiscal year.

F. If the director acts as the registering officer the director shall distribute, within five days of the close of each business day, thirty-one and one-half per cent of the monies collected by the director pursuant to subsection A of this section during that day to the state treasurer, to be placed in the highway user revenue fund. The director, not later than the fifteenth day of each month, shall distribute the remaining monies as follows:

1. Twenty per cent to the state treasurer to be placed in the general fund of this state for general purposes.

2. Twenty-five per cent to the general fund of the county.

3. Twenty-five per cent to the state treasurer, to be placed in the state general fund to aid school financial assistance.

4. Twenty-five per cent to the county treasurer to be distributed to the several incorporated cities and towns of the county apportioned in proportion to the population of each as shown by the most recent United States census.

5. Five per cent to be placed in the special fund established pursuant to § 28–301.03.

§ 28–1594.01. Distribution of transportation excise tax in counties with population of one million two hundred thousand or more persons; regional area road fund; accounts; bonds; definitions

A. All transportation excise tax monies collected pursuant to § 42–1482 in a county with a population of one million two hundred thousand or more persons shall be immediately transferred by the officer collecting the monies to the state treasurer who shall deposit the monies in a fund designated for the county as the regional area road fund. The state treasurer shall hold all monies in such fund as a trustee for the county. Except as provided in this section, the beneficial interest in such fund shall be the county which levied the transportation excise taxes. This state shall have no beneficial interest in such fund except as an obligee for reimbursement of state monies advanced as salaries or expenses by this state or the department and which are to be repaid by the regional area road fund. Monies and investments within the regional area road fund may be used and expended only as provided in this article. No appropriation of any nature may be required before the expenditure of any monies from the fund. In any instance in which payment shall be made from the regional area road fund, the state treasurer may do so by check without the necessity of any warrant or voucher. Subject to the powers granted to the board in chapter 15, article 1.1 of this title,[1] the director shall administer monies deposited in the regional area road fund.

B. The regional area road fund shall be divided into three separate accounts, the bond account, the construction account and the bond proceeds account. Each account shall be kept separate and apart by the state treasurer and shall not be commingled. Transfers between accounts shall be made only as provided in this section or chapter 15, article 1.1 of this title. Before the issuance of any bonds payable from the regional area road fund as provided in chapter 15, article 1.1 of this title, all transportation excise taxes transferred to the state treasurer shall be placed in the construction account and expended as provided in this section. After the issuance of any bonds payable from the regional area road fund as provided in chapter 15, article 1.1 of this title, all transportation excise taxes shall first be deposited to the bond account until the bond account contains monies sufficient to meet all principal, interest or redemption requirements for the then current period as required by any resolution or resolutions of the board pertaining to the issuance of bonds. After all then current period requirements for all such bonds have been deposited in the bond account, the balance of transportation excise taxes received by the treasurer for the then current period shall be deposited in the construction account.

C. The state treasurer may invest monies in any account of the regional area road fund in United States treasury obligations, interest bearing United States bonds, consolidated farm loan bonds, obligations issued by the federal intermediate credit banks or obligations issued by banks for cooperatives on the authority of the Farm Act of 1933,[2] any other obligations guaranteed by the United States government and any investments authorized by any other agencies of the United States government which are authorized for use to secure public deposits or state, county or municipal bonds issued within this state on which the payments of interest have not been deferred, or in evidences of ownership of proportionate interests in future interest and principal payments on federal securities held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and

individually against the obligor on the federal securities, and which underlying federal securities are not available to satisfy any claim of the custodian or any person claiming through the custodian or to whom the custodian may be obligated. The state treasurer shall credit all interest earned on the regional area road funds of a county to the respective account of the regional area road fund in which the investment was made.

D. All monies in the bond account shall be held in trust for the owners of the bonds. Monies in the bond account shall be paid out to paying agents or directly to the owners of the bonds in accordance with the resolution or resolutions of the board authorizing the issuance of the bonds. Monies in the bond account may also be used to pay bond related expenses or recurring expenses pertaining to administration and payment of the bonds.

E. Monies in the bond proceeds account may be obligated or expended as directed by the board for:

1. Payment of all bond related expenses.

2. To create and fund reserve funds or to pay interest on bonds during the expected period of construction.

3. Payment of fees and charges and expenses incurred with respect to bond related obligations.

4. The design, right-of-way purchase or construction of controlled-access highways which are included in the regional transportation plan of the county and which are accepted into the state highway system either as a state route or as a state highway or related grade separations of controlled-access highways which are included in the regional transportation plan of the county.

F. Except as provided in subsections G and H of this section, monies in the construction account of such regional area road fund shall be spent, pledged or accumulated for the purposes provided in subsection E, paragraph 4 of this section. The director may enter into construction contracts or contracts incidental to construction contracts payable from monies in either the bond proceeds account or the construction account or a mix of both accounts.

G. Of the monies deposited to the construction account of the regional area road fund under subsection B of this section, the state treasurer shall distribute the following amounts to that county's public transportation fund as provided in § 28-2502 to be used for planning, preliminary engineering and design which are necessary in developing a regional public transportation system plan pursuant to § 28-2511:

1. On July 1, 1986, two million dollars.

2. On July 1, 1987, two million dollars.

3. On July 1, 1988, two million dollars.

4. On July 1, 1989, one million dollars.

5. On July 1, 1990, one million dollars.

If a regional public transportation system plan receives preliminary approval as provided in § 28-2511, subsection E, the state treasurer shall not distribute any further amount.

H. Of the monies allocated to the construction account of the regional area road fund under subsection B of this section, in fiscal year 1986-1987 and each subsequent fiscal year, the state treasurer shall distribute five million dollars to the public transportation fund established in that county under § 28-2502. Beginning with fiscal year 1987-1988 the monies distributed under this subsection shall be adjusted by the annual percentage change for the previous calendar year in the GNP price deflator as defined in § 41-563 The monies distributed under this subsection shall only be spent for the purposes prescribed in § 28-2521.

I. The director shall develop and annually update as a component of the five year transportation facilities construction program provided in § 28-1825 the use of monies expected to accrue to the county's regional area road fund as provided in this section.

J. The county and municipalities in the county shall, through their regional planning agency, list transportation corridors by priority in the regional transportation plan. The regional transportation plan may also provide a suggested construction schedule for the transportation corridors contained in the plan.

K. On completion of construction, the controlled-access highways prescribed in this section shall be maintained by the department. The department may enter into contracts

with municipalities in the county and the county to allow the municipalities and the county to construct the controlled-access highways or related grade separations of controlled-access highways provided in subsection E or F of this section.

L. The regional transportation plan may be annually updated to include the introduction of new controlled-access highways and related grade separations in the plan or to modify the existing plan.

M. For the purposes of this section:

1. "Bond related expenses" means the payment of all printing, publication or advertising expenses with respect to the sale and issuance of any bonds, all fees, expenses and costs of registrars retained by the board, all fees, expenses and costs of attorneys, accountants, feasibility consultants, computer programmers or other experts employed to aid in the sale and issuance of the bonds, and all other costs and costs, fees and expenses incurred or reasonably related to the issuance and sale of the bonds.

2. "Bond related obligation" means any agreement or contractual relationship between the Arizona transportation board and any bank, trust company, insurance company, surety bonding company, pension fund or other financial institution providing increased credit on the bonds or liquidity for secondary market transactions.

3. "Controlled-access highway" has the meaning assigned to that term in § 28-602.

§ 28-1594.02. Distribution of transportation excise tax in counties with population in excess of four hundred thousand but fewer than one million two hundred thousand persons; regional area road fund; accounts; bonds; definitions

A. All transportation excise tax monies collected pursuant to § 42-1483 in a county with a population in excess of four hundred thousand but fewer than one million two hundred thousand persons shall immediately be transferred by the officer collecting the monies to the state treasurer who shall deposit the monies in a fund designated for the county as the regional area road fund. The state treasurer shall hold all monies in such fund as a trustee for the county. Except as provided in this section, the beneficial interest in such fund shall be the county which levied the transportation excise taxes. This state shall have no beneficial interest, either legal or equitable, in such fund except as an obligee for reimbursement of state monies advanced as salaries or expenses by this state or the department and which are to be repaid by the regional area road fund. Monies and investments within the regional area road fund may be used and expended only as provided in this article. No appropriation of any nature may be required before the expenditure of any monies from the fund. In any instance in which payment shall be made from the regional area road fund, the state treasurer may do so by check without the necessity of any warrant or voucher. Subject to the powers granted to the board in chapter 15, article 1.1 of this title,[1] the director shall administer monies deposited in the regional area road fund.

B. The regional area road fund shall be divided into three separate accounts, the bond account, the construction account and the bond proceeds account. Each account shall be kept separate and apart by the state treasurer and shall not be commingled. Transfers between accounts shall be made only as provided in this section or in chapter 15, article 1.1 of this title. Before the issuance of any bonds payable from the regional area road fund as provided in chapter 15, article 1.1 of this title, all transportation excise taxes transferred to the state treasurer shall be placed in the construction account and expended as herein provided. After the issuance of any bonds payable from the regional area road fund as provided in chapter 15, article 1.1, of this title, all transportation excise taxes shall first be deposited in the bond account until the bond account contains monies sufficient to meet all principal, interest or redemption requirements for the then current period as required by any resolution or resolutions of the board pertaining to the issuance of bonds. After all then current period requirements for all such bonds have been deposited in the bond account, the balance of transportation excise taxes received by the treasurer for the then current period shall be deposited in the construction account.

C. The state treasurer may invest monies in any account of the regional area road fund in United States treasury obligations, interest bearing United States bonds, consolidated farm loan bonds, obligations issued by the federal intermediate credit banks or obligations issued by banks for cooperatives on the authority of the Farm Act of 1933,[2] any other obligations guaranteed by the United States government and any investments

authorized by any other agencies of the United States government which are authorized for use to secure public deposits or state, county or municipal bonds issued within this state on which the payments of interest have not been deferred, or in evidences of ownership of proportionate interests in future interest and principal payments on federal securities held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor on the federal securities, and which underlying federal securities are not available to satisfy any claim of the custodian or any person claiming through the custodian or to whom the custodian may be obligated. The state treasurer shall credit all interest earned on the regional area road funds of a county to the respective account of the regional area road fund in which the investment was made.

D. All monies in the bond account shall be held in trust for the owners of the bonds. Monies in the bond account shall be paid out to paying agents or directly to the owners of the bonds in accordance with the resolution or resolutions of the board authorizing the issuance of the bonds. Monies in the bond account may also be used to pay bond related expenses or recurring expenses pertaining to administration and payment of the bonds.

E. Monies in the bond proceeds account may be obligated or expended as directed by the board for:

1. Payment of all bond related expenses.

2. To create and fund reserve funds or to pay interest on bonds during the expected period of construction.

3. Payment of fees and charges and expenses incurred with respect to bond related obligations.

4. The design, right-of-way purchase or construction of controlled-access highways which are included in the regional transportation plan of the county and which are accepted into the state highway system either as a state route or as a state highway or related grade separations of controlled-access highways which are included in the regional transportation plan of the county.

5. The design, right-of-way purchase, construction, standard and reduced clearance grade separation, extension and widening of arterial streets and highways which are included in the regional transportation plan of the county.

F. Except as provided in subsections G and H[3] of this section, monies in the construction account of such regional area road fund shall be spent, pledged or accumulated for the purposes provided in subsection E, paragraphs 4 and 5 of this section. The director may enter into construction contracts or contracts incidental to construction contracts payable from monies in either the bond proceeds account or the construction account or a mix of both accounts.

G. Of the monies deposited in the construction account of the regional area road fund under subsection B of this section, in the fiscal year first following such an allocation and each subsequent fiscal year, the state treasurer shall distribute two million five hundred thousand dollars to the public transportation fund established in that county under § 28-2504. Beginning with the next following fiscal year the monies distributed under this subsection shall be adjusted by the annual percentage change for the previous calendar year in the GNP price deflator as defined in § 41-563. The monies distributed under this subsection shall only be expended for the purposes prescribed in § 28-2522.

H. The director shall develop and annually update as a component of the five year transportation facilities construction program provided in § 28-1825 the use of monies expected to accrue to the county's regional area road fund as provided in this section. The construction program shall place the highest priority on the completion of the controlled-access highways prescribed in subsection E, paragraph 4 of this section which are accepted into the state highway system. This priority does not preclude spending, pledging or accumulating monies for the streets and highways prescribed in subsection E, paragraph 5 of this section if such spending, pledging or accumulating of monies does not interfere with the completion of the highest priority of the construction program.

I. The county and municipalities in the county shall, through their regional planning agency, list transportation corridors by priority in the regional transportation plan. The regional transportation plan may also provide a suggested construction schedule for the transportation corridors contained in the plan.

J. On completion of construction, the controlled-access highways prescribed in subsection E, paragraph 4 of this section shall be maintained by the department. The department may enter into contracts with municipalities in the county and with the county to allow the municipalities and county to construct the streets or highways provided for in subsection E of this section. On completion of construction the municipality or county in which monies are expended for a project described in subsection E, paragraph 5 of this section is responsible for maintaining the project.

K. The regional transportation plan may be annually updated to include the introduction of new controlled-access highways and related grade separations and new arterial street and highway projects in the plan or to modify the existing plan.

L. For the purposes of this section:

1. "Arterial street or highway" means a street or highway used primarily for through traffic such that vehicular traffic from intersecting streets and highways is required by law to stop or yield before entering or crossing the street or highway.

2. "Bond related expenses" means the payment of all printing, publication or advertising expenses with respect to the sale and issuance of any bonds, all fees, expenses and costs of registrars, all fees, expenses and costs of attorneys, accountants, feasibility consultants, computer programmers or other experts employed to aid in the sale and issuance of the bonds, and all other costs and costs, fees and expenses incurred or reasonably related to the issuance and sale of the bonds.

3. "Bond related obligation" means any agreement or contractual relationship between the board and any bank, trust company, insurance company, surety bonding company, pension fund or other financial institution providing increased credit on the bonds or liquidity for secondary market transactions.

4. "Controlled-access highway" has the meaning assigned to that term in § 28-602.

§ 28-1598. Distribution of highway user revenues; budget and expenditure of local tax revenues required; definitions

A. All highway user revenues, as defined in § 28-1595 and in article IX, § 14, Constitution of Arizona, and all taxes, fees and fines collected under §§ 28-221, 28-226, 28-1011 and 28-1031 and amounts from the state lottery fund as provided in § 28-2601 shall be transferred by the officer collecting the revenues to the department. The department, after deduction of all exemptions and refunds, shall immediately transfer the revenues to the state treasurer who shall deposit the revenues in a fund designated as the Arizona highway user revenue fund. The revenues in the Arizona highway user revenue fund shall only be expended for the purposes prescribed in article IX, § 14, Constitution of Arizona. In the event of any default all amounts required by law or any resolution authorizing the issuance of bonds of the board to be placed in the principal funds, interest funds, reserve funds, sinking funds or any other funds created to service bonds issued or to be issued by the board shall be deducted by the department before the revenues are deposited in the Arizona highway user revenue fund.

B. The department shall allocate and the state treasurer shall distribute revenues of the Arizona highway user revenue fund to the Arizona highway patrol fund in eight installments in each of the first eight months of a fiscal year as follows:

1. For the 1985-1986 fiscal year, five million dollars.

2. For the 1986-1987 fiscal year and all subsequent fiscal years there shall be no distribution of highway user revenue funds to the Arizona highway patrol fund.

C. From and after December 31, 1985 for each fiscal year the department shall allocate and the state treasurer shall distribute revenues derived from three cents of the license tax for each gallon of motor vehicle fuel or use fuel collected pursuant to § 28-1501 or 28-1552 as follows:

1. Sixty-four per cent to the state highway fund.

2. Fourteen per cent to counties with a population of one million two hundred thousand or more persons to be distributed to the county and to each individual city or town within the county on the basis that the unincorporated population of the county and the incorporated population of each city or town bear to the total population within the county.

3. Eight and one-half per cent to counties with a population in excess of four hundred thousand but fewer than one million two hundred thousand persons to be distributed to

the county and to each individual city or town within the county on the basis that the unincorporated population of the county and the incorporated population of each city or town bears to the total population within the county.

4. Eight per cent to counties with a population of four hundred thousand or fewer persons to be distributed to each individual county on the basis that the unincorporated population of each county bears to the total unincorporated population of all counties with a population of four hundred thousand or fewer persons.

5. Five and one-half per cent to the incorporated cities and towns located in counties with a population of four hundred thousand or fewer persons to be distributed to each individual city or town on the basis that the incorporated population of each city or town bears to the total incorporated population of all cities and towns located in counties with a population of four hundred thousand or fewer persons.

D. Each fiscal year the department shall allocate and the state treasurer shall distribute all remaining revenues of the Arizona highway user revenue fund after the distribution provided in subsections B and C of this section, as follows:

1. To the state highway fund, fifty per cent.

2. To the counties, twenty per cent.

3. To the incorporated cities and towns, thirty per cent.

E. Each month the state treasurer shall distribute all revenues credited to the Arizona highway user revenue fund in accordance with the proportions prescribed in subsection D of this section as follows:

1. Revenues allocated to the state highway fund shall be further distributed as follows:

(a) Seven per cent shall be apportioned among cities with a population greater than three hundred thousand persons, the distribution to which was not restricted pursuant to subsection M of this section, for the acquisition of rights-of-way or construction of streets or highways other than controlled-access highways, on the basis of population.

(b) Ninety-three per cent shall be apportioned to the state highway fund.

2. Revenues allocated to the counties shall be further distributed to each individual county, the distribution to which was not restricted pursuant to subsection M of this section, based on the proportion that the sale of motor vehicle fuel and the estimated consumption of use fuel in such county bears to the total sales of motor vehicle fuel and the estimated consumption of use fuel throughout the state during the preceding calendar month.

3. Revenues allocated to the incorporated cities and towns shall be distributed on the basis of the following apportionments:

(a) One-half shall be apportioned to each city or town, the distribution to which was not restricted pursuant to subsection M of this section, on the basis that the population of each bears to the population of all cities and towns within the state.

(b) Subject to subsection M of this section, the remaining one-half shall be apportioned first on the basis of the county origin of sales of motor vehicle fuels within the state, which amount shall be further apportioned among the several incorporated cities and towns within each county in the proportion that the population of each city or town bears to the total population of all cities and towns within the county.

F. The percentages, proportions, allocations and distributions prescribed by this section are subject to the following limitations:

1. If the total highway user revenues derived and credited to the Arizona highway user revenue fund equal or exceed the total highway user revenues derived in the fiscal year ending June 30, 1973, the state and any county shall not receive from such revenues for the use of each and for distribution to cities and towns fewer dollars than were received and distributed in such fiscal year.

2. If the total highway user revenues derived and credited to the Arizona highway user revenue fund do not equal or exceed the total highway user revenues derived in the fiscal year ending June 30, 1973, the state and any county shall receive from such revenues for the use of each and for distribution to cities and towns their pro rata allocation based upon the percentages as provided in subsection D of this section.

G. The state treasurer shall calculate and remit monthly each entitlement based on the formulas prescribed by this section and adjust the remittances for the month of June to correct any overages or deficiencies in the previous months of the fiscal year ending June 30.

H. The auditors for the state, cities and counties shall, as part of the annual audit required pursuant to §§ 41-1279.03, 9-481 and 41-1279.21, respectively, certify in writing that local revenues are expended according to subsection M of this section and that local transportation assistance funds are expended according to §§ 28-2502 and 28-2602 and shall transmit to the state treasurer the certification that local revenues are expended according to subsection M of this section.

I. Beginning on January 15, 1985, the department shall every four years present a report to the legislature which evaluates the status and condition of the state, city and county transportation systems and analyzes all-mode transportation needs of the state, counties, cities and towns. Needs shall be projected for five and ten years. All counties, cities and towns shall submit needs data and information concerning the status of transportation systems for all modes to the department for use in the preparation of the statewide transportation status and needs report in accordance with procedural guidelines established by the department and in accordance with standards established by the technical advisory committee. The committee shall determine when a county, city or town is not in compliance with the procedural guidelines established under this section and shall notify that jurisdiction of such noncompliance. The committee shall advise the director to request the state treasurer to withhold that jurisdiction's revenues, as distributed under this section, except that the jurisdiction shall be entitled to receive such revenues as guaranteed pursuant to article IX, § 14, Constitution of Arizona. The jurisdiction has thirty days to appeal before the committee, and the committee shall notify the director of its finding upon hearing the appeal or the expiration of forty-five days. Upon receipt of a finding of noncompliance, the director shall request the state treasurer to withhold revenues as distributed under this section, except that the jurisdiction shall be entitled to receive such revenues as guaranteed pursuant to article IX, § 14, Constitution of Arizona, until the committee notifies the director that the jurisdiction is in compliance.

J. The state treasurer may invest inactive deposits in the Arizona highway user revenue fund in United States government bonds or interest bearing notes and other interest bearing obligations of the United States for which the full faith and credit of the United States are pledged. All interest earned on highway user revenue funds shall be credited by the state treasurer to the Arizona highway user revenue fund.

K. At least fifteen per cent of the revenues allocated each year to the state highway fund pursuant to subsection D of this section shall be expended, pledged or accumulated for the design, right-of-way purchase or construction of controlled-access highways which are included in the regional transportation plans in counties with a population in excess of four hundred thousand persons and which are accepted into the state highway system either as a state route or as a state highway. These revenues shall be further distributed in the following proportions and with the following limitations:

1. Seventy-five per cent for controlled-access highways which are accepted into the state highway system either as a state route or as a state highway located in counties with a population of one million two hundred thousand or more persons.

2. In counties with a population in excess of four hundred thousand but fewer than one million two hundred thousand persons twenty-five per cent for:

(a) The design, right-of-way purchase or construction of controlled-access highways which are included in the regional transportation plan of the county and which are accepted into the state highway system either as a state route or as a state highway or related grade separations of controlled-access highways which are included in the regional transportation plan of the county.

(b) The design, right-of-way purchase, construction, standard and reduced clearance grade separation, extension and widening of arterial streets and highways which are included in the regional transportation plan of the county.

L. Expenditures for state matching funds for the federal interstate system shall be in addition to the amount provided in subsection K of this section.

M. Beginning with fiscal year 1984-1985, if a county or incorporated city or town does not budget and expend local revenues, as defined in article IX, § 20, Constitution of

Arizona, for street and highway purposes in an amount at least equal to the average amount of local revenues budgeted and expended for street and highway purposes for any four of the immediately preceding five fiscal years, the state treasurer shall not distribute to such county, city or town any amounts from the Arizona highway user revenue fund in excess of amounts distributed for fiscal year 1969–1970.

N. In determining the amount of local revenues budgeted and expended for street and highway purposes during any fiscal year pursuant to subsection M of this section, a county or incorporated city or town shall not consider any of the following:

1. Monies distributed from the Arizona highway user revenue fund.

2. Monies distributed from the local transportation assistance fund.

3. Monies expended by the county or incorporated city or town for street and highway purposes directly necessitated by an emergency declared by the governor.

O. The department may enter into contracts with a county or municipality to allow the county or municipality to construct the streets or highways provided for in subsection K of this section.

P. A county described in subsection K of this section and the municipalities in the county shall, through their regional planning agency, list transportation corridors by priority in the regional transportation plan. The regional transportation plan may also provide a suggested construction schedule for the transportation corridors contained in the plan.

Q. Of the monies allocated to the state highway fund pursuant to subsection D of this section not more than five million dollars annually may be spent for the acquisition, construction or improvement of entry roads to state parks or roads within state parks.

R. For the purposes of this section:

1. "Arterial street or highway" means a street or highway used primarily for through traffic such that vehicular traffic from intersecting streets and highways is required by law to stop or yield before entering or crossing the street or highway.

2. "Controlled-access highway" has the meaning assigned to that term in § 28–602.

3. "Population" means the population determined in the most recent United States decennial census or the most recent special census as provided in § 28–1501.02.

§ 28-1867. Designation of state and county federal aid secondary highways

A. Upon petition of the board of supervisors of a county, the board shall, if it decides that the public convenience is served and the designation will not interfere with the completion and upkeep of the present county highway system, submit to the federal highway administration a request that the road be placed on the county federal aid secondary system.

B. Federal aid secondary county highways shall be ordered constructed, improved, repaired and maintained by the county with the department acting as agent for the counties for the receipt of federal aid funds.

C. The costs of construction, improvement, repair and maintenance of federal aid secondary state highways shall be borne by the department.

D. Matching funds for any county federal aid secondary project shall be the responsibility of the county and matching funds for state federal aid secondary projects shall be the responsibility of the department.

E. Any rural road in the state may be designated a federal aid secondary road by approval of board with the concurrence of federal

highway administration.

F. "Secondary roads" as used in this section means roads having secondary order of significance to primary roads which connect centers of population.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of §§ 28-2501 to 28-2505, was conditionally added by Laws 1985, Ch. 308, § 22. See italic note following § 5-505.

Chapter 20, consisting of Article 1, §§ 28-2501 to 28-2505, Article 2, §§ 28-2511 to 28-2513, Article 3, §§ 28-2521 and 28-2522, and Article 4, §§ 28-2531 to 28-2540, was conditionally added by Laws 1985, Ch. 308, § 22. See italic note following § 5-505.

For applicable conditional enactment provision, see Historical Note following § 5-505.

C.J.S. States §§ 79, 80, 82, 120, 121, 136 to 138, 140.

Library References
States ⇐45, 67.

§ 28-2501. Definitions

In this chapter, unless the context otherwise requires:

1. "Authority" means a regional public transportation authority organized under this chapter.

2. "Board" means the board of directors of a regional public transportation authority.

3. "Fiscal agent" means a bank or trust company authorized to do business in this state or the county treasurer as designated by the board.

4. "Municipality" means an incorporated city or town.

5. "Operating area" means the area in which the authority provides transportation service, the boundaries of which are established according to this chapter.

6. "Population" means the population determined in the most recent United States decennial census or the most recent special census as provided in § 28-1501.02.

7. "Public agency" includes this state and any county, city, town, district or other public agency or entity established under the laws of this state or the federal government.

8. "Public transportation" means local transportation of passengers by means of a public conveyance.

Added by Laws 1985, Ch. 308, § 22.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

§ 28-2502. Regional public transportation authority in counties with population of one million two hundred thousand or more persons; establishment; fund

A. Beginning January 1, 1986, a regional public transportation authority is established in a county with a population of one million two hundred thousand or more persons which approves a transportation excise tax under § 42-1482.

B. The authority may operate both within and outside the corporate limits of the member municipalities.

C. A public transportation fund is established for the authority. The fund consists of:

1. Monies appropriated by each municipality which is a member of the authority or the county, if it elected to enter into the authority. Each member municipality and member county shall appropriate monies to the public transportation fund in an amount determined by the board.

2. Monies appropriated by a county which has not elected to enter into the authority in an amount determined by the county board of supervisors.

3. Monies received from the public transportation excise tax as provided in § 42–1491.

4. Monies distributed under § 28–1594.01.

5. Any grants, gifts or donations from public or private sources.

6. Monies granted by the federal government or appropriated by the legislature.

7. Fares or other revenues collected in operating a public transportation system.

8. Local transportation assistance monies which are distributed to each member under § 28–2602 and as provided in subsection D [1] of this section.

9. Local transportation assistance monies which are distributed to a member pursuant to § 28–2602 and which must be used for public transportation.

10. After the first June 30 following voter approval of the plan as provided in § 42–1491 monies appropriated for public transportation by each municipality which is a member of the authority shall not be less than the total amount of general funds expended for public transportation in that municipality for fiscal year 1984–1985 adjusted by the annual percentage change for the previous calendar year in the GNP price deflator as defined in § 41–563.

D. The fiscal agent, on behalf of the authority, shall administer monies paid into the public transportation fund.

E. A municipality located in a county eligible to establish an authority may elect to enter into the authority by adopting an ordinance declaring such participation. If such an ordinance is adopted, the municipality shall apply for monies from the local transportation assistance fund as provided in § 28–2602 and shall use a portion of the local transportation assistance monies for public transportation. If a municipality with a population of fewer than one hundred thousand persons is unable to use three-fourths of its local transportation assistance monies for public transportation it shall appropriate any remaining amount of the three-fourths of its local transportation assistance monies to the public transportation fund as provided in subsection C of this section. If a municipality with a population of one hundred thousand or more persons is unable to use one-third of its local transportation assistance monies for public transportation it shall appropriate any remaining amount of the one-third of its local transportation assistance monies to the public transportation fund as provided in subsection C of this section.

F. The county may elect to enter into the authority by adopting a resolution declaring such participation. The county shall represent persons residing in the unincorporated areas of the county.

G. A member municipality or member county may withdraw from the authority at the end of a fiscal year by adopting an ordinance or resolution not later than ninety days before the end of the fiscal year which states its intention to withdraw. The withdrawal from the authority shall not result in the cancellation of any contractual agreement entered into between the withdrawing member and the authority.

Added by Laws 1985, Ch. 308, § 22.

[1] So in original.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5–505.

§ 28–2503. Board of directors in counties with population of one million two hundred thousand or more persons; appointment

A. In a county with a population of one million two hundred thousand or more persons the government of the authority is vested in a board of directors composed of the following members:

1. From each of the municipalities which enters into the authority, one elected official who is appointed by the respective governing body of the municipality.

2. One county supervisor who is appointed by the county board of supervisors if the county enters into the authority.

B. The term of each member is two years unless the member is no longer serving in his elected capacity in which case the membership is vacant. Any vacancy shall be filled by the respective governing body under subsection A of this section.

C. Each city or county may provide for an alternate board member who shall also be an elected official.

D. The voting members of the authority are entitled to one vote per member unless a voting member requests a weighted vote. If a weighted vote is requested, the following apply:

1. Each member of the board is entitled to a percentage vote based on the proportion of the population the member represents to the total population represented by all members of the board, except as provided in paragraph 4 of this subsection.

2. If a municipality is a member of the board, its proportion of the population shall be calculated on the basis of the population in the incorporated area of the municipality.

3. If the county is a member of the board, its proportion of the population shall be calculated on the basis of the population in the unincorporated area of the county.

4. The weighted vote of any single member shall not exceed forty per cent of the total weighted vote. If any member's proportion of the population as calculated in this subsection entitles it to a weighted vote in excess of forty per cent, the limitation on its percentage does not affect the calculation of the weighted vote of each other member.

E. For the purpose of preliminary approval of a regional public transportation system plan as provided in § 28-2511, subsection E, the voting provisions of subsection D of this section apply, except that if a weighted vote is requested, in addition to the provisions provided in subsection D of this section relating to a weighted vote, a minimum of one-third of the voting members is also required for preliminary approval of the plan.

Added by Laws 1985, Ch. 308, § 22.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

§ 28-2504. Regional public transportation authority in counties with population in excess of four hundred thousand but fewer than one million two hundred thousand persons; establishment; fund

A. Beginning July 1 of the fiscal year first following approval of a transportation excise tax pursuant to § 42-1483, a regional public transportation authority is established in a county with a population in excess of four hundred thousand but fewer than one million two hundred thousand persons which approves a transportation excise tax under § 42-1483.

B. The authority may operate both within and outside the corporate limits of member municipalities.

C. A public transportation fund is established for the authority. The fund consists of monies distributed under § 28-1594.02.

D. The fiscal agent on behalf of the authority shall administer monies paid into the public transportation fund.

E. A municipality located in a county eligible to establish an authority may elect to enter into the authority by adopting an ordinance declaring such participation.

F. The county may elect to enter into the authority by adopting a resolution declaring such participation. The county shall represent persons residing in the unincorporated areas of the county.

G. A member municipality or member county may withdraw from the authority at the end of a fiscal year by adopting an ordinance or resolution not later than ninety days before the end of the fiscal year which states its intention to withdraw. The withdrawal from the authority shall not result in the cancellation of any contractual agreement entered into between the withdrawing member and the authority.

Added by Laws 1985, Ch. 308, § 22.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

Cross References

Transportation excise tax, distribution to this fund, see § 28-1594.02.

§ 28-2505. Board of directors in counties with population in excess of four hundred thousand but fewer than one million two hundred thousand persons: appointment

A. In a county with a population in excess of four hundred thousand but fewer than one million two hundred thousand persons the government of the authority is vested in a board of directors composed of the members of the governing body of the municipality which contains the largest population in the county and, if the county enters into the authority, a county supervisor appointed by the board of supervisors.

B. The voting members of the authority are entitled to one vote per member.

Added by Laws 1985, Ch. 308, § 22.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

ARTICLE 2. PLANNING

Article 2, consisting of §§ 28-2511 to 28-2513, was conditionally added by Laws 1985, Ch. 308, § 22. See italic note following § 5-505.

§ 28-2511. Planning by the board in counties with population of one million two hundred thousand or more persons

A. The board in counties with a population of one million two hundred thousand or more persons shall develop a regional public transportation system plan. The primary purpose of the plan is the establishment of a regional rapid transit system. The plan may include a regional bus system as a secondary component of the plan.

B. The regional public transportation system plan shall, among other things:

1. Define and identify regional public transportation corridors.

2. Define the public transportation problems, goals and needs for each corridor.

3. Define land use goals.

4. Determine environmental, economic, energy and social policies to guide public transportation investment decisions.

5. Order the priority of regional public transportation corridors for development.

6. Determine the mix of alternative public transportation modes appropriate for development in light of the public transportation goals and needs for each corridor.

7. Select appropriate public transportation technology.

8. Determine the capacity for exclusive public transportation technology.

9. Determine operating performance criteria and costs for public transportation systems.

10. Locate routes and access points to the public transportation systems.

11. Determine the ridership of public transportation systems.

C. Before preliminary approval by the board under subsection D [1] of this section, the regional public transportation system plan shall include, in addition to the appropriate items prescribed in subsection B of this section, the following items presented on an individual fiscal year basis beginning no sooner than fiscal year 1988-1989 and shall not be for a time period of fewer than twenty years:

1. The capital and operating costs of the planned regional public transportation system.

2. The revenue needed by source, according to § 28-2502, subsection C, to fund the regional public transportation system plan.

D. The plan may include as a proposed source of revenue a tax levied pursuant to § 42-1491. The board may propose the tax at various rates for specific periods of time. If such a tax is proposed in the plan, the plan shall specify the tax rate or rates and the length of time each tax rate would be in effect.

