

3-3301. Definitions

In this chapter, unless the context otherwise requires:

1. "Agricultural easement" means a conservation easement that is established pursuant to title 33, chapter 2, article 4 and that is created to satisfy the purposes established by section 3-3302.
2. "Commission" means the Arizona agricultural protection commission.
3. "Department" means the Arizona department of agriculture.
4. "Director" means the director of the department.

3-3302. Agricultural easements; purpose; program termination

A. The purpose of this chapter is to enable and facilitate the establishment of agricultural easements.

B. An agricultural easement that is established pursuant to this article imposes limitations or affirmative obligations regarding the types of activities that are permitted or prohibited on the land. These activities shall be negotiated on a case-by-case basis but must be consistent with the purpose of conserving farm land or ranch land or the local production of food and fiber plus at least one of the following purposes:

1. Conservation of open space.
2. Conservation of native species and their habitat.
3. Conservation of large tracts of undeveloped land.

C. Pursuant to section 41-3102, the program established by this chapter ends on July 1, 2012.

3-3303. Arizona agricultural protection commission; report

A. The Arizona agricultural protection commission is established within, and as an advisory body to, the department consisting of:

1. The following members appointed by the governor:
 - (a) Two members who operate family farms or ranches in this state and who are active in regional or local agricultural organizations.
 - (b) One member who is from a university under the jurisdiction of the Arizona board of regents and who has experience in range ecology.
 - (c) Two members who represent regional or statewide conservation organizations in this state that have been in operation for at least ten years.
2. The following members appointed by the president of the senate:
 - (a) Two members who operate family farms or ranches in this state.
 - (b) One member who represents a regional or statewide land trust that has been in operation for at least five years.
 - (c) One member who is a member of a county board of supervisors.
 - (d) One member who is a member of a natural resource conservation district board of directors.
3. The following members appointed by the speaker of the house of representatives:
 - (a) Two members who are licensed real estate professionals and who are active in marketing agricultural properties.

(b) One member who is active in and represents a statewide agricultural organization in this state that has been in existence for at least ten years.

(c) One member who is active in managing water resources.

(d) One member who is a member of the state bar of Arizona and who is experienced in the practice of private real estate law.

4. The director of the department as an ex officio member.

B. To serve on the commission, a person must be a resident of this state and have demonstrated an interest in the conservation of natural or agricultural resources. The initial members shall assign themselves by lot to terms of one, two and three years in office. Thereafter, all subsequent members serve three year terms of office, except that a member may continue to serve until a successor is appointed and assumes office. On request, appointive members are eligible to receive compensation pursuant to section 38-611 and are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

Compensation and reimbursement costs are payable from the Arizona agricultural protection fund.

C. The commission shall:

1. Recommend to the director the adoption of rules necessary to perform its duties.

2. Advise the department with respect to grants awarded and contracts entered into pursuant to this chapter.

3. Solicit and accept donations to the Arizona agricultural protection fund, including donations for the sole purpose of administering the Arizona agricultural protection program under this article.

4. Elect a chairperson and vice-chairperson from its members each year.

5. Prepare an annual report of its activities and submit a copy of the report to the director, the secretary of state and any member of the public who requests a copy.

6. Advise the director and submit recommendations relating to the monitoring of agricultural easements established pursuant to this chapter.

D. The commission may:

1. Accept, use and dispose of appropriations, gifts and grants of monies, other property and services from any source for the purposes authorized by this chapter.

2. Perform any other acts consistent with and necessary to carry out the purposes of this chapter.

3-3304. Arizona agricultural protection fund

A. The Arizona agricultural protection fund is established. The director shall administer the fund.

B. The director may accept any gifts, grants or donations for deposit in the fund.

C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from

investment shall be credited to the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

D. The director may use monies from the fund for:

1. Reimbursing or advancing monies to persons pursuant to section 3-3307.
2. Purchasing agricultural easements by a qualified easement holder.
3. Paying agricultural easement transaction costs.
4. Monitoring and enforcing costs borne by the easement holder.
5. Administrative costs, which shall not exceed five per cent of the amount deposited in the fund in the fiscal year or seventy-five thousand dollars, whichever is greater.

