

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

CHAPTER 170
HOUSE BILL 2178

AN ACT

AMENDING SECTIONS 48-3611, 48-3612, 48-3615 AND 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 48-3611, Arizona Revised Statutes, is amended to
3 read:

4 48-3611. Citizens' flood control advisory board; qualification;
5 functions

6 A. The board of ~~supervisors~~ DIRECTORS may appoint a citizens' flood
7 control advisory board consisting of seven members. Five members shall be
8 resident taxpayers and qualified electors of the district, at least three of
9 whom shall be residents of the cities in the district. At least one of the
10 board members who are residents of cities shall be a resident of the largest
11 city in the district. The city engineer of the largest city in the district
12 and the chief engineer or manager of a major irrigation or agricultural
13 improvement district, or their representatives, shall be ex officio members
14 of the advisory board with all rights and privileges granted to other board
15 members.

16 B. In appointing members of the advisory board the board of
17 ~~supervisors~~ DIRECTORS shall designate which appointive member shall serve for
18 one year, which for two years, which for three years, which for four years
19 and which for five years. Thereafter the term of each appointive member is
20 five years except for a member appointed to an unexpired term.

21 C. The citizens' flood control advisory board may request information
22 from the chief engineer and general manager and ~~his~~ DISTRICT staff,
23 engineering personnel from cities in the district and any other person with a
24 knowledge of flood control practices. They may recommend the employment of
25 consultants for the purpose of obtaining technical information and
26 recommendations regarding flood control and floodplain management practices.

27 D. The advisory board shall study the flood control, floodplain
28 regulation, drainage and water conservation needs of the district, shall meet
29 with and advise the board as requested by the board and may submit to the
30 board reports and recommendations relating to such studies, but the
31 recommendations are advisory only.

32 Sec. 2. Section 48-3612, Arizona Revised Statutes, is amended to read:

33 48-3612. Board of review

34 A. The board of ~~supervisors~~ DIRECTORS may establish a board of review,
35 which may be the advisory board or a committee of the advisory board to sit
36 in review and make decisions as follows:

37 1. Interpret regulations adopted pursuant to this article if the
38 meaning of a word, phrase or section is in doubt, if there is dispute between
39 the appellant and district employees or if location of a floodway or
40 floodplain is in doubt.

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

1 B. Appeals to the review board may be taken by any person who feels
2 that there is error or doubt in the interpretation of the regulation or that
3 due to unusual circumstances attaching to his property an unnecessary
4 hardship is being inflicted on him. The appeal shall state whether it is a
5 plea for an interpretation or a variance and the grounds for the appeal.

6 C. A person aggrieved in any manner by an action of the review board
7 may within thirty days appeal to the district board.

8 Sec. 3. Section 48-3615, Arizona Revised Statutes, is amended to read:

9 48-3615. Violation; classification; civil penalties; strict
10 liability

11 A. It is unlawful for a person to engage in any development or to
12 divert, retard or obstruct the flow of waters in a watercourse if it creates
13 a hazard to life or property without securing the written authorization
14 required by section 48-3613. Where the watercourse is a delineated
15 floodplain it is unlawful to engage in any development affecting the flow of
16 waters without securing written authorization required by section 48-3613.

17 B. A person who violates subsection A of this section is guilty of a
18 class 2 misdemeanor.

19 C. A person who violates this chapter or rules adopted pursuant to
20 this chapter may be assessed a civil penalty not to exceed the fine
21 chargeable for a class 2 misdemeanor **OR, BY AGREEMENT WITH THE PERSON IN**
22 **VIOLATION, A NONMONETARY PENALTY THAT SERVES THE PURPOSES OF THE DISTRICT.**
23 Each day the violation continues constitutes a separate violation.

24 D. A person who without written authorization from the board of
25 directors damages or interferes with a facility that is owned, operated or
26 otherwise under the jurisdiction of the district is strictly liable for both
27 of the following:

28 1. Any actual damages to persons or property that is caused by the
29 damage or interference.

30 2. Payment of costs to the district for remediating the damage or
31 interference.

32 Sec. 4. Section 48-3615.01, Arizona Revised Statutes, is amended to
33 read:

34 48-3615.01. Notice of violation; hearing; final decision; civil
35 penalty; injunctive relief

36 A. If the chief engineer finds that a person has engaged or is
37 engaging in development in the floodplain without a floodplain use permit,
38 has engaged or is engaging in any development that is not in compliance with
39 an active floodplain use permit or has damaged or interfered with facilities
40 that are authorized pursuant to this chapter without written authorization of
41 the board of directors, the chief engineer shall issue a notice of violation
42 to the owner, occupant or manager of the real property on which the
43 development is located or to the person who has damaged or interfered with
44 the facilities. The notice of violation shall identify the violations
45 observed and order the violator to cease and desist any ongoing activity that
46 is not in compliance with the regulations adopted pursuant to this chapter or

1 cease and desist any damage or interference that is not authorized by the
2 board. The notice of violation shall include the date, time and place where
3 the person responding to the notice of violation may appear to show cause why
4 the notice of violation should be vacated.