E. If a majority of the members of the board preliminarily approves a regional public transportation system plan, the plan shall be submitted to the county board of supervisors who shall order a countywide general or special election as specified by the regional public transportation authority board.

F. The regional public transportation system plan may be modified by the board to reflect changes in population density or technological advances in the approved public transportation modes. A modification to the plan must be approved by a majority of the members of the board voting at a public hearing called for that purpose.

Added by Laws 1985, Ch. 308, § 22.

[1] So in original.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

Laws 1985, Ch. 308, § 33 provides:

"**Sec. 33. Special election to levy a countywide public transportation excise tax; purpose**

"A. If a regional public transportation system plan is preliminarily approved pursuant to § 28-2511, subsection E, Arizona Revised Statutes, as added by this act, the board of supervisors of a county with a population of one million two hundred thousand or more persons shall order and call a countywide special election not to be held before September, 1988, for the purpose of approving a countywide public transportation excise tax as provided by this act or may cause to be placed on the ballot for the qualified electors of the county at a general election held in or after 1988 the question of approving a countywide public transportation excise tax as provided by this act. The board shall specify on the ballot the rate or rates of tax and the length of time each tax rate would be in effect. Such a tax must be approved by a majority of the qualified electors voting at the special election or by a majority of the qualified electors voting on the ballot proposition at the general election.

"B. The board of the regional public transportation authority is responsible for the cost of the special election. The board may pay for the cost of the special election from the public transportation fund established pursuant to § 28-2502, Arizona Revised Statutes.

"C. The board of supervisors shall provide for a publicity pamphlet and ballot format consistent with the provisions of § 30 of this act."

§ 28-2512. Powers and duties of boards in counties with population of one million two hundred thousand or more persons

The board in counties with a population of one million two hundred thousand or more persons shall:

1. Determine the exclusive public transportation systems to be acquired and constructed, the means to finance the systems and whether to operate the systems or to let contracts for their operation.

2. Adopt an annual budget and fix the compensation of its employees.

3. Adopt an administrative code, by ordinance, which shall prescribe the powers and duties of the employees of the authority which are not inconsistent with this chapter, the method of appointing board employees and methods and procedures and systems of operating and managing the board. The administrative code may provide for, among other things, appointing a general manager and organizing the employees of the board into units for administration, design and construction, planning and operation, property acquisition, community relations and such other units as the board deems necessary.

4. Cause a post audit of the financial transactions and records of the board to be made at least annually by a certified public accountant.

5. Adopt all ordinances and make all rules proper or necessary to regulate the use, operation and maintenance of its property and facilities, including its public transportation systems and related transportation facilities and services operating in its area of jurisdiction, and to carry into effect the powers granted to the board.

6. Appoint advisory commissions as it deems necessary.

7. Do any and all things necessary to carry out the purposes of this chapter.

Added by Laws 1985, Ch. 308, § 22.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

§ 28-2513. Contracts; counties with population of one million two hundred thousand or more persons; eminent domain

A. The board in counties with a population of one million two hundred thousand or more persons may contract and enter into stipulations of any nature and do all acts necessary and convenient for the full exercise of the powers granted in this chapter except that the board may not exercise the power of eminent domain.

B. The cities and towns or county may exercise the right of eminent domain pursuant to title 12, chapter 8, article 2 [1] for the purposes prescribed in this chapter, in behalf of the regional public transportation authority and sell or lease to the authority any property acquired through eminent domain proceedings.

Added by Laws 1985, Ch. 308, § 22.

[1] Section 12-1111 et seq.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

ARTICLE 3. REGIONAL BUS SYSTEM

Article 3, consisting of §§ 28-2521 and 28-2522, was conditionally added by Laws 1985, Ch. 308, § 22. See italic note following § 5-505.

§ 28-2521. Regional bus system in counties with population of one million two hundred thousand or more persons

A. The board in counties with a population of one million two hundred thousand or more persons shall establish and operate a regional bus system. The monies distributed under § 28-1594.01, subsection H shall be expended for incremental increases in a regional bus system and for community funded transportation services including dial-a-ride programs and special needs transportation services and shall not be used to supplant any existing sources of monies currently being used in operating an existing bus system. The monies shall only be expended for community funded transportation services including dial-a-ride programs and special needs transportation services and to establish and operate a regional bus system including extending existing bus routes into regional routes, adding new regional routes, increasing the service on existing regional routes and capital expenditures.

B. The board may contract with any public agency or with a person on the terms and conditions the board finds in its best interest to operate a regional bus system.

Added by Laws 1985, Ch. 308, § 22.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

§ 28-2522. Regional bus system in counties with population in excess of four hundred thousand but fewer than one million two hundred thousand persons

A. The board in counties with a population in excess of four hundred thousand but fewer than one million two hundred thousand persons shall establish and operate a regional bus system. Monies distributed under § 28-1594.02, subsection G and allocated under subsections C and D of this section shall be expended for a regional bus system.

B. The board may contract with any public agency or with a person on the terms and conditions the board finds in its best interest to operate a regional bus system.

C. The board shall annually allocate a portion of the monies distributed to the public transportation fund under § 28-1594.02, subsection G to member municipalities and the member county, excluding the municipality which contains the largest population in the county. The allocation shall be based on the percentage that the transit miles driven in the municipality or county are of the total transit miles driven in all member municipalities and the member county.

D. If any member municipality or member county, except the municipality which contains the largest population in the county, requests additional regional bus service, the board shall allocate a portion of the monies distributed to the public transportation fund under § 28-1594.02, subsection G to the requesting jurisdiction. The allocation shall be based on the percentage that the additional transit miles to be driven in the municipality or county are of the total transit miles driven in all member municipalities and the member county.

Added by Laws 1985, Ch. 308, § 22.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

ARTICLE 4. FINANCING FOR REGIONAL PUBLIC TRANSPORTATION AUTHORITY

Article 4, consisting of §§ 28-2531 to 28-2540, was conditionally added by Laws 1985, Ch. 308, § 22. See italic note following § 5-505.

§ 28-2531. Definitions

In this article, unless the context otherwise requires:

1. "Any public transportation purpose" includes any one or more of the following purposes:

(a) The payment of public transportation obligations.

(b) The cost of acquiring, constructing, reconstructing, equipping, maintaining and repairing a public transportation system.

(c) The acquisition of real property for public transportation needs.

2. "Bonds" means bonds of the authority issued pursuant to this article.

3. "Real property for public transportation needs" means those real properties and any appurtenances to the properties which are designated or may be designated by the board as a location for the construction of a public transportation system project, including all lands or interests in lands, the use or occupancy of which are necessary or appropriate in the construction, reconstruction, repair, maintenance, extension, development, improvement or operation of public transportation facilities and improvements.

Added by Laws 1985, Ch. 308, § 22.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

§ 28-2532. Issuance of bonds

A. The board may, subject to this article:

1. Issue its negotiable bonds in such principal amount as, in the opinion of the board, is necessary to provide sufficient monies for any public transportation purpose, to establish reserves to secure the bonds and to provide for the payment of all other expenditures of the board incident to and necessary and convenient to carry out such purposes. The amount of bonds which may be issued shall be determined pursuant to § 28-2535.

2. Issue refunding bonds if the board deems refunding expedient.

3. Refund any bonds issued by the board if such bonds are secured from the same source of revenues as the bonds authorized in this article by the issuance of new bonds, whether the bonds to be refunded have or have not matured.

4. Issue bonds partly to refund bonds then outstanding and partly for any public transportation purpose consistent with this article. Regardless of whether or not the bonds are of such form or character as to be negotiable instruments under the terms of the uniform commercial code, the bonds shall be and are hereby made fully negotiable within the meaning and for all purposes of the uniform commercial code. The board may provide for the registration as to the principal or both principal and interest of the bonds.

B. The bonds shall be authorized by resolution of the board, shall bear such date or dates and shall mature at such time or times, not exceeding twenty years from their respective dates, as such resolution or resolutions may provide. The bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, be executed in such manner, be payable in such medium of payment, at the office of the fiscal agent or at such other place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The bonds shall be sold at public or private sale at the price and on the terms as the board determines, except that bonds to fund or refund other bonds may be exchanged with the holders of bonds being funded or refunded on terms the board determines.

C. In connection with the issuance of the bonds authorized by this article or in order to secure the payment of such bonds and interest on the bonds the board by resolution may:

1. Provide that bonds issued under this article may be secured by a first lien on all or any part of the monies paid into the public transportation fund from the public transportation excise tax provided in § 42-1491.

2. Pledge and assign to or in trust for the benefit of the holder or the holders of the bonds any part of the monies paid into the public transportation fund from the public transportation excise tax provided in § 42-1491 as will be necessary to pay the principal of and interest on the bonds as the bonds become due.

3. Set aside, regulate and dispose of reserves and sinking funds.

4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund any and all reserves or sinking funds set up by the bond resolution.

5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which the consent may be given.

6. Provide for payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the authority in the issuance, sale, delivery and payment of the bonds.

7. Do any other matters, of like or different character, which may in any way affect the security and protection of the bonds.

D. It is intended in the enactment of this article:

1. That any pledge made pursuant to this article is valid and binding from the time when the pledge is made.

2. That the monies so pledged and received by the fiscal agent to be placed in the public transportation fund are immediately subject to the lien of such pledge without any future physical delivery or further act and that any lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board, irrespective of whether such parties have notice. The official resolution or trust indenture or any instrument by which this pledge is created is, when placed in the records of the board, notice to all concerned of the creation of the pledge, and such instruments need not be recorded in any other place.

E. The members of the board or a person executing the bonds are not personally liable for the payment of the bonds. The bonds are valid and binding obligations of the authority notwithstanding the fact that before the delivery of the bonds any of the officers whose signatures appear on the bonds cease to be officers of the authority. From and after the sale and delivery of the bonds, they are incontestable by the board or

the authority.

F. The board may, out of any monies available, purchase bonds, which bonds may thereupon be canceled, at a price not exceeding either of the following:

1. If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date on the bonds.

2. If the bonds are not then redeemable, the redemption price applicable on the first date after the purchase on which the bonds become subject to redemption plus accrued interest to such date.

G. The board shall publish a notice of its intention to issue bonds under this article for at least five consecutive days in a newspaper published in this state. The last day of publication must be at least ten days before the issuance of the bonds. The notice shall state the amount of the bonds to be sold and the intended date of issuance.

Added by Laws 1985, Ch. 308, § 22.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

§ 28-2533. Unlawful interest in real property by board member or employee; violation; classification

A. A member of the board or an employee of the authority shall not directly or indirectly have any financial interest in any real property for public transportation needs hereafter purchased from monies made available by the issuance of bonds.

B. A person who violates this section is guilty of a class 2 misdemeanor.

Added by Laws 1985, Ch. 308, § 22.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

§ 28-2601. Local transportation assistance fund

A. There is established a local transportation assistance fund consisting of monies deposited from the state lottery fund pursuant to § 5-522, funds appropriated pursuant to subsection B of this section and interest earned on local transportation assistance monies as provided in § 28-2602, subsection D.

B. The legislature shall appropriate any amounts which are necessary in order to provide a total of the funds available in the local transportation assistance fund for any one fiscal year for the period from July 1, 1983 until July 1, 1991, in the amount of twenty million five hundred thousand dollars.

C. A maximum amount of one hundred eighty-four million dollars may be deposited in the local transportation assistance fund from the state lottery fund as provided in § 5-522 for the period from July 1, 1983 until July 1, 1991. Any amounts in excess of one hundred eighty-four million dollars shall be deposited in the Arizona highway user revenue fund as provided in § 28-1598.

§ 28-2602. Distribution from fund; definitions

A. An incorporated city or town may apply to the department of transportation prior to the third Monday in June for monies from the local transportation assistance fund.

B. On the first Monday in July of each year the director of the department of transportation shall determine the total amount of requests for local transportation assistance monies from cities and towns and, subject to available monies, authorize payment to be distributed under subsection C of this section.

C. The state treasurer shall pay cities and towns requesting monies from the fund from the available monies in the local transportation assistance fund on a monthly basis, one-twelfth of the annual amount. A city or town shall receive monies in the proportion that the population of each city or town bears to the total population of all cities and towns applying for monies within this state, except that a city or town applying for local transportation assistance monies is entitled to receive at least ten thousand dollars.

D. The state treasurer may invest inactive monies in the local transportation assistance fund in bonds or other evidences of indebtedness of the United States or any of its agencies or instrumentalities when the obligations are guaranteed as to principal and interest by the United States or by any agency or instrumentalities of the United States. The state treasurer shall credit all interest earned on local transportation assistance monies to the local transportation assistance fund.

E. The state treasurer shall pay cities and towns as provided in subsection C of this section a maximum amount of twenty-three million dollars in any one fiscal year from the local transportation assistance fund.

F. A city or town with a population of three hundred thousand persons or less shall use the monies received under subsection C of this section for transportation purposes except as provided in § 28-2603. Such a city or town may use the monies for public transportation operating and related capital purposes. A city or town with a population exceeding three hundred thousand persons shall use the monies received under subsection C of this section for public transportation operating and related capital purposes except as provided in § 28-2603.

G. In this section, unless the context otherwise requires:

1. "Population" means the population of a city or town as defined pursuant to § 41-563.

2. "Public transportation" means local transportation of passengers by means of a public conveyance.

Title 42 Taxation

§ 42-1482. County transportation excise tax for roads; counties with population of one million two hundred thousand or more persons

A. From and after December 31, 1985, a county with a population of one million two hundred thousand or more persons shall levy and the department shall collect a tax at a rate of not more than ten per cent of the transaction privilege tax rate applying to each person engaging or continuing in the county in a business taxed under chapter 8, article 1 of this title[1] if a majority of the qualified electors voting at a countywide special election approves the transportation excise tax.

B. The net revenues collected under this section shall be deposited in the regional area road fund pursuant to § 28-1594.01.

C. The tax levied under this section may be in effect for a period of not more than twenty years.

Added by Laws 1985, Ch. 308, § 29.

[1] Section 42-1301 et seq.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

For applicable conditional enactment provision, see Historical Note following § 5-505.

Cross References

Distribution, see § 28-1594.01.

Regional area road fund bonds, payable from income anticipated from this tax, see § 28-2021 et seq.

Regional public transportation authorities, establishment in counties approving tax under this section, see § 28-2502.

Library References

Counties ⇐190.

C.J.S. Counties § 279.

§ 42-1483. County transportation excise tax for roads; counties with population exceeding four hundred thousand but fewer than one million two hundred thousand persons

A. A county with a population exceeding four hundred thousand but fewer than one million two hundred thousand persons shall levy and the department shall collect a tax at a rate of not more than ten per cent of the transaction privilege tax rate applying to each person engaging or continuing in the county in a business taxed under chapter 8, article 1

of this title[1] if a majority of the qualified electors voting at a countywide special election, or a majority of the qualified electors voting on the ballot proposition at a general election, approves the transportation excise tax.

B. The net revenues collected under this section shall be deposited in the regional area road fund pursuant to § 28-1594.02.

C. The tax shall be levied under this section beginning January 1 or July 1, whichever date occurs first after approval by the voters, and may be in effect for a period of not more than twenty years.

Added by Laws 1985, Ch. 308, § 29.

[1] Section 42-1301 et seq.

Conditional Enactment

For applicable conditional enactment provision of Laws 1985, Ch. 308, see italic note following § 5-505.

For applicable conditional enactment provision, see Historical Note following § 5-505.

Cross References

County transportation excise tax, deposit in regional area road fund, see § 42-1483.
Distribution, see § 28-1594.02.

Regional public transportation authorities, establishment in counties approving tax under this section, see § 28-2504.

Library References

Counties ⇐190.
C.J.S. Counties § 279.

§ 42-1484. County transportation excise tax for roads; counties with population of four hundred thousand or fewer persons

A. A county with a population of four hundred thousand or fewer persons shall levy and the department shall collect a tax at a rate of not more than ten per cent of the transaction privilege tax rate applying to each person engaging or continuing in the county in a business taxed under chapter 8, article 1 of this title[1] if a majority of the qualified electors voting at a countywide special election, or a majority of the qualified electors voting on the ballot proposition at a general election, approves the transportation excise tax.

B. The net revenues collected under this section shall be distributed to the individual county and to the individual cities and towns in the county in the manner determined by the county board of supervisors prior to the election and described in the publicity pamphlet for the election. The revenues distributed to each jurisdiction may only be used in a manner consistent with the use of revenues distributed from the Arizona highway user revenue fund under § 28-1598.

C. The tax shall be levied under this section beginning January 1 or July 1, whichever date occurs first after approval by the voters, and may be in effect for a period of not more than twenty years.

Added by Laws 1985, Ch. 308, § 29.

[1] Section 42-1301 et seq.

Conditional Enactment

Laws 1985, Ch. 308, § 36, subsec. B provides:

"B. Section 42-1484, Arizona Revised Statutes, as added by this act, and §§ 9-789, 9-789.01, 9-790, 11-378, 11-379 and 11-380, Arizona Revised Statutes, as amended by this act, do not become effective unless at least one county with a population of four hundred thousand or fewer persons approves a countywide transportation excise tax as prescribed by this act."

Cross References

Bonds.

Fund for principal and interest, street and highway improvement, see § 9-790
Issuance limitations, see § 9-789.
Pledge of revenues, see § 9-789.01.
County street and highway improvement bonds.
Issuance limitation based on distribution of highway user revenues, see § 11-378.
Security and refunding bonds, see § 11-379.
Separate fund for interest and principal payments, see § 11-380.

Library References

Counties ⇐190.
C.J.S. Counties § 279.

§ 42-1485. Administration

Unless the context otherwise requires, chapter 8, article 1 of this title[1] governs the administration of the taxes imposed by this article, except that:

1. A separate license is not required for the tax imposed by this article, and the tax due under this article shall be included, reported and paid with the transaction privilege tax.

2. A separate bond is not required of employees of the department in administering this article.

3. The tax imposed by this article may be included without segregation in any notice and lien filed for unpaid transaction privilege taxes.

Added by Laws 1985, Ch. 308, § 29.

[1] Section 42-1301 et seq.

Cross References

County public transportation excise tax, administration governed by this section, see § 42-1491.

Library References

Counties ⇐190.
C.J.S. Counties § 279.

ARTICLE 2. PUBLIC TRANSPORTATION EXCISE TAX

Article 2, consisting of § 42-1491 (conditionally enacted), was added by Laws 1985, Ch. 308, § 29. See italic note following § 5-505.

§ 42-1491. County public transportation excise tax; counties with population of one million two hundred thousand or more persons

A. If a majority of the qualified electors voting at a countywide special election or a majority of the qualified electors voting on the ballot proposition at a general election in a county with a population of one million two hundred thousand or more persons which has a regional public transportation authority under § 28-2502 approves a public transportation excise tax, the county shall levy and the department shall collect a tax at a rate of not more than ten per cent of the transaction privilege tax rate applying to each person engaging or continuing in the county in a business taxed under chapter 8, article 1 of this title[1] beginning January 1 or July 1, whichever date occurs first after approval by the voters, but in no event before January 1, 1989.

B. The net revenues collected under this section shall be deposited in the public transportation fund pursuant to § 28-2502.

C. Unless the context otherwise requires, § 42-1485 governs the administration of the tax imposed by this section.

Added by Laws 1985, Ch. 308, § 29.

[1] Section 42-1301 et seq.

Title 48 Special Taxing District

ARTICLE 3. SPECIAL ROAD DISTRICTS

§ 48-1401. Petition to form district; call for election

A. Special road districts may be formed when a petition, signed by twenty-five taxpayers within a proposed district, not more than ten miles in length nor more than one mile in width, is presented to the board of supervisors of a county requesting the formation of a special road district under the provisions of this article, and defining the boundaries of the proposed district.

B. Upon presentation of the petition, the board shall within twenty days call an election of the qualified electors within the proposed district to vote upon the formation of the district.

C. Notice of the time, place and purpose of the election shall be posted in three public places in the proposed district and at the front door of the court house of the county in which the proposed district is located at least ten days before the election.

D. The election shall be conducted as nearly as possible as prescribed by law for school bond elections, except that the board shall select the clerks and judges of election from among the electors within the district.

§ 48-1402. Qualifications of voters; ballots

A. No person shall vote at the election or at any election held in the district unless he is a qualified elector of the district and has resided within the district for not less than thirty days next preceding the election.

B. The ballots at such election shall contain the words "For special road district", "Yes" and "No", with the words "Yes" and "No" followed by a square in which the voter may express his choice by marking a cross. The election officers shall make return of the election to the board of supervisors who shall canvass the return and declare the result.

§ 48-1403. Formation of district; appointment of trustees; bond

A. If two thirds of the votes cast are favorable, the board shall enter in its records an order declaring formation of the special road district, setting forth its boundaries and designating it as "special

§ 48-1404. Election of trustees; vacancies

A. An election shall be held in the special road district on the first Saturday in January of each year to elect trustees to fill vacancies caused by expiration of term of office or otherwise. The trustee elected to succeed the trustee whose term has expired shall hold office for three years from the first Saturday in February next succeeding his election. Persons elected to fill a vacancy shall serve during the

remainder of the term.

B. The election shall be held at such places as the board of trustees shall by resolution determine, after notice thereof posted for ten days next preceding the election in three conspicuous places in each precinct into which the district may be divided for the purposes of election.

C. The returns of election shall be made to the board of supervisors, which shall canvass the returns and issue certificates of election.

D. The office of a trustee who removes from the district or who ceases to possess the qualifications of a trustee, as prescribed by this article, shall become vacant. The remaining members of the board of trustees in which a vacancy occurs shall within thirty days by resolution declare the office vacant, appoint a successor to fill the vacancy for the unexpired term and certify the appointment to the board of supervisors, which shall issue a certificate of the appointment.

§ 48-1405. Powers and duties of trustees

The trustees of the special road district shall:

1. Have exclusive charge and control of the establishment, maintenance and repair of roads, driveways and bridges within the district, other than county and state highways, and to that end may, in the name of the district, hold and convey property for the use and benefit of the district.

2. Sue and be sued.

3. Make contracts, employ labor and purchase material for the construction, maintenance and repair of roads, driveways, highways and bridges within the district and keep such highways and bridges within the district free from obstructions.

4. Control the funds of the district, which shall be paid out only on written order containing an itemized statement of the charge for which the order is drawn, and signed by at least two members of the board of trustees.

§ 48-1406. Special road tax; limitation on amount; election to exceed limits

A. For the purpose of construction, maintenance and repair of the roads, driveways, highways and bridges within the special road district, a special road tax shall be levied on all real property and mobile homes within the district. The board of trustees shall on or before July 1 in each year certify to the board of supervisors the amount of money required by the district for the ensuing fiscal year, and thereupon the board of supervisors shall levy a special tax upon all real property and mobile homes within the district sufficient to produce the amount so certified, not exceeding seventy-five cents per one hundred dollars of assessed valuation of the real property and mobile homes in the district, except as otherwise provided in this article.

B. The tax shall be levied and collected as county taxes are levied and collected, and when collected shall be kept by the county treasurer in a special fund designated "road district no. . . . . fund" to be paid out only on the order of the trustees of the district.

C. If it is deemed necessary or advisable by the board of trustees to expend for that purpose a larger amount annually for not exceeding five years than can be raised by the taxes provided by this section, it shall call a special election of qualified electors of the district to determine whether a greater tax levy shall be made annually for that period.

D. The election shall be called by the board of trustees by posting notice thereof in three public places in the district and at the front door of the court house at least ten days before the election, stating the time, place and purpose of the election.

E. The ballots at the election shall have printed on them "For a tax levy to produce the sum of (here insert amount desired) dollars annually for : . . years", "Yes" and "No", with the words "Yes" and "No" followed by a square in which the voter may express his choice by marking a cross. The election shall be conducted and canvassed as nearly as possible as elections of school trustees are conducted.

F. If two thirds of the votes cast at the election are in favor of increased tax levy, the board of supervisors shall levy annually for the period of the annual expenditures upon all real property and mobile homes of the district such a tax as will produce the amount voted, which shall be collected as other county taxes are collected and shall be placed to the credit of the road district.

§ 48-1407. Road improvement bonds; call for special election

If it is deemed necessary or advisable by the board of trustees of the district to expend in the construction or maintenance of roads, driveways and highways within the district a larger amount of money than can be raised by the seventy-five cent tax levy per one hundred dollars as specified in this article, the board of trustees may, in lieu of raising the tax as provided by § 18–256, call an election and submit to the qualified electors of the district the question of whether or not bonds of the district shall be issued and sold to raise money to make road improvements within the district.

§ 48-1408. Notice of election

A. The election shall be called by posting notices signed by the board in three public places in the district for not less than twenty days before the election. If there is a newspaper published in the county, notice shall also be given by publishing the notice therein for not less than once a week for two successive weeks prior to the election.

B. The notice shall contain:

1. The name and place of holding the election.

2. The names of three judges to conduct the election.

3. The hours during the day, not less than six, in which the polls shall be open.

4. The amount and denomination of the bonds and the maximum rate of interest to be borne on the bonds.

5. The terms of the bonds, not exceeding twenty years.

§ 48-1409. Conduct of election

A. The election shall be held, except as otherwise provided by this article, in conformity with the general election laws of the state, except that the words to appear on the ballots shall be "Bonds, Yes. ☐", "Bonds, No. ☐", and the returns of election shall be made to the board of trustees of the district.

B. On the seventh day after the election at one o'clock p.m., the board of trustees shall meet and canvass the returns, and if two thirds of the votes cast at the election are in favor of issuing the bonds, then the board of trustees shall make an entry of that fact upon their minutes, and certify to the board of supervisors all proceedings had in the premises.

§ 48-1410. Issuance of bonds

A. The board of supervisors shall issue the bonds of the district in the number and amount provided in the proceedings, payable from the road fund of the district, naming the district. The money for redemption of the bonds and payment of interest thereon shall be raised by taxation upon all real property and mobile homes in the district.

B. The board of supervisors shall prescribe the form of the bonds and the interest coupons attached thereto, and fix the time, not to exceed twenty years from the date thereof, when the whole or any part of the principal of the bonds shall be payable. The bonds shall bear interest, payable semiannually, at the rate or rates set by the accepted bid which shall not exceed the maximum rate of interest set forth in the resolution calling the election and shall be sold in the manner prescribed by the board of supervisors, but for not less than par. The proceeds of the sale shall be deposited in the county treasury to the credit of the road district, to be withdrawn for the purposes provided by this article as other road district money is drawn.

§ 48-1411. Payment of bonds; tax levy

A. The board of supervisors, at the time of making the levy of taxes for county purposes, shall levy a tax for that year upon all real property and mobile homes in the district for the interest and redemption of the bonds for an amount sufficient to pay the interest on the bonds for that year, for the portion of the principal becoming due during that year, and in all events sufficient to raise annually for the first half of the term of the bonds an amount sufficient to pay the interest thereon and, during the balance of the term, sufficient to pay the annual interest and also to pay annually a portion of the

principal of the bonds equal to a sum produced by taking the whole amount of the bonds outstanding and dividing it by the number of years the bonds have to run.

B. All taxes so levied, when collected, shall be paid into the county treasury to the credit of the bond fund of the district to be used solely for payment of principal and interest on the bonds. The principal and interest on the bonds shall be paid by the county treasurer on the warrant of the board of trustees from funds provided therefor and the board of trustees shall cancel and file with the board of supervisors the bonds when paid.

§ 48-1412. Effect of special road tax upon collection of general county tax within district

The levy and collection of the special road taxes within the district shall not exempt the property within the district from the levy and collection of the general county road tax by the board of supervisors, but the board shall appropriate annually to the use of the special road district an amount which in their judgment is equitable and just, not less than forty nor more than sixty-five per cent of the amount of road tax levied and collected within the special road district.

§ 48-1413. Dissolution of district

A. When a petition signed by twenty-five electors within a special road district is presented to the board of supervisors of the county in which the special road district is located, requesting the dissolution of the district, the board shall, within twenty days, call an election of the electors within the special road district to vote for or against the dissolution of the district.

B. Notice of the time, place and purpose of the election shall be posted, the election officers appointed, the election conducted, returned and canvassed, and the ballots shall be similar in form, as prescribed by this article for organization of a district.

C. If a majority of the votes cast at the election favor the dissolution, the board shall enter in their records an order declaring the dissolution of the district, and from that time the district shall cease to exist.

D. No special road district shall be dissolved until all outstanding bonds and interest thereon have been paid in full.

TEXT OF STATUTES KEYED TO CHAPTER 7

Title 1 General

Chapter 1 Arizona Revised Statutes

1-101 Designation and citation

1-102 Repealing clause

1-104 Effect of repealing clause and construction of act

Chapter 2 Law and Statutes

1-201 Adoption of common law; exceptions

1-211 Rules of construction and definitions

1-245 Subsequent statute as superceding former law

1-248 Repealing acts; certain laws not affected

1-249 Repealing act; effect on pending action or accrued right

Title 1 General

§ 1-101. Designation and citation

The Arizona Revised Statutes adopted and enacted into law by this Act, and as hereafter amended and supplemented and printed and published pursuant to § 1-106, shall be known as Arizona Revised Statutes and may be cited as "A.R.S." followed by the number of the Title and the number of the Section in the Title, separated by a dash. Example: This section may be cited: "A.R.S. § 1-101".

§ 1-102. Repealing clause

All laws and statutes of a general, public and permanent nature now in force and effect are repealed effective twelve o'clock noon on January 9, 1956.

§ 1-104. Effect of repealing clause and construction of Act

A. The adoption and enactment of these Revised Statutes shall not be construed to repeal or in any way to affect or modify:

1. Any special, local or temporary laws.

2. Any law making an appropriation.

3. Any law affecting any bond issue or by which any bond issue may have been authorized.

4. The running of the statutes of limitations in force at the time this Act becomes effective.

5. The continued existence and operation of any department, agency or office heretofore legally established or held.

6. Any bond of any public officer.

7. Any taxes, fees, assessments or other charges incurred or imposed.

8. Any statutes authorizing, ratifying, confirming, approving or accepting any compact or contract with any other state or with the United States or any agency or instrumentality thereof.

B. All laws, rights and obligations set forth in subsection A of this section shall continue and exist in all respects as if these Revised Statutes had not been adopted and enacted.

C. In addition to their general application, the provisions of Chapter 2 of this Title, so far as applicable, apply to the Act enacting these Revised Statutes.

§ 1-201. Adoption of common law; exceptions

The common law only so far as it is consistent with and adapted to the natural and physical conditions of this state and the necessities of the people thereof, and not repugnant to or inconsistent with the constitution of the United States or the constitution or laws of this state, or established customs of the people of this state, is adopted and shall be the rule of decision in all courts of this state.

§ 1-211. Rules of construction and definitions

A. The rules and the definitions set forth in this chapter shall be observed in the construction of the laws of the state unless such construction would be inconsistent with the manifest intent of the legislature.

B. Statutes shall be liberally construed to effect their objects and to promote justice.

C. The rule of the common law that penal statutes shall be strictly construed has no application to these revised statutes. Penal statutes shall be construed according to the fair import of their terms, with a view to effect their object and to promote justice.

§ 1-245. Subsequent statute as superseding former law

When a statute has been enacted and has become a law, no other statute or law is continued in force because it is consistent with the statute enacted, but in all cases provided for by the subsequent statute, the statutes, laws and rules theretofore in force, whether consistent or not with the provisions of the subsequent statute, unless expressly continued in force by it, shall be deemed repealed and abrogated.

§ 1-248. Repealing acts; certain laws not affected

A repealing act shall not affect:

1. Any law funding the territorial or state debt.

2. Any law authorizing the issuance of, funding of, or payment of principal or interest on, territorial bonds, bonds of the state, bonds of an agency, institution, department or political subdivision of the state, or bonds of a county, city, town or municipal corporation.

3. Any act incorporating or chartering municipal corporations.

§ 1-249. Repealing act; effect on pending action or accrued right

No action or proceeding commenced before a repealing act takes effect, and no right accrued is affected by the repealing act, but proceedings therein shall conform to the new act so far as applicable.

TEXT OF STATUTES KEYED TO CHAPTER 8

Title 11 Counties

Chapter 1 Extent and Location of County Seats

11-101 Division of state into counties

Chapter 2 Board of Supervisors

11-201 Powers of county

11-251 Powers of board

11-952 Intergovernmental agreements and contracts

Title 18 Highways and Bridges

18-201 Establishing, altering or abandoning local highways

18-207 Maintenance of public roads and streets not within city or town

18-208 Improvement of highway within city or town limit

Title 26 Military Affairs, Etc.

Chapter 2 Emergency Services

26-305 Division of emergency services; duties; director; term; qualifications; compensation

26-305.01 Nuclear emergency plan; duties of division and director

26-306 Powers and duties of the director of emergency services

26-307 Power of counties, cities, towns, and state agencies designated by the governor to make orders, rules, and regulations; procedure

26-314 Immunity of state, political subdivisions and officers, agents and employees; limitation

26-322 Determination of eligibility for flood relocation and land exchange

Title 28 Transportation

Chapter 1 Definitions and Penalties

28-104 Department jurisdiction; organization

28-106 Powers and duties of the board; definition

28-106.01 Construction of new airports; approved by board; criteria; definitions

28-108 Powers and duties

28-112 Acceptance and expenditure of federal funds; limitations

Title 32 Professions and Occupations

Chapter 20 Real Estate

32-2101 Definitions

32-2181 Notice to commissioner of intention to subdivide lands; fractional interests; exceptions

Title 37 Public Lands

Chapter 1 State Agencies and Officers

37-102 State land department; powers and duties

37-131 State land commissioner; term; removal; compensation

37-132 Powers and duties

TEXT OF STATUTES KEYED TO CHAPTER 8
(Cont'd.)

Title 41 State Government

Chapter 12 Public Safety

41-1711	Department of public safety; purpose; location; qualifications of director; responsibilities
41-1713	Powers and duties of director
41-1742	Powers of the division
41-1743	Duties of the highway patrol
41-1743.01	Use in emergencies when ordered by governor; assistance to cities and counties
41-1744	Arizona highway patrol reserve

Title 18 Highways and Bridges

§ 11-101. Division of state into counties

The state is divided into counties, named and bounded as provided in this article.

