House Engrossed Senate Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

CHAPTER 162

SENATE BILL 1314

AN ACT

AMENDING SECTION 48-853, ARIZONA REVISED STATUTES; RELATING TO FIRE DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 48-853, Arizona Revised Statutes, is amended to read:

48-853. District board; powers and duties; intergovernmental agreements; contract; administration; definition

A. A fire district formed pursuant to this article, through its board shall:

1. Hold public meetings ~~at least once each calendar month~~ AS NECESSARY TO CARRY OUT ITS POWERS AND DUTIES BUT AT LEAST ONCE EVERY NINETY DAYS.

2. Prepare an annual budget that contains detailed estimated expenditures for each fiscal year and that clearly shows expenses of the district. The budget shall be posted in three public places and published in a newspaper of general circulation in the district ~~thirty~~ TWENTY days before a public hearing at a meeting called by the board ~~or fire chief~~ to adopt the budget. THE BUDGET SHALL BE POSTED IN A PROMINENT LOCATION ON THE OFFICIAL WEBSITE NO LATER THAN SEVEN BUSINESS DAYS AFTER THE ESTIMATES OF REVENUES AND EXPENSES ARE TENTATIVELY ADOPTED. A COMPLETE COPY OF THE APPROVED ESTIMATES OF REVENUES AND EXPENSES SHALL BE POSTED IN A PROMINENT LOCATION ON THE OFFICIAL WEBSITE NO LATER THAN SEVEN BUSINESS DAYS AFTER FINAL ADOPTION. Copies of the budget shall also be available to members of the public on written request to the district. Following the public hearing, the district board ~~or appointed chief~~ shall adopt a budget. BOTH THE TENTATIVELY ADOPTED ESTIMATES OF REVENUES AND EXPENSES AND THE BUDGET FINALLY ADOPTED UNDER THIS SECTION SHALL BE RETAINED AND ACCESSIBLE IN A PROMINENT LOCATION ON THE OFFICIAL WEBSITE FOR AT LEAST SIXTY MONTHS.

3. THE DISTRICT SHALL MAINTAIN A WEBSITE FOR THE PURPOSE OF PROVIDING ACCESS TO PUBLIC RECORDS. THE DISTRICT SHALL POST PERMANENT PUBLIC RECORDS TO ITS WEBSITE.

4. THE DISTRICT SHALL MAINTAIN AND STORE ALL PERMANENT PUBLIC RECORDS IN AN ELECTRONIC MEDIA OR DIGITAL IMAGING FORMAT ACCORDING TO STANDARDS FOR THE STORAGE OF PERMANENT PUBLIC RECORDS ESTABLISHED BY THE DIRECTOR OF THE ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC RECORDS. THE DIRECTOR OF THE ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC RECORDS SHALL APPROVE AN ACCEPTABLE ELECTRONIC MEDIA OR DIGITAL IMAGING FORMAT FOR THE DISTRICT.

5. THE COUNTY IN WHICH THE DISTRICT IS LOCATED SHALL MAINTAIN AN OFFICIAL COPY OF THE PERMANENT PUBLIC RECORDS OF THE DISTRICT. THE COPY OF THE PERMANENT PUBLIC RECORDS SHALL BE PROVIDED TO THE COUNTY BY THE DISTRICT ANNUALLY NO LATER THAN NINETY DAYS AFTER THE END OF THE FISCAL YEAR.

~~3.~~ 6. Require probationary employees in a paid sworn firefighter position, a reserve firefighter position or a volunteer firefighter position of a provider of fire protection and emergency medical services to submit a full set of fingerprints to the fire district. The fire district shall submit the fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange

this fingerprint data with the federal bureau of investigation. This paragraph does not apply to personnel that are provided to a fire district by any public or private entity that provides fire protection and emergency medical services to the fire district and that has already fully complied with fingerprint submittal requirements as otherwise provided by law.

~~4.~~ 7. Appoint the fire chief of the fire service provider selected pursuant to paragraph ~~8~~ 11 of this subsection, either public or private, as the fire chief for the district.

