

REFERENCE TITLE: air quality measures; tax credit

State of Arizona  
Senate  
Forty-eighth Legislature  
First Regular Session  
2007

## **SB 1603**

Introduced by  
Senators Flake, Allen, Burns, Gray C, Huppenthal: Verschoor

AN ACT

AMENDING SECTION 43-222, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 11, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1184; AMENDING SECTIONS 49-480 AND 49-502, ARIZONA REVISED STATUTES; RELATING TO AIR QUALITY MEASURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 43-222, Arizona Revised Statutes, is amended to  
3 read:

4 43-222. Income tax credit review schedule

5 Each year the joint legislative income tax credit review committee  
6 shall review the following income tax credits:

7 1. In 2006, sections 43-1073, 43-1089, 43-1089.01, 43-1089.02,  
8 43-1090, 43-1176 and 43-1181.

9 2. In 2007, sections 43-1077, 43-1078, 43-1079, 43-1080, 43-1165,  
10 43-1166, 43-1167 and 43-1169.

11 3. In 2008, sections 43-1074.01, 43-1081, 43-1168, 43-1170 and  
12 43-1178.

13 4. In 2009, sections 43-1076, 43-1081.01, 43-1084, 43-1162 and  
14 43-1170.01.

15 5. In 2010, sections 43-1075, 43-1079.01, 43-1087, 43-1088,  
16 43-1090.01, 43-1163, 43-1167.01, 43-1175 and 43-1182.

17 6. In 2011, sections 43-1074.02, 43-1083, 43-1085, ~~and~~ 43-1164 and  
18 43-1183.

19 7. IN 2012, SECTION 43-1184.

20 Sec. 2. Title 43, chapter 11, article 6, Arizona Revised Statutes, is  
21 amended by adding section 43-1184, to read:

22 43-1184. Credit for dust abatement measures in nonattainment  
23 areas

24 A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2006  
25 THROUGH DECEMBER 31, 2012, A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY  
26 THIS TITLE FOR MONIES PAID TO PAVE OR OTHERWISE PLACE A PERMANENT HARD  
27 SURFACE OVER EXPOSED SOIL OR GRAVEL IN AN AREA OF THIS STATE THAT IS  
28 DESIGNATED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AS A  
29 NONATTAINMENT AREA FOR PARTICULATE POLLUTION.

30 B. TO QUALIFY FOR A CREDIT UNDER THIS SECTION:

31 1. THE MONIES SPENT BY THE TAXPAYER MUST HAVE BEEN SPENT TO PAVE A  
32 SURFACE THAT IS LOCATED IN THE PARTICULATE NONATTAINMENT AREA ON THE DATE THE  
33 PROJECT BEGINS WITHOUT REGARD TO WHETHER THE PAVEMENT IS ON PROPERTY OWNED OR  
34 OTHERWISE LEGALLY CONTROLLED BY THE TAXPAYER.

35 2. THE TAXPAYER HAS WRITTEN LEGAL AUTHORITY FROM THE OWNER OF THE  
36 PROPERTY TO PLACE THE PAVEMENT ON THE PROPERTY.

37 3. THE TAXPAYER HAS COMPLIED WITH AND RECEIVED ALL APPLICABLE PERMITS  
38 FROM ANY JURISDICTION WITH AUTHORITY OVER THE PAVING PROJECT FOR THAT  
39 PROPERTY.

40 4. THE TAXPAYER MAY BE LOCATED INSIDE OR OUTSIDE A PARTICULATE  
41 NONATTAINMENT AREA ANYWHERE IN THIS STATE.

42 C. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER  
43 THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS  
44 TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE

1 TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE  
2 YEARS' INCOME TAX LIABILITY.

3 D. CO-OWNERS OF A BUSINESS, INCLUDING CORPORATE PARTNERS IN A  
4 PARTNERSHIP, MAY EACH CLAIM ONLY THE PRO RATA SHARE OF THE CREDIT ALLOWED  
5 UNDER THIS SECTION BASED ON THE OWNERSHIP INTEREST. THE TOTAL OF THE CREDITS  
6 ALLOWED ALL SUCH OWNERS MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN  
7 ALLOWED A SOLE OWNER.

8 E. THE DEPARTMENT OF REVENUE MAY ADOPT RULES NECESSARY FOR THE  
9 ADMINISTRATION OF THIS SECTION. ON REQUEST FROM THE DEPARTMENT OF REVENUE,  
10 THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL COOPERATE WITH THE DEPARTMENT  
11 OF REVENUE TO IDENTIFY PARTICULATE NONATTAINMENT AREAS LOCATED IN THIS STATE.

