

REFERENCE TITLE: flood control districts; procedures

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

SB 1519

Introduced by
Senator Kerr

AN ACT

AMENDING SECTIONS 48-3601, 48-3606 AND 48-3609.02, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 21, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 48-3609.03, 48-3609.04, 48-3609.05, 48-3609.06, 48-3609.07 AND 48-3609.08; AMENDING SECTIONS 48-3615.01, 48-3645, 48-3646, 48-3647 AND 48-3650, 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 48-3601, Arizona Revised Statutes, is amended to
3 read:

4 48-3601. Definitions

5 In this article, unless the context otherwise requires:

6 1. "ADVERSE IMPACT" MEANS A FLOOD HAZARD RESULTING FROM DEVELOPMENT
7 IN THE FLOODWAY OR FLOODPLAIN THAT CAUSES ANY OF THE FOLLOWING:

8 (a) A THREAT TO PUBLIC HEALTH AND SAFETY.

9 (b) A RISE IN THE BASE FLOOD ELEVATION BY MORE THAN ONE FOOT.

10 (c) EROSION OR AGGRAVATED EROSION IN AN EROSION-PRONE AREA AS
11 DESCRIBED IN 44 CODE OF FEDERAL REGULATIONS SECTION 60.5 AS IN EFFECT ON
12 JANUARY 1, 2019.

13 (d) DAMAGE TO A STRUCTURE, UTILITY OR BRIDGE.

14 ~~1.~~ 2. "Area of jurisdiction" means the incorporated and
15 unincorporated areas of the county, including public lands, excluding
16 those incorporated areas of cities or towns ~~which~~ THAT have elected to
17 assume floodplain management powers and duties pursuant to section
18 48-3610.

19 3. "BASE FLOOD ELEVATION" MEANS THE ELEVATION OF SURFACE WATER
20 RESULTING FROM A FLOOD THAT HAS A ONE PERCENT CHANCE OF EQUALING OR
21 EXCEEDING THAT LEVEL IN ANY GIVEN YEAR.

22 ~~2.~~ 4. "Board" means the board of directors of a flood control
23 district organized under this article.

24 ~~3.~~ 5. "Development" means any man-made change to improved or
25 unimproved real estate, including buildings or other structures, mining,
26 dredging, filling, grading, paving, excavation or drilling operations or
27 storage of equipment or materials.

28 ~~4.~~ 6. "District" means a flood control district organized pursuant
29 to this article.

30 ~~5.~~ 7. "Flood" or "floodwaters" means a temporary rise in water
31 level including groundwater or overflow of water onto lands not normally
32 covered by water.

33 ~~6.~~ 8. "Floodplain" means any areas in a watercourse ~~which~~ THAT
34 have been or may be covered partially or wholly by floodwater from the one
35 hundred-year flood.

36 ~~7.~~ 9. "Floodplain regulations" means the codes, ordinances and
37 other regulations adopted pursuant to this article relating to the ~~use~~
38 DEVELOPMENT of land and construction OF COMMERCIAL, RESIDENTIAL OR OTHER
39 STRUCTURES THAT MAY DIVERT, RETARD OR OBSTRUCT FLOODWATER AND THREATEN
40 PUBLIC HEALTH OR SAFETY OR THE GENERAL WELFARE within the floodway and
41 floodplain areas.

42 ~~8.~~ 10. "Floodway" means the area of a river or other watercourse
43 and the adjacent land areas necessary in order to discharge the one
44 hundred-year flood without cumulatively increasing the water surface
45 elevation more than one foot.

1 11. "FREEBOARD" MEANS AN ADDITIONAL AMOUNT OF HEIGHT ABOVE THE BASE
2 FLOOD ELEVATION THAT IS USED AS A FACTOR OF SAFETY IN DETERMINING THE
3 LEVEL AT WHICH A STRUCTURE'S LOWEST FLOOR MUST BE ELEVATED OR FLOODPROOFED
4 TO BE IN COMPLIANCE WITH STATE OR LOCAL COMMUNITY FLOODPLAIN MANAGEMENT
5 REGULATIONS AND AS DETERMINED BY THE DIRECTOR OF WATER RESOURCES.

6 12. "NATIONAL FLOOD INSURANCE PROGRAM" MEANS THE PROGRAM OF FLOOD
7 INSURANCE COVERAGE AND FLOODPLAIN MANAGEMENT ADMINISTERED UNDER THE
8 NATIONAL FLOOD INSURANCE ACT OF 1968, AS AMENDED.

9 ~~9.~~ 13. "One hundred-year flood" or "base flood" means a flood that
10 has a one ~~per cent~~ PERCENT chance of being equalled or exceeded in a ~~one~~
11 ~~year~~ ONE-YEAR period, based on the criteria established by the director of
12 water resources.

13 ~~10.~~ 14. "Person" means an individual or the individual's agent, a
14 firm, partnership, association or corporation, or an agent of ~~the~~
15 ~~forementioned groups~~ A FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION, or
16 this state or its agencies or political subdivisions.

17 ~~11.~~ 15. "Regulatory flood elevation" means the elevation ~~which~~ THAT
18 is one foot above the base flood elevation for a watercourse for which the
19 base flood elevation has been determined and shall be as determined by the
20 criteria developed by the director of water resources for all other
21 watercourses.

22 ~~12.~~ 16. "Watercourse" means a lake, river, creek, stream, wash,
23 arroyo, channel or other topographic feature on or over which waters flow
24 at least periodically. Watercourse includes specifically designated areas
25 in which substantial flood damage may occur.

26 Sec. 2. Section 48-3606, Arizona Revised Statutes, is amended to
27 read:

28 48-3606. Assistance for topographic mapping; permits; adverse
29 impact

30 A. If sufficient monies have been appropriated, state monies or
31 assistance allowed by this chapter may be provided to a district to aid in
32 preparing topographic maps or to gather other elevation or channel
33 cross-sectional data necessary, as determined by the director OF WATER
34 RESOURCES, for making hydraulic and hydrologic computations for
35 determining floodplain and floodway limits.

