

Senate Engrossed House Bill

**FILED**  
**KEN BENNETT**  
**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

CHAPTER 222

## **HOUSE BILL 2360**

AN ACT

AMENDING SECTIONS 48-2816 AND 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 48-2816, Arizona Revised Statutes, is amended to  
3 read:

4 48-2816. Flood protection district divisions; directors;  
5 qualification of electors

6 A. The board of supervisors shall order the district to be divided  
7 into three or five divisions, numbered consecutively and as nearly equal in  
8 size as practicable.

9 B. One director, who shall be an elector and a ~~resident landowner, or~~  
10 ~~a qualified elector,~~ in each division shall be elected for the division as  
11 provided in this article. In addition, if requested in the petition for  
12 organizing the district, three directors, who shall be ~~resident~~ electors and  
13 landowners in the district, shall be elected at large by the qualified  
14 electors of the district.

15 C. To be eligible to vote in a district election, a person must  
16 qualify under section 48-2609, except as otherwise provided by this section  
17 and subject to the following:

18 1. For the purpose of organizing a new flood protection district, the  
19 qualifications of electors are the same as provided by this chapter for the  
20 organization of drainage districts.

21 2. The administrator or executor of the estate of a deceased person,  
22 and the guardian of a minor or incompetent person who is appointed and  
23 qualified under the laws of this state, may register and cast the vote of the  
24 estate or person represented by the administrator or executor.

25 3. The officer or agent of a corporation in whose name title to  
26 property in the district on which it has paid taxes as shown on the most  
27 recent tax roll and who is designated and authorized by a resolution of the  
28 corporate board of directors is a qualified elector and may register and cast  
29 the vote of the corporation.

30 4. The general partner of a partnership in whose name title to  
31 property in the district on which it has paid taxes as shown on the most  
32 recent tax roll and who is designated and authorized in writing by all of the  
33 general partners is a qualified elector and may register and cast the vote of  
34 the partnership.

35 5. The trustee of a trust, or if there is more than one trustee, a  
36 trustee who is designated and authorized in writing by all of the trustees,  
37 in whose name title to property in the district on which it has paid taxes as  
38 shown on the most recent tax roll is a qualified elector and may register and  
39 cast the vote of the trust.

40 Sec. 2. Section 48-3603, Arizona Revised Statutes, is amended to read:

41 48-3603. Powers, duties and immunities of district and board;  
42 exemptions

43 A. A county flood control district organized under this article is a  
44 political taxing subdivision of this state and has all the powers, privileges  
45 and immunities granted generally to municipal corporations by the

1 constitution and laws of this state, including immunity of its property and  
2 bonds from taxation.

3 B. The board of directors shall exercise all powers and duties in the  
4 acquisition and operation of the properties of the district and in carrying  
5 out its regulatory functions under this article as are ordinarily exercised  
6 by the governing body of a municipal corporation.

7 C. A district organized under this article, acting through its board  
8 of directors, may:

9 1. Acquire by eminent domain, purchase, donation, dedication, exchange  
10 or other lawful means rights-of-way for and construct, operate and maintain  
11 flood control works and storm drainage facilities within or without the  
12 district for the benefit of the district.

13 2. Acquire by eminent domain, purchase, donation, dedication, exchange  
14 or other lawful means and dispose of by sale, exchange or other lawful means  
15 real and personal property within the boundaries of the district.

16 3. Contract and join with this state, the United States or any other  
17 flood control district or floodplain board, municipality, political  
18 subdivision, governmental agency, irrigation or agricultural improvement  
19 district, association, corporation or individual in acquiring, constructing,  
20 maintaining and operating flood control works, and regulating floodplains.

21 4. Enter into contracts of indemnity to indemnify this state, the  
22 United States or any other flood control district, municipality, political  
23 subdivision, governmental agency, irrigation or agricultural improvement  
24 district, association, corporation or individual against liability by virtue  
25 of injuries, losses or damages occurring through the use of their facilities,  
26 structures, streets, rights-of-way or properties in connection with the  
27 operation of a flood control district and the regulation of floodplains.

28 5. Acquire and maintain existing flood control and drainage facilities  
29 within the district for the benefit of the district if mutually agreeable to  
30 the owners of such facilities.

31 6. Acquire, convert and maintain surplus irrigation facilities as  
32 storm drainage facilities if mutually agreeable to owners of such facilities.