§ 11-201. Powers of county

A. The powers of a county shall be exercised only by the board of supervisors or by agents and officers acting under its authority and authority of law. It has the power to:

1. Sue and be sued.

2. Purchase and hold lands within its limits.

3. Make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers.

4. Make such orders for the disposition or use of its property as the interests of the inhabitants of the county require.

5. Levy and collect taxes for purposes under its exclusive jurisdiction as are authorized by law.

B. Except for the purposes of acting as an intermediary in a license transfer or sale, a county shall not own a commercial cable television system or any other pay television system.

C. Section 11-251.05, subsection A, paragraph 1 does not authorize a county to levy and collect taxes for any purposes beyond those otherwise specifically authorized by statute.

§ 11-251. Powers of board

The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

1. Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that such officers faithfully perform their duties, direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

2. Divide the counties into such districts or precincts as required by law, change them and create others as convenience requires.

3. Establish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof.

4. Lay out, maintain, control and manage public roads, ferries and bridges within the county and levy such tax therefor as may be authorized by law.

5. Provide for the care and maintenance of the indigent sick of the county, erect and maintain hospitals therefor and, in their discretion, provide a farm in connection with the county hospital and adopt regulations for working the farm.

6. Provide suitable rooms for county purposes.

7. Purchase, receive by donation or lease real or personal property necessary for the use of the county prison and take care of, manage and control it, but no purchase of real property shall be made unless the value has been previously estimated by three disinterested citizens of the county, appointed by the board for that purpose, and no more than the appraised value shall be paid therefor.

8. Cause to be erected and furnished a courthouse, jail, hospital and such other buildings as necessary, and construct and establish a branch jail, when necessary, at a point distant from the county seat.

9. Sell at public auction, after thirty days' previous notice given by publication in a newspaper of the county, stating the time and place of the auction, and convey to the highest bidder, for cash or contract of purchase extending not more than ten years from date of sale and upon such terms and conditions and for such consideration as the board shall prescribe, any property belonging to the county which the board deems advantageous for the county to sell, or which the board deems unnecessary for use by the county, and shall pay the proceeds thereof into the county treasury for use of the county, except that personal property need not be sold but may be used as a trade-in on the purchase of personal property when the board deems this disposition of the personal property to be in the best interests of the county. When the property for sale is real property, the board shall have such property appraised by a qualified independent fee appraiser who has an office located in this state. The appraiser shall establish a minimum price which shall in no instance be less than ninety per cent of the appraised value. The notice regarding the sale of real property shall be published in the county where the property is situated and may be published in one or more other counties, and shall contain, among other things, the appraised value, the minimum acceptable sale price, and the common and legal description of the real property. Notwithstanding the requirement for a sale at public auction prescribed in this paragraph, a county may with unanimous consent of the board, without a public auction, sell or lease any county property to any other duly constituted governmental entity, including the state, cities, towns and other counties. A county may with unanimous consent of the board, without public auction, sell or lease any county property for a specific use to any solely charitable, social or benevolent nonprofit organization incorporated in or operating in this state.

10. Examine and exhibit the accounts of all officers having the care, management, collection or disbursement of money belonging to the county or appropriated by law or otherwise for the use and benefit of the county.

11. Examine, settle and allow all accounts legally chargeable against the county, order warrants to be drawn on the county treasurer therefor and provide for issuing the warrants.

12. Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, and levy such other taxes as are required to be levied by law.

13. Equalize assessments.

14. Direct and control the prosecution and defense of all actions to which the county is a party, and compromise them.

15. Insure the county buildings in the name of and for the benefit of the county.

16. Fill by appointment all vacancies occurring in county or precinct offices.

17. Adopt provisions necessary to preserve the health of the county, and provide for the expenses thereof.

18. Contract for county printing and advertising, and provide books and stationery for county officers.

19. Provide for rebinding county records, or, if necessary, the transcribing of county records.

20. Make and enforce necessary rules and regulations for the government of their body, the preservation of order and transaction of business.

21. Adopt a seal for the board, a description and impression of which shall be filed by the clerk in the office of the county recorder, and the secretary of state.

22. Establish, maintain and conduct or aid in establishing, maintaining and conducting, public aviation fields, purchase, receive by donation or lease any property necessary therefor, lease, at a nominal rental if desired, sell such aviation fields or property to the United States or any department thereof, or sell or lease such aviation fields to a city, exchange lands acquired pursuant to this section for other lands, or act in conjunction with the United States in maintaining, managing and conducting all thereof, and, when any such property or part thereof is not needed for the purposes herein mentioned, it shall be sold by the board and the proceeds paid into the general fund of the county.

23. Acquire and hold property for the use of county fairs, and conduct, take care of and manage them.

24. Authorize the sheriff to offer a reward, not exceeding ten thousand dollars in one case, for information leading to the arrest and conviction of persons charged with crime.

25. Contract for the transportation of insane persons to the state hospital or direct the sheriff to transport such persons. The county is responsible for such expense to the extent the expense is not covered by any third party payor.

26. Bury deceased indigents and mark their graves with a stone, giving the name, age and date of death.

27. Sell or grant to the United States the title or interest of the county in any toll road or toll train in or partly within a national park, upon such terms and consideration as may be agreed upon by the board and the secretary of the interior of the United States.

28. Enter into agreements for acquiring rights-of-way, construction, reconstruction or maintenance of highways in their respective counties, including highways which pass through Indian reservations, with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of Congress, except that the governing body of any Indian tribe whose lands are affected must consent to the use of its land, and any such agreements entered into prior to June 26, 1952 are validated and confirmed.

29. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government.

30. Make and enforce all local, police, sanitary and other regulations not in conflict with general law.

31. Budget for funds for foster home care during the school week for mentally retarded and otherwise handicapped children who reside within the county and attend a school for the handicapped in a city or town within such county.

32. Do and perform all acts necessary to enable the county to participate in the "Economic Opportunity Act of 1964" (P.L. 88-452; 78 Stat. 508, as amended).[1]

33. Provide a plan or plans for their employees which provide tax deferred annuity and deferred compensation plans as authorized pursuant to title 26, United States code annotated.[2] Such plans shall allow voluntary participation by all employees of the county. Participating employees shall authorize the board to make reductions in their remuneration as provided in an executed deferred compensation agreement.

34. Adopt and enforce standards for shielding and filtration of commercial or public outdoor portable or permanent light fixtures in proximity to astronomical or meteorological laboratories.

35. Subject to the prohibitions, restrictions and limitations as set forth in § 11-830, adopt and enforce standards for excavation, landfill and grading to prevent unnecessary loss from erosion, flooding and landslides.

36. Make and enforce necessary rules and regulations for the operation and licensing of any establishment not in the limits of an incorporated city or town in which is carried on the business of providing baths, showers or other forms of hydrotherapy or any service of manual massage of the human body.

37. Provide pecuniary compensation as salary or wages for overtime work performed by county employees, including those employees covered by the provisions of title 23, chapter 2, article 9.[3] In so providing, the board may establish salary and wage plans incorporating classifications and conditions prescribed by the federal Fair Labor Standards Act.[4]

38. Establish, maintain and operate medical clinics as defined in title 36, chapter 24, article 1.[5]

39. Enact ordinances under its police authority prescribing reasonable curfews in unincorporated areas of the county for persons under the age of eighteen and fines not to exceed the fine for a petty offense for violation of such ordinances on the request or petition of either:

(a) A homeowners' association which represents a majority of the homeowners in the area covered by the association and to which the curfew would apply.

(b) A majority of the residents of the area to which the curfew would apply.

40. Lease or sublease personal property owned by the county to other political subdivisions of this state to be used for a public purpose.

41. In addition to the agreements authorized by § 11-651, enter into long-term agreements for the purchase of personal property, provided that the board may cancel any such agreement at the end of a fiscal year, at which time the seller may repossess the property and the agreement shall be deemed terminated.

42. Make and enforce necessary regulations not in conflict with the laws of this state to control air pollution generated by motor vehicles operating for recreational purposes within the county, including dust pollution generated by motor vehicles operating for recreational purposes in dry washes and riverbeds.

§ 11-952. Intergovernmental agreements and contracts

A. If authorized by their legislative or other governing bodies, two or more public agencies by direct contract or agreement may contract for services or jointly exercise any powers common to the contracting parties and may enter into agreements with one another for joint or cooperative action, except that if two or more school districts arrange to become contracting parties under the terms of this section, such contract shall first be approved by the state board of education.

B. Any such contract or agreement shall specify the following:

1. Its duration.

2. Its purpose or purposes.

3. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.

4. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

5. Any other necessary and proper matters.

C. No agreement made pursuant to this article shall relieve any public agency of any obligation or responsibility imposed upon it by law.

D. Every agreement or contract involving any public agency, board or commission made pursuant to this article shall, prior to its execution, be submitted to the attorney for each such public agency, board or commission, who shall determine whether the said agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency, board or commission.

E. Any agreement or contract submitted to the attorney general shall be filed with the secretary of state and shall become effective on the date provided in the agreement, but in no event prior to the date it is filed with the secretary of state. The secretary of state shall prepare a cross-index of the names of all public agencies which coordinate with the attorney general and secretary of state and file an agreement under this section.

F. Any agreement or contract submitted to an attorney other than the attorney general shall be filed with the secretary of state if the agreement affects more than one county and shall be filed with the county recorder if only one county is affected and shall become effective on the date provided in the agreement but in no event prior to the date it is filed with the proper officer.

G. Appropriate action by ordinance, resolution or otherwise pursuant to the laws applicable to the governing bodies of the participating agencies approving or extending the duration of the agreement or contract shall be necessary before any such agreement, contract or extension may be filed or become effective.

H. If a school district is a party to an agreement made pursuant to subsection A, the parties to such agreement may extend the duration of the agreement by notification to the proper officer with whom the agreement is filed pursuant to subsection E or F and the state board of education. Such agreement may be extended as many times as is desirable, but each extension may not exceed the duration of the previous agreement.

I. Payment for services under this section shall not be made unless pursuant to a fully approved written contract.

J. A person who authorizes payment of any monies in violation of this section is liable for the monies paid plus twenty per cent of such amount and legal interest from the date of payment.

K. Notwithstanding any other provision of law, public agencies may enter into a contract or agreement pursuant to this section with the superior court, justice courts, police courts [1] for related services and facilities of such courts for a term not to exceed ten years, with the approval of such contract or agreement by the presiding judge of the superior court of the county in which the court or courts which provide the facilities or services are located.

Title 18 Highways and Bridges

§ 18-201. Establishing, altering or abandoning local highways

The board of supervisors may establish, alter or abandon highways in the county and other legal subdivisions, and acquire real property for such purposes by purchase, donation, dedication, condemnation or other lawful means. Such highways may be established or altered by presentation of a petition signed by ten or more resident taxpayers of the county to the board of supervisors, or upon petition to the board by the governing body of a legal subdivision, praying that a highway be established or altered and giving its beginning, terminus and its general course and direction. The board may either reject the petition or act thereon as prescribed by this article. The board may abandon or vacate such highways by resolution as provided in title 28, chapter 14, article 1.[1]

§ 18-207. Maintenance of public roads and streets not within city or town

A. The board of supervisors may expend public funds for maintenance of public roads and streets other than legally designated state and county highways located without the limits of an incorporated city or town. Before expending public funds thereon, such roads or streets shall be laid out, opened and constructed without cost to the county, and fully completed in accordance with a plat approved pursuant to §§ 11-802 and 11-806.01, and in accordance with standard engineering road specifications adopted by the county board of supervisors to insure uniform compliance.

B. Public funds may be expended by the board of supervisors for maintenance of public roads and streets laid out, constructed and opened prior to June 13, 1975 even if such roads and streets were not constructed in accordance with subsection A of this section.

C. Maintenance on public roads and streets shall not be construed to include purchasing or laying rock products, cement or petroleum product materials, except that maintenance on public roads and streets which are paved with cement or petroleum product materials may include seal coating and patching.

§ 18-208. Improvement of highway within city or town limit

A. That part of a highway lying within an incorporated city or town may through cooperation be constructed, improved or maintained under the provisions of this article in the same manner as if lying without an incorporated city or town.

B. As part of such cooperation, the board of supervisors may enter into an agreement with the governing body of a city or town for the lease of:

1. County equipment for use to construct, improve or maintain highways located within the boundaries of the city or town.

2. City or town equipment for use to construct, improve or maintain roads located within the boundaries of the county.

Title 26 Military Affairs, Etc.

§ 26-305. Division of emergency services: duties: director: term: qualifications: compensation

A. There is established in the department of emergency and military affairs the division of emergency services which is administered by the department subject to powers vested in the governor as provided by law.

B. The division shall prepare for and coordinate those emergency services which may be required to reduce the impact of disaster on persons or property.

C. Through the powers vested in the governor, the division shall coordinate the cooperative effort of all governmental agencies including the federal government, this state and its political subdivisions and provide the necessary direction and control of state personnel and equipment to alleviate suffering and loss resulting from disaster.

D. The adjutant general shall appoint the director who serves at the pleasure of the adjutant general. The adjutant general shall select the director on the basis of demonstrated ability in governmental functions or business administration and general knowledge of contingency planning and disaster preparedness. The director shall devote full time to the office and shall hold no other office.

E. The director is eligible to receive compensation pursuant to § 38–611.

F. Employees other than the director and the fire marshal are employees as defined by § 41–762.

§ 26–305.01. Nuclear emergency plan; duties of division and director

A. The division is designated the lead agency and has the overall and primary responsibility for development of a state plan for off-site response to an emergency caused by an accident at a commercial nuclear generating station.

B. The director shall develop the plan by appointing a coordinator and response group and working in consultation with designated representatives from the following:

1. Radiation regulatory agency.
2. Commission of agriculture and horticulture.
3. State dairy commissioner.
4. Department of health services.
5. Department of public safety.
6. Department of transportation.
7. Division of military affairs within the department of emergency and military affairs.
8. Office of economic planning and development.
9. Arizona corporation commission.
10. Any other agencies or offices deemed necessary by the division of emergency services.

§ 26–306. Powers and duties of the director of emergency services

A. The director shall, subject to the approval of the adjutant general:

1. Be the administrative head of the division.
2. Be the state director for civil defense and the state director for emergency preparedness.
3. Make rules and regulations necessary for the operation of the division.
4. Develop and test plans for meeting any condition constituting a state of emergency or state of war emergency, except those emergency plans specifically assigned by the governor to other state agencies. Such plans shall provide for the effective mobilization and management of personnel and equipment of the state.
5. During a state of war emergency, a state of emergency or a local emergency, coordinate the emergency activities of all state agencies except the national guard of Arizona in connection with the emergency.
6. Coordinate the use of state personnel, equipment, services and facilities, including communication services, if requested by political subdivisions in support of emergency services, including search or rescue operations.
7. Coordinate the use of personnel, equipment, services and facilities, including communication services, of one or more political subdivisions in support of any other political subdivision in meeting emergency needs, including search or rescue operations, on the request of the using political subdivision.

8. Maintain a current list of public and private organizations and an inventory of facilities, equipment and supplies within each county available for use in meeting emergency needs, including search or rescue, which inventory shall be prepared by the director with the assistance of each county as provided in § 26-308, subsection E.

9. Develop, maintain and upgrade a fire prevention and fire protection program to promote the public health and safety and to reduce fire hazards to life and property.

10. After consulting with the emergency council, appoint a fire marshal to direct the state fire prevention and fire protection program and to assist in the enforcement of state laws and ordinances of cities, towns and counties relating to fire prevention and fire protection.

B. The director shall:

1. Develop, test and maintain a plan pursuant to § 26-305.01 for response by agencies of this state and its political subdivisions to an accident at a commercial nuclear generating station.

2. Each year submit a recommendation to the legislature in connection with the assessment prescribed by § 26-306.01 with supporting documentation and information.

C. The director may, subject to the approval of the adjutant general:

1. On behalf of the state, propose, develop, negotiate and consummate contractual arrangements with the federal government for technical, administrative and financial support from the federal government in connection with the emergency services activities of the state.

2. Represent the state at conferences with agencies of the federal government in the development and promotion of the emergency services capability of the state.

§ 26-307. Power of counties, cities, towns and state agencies designated by the governor to make orders, rules and regulations; procedure

A. State agencies when designated by the governor, and counties, cities and towns may make, amend and rescind orders, rules and regulations necessary for emergency functions but such shall not be inconsistent with orders, rules and regulations promulgated by the governor.

B. Any order, rule or regulation issued by the governing body of a county or other political subdivision of the state is effective when a copy is filed in the office of the clerk of the political subdivision. Existing laws, ordinances, orders, rules and regulations in conflict with this chapter or orders, rules or regulations issued under authority of this chapter are suspended during the time and to the extent that they conflict.

C. In a state of war emergency, counties, cities and towns may waive procedures and formalities otherwise required by law pertaining to the performance of public work, entering into contracts, incurring obligations, employing permanent and temporary workers, utilizing volunteer workers, renting equipment, purchasing and distributing supplies, materials and facilities and appropriating and expending public funds when such governmental entity determines and declares that strict compliance with such procedures and formalities may prevent, hinder or delay mitigation of the effects of the state of war emergency.

D. In the absence of specific authority in state emergency plans and programs, the governing body of each county, city and town of the state shall take emergency measures as deemed necessary to carry out the provisions of this chapter.

§ 26-314. Immunity of state, political subdivisions and officers, agents and employees; limitation

A. This state and its political subdivisions shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of the state or its political subdivisions or any employee of this state or its political subdivisions, excepting wilful misconduct, gross negligence or bad faith of any such employee, in carrying out the provisions of this chapter. This immunity shall not extend to emergency services as defined in § 26-301, paragraph 6.

B. The immunities from liability, exemptions from laws, ordinances and rules, all pensions, relief, disability workers' compensation and other benefits which apply to the

activity of officers, agents or employees of any political subdivision when performing their respective functions within the territorial limits of their respective political subdivisions shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this chapter, excepting wilful misconduct, gross negligence, or bad faith.

C. Volunteers duly enrolled or registered with the division of emergency services or any political subdivision, in a local emergency, a state of emergency, or a war emergency, or unregistered persons placed into service during a state of war emergency, in carrying out, complying with, or attempting to comply with any order or regulation issued pursuant to the provisions of this chapter or any local ordinance, or performing any of their authorized functions or duties or training for the performance of their authorized functions or duties, shall have the same degree of responsibility for their actions, and enjoy the same immunities and disability workers' compensation benefits as officers and employees of the state and its political subdivisions performing similar work.

D. No other state or its officers or employees rendering aid in this state pursuant to any interstate mutual aid arrangement, agreement or compact shall be liable on account of any act or omission in good faith on the part of such state or its officers or employees while so engaged, or on account of the maintenance or use of any equipment or supplies in connection with an emergency.

§ 26-322. Determination of eligibility for flood relocation and land exchange

A. The governing board shall petition the director to designate a specific land area within a floodplain as eligible for flood relocation assistance and exchange for state land pursuant to § 37-610 if five or more residents, businesses or combination of both from such area so request the governing board in writing and if the requirements of subsection B of this section are met.

B. Before petitioning the director, the governing board shall determine that:

1. A majority of the residents and businesses located in the specific area of the floodplain have signed a petition with the governing board requesting relocation.

2. A suitable parcel of state land or a parcel of land held by another governmental entity is available within a reasonable distance from the floodplain area, not to exceed twenty-five miles, which is capable of supporting those who wish to relocate on such parcel of land.

C. The director shall determine the eligibility of a floodplain area for flood relocation assistance. Eligibility shall occur only if all of the following apply:

1. The area is in a floodplain, as certified by the director of water resources.

2. There is no approved or authorized flood control project which would, upon completion, protect the area as certified by the director of water resources.

3. There are funds available in the floodplain land exchange fund to compensate the state trust for the estimated amount of exchanges involving private land valued at less than the state land for which it is exchanged or for the purchase of an available parcel of state land, state trust land or other public or private land as prescribed by subsection E of this section. The director of the division of emergency services shall obtain certification from the state land department that such funds are available.

4. There are funds available from federal, state and local sources for support of the relocation process.

D. If it is determined by the governing board pursuant to subsection B, paragraph 2 of this section that a parcel of land held by a governmental entity other than the state is available for exchange, the director shall attempt to secure such land for the relocation program.

E. The director may purchase land to support the relocation using funds from the floodplain land exchange fund if he determines, in consultation with the state land commissioner, that the purchase is in the best interest of this state. If the director so determines, he may exchange the purchased land with land belonging to residents in floodplain areas.

F. If private land within such a floodplain is not exchanged to [1] this state pursuant to this section, the division may, upon the determination of the director, condemn such land.

G. The director may enter into contracts of indemnity to indemnify any public or private agency, association, corporation or other entity or any individual against liability by virtue of injuries, losses or damages in connection with the administration of this article.

H. Lands purchased or exchanged for flood relocation purposes which are adjacent to any area currently being used for agricultural purposes must include a buffer zone of one-quarter mile from any school ground or campus and one hundred feet from any dwelling unit.

Title 28 Transportation

§ 28-104. Department jurisdiction; organization

A. The exclusive control and jurisdiction over state highways, state routes, state airports and all state owned transportation systems or modes is vested in the department of transportation.

B. The department shall:

1. Register motor vehicles and aircraft, license drivers, collect revenues, enforce motor vehicle and aviation statutes, and perform related functions.

2. Do multi-modal state transportation planning, cooperate and coordinate transportation planning with local governments, and establish an annually updated priority program of capital improvements for all transportation modes.

3. Design and construct transportation facilities in accordance with a priority plan; and maintain and operate state highways, state airports, and state public transportation systems.

4. Investigate new transportation systems and cooperate with and advise local governments concerning the development and operation of public transit systems.

5. Have administrative jurisdiction of transportation safety programs and implement them in accordance with applicable law.

C. In order to carry out the responsibilities enumerated in subsection B, the department shall be organized into the following divisions:

1. Motor vehicle.
2. Transportation planning.
3. Highways.
4. Aeronautics.
5. Public transit.
6. Administrative services.

§ 28-106. Powers and duties of the board: definition

A. With respect to aeronautics, the transportation board shall distribute monies appropriated to the division from the state aviation fund for planning, design, development, acquisition of interests in land, construction and improvement of publicly owned and operated airport facilities in counties and incorporated cities and towns. The transportation board shall distribute the monies according to the needs for such facilities as determined by the board.

B. With respect to highways, the transportation board shall:

1. Establish a complete system of state highway routes.

2. Determine which state highway routes or portions of such routes shall be accepted into the state highway system, and which state highway routes shall be improved.

3. Establish, open, relocate, alter, vacate or abandon any portion of a state route or state highway.

C. The transportation board shall establish policies and the relative weights given to criteria to guide the development or modification of the five-year transportation facilities construction program, award all construction contracts for transportation facilities and monitor the status of such construction projects.

D. The transportation board shall determine priority program planning with respect to transportation facilities.

E. With respect to transportation facilities other than highways, the transportation board shall establish, open, relocate, alter, vacate or abandon all or portions of such facilities.

F. For purposes of subsection A, a "publicly owned and operated airport facility" means an airport and appurtenant facilities in which one or more agencies, departments or instrumentalities of this state or any city, town or county of this state holds an interest in the land upon which the airport is located which is clear of any reversionary interest, lien, easement, lease or other encumbrance which might preclude or interfere with the possession, use or control of the land for public airport purposes for a minimum period of twenty years.

G. The transportation board shall prescribe rules and regulations for the effective administration of its powers, duties and responsibilities including rules and regulations relating to:

1. Priority programs.

2. Establishing, altering or vacating highways.

3. Construction contracts.

4. Revenue bonds.

5. Local government airport grants.

6. Designating or establishing scenic or historic highways.

7. Prohibiting bid rigging.

§ 28-106.01. Construction of new airports; approval by board; criteria; definitions

A. No new airport shall be constructed within the boundaries of any urbanized area or within twenty-four statute miles of the exterior boundary of any urbanized area without approval of the transportation board. This section does not apply to heliports or to additions to any existing airport.

B. The board shall approve construction of a new airport only if:

1. The construction of such new airport is consistent with the state, regional and local aviation system plans; and

2. The state, regional and local aviation plans have considered relevant criteria including airspace and air safety, land use compatibility and priority of funding.

C. For the purposes of this section:

1. "Airport" means any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized for those purposes.

2. "Heliport" means an area of land, water or structure used or intended to be used for the landing and takeoff of rotorcraft.

3. "Rotorcraft" means a heavier-than-air aircraft that depends principally for its support in flight on the lift generated by one or more rotors.

4. "Urbanized area" means an urbanized area as defined in the decennial census by the United States Bureau of the Census.

§ 28-108. Powers and duties

Text of section pending conditional amendment

A. The director shall:

1. Supervise and administer the overall activities of the department, its divisions and employees.

2. Appoint assistant directors for each of the divisions which assistant directors shall be exempt from the state personnel system.

3. Prescribe such rules and regulations as he deems necessary for the collection of taxes and license fees.

4. Provide for the assembly and distribution of information to the public concerning the department activities.

5. Prescribe such rules and regulations as he deems necessary for public safety and convenience.

6. Prescribe rules and regulations for the expenditure of all money in the state highway fund.

7. Prescribe standard board and road signs, or other devices, and provide a uniform system of marking and signaling on state routes and state highways, which shall correlate with and so far as possible conform to the system as approved by the American association of state highway officials, and regulate the use of advertising signboards and road signs on state roads or state highways.

8. Prescribe rules and regulations for closing state highways under construction or repair.

9. Receive, allocate, control and disperse all funds designated for state mass transit programs by federal or state law, regulation or rule.

10. Pass upon projects for construction in cooperation with the United States, and negotiate and enter into contracts on behalf of the state with the United States for the cooperative construction and maintenance of federal aid mass transit systems within the state.

11. Enter into agreements on behalf of the state with counties, cities, towns, mass transit districts, or with any other political subdivision for the improvement or maintenance of mass transit systems, or for the joint improvement or maintenance thereof, and enter into contracts for the construction of state mass transit systems.

12. Prescribe rules and regulations for the application for and the expenditure of all mass transit funds.

13. Exercise such other powers and duties as are necessary to fully carry out the policies, activities and duties of the department.

14. Delegate such functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

15. Contract for both the operation of state owned airports and for the purpose of securing air search and rescue services.

16. Plan, build and develop, in conjunction with local authorities, airports, airport terminals and other related navigational facilities.

17. Operate and maintain the Grand Canyon national park airport located in the Kaibab national forest, Coconino county.

18. Enter into agreements on behalf of the state with counties, cities, towns or rural districts for the improvement or maintenance of state routes, or for the joint improvement or maintenance thereof.

19. Exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes and prescribe such rules and regulations regarding such use as he deems necessary to prevent the abuse and unauthorized use of such highways and routes.

20. Enter into agreements by direct contract with nonpublic entities for services or jointly exercise any powers common to the contracting parties that he deems necessary and in the best interests of the department subject to the limitations of § 41-2544.

B. The director may provide technical transportation planning expertise to local governments when requested, coordinate local government transportation planning with regional and state transportation planning, and guide local transportation planning to assure compliance with federal requirements. Such planning authority shall not, however, preempt planning responsibilities and decisions of local governments.

C. If the governor declares a state of emergency the director may, as necessary, contract and do all things necessary to provide emergency transportation services for the residents in the affected areas whether such emergency transportation is by streets, by rail or by air.

§ 28-112. Acceptance and expenditure of federal funds; limitations

A. The department may accept and expend any grants, donations, aids or other funds received from the federal government, or any agency thereof, for any transportation purpose.

B. The department may contract and do all things necessary to secure the full benefits available to this state for transportation purposes under federal law and in so doing, may cooperate with federal, state, and local government agencies, private and public organizations and private individuals.

C. The provisions of this article shall not be construed to affect the authority of other agencies or boards of the state or political subdivisions from accepting, receiving or expending grants or other funds from the federal government or any agency thereof for any transportation purposes pursuant to other provisions of law or charter.

Title 32 Professions and Occupations

§ 32-2101. Definitions

Text of section effective until January 1, 1986

In this chapter, unless the context otherwise requires:

1. "Advertising" means the attempt by publication, dissemination, exhibition, solicitation or circulation, oral or written, or for broadcast on radio or television to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in lands subject to the provisions of this chapter including the land sales contract to be used and any photographs or drawings or artist's presentations of physical conditions or facilities existing or to exist on the property. Advertising does not include communications to stockholders as follows:

(a) Annual reports and interim financial reports.

(b) Proxy materials.

(c) Registration statements.

(d) Securities prospectuses.

(e) Applications for listing of securities on stock exchanges.

(f) Prospectuses.

(g) Property reports.

(h) Offering statements.

Advertising does not further include any other documents required to be delivered to a prospective purchaser by an agency of any other state or the federal government, all communications addressed to and relating to the account of any persons who have previously executed a contract for the purchase of the subdivider's lands except when directed to the sale of additional lands and press releases or other communications

delivered to newspapers, periodicals or other news media for general information or public relations purposes if no charge is made by such newspapers, periodicals or other news media for the publication or use of any part of such communications.

2. "Blanket encumbrance" means any mortgage, deed of trust or any other encumbrance or lien, securing or evidencing the payment of money and affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one such lot or parcel by which the subdivider holds such subdivision under an option, contract to sell or trust agreement. Blanket encumbrance does not include taxes and assessments levied by public authority.

3. "Board" means the state real estate advisory board.

4. "Broker", when used without modification, means a person licensed as a broker under any of the provisions of this chapter.

5. "Cemetery" or "cemetery property" means any one, or combination of more than one, of the following, in a place used, or intended to be used, and dedicated for cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault entombments.

(c) A crematory, or a crematory and columbarium, for cinerary interments.

6. "Cemetery broker" means a person other than a real estate broker or real estate salesman who, for another, for compensation:

(a) Sells, leases or exchanges cemetery property or interment services of or for another, or on his own account.

(b) Offers for another or for his own account to buy, sell, lease or exchange cemetery property or interment services.

(c) Negotiates the purchase and sale, lease or exchange of cemetery property or interment services.

(d) Negotiates the purchase or sale, lease or exchange, or lists or solicits, or negotiates a loan on or leasing of cemetery property or interment services.

7. "Cemetery salesman" means a natural person or a corporation, other than a real estate broker or real estate salesman, engaged by or on behalf of a licensed broker, or by or on behalf of a corporation which is licensed as a cemetery salesman, to perform any act or transaction included in the definition of cemetery broker.

8. "Commissioner" means the state real estate commissioner.

9. "Compensation" means any fee, commission, salary, money or other valuable consideration for services rendered or to be rendered as well as the promise of consideration whether contingent or not.

10. "Department" means the state real estate department.

11. "Designated broker" means the officer or member of a corporation or partnership licensed under any of the provisions of this chapter designated under the provisions of § 32-2125, subsection A by such corporation or partnership to act in its behalf as broker. A designated broker may only act as a broker for or on behalf of the corporation or partnership by which he has been designated as a broker. He may not hold any other license as a real estate broker.

12. "Fractional interest" means an undivided interest in improved or unimproved land, lots or parcels of any size created for the purpose of sale or lease and evidenced by a receipt, certificate, deed or other document conveying such interest. Undivided interests in land, lots or parcels created in the names of a husband and wife as community property, joint tenants or tenants in common, or in the names of other persons who, acting in concert together as part of a single transaction, acquire such interest without a purpose to divide such interests for present or future sale or lease shall be deemed to constitute only one fractional interest.

13. "Improved lot or parcel" means a lot or parcel of a subdivision upon which lot or parcel there is a residential, commercial or industrial building or concerning which a contract has been executed or a building permit has been issued to erect such an improvement.

14. "Inactive license" means a license which has been returned to the commissioner and is being held by the commissioner on an inactive status during the current license period.

15. "Lease" or "leasing" includes any lease, whether it is the sole, the principal or any incidental part of a transaction.

16. "Licensee" means a person to whom a license for the current license period as broker or salesman has been granted under any provision of this chapter.

17. "License period" means the two year period beginning with the date of original issue or renewal of a particular license.

18. "Member" means a member of the real estate advisory board.

19. "Permanent access", as required under article 4 of this chapter,[1] means permanent access from the subdivision to any federal, state or county highway.

20. "Perpetual or endowed-care cemetery" means a cemetery wherein lots or other burial spaces are sold or transferred under the representation that the cemetery will receive "perpetual" or "endowed" care as herein defined, free of further cost to the purchaser after payment of the original purchase price for the lot or burial space.

21. "Perpetual-care" or "endowed-care" means the maintenance and care of all places where interments have been made, of the trees, shrubs, roads, streets and other improvements and embellishments contained within or forming a part of the cemetery. This shall not include the maintenance or repair of monuments, tombs, copings or other man-made ornaments as associated with individual burial spaces.

22. "Person" means any individual, corporation, partnership, company and any other form of multiple organization for carrying on business, foreign or domestic.

23. "Promotional practice" means advertising and any other act, practice, device or scheme to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in lands subject to the provisions of this chapter including meetings with prospective purchasers, arrangements for prospective purchasers to visit the lands offered for sale, travel allowances and discount, exchange, refund and cancellation privileges.

24. "Real estate" includes leasehold-interests and any estates in land as defined in title 33, chapter 2, articles 1 and 2,[2] regardless of whether located in this state.

25. "Real estate broker" means a person, other than a salesman, who, for another and for compensation:

(a) Sells, exchanges, purchases, rents of leases real estate.

(b) Offers to sell, exchange, purchase, rent or lease real estate.

(c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate.

(d) Lists, offers, attempts or agrees to list real estate for sale, lease or exchange.

(e) Auctions, offers, attempts or agrees to auction real estate.

(f) Buys, sells, offers to buy or sell or otherwise deals in options on real estate or improvements thereon.

(g) Collects, offers, attempts or agrees to collect rent for the use of real estate.

(h) Advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting or leasing real estate or counseling or advising thereon.

(i) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate.

(j) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate.

(k) Negotiates, or offers, attempts or agrees to negotiate, a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate subject to the provisions of subsection C of § 32-2155. The provisions of this subdivision do not apply to mortgage brokers as defined in and subject to the provisions of title 6, chapter 9, article 1.[3]

(*l*) Engages in the business of assisting or offering to assist another in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.