36 B. FOR ANY FLOODPLAIN USE PERMIT CONSIDERED BY THE DISTRICT, THE
37 DISTRICT SHALL CONSIDER ANY ADVERSE IMPACT EXCEPT THAT THE DISTRICT MAY
38 NOT CONSIDER AN ADVERSE IMPACT ON PRIVATE PROPERTY UNLESS THAT ADVERSE
39 IMPACT HAS A DIRECT IMPACT ON A DISTRICT-OWNED PROPERTY OR IS AN IMMINENT
40 THREAT TO PUBLIC HEALTH AND SAFETY. THE DISTRICT MAY NOT CONSIDER OR
41 AFFECT THE PRIVATE PROPERTY RIGHTS OF A PERSON WITH RESPECT TO THE PRIVATE
42 PROPERTY RIGHTS OF ANOTHER PERSON.

1 ~~2.~~ 4. The district shall provide at least two weeks' notice of a
2 meeting at which the final text of the proposed rule is considered by the
3 board of directors. The notice shall include the entire text of the final
4 version of the proposed rule, ~~and it~~ WHICH shall be made available to the
5 public. At least one week before the meeting, the district shall provide
6 the public with the district's written responses to written public
7 comments and ~~may provide written responses~~ to verbal comments.

8 ~~3.~~ 5. The district shall provide the board ~~of directors~~ with
9 copies of the public comments and the district's written responses to the
10 public comments. If as a result of public comments or internal review,
11 the board ~~of directors~~ determines that the text of a proposed rule
12 requires substantial change, the board ~~of directors~~ shall issue a
13 supplemental notice containing the changes to the proposed rule and shall
14 provide for additional public comment before adoption.

15 C. Notwithstanding this section, the board ~~of directors~~ may provide
16 alternative procedures for the adoption of a rule if the board makes a
17 finding that an emergency exists and adoption of the rule is necessary to
18 protect the public health, safety or welfare, to avoid an imminent budget
19 reduction or to avoid serious prejudice to the public interest. Within a
20 reasonable time after adopting an emergency rule, the board ~~of directors~~
21 shall review the emergency rule to determine whether the rule should
22 continue in effect or be terminated.

23 ~~D. Notwithstanding this section, the board of directors may provide
24 alternative procedures for the adoption of a rule if the rule is required
25 by state or federal law or regulation, and the basis for the requirement
26 to adopt the rule is not the result of delay or inaction by the board of
27 directors.~~

28 ~~E. Notwithstanding this section, the board of directors may provide
29 alternative procedures for the expedited adoption, amendment or repeal of
30 a rule if the expedited rulemaking does not increase the cost of
31 regulatory compliance or reduce the procedural rights of regulated
32 parties.~~

33 ~~F. A rule cannot be enforced without substantial compliance with
34 this section, except those rules that were approved by the board of
35 directors before July 3, 2015.~~

36 ~~G. The district may provide the notices required by this section on
37 the district's website.~~

38 ~~H.~~ D. The district may meet informally with any interested party
39 for the purpose of discussing any proposed rule.

40 ~~I.~~ E. This section does not apply to:

- 41 1. Substantive policy statements.
42 2. Procedural documents that only affect the internal procedures of
43 the district and do not impose ~~additional~~ requirements, conditions or
44 penalties on regulated parties.

1 ~~3. Use or adoption of any form whose contents or substantive~~
2 ~~requirements are consistent with an ordinance or statute, and any~~
3 ~~procedures for the execution or use of the form.~~

4 ~~F.~~ F. For the purposes of this section, "rule" means a district
5 statement of general applicability that implements, interprets or
6 prescribes law or policy, or describes the procedure or practice
7 requirements of a district. Rule includes prescribing fees or the
8 amendment or repeal of an existing rule but does not include intra-agency
9 memoranda that are not delegation agreements.

10 Sec. 4. Title 48, chapter 21, article 1, Arizona Revised Statutes,
11 is amended by adding sections 48-3609.03, 48-3609.04, 48-3609.05,
12 48-3609.06, 48-3609.07 and 48-3609.08, to read:

13 48-3609.03. Variance between rule and published notice of
14 proposed rulemaking

15 A. A DISTRICT MAY NOT SUBMIT A RULE TO THE BOARD THAT IS
16 SUBSTANTIALLY DIFFERENT FROM THE PROPOSED RULE CONTAINED IN THE NOTICE OF
17 PROPOSED RULEMAKING OR A SUPPLEMENTAL NOTICE PUBLISHED BY THE DISTRICT
18 OPENING THE RULEMAKING. THE DISTRICT MAY TERMINATE A RULEMAKING
19 PROCEEDING AND COMMENCE A NEW RULEMAKING PROCEEDING FOR THE PURPOSE OF
20 MAKING A SUBSTANTIALLY DIFFERENT RULE.

21 B. IN DETERMINING WHETHER A RULE IS SUBSTANTIALLY DIFFERENT FROM
22 THE PUBLISHED PROPOSED RULE ON WHICH IT IS REQUIRED TO BE BASED, THE
23 DISTRICT MUST CONSIDER ALL OF THE FOLLOWING:

24 1. THE EXTENT TO WHICH ALL PERSONS AFFECTED BY THE RULE SHOULD HAVE
25 UNDERSTOOD THAT THE PUBLISHED PROPOSED RULE WOULD AFFECT THEIR INTERESTS.

26 2. THE EXTENT TO WHICH THE SUBJECT MATTER OF THE RULE OR THE ISSUES
27 DETERMINED BY THAT RULE ARE DIFFERENT FROM THE SUBJECT MATTER OR ISSUES
28 INVOLVED IN THE PUBLISHED PROPOSED RULE.

29 3. THE EXTENT TO WHICH THE EFFECTS OF THE RULE DIFFER FROM THE
30 EFFECTS OF THE PUBLISHED PROPOSED RULE IF IT HAD BEEN MADE INSTEAD.