12 Sec. 3. Section 49-480, Arizona Revised Statutes, is amended to read:  
13 49-480. Permits; fees

14 A. The board of supervisors may adopt a program for the review,  
15 issuance, revision, administration and enforcement of permits and for public  
16 review of proposed permits for sources that are subject to section 49-426,  
17 subsection A, that are not under the jurisdiction of the state pursuant to  
18 section 49-402 and that are not otherwise exempt pursuant to section 49-426,  
19 subsection B and subsection K of this section. This program shall include  
20 provisions for administration, inspection and enforcement of general permits  
21 issued pursuant to section 49-426, subsection H and subsection J of this  
22 section.

23 B. Procedures for the review, issuance, revision and administration of  
24 permits issued pursuant to this section and required to be obtained pursuant  
25 to title V of the clean air act including sources that emit hazardous air  
26 pollutants shall be substantially identical to procedures for the review,  
27 issuance, revision and administration of permits issued by the department  
28 under this chapter. Such procedures shall comply with the requirements of  
29 sections 165, 173 and 408 and titles III and V of the clean air act and  
30 implementing regulations for sources subject to titles III and V of the clean  
31 air act. Procedures for the review, issuance, revision and administration of  
32 permits issued pursuant to this section and not required to be obtained  
33 pursuant to title V of the clean air act shall impose no greater procedural  
34 burden on the permit applicant than procedures for the review, issuance,  
35 revision and administration of permits issued by the department under  
36 sections 49-426 and 49-426.01 and other applicable provisions of this  
37 chapter.

38 C. Upon adoption of a permit program by the board of supervisors  
39 pursuant to this section, no person may begin actual construction, operate or  
40 make a modification to any source subject to the permit program without  
41 complying with the requirements of that program.

42 D. Permits issued pursuant to a program adopted under this section are  
43 subject to payment of a reasonable fee to be determined as follows:

44 1. For any source required to obtain a permit under title V of the  
45 clean air act, the board of supervisors shall establish by rule a system of

1 fees consistent with and equivalent to that prescribed under section 502 of  
2 the clean air act. Such system shall prescribe procedures for increasing the  
3 fee each year by the percentage, if any by which the consumer price index for  
4 the most recent calendar year ending before the beginning of such year  
5 exceeds the consumer price index for the calendar year 1989.

6 2. For any facility subject to the permitting requirements of this  
7 chapter but not required to obtain a permit under title V of the clean air  
8 act, the board of supervisors shall determine a permit fee based on all  
9 reasonable direct and indirect costs required to administer the permit, but  
10 not exceeding twenty-five thousand dollars.

11 The board of supervisors shall establish an annual inspection fee, not to  
12 exceed the average cost of services.

13 E. Funds received for permits issued pursuant to this section shall be  
14 deposited in a special public health fund and shall be used by the control  
15 officer **FIRST FOR THE IMPLEMENTATION OF DUST MITIGATION MEASURES IN A**  
16 **PARTICULATE NONATTAINMENT AREA AND, AS A SECONDARY PRIORITY,** to defray the  
17 costs of implementing this article.

18 F. Permits issued pursuant to this section for a source required to  
19 obtain a permit under title V of the clean air act shall, and for a source  
20 that is not required to obtain a title V permit may, contain all of the  
21 following:

22 1. Conditions reflecting all applicable requirements of this article  
23 and rules adopted pursuant to this article.

24 2. Enforceable emission limitations and standards.

25 3. A schedule for compliance, if applicable.

26 4. The requirement to submit at least every six months the results of  
27 any required monitoring.

28 5. Any other conditions that are necessary to assure compliance with  
29 this article and the clean air act, including the applicable implementation  
30 plan.

31 G. The control officer may refuse to issue any permit to any source  
32 subject to the requirements of title V of the clean air act if the  
33 administrator objects to its issuance in a timely manner as prescribed under  
34 title V of the act.

35 H. In the case of a permit with a term of three or more years issued  
36 pursuant to the requirements of title V of the clean air act to a major  
37 source, the control officer shall require revisions to the permit to  
38 incorporate applicable standards and regulations adopted by the administrator  
39 pursuant to the clean air act after the issuance of the permit. The control  
40 officer shall require any revisions as expeditiously as practicable but not  
41 later than eighteen months after the promulgation of such standards and  
42 regulations. No permit revision shall be required if the effective date of  
43 the standards and regulations is after the expiration of the permit. Any  
44 permit revision required pursuant to this subsection shall be treated as a  
45 permit renewal.