33 7. Construct, maintain and operate flood control and storm drainage  
34 facilities and regulate floodplains in the district by agreement with this  
35 state, counties, other municipal corporations, political subdivisions and  
36 other persons and reimburse such agencies or persons for the cost of the  
37 work.

38 8. On the dissolution of any other flood control district, assume the  
39 assets and obligations of the other district.

40 9. Enter into intergovernmental agreements with other public agencies  
41 pursuant to title 11, chapter 7, article 3 to carry out the objects and  
42 purposes of the district.

43 10. Apply for, obtain, expend and repay flood control loans pursuant to  
44 title 45, chapter 8, article 5.

1           11. Apply to the director of water resources for alternative flood  
2 control assistance for flood control projects pursuant to section 45-1471,  
3 except that the director shall not grant any such assistance for any project  
4 unless the director has approved the project in advance of planning.

5           12. Sue and be sued, enter into contracts and generally do all things  
6 that may be necessary to construct, acquire and maintain facilities, operate  
7 the district and perform its regulatory functions and that are in the  
8 interests of the district.

9           13. Adopt such rules and bylaws for its orderly operation as it sees  
10 fit.

11           14. Appoint a chief engineer and general manager, who may be the county  
12 engineer.

13           15. Appoint a treasurer, who may be the county treasurer, an attorney,  
14 who may be the county attorney, and other employees it considers desirable  
15 and necessary to carry out the purposes of the district. Any other work  
16 required by the district may be performed by regular employees of the county  
17 on assignment by the board of supervisors, except that regular county  
18 employees shall not undertake construction projects with an estimated cost of  
19 five thousand dollars or more.

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

25           17. Construct, operate and maintain artificial groundwater recharge  
26 facilities, and, if organized in a county having a population of more than  
27 five hundred thousand persons according to the most recent United States  
28 decennial census, underground storage and recovery facilities, if they have  
29 flood control benefits, and contract and join with the United States, this  
30 state and other governmental units for the purpose of constructing, operating  
31 and maintaining multipurpose groundwater recharge, underground storage and  
32 recovery and flood control facilities, except that a district shall not  
33 expend district funds for any underground storage and recovery facility that  
34 does not have flood control benefits.

35           18. Acquire real property by purchase, donation, dedication, exchange  
36 or other lawful means, except by eminent domain, in areas suitable for  
37 groundwater recharge projects.

38           19. Cooperate and join with other entities that engage in underground  
39 water storage and recovery projects under title 45, chapter 3, including  
40 multi-county water conservation districts and other political subdivisions.

41           20. Either alone, or by entering into any combination of contracts with  
42 this state, the United States, any other flood control district, a floodplain  
43 board, a municipality or other political subdivision, a government agency, an  
44 irrigation or agricultural improvement district or an association,

1 corporation or individual, implement flood control enhancement solutions  
2 including:

3 (a) Assistance for property owners within the floodplain and through  
4 the elevation, bank stabilization and flood proofing of existing structures.

5 (b) Preservation and restoration of the floodplain.

6 (c) Maintenance of flood warning systems and associated flood response  
7 plans.

8 (d) Construction of bridges or other access over watercourses that are  
9 impassable to emergency vehicle traffic for fourteen or more days a year.

10 21. If a part of a parcel of land is to be taken for drainage, basins,  
11 impoundments or any other flood control related use and the board and the  
12 affected property owner determine that the remainder will be left in such a  
13 condition as to give rise to a claim or litigation concerning severance or  
14 other damage, acquire the whole parcel by purchase, donation, dedication,  
15 exchange, condemnation or other lawful means, and the remainder may be sold  
16 or exchanged for other properties needed for flood control use.

17 22. Adopt and enforce civil penalties for violations of its regulations  
18 or ordinances and for unauthorized damage and interference to those district  
19 facilities that are authorized pursuant to this chapter.

20 23. Pursuant to the authority prescribed in this chapter, appoint  
21 hearing officers to hear and determine actions.

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

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

31 26. Authorize the chief engineer of the district to apply for and  
32 obtain administrative search warrants for entry and inspection from a local  
33 court of general jurisdiction to determine if violations of section 48-3609,  
34 48-3613, 48-3614 or 48-3615 have occurred. The warrants shall be served by a  
35 peace officer as defined in section 1-215. A report of any inspections made  
36 pursuant to this section shall be prepared and made available in the records  
37 of the district and a copy mailed or otherwise delivered to the owner within  
38 fifteen days after the inspection of the owner's premises.