31 48-3609.04. Incorporation by reference

32 A. A DISTRICT MAY INCORPORATE BY REFERENCE IN DISTRICT RULES, AND
33 WITHOUT PUBLISHING THE INCORPORATED MATTER IN FULL, ALL OR ANY PART OF A
34 CODE, STANDARD, RULE OR REGULATION OF AN AGENCY OF THE UNITED STATES OR OF
35 THIS STATE OR A NATIONALLY RECOGNIZED ORGANIZATION OR ASSOCIATION, IF
36 INCORPORATION OF THE TEXT IN DISTRICT RULES WOULD BE UNDULY CUMBERSOME,
37 EXPENSIVE OR OTHERWISE INEXPEDIENT.

38 B. THE REFERENCE IN THE DISTRICT RULES SHALL FULLY IDENTIFY THE
39 INCORPORATED MATTER BY LOCATION, DATE AND OTHERWISE AND SHALL STATE THAT
40 THE RULE DOES NOT INCLUDE ANY LATER AMENDMENTS OR EDITIONS OF THE
41 INCORPORATED MATTER.

42 C. A DISTRICT MAY INCORPORATE BY REFERENCE SUCH MATTER IN DISTRICT
43 RULES ONLY IF THE AGENCY, ORGANIZATION OR ASSOCIATION ORIGINALLY ISSUING
44 THAT MATTER MAKES COPIES OF IT READILY AVAILABLE TO THE PUBLIC FOR
45 INSPECTION AND REPRODUCTION.

1 D. THE RULES SHALL STATE WHERE COPIES OF THE INCORPORATED MATTER
2 ARE AVAILABLE FROM THE DISTRICT ISSUING THE RULE AND FROM THE AGENCY OF
3 THE UNITED STATES OR THIS STATE OR THE ORGANIZATION OR ASSOCIATION
4 ORIGINALLY ISSUING THE MATTER.

5 E. A DISTRICT MAY INCORPORATE LATER AMENDMENTS OR EDITIONS OF THE
6 INCORPORATED MATTER ONLY AFTER COMPLIANCE WITH THE RULEMAKING REQUIREMENTS
7 OF THIS CHAPTER.

8 48-3609.05. Invalidity of rules; preamble justification for
9 rulemaking

10 A. A RULE IS INVALID UNLESS IT IS MADE AND APPROVED IN SUBSTANTIAL
11 COMPLIANCE WITH SECTIONS 48-3609.02, 48-3609.03, 48-3609.04, 48-3609.05,
12 48-3609.06, 48-3609.07 AND 48-3609.08, ALL PUBLIC NOTICE REQUIREMENTS, AND
13 ARTICLE 2 OF THIS CHAPTER, UNLESS OTHERWISE PROVIDED BY LAW.

14 B. A PARTY MAY USE ONLY THE REASONS CONTAINED IN THE PREAMBLE AS
15 JUSTIFICATION FOR THE MAKING OF THE RULE IN ANY PROCEEDING IN WHICH THE
16 VALIDITY OF THE RULE IS AT ISSUE.

17 48-3609.06. Petition for a rule or review of a district
18 practice, substantive policy statement, final
19 rule or unduly burdensome licensing
20 requirement; notice

21 A. ANY PERSON MAY PETITION THE DISTRICT TO DO EITHER OF THE
22 FOLLOWING:

- 23 1. MAKE, AMEND OR REPEAL A FINAL RULE.
24 2. REVIEW AN EXISTING DISTRICT PRACTICE OR SUBSTANTIVE POLICY
25 STATEMENT THAT THE PERSON ALLEGES TO CONSTITUTE A RULE.

26 B. THE DISTRICT SHALL PRESCRIBE THE FORM OF THE PETITION AND THE
27 PROCEDURES FOR THE PETITION'S SUBMISSION, CONSIDERATION AND DISPOSITION.
28 THE PERSON SHALL STATE ON THE PETITION THE RULEMAKING TO REVIEW OR THE
29 DISTRICT PRACTICE OR SUBSTANTIVE POLICY STATEMENT TO CONSIDER MAKING INTO
30 A RULE.

31 C. NOT LATER THAN SIXTY DAYS AFTER SUBMISSION OF THE PETITION, THE
32 DISTRICT SHALL DO ANY OF THE FOLLOWING:

- 33 1. REJECT THE PETITION AND STATE THE DISTRICT'S REASONS IN WRITING
34 TO THE PETITIONER.
35 2. INITIATE RULEMAKING PROCEEDINGS IN ACCORDANCE WITH THIS CHAPTER.
36 3. IF OTHERWISE LAWFUL, MAKE A RULE.

37 D. THE DISTRICT'S RESPONSE TO THE PETITION IS OPEN TO PUBLIC
38 INSPECTION AND THE RESPONSE SHALL BE CONSPICUOUSLY POSTED ON THE
39 DISTRICT'S WEBSITE.

40 E. IF THE DISTRICT REJECTS A PETITION PURSUANT TO SUBSECTION C OF
41 THIS SECTION, THE PETITIONER HAS THIRTY DAYS TO APPEAL TO THE BOARD TO
42 REVIEW WHETHER THE EXISTING DISTRICT PRACTICE OR SUBSTANTIVE POLICY
43 STATEMENT CONSTITUTES A RULE. THE BOARD CHAIRPERSON SHALL PLACE THIS
44 APPEAL ON THE AGENDA OF THE BOARD'S NEXT MEETING.

1 F. A PERSON MAY PETITION THE BOARD TO REQUEST A REVIEW OF A FINAL
2 RULE BASED ON THE PERSON'S BELIEF THAT THE FINAL RULE DOES NOT MEET THE
3 REQUIREMENTS PRESCRIBED IN SECTION 48-3609.05.