~~5.~~ 8. Adopt the fire code of the municipality whose municipal planning area includes the district except that the fire district's authority to conduct inspections shall apply only to commercial and industrial properties and shall not apply to residential properties.

~~6.~~ 9. Keep three copies of the applicable fire code, amendments and revisions on file for public inspection.

~~7.~~ 10. Notify the county board of supervisors of the cost of providing fire protection service and emergency medical service for each household or other structure in the district if the district provides service pursuant to paragraph ~~8~~ 11, subdivision (a) or (b) of this subsection.

~~8.~~ 11. Act within sixty days after the formation of the district to do any of the following:

(a) Enter into an intergovernmental agreement with a municipal provider for fire protection services for the district. A municipal provider seeking to enter into AN agreement with the district shall make a formal expression of intent to enter into an agreement with the district within twenty-one days of district formation.

(b) Issue a request for proposals for nonmunicipal private providers of fire protection services for the district. A request for proposals may be issued only if no municipal providers of fire protection services have made an expression of intent seeking to enter into a fire protection agreement with the district. Notwithstanding any other law, municipal annexation shall not be undertaken during the term of any contract entered into between the district and a private fire service provider, except that in the one hundred eighty day period before the end of the contract, the municipality shall notify the residents of the opportunity to annex into the municipality. A resident shall notify the district and the municipality within ninety days before the end of the contract that the resident is annexing into the municipality and shall complete the annexation within ten days after the completion of the contract. If no district residents notify the municipality that the resident is annexing, the district may renew the contract automatically. If a resident proposes to annex into the municipality, the district shall issue a request for proposals again as prescribed in this subdivision.

(c) Before applying this subdivision, ~~the district shall~~ request an independent review by the county attorney of the negotiations, if any, that were conducted as prescribed in subdivision (a) of this paragraph and the

request for proposals and resulting bids. After the independent review, the county attorney shall certify whether the negotiations and proposals were based on commercially reasonable assumptions. If the county attorney certifies that any one or more of the provisions are not commercially reasonable, the district and the other party to the negotiations have ten days to cure and continue negotiations before resubmitting information on the negotiations and proposals to the county attorney for certification. Notwithstanding any other law, the county attorney shall have access to sealed bids for purposes of this subdivision. The county attorney shall review and issue a certification pursuant to this subdivision within thirty days after the information and documents regarding negotiations and proposals are submitted to the county attorney. If a fire district does not enter into an intergovernmental agreement pursuant to subdivision (a) of this paragraph or enter into a contract pursuant to subdivision (b) of this paragraph, the surrounding municipality shall provide fire protection and emergency medical services except for services regulated pursuant to title 36, chapter 21.1 in the district immediately on request by the district, following final certification by the county attorney. The municipality shall be compensated by the district as follows:

(i) A three person board shall set the secondary property tax rate for the district. The district shall appoint one person to the board, the surrounding municipality shall appoint one person to the board, and the two appointees shall agree on a third person for the board. If the two appointees cannot agree on a third appointee within five days after the two persons are appointed, the county board of supervisors shall appoint the third person to the board.

(ii) The three person board shall meet and set the tax rate within thirty days after the third person is appointed to the board.

(iii) The district shall levy the tax at the rate as determined by the three person board and the tax shall be collected as other property taxes are collected. On receipt of monies from the property tax levied, the district shall reimburse the county for the costs associated with the formation of the district, including administrative expenses, and shall transfer the remaining monies to the surrounding municipality.

~~9.~~ 12. Require that any intergovernmental agreement or contract between the district and a provider of fire protection services ~~to~~ include:

(a) A term of duration between three and five years.

(b) A provision setting forth the cost of service and performance criteria.

(c) An acknowledgment of the right of the municipality to determine the location of future infrastructure if the district is in the municipality's planning area at the time of the execution of the contract.

~~10.~~ 13. If necessary, issue a request for proposals for providers of emergency medical services and enter into an intergovernmental agreement or

contract with a provider of emergency medical services except for those services regulated by title 36, chapter 21.1.