1 I. Except as provided in section 49-426, subsection B and subsection A  
2 of this section, any person burning used oil, used oil fuel, hazardous waste  
3 or hazardous waste fuel in any machine, incinerator or device shall first  
4 obtain a permit from the control officer. Any permit issued by the control  
5 officer under this subsection shall contain, at a minimum, conditions  
6 governing:

7 1. Limitations on the types, amounts and feed rates of used oil, used  
8 oil fuel, hazardous waste or hazardous waste fuel which may be burned.

9 2. The frequency and types of fuel testing to be conducted by the  
10 person.

11 3. The frequency and type of emissions testing or monitoring to be  
12 conducted by the person.

13 4. Requirements for record keeping and reporting.

14 5. Numeric emission limitations expressed in pounds per hour and tons  
15 per year for air contaminants to be emitted from the facility burning used  
16 oil, used oil fuel, hazardous waste or hazardous waste fuel.

17 J. The board of supervisors may authorize by rule the control officer  
18 to issue a general permit for a defined class of facilities if that class of  
19 facilities has not been issued a general permit by the director for sources  
20 in that county pursuant to section 49-426, subsection H. The criteria for  
21 issuance of a general permit are those applicable to the director pursuant to  
22 section 49-426, subsection G.

23 K. The board of supervisors may identify by rule sources or  
24 classifications of sources for which a permit is not required and  
25 pollutant-emitting activities and emissions units at permitted sources that  
26 are not subject to inclusion in the permit. The criteria for exemptions  
27 granted pursuant to this subsection are those applicable to exemptions  
28 granted by the director pursuant to section 49-426, subsection B.

29 L. In determining whether a permitting threshold established pursuant  
30 to this section applies to an existing source, the control officer shall  
31 exclude particulate matter that is not subject to a national ambient air  
32 quality standard under the clean air act.

33 M. The board of supervisors may adopt a rule or ordinance that  
34 establishes less burdensome permit procedures and requirements for permits  
35 that are not required to be obtained pursuant to title V of the clean air  
36 act. Until the effective date of a rule or ordinance adopted by a board of  
37 supervisors pursuant to this section, the control officer, either on the  
38 control officer's own initiative or on the request of a permit applicant, may  
39 waive requirements that are not appropriate for non-title V sources.

40 Sec. 4. Section 49-502, Arizona Revised Statutes, is amended to read:

41 49-502. Violation; classification

42 A. Any person who violates any provision of this article, any rule  
43 adopted pursuant to this article or any effective order of abatement, permit  
44 or permit condition issued pursuant to this article is guilty of a class 1  
45 misdemeanor for each day the violation continues unless another

1 classification is specifically prescribed in this article. Each day of  
2 violation shall constitute a separate offense. Peace officers and the  
3 control officer and his deputies shall have the authority to issue a notice  
4 to appear under the same conditions and procedures set forth in section  
5 13-3903 for a violation of any provision of this article, any rule adopted  
6 pursuant to this article or any effective order of abatement, permit or  
7 permit condition issued pursuant to this article.

8 B. Any person who violates any provision of this article, any rule  
9 adopted pursuant to this article or any effective order of abatement, permit  
10 or permit condition issued pursuant to this article is subject to a civil  
11 penalty of not more than ten thousand dollars per day per violation. The  
12 county attorney, at the request of the control officer, may commence an  
13 action in superior court to recover civil penalties provided by this  
14 section. Penalties recovered pursuant to this section shall be deposited in  
15 the special public health fund prescribed in section 49-480.

16 C. In determining the amount of a fine or civil penalty under this  
17 section, the court shall consider:

- 18 1. The seriousness of the violation.
- 19 2. As an aggravating factor only, the economic benefit, if any,  
20 resulting from the violation.
- 21 3. Any history of such violation.
- 22 4. Any good faith efforts to comply with the applicable requirements.
- 23 5. The economic impact of the penalty on the violator.
- 24 6. Such other factors as the court deems relevant.

25 D. MONIES PAID PURSUANT TO CONSENT ORDERS ENTERED INTO BY THE COUNTY,  
26 THE COUNTY ATTORNEY OR THE CONTROL OFFICER PURSUANT TO THIS ARTICLE SHALL BE  
27 DEPOSITED IN THE SPECIAL PUBLIC HEALTH FUND PRESCRIBED IN SECTION 49-480.

28 Sec. 5. Purpose

29 Pursuant to section 43-223, Arizona Revised Statutes, the legislature  
30 enacts section 43-1184, Arizona Revised Statutes, as added by this act, to  
31 encourage taxpayers in this state to reduce harmful particulate emissions to  
32 enable this state to comply with federal clean air requirements.