4 G. IF THE BOARD RECEIVES INFORMATION THAT INDICATES AN EXISTING
5 DISTRICT PRACTICE OR SUBSTANTIVE POLICY STATEMENT MAY CONSTITUTE A RULE,
6 THAT A FINAL RULE DOES NOT MEET THE REQUIREMENTS PRESCRIBED IN SECTION
7 48-3609.05 OR 48-3642, THAT AN EXISTING DISTRICT PRACTICE, SUBSTANTIVE
8 POLICY STATEMENT, FINAL RULE OR REGULATORY LICENSING REQUIREMENT IS NOT
9 SPECIFICALLY AUTHORIZED BY STATUTE PURSUANT TO SECTION 48-3609.05, OR THAT
10 THE EXISTING DISTRICT PRACTICE, SUBSTANTIVE POLICY STATEMENT, FINAL RULE
11 OR REGULATORY LICENSING REQUIREMENT IS UNDULY BURDENSOME OR IS NOT
12 DEMONSTRATED TO BE NECESSARY TO SPECIFICALLY FULFILL A PUBLIC HEALTH OR
13 SAFETY CONCERN, THE BOARD SHALL:

14 1. NOTIFY THE DISTRICT THAT THE MATTER HAS BEEN OR WILL BE PLACED
15 ON AN AGENDA.

16 2. NOT LATER THAN THIRTY DAYS AFTER RECEIVING NOTICE FROM THE
17 BOARD, THE DISTRICT SHALL SUBMIT A STATEMENT TO THE BOARD THAT ADDRESSES
18 WHETHER THE EXISTING DISTRICT PRACTICE OR SUBSTANTIVE POLICY STATEMENT
19 CONSTITUTES A RULE, WHETHER THE FINAL RULE MEETS THE REQUIREMENTS
20 PRESCRIBED IN SECTION 48-3609.05 OR WHETHER AN EXISTING DISTRICT PRACTICE,
21 SUBSTANTIVE POLICY STATEMENT, FINAL RULE OR REGULATORY LICENSING
22 REQUIREMENT MEETS THE GUIDELINES PRESCRIBED IN THIS SUBSECTION.

23 3. WITHIN NINETY DAYS AFTER RECEIPT OF THE PERSON'S REQUEST,
24 DETERMINE WHETHER THE EXISTING DISTRICT PRACTICE OR SUBSTANTIVE POLICY
25 STATEMENT CONSTITUTES A RULE, WHETHER THE FINAL RULE MEETS THE
26 REQUIREMENTS PRESCRIBED IN SECTION 48-3609.05 OR WHETHER AN EXISTING
27 DISTRICT PRACTICE, SUBSTANTIVE POLICY STATEMENT, FINAL RULE OR REGULATORY
28 LICENSING REQUIREMENT MEETS THE GUIDELINES PRESCRIBED IN THIS SUBSECTION.

29 H. FOR THE PURPOSES OF THIS SECTION, THE BOARD MEETING MAY NOT BE
30 SCHEDULED UNTIL THE EXPIRATION OF THE DISTRICT RESPONSE PERIOD PRESCRIBED
31 IN SUBSECTION G OF THIS SECTION.

32 I. AN EXISTING DISTRICT PRACTICE, SUBSTANTIVE POLICY STATEMENT,
33 FINAL RULE OR REGULATORY LICENSING REQUIREMENT CONSIDERED BY THE BOARD
34 PURSUANT TO THIS SECTION SHALL REMAIN IN EFFECT WHILE UNDER CONSIDERATION
35 BY THE BOARD. IF THE BOARD DECIDES THE EXISTING DISTRICT PRACTICE OR
36 SUBSTANTIVE POLICY STATEMENT CONSTITUTES A RULE OR THAT THE FINAL RULE
37 DOES NOT MEET THE REQUIREMENTS PRESCRIBED IN SECTION 48-3609.05, THE
38 PRACTICE, POLICY STATEMENT OR RULE IS VOID. IF THE BOARD DETERMINES THAT
39 THE EXISTING DISTRICT PRACTICE, SUBSTANTIVE POLICY STATEMENT, FINAL RULE
40 OR REGULATORY LICENSING REQUIREMENT IS UNDULY BURDENSOME OR IS NOT
41 DEMONSTRATED TO BE NECESSARY TO SPECIFICALLY FULFILL A PUBLIC HEALTH OR
42 SAFETY CONCERN AND MEETS THE REQUIREMENTS OF SUBSECTION G OF THIS SECTION,
43 THE BOARD MAY MODIFY, REVISE OR DECLARE VOID ANY SUCH EXISTING DISTRICT
44 PRACTICE, SUBSTANTIVE POLICY STATEMENT, FINAL RULE OR REGULATORY LICENSING
45 REQUIREMENT.

1 J. A BOARD DECISION PURSUANT TO THIS SECTION SHALL INCLUDE FINDINGS
2 OF FACT AND CONCLUSIONS OF LAW, SEPARATELY STATED. CONCLUSIONS OF LAW
3 SHALL SPECIFICALLY ADDRESS THE DISTRICT'S AUTHORITY TO ACT CONSISTENT WITH
4 SECTION 48-3609.05.

5 K. A DECISION BY THE BOARD PURSUANT TO THIS SECTION IS NOT SUBJECT
6 TO JUDICIAL REVIEW, EXCEPT THAT IN ADDITION TO THE PROCEDURE PRESCRIBED IN
7 THIS SECTION OR IN LIEU OF THE PROCEDURE PRESCRIBED IN THIS SECTION, A
8 PERSON MAY SEEK DECLARATORY RELIEF PURSUANT TO SECTION 48-3609.07.

9 L. EACH DISTRICT AND THE BOARD SHALL POST PROMINENTLY ON ITS
10 WEBSITE NOTICE OF AN INDIVIDUAL'S RIGHT TO PETITION THE BOARD FOR REVIEW
11 PURSUANT TO THIS SECTION.

