

House Engrossed

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HOUSE BILL 2360

AN ACT

AMENDING SECTION 48-3603, ARIZONA REVISED STATUTES; RELATING TO COUNTY FLOOD
CONTROL DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 48-3603, Arizona Revised Statutes, is amended to
3 read:

4 48-3603. Powers, duties and immunities of district and board:
5 exemptions

6 A. A county flood control district organized under this article is a
7 political taxing subdivision of this state and has all the powers, privileges
8 and immunities granted generally to municipal corporations by the
9 constitution and laws of this state, including immunity of its property and
10 bonds from taxation.

11 B. The board of directors shall exercise all powers and duties in the
12 acquisition and operation of the properties of the district and in carrying
13 out its regulatory functions under this article as are ordinarily exercised
14 by the governing body of a municipal corporation.

15 C. A district organized under this article, acting through its board
16 of directors, may:

17 1. Acquire by eminent domain, purchase, donation, dedication, exchange
18 or other lawful means rights-of-way for and construct, operate and maintain
19 flood control works and storm drainage facilities within or without the
20 district for the benefit of the district.

21 2. Acquire by eminent domain, purchase, donation, dedication, exchange
22 or other lawful means and dispose of by sale, exchange or other lawful means
23 real and personal property within the boundaries of the district.

24 3. Contract and join with this state, the United States or any other
25 flood control district or floodplain board, municipality, political
26 subdivision, governmental agency, irrigation or agricultural improvement
27 district, association, corporation or individual in acquiring, constructing,
28 maintaining and operating flood control works, and regulating floodplains.

29 4. Enter into contracts of indemnity to indemnify this state, the
30 United States or any other flood control district, municipality, political
31 subdivision, governmental agency, irrigation or agricultural improvement
32 district, association, corporation or individual against liability by virtue
33 of injuries, losses or damages occurring through the use of their facilities,
34 structures, streets, rights-of-way or properties in connection with the
35 operation of a flood control district and the regulation of floodplains.

36 5. Acquire and maintain existing flood control and drainage facilities
37 within the district for the benefit of the district if mutually agreeable to
38 the owners of such facilities.

39 6. Acquire, convert and maintain surplus irrigation facilities as
40 storm drainage facilities if mutually agreeable to owners of such facilities.

41 7. Construct, maintain and operate flood control and storm drainage
42 facilities and regulate floodplains in the district by agreement with this
43 state, counties, other municipal corporations, political subdivisions and
44 other persons and reimburse such agencies or persons for the cost of the
45 work.

1 8. On the dissolution of any other flood control district, assume the
2 assets and obligations of the other district.

3 9. Enter into intergovernmental agreements with other public agencies
4 pursuant to title 11, chapter 7, article 3 to carry out the objects and
5 purposes of the district.

6 10. Apply for, obtain, expend and repay flood control loans pursuant to
7 title 45, chapter 8, article 5.

8 11. Apply to the director of water resources for alternative flood
9 control assistance for flood control projects pursuant to section 45-1471,
10 except that the director shall not grant any such assistance for any project
11 unless the director has approved the project in advance of planning.

12 12. Sue and be sued, enter into contracts and generally do all things
13 that may be necessary to construct, acquire and maintain facilities, operate
14 the district and perform its regulatory functions and that are in the
15 interests of the district.

16 13. Adopt such rules and bylaws for its orderly operation as it sees
17 fit.

18 14. Appoint a chief engineer and general manager, who may be the county
19 engineer.

20 15. Appoint a treasurer, who may be the county treasurer, an attorney,
21 who may be the county attorney, and other employees it considers desirable
22 and necessary to carry out the purposes of the district. Any other work
23 required by the district may be performed by regular employees of the county
24 on assignment by the board of supervisors, except that regular county
25 employees shall not undertake construction projects with an estimated cost of
26 five thousand dollars or more.

27 16. Allow variances from the terms or regulations adopted pursuant to
28 this article to the extent permitted by section 48-3609, subsection B,
29 paragraph 7 and if, owing to peculiar conditions, a strict interpretation
30 would work an unnecessary hardship, if in granting the variance the general
31 intent and purposes of this article and the regulations will be preserved.

32 17. Construct, operate and maintain artificial groundwater recharge
33 facilities, and, if organized in a county having a population of more than
34 five hundred thousand persons according to the most recent United States
35 decennial census, underground storage and recovery facilities, if they have
36 flood control benefits, and contract and join with the United States, this
37 state and other governmental units for the purpose of constructing, operating
38 and maintaining multipurpose groundwater recharge, underground storage and
39 recovery and flood control facilities, except that a district shall not
40 expend district funds for any underground storage and recovery facility that
41 does not have flood control benefits.

42 18. Acquire real property by purchase, donation, dedication, exchange
43 or other lawful means, except by eminent domain, in areas suitable for
44 groundwater recharge projects.

1 19. Cooperate and join with other entities that engage in underground
2 water storage and recovery projects under title 45, chapter 3, including
3 multi-county water conservation districts and other political subdivisions.

4 20. Either alone, or by entering into any combination of contracts with
5 this state, the United States, any other flood control district, a floodplain
6 board, a municipality or other political subdivision, a government agency, an
7 irrigation or agricultural improvement district or an association,
8 corporation or individual, implement flood control enhancement solutions
9 including:

10 (a) Assistance for property owners within the floodplain and through
11 the elevation, bank stabilization and flood proofing of existing structures.

12 (b) Preservation and restoration of the floodplain.