(m) Claims, demands, charges, receives, collects or contracts for the collection of an advance fee in connection with any employment enumerated in this section, including employment undertaken to promote the sale or lease of real property by advance fee listing, by furnishing rental information to a prospective tenant for a fee paid by such prospective tenant, by advertisement or by any other offering to sell, lease, exchange or rent real property or selling kits connected therewith. This shall not include the activities of any communications media of general circulation or coverage not primarily engaged in the advertisement of real estate.

(n) Performs any of the foregoing acts as an employee of, or in behalf of, the owner of real estate, or interest therein, or improvements affixed thereon, for compensation.

26. "Real estate sales contract" means an agreement in which one party agrees to lease or convey title to real estate to another party upon the satisfaction of specified conditions set forth in the contract.

27. "Real estate salesman" means a natural person or a corporation engaged by or on behalf of a licensed real estate broker, or by or on behalf of a corporation which is licensed as a real estate salesman, to perform any act or participate in any transaction in a manner included in the definition of real estate broker subject to the provisions of subsection C of § 32-2155.

28. "Sale" or "lease" includes every disposition, transfer or offer or attempt to dispose of or transfer land in a subdivision, or an interest or estate therein, by a subdivider or his agent, including the offering of such property as a prize or gift if a monetary charge or consideration for whatever purpose is required by the subdivider or his agent.

29. "Salesman", when used without modification, means a natural person or a corporation licensed as a salesman under any of the provisions of this chapter.

30. "Stock cooperative" means a corporation to which all of the following apply:

(a) The corporation is formed or used to hold title to improved real property in fee simple or for a term of years.

(b) All or substantially all of the shareholders of the corporation each receives a right of exclusive occupancy in a portion of the real property to which the corporation holds title.

(c) The right of occupancy may only be transferred with the concurrent transfer of the shares of stock in the corporation held by the person having the right of occupancy.

31. "Subdivider" means any person who causes land to be subdivided into a subdivision for himself or for others, or who undertakes to develop a subdivision, but does not include a public agency or officer authorized by law to create subdivisions.

32. "Subdivision" or "subdivided lands" means improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, or for cemetery purposes, whether immediate or future, into four or more lots, parcels or fractional interests. Subdivision or subdivided lands include a stock cooperative. This paragraph shall not apply to the division or proposed division of land located in the state of Arizona into lots or parcels each of which is, or will be, thirty-six acres or more in area including to the center line of dedicated roads or easements, if any, contiguous to the lot or parcel and provided further that this definition shall not be deemed to include the leasing of agricultural lands, or of apartments, offices, stores, hotels, motels, or similar space within an apartment building, industrial building or commercial building except that horizontal property regimes as defined in title 33, chapter 4.1 [4] shall be included in this definition nor shall this definition include the subdivision into, or development of parcels, plots or fractional portions within the original boundaries of a cemetery which has been formed and approved pursuant to this chapter, if such subdivision or development is not inconsistent with the original notice filed pursuant to § 32-2181 and the original report prepared pursuant to § 32-2183.

33. "Trustee" means:

(a) A person designated under § 32-2194.11 to act as a trustee for an endowment-care cemetery fund.

(b) A person holding bare legal title to real property under a subdivision trust. A trustee shall not be deemed to be a developer, subdivider, broker or salesman within the provisions of this chapter.

34. "Unimproved lot or parcel" means a lot or parcel of a subdivision which is not an improved lot or parcel.

35. "Unsubdivided lands" means four or more contiguous parcels of land or lands, which parcels are more than thirty-six acres each but less than one hundred sixty acres each, and which are offered, known or advertised under a common plan for sale or lease, except that agricultural leases shall not be included in this definition.

§ 32-2181. Notice to commissioner of intention to subdivide lands; fractional interests; exceptions; deed restrictions

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

1. Name and address of 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. Name and address of subdivider.

3. Legal description and area of land.

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

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 such other information the owner, his 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 thereof 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 thereof is located, and which is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to such 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 thereof.

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 installation of off-site improvements, such as roads and utilities, and approval thereof by the political subdivision having such authority.

18. A true statement of provisions made for financing any community, recreational or other facilities to be included in the offering or represented as being in the offering. Such statement shall include a trust agreement or other evidence of assurances for delivery of such facilities and a statement of the provisions, if any, for the continued maintenance of such facilities.

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

20. 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 such facilities and utilities which will be borne by purchasers of lots in the subdivision.

21. 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.

22. 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 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.[1]

(c) Any subdivision, wherever located, for which registration would have been required pursuant to the federal Interstate Land Sales Full Disclosure Act[1] but for the exemption for subdivisions whose lots are all five acres or more in size.

23. A true statement identifying all other subdivisions, designated in paragraph 22, subdivisions (a), (b) and (c), 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 subdivider.

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

24. Such other information and such other documents and certifications as the commissioner may reasonably require.

B. The commissioner, upon application, may grant an owner, agent or subdivider of ten or less lots or parcels within a subdivision previously approved by the commissioner, an exemption from all or part of the notification requirements of subsection A of this section. Such owner, agent or subdivider shall file a statement with the commissioner indicating the change of ownership in such lots or parcels together with any material changes occurring subsequent to the original approval of the subdivision within which such lots or parcels are located. Such 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 § 45-402, the owner, agent or subdivider shall accompany the notice with a certificate of assured water supply issued by the director of water resources, unless the subdivision is located within an area designated as having an assured water supply by the director of water resources pursuant to § 45-576, subsection D, E, G or I or is exempt from such requirement pursuant to § 45-576, subsection K. If the owner, agent or 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, such submission constitutes compliance with this subsection.

D. It shall be 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 by using a series of owners or conveyances or by any other method which ultimately results in the division of such lands into a subdivision. Such a plan or offering is subject to the provisions of this article.

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

1. Each of the 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 of dedicated roads or easements, if any, contiguous to the land in which such interests are held.

2. The 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.

3. The fractional interests are created by a valid order or decree of a court or by operation of law.

4. The 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 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 § 44-1844, 44-1845 or 44-1846.

6. The commissioner by special order exempts offerings or dispositions of any 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,[2] if the director of water resources, pursuant to § 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 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 any additional information which is reasonably necessary to determine the good moral character of anyone directly involved in subdividing land within the state. The information may include:

1. Prior criminal records.

2. Fingerprints and background information, pursuant to § 41-1750, subsection G. With respect to each person requiring a fingerprint and background investigation a fee shall be charged in an amount to be determined by the commissioner. For such purpose, the real estate department and the department of public safety may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3.[3] Such fees shall be credited pursuant to § 35-148.

3. An affidavit setting out whether the applicant, any holder of an ownership interest or any principal of such holder has participated in, operated or held an interest in any land development company which has filed, or is subject to, a petition under any chapter of the federal Bankruptcy Act,[4] or the names of any persons who have been indicted for fraud or against whom an information for fraud has been filed.

H. The commissioner may require the owner, agent or 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.

I. The commissioner may adopt rules and regulations authorizing the owner, agent or 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 provided that the statement complies with the requirements of such act and the regulations pertinent thereto.

J. Cemeteries once formed and approved pursuant to this chapter shall be exempt from the requirements of this section upon further subdivision or development if such further subdivision or development is not inconsistent with the original notice filed pursuant to this section and the original report prepared pursuant to § 32-2183.

K. 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 such 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.

L. Before offering subdivided lands for lease or sale an owner, agent or 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 such promises as deed restrictions in all deeds or other instruments affecting any interest in real property within such subdivided lands.

§ 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, 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 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 may not take any formal action on a matter until the matter has been listed in the public docket for at least ten business days. 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 order a new appraisal for the sale, exchange or long-term leasing of state land that does not have a current appraisal. A current appraisal is an appraisal made within at least one hundred eighty days prior to the sale, exchange or long-term leasing of state land.

§ 37-131. State land commissioner; appointment; term; removal; compensation

A. There shall be a state land commissioner who shall be the executive officer of the state land department.

B. The commissioner shall be appointed by the governor pursuant to § 38-211 and shall serve at the pleasure of the governor.

C. The commissioner shall receive compensation as determined pursuant to § 38-611.

§ 37-132. Powers and duties

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed upon the department, and prescribe such rules and regulations as are necessary to discharge those duties.

2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to § 37-202.

3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.

4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent any urban sprawl or leapfrog development on state lands.

5. Classify and appraise all state lands, together with the improvements thereon, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as he deems to be in the best interest of the state. Grants of rights-of-way to governmental agencies or political subdivisions of this state for cash without public auction shall be made only for public road or highway or for municipal or county airport or community college purposes and on condition of reversion to this state if the rights-of-way cease to be used for these purposes. The provisions of this paragraph shall be subject to hearing and judicial review procedures pursuant to title 12, chapter 7, article 6.[1]

6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by the state.

7. Have authority to lease for commercial purposes and sell all land owned or held in trust by the state, but any such lease for commercial purposes or any such sale shall first be approved by the board of appeals pursuant to § 37-213.

8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.

9. Appoint such deputies and other assistants and employees necessary to perform the duties of the department, assign their duties, and require of them such surety bonds as he deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to § 38-611.

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year, and publish it for distribution.

B. The commissioner may take evidence relating to, and may require of the various county officers information on, any matter which he has the power to investigate or determine.

C. The commissioner or any deputy or employee of the department shall not have, own or acquire, directly or indirectly, any state lands or the products thereon, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

Title 41 State Government

§ 41-1711. Department of public safety; purpose; location; qualifications of director; responsibilities

A. There shall be a department of public safety which is responsible for creating and coordinating services for use by local law enforcement agencies in protecting the public safety. The principal office and headquarters of the department shall be in Phoenix.

B. The department shall formulate plans with a view to establishing modern services for prevention of crime, apprehension of violators, training of law enforcement personnel, and the promotion of public safety. The department shall in no way preempt the authority and jurisdiction of established agencies of political subdivisions of the state.

C. The director shall be selected on the basis of training and experience with a minimum of five years' experience in the administration of law enforcement.

D. The director shall be appointed by the governor pursuant to § 38-211 to serve for a term of five years and shall be subject to removal for cause, including but not limited to malfeasance, misfeasance and nonfeasance in office. The term shall expire on the third Monday in January of the appropriate year. The director shall receive an annual compensation as determined pursuant to § 38-611.

E. The director shall be directly responsible to the governor for the conduct and the administration of the department. If the director is unable to act, the deputy director shall direct the activities of the department during the period in which the director is unable to act. If the director and deputy director are unable to act, the governor shall direct the activities of the department during the period in which the director and deputy director are unable to act.

F. The director shall prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the state director of emergency services.

G. The director shall be responsible for the establishment, operation and maintenance of the statewide emergency medical services communication system prescribed by § 41-1835.

H. The director may purchase, lease, equip, staff and operate air ambulances, including ambulance helicopters, pursuant to § 41-1834.

I. To limit the expenditures of monies derived from the state highway fund established pursuant to Article IX, § 14, Constitution of Arizona, to traffic safety and traffic law enforcement purposes, the department of public safety shall:

1. Maintain a strict account of all costs incurred by each function of the department. Such costs shall be determined and allocated between traffic safety or traffic law enforcement functions and all other departmental functions and shall include such costs as wages or salaries, materials or supplies and equipment or facility use.

2. Immediately following the determination of all such costs certify to the department of administration and the state treasurer the full amount of all such costs relating to the various functions within the department.

J. The director of the department of administration shall annually submit a separate report to the legislature compiled from the department's functional costs certification indicating the complete breakdown between those costs which are related to traffic safety or traffic law enforcement functions and the various other functions within the department. The director of the department of administration shall include within his annual report to the legislature a recommendation for a separate appropriation to reimburse the state highway fund from the state general fund for any expenditures from the state highway fund during the prior fiscal year in excess of the total of all costs related to traffic safety or traffic law enforcement functions of the department.

K. The director shall establish a special hazardous materials emergency response organizational unit within the department to function as the initial response element of the hazardous materials emergency management program pursuant to § 26-305.02.

§ 41-1713. Powers and duties of director

A. The director of the department shall:

1. Be the administrative head of the department.

2. Subject to the merit system rules, appoint, suspend, demote, promote, or dismiss all other classified employees of the department upon the recommendation of their respective division superintendent. He shall determine and furnish the merit system council with a table of organization. The superintendent of each division shall serve at the concurrent pleasure of the director and the governor.

3. Make rules and regulations necessary for the operation of the department.

4. Annually submit a report of the work of the department to the governor and the legislature, or more often if requested by the governor or the legislature.

5. Appoint a deputy director with the approval of the governor.

B. The director may:

1. Issue commissions to officers of the department.

2. Request the cooperation of the utilities, communication media and public and private agencies, any sheriff or other peace officer in any county or municipality, within the limits of their respective jurisdictions when necessary, to aid and assist in the performance of any duty imposed by this chapter.

3. Cooperate with any public or private agency or person to receive or give necessary assistance and may contract for such assistance subject to legislative appropriation controls.

4. Utilize the advice of the council and cooperate with sheriffs, local police and peace officers within the state for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety.

5. Acquire in the name of the state, either in fee or lesser estate or interest, any real or personal property which he considers necessary for

the department's use, by purchase, donation, dedication, exchange or other lawful means. All acquisitions of personal property pursuant to this paragraph shall be made as prescribed in chapter 23 of this title [1] unless otherwise provided by law.

6. Dispose of any property, real or personal, or any right, title or interest therein, when he determines that such property is no longer needed or necessary for the department's use. Disposition of personal property shall be as prescribed in chapter 23 of this title. The real property shall be sold by public auction or competitive bidding after notice published in a daily newspaper of general circulation, not less than three times, two weeks prior to the sale and subject to the approval of the director of the department of administration. When real property is sold, it shall not be sold for less than the appraised value as established by a competent real estate appraiser. Any funds derived from the disposal of real or personal property shall be deposited in the Arizona highway patrol fund as authorized by § 28–1891, subsection B, paragraph 6.

7. Sell, lend or lease personal property directly to any state, county or local law enforcement agency. Such personal property may be sold or leased at a predetermined price without competitive bidding. Any state, county or local law enforcement agency receiving such property may not resell or lease such property to any person or organization except for educational purposes.

8. Dispose of surplus property by transferring such property to the department of administration for disposition to another state budget unit or political subdivision if such state budget unit or political subdivision is not a law enforcement agency.

9. Lease or rent personal property directly to any state law enforcement officer for the purpose of traffic safety, traffic control or other law enforcement related activity.

10. Sell at a price determined by the director according to current fair market value, and without public bidding, the department issued handgun to a department officer on retirement pursuant to title 38, chapter 5, article 4.[2] Any funds derived from the sale of such handgun to the retiring department officer shall be deposited in the Arizona highway patrol fund as authorized by § 28–1891, subsection B, paragraph 6.

§ 41–1742. Powers of the division

A. The highway patrol division superintendent may:

1. Adopt rules and regulations governing the policy, procedure and administration of all activities of the patrol.

2. Provide for training the patrolmen.

3. Cause signs to be erected and maintained as are necessary to give notice of any special restrictions.

4. Cooperate with the department of transportation and the commission of agriculture and horticulture in the enforcement of laws relating to motor vehicles.

B. The director of the department of transportation may grant authority to the highway patrol division superintendent to fix temporary

speed limits or apply other temporary restrictions when emergency conditions exist. The director of the department of transportation may fix such speed limits, or apply such restrictions when congested traffic or other conditions require restrictions for public safety.

C. The division shall issue to each member of the patrol a badge of authority, with the words "Arizona Highway Patrol" encircling the badge, the seal of the state in the center thereof and with the designation of the office or rank of the holder below.

§ 41-1743. Duties of highway patrol

The highway patrol shall patrol the highways of the state, both day and night, and enforce the laws of the state. The highway patrol shall also investigate accidents which occur upon the highways, procure the names of drivers and descriptions and license numbers of the motor vehicles involved and transmit forthwith to the vehicle superintendent a copy of the report of the investigation.

§ 41-1743.01. Use in emergencies when ordered by governor; assistance to cities and counties

A. When the governor proclaims an emergency wherein he deems it necessary to protect life or property, he may order the Arizona highway patrol to provide whatever specific emergency services are necessary. The order directing the superintendent and the Arizona highway patrol shall state the specific purpose or purposes for which it is being utilized and the specific objectives to be accomplished.

B. If a county or municipality requires aid to protect life or property, there shall be submitted to the governor a request for such aid setting forth the particular object[1] be accomplished and the area affected.

C. The authority granted in this section is supplemental to and is to be coordinated with the authority granted to the governor under § 26-172.

D. Upon approval by the governor, the highway patrol shall provide police security on or in the immediate vicinity of any state property at the request of the agency in need of such security. An agency in need of such security shall reimburse the highway patrol fund for the services of the personnel involved from such funds as may be available to such agency, and within the budget limitation of the Arizona highway patrol.

§ 41-1744. Arizona highway patrol reserve

The director may provide for a volunteer organization to be known as the Arizona highway patrol reserve, which organization shall consist of United States citizens, residents of the state of Arizona who shall render auxiliary support, without compensation, to the department under such rules and regulations as the director may prescribe.

TEXT OF STATUTES KEYED TO CHAPTER 9

Title 11 Counties

Chapter 6 Planning; Zoning; Building Codes

11-802	County planning and zoning
11-803	County planning and zoning commission; membership; terms; advisory officers
11-804	Organization of commission
11-806	Powers and duties; comprehensive plan
11-806.01	Subdivision regulation; platting roles; penalty

§ 11-802. County planning and zoning

The board of supervisors of a county, in order to conserve and promote the public health, safety, convenience and general welfare, and in accordance with the provisions of this chapter, shall plan and provide for the future growth and improvement of its area of jurisdiction, and coordinate all public improvements in accordance therewith, form a planning and zoning commission to consult with and advise it regarding matters of planning, zoning, and subdivision platting and in the manner provided in this chapter, adopt and enforce such rules, regulations, ordinances and plans as may apply to the development of its area of jurisdiction.

§ 11-803. County planning and zoning commission; membership; terms; advisory officers

A. In the counties having three supervisorial districts, the county planning and zoning commission shall consist of nine members who shall be qualified electors of the county. Three members shall be appointed from each supervisorial district by the supervisor from that district, and not more than one of the three shall be a resident of an incorporated municipality. Members of the commission shall serve without compensation except for reasonable travel expenses.

B. In the counties having five supervisorial districts, the county planning and zoning commission shall consist of ten members who shall be qualified electors of the county. Two members shall be appointed from each supervisorial district by the supervisor from that district and not more than one of the two shall be a resident of an incorporated municipality. Members of the commission shall serve without compensation except for reasonable travel expenses.

C. The terms of the members of the commissions shall be for four years except for those initially appointed. Of those members initially appointed pursuant to subsection A, five members shall be appointed to a two year term and four members shall be appointed to a four year term. Of those members initially appointed pursuant to subsection B, five members shall be appointed to a two year term and five members shall be appointed to a four year term. Thereafter, each term shall be four years. If a vacancy occurs otherwise than by expiration of term, it shall be filled by appointment for the unexpired portion of the term. Members of the commission may be removed by the board for cause.

D. Upon a conversion from three to five supervisorial districts pursuant to § 11-212, the board of supervisors, upon expiration of the terms of members of the commission serving on the date of such conversion, shall make such appointments to fill such vacancies to conform to the provisions of subsection B as soon as is practical.

E. The county assessor, county engineer, county health officer and county attorney shall serve in an advisory capacity to the commission and to the boards of adjustment.

§ 11-804. Organization of commission

A. The commission shall:

1. Elect a chairman from among its members for a term of one year, and such other officers as it may determine.

2. By resolution fix the time and place within the district of regular meetings, and hold at least one regular meeting each month, and such additional meetings as the chairman or a majority of the commission deems necessary.

3. Adopt rules for the transaction of business, and keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record and be open to public inspection.

4. Transmit all of its recommendations, decisions, findings, reports and official actions, regardless of vote, to the board of supervisors.

B. A majority of the commission shall constitute a quorum for the transaction of business and a majority vote of the quorum shall be required for any official action.

Amended by Laws 1982, Ch. 120, § 1.

§ 11-806. Powers and duties; comprehensive plan

Cross References

Construction of new airports, restrictions, see § 28-106.01.

Law Review Commentaries

Nonproportional representation, middle-ground approach. 19 Ariz.L.Rev. 544 (1977).

§ 11-806.01. Subdivision regulation; platting rules; violation; classification

A. The county board of supervisors shall regulate the subdivision of all lands within its corporate limits, except subdivisions which are regulated by municipalities.

B. No plat of a subdivision of land within the area of jurisdiction of such county shall be accepted for recording or recorded until it has been approved by the board. The approval of the board shall be endorsed in writing on the plat and shall also include specific identification of and approval of the assurances except those for hiking and equestrian trails required by this section. Where a county planning and zoning commission exists, the plat shall first have been referred to such commission for its consideration and the board shall have received the recommendation of the commission. If the subdivision is within a groundwater active management area, as defined in § 45-402, the plat shall not be approved unless accompanied by a certificate of assured water supply issued by the director of water resources, unless the subdivision is located within an area designated as having an assured water supply by the director of water resources pursuant to § 45-576, subsection D, E, G or I or is exempt from such requirement pursuant to § 45-576, subsection K. The board shall note on the face of the plat that a certificate of assured water supply has been submitted with the plat or that the proposed subdivision is within an area designated as having an assured water supply, pursuant to § 45-576, subsection D, E, G or I.

C. Any person causing a final plat to be recorded without first submitting the plat and obtaining approval of the board shall be guilty of a class 2 misdemeanor. No county recorder shall accept for recording or record any plat which has not been approved as provided by this article.

D. The ground of refusal or approval of any plat submitted, including citation of or reference to the rule or regulation violated by the plat, shall be stated upon the record of the board.

E. The commission shall recommend to the board and the board shall adopt general rules and regulations of uniform application governing plats and subdivisions of land within its area of jurisdiction. The regulations adopted shall secure and provide for the proper arrangement of streets, or other highways in relation to existing or planned streets, or highways or to the official map for adequate and convenient open spaces for traffic, utilities, drainage, access of fire fighting apparatus, recreation, light and air. The board may adopt general rules and regulations to provide for the proper arrangement of hiking and equestrian trails in relation to existing or planned streets or highways and if adopted, such hiking and equestrian trails shall conform to the official map for adequate and convenient open spaces for traffic, utilities, drainage, access of fire fighting apparatus, recreation, light and air. The general rules and regulations may provide for

modification by the commission in planned area development or specific cases where unusual topographical or other exceptional conditions may require such action. The regulations shall include provisions as to the extent to which streets and other highways shall be graded and improved and to which water, sewer or other utility mains, piping or other facilities shall be installed or provided for on the plat as a condition precedent to the approval of the final plat.

F. Boards of supervisors of counties shall prepare specifications and make orders, inspections, examinations and certificates as may be necessary to protect and complete the provisions and make them effective. The regulations shall require the posting of performance bonds, assurances or such other security as may be appropriate and necessary to assure the installation of required street, sewer, electric and water utilities, drainage, flood control and improvements meeting established minimum standards of design and construction.

G. Before adoption of rules and regulations by the board or any amendment thereof as provided in this article, a public hearing shall be held by the commission. A copy of the rules and regulations shall be certified by the commission to the county board of supervisors which shall hold a public hearing after notice of time and place has been given by one publication fifteen days prior to the public hearing in a newspaper of general circulation in the county.

H. Approval of a plat shall not be deemed to constitute or effect an acceptance by the county for designation of any street, highway or other way or open space shown upon the plat into the county maintenance system except for hiking and equestrian trails which shall be constructed and maintained by the county. However, at such time as the streets, highways or other ways are fully completed in accordance with the approved plat and written specifications made by the county board, the county shall accept such streets, highways and other ways into the county maintenance system within one year of completion.

TEXT OF STATUTES KEYED TO CHAPTER 10

Title 11 Counties

Chapter 2 Board of Supervisors

11-251 Powers of Board

Title 18 Highways and Bridges

Chapter 2 County Highways

18-201 Establishing, alterning or abandoning local highways

18-207 Maintenance of public roads and streets not within city or town

18-208 Improvement of highway within city or town limit

Title 28 Transportation

Chapter 6 Uniform Act Regulating Traffic on Highways

28-650 Warning devices at construction sites

Title 11 Counties

§ 11-251. Powers of board

The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

1. Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that such officers faithfully perform their duties, direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

2. Divide the counties into such districts or precincts as required by law, change them and create others as convenience requires.

3. Establish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof.

4. Lay out, maintain, control and manage public roads, ferries and bridges within the county and levy such tax therefor as may be authorized by law.

5. Provide for the care and maintenance of the indigent sick of the county, erect and maintain hospitals therefor and, in their discretion, provide a farm in connection with the county hospital and adopt regulations for working the farm.

6. Provide suitable rooms for county purposes.

7. Purchase, receive by donation or lease real or personal property necessary for the use of the county prison and take care of, manage and control it, but no purchase of real property shall be made unless the value has been previously estimated by three disinterested citizens of the county, appointed by the board for that purpose, and no more than the appraised value shall be paid therefor.

8. Cause to be erected and furnished a courthouse, jail, hospital and such other buildings as necessary, and construct and establish a branch jail, when necessary, at a point distant from the county seat.

9. Sell at public auction, after thirty days' previous notice given by publication in a newspaper of the county, stating the time and place of the auction, and convey to the highest bidder, for cash or contract of purchase extending not more than ten years from date of sale and upon such terms and conditions and for such consideration as the board shall prescribe, any property belonging to the county which the board deems advantageous for the county to sell, or which the board deems unnecessary for use by the county, and shall pay the proceeds thereof into the county treasury for use of the county, except that personal property need not be sold but may be used as a trade-in on the purchase of personal property when the board deems this disposition of the personal property to be in the best interests of the county. When the property for sale is real property, the board shall have such property appraised by a qualified independent fee appraiser who has an office located in this state. The appraiser shall establish a minimum price which shall in no instance be less than ninety per cent of the appraised value. The notice regarding the sale of real property shall be published in the county where the property is situated and may be published in one or more other counties, and shall contain, among other things, the appraised value, the minimum acceptable sale price, and the common and legal description of the real property. Notwithstanding the requirement for a sale at public auction prescribed in this paragraph, a county may with unanimous consent of the board, without a public auction, sell or lease any county property to any other duly constituted governmental entity, including the state, cities, towns and other counties. A county may with unanimous consent of the board, without public auction, sell or lease any county property for a specific use to any solely charitable, social or benevolent nonprofit organization incorporated in or operating in this state.

10. Examine and exhibit the accounts of all officers having the care, management, collection or disbursement of money belonging to the county or appropriated by law or otherwise for the use and benefit of the county.

11. Examine, settle and allow all accounts legally chargeable against the county, order warrants to be drawn on the county treasurer therefor and provide for issuing the warrants.

12. Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, and levy such other taxes as are required to be levied by law.

13. Equalize assessments.

14. Direct and control the prosecution and defense of all actions to which the county is a party, and compromise them.

15. Insure the county buildings in the name of and for the benefit of the county.

16. Fill by appointment all vacancies occurring in county or precinct offices.

17. Adopt provisions necessary to preserve the health of the county, and provide for the expenses thereof.

18. Contract for county printing and advertising, and provide books and stationery for county officers.

19. Provide for rebinding county records, or, if necessary, the transcribing of county records.

20. Make and enforce necessary rules and regulations for the government of their body, the preservation of order and transaction of business.

21. Adopt a seal for the board, a description and impression of which shall be filed by the clerk in the office of the county recorder, and the secretary of state.

22. Establish, maintain and conduct or aid in establishing, maintaining and conducting, public aviation fields, purchase, receive by donation or lease any property necessary therefor, lease, at a nominal rental if desired, sell such aviation fields or property to the United States or any department thereof, or sell or lease such aviation fields to a city, exchange lands acquired pursuant to this section for other lands, or act in conjunction with the United States in maintaining, managing and conducting all thereof, and, when any such property or part thereof is not needed for the purposes herein mentioned, it shall be sold by the board and the proceeds paid into the general fund of the county.

23. Acquire and hold property for the use of county fairs, and conduct, take care of and manage them.

24. Authorize the sheriff to offer a reward, not exceeding ten thousand dollars in one case, for information leading to the arrest and conviction of persons charged with crime.

25. Contract for the transportation of insane persons to the state hospital or direct the sheriff to transport such persons. The county is responsible for such expense to the extent the expense is not covered by any third party payor.

26. Bury deceased indigents and mark their graves with a stone, giving the name, age and date of death.

27. Sell or grant to the United States the title or interest of the county in any toll road or toll train in or partly within a national park, upon such terms and consideration as may be agreed upon by the board and the secretary of the interior of the United States.

28. Enter into agreements for acquiring rights-of-way, construction, reconstruction or maintenance of highways in their respective counties, including highways which pass through Indian reservations, with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of Congress, except that the governing body of any Indian tribe whose lands are affected must consent to the use of its land, and any such agreements entered into prior to June 26, 1952 are validated and confirmed.

29. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government.

30. Make and enforce all local, police, sanitary and other regulations not in conflict with general law.

31. Budget for funds for foster home care during the school week for mentally retarded and otherwise handicapped children who reside within the county and attend a school for the handicapped in a city or town within such county.

32. Do and perform all acts necessary to enable the county to participate in the "Economic Opportunity Act of 1964" (P.L. 88-452; 78 Stat. 508, as amended).[1]

33. Provide a plan or plans for their employees which provide tax deferred annuity and deferred compensation plans as authorized pursuant to title 26, United States code annotated.[2] Such plans shall allow voluntary participation by all employees of the county. Participating employees shall authorize the board to make reductions in their remuneration as provided in an executed deferred compensation agreement.

34. Adopt and enforce standards for shielding and filtration of commercial or public outdoor portable or permanent light fixtures in proximity to astronomical or meteorological laboratories.

35. Subject to the prohibitions, restrictions and limitations as set forth in § 11-830, adopt and enforce standards for excavation, landfill and grading to prevent unnecessary loss from erosion, flooding and landslides.

36. Make and enforce necessary rules and regulations for the operation and licensing of any establishment not in the limits of an incorporated city or town in which is carried on the business of providing baths, showers or other forms of hydrotherapy or any service of manual massage of the human body.

37. Provide pecuniary compensation as salary or wages for overtime work performed by county employees, including those employees covered by the provisions of title 23, chapter 2, article 9.[3] In so providing, the board may establish salary and wage plans incorporating classifications and conditions prescribed by the federal Fair Labor Standards Act.[4]

38. Establish, maintain and operate medical clinics as defined in title 36, chapter 24, article 1.[5]

39. Enact ordinances under its police authority prescribing reasonable curfews in unincorporated areas of the county for persons under the age of eighteen and fines not to exceed the fine for a petty offense for violation of such ordinances on the request or petition of either:

(a) A homeowners' association which represents a majority of the homeowners in the area covered by the association and to which the curfew would apply.

(b) A majority of the residents of the area to which the curfew would apply.

40. Lease or sublease personal property owned by the county to other political subdivisions of this state to be used for a public purpose.

41. In addition to the agreements authorized by § 11-651, enter into long-term agreements for the purchase of personal property, provided that the board may cancel any such agreement at the end of a fiscal year, at which time the seller may repossess the property and the agreement shall be deemed terminated.

42. Make and enforce necessary regulations not in conflict with the laws of this state to control air pollution generated by motor vehicles operating for recreational purposes within the county, including dust pollution generated by motor vehicles operating for recreational purposes in dry washes and riverbeds.

Title 18 Highways and Bridges

§ 18-201. Establishing, altering or abandoning local highways

The board of supervisors may establish, alter or abandon highways in the county and other legal subdivisions, and acquire real property for such purposes by purchase, donation, dedication, condemnation or other lawful means. Such highways may be established or altered by presentation of a petition signed by ten or more resident taxpayers of the county to the board of supervisors, or upon petition to the board by the governing body of a legal subdivision, praying that a highway be established or altered and giving its beginning, terminus and its general course and direction. The board may either reject the petition or act thereon as prescribed by this article. The board may abandon or vacate such highways by resolution as provided in title 28, chapter 14, article 1.[1]

§ 18–207. Maintenance of public roads and streets not within city or town

A. The board of supervisors may expend public funds for maintenance of public roads and streets other than legally designated state and county highways located without the limits of an incorporated city or town. Before expending public funds thereon, such roads or streets shall be laid out, opened and constructed without cost to the county, and fully completed in accordance with a plat approved pursuant to §§ 11–802 and 11–806.01, and in accordance with standard engineering road specifications adopted by the county board of supervisors to insure uniform compliance.

B. Public funds may be expended by the board of supervisors for maintenance of public roads and streets laid out, constructed and opened prior to June 13, 1975 even if such roads and streets were not constructed in accordance with subsection A of this section.

C. Maintenance on public roads and streets shall not be construed to include purchasing or laying rock products, cement or petroleum product materials, except that maintenance on public roads and streets which are paved with cement or petroleum product materials may include seal coating and patching.

§ 18–208. Improvement of highway within city or town limit

A. That part of a highway lying within an incorporated city or town may through cooperation be constructed, improved or maintained under the provisions of this article in the same manner as if lying without an incorporated city or town.

B. As part of such cooperation, the board of supervisors may enter into an agreement with the governing body of a city or town for the lease of:

1. County equipment for use to construct, improve or maintain highways located within the boundaries of the city or town.

2. City or town equipment for use to construct, improve or maintain roads located within the boundaries of the county.

Title 28 Transportation

§ 28–650. Warning devices at construction sites

Any person, contractor or political subdivision performing work on roads, streets or highways shall post and maintain at the work site until the work is completed or until such time as the governing body authorizes removal, such warning signs, signals, markers and barricades in compliance with the manual and specifications for uniform system of traffic control devices adopted by the director to warn those using such street, road or highway.