12 48-3609.07. Declaratory judgment

13 A. ANY PERSON WHO IS OR MAY BE AFFECTED BY A RULE MAY OBTAIN A
14 JUDICIAL DECLARATION OF THE VALIDITY OF THE RULE BY FILING AN ACTION FOR
15 DECLARATORY RELIEF IN THE SUPERIOR COURT IN ACCORDANCE WITH TITLE 12,
16 CHAPTER 10, ARTICLE 2.

17 B. ANY PERSON WHO IS OR MAY BE AFFECTED BY AN EXISTING DISTRICT
18 PRACTICE OR SUBSTANTIVE POLICY STATEMENT THAT THE PERSON ALLEGES TO
19 CONSTITUTE A RULE MAY OBTAIN A JUDICIAL DECLARATION ON WHETHER THE
20 PRACTICE OR SUBSTANTIVE POLICY STATEMENT CONSTITUTES A RULE BY FILING AN
21 ACTION FOR DECLARATORY RELIEF IN THE SUPERIOR COURT IN ACCORDANCE WITH
22 TITLE 12, CHAPTER 10, ARTICLE 2.

23 48-3609.08. Rules; restrictions; affirmative defense;
24 exceptions; definition

25 A. NOTWITHSTANDING ANY OTHER LAW, A DISTRICT MAY NOT ADOPT ANY NEW
26 RULE THAT WOULD INCREASE EXISTING REGULATORY RESTRAINTS OR BURDENS ON THE
27 FREE EXERCISE OF PROPERTY RIGHTS OR THE FREEDOM TO ENGAGE IN AN OTHERWISE
28 LAWFUL BUSINESS OR OCCUPATION UNLESS THE RULE IS EITHER OF THE FOLLOWING:

- 29 1. A COMPONENT OF A COMPREHENSIVE EFFORT TO REDUCE REGULATORY
30 RESTRAINTS OR BURDENS.
31 2. NECESSARY TO IMPLEMENT STATUTES OR REQUIRED BY A FINAL COURT
32 ORDER OR DECISION.

33 B. ANY PERSON WHO IS SUBJECT TO A CIVIL OR CRIMINAL PROCEEDING
34 ARISING FROM THE ENFORCEMENT OF A RULE IN VIOLATION OF SUBSECTION A OF
35 THIS SECTION HAS AN AFFIRMATIVE DEFENSE TO THE ENFORCEMENT ACTION. ANY
36 COURT OR ADMINISTRATIVE BODY CONSIDERING OR REVIEWING THE DEFENSE SHALL
37 RULE ON ITS MERITS WITHOUT DEFERENCE TO ANY LEGISLATIVE, ADMINISTRATIVE OR
38 EXECUTIVE FINDING CONCERNING THE RULE. THE COURT OR ADMINISTRATIVE BODY
39 MAY AWARD THE PREVAILING PARTY, OTHER THAN THE DISTRICT, ATTORNEY FEES AND
40 COSTS.

41 C. THIS SECTION DOES NOT APPLY TO RULES THAT EITHER:

- 42 1. GOVERN PUBLIC EMPLOYEES.
43 2. ARE NECESSARY TO PROTECT PUBLIC HEALTH AND SAFETY.

1 ~~reasonably calculated to effect actual notice on the alleged violator, the~~
2 ~~chief engineer and every 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
5 serve as the complaint and the request for hearing shall serve as the
6 answer. Decisions of the hearing officer or by the board of hearing
7 review shall be available to any party to the hearing. The board of
8 directors shall adopt written rules of procedure for the hearing and
9 review of hearings. These rules shall be adopted in the same manner as
10 floodplain ordinances.

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

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

31 G. In a county with a population of less than one hundred seventy-
32 five thousand persons, the district may adopt a procedure in which the
33 hearing officer issues a written finding and a final decision and order.
34 The hearing officer's final decision and order may be in any form as
35 adopted by the board of directors pursuant to its authority under this
36 chapter and may include a determination of violation, an order directing
37 that measures be taken to abate or ameliorate any harm or damage arising
38 from the violation and the imposition of a civil penalty. On
39 recommendation of the chief engineer and with the agreement of the person
40 in violation, the hearing officer may order a nonmonetary penalty that
41 serves the statutory purposes of the district.

42 H. On written request of any party who is subject to the decision
43 and order of the chief engineer or hearing officer pursuant to this
44 section, the board of hearing review may review any decision and order of
45 the chief engineer or hearing officer. The written request for review

1 shall be delivered to the clerk of the board of directors within fifteen
2 days after the date of the final decision and order. The written request
3 shall identify specifically the section or sections of the chief
4 engineer's or hearing officer's final order that is requested to be
5 reviewed by the board of hearing review.

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

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

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

33 Sec. 6. Section 48-3645, Arizona Revised Statutes, is amended to
34 read:

35 48-3645. Licensing time frames; compliance; consequence for
36 failure to comply with time frame; exemptions;
37 definitions

38 A. For any new ordinance or regulation requiring a license, a
39 district shall have in place an overall time frame during which the
40 district will either grant or deny each type of license that it issues.
41 The overall time frame for each type of license shall state separately the
42 administrative completeness review time frame and the substantive review
43 time frame and shall be posted on the district's website, if the district
44 maintains a website.

1 B. On or before December 31, 2012, a district that issues licenses
2 required under existing ordinances or codes shall have in place an overall
3 time frame during which the district will either grant or deny each type
4 of license that it issues. The overall time frame for each type of
5 license shall state separately the administrative completeness review time
6 frame and the substantive review time frame and shall be posted on the
7 district's website, if the district maintains a website. Districts shall
8 prioritize the establishment of time frames for those licenses that have
9 the greatest impact on the public.

10 C. In establishing time frames, districts shall consider all of the
11 following:

- 12 1. The complexity of the licensing subject matter.
- 13 2. The resources of the district.
- 14 3. The economic impact of delay on the regulated community.
- 15 4. The impact of the licensing decision on public health and
16 safety.
- 17 5. The possible use of volunteers with expertise in the subject
18 matter area.
- 19 6. The possible increased use of general licenses for similar types
20 of licensed businesses or facilities.
- 21 7. The possible increased cooperation between the district and the
22 regulated community.