13 (c) Maintenance of flood warning systems and associated flood response
14 plans.

15 (d) Construction of bridges or other access over watercourses that are
16 impassable to emergency vehicle traffic for fourteen or more days a year.

17 21. If a part of a parcel of land is to be taken for drainage, basins,
18 impoundments or any other flood control related use and the board and the
19 affected property owner determine that the remainder will be left in such a
20 condition as to give rise to a claim or litigation concerning severance or
21 other damage, acquire the whole parcel by purchase, donation, dedication,
22 exchange, condemnation or other lawful means, and the remainder may be sold
23 or exchanged for other properties needed for flood control use.

24 22. Adopt and enforce civil penalties for violations of its regulations
25 or ordinances and for unauthorized damage and interference to those district
26 facilities that are authorized pursuant to this chapter.

27 23. Pursuant to the authority prescribed in this chapter, appoint
28 hearing officers to hear and determine actions.

29 24. For any district that intends to take enforcement action pursuant
30 to section 48-3615.01, adopt written rules of procedure for the hearing and
31 review of decisions on actions prescribed by this chapter.

32 25. Establish a board of hearing review to review decisions of hearing
33 officers that are issued pursuant to section 48-3615.01. The board of
34 hearing review shall consist of one member from each board of directors'
35 district or the board of directors may authorize the citizens' flood control
36 advisory board or the board of review to designate a like number of its
37 members to serve as the board of hearing review.

38 26. Authorize the chief engineer of the district to apply for and
39 obtain administrative search warrants for entry and inspection from a local
40 court of general jurisdiction to determine if violations of section 48-3609,
41 48-3613, 48-3614 or 48-3615 have occurred. The warrants shall be served by a
42 peace officer as defined in section 1-215. A report of any inspections made
43 pursuant to this section shall be prepared and made available in the records
44 of the district and a copy mailed or otherwise delivered to the owner within
45 fifteen days after the inspection of the owner's premises.

1 D. The board shall adopt and enforce floodplain regulations as
2 provided in section 48-3609.

3 E. The board may adopt a fee schedule for review of applications for
4 permits and variances from or interpretations of the floodplain regulations.

5 F. The affirmative vote of a majority of the board of directors is
6 necessary to approve any measure. One member may adjourn any meeting at
7 which a quorum is not present.

8 G. The board shall keep a proper written record of all of its
9 proceedings, which shall be open to public inspection.

10 H. The accounts of the district are subject to annual and other audits
11 as provided by law.

12 I. Section 9-403 does not apply to a flood control district organized
13 under this article and section 9-402 does not apply when the district is
14 selling property to this state or a political subdivision. Before selling
15 any property to this state or a political subdivision of this state, the
16 flood control district shall obtain an appraisal of the fair market value of
17 the property by a person who is certified pursuant to title 32, chapter 36.
18 If any property sold by the district to this state or a political subdivision
19 without complying with section 9-402 is subsequently sold by this state or
20 political subdivision as undeveloped property for a price exceeding the
21 original sale price, the district shall be paid the difference between the
22 original price and the subsequent sale price. For the purposes of this
23 subsection, "political subdivision" means any incorporated city or town,
24 county, school district, fire district, charter school, community college or
25 university.

26 J. THE DISTRICT AND ITS EMPLOYEES AND OFFICERS ARE NOT LIABLE FOR ANY
27 INJURY OR PROPERTY DAMAGE THAT MAY ARISE OUT OF A PLAN OR DESIGN FOR
28 CONSTRUCTION, MAINTENANCE OR IMPROVEMENT TO A DAM, LEVEE, BERM, CHANNEL,
29 CANAL, CULVERT OR ANY OTHER FLOOD CONTROL PROJECT THE DISTRICT IS AUTHORIZED
30 TO PLAN, DESIGN, CONSTRUCT, MAINTAIN OR IMPROVE WHEN A REASONABLY ADEQUATE
31 WARNING OF ANY UNREASONABLY DANGEROUS HAZARD IS GIVEN TO POTENTIALLY AFFECTED
32 PROPERTY OWNERS IN A MANNER THAT OWNERS MAY TAKE SUITABLE PRECAUTIONS TO
33 PROTECT THEMSELVES AND THEIR PROPERTY. THE WARNING SHALL INCLUDE INFORMATION
34 FOR THE PROPERTY OWNER REGARDING A NATIONAL FLOOD INSURANCE PROGRAM. A
35 WARNING IS SUFFICIENT PURSUANT TO THIS SUBSECTION IF THE WARNING IS PROVIDED
36 TO A SINGLE PROPERTY OWNER OF THE PARCEL, AND NOTICE TO SUBSEQUENT PROPERTY
37 OWNERS IS NOT REQUIRED. THE IMMUNITIES PRESCRIBED BY THIS SUBSECTION ARE IN
38 ADDITION TO AND NOT IN DEROGATION OR LIMITATION OF THE IMMUNITIES GRANTED A
39 DISTRICT, EMPLOYEE OR OFFICER AS OTHERWISE PROVIDED BY LAW AND APPLY IF
40 EITHER OR BOTH OF THE FOLLOWING CONDITIONS IS MET:

41 1. THE PROJECT IS FUNDED WHOLLY OR PARTIALLY BY FEDERAL MONIES.

42 2. THE PROJECT IS PLANNED OR DESIGNED TO MEET A RECURRENCE INTERVAL
43 APPROVED BY THE DISTRICT'S BOARD OF DIRECTORS.