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

6 1. Admit the allegations by doing either of the following:

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

9 (b) Mailing or delivering to the chief engineer a form provided with
10 the notice of violation or a written statement signed by the person in which
11 the person admits the allegations, agrees to acquire any required permit and
12 agrees to remedy the violation, damage or interference in accordance with the
13 terms determined by the chief engineer.

14 2. Deny the allegations by doing either of the following:

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

17 (b) Mailing or delivering to the chief engineer a form provided with
18 the notice of violation or a written statement signed by the person denying
19 the allegations and requesting a hearing on the matter.

20 C. On request for a hearing, the hearing officer shall set a date,
21 time and place for a hearing and serve a notice of hearing on the person
22 alleged to be in violation and provide a notice of the hearing to the chief
23 engineer. Service of notice shall be by personal delivery or certified mail,
24 return receipt requested, or by any other method reasonably calculated to
25 effect actual notice on the alleged violator, the chief engineer and every
26 other party to the action.

27 D. The hearing officer shall be appointed by the board of directors
28 and may be an employee of the district. Decisions of the hearing officer or
29 by the board of hearing review shall be available to any party to the
30 hearing. The board of directors shall adopt written rules of procedure for
31 the hearing and review of hearings. These rules shall be adopted in the same
32 manner as floodplain ordinances.

33 E. At the hearing, a representative of the district shall present
34 evidence of the violation described in the notice of hearing. The county
35 attorney may present evidence on behalf of the district. The noticed party
36 or attorney or other designated representative shall be given the opportunity
37 to present evidence at the hearing. After completion of the hearing, the
38 hearing officer shall issue a written finding, ~~AND~~ a recommendation for the
39 appropriate measures to be taken to abate or ameliorate any harm or damage
40 arising from the violation and ~~FOR~~ the imposition of any civil penalties
41 attributed to the violation.

42 F. The hearing officer's written finding shall be submitted to the
43 chief engineer and the noticed party within thirty days after the date of the
44 hearing. On receipt of the hearing officer's findings, determination and
45 recommendation, the chief engineer shall issue a final decision and order.
46 The chief engineer's final decision and order may be in any form as adopted

1 by the board of directors pursuant to its authority under this chapter and
2 may include a determination of violation, an order directing that measures be
3 taken to abate or ameliorate any harm or damage arising from the violation
4 and the imposition of a civil penalty. BY AGREEMENT WITH THE PERSON IN
5 VIOLATION, THE CHIEF ENGINEER MAY ORDER A NONMONETARY PENALTY THAT SERVES THE
6 PURPOSES OF THE DISTRICT.

7 G. On written request of any party who is subject to the decision and
8 order of the chief engineer pursuant to this section, the board of hearing
9 review may review any decision and order of the chief engineer. The written
10 request for review shall be delivered to the clerk of the board of directors
11 within fifteen days after the date of the final decision and order. THE
12 WRITTEN REQUEST SHALL IDENTIFY SPECIFICALLY THE SECTION OR SECTIONS OF THE
13 CHIEF ENGINEER'S FINAL ORDER THAT IS REQUESTED TO BE REVIEWED BY THE BOARD OF
14 HEARING REVIEW.

15 H. THE BOARD OF HEARING REVIEW SHALL SET A TIME AND DATE TO HEAR THE
16 MATTER REQUESTED FOR REVIEW. THE HEARING SHALL BE CONDUCTED BASED ON THE
17 INFORMATION PRESENTED TO THE CHIEF ENGINEER IN ISSUING THE FINAL DECISION AND
18 ORDER OR, IN AN APPEAL FROM A DETERMINATION OF A VIOLATION BY A HEARING
19 OFFICER, THE RECORD BEFORE THE HEARING OFFICER. THE INFORMATION PRESENTED TO
20 THE CHIEF ENGINEER IN ISSUING THE FINAL DECISION AND ORDER SHALL BE MADE
21 AVAILABLE TO ALL PARTIES ON REQUEST. BASED ON THE RECORD BEFORE THE BOARD OF
22 HEARING REVIEW, THE BOARD MAY DENY, APPROVE OR MODIFY THE ORDER OF THE CHIEF
23 ENGINEER OR THE ORDER OF THE HEARING OFFICER. THE BOARD SHALL ISSUE A
24 WRITTEN ORDER OF ITS DECISION INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF
25 LAW, AND SHALL SUBMIT ITS FINAL WRITTEN ORDER ON THE MATTER TO THE CHIEF
26 ENGINEER WITHIN THIRTY DAYS AFTER COMPLETION OF THE HEARING.

27 ~~H.~~ I. If the person alleged to be in violation continues the
28 violation after the chief engineer has issued a final decision and order or
29 after the board of hearing review has completed its review pursuant to this
30 section, the chief engineer may apply for a temporary restraining order or
31 preliminary or permanent injunction from the superior court according to the
32 Arizona rules of civil procedure. A decision to seek injunctive relief does
33 not preclude other forms of relief or enforcement against the violator. The
34 remedies prescribed by this section are cumulative and do not prevent the
35 district from seeking injunctive relief at any time.

36 ~~H.~~ J. The chief engineer may designate another person to carry out
37 the chief engineer's powers and duties prescribed by this section and that
38 designee is authorized to take all actions prescribed by this section in
39 place of the chief engineer.

APPROVED BY THE GOVERNOR MAY 2, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 2, 2013.