23 8. Increased district flexibility in structuring the licensing
24 process and personnel including:

- 25 ~~(a) master planned communities.~~
- 26 ~~(b) Suspension of the substantive and overall time frames for~~
27 ~~purposes including delays caused by the need for public hearings, state or~~
28 ~~federal approvals or approvals from public utilities on residential or~~
29 ~~commercial development projects.~~

30 ~~9. That the substantive review and overall time frames do not~~
31 ~~include the time required by the applicant to obtain other nondistrict~~
32 ~~licenses or to participate in meetings as required by law.~~

33 D. A district shall issue a written ~~or electronic~~ notice of
34 administrative completeness or deficiencies to an applicant for a license
35 within the administrative completeness review time frame. ~~If the permit~~
36 ~~sought requires approval of more than one department of the district, each~~
37 ~~department may issue a written or electronic notice of administrative~~
38 ~~completeness or deficiencies.~~

39 E. If a district determines that an application for a license is
40 not administratively complete, the district shall include ~~a~~ ONE
41 comprehensive list of the specific deficiencies in the written ~~or~~
42 ~~electronic~~ notice provided pursuant to subsection D of this section. ~~THE~~
43 ~~WRITTEN NOTICE OF DEFICIENCIES SHALL INCLUDE A SPECIFIC LIST OF THE~~
44 ~~MISSING INFORMATION NECESSARY FOR THE ADMINISTRATIVE REVIEW.~~ If the
45 district issues a written ~~or electronic~~ notice of deficiencies within the

1 administrative completeness time frame, the administrative completeness
 2 review time frame and the overall time frame are suspended from the date
 3 the notice is issued until the date that the district receives the missing
 4 information from the applicant. ~~The district may issue an additional~~
 5 ~~written or electronic notice of administrative completeness or~~
 6 ~~deficiencies based on the applicant's submission of missing information.~~
 7 ~~If the permit sought requires approval of more than one department of the~~
 8 ~~district, each department may issue an additional written or electronic~~
 9 ~~notice of administrative completeness or deficiencies based on the~~
 10 ~~applicant's submission of missing information~~ IF THE APPLICANT CANNOT
 11 SUBMIT THE MISSING INFORMATION WITHIN THE ADMINISTRATIVE COMPLETENESS
 12 REVIEW TIME FRAME, THE APPLICANT MAY REQUEST AN EXTENSION BY SUBMITTING A
 13 WRITTEN REQUEST TO THE DISTRICT POSTMARKED OR DELIVERED TO THE DISTRICT
 14 NOT LATER THAN SIXTY DAYS AFTER THE DATE OF THE NOTICE. THE WRITTEN
 15 REQUEST FOR EXTENSION SHALL DESCRIBE THE REASONS FOR THE APPLICANT'S
 16 INABILITY TO COMPLY WITH THE ADMINISTRATIVE COMPLETENESS REVIEW TIME
 17 FRAME. THE DISTRICT SHALL ACT ON THE APPLICANT'S REQUEST FOR EXTENSION
 18 NOT LATER THAN THIRTY DAYS AFTER RECEIVING THE WRITTEN REQUEST. IF THE
 19 APPLICANT FAILS TO SUBMIT THE MISSING INFORMATION WITHIN THE EXTENSION
 20 PERIOD, THE DISTRICT MAY CLOSE THE APPLICANT'S FILE. AN APPLICANT WHOSE
 21 FILE HAS BEEN CLOSED AND WHO LATER SEEKS A LICENSE SHALL SUBMIT A NEW
 22 APPLICATION.

23 F. If a district does not issue a written ~~or electronic~~ notice of
 24 administrative completeness or deficiencies within the administrative
 25 completeness review time frame, the application is deemed administratively
 26 complete. If a district issues a timely written ~~or electronic~~ notice of
 27 deficiencies, an application ~~shall~~ IS not ~~be~~ complete until all requested
 28 information has been received by the district. ~~A district may consider an~~
 29 ~~application withdrawn if by fifteen days or longer after the date of the~~
 30 ~~notice, as established by the district, the applicant does not supply the~~
 31 ~~documentation or information requested or an explanation of why the~~
 32 ~~information cannot be provided within the established time period.~~

33 G. During the substantive review time frame, a district may make
 34 one comprehensive written ~~or electronic~~ request for ~~corrections.~~ If the
 35 ~~district identifies legal requirements that were not included in the~~
 36 ~~comprehensive request for corrections, the district may amend the~~
 37 ~~comprehensive request for corrections once to include the legal~~
 38 ~~requirements and the legal authority for the requirements. If the permit~~
 39 ~~sought requires approval of more than one department of the district, each~~
 40 ~~department may issue a comprehensive written or electronic request for~~
 41 ~~corrections. If the applicant fails to resolve an issue identified in a~~
 42 ~~request for corrections, the district may make supplemental written or~~
 43 ~~electronic requests for corrections that are limited to issues previously~~
 44 ~~identified in a comprehensive request for corrections~~ ADDITIONAL
 45 INFORMATION. If a district issues a comprehensive written ~~or electronic~~

1 request or a supplemental request for ~~corrections~~ INFORMATION BY WRITTEN
 2 MUTUAL AGREEMENT FOR ADDITIONAL INFORMATION, the substantive review time
 3 frame and the overall time frame are suspended from the date the request
 4 is issued until the date that the district receives the ~~corrections~~
 5 ADDITIONAL INFORMATION from the applicant. ~~If an applicant requests~~
 6 ~~significant changes, alterations, additions or amendments to an~~
 7 ~~application that are consistent with the purposes of the original~~
 8 ~~application and that are not in response to a request for correction, a~~
 9 ~~district may make one additional comprehensive written or electronic~~
 10 ~~request for corrections and may have no more than an additional fifty per~~
 11 ~~cent of the substantive review time frame as established by the district~~
 12 ~~for that license to grant or deny the license. Nothing shall prevent~~
 13 ~~communication between a district and an applicant regarding a~~
 14 ~~comprehensive written or electronic request for corrections or a~~
 15 ~~supplemental request for corrections. A district may consider an~~
 16 ~~application withdrawn if, by thirty days or more after the date of notice,~~
 17 ~~as established by the district, the applicant does not supply the~~
 18 ~~documentation or information requested or an explanation of why the~~
 19 ~~information cannot be provided within the established time period.~~

