

Senate Engrossed House Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 319

HOUSE BILL 2428

AN ACT

AMENDING SECTIONS 11-532, 11-807 AND 11-808, ARIZONA REVISED STATUTES;
RELATING TO COUNTIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 11-532, Arizona Revised Statutes, is amended to
3 read:

4 11-532. Powers and duties

5 A. The county attorney is the public prosecutor of the county and
6 shall:

7 1. Attend the superior and other courts within the county and conduct,
8 on behalf of the state, all prosecutions for public offenses.

9 2. Institute proceedings before magistrates for the arrest of persons
10 charged with or reasonably suspected of public offenses when the county
11 attorney has information that the offenses have been committed.

12 3. When not engaged in criminal proceedings in the superior court,
13 attend upon the magistrates in cases of arrest when required by them, and
14 attend before and give advice to the grand jury.

15 4. Draw indictments and informations, defend actions brought against
16 the county and prosecute actions to recover recognizances forfeited in courts
17 of record and actions for recovery of debts, fines, penalties and forfeitures
18 accruing to the state or county.

19 5. Deliver receipts for monies or property received in the county
20 attorney's official capacity and file duplicate receipts with the clerk of
21 the board.

22 6. On the first Monday of January, April, July and October in each
23 year, file with the board of supervisors an account, verified by oath, of all
24 monies received in the county attorney's official capacity during the
25 preceding three months, and at the same time pay it to the county treasurer.

26 7. When required, give a written opinion to county officers on matters
27 relating to the duties of their offices.

28 8. Keep a register of official business, and enter therein every
29 action prosecuted, criminal or civil, and of the proceedings therein.

30 9. Act as the legal advisor to the board of supervisors, attend its
31 meetings and oppose claims against the county which the county attorney deems
32 unjust or illegal.

33 10. Act as attorney for school districts except as provided in section
34 15-343, or except in any lawsuits involving a conflict of interest with other
35 county offices at which time the attorney general may represent the school
36 district.

37 11. Act as attorney for the community college district except as
38 provided in section 15-1448 or except in any lawsuits involving a conflict of
39 interest with other county offices, at which time the attorney general may
40 represent the community college district.

41 12. Defend all locally valued and assessed property tax appeals as
42 provided in section 42-16208.

1 B. Upon receipt of an appellant's brief in a criminal appeal, the
2 county attorney shall furnish the attorney general with a true statement of
3 the facts in the case, together with the available authorities and citations
4 that are responsive to the assignments or specifications of error.

5 C. The county attorney may represent a school district governing board
6 member against whom an action is brought in the board member's individual
7 capacity until such time as it is established as a matter of law that the
8 alleged activity or events which form the basis of the complaint were not
9 performed, or not directed to be performed, within the scope or course of the
10 member's duties.

11 D. Notwithstanding the provisions of article 12 of this chapter, in
12 connection with the investigation or prosecution of any matter involving the
13 death of a person, the county attorney may request that the medical examiner,
14 for the county in which the prosecution will take place, conduct the medical
15 examination.

16 E. THE COUNTY ATTORNEY MAY PROVIDE CIVIL LEGAL SERVICES TO ANOTHER
17 COUNTY OR OTHER POLITICAL SUBDIVISION OF THIS STATE OR AN OFFICER, EMPLOYEE
18 OR AGENCY OF A POLITICAL SUBDIVISION OF THIS STATE PURSUANT TO AN
19 INTERGOVERNMENTAL AGREEMENT ENTERED INTO BY THE COUNTY AND THE OTHER
20 POLITICAL SUBDIVISION OF THIS STATE AS PROVIDED IN CHAPTER 7, ARTICLE 3 OF
21 THIS TITLE AT THE REQUEST OF THE COUNTY ATTORNEY. ANY INTERGOVERNMENTAL
22 AGREEMENT SHALL STATE ANY PAYMENT TO BE RENDERED FOR THE SERVICES AND THE
23 SCOPE OF THE REPRESENTATION. THE COUNTY ATTORNEY MAY ALSO OBTAIN CIVIL LEGAL
24 SERVICES FOR THE COUNTY OR FOR AN OFFICER, EMPLOYEE OR AGENCY OF THE COUNTY,
25 FROM THE ELECTED OR APPOINTED ATTORNEY OF ANOTHER COUNTY OR OTHER POLITICAL
26 SUBDIVISION OF THIS STATE PURSUANT TO AN INTERGOVERNMENTAL AGREEMENT.

