

Senate Engrossed

**FILED**

**KEN BENNETT**

**SECRETARY OF STATE**

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

CHAPTER 72

# **SENATE BILL 1297**

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 which may be necessary to construct, acquire and maintain facilities, operate  
14 the district and perform its regulatory functions and which 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           21. IF A PART OF A PARCEL OF LAND IS TO BE TAKEN FOR DRAINAGE, BASINS,  
16 IMPOUNDMENTS OR ANY OTHER FLOOD CONTROL RELATED USE AND THE BOARD AND THE  
17 AFFECTED PROPERTY OWNER DETERMINE THAT THE REMAINDER WILL BE LEFT IN SUCH A  
18 CONDITION AS TO GIVE RISE TO A CLAIM OR LITIGATION CONCERNING SEVERANCE OR  
19 OTHER DAMAGE, ACQUIRE THE WHOLE PARCEL BY PURCHASE, DONATION, DEDICATION,  
20 EXCHANGE, CONDEMNATION OR OTHER LAWFUL MEANS, AND THE REMAINDER MAY BE SOLD  
21 OR EXCHANGED FOR OTHER PROPERTIES NEEDED FOR FLOOD CONTROL USE.

22           ~~21.~~ 22. Adopt and enforce civil penalties for violations of its  
23 regulations or ordinances and for unauthorized damage and interference to  
24 those district facilities that are authorized pursuant to this chapter.

25           ~~22.~~ 23. Pursuant to the authority prescribed in this chapter, appoint  
26 hearing officers to hear and determine actions.

27           ~~23.~~ 24. For any district that intends to take enforcement action  
28 pursuant to section 48-3615.01, adopt written rules of procedure for the  
29 hearing and review of decisions on actions prescribed by this chapter.

30           ~~24.~~ 25. Establish a board of hearing review to review decisions of  
31 hearing officers that are issued pursuant to section 48-3615.01. The board  
32 of hearing review shall consist of one member from each board of directors'  
33 district or the board of directors may authorize the citizens' flood control  
34 advisory board or the board of review to designate a like number of its  
35 members to serve as the board of hearing review.

36           ~~25.~~ 26. Authorize the chief engineer of the district to apply for and  
37 obtain administrative search warrants for entry and inspection from a local  
38 court of general jurisdiction to determine if violations of section 48-3609,  
39 48-3613, 48-3614 or 48-3615 have occurred. The warrants shall be served by a  
40 peace officer as defined in section 1-215. A report of any inspections made  
41 pursuant to this section shall be prepared and made available in the records  
42 of the district and a copy mailed or otherwise delivered to the owner within  
43 fifteen days after the inspection of the owner's premises.

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

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

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

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

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

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

APPROVED BY THE GOVERNOR JULY 10, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 10, 2009.

Passed the House July 1, 2009,

by the following vote: 44 Ayes,

11 Nays, 5 Not Voting

[Signature]  
Speaker of the House  
[Signature]  
Chief Clerk of the House

Passed the Senate June 16, 2009,

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

[Signature]  
President of the Senate  
[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

1st day of July, 2009

at 8:53 o'clock A. M.

[Signature]  
Secretary to the Governor

Approved this 10th day of

July, 2009,

at 9:57 o'clock A. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 10 day of July, 2009,

at 12:30 o'clock P. M.

[Signature]  
Secretary of State

S.B. 1297