~~11.~~ 14. Assess and levy a secondary property tax to pay for the costs of the fire protection service or emergency medical service except for those services regulated by title 36, chapter 21.1. A secondary property tax assessed pursuant to this section is not subject to the levy limitation prescribed by section 48-807.

~~12.~~ 15. Defend, indemnify and hold harmless a municipal provider or any other provider of fire protection from and against any claims or expenses to which it may be subjected by reason of injury or death of any person or loss or damage to any property directly attributable to the provision of the services unless the services were provided in a grossly negligent manner. The fire district shall secure insurance sufficient to cover liability exposure.

B. A fire district formed pursuant to this article, through its board, may:

1. Contract for administrative staff services, if any, deemed necessary or appropriate to carry out its powers and duties, but a member of a district board~~,~~ shall not be an employee of the district.

2. Retain a certified public accountant to perform an annual audit of district books.

3. Retain private legal counsel.

4. Sue and be sued.

5. Accept gifts, contributions, bequests and grants and comply with any requirements of such gifts, contributions, bequests and grants not inconsistent with this article.

6. Appropriate and expend annually such monies as are necessary for the purpose of fire districts belonging to and paying dues in the Arizona fire district association and other professional affiliations or entities.

C. The county attorney may advise and represent the district when in the county attorney's judgment such advice and representation are appropriate and not in conflict with the county attorney's duties under section 11-532. If the county attorney is unable to advise and represent the district due to a conflict of interest, the district may retain private legal counsel or may request the attorney general to represent it, or both.

D. The chairperson and clerk of the district board or their respective designees, as applicable, shall draw warrants on the county treasurer for money required to operate the district in accordance with the budget and, as so drawn, the warrants shall be sufficient to authorize the county treasurer to pay from the fire district fund.

E. The district shall not incur any debt or liability in excess of taxes levied and to be collected and the money actually available and unencumbered at the time in the fund, except as provided in section 48-807.

F. If a district formed under section 48-851 agrees to provide fire and emergency medical services in a county island where a private provider of fire or emergency services already has facilities or provides service, the district and the private provider shall enter into an agreement covering the roles and relationships regarding mutual aid or backup and any services for which the district wishes to contract and any reimbursement or billing and collection practices. The agreement shall be executed before the district begins providing service in the county island. A district may enter into an intergovernmental agreement with appropriate regional automatic aid dispatch systems.

G. This section does not require a fire district or a city or town to provide fire protection or emergency medical services to an area of the county that is receiving services from a private provider, except as provided by a mutual aid or backup agreement pursuant to this section.

H. For the purposes of this article, "fire service" and "fire protection" include fire prevention, emergency medical services, inspection of commercial or industrial property where a known code violation exists and enforcement.

APPROVED BY THE GOVERNOR APRIL 18, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2011.

Passed the House April 12, 20 11,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate March 1, 20 11,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

~~EXECUTIVE DEPARTMENT OF ARIZONA~~
~~OFFICE OF GOVERNOR~~
~~This Bill was received by the Governor this~~

~~_____ day of _____, 20___,~~

~~at _____ o'clock _____ M.~~

~~Secretary to the Governor~~

~~Approved this _____ day of~~

~~_____, 20____,~~

~~at _____ o'clock _____ M.~~

~~Governor of Arizona~~

~~EXECUTIVE DEPARTMENT OF ARIZONA~~
~~OFFICE OF SECRETARY OF STATE~~

~~This Bill was received by the Secretary of State~~

~~this _____ day of _____, 20___,~~

~~at _____ o'clock _____ M.~~

~~Secretary of State~~

S.B. 1314

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 13, 20 11

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

13 day of April, 20 11

at 4:25 o'clock P. M.

Nicole Bendle
Secretary to the Governor

Approved this 18th day of

April

at 2:50 o'clock P. M.

Jan Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 18th day of April, 20 11

at 5:04 o'clock P M.

Ken Bennett
Secretary of State

S.B. 1314