TEXT OF STATUTES KEYED TO CHAPTER 11

Title 28 Transportation

Chapter 6 Uniform Act Regulating Traffic on Highways

28-602	Definitions
28-611	Powers of Governor
28-621	Provisions of chapter refer to vehicles upon the highways, exceptions
28-623	Public officers and employees to obey chapter; exceptions
28-626	Provisions of chapter uniform throughout state
28-627	Powers of local authorities
28-641	State sign manual
28-642	Signs on state highways
28-643	Local traffic control devices
28-644	Obedience to and required traffic control devices
28-645	Traffic control signal legend
28-646	Pedestrian control signals
28-647	Flashing signals
28-648	Display of unauthorized signs, signals, or markings
28-649	Interference with official traffic control devices or railroad signs or signals
28-650	Warning devices at construction sites

Title 28 Transportation

§ 28-602. Definitions

In this chapter, unless the context otherwise requires:

1. "Controlled-access highway" means a highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from except at such points only and in the manner determined by the public authority having jurisdiction over the highway, street or roadway.

2. "Crosswalk" means:

(a) That part of a roadway at an intersection included within the prolongations or connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in absence of curbs, from the edges of the traversable roadway.

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

3. "Explosives" means any chemical compound or mechanical mixture commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, friction, concussion, percussion or detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

4. "Flammable liquid" means any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed-cup test device.

5. "Gross weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

6. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a highway includes two roadways thirty or more feet apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If the intersecting highway also includes two roadways thirty or more feet apart, then every crossing of two roadways of the highways shall be regarded as a separate intersection.

7. "Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

8. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state pertaining to the licensing of persons to operate motor vehicles.

9. "Metal tire" means a tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

10. "Official traffic-control devices" means all signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

11. "Park," if prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

12. "Police officer" means an officer authorized to direct or regulate traffic or make arrests for violations of traffic regulations.

13. "Private road or driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

14. "Railroad" means a carrier of persons or property upon cars operated upon stationary rails.

15. "Railroad sign or signal" means a sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

16. "Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails.

17. "Roadway" means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, roadway refers to any such roadway separately but not to all such roadways collectively.

18. "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

19. "Stop", if required, means complete cessation from movement.

20. "Stop, stopping or standing", if prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic-control sign or signal.

21. "Through highway" means a highway or portion of a highway at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing and when stop signs are erected as provided in this chapter.

22. "Traffic" means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together while using any highway for purposes of travel.

23. "Traffic-control signal" means a device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

24. "Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property.

§ 28-611. Powers of governor

The governor, in addition to other duties and responsibilities conferred upon him by the constitution and laws of this state, may contract and do all other things necessary to secure the full benefits available to this state under the federal highway safety act of 1966,[1] and in so doing, the governor may cooperate with federal and state agencies, private and public organizations, and with persons, to effectuate the purposes of such safety act, and any amendments thereto. The governor shall be responsible for and may administer through such appropriate agency of this state as he shall designate within thirty days from the effective date of this section, the highway safety programs of this state and those of its political subdivisions, all of which shall be in accordance with the federal highway safety act of 1966 and federal rules and regulations adopted to implement such act and as further provided by law.

§ 28-621. Provisions of chapter refer to vehicles upon the highways; exceptions

The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.

2. The provisions of articles 4 and 5 of this chapter shall apply upon highways and elsewhere throughout the state.

§ 28-623. Public officers and employees to obey chapter; exceptions

A. The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.

B. Unless specifically made applicable, the provisions of this chapter shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway, or to railroad employees working on a railroad track or tracks crossing the highway, but shall apply to such persons and vehicles when traveling to or from such work.

§ 28-626. Uniform application of chapter throughout state; local ordinances or regulations

A. The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized by this chapter. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

B. Local authorities shall adopt ordinances or regulations relating to movement of traffic and control including parking or standing ordinances or regulations which provide for imposition of civil sanctions upon violation of such ordinance or regulation. Unless an ordinance or regulation provides for imposition of a criminal penalty, violation of such ordinance or regulation shall constitute a civil traffic violation.

§ 28-627. Powers of local authorities

A. The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from:

1. Regulating the standing or parking of vehicles.

2. Regulating traffic by means of police officers or traffic-control signals.

3. Regulating or prohibiting processions or assemblages on the highways.

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction.

5. Regulating the speed of vehicles in public parks.

6. Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to the intersection.

7. Restricting the use of highways as authorized in § 28-1012.

8. Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee.

9. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections.

10. Altering the prima facie speed limits as authorized by this chapter.

11. Designating routes over streets and highways for vehicles of an urbar mass transit transportation system not exceeding one hundred two inches in width.

12. Adopting such other traffic regulations as are specifically authorized by this chapter.

B. No local authority shall erect or maintain any stop sign or traffic-control signal at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the director.

C. No ordinance or regulation enacted under paragraphs 4, 5, 6, 7, 9 or 10 of subsection A of this section shall be effective until signs giving notice of the local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

D. In addition to the appointment of peace officers, local authorities may by ordinance provide for the appointment of unarmed police aides who shall be employed by the police department and shall be empowered to commence an action or proceeding before a court or judge for any violation of their ordinances regulating the standing or parking of vehicles. The authority of the unarmed police aide as authorized in this section shall be strictly limited to the enforcement of the ordinances of local authorities regulating the standing or parking of vehicles and in no way shall this section be construed to grant other powers or benefits to which peace officers of this state are entitled.

E. In addition to the appointment of peace officers, local authorities may by ordinance provide for the appointment of traffic investigators who may:

1. Investigate traffic accidents within the jurisdiction of the local authority.

2. Commence an action or proceeding before a court or judge for any violation of a state statute or local ordinance relating to traffic laws, providing that such violation is related to a traffic accident within the jurisdiction of the local authority.

F. A traffic investigator appointed pursuant to subsection E shall:

1. Be unarmed at all times during the course of his duties.

2. Be an employee of the appointing local authority.

3. File written reports as required pursuant to § 28–667, but in no way shall this section be construed to grant other powers or benefits to traffic investigators to which peace officers of this state are entitled.

§ 28-641. State sign manual

The director shall adopt a manual and specifications for a uniform system of traffic control devices for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system set forth in the most recent edition of the manual on uniform traffic control devices for streets and highways prepared by the national joint committee on uniform traffic control devices.

§ 28-642. Signs on state highways

A. The director shall place and maintain such traffic-control devices, conforming to the manual and specifications, upon all state highways as he deems necessary to indicate and to carry out the provisions of this chapter or to regulate, warn or guide traffic.

B. No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the director except by the latter's permission.

§ 28-643. Local traffic-control devices

Local authorities in their respective jurisdictions shall place and maintain such traffic-control devices upon highways under their jurisdiction as they deem necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn or guide traffic. All traffic-control devices erected shall conform to the state manual and specifications.

§ 28-644. Obedience to and required traffic-control devices

A. The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exemptions granted the driver of an authorized emergency vehicle in this chapter.

B. No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. When a particular section does not state that signs are required, that section shall be effective even though no signs are erected or in place.

§ 28-645. Traffic control signal legend

A. If traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word

legend, and such lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

1. Green indication:

(a) Vehicular traffic facing a green signal may proceed straight through or turn right or left unless a sign at that place prohibits either turn. Vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited.

(b) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(c) Unless otherwise directed by a pedestrian control signal, as provided in § 28–646, pedestrians facing any green signal, except if the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

2. Steady yellow indication:

(a) Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(b) Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian control signal as provided in § 28–646, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

3. Red indication:

(a) Vehicular traffic facing a steady red signal alone shall stop before entering the intersection and shall remain standing until an indication to proceed is shown except as provided in subdivisions (b) and (c) of this paragraph.

(b) The driver of a vehicle which is stopped as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if there is no crosswalk, then at the entrance to the intersection, in obedience to a red signal, may make a right turn, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal. Right turns may be prohibited against a red signal at any intersection when a sign is erected at the intersection prohibiting such turn.

(c) The driver of a vehicle on a one-way street which intersects another one-way street on which traffic moves to the left shall stop in obedience to a red signal but may then make a left turn into such one-way street, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection, except that any such left turn as above described, may be prohibited when a sign is erected at such intersection giving notice thereof.

(d) Unless otherwise directed by a pedestrian control signal as provided in § 28–646, pedestrians facing a steady red signal alone shall not enter the roadway.

B. If an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of a sign or marking the stop shall be made at the signal.

§ 28–646. Pedestrian control signals; loitering prohibited

A. When special pedestrian control signals exhibiting the words "Walk" or "Don't Walk" are in place the signals shall indicate as follows:

1. Walk. Pedestrians facing the signal may proceed across the roadway in the direction of the signal and shall be given the right of way by the drivers of vehicles.

2. Don't Walk. No pedestrian shall start to cross the roadway in the direction of the signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the don't walk signal is showing.

B. A pedestrian shall not loiter or unduly delay crossing the roadway after traffic has stopped to give the right of way.

§ 28-647. Flashing signals

When an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

1. Flashing red stop signal. When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest cross walk at an intersection or at a limit line when marked, or if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

2. Flashing yellow caution signal. When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past the signal only with caution.

§ 28-648. Display of unauthorized signs, signals or markings

A. No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

B. Every such prohibited sign, signal or marking is declared to be a public nuisance and the authority having jurisdiction over the highway is empowered to remove the same or cause it to be removed without notice.

§ 28-649. Interference with official traffic-control devices or railroad signs or signals

No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any part thereof.

§ 28-650. Warning devices at construction sites

Any person, contractor or political subdivision performing work on roads, streets or highways shall post and maintain at the work site until the work is completed or until such time as the governing body authorizes removal, such warning signs, signals, markers and barricades in compliance with the manual and specifications for uniform system of traffic control devices adopted by the director to warn those using such street, road or highway.

TEXT OF STATUTES KEYED TO CHAPTER 12

Title 28 Transportation

Chapter 1 Definitions and Penalties

28-104 Department jurisdiction; organization

28-106 Powers and duties of the board; definition

Chapter 6 Uniform Act Regulating Traffic on Highways

28-666 Immediate reports of accidents

28-667 Written reports of accidents

28-669 Accident report forms

28-674 Department to tabulate and analyze accident reports

28-675 Any incorporated city may require accident reports

Title 11 Counties

Chapter 5 County Improvement Districts

11-562 Duties

Title 28 Transportation

§ 28-104. Department jurisdiction; organization

A. The exclusive control and jurisdiction over state highways, state routes, state airports and all state owned transportation systems or modes is vested in the department of transportation.

B. The department shall:

1. Register motor vehicles and aircraft, license drivers, collect revenues, enforce motor vehicle and aviation statutes, and perform related functions.

2. Do multi-modal state transportation planning, cooperate and coordinate transportation planning with local governments, and establish an annually updated priority program of capital improvements for all transportation modes.

3. Design and construct transportation facilities in accordance with a priority plan; and maintain and operate state highways, state airports, and state public transportation systems.

4. Investigate new transportation systems and cooperate with and advise local governments concerning the development and operation of public transit systems.

5. Have administrative jurisdiction of transportation safety programs and implement them in accordance with applicable law.

C. In order to carry out the responsibilities enumerated in subsection B, the department shall be organized into the following divisions:

1. Motor vehicle.
2. Transportation planning.
3. Highways.
4. Aeronautics.
5. Public transit.
6. Administrative services.

§ 28-106. Powers and duties of the board; definition

A. With respect to aeronautics, the transportation board shall distribute monies appropriated to the division from the state aviation fund for planning, design, development, acquisition of interests in land, construction and improvement of publicly owned and operated airport facilities in counties and incorporated cities and towns. The transportation board shall distribute the monies according to the needs for such facilities as determined by the board.

B. With respect to highways, the transportation board shall:

1. Establish a complete system of state highway routes.

2. Determine which state highway routes or portions of such routes shall be accepted into the state highway system, and which state highway routes shall be improved.

3. Establish, open, relocate, alter, vacate or abandon any portion of a state route or state highway.

C. The transportation board shall establish policies and the relative weights given to criteria to guide the development or modification of the five-year transportation facilities construction program, award all construction contracts for transportation facilities and monitor the status of such construction projects.

D. The transportation board shall determine priority program planning with respect to transportation facilities.

E. With respect to transportation facilities other than highways, the transportation board shall establish, open, relocate, alter, vacate or abandon all or portions of such facilities.

F. For purposes of subsection A, a "publicly owned and operated airport facility" means an airport and appurtenant facilities in which one or more agencies, departments or instrumentalities of this state or any city, town or county of this state holds an interest in the land upon which the airport is located which is clear of any reversionary interest, lien, easement, lease or other encumbrance which might preclude or interfere with the possession, use or control of the land for public airport purposes for a minimum period of twenty years.

G. The transportation board shall prescribe rules and regulations for the effective administration of its powers, duties and responsibilities including rules and regulations relating to:

1. Priority programs.
2. Establishing, altering or vacating highways.
3. Construction contracts.
4. Revenue bonds.
5. Local government airport grants.
6. Designating or establishing scenic or historic highways.
7. Prohibiting bid rigging.

§ 28-666. Immediate reports of accidents

The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately by the quickest means of communication, whether oral or written, give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the highway patrol.

§ 28-667. Written reports of accidents

Every law enforcement officer or public employee who, in the regular course of duty, investigates a motor vehicle accident resulting in bodily injury or death or damage to the property of any person in excess of five hundred dollars, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within twenty-four hours after completing such investigation, complete a written report of the accident. The original of the report shall be retained by the agency employing such officer or public employee. A copy of such report shall be forthwith forwarded to the department for its use. The department may place such notes, date stamps, identifying numbers, marks or other information on such copies as its needs require, provided that such shall not alter the original information reported by the investigating officer or public employee.

§ 28-669. Accident report forms

A. The department shall prepare and upon request supply to police departments, sheriffs and other suitable agencies forms for accident reports required under this article, appropriate with respect to the persons required to make the reports and the purposes to be served. The written reports to be made by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing and the persons and vehicles involved.

B. Every accident report required to be made in writing shall be made on the appropriate form approved by the department and shall contain all of the information required therein unless not available.

§ 28-674. Department to tabulate and analyze accident reports

The department shall tabulate and may analyze all accident reports, and shall publish annually, or at more frequent intervals, statistical information based thereon as to the number and circumstances of traffic accidents.

§ 28-675. Any incorporated city may require accident reports

Any incorporated city, town, village or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of the accident or a copy of any report required by this article to be filed with the department. All reports shall be for the confidential use of the city department.

Title 11 Counties

§ 11-562. Duties

A. The county engineer shall be custodian of the records and property of the county relating to surveying, engineering and road construction.

B. Except where highways are being constructed under the direction of a highway commission, the county engineer shall, under the direction of the board, have charge of all highways, other engineering construction and improvements, alterations and repairs to county property, and shall make surveys, maps, plans and specifications required by the board.

TEXT OF STATUTES KEYED TO CHAPTER 13

Title 10 Corporations and Associations

Chapter 2 Corporations and Associations Not for Profit

10-827 Powers of a generation and transmission cooperative

10-836 Use of roads and streets; notice; protest

Title 11 Counties

Chapter 2 Board of Supervisors

11-251 Powers of board

Title 12 Courts and Civil Proceedings

Chapter 8 Special Actions and Proceedings Relating to Property

12-1111 Purposes for which eminent domain may be exercised

12-1112 Prerequisites to taking property by condemnation

12-1113 Estates in land subject to condemnation

12-1114 Private property subject to condemnation

12-1115 Right of state to enter and survey property for public use

12-1116 Actions for condemnation; immediate possession; money deposit

12-1117 Complaint

12-1118 Joint or separate actions; consolidations

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12-1121 Powers of court; precedence

12-1122 Ascertainment and assessment of value, damages and benefits

12-1123 Accrual of right to compensation and damages; limitation

12-1124 Payment of compensation; effect of failure to pay

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Title 18 Highways and Bridges

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18-201 Establishing, altering, or abandoning local highways

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Chapter 6 Uniform Act Regulating Traffic on Highways

28-602 Definitions

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28-1905 Disposition by joint action

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28-1907 Extinguishment of easements

28-1908 Access to public road

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28-2101 Definitions

28-2107 Control of advertising displays along interstate, secondary, and primary highways by municipality or county

Title 32 Professions and Occupations

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32-2181 Notice to commissioner of intension to subdivide lands; fractional interests; exceptions; deed restrictions

Title 48 Special Taxing Districts

Chapter 14 Sanitary Districts

48-1550 Use of public rights-of-way

48-2912 Rights-of-way

Title 10 Corporations and Associations

§ 10-827. Powers of a generation and transmission cooperative

A generation and transmission cooperative may:

1. Sue and be sued and complain and defend in its corporate name.

2. Have perpetual existence by its corporate name.

3. Adopt a corporate seal and alter the seal at its pleasure, and use the seal by causing it, or a facsimile of it, to be impressed or affixed or in any other manner reproduced, but failure to have or to affix a corporate seal does not affect the validity of any instrument or any action taken in pursuance of [1] in reliance on the seal.

4. Own, operate, lease or control plants, property and facilities for the generation or transmission, sale or furnishing of electricity for light, heat or power or other uses, and generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and sell, supply and dispose of electric energy to or for its members, governmental agencies and political subdivisions and other electric utilities.

5. Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, exercise rights arising out of the ownership or possession, use, employ, sell, assign, transfer, convey, mortgage, lend, pledge, hypothecate or otherwise use and deal in and with shares, rights, memberships or other interests in, or notes, bonds, debentures, mortgages, passbooks, certificates of deposit or other obligations of other domestic or foreign corporations, associations, partnerships, limited partnerships or individuals, or direct or indirect obligations or securities of individuals, associations, cooperatives, partnerships, corporations or of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

6. Construct, purchase, take, receive, lease as lessee or otherwise acquire, and own, hold, improve, use, equip, maintain and operate, and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge or otherwise dispose of or encumber electric transmission lines and systems, electric generating plants, lands, buildings, structures, dams, plants and equipment, and any and all kinds and classes of real or personal property, tangible or intangible, which are deemed necessary, convenient or appropriate to accomplish the purpose for which the generation and transmission cooperative is organized.

7. Purchase or otherwise acquire, and own, hold, use and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way and easements.

8. Make contracts and guarantees and incur liabilities, borrow money and otherwise contract indebtedness, and issue its notes, bonds and other evidence of indebtedness, and secure the payment of any indebtedness by mortgage, pledge, deed of trust, assignment, security agreement or any other hypothecation or encumbrance on any or all of its real or personal property, assets, franchises, revenue or income.

9. Construct, maintain and operate electric transmission lines along, on, under and across publicly owned lands and public thoroughfares, including all roads, highways, streets, alleys, bridges and causeways, and acquire for such purposes franchises, licenses, permits, easements, rights-of-way, and all similar rights and privileges relating to such purposes.

10. Exercise the power of eminent domain in the manner and to the extent provided by the laws of this state for the exercise of such power by other corporations constructing or operating electric transmission lines or systems.

11. Become a member of other cooperative organizations or corporations or own stock in such other organizations or corporations.

12. Conduct its business, carry on its operations, have offices and exercise the powers granted it by this article in any state, territory, district or possession of the United States or in any foreign country.

13. Adopt, amend and repeal bylaws consistent with this article.

14. Indemnify any director or officer or former director or officer of the generation and transmission cooperative, or any person who has served at its request as a director or officer of another corporation in which it owns shares of capital stock or in which it holds a membership or of which it is a creditor, against expenses actually and reasonably incurred by him in which he is involved or made a party by reason of being or having been such director or officer, except in relation to matters as to which he is adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the generation and transmission cooperative or other corporation, and to make any other indemnification that may be authorized by the articles of incorporation or by any bylaw or any resolution adopted by the members after notice.

15. Cease its corporate activities and surrender its corporate franchise.

16. Do and perform other acts and things, and have and exercise other powers, which may be necessary, convenient or appropriate to accomplish the purpose for which the generation and transmission cooperative is organized.

§ 10-836. Use of roads and streets; notice; protest

A. A generation and transmission cooperative has the use of, and the right is expressly granted to it to use, the public highways, county highways and streets and alleys in any area of this state. The generation and transmission cooperative may construct and operate lines connecting any points within this state and connect at the state boundary with like lines.

B. Within the confines of municipal corporations, the use and occupancy of streets shall be under such rights as are required by franchises according to law and subject to control and regulation by municipal authorities, and the use of public highways, except state highways, by generation and transmission cooperatives not within the confines of an incorporated city or town shall be regulated by the board of supervisors of the county by license or franchise. The board of supervisors in granting the license or franchise, or at any time after it is granted, may impose such restrictions and limitations concerning the use of the public roads as deemed best for the public safety or welfare. Every franchise granted under this section must include provisions requiring the grantee to bear all expenses, including damage and compensation for any alteration of the direction, surface, grade or alignment of any county road, made for the purpose of the franchise.

C. The board of supervisors before granting the privilege contemplated by this section shall give public notice of its intention to make the grant by publishing notice in some newspaper of general circulation, published within the county, for at least once a week for three weeks prior to the day set for the consideration of the action. If, on or before the date, more than fifty per cent of the qualified electors of the county petition the board of supervisors to deny the privilege, they shall so act, and any privilege granted contrary to the petition is void.

Title 11 Counties

§ 11-251. Powers of board

The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

1. Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that such officers faithfully perform their duties, direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

2. Divide the counties into such districts or precincts as required by law, change them and create others as convenience requires.

3. Establish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof.

4. Lay out, maintain, control and manage public roads, ferries and bridges within the county and levy such tax therefor as may be authorized by law.

5. Provide for the care and maintenance of the indigent sick of the county, erect and maintain hospitals therefor and, in their discretion, provide a farm in connection with the county hospital and adopt regulations for working the farm.

6. Provide suitable rooms for county purposes.

7. Purchase, receive by donation or lease real or personal property necessary for the use of the county prison and take care of, manage and control it, but no purchase of real property shall be made unless the value has been previously estimated by three disinterested citizens of the county, appointed by the board for that purpose, and no more than the appraised value shall be paid therefor.

8. Cause to be erected and furnished a courthouse, jail, hospital and such other buildings as necessary, and construct and establish a branch jail, when necessary, at a point distant from the county seat.

9. Sell at public auction, after thirty days' previous notice given by publication in a newspaper of the county, stating the time and place of the auction, and convey to the highest bidder, for cash or contract of purchase extending not more than ten years from date of sale and upon such terms and conditions and for such consideration as the board shall prescribe, any property belonging to the county which the board deems advantageous for the county to sell, or which the board deems unnecessary for use by the county, and shall pay the proceeds thereof into the county treasury for use of the county, except that personal property need not be sold but may be used as a trade-in on the purchase of personal property when the board deems this disposition of the personal property to be in the best interests of the county. When the property for sale is real property, the board shall have such property appraised by a qualified independent fee appraiser who has an office located in this state. The appraiser shall establish a minimum price which shall in no instance be less than ninety per cent of the appraised value. The notice regarding the sale of real property shall be published in the county where the property is situated and may be published in one or more other counties, and shall contain, among other things, the appraised value, the minimum acceptable sale price, and the common and legal description of the real property. Notwithstanding the requirement for a sale at public auction prescribed in this paragraph, a county may with unanimous consent of the board, without a public auction, sell or lease any county property to any other duly constituted governmental entity, including the state, cities, towns and other counties. A county may with unanimous consent of the board, without public auction, sell or lease any county property for a specific use to any solely charitable, social or benevolent nonprofit organization incorporated in or operating in this state.

10. Examine and exhibit the accounts of all officers having the care, management, collection or disbursement of money belonging to the county or appropriated by law or otherwise for the use and benefit of the county.

11. Examine, settle and allow all accounts legally chargeable against the county, order warrants to be drawn on the county treasurer therefor and provide for issuing the warrants.

12. Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, and levy such other taxes as are required to be levied by law.

13. Equalize assessments.

14. Direct and control the prosecution and defense of all actions to which the county is a party, and compromise them.

15. Insure the county buildings in the name of and for the benefit of the county.

16. Fill by appointment all vacancies occurring in county or precinct offices.

17. Adopt provisions necessary to preserve the health of the county, and provide for the expenses thereof.

18. Contract for county printing and advertising, and provide books and stationery for county officers.

19. Provide for rebinding county records, or, if necessary, the transcribing of county records.

20. Make and enforce necessary rules and regulations for the government of their body, the preservation of order and transaction of business.

21. Adopt a seal for the board, a description and impression of which shall be filed by the clerk in the office of the county recorder, and the secretary of state.

22. Establish, maintain and conduct or aid in establishing, maintaining and conducting, public aviation fields, purchase, receive by donation or lease any property necessary therefor, lease, at a nominal rental if desired, sell such aviation fields or property to the United States or any department thereof, or sell or lease such aviation fields to a city, exchange lands acquired pursuant to this section for other lands, or act in conjunction with the United States in maintaining, managing and conducting all thereof, and, when any such property or part thereof is not needed for the purposes herein mentioned, it shall be sold by the board and the proceeds paid into the general fund of the county.

23. Acquire and hold property for the use of county fairs, and conduct, take care of and manage them.

24. Authorize the sheriff to offer a reward, not exceeding ten thousand dollars in one case, for information leading to the arrest and conviction of persons charged with crime.

25. Contract for the transportation of insane persons to the state hospital or direct the sheriff to transport such persons. The county is responsible for such expense to the extent the expense is not covered by any third party payor.

26. Bury deceased indigents and mark their graves with a stone, giving the name, age and date of death.

27. Sell or grant to the United States the title or interest of the county in any toll road or toll train in or partly within a national park, upon such terms and consideration as may be agreed upon by the board and the secretary of the interior of the United States.

28. Enter into agreements for acquiring rights-of-way, construction, reconstruction or maintenance of highways in their respective counties, including highways which pass through Indian reservations, with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of Congress, except that the governing body of any Indian tribe whose lands are affected must consent to the use of its land, and any such agreements entered into prior to June 26, 1952 are validated and confirmed.

29. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government.

30. Make and enforce all local, police, sanitary and other regulations not in conflict with general law.

31. Budget for funds for foster home care during the school week for mentally retarded and otherwise handicapped children who reside within the county and attend a school for the handicapped in a city or town within such county.

32. Do and perform all acts necessary to enable the county to participate in the "Economic Opportunity Act of 1964" (P L. 88–452; 78 Stat. 508, as amended).[1]

33. Provide a plan or plans for their employees which provide tax deferred annuity and deferred compensation plans as authorized pursuant to title 26, United States code annotated.[2] Such plans shall allow voluntary participation by all employees of the county. Participating employees shall authorize the board to make reductions in their remuneration as provided in an executed deferred compensation agreement.

34. Adopt and enforce standards for shielding and filtration of commercial or public outdoor portable or permanent light fixtures in proximity to astronomical or meteorological laboratories.

35. Subject to the prohibitions, restrictions and limitations as set forth in § 11–830, adopt and enforce standards for excavation, landfill and grading to prevent unnecessary loss from erosion, flooding and landslides.

36. Make and enforce necessary rules and regulations for the operation and licensing of any establishment not in the limits of an incorporated city or town in which is carried on the business of providing baths, showers or other forms of hydrotherapy or any service of manual massage of the human body.

37. Provide pecuniary compensation as salary or wages for overtime work performed by county employees, including those employees covered by the provisions of title 23, chapter 2, article 9.[3] In so providing, the board may establish salary and wage plans incorporating classifications and conditions prescribed by the federal Fair Labor Standards Act.[4]

38. Establish, maintain and operate medical clinics as defined in title 36, chapter 24, article 1.[5]

39. Enact ordinances under its police authority prescribing reasonable curfews in unincorporated areas of the county for persons under the age of eighteen and fines not to exceed the fine for a petty offense for violation of such ordinances on the request or petition of either:

(a) A homeowners' association which represents a majority of the homeowners in the area covered by the association and to which the curfew would apply.

(b) A majority of the residents of the area to which the curfew would apply.

40. Lease or sublease personal property owned by the county to other political subdivisions of this state to be used for a public purpose.

41. In addition to the agreements authorized by § 11-651, enter into long-term agreements for the purchase of personal property, provided that the board may cancel any such agreement at the end of a fiscal year, at which time the seller may repossess the property and the agreement shall be deemed terminated.

42. Make and enforce necessary regulations not in conflict with the laws of this state to control air pollution generated by motor vehicles operating for recreational purposes within the county, including dust pollution generated by motor vehicles operating for recreational purposes in dry washes and riverbeds.

Title 12 Courts and Civil Proceedings

§ 12-1111. Purposes for which eminent domain may be exercised

Subject to the provisions of this title, the right of eminent domain may be exercised by the state, a county, city, town, village, or political subdivision, or by a person, for the following uses:

1. All public uses authorized by the government of the United States.

2. Buildings and grounds for any public use of the state and all other public uses authorized by the legislature.

3. Buildings and grounds for the use of a county, city, town or school district.

4. Canals, aqueducts, flumes, ditches or pipes, for conducting water for the use of the inhabitants or for drainage of a county, city, town or village.

5. Raising the banks of streams, removing obstructions therefrom, or widening, deepening or straightening their channels.

6. Roads, streets and alleys, and all other public uses for the benefit of a county, city, town or village, or the inhabitants thereof, which is authorized by the legislature. The method of apportioning and collecting the costs of the improvements authorized by paragraphs 3, 4, 5 and 6 shall be as provided in the law by which they are authorized.

7. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads and highways.

8. Steam, horse, mule, electric and cable railroads or railways.

9. Telegraph and telephone lines and conduits for public communication.

10. Electric light and power transmission lines, pipe lines used for supplying gas, and all transportation, transmission and intercommunication facilities of public service agencies.

11. Aviation fields.

12. Reservoirs, canals, ditches, flumes, aqueducts and pipes, for the use of a county, city, town or village, or its inhabitants, or for public transportation for supplying mines and other industrial enterprises, farms and farm neighborhoods with water for irrigation, domestic and other needful purposes, and for generating electricity.

13. Draining and reclaiming lands, and for floating logs and lumber on nonnavigable streams.

14. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines, and outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines, and an occupancy in common by the owners or possessors of different mines, or any place for the flow, deposit or conduct of tailings or refuse matter from their several mines.

15. Byroads leading from highways to residences and farms.

16. Private canals, ditches, flumes, aqueducts and pipes for conducting water from natural water courses or bodies or from public sources where the lands to be irrigated are not directly reached by such natural water course or public sources.

17. Pipe lines to carry petroleum, petroleum products or any other liquid.

18. Rights of way, station grounds, pits, yards, sidetracks and other necessary facilities for railways.

§ 12-1112. Prerequisites to taking property by condemnation

Before property may be taken, it shall appear that:

1. The use to which the property is to be applied is a use authorized by law.

2. The taking is necessary to such use.

3. If the property is already appropriated to some public use, the public use to which it is to be applied is a more necessary public use.

§ 12-1113. Estates in land subject to condemnation

The interests, estates and rights in lands subject to be taken for public use, are:

1. A fee simple, when taken for public buildings or grounds or for permanent buildings, for use in connection with a right of way, or for an outlet for the flow or a place for the deposit of tailings or refuse from a mine or for irrigating ditches.

2. An easement when taken for any use other than those set forth in paragraph 1.

3. A right of entry upon and occupation of lands, and the right to take therefrom earth, gravel, stone, trees and timber necessary for a public use.

4. A use in the water of a stream, river or spring.

§ 12-1114. Private property subject to condemnation

Private property which may be taken includes:

1. All real property belonging to any person, including any and all water and water rights for the irrigation of any land condemned, belonging to or used in connection with the land for the irrigation thereof, with right of way for the water or water rights condemned through irrigating canals and ditches leading to the land condemned.

2. Lands belonging to the state, or to any county, city, town or village, not appropriated to some public use.

3. Property appropriated to public use.

4. Franchises for toll roads, toll bridges, and ferries, and all other franchises, but such franchises shall not be taken unless for free highways, railroads or other more necessary public uses.

5. All rights of way through canyons, passes or defiles, and all rights of way for any and all purposes mentioned in paragraph 2 of § 12-1111, and any and all structures and improvements thereon, and the lands held or used in connection therewith, intersected by any other right of way or improvements or structures thereon, which shall also be subject to a limited use in common with the owner thereof when necessary, but such uses, crossings, intersections and connections shall be made in the manner most compatible with the greatest public benefit and least private injury.

6. All classes of private property not enumerated, including property for use in water or water rights, taken for public use when the taking is authorized by law.

§ 12-1115. Right of state to enter and survey property for public use

A. Where land is required for public use, the state, or its agents in charge of such use, may survey and locate the land, but it shall be located in the manner which will be most compatible with the greatest public good and the least private injury.

B. The land may be entered upon to make examinations, surveys and maps thereof, and the entry constitutes no cause of action in favor of the owners of the land, except for injuries resulting from negligence, wantonness or malice.

C. A person seeking to acquire property for any of the public uses authorized by this title is an agent of the state.

§ 12-1116. Actions for condemnation; immediate possession; money deposit

A. All actions for condemnation shall be brought as other civil actions in the superior court in the county in which the property is located. The plaintiff may, at the time of filing the complaint, or at any time thereafter, make application to the court for an order permitting him to take possession of and use the property sought to be condemned for the purpose prayed for.

B. Upon filing the application, a time for hearing it shall be fixed, and notice thereof served upon the parties in interest by personal service within the state, or by publication if without the state, in such manner as the court directs.

C. On the day of the hearing, if it appears that the use for which the property is sought to be condemned is a necessary use, the court shall receive evidence as to the probable damages to each owner, possessor or person having an interest in each parcel of land sought to be condemned, and may direct that upon a deposit of money or if the condemnor is the state, county, city, town, or political subdivision thereof, a bond in a form to be approved by the court, the plaintiff shall be let into the possession and full use of the parcels of land, as described in the order, for the purposes therein specified.

D. The money or bond may be deposited with the clerk of the court or the state treasurer at the election of the plaintiff and held for the use and benefit of each person having an interest in each parcel of land sought to be condemned, subject to final judgment after trial of the action, and held also as a fund to pay any further damages and costs recovered in the proceedings, as well as all damages sustained by defendant if for any cause the property is not finally taken for public use. The deposit of the money or bond shall not discharge plaintiff from liability to maintain the fund in full, but it shall remain deposited for all accidents, defalcations or other contingencies, as between the parties to the proceedings, at the risk of plaintiff, until the compensation or damage is finally settled by judicial determination, and the court awards such part thereof as shall be determined to defendant, or until the clerk or the state treasurer is ordered by the court to disburse it. The clerk of the court or the state treasurer shall be liable to plaintiff for the deposit or bond if lost or abstracted.