20 ~~H. Nothing shall prevent the district from continuing to process~~
 21 ~~the application during the suspension of the substantive review time frame~~
 22 ~~and overall time frame.~~

23 ~~i. H.~~ By mutual written ~~or electronic~~ agreement, a district and an
 24 applicant for a license may extend the substantive review time frame and
 25 the overall time frame. An extension of the substantive review time frame
 26 and the overall time frame may not exceed ~~fifty per cent~~ TWENTY-FIVE
 27 PERCENT of the overall time frame.

28 ~~j. I.~~ Unless a district and an applicant for a license mutually
 29 agree to extend the substantive review time frame and the overall time
 30 frame pursuant to subsection ~~i~~ H of this section, a district shall issue
 31 a written ~~or electronic~~ notice granting or denying a license to an
 32 applicant. If a district denies ~~or withdraws~~ an application for a
 33 license, the district shall include in the written ~~or electronic~~ notice at
 34 least the following information:

35 1. Justification for the denial ~~or withdrawa~~ with references to
 36 the statutes, ~~ordinances, executive orders, substantive policy statements~~
 37 ~~or delegation agreements~~ OR RULES on which the denial ~~or withdrawa~~ is
 38 based.

39 2. An explanation of the applicant's right to appeal the denial ~~or~~
 40 ~~withdrewa~~. The explanation shall include the number of ~~working~~ days in
 41 which the applicant must file a protest challenging the denial ~~or~~
 42 ~~withdrewa~~ and the name and telephone number of a district contact person
 43 who can answer questions regarding the appeals process.

1 ~~3. An explanation of the applicant's right to resubmit the~~
2 ~~application, the total amount of fees that will be assessed if the~~
3 ~~applicant resubmits the application and the method in which the fees were~~
4 ~~calculated.~~

5 ~~K. J.~~ J. If a district does not issue to the applicant the written ~~or~~
6 ~~electronic~~ notice granting or denying a license within the overall time
7 frame or within the mutually agreed ~~upon~~ ON time frame extension, the
8 district shall refund to the applicant all fees charged for reviewing and
9 acting on the application for the license and shall excuse payment of any
10 fees that have not yet been paid. The district shall not require an
11 applicant to submit an application for a refund pursuant to this
12 subsection. The refund shall be made within thirty ~~working~~ days after the
13 expiration of the overall time frame or the time frame extension. The
14 district shall continue to process the application. Notwithstanding any
15 other statute, the district shall make the refund from the fund in which
16 the application fees were originally deposited. ~~The right to receive a~~
17 ~~refund of fees charged for reviewing and acting on the application for the~~
18 ~~license may not be waived by the applicant.~~ THIS SUBSECTION APPLIES ONLY
19 TO LICENSE APPLICATIONS THAT ARE SUBJECT TO SUBSTANTIVE REVIEW.

20 K. AN APPLICATION IS DEEMED DENIED IF THE TIME FOR THE OVERALL TIME
21 FRAME EXPIRES, THE APPLICANT HAS NOT RESPONDED TO THE REQUEST FOR
22 ADDITIONAL INFORMATION FOR THE SUBSTANTIVE REVIEW AND THE DISTRICT AND THE
23 APPLICANT HAVE NOT MUTUALLY AGREED TO A SUPPLEMENTAL REQUEST FOR
24 INFORMATION OR AN EXTENSION OF THE OVERALL TIME FRAME. THE DISTRICT SHALL
25 NOTIFY THE APPLICANT THAT THE APPLICATION IS DEEMED DENIED THREE HUNDRED
26 SIXTY-FIVE DAYS AFTER THE APPLICANT SUBMITTED THE APPLICATION.

27 ~~L. If an application for a license is denied because revisions or~~
28 ~~corrections were not submitted or considered within the allowed time~~
29 ~~frame, or withdrawn, and the applicant resubmits the application for the~~
30 ~~same purposes with only revisions or corrections to the original~~
31 ~~application, the district shall not assess any additional fees that exceed~~
32 ~~fifty per cent of the original permit fee that has not been refunded to~~
33 ~~the applicant provided that the application is submitted before the time~~
34 ~~of destruction of the original application file pursuant to section~~
35 ~~41-151.15. This subsection does not apply to license applications that~~
36 ~~were denied for disqualifying criminal convictions or that were submitted~~
37 ~~fraudulently.~~ EXCEPT FOR LICENSE APPLICATIONS THAT WERE NOT SUBJECT TO
38 SUBSTANTIVE REVIEW, THE DISTRICT SHALL PAY A PENALTY TO THE COUNTY GENERAL
39 FUND FOR EACH MONTH AFTER THE EXPIRATION OF THE OVERALL TIME FRAME OR THE
40 TIME FRAME EXTENSION UNTIL THE DISTRICT ISSUES WRITTEN NOTICE TO THE
41 APPLICANT GRANTING OR DENYING THE LICENSE. THE DISTRICT SHALL PAY THE
42 PENALTY FROM THE AGENCY FUND IN WHICH THE APPLICATION FEES WERE ORIGINALLY
43 DEPOSITED. THE PENALTY SHALL BE TWO AND ONE-HALF PERCENT OF THE TOTAL
44 FEES RECEIVED BY THE DISTRICT FOR REVIEWING AND ACTING ON THE APPLICATION
45 FOR EACH LICENSE THAT THE DISTRICT HAS NOT GRANTED OR DENIED ON THE LAST

1 DAY OF EACH MONTH AFTER THE EXPIRATION OF THE OVERALL TIME FRAME OR TIME
2 FRAME EXTENSION FOR THAT LICENSE.

3 ~~M.~~ L. This section does not apply to a license that is either:

4 1. Issued within seven working days after receipt of the initial
5 application or a permit that expires within twenty-one working days after
6 issuance.