E. Grants made pursuant to this article are exempt from title 41, chapter 23.

3-3305. Qualifying applicants for funding agricultural easement proposal

A. The director shall grant monies from the Arizona agricultural protection fund to acquire agricultural easements in perpetuity or for a renewable term of at least twenty-five years. The grants may be made only to:

1. An agency or instrumentality of this state.
2. A political subdivision of this state or an agency or instrumentality of a political subdivision.
3. A nonprofit organization that is exempt from federal income taxation under section 501(c) of the internal revenue code and that has the purpose of preserving agriculture, open space or natural resources.

B. The director may not grant monies to purchase or acquire any right to property by eminent domain.

3-3306. Application process

A. The department shall establish a procedure for submitting applications and granting monies each year from the Arizona agricultural protection fund consistent with the requirements and guidelines of this article. Priority shall be given to funding projects for which matching monies or assets of comparable value, including in-kind donations, will be provided by other sources.

B. The applicant shall submit the application to the commission, with a copy to the department. The commission shall evaluate the application and submit its recommendations to the department consistent with the requirements of this article. The applicant shall submit the following information as part of the application for funding an agricultural easement proposal:

1. The name of all owners of title to and interests in the land proposed for the agricultural easement, including:
 - (a) The holders of any mortgages, deeds of trust and other security interests in the land.
 - (b) The holders of any other easements on or across the land.
 - (c) Any lessees, holders of mineral rights or other persons who have an interest in the use, occupancy or access to the land.
2. A legal description of the land.
3. The name of the proposed easement holder.

4. The total cost of the proposed agricultural easement, including:
 - (a) The amount proposed to be funded by a grant from the Arizona agricultural protection fund.
 - (b) The amount, source and nature of all other consideration, if applicable, including cash donations, grants, gifts, debt financing, in-kind donations, exchanges and services.
5. A description of how the proposed agricultural easement meets the purposes listed in section 3-3302 and which of those criteria the proposed easement addresses.
6. Any other information that the commission or the department considers necessary to adequately evaluate the application.
- C. In addition to the information prescribed by subsection B of this section, the applicant shall also submit:
 1. A copy of the document creating the proposed easement.
 2. If the proposed easement holder is a private nonprofit organization:
 - (a) Notification that this state holds the second position on the easement agreement. For purposes of this subdivision, holding the second position on an agricultural easement authorizes this state to enforce the easement provisions if the qualified easement holder fails to do so.
 - (b) A statement of the specific duties of the easement holder to this state.
- D. The commission shall:
 1. Provide for public involvement regarding the applications submitted to the commission.
 2. Notify any person who requests notice of applications submitted pursuant to this section.
 3. Provide a reasonable opportunity for comment on the applications for a period of at least forty-five days.
 4. Consider all written and oral comments received.
 5. Submit its recommendations to the director with supporting findings and analyses.
- E. The director shall develop a mediation program to resolve disputes between landowners and the holder of any of the agricultural easements acquired under this chapter.

3-3307. Criteria for awarding grants

The director shall adopt guidelines that establish the criteria and policies for granting monies for acquiring agricultural easements established pursuant to this chapter. With respect to each application, the commission must consider each, but the proposal is not required to meet all, of the following:

1. Important natural, cultural or public values found on the farm lands or ranch lands.
2. The possibility of conversion of the property from traditional agricultural use.
3. Positive impacts on long-term agricultural productivity and perpetuation.
4. Landscape and watershed integrity to conserve water quality and natural resources.

5. Habitats for native species, including habitats for important, rare or sensitive species.
6. Potential for leveraging state monies allocated to the program with additional public or private monies.
7. Provisions for compensating landowners who agree to allow public access on the agricultural easement, but an agreement to allow public access is not a requirement for an agricultural easement and does not afford higher funding priority.

3-3308. Terms of agricultural easement

- A. The director shall ensure that the agricultural easement prohibits activities that are inconsistent with the preservation of open space and the local production of food and fiber. The director shall monitor agricultural easements established pursuant to this chapter based on recommendations received from the commission.
- B. The easement holder and the landowner may negotiate and include the following considerations in the agricultural easement:
 1. Lump sum or annual cash payments.
 2. A perpetual or renewable term easement.
 3. Long-term contract security provisions.
 4. Retention of limited residential development rights by the landowner that must be consistent with the specific conditions of the agricultural easement agreement and with the purposes prescribed by this article. The retained limited residential development rights shall not exceed ten per cent of the land subject to the easement.