E. If the plaintiff elects to deposit the money or bond in the state treasury, the state treasurer shall receive the money or bond and return a receipt therefor to the court and the state treasurer shall safely keep such deposit in a special fund to be entered on his books as the condemnation fund. The state treasurer shall invest and reinvest the monies in the condemnation fund in the same class of securities or investments as set forth in § 35-324. The state treasurer shall disburse the money deposited and, if necessary, convert such investments to cash for the purpose of making such disbursements or forfeit the bond as the court may direct pursuant to its judgment. After satisfaction of the judgment in a condemnation action, the excess, if any, of the deposit made regarding such action, including monies earned by the investment and reinvestment of such deposit, shall be returned by the state treasurer to the plaintiff by a warrant which the department of administration shall issue upon direction of the state treasurer after having received a certified copy of the judgment and without regard to provisions requiring the filing of a claim against the state. Any monies remaining in the condemnation fund at the end of the fiscal year shall not revert to the state general fund.

F. If the plaintiff elects to deposit the money or bond with the clerk of the court, the clerk shall receive the money or bond and return a receipt therefor to the court and the clerk shall be liable to the plaintiff if the money or bond is lost or abstracted. The clerk shall disburse the money or forfeit the bond as the court may direct pursuant to its judgment. Any money remaining in a deposit after the judgment of the court has been fully paid shall be returned by the clerk to the plaintiff.

G. The parties may stipulate as to the amount of deposit, or for a bond from the plaintiff in lieu of a deposit.

H. The parties may also stipulate that:

1. The plaintiff may deposit with the clerk of the court the amount in money for each person in interest which plaintiff's valuation evidence shows to be the probable damages to each person in interest, and,

2. Each person in interest may, on stipulation and order of the court, withdraw the amount which plaintiff has deposited for his interest.

I. No person in interest for whom a deposit has been made, pursuant to stipulation for his withdrawal, shall be entitled to interest upon the amount which he is allowed to withdraw, but he shall be entitled to interest upon that portion of the final judgment, exclusive of costs allowed by the court, which exceeds the amount which is deposited for his withdrawal. Should the amount which is withdrawn by any defendant exceed the amount of the final judgment awarded the defendant inclusive of costs allowed by the court, such defendant withdrawing the funds shall forthwith repay to plaintiff such excess, with legal interest from date of withdrawal to date of repayment.

J. No stipulation which is made nor any evidence which is introduced pursuant to this section shall be introduced in evidence or used to the prejudice of any party in interest on the trial of the action.

§ 12-1117. Complaint

The complaint shall set forth:

1. The name of the person asserting the public use for which the property is sought, as plaintiff.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, as defendants.

3. A statement of the right of plaintiff.

4. If a right of way for a road, ditch, canal or other purpose is sought, the location and general route, accompanied with a map thereof.

5. A description of each piece of land sought to be taken, and whether the land includes the whole or only a part of an entire parcel or tract.

§ 12-1118. Joint or separate actions; consolidation

A. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the election of plaintiff, but the court may consolidate or separate them for convenience of the parties.

B. When application for condemnation of a right of way for sewage disposal, or to obtain water, is made on behalf of a settlement, village or an unincorporated town, the board of supervisors of the county may be the plaintiff.

§ 12-1119. Summons; contents; service

A. The clerk shall issue a summons containing:

1. The names of the parties.

2. A general description of the whole property.

3. A statement of the public use for which it is sought.

4. A reference to the complaint for descriptions of the respective parcels.

5. Notice to defendants to appear and show cause why the property described should not be condemned as prayed for in the complaint.

B. The summons in all other particulars shall be as provided in civil actions, and shall be served in like manner.

§ 12-1120. Right to defend action

All persons occupying, or having or claiming an interest in any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead and defend in respect to his property or interest, or that claimed by him, as if named in the complaint.

§ 12-1121. Powers of court; precedence

A. The court may determine and regulate the place and manner of making connections and crossings or of enjoying the common use mentioned in paragraph 14 of § 12–1111. It shall hear and determine all adverse or conflicting claims to the property sought to be condemned and the claim of damages therefor, and shall determine the respective rights of different parties seeking condemnation of the same property.

B. The court in which any action brought under articles 2 and 3 of this chapter is pending shall, at the request of any party, give the action precedence over other civil actions.

§ 12-1122. Ascertainment and assessment of value, damages and benefits

A. The court or jury shall ascertain and assess:

1. The value of the property sought to be condemned and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein, and if it consists of different parcels, the value of each parcel and each estate or interest therein separately.

2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff.

3. How much the portion not sought to be condemned and each estate or interest therein will be benefited separately, if at all, by construction of the improvement proposed by plaintiff. If the benefit is equal to the damages assessed under paragraph 2 of this subsection, the owner of the parcel shall be allowed no compensation except for the value of the portion taken, but if the benefit is less than the damages so assessed, the benefit shall be deducted from the damages, and the remainder shall be the only damages allowed in addition to the value.

4. If the property sought to be condemned is for a railroad, the cost of good and sufficient fences along the line of the railroad, and the cost of cattle guards where fences may cross the line of the railroad.

B. As far as practicable, compensation shall be assessed for each source of damage separately.

§ 12-1123. Accrual of right to compensation and damages; limitation

A. For the purpose of assessing compensation and damages, the right to compensation and damages shall be deemed to accrue at the date of the summons, and its actual value at that date shall be the measure of compensation and damages.

B. If an order is made letting the plaintiff into possession prior to final judgment, the compensation and damages awarded shall draw legal interest from the date of the order except that where the defendant is allowed, pursuant to § 12-1116, subsection H, to withdraw the money deposited by plaintiff, such defendant shall not be entitled to any legal interest upon the money which he is allowed to withdraw regardless of the date of the order letting plaintiff into possession.

C. No improvements placed upon the property subsequent to the date of service of summons shall be included in the assessment of compensation or damages.

D. If an order is made letting plaintiff into possession prior to the recording of the final order of condemnation, the plaintiff shall record the order in the office of the county recorder of the county or counties in which the property is located and upon the recording so much of the defendant's property as is affected by the order shall immediately be removed from the tax rolls.

§ 12-1124. Payment of compensation; effect of failure to pay

Payment of compensation and damages may be made to a defendant or defendants entitled thereto, or the money may be deposited in court and distributed to the defendant or defendants entitled thereto. If the money is not so paid or deposited, the defendant or defendants may have execution as in civil actions, and if the money cannot be collected on execution, the court, upon a showing to that effect, shall set aside and annul the entire proceedings, and restore possession of the property to defendant or defendants, if possession has been taken by plaintiff.

§ 12-1125. Payment of damages in proceedings by railroad

A. If the property sought to be condemned is for a railroad, plaintiff shall, within thirty days after final judgment, pay the sum assessed, but may, before payment, elect to build fences and cattle guards. If plaintiff so elects, he shall execute and deliver to defendant a bond, with sureties to be approved by the court, in double the assessed cost thereof conditioned that plaintiff will build the fences and cattle guards within eighteen months from the time the railroad is built on the land taken, and if bond is given, plaintiff shall not be required to pay the cost of the fences and cattle guards to defendant.

B. In an action on the bond reasonable attorney's fees, in addition to all damages, may be recovered.

§ 12-1126. Final order of condemnation; recording; vesting of property

A. When the final judgment has been satisfied, the court shall make a final order of condemnation, describing the property condemned and the purposes of the condemnation.

B. A copy of the order shall be recorded in the office of the county recorder of the county or counties in which the property is located, and thereupon the property described shall vest in plaintiff for the purposes therein specified.

§ 12-1127. Possession by plaintiff after judgment or pending appeal; receipt of payment as abandonment; custody of money paid into court; costs of new trial

A. At any time after judgment is entered, or pending an appeal from the judgment to the supreme court, when plaintiff has paid into court for defendant or defendants the full amount of the judgment, and such other amounts as required by the court as a fund to pay further damages and costs which may be recovered in the proceedings, as well as all damages that may be sustained by defendant or defendants if for any cause the property is not finally taken for public use, the superior court in which the action was tried may, upon notice of not less than ten days, authorize plaintiff, if already in possession, to continue therein, or if not, then to take possession of and use the property until final conclusion of the litigation, and may, if necessary, stay all actions and proceedings against plaintiff on account thereof.

B. The defendant or defendants who are entitled to the money paid into court upon any judgment may demand and receive the money at any time thereafter upon an order of the court. The court shall, upon application, order the money so paid into court delivered to the party entitled thereto upon his filing either a satisfaction of the judgment or a receipt for the money, and an abandonment of all defenses to the action or proceeding except as to the amount of damages to which he may be entitled if a new trial is granted. Such payment shall be deemed an abandonment of all defenses, except the party's claim for greater compensation.

C. The money paid into court on final judgment may be placed by order of court in the custody of the clerk or state treasurer to be held or disbursed upon order of court, and plaintiff and such officers shall be subject to the same responsibility, liabilities and restrictions with respect thereto as provided in this article when money is paid into court by plaintiff upon application for possession before trial.

D. When a new trial is granted upon application of a defendant, and he fails upon the trial to obtain greater compensation than was allowed upon the first trial, the costs of the new trial shall be taxed against him.

§ 12-1128. Costs and jury fees

A. Costs may be allowed or not, and if allowed may be apportioned between the parties on the same or adverse sides, in the discretion of the court.

B. The jury fee may be assessed or not against the plaintiff, in the discretion of the court. If jury fees are so assessed, they shall be calculated in the same manner and amounts as in other civil actions and the plaintiff shall pay such fee to the clerk of the court for transmittal to the county treasurer who shall dispose such monies in the same manner as the disposition of other jury fees.

C. In an action for condemnation of property by or on behalf of an educational, reformatory or penal institution of the state, if the board or officers having charge of the institution, prior to commencement of the action or proceeding, tender to the owner of the property such sum of money as the board or officers deem the reasonable value of the property, and the owner refuses to accept it and transfer the property, then all costs and expenses of the action or proceeding shall be taxed against the owner unless the sum of money assessed in the judgment as the value of the property and compensation to be paid therefor is greater than the amount so tendered.

§ 12-1201. Private way of necessity defined

"Private way of necessity" as used in this article means right of way on, over, across, or through the land of another for means of ingress and egress, and the construction and maintenance thereon of roads, overhead transmission lines, pole lines, power lines, canals, ditches, flumes, shafts, tunnels, pipe lines, drains, including, but not limited to, embankments, diversion dams, dikes, ditches, canals, flumes and levees for the purpose of removing water from land or preventing accumulation of water on land, and tramways, including, but not limited to, aerial tramways and industrial railroads, for mining, milling, lumbering, agricultural, domestic or sanitary purposes.

§ 12-1202. Right to private way of necessity; limitation

A. An owner of or a person entitled to the beneficial use of land, mines or mining claims and structures thereon, which is so situated with respect to the land of another that it is necessary for its proper use and enjoyment to have and maintain a private way of necessity over, across, through, and on the premises, may condemn and take lands of another, sufficient in area for the construction and maintenance of the private way of necessity.

B. If the condemnation is upon, over, or affects the range lands of another, the area condemned shall be strictly defined, and livestock driven upon or over the private way shall be accompanied by and under the control of sufficient drivers or herders to confine the livestock to the condemned area, and the livestock shall be so confined to that area and kept moving directly across the property condemned until they have been completely removed from the condemned area.

Title 18 Highways and Bridges

§ 18-201. Establishing, altering or abandoning local highways

The board of supervisors may establish, alter or abandon highways in the county and other legal subdivisions, and acquire real property for such purposes by purchase, donation, dedication, condemnation or other lawful means. Such highways may be established or altered by presentation of a petition signed by ten or more resident taxpayers of the county to the board of supervisors, or upon petition to the board by the governing body of a legal subdivision, praying that a highway be established or altered and giving its beginning, terminus and its general course and direction. The board may either reject the petition or act thereon as prescribed by this article. The board may abandon or vacate such highways by resolution as provided in title 28, chapter 14, article 1.[1]

§ 18-202. Survey of proposed highway; notice of hearing

A. Upon filing the petition, the board shall direct the county engineer to make a survey of the proposed highway and file with the board a report of the proposed highway, together with a map as surveyed, showing thereon the legal subdivision of the lands traversed by the survey. If a survey and maps have already been made for any purpose, such data and maps may be used instead.

B. The board shall thereupon set a date for a public hearing on the petition. The board shall give notice to the public by advertising once a week for two consecutive weeks in a newspaper in the county. The notice shall state the purpose and the date of the ensuing hearing, and shall direct all persons desiring to object to the action prayed for in the petition to file with the board a statement in writing setting forth their objection or opposition, and to show cause why the petition should not be granted.

§ 18-203. Hearing

A. At the hearing provided for in § 18-202 the board shall consider the feasibility, advantages and necessity of the highway sought to be established, and, if in the opinion of the board the proposed highway is a public necessity, the board may approve the establishment thereof by resolution, and may accept any right of way or property donated to the state or the county.

B. A landowner or party affected may make and execute a written waiver or release of all compensation or any part thereof, or may grant an easement or other conveyance of property for such purposes.

§ 18-206. Exercise of eminent domain by county to obtain right of way for federal-county highway

A. When a board of supervisors enters into an agreement with the United States acting through its duly authorized officers or agents, pursuant to an act of congress for acquiring a right of way for a highway in a county, and the United States has constructed a part of the highway described in the agreement, but the board of supervisors has been unable under the provisions of §§ 18-201 and 18-

202 to acquire a right of way necessary for completion of the highway, it is the duty of the county attorney of the county upon demand by the agent of the United States having charge of the work to be done by the United States under the agreement, and upon resolution by the board of supervisors directing him so to do, to file in the superior court of the county in which the land is located, proceedings for condemnation as provided in § 12–1116 in the name of the county.

B. The county treasurer shall make the deposit required by the court as provided by § 12–1116, and upon final judgment by the court assessing the value of the lands sought to be condemned and the damages, if any, to pay the amount found due. If the money so deposited or paid by the treasurer has not been appropriated or set aside for that purpose by the board of supervisors, the board shall set up the amount in its next budget and levy a tax for that purpose.

C. The provisions of this section shall not apply to highways designated as national highways, state highways or state routes.

Title 28 Transportation

§ 28–602. Definitions

In this chapter, unless the context otherwise requires:

1. "Controlled-access highway" means a highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from except at such points only and in the manner determined by the public authority having jurisdiction over the highway, street or roadway.

2. "Crosswalk" means:

(a) That part of a roadway at an intersection included within the prolongations or connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in absence of curbs, from the edges of the traversable roadway.

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

3. "Explosives" means any chemical compound or mechanical mixture commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, friction, concussion, percussion or detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

4. "Flammable liquid" means any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed-cup test device.

5. "Gross weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

6. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a highway includes two roadways thirty or more feet apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If the intersecting highway also includes two roadways thirty or more feet apart, then every crossing of two roadways of the highways shall be regarded as a separate intersection.

7. "Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

8. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state pertaining to the licensing of persons to operate motor vehicles.

9. "Metal tire" means a tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

10. "Official traffic-control devices" means all signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

11. "Park," if prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

12. "Police officer" means an officer authorized to direct or regulate traffic or make arrests for violations of traffic regulations.

13. "Private road or driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

14. "Railroad" means a carrier of persons or property upon cars operated upon stationary rails.

15. "Railroad sign or signal" means a sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

16. "Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails.

17. "Roadway" means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, roadway refers to any such roadway separately but not to all such roadways collectively.

18. "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

19. "Stop", if required, means complete cessation from movement.

20. "Stop, stopping or standing", if prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic-control sign or signal.

21. "Through highway" means a highway or portion of a highway at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing and when stop signs are erected as provided in this chapter.

22. "Traffic" means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together while using any highway for purposes of travel.

23. "Traffic-control signal" means a device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

24. "Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property.

§ 28-1861. State highways and routes defined

A. The state highways, to be known as state routes, shall consist of the highways declared prior to August 12, 1927 to be state highways, under authority of law, which the transportation board, after receipt of a recommendation from the director, may add to, abandon or change. If the transportation board proceeds contrary to the recommendations of the director, it shall file a written report with the governor, stating the reasons for such action. The state highways shall consist of such parts of the state routes designated and accepted as state highways by the transportation board. No highway which has not been designated a state route shall become a state highway,

nor shall any portion of a state route become a state highway until it has been specifically designated and accepted by the transportation board as a state highway, and ordered constructed and improved.

B. All highways, roads or streets which have been constructed, laid out, opened, established or maintained for ten years or more by the state or any agency or legal subdivision of the state prior to January 1, 1960, and which have been used continuously by the public as thoroughfares for free travel and passage for ten years or more, regardless of any error, defect or omission in the proceeding or failure to act to establish such highways, roads or streets, or in recording of the proceedings, and all such highways, roads or streets are declared public highways.

§ 28-1862. Width of highways; errors in establishing

A. All highways constructed, laid out, opened or established prior to August 12, 1927 as public highways by the territory or state, or by a board of supervisors or legal subdivision of the state, and which have been used continuously by the public as thoroughfares for free travel and passage for two years or more, regardless of any error, defect or omission in the proceeding to establish the highways, or in recording of the proceedings, and all highways established pursuant to law, are declared public highways sixty-six feet wide, unless the width thereof is otherwise specified.

B. No portion of a public highway within the limits of an incorporated city or town having a population of more than twenty-five hundred shall come under the provisions of this section except as specifically provided for in this title.

§ 28-1901. Definitions

In this article, unless the context otherwise requires:

1. "Governing body" means the city or town council or other authority of a city, the board of supervisors of a county or the transportation board for the state.

2. "Owner" or "owners of record" includes any person, firm, partnership, association or corporation.

3. "Owners association" means a nonprofit corporation authorized to do business in this state.

4. "Roadway" includes all or part of any platted or designated public street, highway, alley, lane, parkway, avenue, road, sidewalk or other public way, whether or not it has been used as such.

§ 28-1902. Disposition of unnecessary public roadways; application to other public uses; sale to abutting owners; vacation with title vesting in abutting owner; vacation with title vesting in owners association

When in the discretion of the governing body of a city, town, county or the state, a public roadway owned by the city, town, county or the state respectively, or a portion of such roadway is no longer necessary for public use as a roadway, the governing body may dispose of or use the same as follows:

1. A roadway or portion thereof may be exchanged with an abutting owner for all or part of a new public roadway and, when so exchanged, title shall vest in such grantee.

2. The governing body or, in the case of the state, the board may authorize the director to sell and, by quitclaim deed, convey the land within such roadway or portion thereof, and thereupon such roadway or portion thereof shall be deemed to be vacated

and title thereto shall vest in the grantee, provided that if such grantee is an abutting owner title shall vest subject to the same encumbrances, liens, limitations, restrictions and estates as exist on the grantee's abutting land. No less than sixty days prior to the date of sale, a notice of sale describing the roadway or portion thereof to be sold, making specific reference to this section, and stating that any person may submit purchase offers and that abutting owners shall have preference rights in accordance with the provisions of this section shall be posted at intervals of no more than one mile and in no less than three places on or along the side of such roadway and shall be delivered or mailed to abutting owners of record when their addresses are known or can be readily discovered. Abutting owners of record in whom title to a portion of such roadway would vest under paragraph 3 of this section may at the sale, or at any time prior to the sale, deliver to the clerk or secretary of the governing body or, in the case of the state, the director a written offer to purchase such portion or a part of such portion for the consideration paid for the same by the city, town, county or the state, whichever first acquired the land within the roadway for public use. If such an offer is timely submitted it shall be preferred over all other offers. In the absence of such an offer the governing body or, in the case of the state, the director may sell the roadway or portion thereof for such consideration as it shall deem advisable.

3. If the roadway is a city or county roadway, the governing body may resolve that such roadway or portion thereof be vacated, and thereupon title to such roadway or portion thereof shall vest, subject to the same encumbrances, liens, limitations, restrictions and estates as exist on the land to which it accrues, as follows:

(a) In the event that a roadway which constitutes the exterior boundary of a subdivision or other tract of land is vacated, title to the roadway shall vest in the owners of the land abutting the vacated roadway to the same extent that the land included within the roadway, at the time the roadway was acquired for public use, was a part of the subdivided land or was a part of the adjacent land.

(b) In the event that less than the entire width of the roadway is vacated, title to the vacated portion shall vest in the owners of the land abutting such vacated portion.

(c) In the event that a roadway bounded by straight lines is vacated, title to the vacated roadway shall vest in the owners of the abutting land, each abutting owner taking to the center of the roadway, except as provided in subdivisions (a) and (b) of this paragraph. In the event that the boundary lines of abutting lands do not intersect such roadway at a right angle, the land included within such roadway shall vest as provided in subdivision (d) of this paragraph.

(d) In all instances not specifically provided for, title to the vacated roadway shall vest in the owners of the abutting land, each abutting owner taking that portion of the vacated roadway to which his land, or any part thereof, is nearest in proximity.

(e) No portion of a roadway upon vacation shall accrue to an abutting roadway.

4. Notwithstanding paragraph 3, if the roadway is a city or county roadway in a planned development, the governing body may resolve that the roadway or portion thereof be vacated and that title to such vacated roadway or portion vests in the owners association if the following conditions are met:

(a) The owners association includes the owners of the land abutting the roadway or portion thereof to be vacated.

(b) The owners association has rights and remedies under covenants, conditions or restrictions of title to maintain the vacated roadway and to assess all members of the association for the maintenance of the roadway.

(c) Two-thirds of the members of the owners association and a majority of the owners of commercial property abutting the roadway or portion thereof to be vacated approve the vesting of title to such roadway or portion in the association.

5. If the roadway is a state roadway, the governing body may resolve that the state's interest in such roadway or portion thereof be abandoned and thereupon the state's interest in so much of the roadway as lies without the boundaries of incorporated cities shall vest in the county wherein it lies and the state's interest in so much of the roadway as lies within the boundaries of an incorporated city shall vest in such city. The director shall promptly notify the city or county affected thereby and such county or city may maintain such roadway as other county or city roadways are maintained or may dispose of it as provided in this section or § 28-1907.

§ 28-1903. Reservation of easements

Rights of way or easements of existing sewer, gas, water or similar pipelines and appurtenances and for canals, laterals or ditches and appurtenances, and for electric, telephone, and similar lines and appurtenances shall continue as they existed prior to the disposal or abandonment thereof.

§ 28-1904. Notice; hearing; appraisal

The governing body or, in the case of the state, the board may give notice of pending disposition of roadways, hold hearings, obtain appraisals and take other similar action in connection with such disposition when it deems such action necessary or advisable.

§ 28-1905. Disposition by joint action

A. So much of a county roadway as constitutes the boundary line between two counties shall not be disposed of except by joint action of the governing bodies of both counties.

B. So much of a state or county roadway as constitutes a boundary line of an incorporated city or town or as is a state or county highway within an incorporated city or town shall not be disposed of except by joint action of the governing bodies of the city or town and the county or the state. However, the governing body of a county or the state may, subject to the obligations of contract, abandon a county or state highway within an incorporated city or town by resolution.

§ 28-1906. Resolution of disposition; effective when recorded

A governing body's resolution disposing of a roadway or a portion thereof or applying such roadway to another public use shall describe the roadway and set forth its disposition or use. The resolution shall take effect when it is recorded in the office of the county recorder of the county in which the roadway lies.

§ 28-1907. Extinguishment of easements

If a city or county owns no title to a roadway but holds right-of-way easements only, such easements may be extinguished by the governing body's resolution.

§ 28-1908. Access to public road

A roadway shall not be vacated so as to leave any land adjoining the roadway without an established public road connecting the land with another established public roadway unless there is expressly reserved in the conveyancing instrument the roadway rights of ingress and egress for public or emergency vehicles, all property owners, their guests and invitees and persons lawfully conducting business on the land.

§ 28-2101. Definitions

In this article, unless the context otherwise requires:

1. "Business area" means an area outside municipal limits embracing all of the land on the same side of the highway on which one or more commercial or industrial activities

are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied for such activity, including its parking, storage and service areas, its driveways and its established front, rear and side yards, constituting an integral part of such activity and which is zoned, under authority of law, primarily to permit industrial or commercial activity. However, when one or more commercial or industrial activities are located within one thousand feet of a freeway interchange, the business area shall extend three thousand feet measured in each direction parallel to the freeway from the center line of the crossroad, but shall not extend beyond the limits of the established commercial or industrial zone.

2. "Freeway" means a divided arterial highway on the interstate or primary system with full control of access and with grade separations at intersections.

3. "Information center" means a site established and maintained at a safety rest area for the purpose of informing the public of places of interest within the state and providing other information the transportation board considers desirable.

4. "Interstate system" means that portion of the national system of interstate and defense highways located within this state as may now or hereafter be officially designated by the transportation board and approved by the secretary of transportation pursuant to title 23, United States Code.[1]

5. "Main-traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders, on which through traffic is carried. In the case of divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads or parking areas.

6. "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform, the message of which is visible from any place on the main-traveled way of the interstate, secondary or primary systems.

7. "Primary system" means that portion of connected main highways located within this state as may now or hereafter be officially designated by the transportation board and approved by the secretary of transportation pursuant to title 23, United States Code.

8. "Safety rest area" means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right-of-way of the interstate or primary systems.

9. "Secondary system" means that portion of connected highways located within this state as may now or hereafter be officially designated by the transportation board and approved by the secretary of transportation pursuant to title 23, United States Code.

10. "Tourist related advertising display" means any outdoor advertising which advertises a specific public or private facility, accommodation, goods or service, at a particular location or site, including but not limited to any overnight lodging, campsite, food service, recreational facility, tourist attraction, educational or historical site or feature, and automotive service facility or garage.

11. "Unzoned commercial or industrial area" means an area not zoned under authority of law in which land use is characteristic of that generally permitted only in areas which are actually zoned commercial or industrial under authority of state law, embracing all of the land on the same side of the highway on which one or more commercial or industrial activities are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied by such activity, including its parking, storage and service areas, its driveways and its established front, rear and side yards, constituting an integral part of such activity. As used in this paragraph, "commercial or industrial activities" does not include:

(a) Outdoor advertising structures.

(b) Agricultural, forestry, grazing, farming and related activities.

(c) Transient or temporary activities including but not limited to wayside fresh produce stands.

(d) Activities not visible from the main-traveled way.

(e) Activities conducted in a building principally used as a residence.

(f) Railroad tracks and minor sidings, and above ground or underground utility lines.

§ 28-2107. Control of advertising displays along interstate, secondary and primary highways by municipality or county

If an incorporated municipality or county desires to control outdoor advertising along interstate, secondary and primary highways, it may do so upon request to the director and certification by the director to the secretary of transportation that the municipality or county has enacted comprehensive zoning ordinances and by ordinance regulates the size, lighting, and spacing of outdoor advertising in zoned commercial and industrial areas along interstate, secondary and primary highways, provided that municipalities or counties may not assume control of outdoor advertising under the provisions of this section if the ordinance provisions are less restrictive than the provisions of this article.

Title 32 Professions and Occupations

§ 32-2181. Notice to commissioner of intention to subdivide lands; fractional interests; exceptions; deed restrictions

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

1. Name and address of 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. Name and address of subdivider.

3. Legal description and area of land.

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

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 such other information the owner, his 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 thereof 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 thereof is located, and which is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to such 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 thereof.

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 installation of off-site improvements, such as roads and utilities, and approval thereof by the political subdivision having such authority.

18. A true statement of provisions made for financing any community, recreational or other facilities to be included in the offering or represented as being in the offering. Such statement shall include a trust agreement or other evidence of assurances for delivery of such facilities and a statement of the provisions, if any, for the continued maintenance of such facilities.

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

20. 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 such facilities and utilities which will be borne by purchasers of lots in the subdivision.

21. 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.

22. 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 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.[1]

(c) Any subdivision, wherever located, for which registration would have been required pursuant to the federal Interstate Land Sales Full Disclosure Act[1] but for the exemption for subdivisions whose lots are all five acres or more in size.

23. A true statement identifying all other subdivisions, designated in paragraph 22, subdivisions (a), (b) and (c), 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 subdivider.

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

24. Such other information and such other documents and certifications as the commissioner may reasonably require.

B. The commissioner, upon application, may grant an owner, agent or subdivider of ten or less lots or parcels within a subdivision previously approved by the commissioner, an exemption from all or part of the notification requirements of subsection A of this section. Such owner, agent or subdivider shall file a statement with the commissioner indicating the change of ownership in such lots or parcels together with any material changes occurring subsequent to the original approval of the subdivision within which such lots or parcels are located. Such 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 § 45–402, the owner, agent or subdivider shall accompany the notice with a certificate of assured water supply issued by the director of water resources, unless the subdivision is located within an area designated as having an assured water supply by the director of water resources pursuant to § 45–576, subsection D, E, G or I or is exempt from such requirement pursuant to § 45–576, subsection K. If the owner, agent or 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, such submission constitutes compliance with this subsection.

D. It shall be 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 by using a series of owners or conveyances or by any other method which ultimately results in the division of such lands into a subdivision. Such a plan or offering is subject to the provisions of this article.

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

1. Each of the 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 of dedicated roads or easements, if any, contiguous to the land in which such interests are held.

2. The 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.

3. The fractional interests are created by a valid order or decree of a court or by operation of law.

4. The 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 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 § 44–1844, 44–1845 or 44–1846.

6. The commissioner by special order exempts offerings or dispositions of any 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,[2] if the director of water resources, pursuant to § 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 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 any additional information which is reasonably necessary to determine the good moral character of anyone directly involved in subdividing land within the state. The information may include:

1. Prior criminal records.

2. Fingerprints and background information, pursuant to § 41–1750, subsection G. With respect to each person requiring a fingerprint and background investigation a fee shall be charged in an amount to be determined by the commissioner. For such purpose, the real estate department and the department of public safety may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3.[3] Such fees shall be credited pursuant to § 35–148.

3. An affidavit setting out whether the applicant, any holder of an ownership interest or any principal of such holder has participated in, operated or held an interest in any land development company which has filed, or is subject to, a petition under any chapter of the federal Bankruptcy Act,[4] or the names of any persons who have been indicted for fraud or against whom an information for fraud has been filed.

H. The commissioner may require the owner, agent or 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.

I. The commissioner may adopt rules and regulations authorizing the owner, agent or 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 provided that the statement complies with the requirements of such act and the regulations pertinent thereto.

J. Cemeteries once formed and approved pursuant to this chapter shall be exempt from the requirements of this section upon further subdivision or development if such further subdivision or development is not inconsistent with the original notice filed pursuant to this section and the original report prepared pursuant to § 32-2183.

K. 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 such 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.

L. Before offering subdivided lands for lease or sale an owner, agent or 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 such promises as deed restrictions in all deeds or other instruments affecting any interest in real property within such subdivided lands.

Title 48 Special Taxing Districts

§ 48-1550. Use of public rights of way

A. Power districts may use public streets, thoroughfares, highways and alleys and all other public ways not within towns, cities or municipal corporations under direction of the public officers in charge or control thereof.

B. The district may:

1. Build pole lines, lay pipes or conduits and connections therewith necessary to carry out the purpose for which the district is formed.

2. Erect, maintain and operate over public roads and streets not within corporate limits of cities, and thoroughfares, highways and alleys and other public ways, poles, wires, conduits or conductors in connection therewith necessary to complete and effect the purposes of the power district.

§ 48-2012. Rights of way

A right of way in or across public property, highways or streets within a sanitary district is granted to the district whenever found by the board of directors to be necessary or convenient for performing any work authorized by this article.

TEXT OF STATUTES KEYED TO CHAPTER 14

Title 10 Corporations and Associations

Chapter 2 Electric Cooperatives

10-770 Use of roads and streets; notice; protest

10-827 Powers of a generation and transmission cooperative

10-828 Membership in a generation and transmission cooperative; voting; nonliability

10-836 Use of roads and streets; notice; protest

Title 18 Highways and Bridges

Chapter 2 County Highways

18-201 Establishing, altering, or abandoning local highways

Title 28 Transportation

Chapter 14 Disposition of Public Roadways

28-1903 Reservation of easements

Title 30 Power

Chapter 1 Arizona Power Authority

30-123 Development programs for utilization of power; use of state property; right of eminent domain

Title 40 Public Utilities and Carriers

Chapter 2 Public Service Corporations Generally

40-283 Construction and operation of transportation lines within state; control and regulation of use of streets in municipal corporations; franchises or licenses granted by municipal authorities; notice by board of supervisors of consideration of franchise; action by electors

40-332 Power of commission to order joint use of facilities belonging to public service corporation

40-337 Power of commission over railroad crossings

40-337.01 Installation of automatic warning devices; agreements for sharing cost; apportionment of cost

40-337.02 Allocation of funds for automatic warning signals at railroad crossings

40-337.03 Determination of location of automatic warning signals

40-360.22 Excavations; determining location of underground facilities; providing information

40-360.23 Making excavation in careful, prudent manner; liability for negligence

40-360.24 Notice of damage to underground facility

40-360.25 Injunction; mandamus

40-360.26 Damage of underground facility; liability to owner; homeowner exemption

40-360.27 Liability for attorney's fee

TEXT OF STATUTES KEYED TO CHAPTER 14

(Cont'd.)

Title 40 Public Utilities and Carriers (Continued)

Chapter 2 Public Service Corporations Generally

40-360.28 - Civil penalty; liability

40-360.29 Charters and ordinances of governments not affected

40-360.41 Definitions

40-360.42 Activity near overhead line; safety restrictions

40-360.43 Activity in close proximity to lines; clearance arrangements; procedure; payment; notice

40-360.44 Violation

40-360.45 Exemptions

40-443 Pipeline safety revolving fund

Title 48 Special Taxing Districts

Chapter 11 Power Districts

48-1550 Use of public rights of way

48-1551 Construction of works across private and public property

Chapter 12 Electrical Districts

48-1702 Petition for organization

48-1749 Right to use public ways; nature of use

Chapter 14 Sanitary Districts

48-2012 Rights of Way

§ 10-770. Use of roads and streets; notice; protest

A. A cooperative shall have the use of, and the right is expressly granted to it to use, the public highways, county highways and streets and alleys in or outside the service area of the cooperative. The cooperative may construct and operate lines connecting any points within the state and connect at the state boundary with like lines.

