

House Engrossed

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HOUSE BILL 2349

AN ACT

AMENDING SECTION 48-3615.01, 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 48-3615.01, Arizona Revised Statutes, is amended to
3 read:

4 48-3615.01. Notice of violation; hearing; final decision; civil
5 penalty; injunctive relief

6 A. If the chief engineer finds that a person has engaged or is
7 engaging in development in the floodplain without a floodplain use permit,
8 has engaged or is engaging in any development that is not in compliance with
9 an active floodplain use permit or has damaged or interfered with facilities
10 that are authorized pursuant to this chapter without written authorization of
11 the board of directors, the chief engineer shall issue a notice of violation
12 to the owner, occupant or manager of the real property on which the
13 development is located or to the person who has damaged or interfered with
14 the facilities. The notice of violation shall identify the violations
15 observed and order the violator to cease and desist any ongoing activity that
16 is not in compliance with the regulations adopted pursuant to this chapter or
17 cease and desist any damage or interference that is not authorized by the
18 board. The notice of violation shall include the date, ~~AND time and place~~
19 ~~where the person responding to the notice of violation may appear to show~~
20 ~~cause why the notice of violation should be vacated~~ BY WHICH THE PERSON MUST
21 MAIL OR DELIVER A RESPONSE TO THE NOTICE OF VIOLATION.

22 B. On receipt of the notice of violation, the person may:

23 1. Admit the allegations by ~~doing either of the following:~~

24 ~~(a) Appearing in person, by attorney or by another designated~~
25 ~~representative at a time and location given in the notice of violation.~~

26 ~~(b)~~ mailing or delivering to the chief engineer a form provided with
27 the notice of violation or a written statement signed by the person in which
28 the person admits the allegations, agrees to acquire any required permit and
29 agrees to remedy the violation, damage or interference in accordance with the
30 terms determined by the chief engineer. AT THE SAME TIME AND WITH THE SAME
31 FORM AND IF THE FORM CONTAINS THE REQUEST BY THE PERSON FOR A STAY, THE CHIEF
32 ENGINEER SHALL ISSUE A STAY OF ANY CEASE AND DESIST ORDER UNLESS THERE IS A
33 THREAT TO THE PUBLIC HEALTH OR SAFETY OR TO ANOTHER PERSON'S PROPERTY RIGHTS.

34 2. Deny the allegations by ~~doing either of the following:~~

35 ~~(a) Appearing in person, by attorney or by another designated~~
36 ~~representative at the time and location given in the notice of violation.~~

37 ~~(b)~~ mailing or delivering to the chief engineer a form provided with
38 the notice of violation or a written statement signed by the person denying
39 the allegations and requesting a hearing on the matter.

40 C. On request for a hearing, the hearing officer shall set a date,
41 time and place for a hearing and serve a notice of hearing on the person
42 alleged to be in violation and provide a notice of the hearing to the chief
43 engineer. Service of notice shall be by personal delivery or certified mail,
44 return receipt requested, or by any other method reasonably calculated to

1 effect actual notice on the alleged violator, the chief engineer and every
2 other party to the action.

3 D. The hearing officer shall be appointed by the board of directors
4 and may be an employee of the district. ~~THE NOTICE OF VIOLATION SHALL SERVE~~
5 ~~AS THE COMPLAINT AND THE REQUEST FOR HEARING SHALL SERVE AS THE ANSWER.~~
6 Decisions of the hearing officer or by the board of hearing review shall be
7 available to any party to the hearing. The board of directors shall adopt
8 written rules of procedure for the hearing and review of hearings. These
9 rules shall be adopted in the same manner as floodplain ordinances.

10 E. At the hearing, a representative of the district shall present
11 evidence of the violation described in the notice of hearing. The county
12 attorney may present evidence on behalf of the district. The noticed party
13 or attorney or other designated representative shall be given the opportunity
14 to present evidence at the hearing. After completion of the hearing, the
15 hearing officer shall issue a written finding and a recommendation for the
16 appropriate measures to be taken to abate or ameliorate any harm or damage
17 arising from the violation and for the imposition of any civil penalties
18 attributed to the violation.