27 Sec. 2. Section 11-807, Arizona Revised Statutes, is amended to read:

28 11-807. Boards of adjustment; powers; appeals

29 A. There shall be one or more boards of adjustment IN EACH COUNTY.
30 THE BOARD OF SUPERVISORS MAY ESTABLISH ONE BOARD OF ADJUSTMENT THAT HAS
31 JURISDICTION COUNTYWIDE AND THAT IS COMPOSED OF ONE MEMBER WHO IS A RESIDENT
32 OF EACH SUPERVISORIAL DISTRICT OR ONE BOARD OF ADJUSTMENT IN EACH
33 SUPERVISORIAL DISTRICT THAT HAS JURISDICTION IN THAT SUPERVISORIAL DISTRICT
34 AND THAT IS composed of not less than three nor more than five members each,
35 ~~one of which shall be appointed in and shall have jurisdiction in each~~
36 ~~supervisorial district in which the zoning ordinance has been applied~~ OF WHOM
37 ARE RESIDENTS OF THAT SUPERVISORIAL DISTRICT. The members of each board
38 shall be appointed for staggered terms of four years each. ~~They shall be~~
39 ~~residents and taxpayers of the district from which appointed.~~

40 B. The board of adjustment may:

41 1. Interpret the zoning ordinance when the meaning of any word, phrase
42 or section is in doubt, when there is dispute between the appellant and
43 enforcing officer, or when the location of a district boundary is in doubt.

1 2. Allow a variance from the terms of the ordinance when, owing to
2 peculiar conditions, a strict interpretation would work an unnecessary
3 hardship, if in granting such variance the general intent and purposes of the
4 zoning ordinance will be preserved.

5 3. IF AUTHORIZED BY THE BOARD OF SUPERVISORS, REVIEW DECISIONS BY A
6 HEARING OFFICER WHO HEARS AND DETERMINES ZONING VIOLATIONS PURSUANT TO
7 SECTION 11-808 AND RENDER A FINAL DECISION. SUBSECTIONS C AND D OF THIS
8 SECTION DO NOT APPLY TO THIS PARAGRAPH. JUDICIAL REVIEW OF THE FINAL
9 DECISION BY THE BOARD OF ADJUSTMENT SHALL BE PURSUANT TO TITLE 12, CHAPTER 7,
10 ARTICLE 6.

11 C. Appeals to an adjustment board may be taken by any person who feels
12 that there is error or doubt in the interpretation of the ordinance or that
13 due to unusual circumstances attaching to the person's property an
14 unnecessary hardship is being inflicted on the person. The appeal shall
15 state whether it is a plea for an interpretation or a variance and the
16 grounds for the appeal.

17 D. Any person aggrieved in any manner by an action of a board of
18 adjustment may within thirty days appeal to the superior court, and the
19 matter shall be heard de novo.

20 Sec. 3. Section 11-808, Arizona Revised Statutes, is amended to read:

21 11-808. Enforcement; county zoning inspector; deputies;
22 building permits; violations; classification; civil
23 penalties; hearing officers and procedures

24 A. The county zoning ordinance shall provide for its enforcement
25 within a zoned territory by means of withholding building permits, and for
26 such purposes may establish the position of county zoning inspector, and such
27 deputy inspectors as may be required, who shall be appointed by the board.

28 B. From and after the establishment and filling of the position, it
29 shall be unlawful to erect, construct, reconstruct, alter or use any building
30 or other structure within a zoning district covered by the ordinance without
31 first obtaining a building permit from the inspector and for that purpose the
32 applicant shall provide the zoning inspector with a sketch of the proposed
33 construction containing sufficient information for the enforcement of the
34 zoning ordinance. No permit shall be required for repairs or improvements of
35 a value not exceeding five hundred dollars. Reasonable fees may be charged
36 for the issuance of a permit. The inspector shall recognize the limitations
37 placed on his THE INSPECTOR'S authority by section 11-821, and shall issue
38 the permit when it appears that the proposed erection, construction,
39 reconstruction, alteration or use fully conforms to the zoning ordinance. In
40 any other case he THE INSPECTOR shall withhold the permit.