B. Within the confines of municipal corporations however, use and occupancy of streets shall be under such rights as may be acquired by franchises according to law, and subject to control and regulation by municipal authorities, and the use of public highways, except state highways, by cooperatives not within the confines of an incorporated city or town, shall be regulated by the board of supervisors of the county, by license or franchise. The board of supervisors in granting the license or franchise, or at any time after it is granted, may impose such restrictions and limitations as to the use of the public roads as may be deemed best for the public safety or welfare. Every franchise granted under this section shall include provisions requiring the grantee to bear all expenses, including damage and compensation for any alteration of the direction, surface, grade or alignment of any county road, made for the purpose of such franchise.

C. The board of supervisors before granting the privileges contemplated by this section, shall give public notice of its intention to make the grant, by publishing notice in some newspaper of general circulation, published within the county, for at least once a week for three weeks prior to the day set for the consideration of such action. If, on or before such date, more than fifty per cent of the qualified electors of the county petition the board of supervisors to deny the privilege, they shall so act, and any privilege granted contrary to the petition shall be void.

§ 10-827. Powers of a generation and transmission cooperative

A generation and transmission cooperative may:

1. Sue and be sued and complain and defend in its corporate name.

2. Have perpetual existence by its corporate name.

3. Adopt a corporate seal and alter the seal at its pleasure, and use the seal by causing it, or a facsimile of it, to be impressed or affixed or in any other manner reproduced, but failure to have or to affix a corporate seal does not affect the validity of any instrument or any action taken in pursuance of [1] in reliance on the seal.

4. Own, operate, lease or control plants, property and facilities for the generation or transmission, sale or furnishing of electricity for light, heat or power or other uses, and generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and sell, supply and dispose of electric energy to or for its members, governmental agencies and political subdivisions and other electric utilities.

5. Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, exercise rights arising out of the ownership or possession, use, employ, sell, assign, transfer, convey, mortgage, lend, pledge, hypothecate or otherwise use and deal in and with shares,

rights, memberships or other interests in, or notes, bonds, debentures, mortgages, passbooks, certificates of deposit or other obligations of other domestic or foreign corporations, associations, partnerships, limited partnerships or individuals, or direct or indirect obligations or securities of individuals, associations, cooperatives, partnerships, corporations or of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

6. Construct, purchase, take, receive, lease as lessee or otherwise acquire, and own, hold, improve, use, equip, maintain and operate, and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge or otherwise dispose of or encumber electric transmission lines and systems, electric generating plants, lands, buildings, structures, dams, plants and equipment, and any and all kinds and classes of real or personal property, tangible or intangible, which are deemed necessary, convenient or appropriate to accomplish the purpose for which the generation and transmission cooperative is organized.

7. Purchase or otherwise acquire, and own, hold, use and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way and easements.

8. Make contracts and guarantees and incur liabilities, borrow money and otherwise contract indebtedness, and issue its notes, bonds and other evidence of indebtedness, and secure the payment of any indebtedness by mortgage, pledge, deed of trust, assignment, security agreement or any other hypothecation or encumbrance on any or all of its real or personal property, assets, franchises, revenue or income.

9. Construct, maintain and operate electric transmission lines along, on, under and across publicly owned lands and public thoroughfares, including all roads, highways, streets, alleys, bridges and causeways, and acquire for such purposes franchises, licenses, permits, easements, rights-of-way, and all similar rights and privileges relating to such purposes.

10. Exercise the power of eminent domain in the manner and to the extent provided by the laws of this state for the exercise of such power by other corporations constructing or operating electric transmission lines or systems.

§ 10-828. Membership in a generation and transmission cooperative; voting; nonliability

A. Only electric utilities are eligible to be members of a generation and transmission cooperative. All incorporators must be original members of a generation and transmission cooperative, and new members may be admitted by a majority vote of all voting delegates. The bylaws may prescribe additional qualifications and limitations concerning membership.

B. The articles of incorporation or the bylaws of a generation and transmission cooperative may provide for classifications of members in a generation and transmission cooperative. Those members who purchase all of their electrical requirements from the generation and transmission cooperative are designated as class A members. Other members who purchase electricity are designated as class B members. The bylaws may provide for other classifications of members.

C. Each class A member is entitled to designate two representatives to serve as voting delegates for that member. Class B members are entitled to designate one representative for every three class B members or fraction of members to serve as a voting delegate for those members. The bylaws may provide for grouping of class B members for such appointment. The number of delegates for which other classifications of members are entitled to designate shall be as stated in the bylaws.

D. Members are entitled to vote as members only through their duly designated voting delegate. A reference in this article to approval or votes by members refers to the members approving or voting through their voting delegates.

E. A member is not liable or responsible for any debts of the generation and transmission cooperative, and the property of the members is not subject to execution for such debts, unless the member otherwise agrees.

§ 10-836. Use of roads and streets; notice; protest

A. A generation and transmission cooperative has the use of, and the right is expressly granted to it to use, the public highways, county highways and streets and alleys in any area of this state. The generation and transmission cooperative may construct and operate lines connecting any points within this state and connect at the state boundary with like lines.

B. Within the confines of municipal corporations, the use and occupancy of streets shall be under such rights as are required by franchises according to law and subject to control and regulation by municipal authorities, and the use of public highways, except state highways, by generation and transmission cooperatives not within the confines of an incorporated city or town shall be regulated by the board of supervisors of the county by license or franchise. The board of supervisors in granting the license or franchise, or at any time after it is granted, may impose such restrictions and limitations concerning the use of the public roads as deemed best for the public safety or welfare. Every franchise granted under this section must include provisions requiring the grantee to bear all expenses, including damage and compensation for any alteration of the direction, surface, grade or alignment of any county road, made for the purpose of the franchise.

C. The board of supervisors before granting the privilege contemplated by this section shall give public notice of its intention to make the grant by publishing notice in some newspaper of general circulation, published within the county, for at least once a week for three weeks prior to the day set for the consideration of the action. If, on or before the date, more than fifty per cent of the qualified electors of the county petition the board of supervisors to deny the privilege, they shall so act, and any privilege granted contrary to the petition is void.

Title 18 Highways and Bridges

§ 18-201. Establishing, altering or abandoning local highways

The board of supervisors may establish, alter or abandon highways in the county and other legal subdivisions, and acquire real property for such purposes by purchase, donation, dedication, condemnation or other lawful means. Such highways may be established or altered by presentation of a petition signed by ten or more resident taxpayers of the county to the board of supervisors, or upon petition to the board by the governing body of a legal subdivision, praying that a highway be established or altered and giving its beginning, terminus and its general course and direction. The board may either reject the petition or act thereon as prescribed by this article. The board may abandon or vacate such highways by resolution as provided in title 28, chapter 14, article 1.[1]

Title 28 Transportation

§ 28-1903. Reservation of easements

Rights of way or easements of existing sewer, gas, water or similar pipelines and appurtenances and for canals, laterals or ditches and appurtenances, and for electric, telephone, and similar lines and appurtenances shall continue as they existed prior to the disposal or abandonment thereof.

Title 30 Power

§ 30-123. Development programs for utilization of power; use of state property; right of eminent domain

A. The authority shall formulate plans and development programs for the practical, equable and economical utilization of electric power placed under its supervision and control. The authority shall,

subject to the provisions of this chapter, proceed to accomplish progressively and place the plans and programs in operation and effect. For such purpose the authority may exercise all or any of the powers and privileges granted by this chapter, singly or conjointly, severally independent or jointly with the United States or any department thereof, or with any person or operating unit, and may make application for, obtain, hold and use permits and licenses from the United States or any of its agencies for power sites, rights-of-way, rights and uses and other privileges. For such purpose the authority may make application, appropriations and filings under and in accordance with this chapter and chapter 1 of title 45 for power in the same manner as any other qualified person or operating unit, but without payment of fees or charges for filing any maps, plans or other data in connection therewith.

B. The authority may use real property owned by the state, not dedicated to public use, which may be necessary as sites for any project, or facility or rights-of-way of the authority. When any lands or rights-of-way of the state dedicated to public use are necessary for the construction, operation or maintenance of the projects or transmission systems, such lands or rights-of-way may be used therefor but in accordance with the terms and conditions of an agreement to be first entered into between the authority and the political subdivision or agency having jurisdiction over or control and management of the land or rights-of-way.

C. The authority may acquire by lease, purchase or any other means, real property owned by the state or federal government and may dispose of such property by sale, lease or other means to persons engaged in projects deemed by the authority to be feasible for the production of electric power or energy from solar, nuclear or geothermal energy, including projects for research and development in such fields.

D. The authority may exercise the privilege and right of eminent domain and may condemn private property for public use in the same manner and to the same extent as persons or operating units. Any property condemned, taken or appropriated under the provisions of this chapter is declared to be taken, condemned or appropriated for a public use.

E. No project, transmission system, work or facility shall be constructed or otherwise acquired, unless and until after due consideration and investigation, it is determined by the authority to be feasible and economically sound, and that the project or facility will be self-financing and will be liquidated within a reasonable period of useful life as determined by the authority and until definite contracts or agreements are executed as provided by § 30–121.

Title 40 Public Utilities and Carriers

§ 40-283. Construction and operation of transportation lines within state; control and regulation of use of streets in municipal corporations; franchises or licenses granted by municipal authorities; notice by board of supervisors of consideration of franchise; action by electors

A. Any person engaged in transportation or transmission business within the state may construct and operate lines connecting any points within the state and connect at the state boundary with like lines, except that within the confines of municipal corporations the use and occupancy of streets shall be under rights acquired by franchises according to law, and subject to control and regulation by the municipal authorities. The use of highways, except state highways, by public utilities not within any incorporated city or town, shall be regulated by the board of supervisors of the county by license or franchise.

B. A board of supervisors in granting a license or franchise, or at any time after it is granted, may impose restrictions and limitations upon the use of the public roads as it deems best for the public safety or welfare.

C. Every franchise granted under this article shall include provisions requiring the grantee thereof to bear all expenses, including damage and compensation for any alteration of the direction, surface, grade or alignment of a county road, made for the purpose of such franchise. If the surface of a county highway is used by any grantee for trackage, the franchise shall include reasonable regulations for maintenance by the grantee of that portion of the highway so used.

D. A board of supervisors, before granting any of the privileges authorized under this section, shall give public notice of its intention to make such grant by publishing notice in a newspaper of general circulation, published within the county, for at least once a week for three weeks prior to the day set for consideration of such action. If, on or before such date, more than fifty per cent of the qualified electors of the county petition the board of supervisors to deny such privilege, it shall do so, and any privilege granted against such petition shall be void.

§ 40-332. Power of commission to order joint use of facilities belonging to public service corporation

When the commission finds that public convenience and necessity require the use by one public service corporation of the equipment, or any part thereof, on, over, or under any street or highway belonging to another public service corporation, and that the use will not result in irreparable injury to the other users thereof or in any substantial detriment to the service, and that the public service corporations have failed to agree upon the use or the terms and conditions thereof, the commission may by order direct that such use be permitted and prescribe a reasonable compensation and terms for the joint use. If the use is directed, the corporation to whom the use is permitted shall be liable to the owner or other users of the equipment for damage which results therefrom to the property of the owner or other users thereof.

§ 40-337. Power of commission over railway crossings

A. No public highway or street shall be constructed across the track of any railroad at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad at grade, without the permission of the commission, but this provision shall not apply to the replacement of lawfully existing tracks. The commission may refuse permission or grant it upon such terms and conditions as it prescribes.

B. The commission shall have the exclusive power:

1. To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each of the crossings.

2. To alter or abolish crossings.

3. To prescribe the terms upon which and the proportions in which the expense of the alteration or abolition of the crossing shall be divided between the parties affected or in interest.

C. When the commission finds that public convenience and necessity demands establishment, creation or construction of a crossing of a street or highway over, under or upon the tracks or lines of any public service corporation, the commission may by order require the establishment, construction or creation of the crossing, and the crossing shall thereupon become a public crossing. The commission shall have the exclusive power to prescribe the character of crossings to be constructed and maintained by railroads where their lines cross public roads or streets of a town or city.

§ 40-337.01. Installation of automatic warning devices; agreements for sharing cost; apportionment of cost

A. The commission may determine, after a public hearing, whether any particular crossing of a railroad and a public highway or street is sufficiently hazardous as to require the installation of automatic warning signals or devices at such crossing, provided, that a public hearing shall not be required if the parties in interest have entered into an agreement for the construction of such crossing and for the apportionment between them of the cost of acquiring and installing such automatic warning signals or devices and provided further such agreement assesses the cost at not to exceed the amounts prescribed in subsection B.

B. If the commission finds that any crossing requires the installation of automatic warning signals or devices, it shall order such installation, and if the parties in interest are unable to agree upon the apportionment of the cost of acquisition and installation, then the cost shall be borne as follows:

1. The railroad, fifty per cent.

2. Where a city street is involved: the city, fifty per cent.

3. Where a county highway is involved: the county, fifty per cent.

4. When a state highway is involved: the state highway fund, fifty per cent.

5. City, county or state highway funds may be used to finance the cost of installation of automatic warning signals or devices in amounts

greater than those set forth in this subsection, provided that federal funds are available for and are actually reimbursed to the city, county or state highway to cover the cost of the installation.

C. When a railroad has installed automatic signals or warning devices pursuant to order of the commission, it shall secure reimbursement for that portion of the cost thereof which, in accordance with the agreement of the parties in interest or the provisions hereof, is to be borne by others, by filing verified claims with the appropriate fiscal officers, and such claims shall be approved and paid without reference to or limitation by the provisions of any other law. For the purpose of determining the amount of reimbursement to which the railroad is entitled, the commission shall retain jurisdiction of the matter and upon completion of the installation of the automatic signals and warning devices, shall make a determination as to the cost of installing same, including but not limited to, the cost of acquisition and expense of installation.

Added by Laws 1959, Ch. 128, § 1. Amended by Laws 1969, Ch. 57, § 1.

§ 40–337.02. Allocation of funds for automatic warning signals at railway crossings

A. In each annual budget request prepared by the corporation commission, ten per cent, but not more than two hundred thousand dollars, of the total amount approved for the same year by the federal highway administration for railroad—highway projects within this state under the provisions of the Federal Highway Acts of 1973 and 1976,[1] and subsequent acts, shall be set aside from the general or any other fund for the installation of automatic warning signals or devices or the upgrading of existing warning signals or devices at public railroad grade crossings. Such appropriation shall be used exclusively for the ten per cent required under the Federal Highway Acts of 1973 and 1976, and subsequent acts, for railroad—highway projects approved for federal funding in any year under such acts.

B. Funds appropriated pursuant to this section shall be available for allocation and expenditure without regard to fiscal years.

C. Funds appropriated pursuant to this section shall be in addition to any funds appropriated for the purposes of § 40–337.01.

D. The corporation commission shall in its request for such funds, provide a full report of accomplishments for the previous year and an accounting of all funds not utilized from previous appropriations.

§ 40-337.03. Determination of location of automatic warning signals

On or before February 15 of each year, the commission shall submit to the railroad involved and the city, county and department of transportation in which jurisdiction a public railroad grade crossing is located, an array of such crossings where the installation of automatic warning signals or devices should be considered during the year, or within a reasonable time thereafter depending upon the availability of monies, materials, labor and other factors involved in such installation.

§ 40-360.22. Excavations; determining location of underground facilities; providing information

A. A person shall not make or begin any excavation in any public street, alley, right-of-way dedicated to the public use or utility easement or on any express or implied private property utility easement without first determining whether underground facilities will be encountered, and if so where they are located from each and every public utility, municipal corporation or other person having the right to bury such underground facilities within the public street, alley, right-of-way or utility easement and taking measures for control of the facilities in a careful and prudent manner.

B. Every public utility, municipal corporation or other person having the right to bury underground facilities shall file with the county clerk and recorder in each county where it is doing business, the job title, address and telephone number of the person or persons from whom the necessary information may be obtained. Such person or persons shall be readily available during established business hours. Upon receipt of inquiry or notice from the excavator, the owner of the facility shall respond as promptly as practical, but in no event later than two working days, by marking such facility with stakes, paint or in some customary manner. No person shall begin excavating before the location and marking are complete or the excavator is notified that marking is unnecessary.

§ 40-360.23. Making excavation in careful, prudent manner; liability for negligence

Obtaining information as required by this article does not excuse any person making any excavation from doing so in a careful and prudent manner, nor shall it excuse such persons from liability for any damage or injury resulting from his negligence.

§ 40–360.24. Notice of damage to underground facility

In the event of any damage to or dislocation of any underground facility in connection with any excavation the person responsible for the excavation operations shall immediately notify the owner of such facility and shall not attempt any repair, except temporary emergency repairs, to the damaged facility. The excavation shall be left open until the arrival of representatives of the owner of the facility. Upon receipt of notice, the owner of the underground facility shall dispatch its representatives promptly, but in no event later than two working days, to examine the underground facility, and, if necessary, effect repairs.

§ 40–360.25. Injunction; mandamus

If any person is engaging in excavation in a negligent or unsafe manner which has resulted in or is likely to result in damage to an underground facility or if any person is proposing to use procedures for excavation which are likely to result in damage to an underground facility, the owner of such facility may commence an action in the superior court in the county in which the excavation is occurring or is to occur, or in which the person complained of has its principal place of business or resides, for the purpose of having such negligent or unsafe excavation stopped and prevented, either by mandamus or injunction. Such persons as the court may deem necessary or proper may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the complaint. If the court finds that the person complained of has repeatedly engaged in negligent or unsafe excavation resulting in damage to underground facilities after the effective date of this article, the court shall issue such order and take such equitable action as shall be reasonable and appropriate to prevent continuance by such person of such negligent or unsafe operations.

§ 40–360.26. Damage of underground facility; liability to owner; homeowner exemption

A. If any underground facility is damaged by any person as a result of failing to obtain information as to its location, failing to take measures for protection of the facilities or failing to excavate in a careful and prudent manner as required by this article, the person is liable to the owner of the underground facility for the total cost of the repair of the facility.

B. A person engaging in excavating in an express or implied utility easement across property owned by him is not liable to the owner of the underground facility damaged by the property owner if the damaged

underground facility is not buried or placed below ground in accordance with the applicable standards, if the underground facility is not located within the easement or if the person engaged in the excavation has complied with § 40–360.22.

§ 40–360.27. Liability for attorney's fee

The prevailing party in an action brought to impose liability under any section of this article shall be entitled to recover a reasonable attorney's fee.

§ 40–360.28. Civil penalty; liability

A. A person who violates any provision of this article is subject to a civil penalty in an amount not to exceed two thousand dollars to be imposed by the court in favor of the state. Any penalties received by the state shall be deposited in the general fund.

B. If a violation of this article results in physical contact with an underground facility, the violator is liable to the owner of the facility for all damages to the facilities and costs, expenses and damages to third parties incurred by the owner of the facility as a result of the contact.

C. If the owner or operator fails to locate or incorrectly locates the underground facility, pursuant to this article, the owner or operator becomes liable for resulting damages, costs and expenses to the injured party.

D. This section is not applicable to an excavation made:

1. During an emergency which involves danger to life, health or property if reasonable precautions are taken to protect underground facilities.

2. In agricultural operations or for the purpose of finding or extracting natural resources.

3. With hand tools on property owned or occupied by the person performing the excavation while gardening or tilling such property.

§ 40–360.29. Charters and ordinances of governments not affected

The provisions of this article shall be cumulative and supplemental to other provisions of law or charter and shall not be construed to prohibit cities and towns from enacting ordinances regulating excavations.

§ 40–360.41. Definitions

In this article, unless the context otherwise requires:

1. "Authorized person" means:

(a) An employee of a public utility which produces, transmits or delivers electricity.

(b) An employee of a public utility which provides and whose work relates to communication services or state, county or municipal agencies which have authorized circuit construction on or near the poles or structures of a public utility.

(c) An employee of an industrial plant whose work relates to the electrical system of the industrial plant.

(d) An employee of a cable television or communication services company or an employee of a contractor of a cable television or communication services company if specifically authorized by the owner of the poles to make cable television or communication services attachments.

(e) An employee or agent of state, county or municipal agencies which have or whose work relates to overhead electrical lines or circuit construction or conductors on poles or structures of any type.

2. "High voltage" means voltage in excess of six hundred volts measured between conductors or between a conductor and the ground.

3. "Overhead line" means all bare or insulated electrical conductors installed aboveground.

4. "Person" or "business entity" means those parties who contract to perform any function or activity upon any land, building, highway or other premises.

5. "Public utility" includes public service corporations, municipally owned systems and districts subject to article XIII, § 7, Constitution of Arizona.

§ 40–360.42. Activity near overhead line; safety restrictions

Unless danger against contact with high voltage overhead lines has been effectively guarded against as provided by § 40–360.43:

1. A person or business entity shall not, individually or through an agent or employee, require any other person to perform any function or activity upon any land, building, highway or other premises if at any time during the performance of any function or activity it is possible that the person performing the function or activity could move or be placed within six feet of any high voltage overhead line or if it is possible that any part of any tool or material used by the person could be brought within six feet of any high voltage overhead line during the performance of any function or activity.

2. A person or business entity shall not individually, through an agent or employee or as an agent or employee, operate any mechanical equipment or hoisting equipment, any part of which is capable of vertical, lateral or swinging motion within ten feet of any high voltage overhead line.

§ 40–360.43. Activity in close proximity to lines; clearance arrangements; procedure; payment; notice

A. If any person or business entity desires to temporarily carry on any function, activity, work or operation in closer proximity to any high voltage overhead line than permitted by this article, the person or business entity responsible for performing the work shall promptly notify the public utility operating the high voltage overhead line. The person or business entity may perform the work only after satisfactorily mutual arrangements, including coordination of work and construction schedules, have been made between the public utility operating the lines

and the person or business entity responsible for performing the work. Arrangements may include placement of temporary mechanical barriers to separate and prevent contact between material, equipment or persons and the high voltage overhead lines or temporary deenergization and grounding or temporary relocation or raising of the high voltage overhead lines.

B. The person or business entity responsible for performing the work in the vicinity of the high voltage overhead lines shall pay any actual expenses of the public utility operating high voltage overhead lines in providing arrangements for clearances, except in instances where the public utility operating high voltage overhead lines has installed lines within ten feet of an existing fixture or structure after the fixture or structure has been in place at the permanent location. The public utility is not required to provide the arrangements for clearances until an agreement for payment has been made.

C. The public utility shall commence construction for temporary clearances within five working days of an agreement for payment, if required, or from the date of the request of the person responsible for the work. Once initiated, the clearance work will continue without interruption to completion.

§ 40–360.44. *Violation*

A. A person or business entity or agent of the person or business entity who violates this article may be subject to a civil penalty in an amount not to exceed one thousand dollars to be imposed by the court in favor of the state to be deposited in the general fund.

B. If a violation of this article results in physical or electrical contact with any high voltage overhead line, the person or business entity violating this article is liable to the public utility operating the high voltage overhead line for all damages to the facilities and all costs and expenses, including damages to third persons, incurred by the public utility as a result of the contact.

§ 40–360.45. Exemptions

This article does not apply to construction, reconstruction, operation or maintenance by an authorized person of overhead electrical or communication circuits or conductors and their supporting structures or electrical generating, transmission or distribution systems or communication systems or off-premises outdoor advertising signs during maintenance.

§ 40–443. Pipeline safety revolving fund

A. There is established a pipeline safety revolving fund consisting of all monies collected from civil penalties assessed pursuant to this article and any other fine collected by the commission in enforcing this article and rules and regulations relating to pipeline safety.

B. Subject to legislative appropriation, monies in the fund shall be used for the purpose of meeting expenses and paying costs associated with gas and hazardous liquids and gas and hazardous liquids pipeline facilities safety, including public education, training, purchasing equip-

ment, inspecting for leaks and other hazards, reviewing pipeline plans, installation and operation and any other activity of the commission under this article.

C. The monies in the fund are exempt from § 35-190 relating to lapsing of appropriations.

Title 48 Special Taxing Districts

§ 48-1550. Use of public rights of way

A. Power districts may use public streets, thoroughfares, highways and alleys and all other public ways not within towns, cities or municipal corporations under direction of the public officers in charge or control thereof.

B. The district may:

1. Build pole lines, lay pipes or conduits and connections therewith necessary to carry out the purpose for which the district is formed.

2. Erect, maintain and operate over public roads and streets not within corporate limits of cities, and thoroughfares, highways and alleys and other public ways, poles, wires, conduits or conductors in connection therewith necessary to complete and effect the purposes of the power district.

Formerly § 30-359. Renumbered as § 48-1550 by Laws 1985, Ch. 190, § 12.

§ 48-1551. Construction of works across private and public property

A. The board of directors may construct district works across streams of water, water courses, streets, avenues, highways, railways, canals, ditches, flumes, transmission lines, telephone or telegraph lines or private property, which the route of the power line or lines intersect or cross.

B. If the board of directors and the persons owning or controlling any property, franchise right or other use of property so to be used or crossed, cannot agree on the amount to be paid for the taking, use or privilege of using such property, the amount shall be ascertained and determined in the manner provided for taking land for public uses.

C. The district may locate, construct and maintain the works over, through or upon any of the lands which are the property of the state, under direction and supervision of the state land department.

Formerly § 30-360. Renumbered as § 48-1551 by Laws 1985, Ch. 190, § 12.

§ 48-1702. Petition for organization

A. Petition for the formation of an electrical district for the purpose of providing power for use primarily for pumping water for irrigation shall be filed with the board of supervisors of the county in which the proposed district is located, or if parts of the proposed district are located in more than one county, the petition shall be filed with the board of district to cover operating expenses or other general expenses of the

district to cover operating expenses or other general expenses of the district, as defined in this chapter.

Formerly § 30-548. Renumbered as § 48-1748 by Laws 1985, Ch. 190, § 13.

§ 48-1749. Right to use public ways; nature of use

A. Any district organized under this chapter shall have the use of and the right is expressly granted to it to use public highways, roads, streets and alleys, within or without the district, required to bring power into the district, and such use shall include building transmission lines and laying conduits, pipes or other construction necessary in conducting the business of the district. The use shall be under reasonable restrictions set forth by the board of supervisors of the county or governing body of the city or town in which the public ways are located.

B. Should a controversy over the use arise, the dispute shall be submitted to and decided by the corporation commission, but the right granted in this section shall be preserved to the district with necessary limitations only.

Formerly § 30-549. Renumbered as § 48-1749 by Laws 1985, Ch. 190, § 13.

§ 48-2012. Rights of way

A right of way in or across public property, highways or streets within a sanitary district is granted to the district whenever found by the board of directors to be necessary or convenient for performing any work authorized by this article.

Formerly § 36-1311. Renumbered as § 48-2012 by Laws 1985, Ch. 190, § 15.

TEXT OF STATUTES KEYED TO CHAPTER 15

Title 41 State Government

Chapter 3 Administrative Boards and Commissions

41-516 Exemption from standards for parkways and historic and scenic roads

§ 41-516. Exemption from standards for parkways and historic and scenic roads

To ensure the protection and enhancement of the special features for historic roads, parkways and scenic roads, the department of transportation, the federal highway administration, the county or the city may allow an exemption from the standards normally applied to the construction and maintenance of the roads and parkways. Revised construction and maintenance procedures for such designated roads and parkways may be developed to reasonably provide for the safety and service of the traveling public.

TEXT OF STATUTES KEYED TO CHAPTER 16

Title 11 Counties

Chapter 2 Board of Supervisors

11-251 Powers of board

11-254 Contracts for supplies and buildings; competitive bids

Chapter 3 County Officers

11-562 Duties

Chapter 4 Fiscal Provisions

11-651 Lease-purchase agreements; terms and conditions

Title 18 Highways and Bridges

Chapter 2 County Highways

18-217 Bids for construction, reconstruction, equipment or supplies; procedures; bond

Title 28 Transportation

Chapter 6 Uniform Act Regulating Traffic on Highways

28-623 Public officers and employees to obey chapter; exceptions

Title 11 Counties

§ 11-251. Powers of board

The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

1. Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that such officers faithfully perform their duties, direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

2. Divide the counties into such districts or precincts as required by law, change them and create others as convenience requires.

3. Establish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof.

4. Lay out, maintain, control and manage public roads, ferries and bridges within the county and levy such tax therefor as may be authorized by law.

5. Provide for the care and maintenance of the indigent sick of the county, erect and maintain hospitals therefor and, in their discretion, provide a farm in connection with the county hospital and adopt regulations for working the farm.

6. Provide suitable rooms for county purposes.

7. Purchase, receive by donation or lease real or personal property necessary for the use of the county prison and take care of, manage and control it, but no purchase of real property shall be made unless the value has been previously estimated by three disinterested citizens of the county, appointed by the board for that purpose, and no more than the appraised value shall be paid therefor.

8. Cause to be erected and furnished a courthouse, jail, hospital and such other buildings as necessary, and construct and establish a branch jail, when necessary, at a point distant from the county seat.

9. Sell at public auction, after thirty days' previous notice given by publication in a newspaper of the county, stating the time and place of the auction, and convey to the highest bidder, for cash or contract of purchase extending not more than ten years from date of sale and upon such terms and conditions and for such consideration as the board shall prescribe, any property belonging to the county which the board deems advantageous for the county to sell, or which the board deems unnecessary for use by the county, and shall pay the proceeds thereof into the county treasury for use of the county, except that personal property need not be sold but may be used as a trade-in on the purchase of personal property when the board deems this disposition of the personal property to be in the best interests of the county. When the property for sale is real property, the board shall have such property appraised by a qualified independent fee appraiser who has an office located in this state. The appraiser shall establish a minimum price which shall in no instance be less than ninety per cent of the appraised value. The notice regarding the sale of real property shall be published in the county where the property is situated and may be published in one or more other counties, and shall contain, among other things, the appraised value, the minimum acceptable sale price, and the common and legal description of the real property. Notwithstanding the requirement for a sale at public auction prescribed in this paragraph, a county may with unanimous consent of the board, without a public auction, sell or lease any county property to any other duly constituted governmental entity, including the state, cities, towns and other counties. A county may with unanimous consent of the board, without public auction, sell or lease any county property for a specific use to any solely charitable, social or benevolent nonprofit organization incorporated in or operating in this state.

10. Examine and exhibit the accounts of all officers having the care, management, collection or disbursement of money belonging to the county or appropriated by law or otherwise for the use and benefit of the county.

11. Examine, settle and allow all accounts legally chargeable against the county, order warrants to be drawn on the county treasurer therefor and provide for issuing the warrants.

12. Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, and levy such other taxes as are required to be levied by law.

13. Equalize assessments.

14. Direct and control the prosecution and defense of all actions to which the county is a party, and compromise them.

15. Insure the county buildings in the name of and for the benefit of the county.

16. Fill by appointment all vacancies occurring in county or precinct offices.

17. Adopt provisions necessary to preserve the health of the county, and provide for the expenses thereof.

18. Contract for county printing and advertising, and provide books and stationery for county officers.

19. Provide for rebinding county records, or, if necessary, the transcribing of county records.

20. Make and enforce necessary rules and regulations for the government of their body, the preservation of order and transaction of business.

21. Adopt a seal for the board, a description and impression of which shall be filed by the clerk in the office of the county recorder, and the secretary of state.

22. Establish, maintain and conduct or aid in establishing, maintaining and conducting, public aviation fields, purchase, receive by donation or lease any property necessary therefor, lease. at a nominal rental if desired, sell such aviation fields or property to the United States or any department thereof, or sell or lease such aviation fields to a city, exchange lands acquired pursuant to this section for other lands, or act in conjunction with the United States in maintaining, managing and conducting all thereof, and, when any such property or part thereof is not needed for the purposes herein mentioned, it shall be sold by the board and the proceeds paid into the general fund of the county.

23. Acquire and hold property for the use of county fairs, and conduct, take care of and manage them.

24. Authorize the sheriff to offer a reward, not exceeding ten thousand dollars in one case, for information leading to the arrest and conviction of persons charged with crime.

25. Contract for the transportation of insane persons to the state hospital or direct the sheriff to transport such persons. The county is responsible for such expense to the extent the expense is not covered by any third party payor.

26. Bury deceased indigents and mark their graves with a stone, giving the name, age and date of death.

27. Sell or grant to the United States the title or interest of the county in any toll road or toll train in or partly within a national park, upon such terms and consideration as may be agreed upon by the board and the secretary of the interior of the United States.

28. Enter into agreements for acquiring rights-of-way, construction, reconstruction or maintenance of highways in their respective counties, including highways which pass through Indian reservations, with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of Congress, except that the governing body of any Indian tribe whose lands are affected must consent to the use of its land, and any such agreements entered into prior to June 26, 1952 are validated and confirmed.

29. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government.

30. Make and enforce all local, police, sanitary and other regulations not in conflict with general law.

31. Budget for funds for foster home care during the school week for mentally retarded and otherwise handicapped children who reside within the county and attend a school for the handicapped in a city or town within such county.

32. Do and perform all acts necessary to enable the county to participate in the "Economic Opportunity Act of 1964" (P.L. 88–452; 78 Stat. 508, as amended).[1]

33. Provide a plan or plans for their employees which provide tax deferred annuity and deferred compensation plans as authorized pursuant to title 26, United States code annotated.[2] Such plans shall allow voluntary participation by all employees of the county. Participating employees shall authorize the board to make reductions in their remuneration as provided in an executed deferred compensation agreement.

34. Adopt and enforce standards for shielding and filtration of commercial or public outdoor portable or permanent light fixtures in proximity to astronomical or meteorological laboratories.

35. Subject to the prohibitions, restrictions and limitations as set forth in § 11–830, adopt and enforce standards for excavation, landfill and grading to prevent unnecessary loss from erosion, flooding and landslides.

36. Make and enforce necessary rules and regulations for the operation and licensing of any establishment not in the limits of an incorporated city or town in which is carried on the business of providing baths, showers or other forms of hydrotherapy or any service of manual massage of the human body.

37. Provide pecuniary compensation as salary or wages for overtime work performed by county employees, including those employees covered by the provisions of title 23, chapter 2, article 9.[3] In so providing, the board may establish salary and wage plans incorporating classifications and conditions prescribed by the federal Fair Labor Standards Act.[4]

38. Establish, maintain and operate medical clinics as defined in title 36, chapter 24, article 1.[5]

39. Enact ordinances under its police authority prescribing reasonable curfews in unincorporated areas of the county for persons under the age of eighteen and fines not to exceed the fine for a petty offense for violation of such ordinances on the request or petition of either:

(a) A homeowners' association which represents a majority of the homeowners in the area covered by the association and to which the curfew would apply.