19 F. The hearing officer's written finding shall be submitted to the
20 chief engineer and the noticed party within thirty days after the date of the
21 hearing. On receipt of the hearing officer's findings, determination and
22 recommendation, the chief engineer shall issue a final decision and order.
23 The chief engineer's final decision and order may be in any form as adopted
24 by the board of directors pursuant to its authority under this chapter and
25 may include a determination of violation, an order directing that measures be
26 taken to abate or ameliorate any harm or damage arising from the violation
27 and the imposition of a civil penalty. By agreement with the person in
28 violation, the chief engineer may order a nonmonetary penalty that serves the
29 purposes of the district.

30 G. ~~IN A COUNTY WITH A POPULATION OF LESS THAN ONE HUNDRED SEVENTY-FIVE~~
31 ~~THOUSAND PERSONS, THE DISTRICT MAY ADOPT A PROCEDURE IN WHICH THE HEARING~~
32 ~~OFFICER ISSUES A WRITTEN FINDING AND A FINAL DECISION AND ORDER. THE HEARING~~
33 ~~OFFICER'S FINAL DECISION AND ORDER MAY BE IN ANY FORM AS ADOPTED BY THE BOARD~~
34 ~~OF DIRECTORS PURSUANT TO ITS AUTHORITY UNDER THIS CHAPTER AND MAY INCLUDE A~~
35 ~~DETERMINATION OF VIOLATION, AN ORDER DIRECTING THAT MEASURES BE TAKEN TO~~
36 ~~ABATE OR AMELIORATE ANY HARM OR DAMAGE ARISING FROM THE VIOLATION AND THE~~
37 ~~IMPOSITION OF A CIVIL PENALTY. ON RECOMMENDATION OF THE CHIEF ENGINEER AND~~
38 ~~WITH THE AGREEMENT OF THE PERSON IN VIOLATION, THE HEARING OFFICER MAY ORDER~~
39 ~~A NONMONETARY PENALTY THAT SERVES THE STATUTORY PURPOSES OF THE DISTRICT.~~

40 ~~G.~~ H. On written request of any party who is subject to the decision
41 and order of the chief engineer ~~OR HEARING OFFICER~~ pursuant to this section,
42 the board of hearing review may review any decision and order of the chief
43 engineer ~~OR HEARING OFFICER~~. The written request for review shall be
44 delivered to the clerk of the board of directors within fifteen days after
45 the date of the final decision and order. The written request shall identify

1 specifically the section or sections of the chief engineer's OR HEARING
2 OFFICER'S final order that is requested to be reviewed by the board of
3 hearing review.

4 ~~H.~~ I. The board of hearing review shall set a time and date to hear
5 the matter requested for review. The hearing shall be conducted based on the
6 information presented to the chief engineer OR HEARING OFFICER in issuing the
7 final decision and order or, in an appeal from a determination of a violation
8 by a hearing officer, the record before the hearing officer. The information
9 presented to the chief engineer OR HEARING OFFICER in issuing the final
10 decision and order shall be made available to all parties on request. Based
11 on the record before the board of hearing review, the board may deny, approve
12 or modify the order of the chief engineer or the order of the hearing
13 officer. The board shall issue a written order of its decision, including
14 findings of fact and conclusions of law, and shall submit its final written
15 order on the matter to the chief engineer within thirty days after completion
16 of the hearing.

17 ~~I.~~ J. If the person alleged to be in violation continues the
18 violation after the chief engineer OR HEARING OFFICER has issued a final
19 decision and order or after the board of hearing review has completed its
20 review pursuant to this section, the chief engineer may apply for a temporary
21 restraining order or preliminary or permanent injunction from the superior
22 court according to the Arizona rules of civil procedure. A decision to seek
23 injunctive relief does not preclude other forms of relief or enforcement
24 against the violator. The remedies prescribed by this section are cumulative
25 and do not prevent the district from seeking injunctive relief at any time.

26 ~~J.~~ K. The chief engineer may designate another person to carry out
27 the chief engineer's powers and duties prescribed by this section and that
28 designee is authorized to take all actions prescribed by this section in
29 place of the chief engineer.