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

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

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

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

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

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

19 J. THE DISTRICT AND ITS EMPLOYEES AND OFFICERS ARE NOT LIABLE FOR ANY  
20 INJURY OR PROPERTY DAMAGE THAT MAY ARISE OUT OF A PLAN OR DESIGN FOR  
21 CONSTRUCTION, MAINTENANCE OR IMPROVEMENT TO A DAM, LEVEE, BERM, CHANNEL,  
22 CANAL, CULVERT OR ANY OTHER FLOOD CONTROL PROJECT THE DISTRICT IS AUTHORIZED  
23 TO PLAN, DESIGN, CONSTRUCT, MAINTAIN OR IMPROVE WHEN A REASONABLY ADEQUATE  
24 WARNING OF ANY UNREASONABLY DANGEROUS HAZARD IS GIVEN TO POTENTIALLY AFFECTED  
25 PROPERTY OWNERS IN A MANNER THAT OWNERS MAY TAKE SUITABLE PRECAUTIONS TO  
26 PROTECT THEMSELVES AND THEIR PROPERTY. THE WARNING SHALL INCLUDE INFORMATION  
27 FOR THE PROPERTY OWNER REGARDING A NATIONAL FLOOD INSURANCE PROGRAM. A  
28 WARNING IS SUFFICIENT PURSUANT TO THIS SUBSECTION IF THE WARNING IS PROVIDED  
29 TO A SINGLE PROPERTY OWNER OF THE PARCEL, AND NOTICE TO SUBSEQUENT PROPERTY  
30 OWNERS IS NOT REQUIRED. THE IMMUNITIES PRESCRIBED BY THIS SUBSECTION ARE IN  
31 ADDITION TO AND NOT IN DEROGATION OR LIMITATION OF THE IMMUNITIES GRANTED A  
32 DISTRICT, EMPLOYEE OR OFFICER AS OTHERWISE PROVIDED BY LAW AND APPLY IF  
33 EITHER OR BOTH OF THE FOLLOWING CONDITIONS IS MET:

- 34 1. THE PROJECT IS FUNDED WHOLLY OR PARTIALLY BY FEDERAL MONIES.  
35 2. THE PROJECT IS PLANNED OR DESIGNED TO MEET A RECURRENCE INTERVAL  
36 APPROVED BY THE DISTRICT'S BOARD OF DIRECTORS.

APPROVED BY THE GOVERNOR APRIL 10, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2012.

Passed the House February 23, 2012

Passed the Senate April 3, 2012

by the following vote: 36 Ayes,

by the following vote: 23 Ayes,

23 Nays, 0 Not Voting  
1 vacant

6 Nays, 1 Not Voting

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

[Signature]  
Chief Clerk of the House

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

           day of           , 20    

at            o'clock            M.

            
Secretary to the Governor

Approved this            day of

at            o'clock            M.

            
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this            day of           , 20    

at            o'clock            M.

            
Secretary of State

H.B. 2360

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

\_\_\_\_\_ April 5 \_\_\_\_\_, 2012,

by the following vote: 34 Ayes,

25 Nays, 1 Not Voting

  
Speaker of the House

  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

5 day of April, 2012,

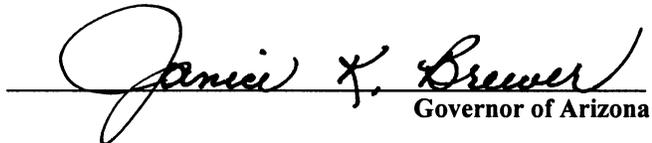
at 1 o'clock P M.

  
Secretary to the Governor

Approved this 10<sup>th</sup> day of

April, 2012

at 4:30 o'clock P. M.

  
Governor of Arizona

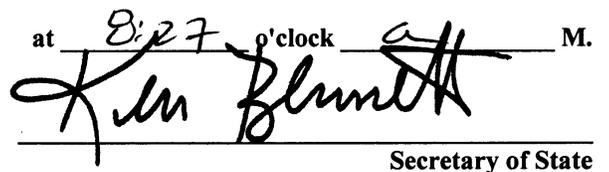
H.B. 2360

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 11<sup>th</sup> day of April, 2012,

at 8:27 o'clock a M.

  
Secretary of State