41 C. It is unlawful to erect, construct, reconstruct, maintain or use
42 any land in any zoning district in violation of any regulation or any
43 provision of any ordinance pertaining thereto TO THE LAND and any such
44 violation constitutes a public nuisance. Any person, firm or corporation
45 violating such an ordinance, or any part thereof OF AN ORDINANCE, is guilty

1 of a class 2 misdemeanor. Each ~~and every~~ day during which the illegal
2 erection, construction, reconstruction, alteration, maintenance or use
3 continues is a separate offense.

4 D. A county may establish civil penalties for violation of any zoning
5 regulation or ordinance. Civil penalties shall not exceed the amount of the
6 maximum fine for a class 2 misdemeanor. Each day of continuance of the
7 violation constitutes a separate violation. If an alleged violator is served
8 with a notice of violation pursuant to subsection E of this section, ~~he~~ THE
9 ALLEGED VIOLATOR shall not be subject to a criminal charge arising out of the
10 same facts.

11 E. A county that establishes a civil penalty for violation of a zoning
12 regulation or ordinance may appoint hearing officers to hear and determine
13 zoning violations. ~~Whenever~~ IF the zoning inspector reports a zoning
14 violation to the hearing officer, the hearing officer shall hold a hearing
15 after serving notice of the hearing on the ALLEGED violator. The notice
16 shall be personally served on the alleged violator by the zoning inspector at
17 least five days ~~prior to~~ BEFORE the hearing. If the zoning inspector is
18 unable to personally serve the notice, the notice may be served in the same
19 manner prescribed for alternative methods of service by the Arizona rules of
20 civil procedure. A notice served ~~upon~~ ON the alleged violator other than by
21 personal service shall be served at least thirty days ~~prior to~~ BEFORE the
22 hearing.

23 F. At the hearing, the zoning inspector shall present evidence showing
24 the existence of a zoning violation and the alleged violator or ~~his~~ THE
25 ALLEGED VIOLATOR'S attorney or other designated representative shall be given
26 a reasonable opportunity to present evidence. The county attorney may
27 present evidence on behalf of the zoning inspector. At the conclusion of the
28 hearing the hearing officer shall determine whether a zoning violation exists
29 and, if a violation is found to exist, may impose civil penalties in
30 accordance with subsection D of this section.

31 G. A hearing officer may be an employee of the county and shall be
32 appointed by the board of supervisors. A review of decisions of the hearing
33 officer by the board of supervisors shall be available to any party to the
34 hearing. THE BOARD OF SUPERVISORS MAY DELEGATE THIS REVIEW TO A COUNTY BOARD
35 OF ADJUSTMENT. IF THE BOARD OF SUPERVISORS ELECTS TO DELEGATE THIS REVIEW,
36 THE BOARD OF SUPERVISORS SHALL DELEGATE ALL REQUESTED REVIEWS TO THE BOARD OF
37 ADJUSTMENT. The board of supervisors shall ~~promulgate~~ ADOPT written rules of
38 procedure for the hearing and review of hearings, which shall be adopted in
39 the same manner as zoning ordinances. Judicial review of the final decisions
40 of the board of supervisors OR A BOARD OF ADJUSTMENT shall be pursuant to
41 title 12, chapter 7, article 6. A county that establishes civil penalties
42 for violation of a zoning regulation or ordinance is not precluded from
43 pursuing the remedies as provided for in subsection H of this section.

1 H. If any building or structure is or is proposed to be erected,
2 constructed, reconstructed, altered, maintained or used or any land is or is
3 proposed to be used in violation of this chapter or any ordinance, regulation
4 or provision enacted or adopted by the board under the authority granted by
5 this chapter, the board, the county attorney, the inspector or any adjacent
6 or neighboring property owner who is specially damaged by the violation, in
7 addition to the other remedies provided by law, may institute injunction,
8 mandamus, abatement or any other appropriate action or proceedings to prevent
9 or abate or remove the unlawful erection, construction, reconstruction,
10 alteration, maintenance or use.

APPROVED BY THE GOVERNOR MAY 11, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2010.

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 28, 2010,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

[Signature]
Speaker of the House

Cheryl Laube
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

29 day of April, 2010,

at 11:50 o'clock A. M.

[Signature]
Secretary to the Governor

Approved this 11th day of

May, 2010,

at 11:53 o'clock A. M.

[Signature]
Governor of Arizona

H.B. 2428

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 12th day of May, 2010,

at 9:35 o'clock a M.

[Signature]
Secretary of State