7 2. Necessary for the construction or development of a residential
8 lot, including swimming pools, hardscape and property walls, ~~subdivisions~~
9 A SUBDIVISION or A master planned community.

10 ~~N.~~ M. For the purposes of this section:

11 1. "Master planned community" means development by one or more
12 developers of real estate that consists of residential, commercial,
13 education, health care, open space and recreational components and that is
14 developed pursuant to a long-range, multiphase master plan providing
15 comprehensive land use planning and staged implementation and development.

16 2. "Subdivision" means improved or unimproved land or lands divided
17 for the purposes of financing, sale or lease, whether immediate or future,
18 into four or more lots, tracts or parcels of land, ~~or,~~ or, if a new street is
19 involved, any such property that is divided into two or more lots, tracts
20 or parcels of land, ~~or,~~ or, any such property, ~~the~~ boundaries of which have
21 been fixed by a recorded plat, which is divided into more than two parts.
22 Subdivision includes any condominium, cooperative, community apartment,
23 townhouse or similar project containing four or more parcels, ~~in~~ in which an
24 undivided interest in the land is coupled with the right of exclusive
25 occupancy of any unit located thereon, but plats of such projects need not
26 show the buildings or the manner in which the buildings or airspace above
27 the property shown on the plat are to be divided.

28 Sec. 7. Section 48-3646, Arizona Revised Statutes, is amended to
29 read:

30 48-3646. License application process

31 A district that issues licenses shall provide the following
32 information to an applicant at the time the applicant obtains an
33 application for a license:

34 1. A list of all of the steps the applicant ~~is required to~~ MUST
35 take ~~in order~~ to obtain the license.

36 2. The applicable licensing time frames.

37 3. The name and telephone number of a district contact person who
38 can answer questions or provide assistance throughout the application
39 process.

40 4. The website address and any other information, if applicable, to
41 allow the regulated person to utilize electronic communication with the
42 district.

1 5. Notice that an applicant may receive a clarification from the
2 district of its interpretation or application of a statute, ordinance, ~~OR~~
3 regulation, ~~executive order, delegation agreement or authorized~~
4 ~~substantive policy statement~~ as provided in section 48-3649.

5 Sec. 8. Section 48-3647, Arizona Revised Statutes, is amended to
6 read:

7 48-3647. Directory of documents

8 A. The district shall publish, ~~or prominently~~ AND CONSPICUOUSLY
9 place on the district website, at least annually, a directory summarizing
10 the subject matter of all currently applicable ordinances, rules,
11 regulations and substantive policy statements. The district shall keep
12 copies of this directory and all RULES, ORDINANCES, REGULATIONS,
13 substantive policy statements AND ANY MATERIALS INCORPORATED BY REFERENCE
14 at one location AND SHALL POST ON THE WEBSITE THE LOCATION WHERE THE
15 PUBLIC MAY INSPECT THE RULES, ORDINANCES, REGULATIONS, SUBSTANTIVE POLICY
16 STATEMENTS AND INCORPORATIONS BY REFERENCE. ~~The directory, ordinances,~~
17 ~~regulations, rules, substantive policy statements and any materials~~
18 ~~incorporated by reference in these documents shall be open to public~~
19 ~~inspection at the office of the district or the district website.~~

20 B. THE DISTRICT SHALL ENSURE THAT THE FIRST PAGE OF EACH
21 SUBSTANTIVE POLICY STATEMENT INCLUDES THE FOLLOWING NOTICE:

22 THIS SUBSTANTIVE POLICY STATEMENT IS ADVISORY ONLY. A
23 SUBSTANTIVE POLICY STATEMENT DOES NOT INCLUDE INTERNAL
24 PROCEDURAL DOCUMENTS THAT ONLY AFFECT THE INTERNAL PROCEDURES
25 OF THE AGENCY AND DOES NOT IMPOSE ADDITIONAL REQUIREMENTS OR
26 PENALTIES ON REGULATED PARTIES OR INCLUDE CONFIDENTIAL
27 INFORMATION OR RULES MADE IN ACCORDANCE WITH SECTION
28 48-3609.02, ARIZONA REVISED STATUTES. IF YOU BELIEVE THAT
29 THIS SUBSTANTIVE POLICY STATEMENT IMPOSES ADDITIONAL
30 REQUIREMENTS OR PENALTIES ON REGULATED PARTIES YOU MAY
31 PETITION THE DISTRICT UNDER SECTION 48-3609.06, ARIZONA
32 REVISED STATUTES, FOR A REVIEW OF THE STATEMENT.

33 C. THE DISTRICT SHALL POST ON THE DISTRICT'S WEBSITE:

34 1. THE FULL TEXT OF EACH RULE, ORDINANCE OR REGULATION CURRENTLY IN
35 USE.

36 2. EACH SUBSTANTIVE POLICY STATEMENT CURRENTLY IN USE, INCLUDING
37 ITS FULL TEXT.

38 3. THE NOTICE REQUIRED IN SUBSECTION B OF THIS SECTION.

39 Sec. 9. Section 48-3650, Arizona Revised Statutes, is amended to
40 read:

41 48-3650. Exemptions

42 This article does not apply to:

43 1. An ordinance, RULE OR regulation ~~or substantive policy statement~~
44 that relates to only the internal management of a district and that does

1 not directly and substantially affect the procedural or substantive rights
2 or duties of any segment of the public.

3 2. An ordinance, **RULE OR** regulation ~~or substantive policy statement~~
4 that relates to only the physical servicing, maintenance or care of
5 district owned or operated facilities or property.

6 ~~3. An ordinance, regulation or substantive policy statement~~
7 ~~relating to a district contract.~~