(b) A majority of the residents of the area to which the curfew would apply.

40. Lease or sublease personal property owned by the county to other political subdivisions of this state to be used for a public purpose.

41. In addition to the agreements authorized by § 11–651, enter into long-term agreements for the purchase of personal property, provided that the board may cancel any such agreement at the end of a fiscal year, at which time the seller may repossess the property and the agreement shall be deemed terminated.

42. Make and enforce necessary regulations not in conflict with the laws of this state to control air pollution generated by motor vehicles operating for recreational purposes within the county, including dust pollution generated by motor vehicles operating for recreational purposes in dry washes and riverbeds.

§ 11-254. Contracts for supplies and buildings; competitive bids

All books, stationery and supplies for county institutions for the ensuing year exceeding five thousand dollars in value, and all erections of, repairs to and alteration in any county building exceeding one thousand five hundred dollars in value, shall be let by contract after advertisement made for bids therefor for not less than ten days nor more than four weeks in the official paper of the county. The advertisement shall state that sealed bids will be received at the office of the board until a date therein named, the nature of the bids and that specifications therefor may be seen at the office of the board, or it may call for specifications and bids. Bids shall be opened publicly at the time and place stated in the advertisement.

Awards shall be made with reasonable promptness by giving written notice to the responsible bidder whose bid conforms to the advertisement and will be the most advantageous to the county with respect to price, conformity to the specification and other factors. However, all bids may be rejected if the board determines that rejection is in the public interest.

§ 11-562. Duties

A. The county engineer shall be custodian of the records and property of the county relating to surveying, engineering and road construction.

B. Except where highways are being constructed under the direction of a highway commission, the county engineer shall, under the direction of the board, have charge of all highways, other engineering construction and improvements, alterations and repairs to county property, and shall make surveys, maps, plans and specifications required by the board.

§ 11-651. Lease-purchase agreements; terms and conditions

The board of supervisors of a county may enter into agreements for the lease-purchase of equipment for a period in excess of one year under the following terms and conditions:

1. The lease-purchase agreement shall be executed for the period of one fiscal year only and, if a longer period is needed to complete purchase of the equipment, the board of supervisors shall have the right, at the end of each fiscal year, to enter into an agreement for continuation of the agreement for succeeding one-year periods until complete payment has been made.

2. If, at the end of the first one-year period and prior to payment of the total purchase price, the board of supervisors does not agree to a continuation of the lease-purchase agreement, the seller may repossess the equipment and the agreement shall be deemed terminated.

Title 18 Highways and Bridges

§ 18-217. Bids for construction, reconstruction, equipment or supplies; procedure; bond

A. In a county of the first class having a population of one hundred fifty thousand persons or over, bids for all items of construction or reconstruction involving an expenditure equal to or greater than the amount determined pursuant to subsection B of this section, all purchases or other acquisition of equipment involving an expenditure in excess of five thousand dollars, and all purchases of supplies and materials involving an expenditure of two thousand five hundred dollars or over shall be called for by advertising in a newspaper of general circulation published within the county for two consecutive insertions if it is a weekly newspaper, or for two insertions not less than six nor more than ten days apart, if it is a daily newspaper. The advertisement shall state specifically the character of the work to be done and the kind and quality of materials or supplies to be furnished.

B. Bids shall be called pursuant to subsection A of this section for all items of construction or reconstruction involving an expenditure of:

1. In fiscal year 1985-1986, thirty-five thousand dollars.

2. In fiscal year 1986–1987 and each fiscal year thereafter, the amount provided in paragraph 1 of this subsection adjusted by the annual percentage growth in the GNP price deflator as defined in § 41–563, subsection E.

C. Should a bid satisfactory to the board of supervisors be received, it shall let a contract to the lowest responsible bidder, upon the contractor or supplier giving such bond or bonds as required under the provisions of title 34, chapter 2, article 2,[1] or the board may reject any or all bids and readvertise.

D. No board of supervisors, member thereof, or other official or agent of a county affected by this section shall segregate or divide into separate units a contiguous or continuous portion of highway construction or reconstruction, or divide into separate portions an item of equipment or generally recognized unit of supplies or material, in order to avoid the restrictions imposed by subsection A.

E. After a contract has been awarded, the board authorized representative may if necessary authorize change orders to the contract in accordance with guidelines set by the board of supervisors. Such change order authority shall not be construed to permit the board authorized representative to act independently to award new contracts.

Title 28 Transportation

§ 28-623. Public officers and employees to obey chapter; exceptions

A. The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.

B. Unless specifically made applicable, the provisions of this chapter shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway, or to railroad employees working on a railroad track or tracks crossing the highway, but shall apply to such persons and vehicles when traveling to or from such work.

TEXT OF STATUTES KEYED TO CHAPTER 17

Title 11 Counties

Chapter 2 Board of Supervisors

11-254 Contracts for supplies and buildings; competitive bids

11-254.01 Alternative county purchasing procedures; purchases to be based upon competitive bids; content and issuance of invitations and specifications; basis of award and rejection of bids; applicability

Title 18 Highways and Bridges

Chapter 2 County Highways

18-217 Bids for construction, reconstruction, equipment or supplies; procedure; bond

Title 34 Public Buildings

Chapter 1 Employment of Special Services

34-101 Definition of agent, authorized representatives

34-102 Employment of architect or engineer for work on public buildings and structures; contract

Chapter 2 Employment of Contractors

34-201 Notice of intention to receive bids and enter contract; procedure; doing work without advertising for bids

34-221 Contract with successful bidder; payments to contractor; security

34-222 Surety bond required; suit on bond; limitations

34-223 Payment bond provisions

34-226 Indemnity agreements in construction and architect-engineer contracts void; definition

34-241 Eligibility of contractors on public works; preferred contractors; eligibility of subcontractor; qualifying definitions

34-242 Preference for locally manufactured materials in awarding contracts for furnishing materials

34-244 Provisions inapplicable to federal aid contracts when federal law conflicts

34-301 Employment of aliens on public works prohibited

34-302 Residence requirements for employees

§ 11-254. Contracts for supplies and buildings; competitive bids

All books, stationery and supplies for county institutions for the ensuing year exceeding five thousand dollars in value, and all erections of, repairs to and alteration in any county building exceeding one thousand five hundred dollars in value, shall be let by contract after advertisement made for bids therefor for not less than ten days nor more than four weeks in the official paper of the county. The advertisement shall state that sealed bids will be received at the office of the board until a date therein named, the nature of the bids and that specifications therefor may be seen at the office of the board, or it may call for specifications and bids. Bids shall be opened publicly at the time and place stated in the advertisement. Awards shall be made with reasonable promptness by giving written notice to the responsible bidder whose bid conforms to the advertisement and will be the most advantageous to the county with respect to price, conformity to the specification and other factors. However, all bids may be rejected if the board determines that rejection is in the public interest.

§ 11-254.01. Alternative county purchasing procedures: purchases to be based upon competitive bids: content and issuance of invitations and specifications: basis of awards and rejection of bids: applicability

A. As an alternative to the procedures prescribed in § 11-254, a county board of supervisors may by resolution determine that county purchases be made pursuant to this section.

B. All purchases of supplies, materials, equipment and contractual services, except professional services, made by the county having an estimated cost in excess of five thousand dollars per transaction shall be based on sealed, competitive bids. The county purchasing agent shall make the awards on board approval. The invitation for bids and specifications must be issued in sufficient time before the purchase is made and in sufficient detail to permit free competition. Copies of the invitation and specifications shall be supplied to and bids shall be solicited from the maximum number of qualified sources consistent with the item to be purchased as determined by the county purchasing agent, including all qualified suppliers who before the issuance of the invitation notify the purchasing department in writing that they desire to bid on materials, supplies, equipment or contractual services contained in the invitation.

C. Bids shall be opened publicly at the time and place stated in the invitation. The county purchasing agent shall make awards with reasonable promptness by giving written notice to the responsible bidder whose bid conforms to the invitation and whose bid is the most advantageous to the county concerning price, conformity to the specifications and other factors. The board may reject all bids if the county purchasing agent determines that rejection is in the public interest.

D. If the board of supervisors adopts a resolution electing to make county purchases pursuant to this section, this section applies to all purchases of supplies, materials, equipment and contractual services, except professional services, made by the county purchasing agent for any budget unit.

E. For purchases of five thousand dollars or less, each county shall develop procedures for competitive bidding or comply with the uniform accounting system prescribed by the auditor general under § 41-1279.21.

Title 18 Highways and Bridges

§ 18-217. Bids for construction, reconstruction, equipment or supplies; procedure; bond

A. In a county of the first class having a population of one hundred fifty thousand persons or over, bids for all items of construction or reconstruction involving an expenditure equal to or greater than the amount determined pursuant to subsection B of this section, all purchases or other acquisition of equipment involving an expenditure in excess of five thousand dollars, and all purchases of supplies and materials involving an expenditure of two thousand five hundred dollars or over shall be called for by advertising in a newspaper of general circulation published within the county for two consecutive insertions if it is a weekly newspaper, or for two insertions not less than six nor more than ten days apart, if it is a daily newspaper. The advertisement shall state specifically the character of the work to be done and the kind and quality of materials or supplies to be furnished.

B. Bids shall be called pursuant to subsection A of this section for all items of construction or reconstruction involving an expenditure of:

1. In fiscal year 1985-1986, thirty-five thousand dollars.

2. In fiscal year 1986-1987 and each fiscal year thereafter, the amount provided in paragraph 1 of this subsection adjusted by the annual percentage growth in the GNP price deflator as defined in § 41-563, subsection E.

C. Should a bid satisfactory to the board of supervisors be received, it shall let a contract to the lowest responsible bidder, upon the contractor or supplier giving such bond or bonds as required under the provisions of title 34, chapter 2, article 2,[1] or the board may reject any or all bids and readvertise.

D. No board of supervisors, member thereof, or other official or agent of a county affected by this section shall segregate or divide into separate units a contiguous or continuous portion of highway construction or reconstruction, or divide into separate portions an item of equipment or generally recognized unit of supplies or material, in order to avoid the restrictions imposed by subsection A.

E. After a contract has been awarded, the board authorized representative may if necessary authorize change orders to the contract in accordance with guidelines set by the board of supervisors. Such change order authority shall not be construed to permit the board authorized representative to act independently to award new contracts.

[1] Section 34-221 et seq.

Title 34 Public Buildings

§ 34-101. Definition of agent; authorized representatives

In this title, unless the context otherwise requires, "agent" means any county, city or town, or officer, board or, commission thereof, and irrigation, power, electrical, drainage and flood control districts, tax levying public improvement districts, and county or city improvement districts. The county board of supervisors may authorize representatives to act as agents for the purpose of authorizing necessary change orders to previously awarded contracts in accordance with guidelines set by the board of supervisors.

§ 34-102. Employment of architect or engineer for work on public buildings and structures; contract

A. When authority is given by law to an agent to construct a building or structure, or additions to or alterations of existing buildings or structures, an architect or engineer, or both, as warranted by the type of construction, shall be employed by the agent if the work is deemed of a nature warranting such employment.

B. When an engineer is employed, the agent may enter into a contract with the engineer, and fix his compensation.

§ 34-201. Notice of intention to receive bids and enter contract; procedure; doing work without advertising for bids

A. Every agent shall, upon acceptance and approval of the working drawings and specifications, publish a notice to contractors of intention to receive bids and contract for the proposed work, and stating:

1. The nature of the work required, the type, purpose and location of the proposed building, and where the plans, specifications and full information as to the proposed work may be obtained.

2. That contractors desiring to submit proposals may obtain copies of full or partial sets of plans and specifications for estimate on request or by appointment. The return of such plans and specifications shall be guaranteed by a deposit of a designated amount which shall be refunded on return of the plans and specifications in good order.

3. That every proposal shall be accompanied by a certified check, cashier's check or a surety bond for five per cent of the amount of the bid included in the proposal as a guarantee that the contractor will enter into a contract to perform the proposal in accordance with the plans and specifications, or as liquidated damages in event of failure or refusal of the contractor to enter into the contract. The certified check, cashier's check or surety bond shall be returned to the contractors whose proposals are not accepted, and to the successful contractor upon the execution of a satisfactory bond and contract as provided in this article.

4. That the right is reserved to reject any or all proposals or to withhold the award for any reason the agent determines.

B. If the agent believes that any construction, building, addition or alteration contemplated at a public institution can be advantageously done by the inmates thereof and regularly employed help, the agent may cause the work to be done without advertising for bids.

C. If the agent believes the work can be done more advantageously by day work or force account, any building, structure, addition or alteration may be constructed without advertising for bids provided that the total cost of the work, excluding materials and equipment previously acquired by bid, does not exceed:

1. In fiscal year 1985-1986, ten thousand five hundred dollars.

2. In fiscal year 1986-1987 and each fiscal year thereafter, the amount provided in paragraph 1 of this subsection adjusted by the annual percentage growth in the GNP price deflator as defined in § 41-563, subsection E.

D. Force account work may be performed only by the agent's regularly employed personnel.

§ 34-221. Contract with successful bidder; payments to contractor; security

A. The agent shall enter into a contract with the lowest responsible bidder whose proposal is satisfactory, the terms of which shall include the following items:

1. A surety company bond or bonds as required under the provisions of this article.

2. The owner by mutual agreement may make progress payments as provided for in this paragraph. Payment to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under such contract may include payment for material and equipment but to insure the proper performance of such contract, the owner shall retain ten per cent of the amount of each estimate until final completion and acceptance of all material, equipment and work covered by the contract. Upon completion and acceptance of each separate building, public work, or other division of the contract on which the price is stated separately in the contract, except as qualified in paragraph 3 of this subsection, payment may be made in full, including retained percentages thereon, less authorized deductions. In preparing estimates, the material and equipment delivered on the site to be incorporated in the job may be taken into consideration in determining the estimated value by the architect or engineer.

3. Ten per cent of all estimates shall be retained by the agent as a guarantee for complete performance of the contract, to be paid to the contractor within sixty days after completion or filing notice of completion of the contract. In lieu of the retention provided in this paragraph and paragraph 2 of this subsection, the agent shall, at the option of the contractor, accept as a substitute an assignment of time certificates of deposit of banks licensed by this state, securities of or guaranteed by the United States of America, securities of this state, securities of counties, municipalities and school districts within this state or shares of savings and loan institutions authorized to transact business in this state, in an amount equal to ten per cent of all estimates which shall be retained by the agent as a guarantee for complete performance of the contract. In the event the agent accepts substitute security as described in this paragraph for the ten per cent retention, the contractor shall be entitled to all interest or income earned by such security and all such security in lieu of retention shall be returned to the contractor by the agent within sixty days after final completion and acceptance of all material, equipment and work covered by the contract if the contractor has furnished the agent satisfactory receipts for all labor and material billed and waivers of liens from any and all persons holding claims against the work. In no event shall the agent accept a time certificate of deposit of a bank or shares of a savings and loan institution in lieu of the retention specified unless accompanied by a signed and acknowledged waiver of the bank or savings and loan association of any right or power to setoff against either the agent or the contractor in relationship to the certificates or shares assigned.

4. In any instance where the agent has accepted substitute security as provided in paragraph 3 of this subsection, any subcontractor undertaking to perform any part of such public work shall be entitled to provide substitute security to the contractor upon terms and conditions similar to those described in paragraph 3, and such security shall be in lieu of any retention under the subcontract.

B. The contract shall be signed by the agent and the contractor.

§ 34-222. Surety bond required; suit on bond; limitations

A. Except where specifically exempted by statute, before any contract is executed with any person for the construction, alteration, or repair of any public building, a public work or improvement of any county, city or town, or officer, board or commission thereof, and irrigation, power, electrical, drainage and flood control districts, tax levying public improvement districts, and county or city improvement districts, he shall furnish to the agent entering into such contract the following bonds which shall become binding upon the award of the contract to such person, who, for purposes of this article, means "contractor":

1. A performance bond in an amount equal to the full contract amount conditioned upon the faithful performance of the contract in accordance with plans, specifications and conditions thereof. Such bond shall be solely for the protection of the state or the public body awarding the contract, as the case may be.

2. A payment bond in an amount equal to the full contract amount solely for the protection of claimants supplying labor or materials to the contractor or his subcontractors in the prosecution of the work provided for in such contract.

B. Each such bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of his judgment such reasonable attorneys' fees as may be fixed by a judge of the court.

C. Each such bond shall be executed by a surety company or companies duly authorized to do business in this state. The bonds shall be payable to the public body concerned.

D. Such bonds shall be filed in the office of the department, board, commission, institution, agency or other contracting body awarding the contract.

E. It shall be illegal for the invitation for bids, or any person acting or purporting to act on behalf of the contracting body, to require that such bonds be furnished by a particular surety company, or through a particular agent or broker.

§ 34-223. Payment bond provisions

A. Every claimant who has furnished labor or material in the prosecution of the work provided for in such contract in respect of which a payment bond is furnished under the provisions of § 34-222, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute such action to final judgment for the sum or sums justly due him, and have execution thereon, provided however that any such claimant having a direct contractual relationship with a subcontractor of the contractor furnishing such payment bond but no contractual relationship express or implied with such contractor shall have a right of action upon such payment bond upon giving the contractor only a written preliminary twenty day notice, as provided for in § 33-992.01, subsection C, paragraphs 1, 2, 3 and 4 and subsections D, E and I, and upon giving written notice to such contractor within ninety days from the date on which such claimant performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied for whom the labor was done or performed. Such notice shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business, or at his residence. A written preliminary twenty day notice as required in § 33-992.01, subsection C, paragraphs 1 through 4 and subsections D, E and I shall not be required of any claimant who has furnished rental equipment used in the prosecution of the work.

B. Every suit instituted under this section shall be brought in the name of the claimant, but no such suit shall be commenced after the expiration of one year from the date on which the last of the labor was performed or materials were supplied by him.

C. The contracting body and the agent in charge of its office shall furnish to anyone making written application therefor who states that he has supplied labor or materials for such work, and payment therefor has not been made, or that he is being sued on any such bond, or that it is the surety thereon, a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution and delivery of the original. Applicants shall pay for such certified copies such reasonable fees as the contracting body or the agent in charge of its office fixes to cover the actual cost of preparation thereof.

§ 34-226. Indemnity agreements in construction and architect-engineer contracts void; definition

A. A covenant, clause or understanding in, collateral to or affecting a construction contract or architect-engineer professional service contract which purports to indemnify or hold harmless the promisee against liability for loss or damage resulting from the sole negligence of the promisee, his agents, employees or indemnitee is void.

B. Nothing contained in this section shall prevent a contractor responsible for the performance of a construction contract from fully indemnifying a person, firm, corporation, state or other agency for whose account the construction contract is not being performed but who, as an accommodation, enters into an agreement with the contractor permitting such contractor to enter upon or adjacent to its property for the purpose of performing such construction contract for others.

C. In this section "architect-engineer contract" means a written or oral agreement relating to the design of any construction, alteration, repair, maintenance, moving, demolition or excavation of a structure, highway, appurtenance or other development or improvement to land.

D. In this section "construction contract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, moving, demolition or excavation of a structure, highway, appurtenance or other development or improvement to land.

§ 34-241. Eligibility of contractors on public works; preferred contractors; eligibility of subcontractor; qualifying definitions

A. In awarding the contract for work to be paid for from public funds, bids of contractors who have satisfactorily performed prior public contracts, and who have paid the state or county taxes within the state for at least two consecutive years in an amount of at least two hundred dollars per year immediately prior to submitting a bid on a plant and equipment such as may be used in the performance of the contract for which the bid is submitted, or on other real or personal property in the state equivalent in value to such plant or equipment, shall be deemed a better bid than the bid of a competing contractor who has not paid such taxes, whenever the bid of the competing contractor is less than five per cent lower, and the contractor making a bid, as provided by this section, which is deemed the better bid, shall be awarded the contract.

B. No contract awarded for public work shall be sublet to a subcontractor who has not paid taxes as required by this section.

C. For purposes of this section:

1. "Paid the state or county taxes within the state" means the contractor has paid real or secured personal property taxes assessed under title 42, chapter 2[1] or unsecured personal property taxes assessed under title 42, chapter 3.[2]

2. "Satisfactorily performed prior public contracts" means that the contractor has completed a public works contract with any agent or with the United States or any of its instrumentalities.

3. "Two consecutive years immediately prior to submitting a bid" means payment of the complete liability for any of the taxes listed in paragraph 1 for the two tax years immediately preceding submitting the bid. One of the years may be the year in which the bid is submitted. If the second year is the year in which the bid is submitted, the tax payments must be for a complete tax year. Prorated tax payments do not qualify as payment for a complete tax year. Installment tax payments do not qualify as payment for a complete tax year until all installments are paid.

§ 34-242. Preference for locally manufactured materials in awarding contracts for furnishing materials

In awarding contracts for furnishing materials, either directly or through a contractor or subcontractor, to the state or any political subdivision thereof, to be paid for from public funds, bidders who furnish materials produced or manufactured in the state shall be awarded the contract in preference to any competing bidder who furnishes materials not produced or manufactured in the state, whenever the bid of the competing bidder, quality and suitability considered, is less than five per cent lower.

§ 34-244. Provisions inapplicable to federal aid contracts when federal law conflicts

Text as amended by Laws 1984, Ch. 251, § 20, effective January 1, 1985

A. If any provision or condition of this article or § 34-301, 34-302 or 38-481 conflicts with any provision of federal law or any rule or regulation made under federal law pertaining to federal aid contracts, such provision or condition shall not apply on federal aid contracts to the extent that conflict exists, but all provisions or conditions of sections with which there is no conflict shall apply to federal aid contracts.

B. Political subdivisions shall, when federal law, rules or regulations permit, enter into and perform any contract subject to the provisions or conditions of this article and §§ 34-301, 34-302 and 38-481, and shall obligate from such funds the amount that the representatives of the federal government require to be deducted from the federal aid funds allotted to the contract by reason of the application of the provisions and conditions of such sections.

§ 34-301. Employment of aliens on public works prohibited

A. A person not a citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal works or employment.

B. This section shall not be construed to prevent the working of prisoners by the state or a county or municipality thereof on street, road, or other public work, nor shall the provisions of this section apply to the employment of any teacher, instructor or professor authorized to teach in the United States under the teacher exchange program as provided by federal statutes or the employment of university or college faculty members.

§ 34-302. Residence requirements for employees

A. In performing contracts for public work executed by the state or a political subdivision thereof, and in the performance of any work by the state or a political subdivision thereof, there shall be employed only persons who are and have been for not less than one year bona fide residents of the state.

B. Contractors or subcontractors may employ on such work not to exceed three regularly employed nonresident executives and technical experts, or when bona fide residents of the state are not available for such employment and the authorized representative of the industrial commission so certifies, persons who are not qualified under this section may be employed until there are available a sufficient number of employees who qualify.

TEXT OF STATUTES KEYED TO CHAPTER 18

Title 26 Military Affairs and Civil Defense

Chapter 2 Emergency Service

26-301 Definitions

26-307 Powers of counties, cities, towns, and state agencies designated by the governor to make orders, rules, and regulations; procedure

26-308 Powers of local government, local emergency services establishment, organization

26-309 Mutual aid, responsibilities of agencies and officials, interstate and federal agreements

26-311 Local emergency, power of political subdivisions, state agency assistance

26-314 Immunity of state, political subdivisions and officers, agents and employees, limitation

Title 35 Public Finances

Chapter 1 Budgetary and Fiscal Provisions for State Agencies

35-192 Authorization for declaration of disaster, authorization for liabilities and expenses, priority and limitations, review and report of expenditures

Title 26 Military Affairs and Civil Defense

§ 26-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Commercial nuclear generating station" means an electric power generating facility owned by a public service corporation, a municipal corporation or a consortium of public service corporations or municipal corporations which produces electricity by means of a nuclear reactor.

2. "Council" means the Arizona emergency council.

3. "Director" means the director of the division.

4. "Division" means the division of emergency services within the department of emergency and military affairs.

5. "Emergency functions" include warning and communications services, relocation of persons from stricken areas, radiological defense, temporary restoration of utilities, plant protection, transportation, welfare, engineering, search, rescue, health, law enforcement, fire fighting and other activities necessary or incidental thereto.

6. "Emergency services" means the preplanning and preparation necessary to carry out emergency functions, other than functions for which military forces or federal agencies are primarily responsible, to prevent or minimize the loss of lives or property caused by disasters of every kind.

7. "Local emergency" means the existence of conditions of disaster or of extreme peril to the safety of persons or property within the territorial limits of a county, city or town, which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of such political subdivision as determined by its governing body and which require the combined efforts of other political subdivisions.

8. "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons or property within the state caused by air pollution, fire, flood or floodwater, storm, epidemic, riot, earthquake or other causes, except those resulting in a state of war emergency, which are or are likely to be beyond the control of the services, personnel, equipment and facilities of any single county, city or town, and which require the combined efforts of the state and the political subdivision.

9. "State of war emergency" means the condition which exists immediately whenever this nation is attacked or upon receipt by this state of a warning from the federal government indicating that such an attack is imminent.

§ 26-307. Power of counties, cities, towns and state agencies designated by the governor to make orders, rules and regulations; procedure

A. State agencies when designated by the governor, and counties, cities and towns may make, amend and rescind orders, rules and regulations necessary for emergency functions but such shall not be inconsistent with orders, rules and regulations promulgated by the governor.

B. Any order, rule or regulation issued by the governing body of a county or other political subdivision of the state is effective when a copy is filed in the office of the clerk of the political subdivision. Existing laws, ordinances, orders, rules and regulations in conflict with this chapter or orders, rules or regulations issued under authority of this chapter are suspended during the time and to the extent that they conflict.

C. In a state of war emergency, counties, cities and towns may waive procedures and formalities otherwise required by law pertaining to the performance of public work, entering into contracts, incurring obligations, employing permanent and temporary workers, utilizing volunteer workers, renting equipment, purchasing and distributing supplies, materials and facilities and appropriating and expending public funds when such governmental entity determines and declares that strict compliance with such procedures and formalities may prevent, hinder or delay mitigation of the effects of the state of war emergency.

D. In the absence of specific authority in state emergency plans and programs, the governing body of each county, city and town of the state shall take emergency measures as deemed necessary to carry out the provisions of this chapter.

§ 26-308. Powers of local government; local emergency services establishment; organization

A. Each county and incorporated city and town of the state may appropriate and expend funds, make contracts, obtain and distribute equipment, materials and supplies for emergency service purposes.

B. Each county and incorporated city and town of the state shall establish and provide for emergency services within its jurisdiction in accordance with state emergency plans and programs. Each unincorporated community may establish such emergency service.

C. The chief executive officer or governing body of each county, incorporated city or incorporated town may appoint a director who shall be responsible for the organization, administration and operation of local emergency services, subject to the direction and control of such executive officer or governing body.

D. State emergency plans shall be in effect in each such political subdivision of the state. The governing body of each such political subdivision shall take such action as is necessary to carry out the provisions thereof, including the development of additional emergency plans for the political subdivision in support of the state emergency plans.

E. Each county's emergency services organization shall:

1. Establish and maintain a current and detailed roster of public and private organizations within the county which have personnel trained and available for assisting in meeting emergency needs including search or rescue.

2. Establish and maintain a current detailed inventory of facilities, equipment, supplies and other resources within the county available for use in meeting emergency needs including search or rescue.

3. Provide a summary of the information required in paragraphs 1 and 2 to the state director of emergency services.

§ 26-309. Mutual aid; responsibilities of agencies and officials; interstate and federal agreements

A. The purposes of the provisions of this section are to facilitate the rendering of aid to persons or property in areas within the state stricken by an emergency and to make unnecessary the execution of written agreements in times of emergency. Any emergency plans duly adopted and approved satisfy the requirement for mutual aid agreements.

B. During an emergency, if the need arises for outside aid in any county, city or town, such aid may be rendered in accordance with approved emergency plans.

C. The governor may, on behalf of this state, enter into reciprocal aid agreements or compacts, mutual aid plans, or other interstate arrangements for the protection of life and property with other states and the federal government. Such mutual aid arrangements may include the furnishing or exchange on terms and conditions deemed necessary of supplies, equipment, facilities, personnel and services.

§ 26-311. Local emergency; power of political subdivisions; state agency assistance

A. In addition to the powers granted by other provisions of the law or charter, whenever the mayor of an incorporated city or town or the chairman of the board of supervisors for the unincorporated portion of the county, shall deem that an emergency exists due to fire, conflagration, flood, earthquake, explosion, war, bombing, acts of the enemy or any other natural or man-made calamity or disaster or by reason of threats or occurrences of riots, routs, affrays or other acts of civil disobedience which endanger life or property within the city, or the unincorporated areas of the county, or portion thereof, the mayor or chairman of the board of supervisors, if authorized by ordinance or resolution, may by proclamation declare an emergency or a local emergency to exist.

B. If an emergency is declared pursuant to subsection A of this section, the mayor or the chairman of the board of supervisors shall, during such emergency, govern by proclamation and shall have the authority to impose all necessary regulations to preserve the peace and order of the city, town, or unincorporated areas of the county, including but not limited to:

1. Imposition of curfews in all or portions of the political subdivision.

2. Ordering the closing of any business.

3. Closing to public access any public building, street, or other public place.

4. Calling upon regular or auxiliary law enforcement agencies and organizations within or without the political subdivision for assistance.

C. In periods of local emergency, including an emergency declared pursuant to subsection A of this section, political subdivisions have full power to provide mutual aid to any affected area in accordance with local ordinances, resolutions, emergency plans or agreements therefor.

D. State agencies may provide mutual aid, including personnel, equipment and other available resources to assist political subdivisions during a local emergency in accordance with emergency plans or at the direction of the governor.

§ 26-314. Immunity of state, political subdivisions and officers, agents and employees; limitation

A. This state and its political subdivisions shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function

or duty on the part of the state or its political subdivisions or any employee of this state or its political subdivisions, excepting wilful misconduct, gross negligence or bad faith of any such employee, in carrying out the provisions of this chapter. This immunity shall not extend to emergency services as defined in § 26–301, paragraph 6.

B. The immunities from liability, exemptions from laws, ordinances and rules, all pensions, relief, disability workers' compensation and other benefits which apply to the activity of officers, agents or employees of any political subdivision when performing their respective functions within the territorial limits of their respective political subdivisions shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this chapter, excepting wilful misconduct, gross negligence, or bad faith.

C. Volunteers duly enrolled or registered with the division of emergency services or any political subdivision, in a local emergency, a state of emergency, or a war emergency, or unregistered persons placed into service during a state of war emergency, in carrying out, complying with, or attempting to comply with any order or regulation issued pursuant to the provisions of this chapter or any local ordinance, or performing any of their authorized functions or duties or training for the performance of their authorized functions or duties, shall have the same degree of responsibility for their actions, and enjoy the same immunities and disability workers' compensation benefits as officers and employees of the state and its political subdivisions performing similar work.

D. No other state or its officers or employees rendering aid in this state pursuant to any interstate mutual aid arrangement, agreement or compact shall be liable on account of any act or omission in good faith on the part of such state or its officers or employees while so engaged, or on account of the maintenance or use of any equipment or supplies in connection with an emergency.

Title 35 Public Finances

§ 35–192. Authorization for declaration of disaster; authorization for liabilities and expenses; priorities and limitations; review and report of expenditures

A. The governor may declare an emergency arising from such major disasters as provided in this section and incur liabilities therefor, regardless of whether or not the legislature is in session.

B. When the governor determines that a contingency or disaster so justifies, and declares an emergency, specific liabilities and expenses provided for in this section are authorized to be incurred against and to be paid as claims against the state from unrestricted monies from the general fund to meet contingencies and emergencies arising from:

1. Invasions, hostile attacks, riots or insurrections.

2. Epidemics of disease or plagues of insects.

3. Floods or floodwaters.

4. Acts of God or any major disaster.

C. When authorized by the governor, specific liabilities and expenses provided for in this section may be incurred against and be paid as claims against the state from unrestricted monies from the general fund to meet contingencies and emergencies arising from search or rescue operations conducted pursuant to § 11–251.02, § 11–441, subsection C or § 26–306 subject to the limitations provided in § 35–192.01.

D. Liabilities and expenses authorized under the provisions of subsection B of this section may be incurred for any of the emergencies or contingencies prescribed in subsection B of this section in the following order of priority:

1. Reimbursement for expenses incurred to combat a menace to the health, lives or property of any considerable number of persons of the state, or to property of the state or its political subdivisions.

2. Reimbursement for expenses incurred to repair damage to any property of the state.

3. Reimbursement for expenses incurred to repair damage to any property of the political subdivisions of the state.

4. Reimbursement for expenses incurred in search or rescue operations.

5. Reimbursement for expenses incurred in disaster recovery activities or in matching federal disaster recovery programs.

E. The auditor of the department of emergency and military affairs shall review all liabilities incurred and expenditures made under this section and report to the state emergency council at ninety day intervals during the emergency and within ninety days after the termination of the emergency. The state emergency council shall review in detail each report by the auditor. The director of emergency services shall make a written report not later than August 1 of each year to the legislature of the actions of the state emergency council during the preceding fiscal year including an itemized statement of expenditures for each emergency during the year.

F. All liabilities incurred under the provisions of this section shall be subject to the following limitations:

1. No liability shall be incurred against the fund without the approval of the governor for each contingency or emergency.

2. Incurring of liabilities in excess of one hundred thousand dollars in any single contingency or emergency shall not be made without consent of a majority of the members of the state emergency council.

3. The aggregate amount of all liabilities incurred under the provisions of this section shall not exceed two million five hundred thousand dollars in any fiscal year beginning July 1 through June 30.

4. Obligation of funds under the provisions of this section may be made only when one or more of the following conditions exist:

(a) No appropriation is available to meet the contingency or emergency.

(b) An appropriation is insufficient to meet the contingency or emergency.

(c) Federal funds available for such contingency or emergency require the use of state funds or other public funds.

G. The state director of emergency services shall develop rules and regulations for administering the fund, subject to approval by the governor.