Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

CHAPTER 170

HOUSE BILL 2178

AN ACT

AMENDING SECTIONS 48-3611, 48-3612, 48-3615 AND 48-3615.01, ARIZONA REVISED STATUTES; RELATING TO COUNTY FLOOD CONTROL DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 48-3611, Arizona Revised Statutes, is amended to read:

48-3611. Citizens' flood control advisory board; qualification; functions

A. The board of ~~supervisors~~ DIRECTORS may appoint a citizens' flood control advisory board consisting of seven members. Five members shall be resident taxpayers and qualified electors of the district, at least three of whom shall be residents of the cities in the district. At least one of the board members who are residents of cities shall be a resident of the largest city in the district. The city engineer of the largest city in the district and the chief engineer or manager of a major irrigation or agricultural improvement district, or their representatives, shall be ex officio members of the advisory board with all rights and privileges granted to other board members.

B. In appointing members of the advisory board the board of ~~supervisors~~ DIRECTORS shall designate which appointive member shall serve for one year, which for two years, which for three years, which for four years and which for five years. Thereafter the term of each appointive member is five years except for a member appointed to an unexpired term.

C. The citizens' flood control advisory board may request information from the chief engineer and general manager and ~~his~~ DISTRICT staff, engineering personnel from cities in the district and any other person with a knowledge of flood control practices. They may recommend the employment of consultants for the purpose of obtaining technical information and recommendations regarding flood control and floodplain management practices.

D. The advisory board shall study the flood control, floodplain regulation, drainage and water conservation needs of the district, shall meet with and advise the board as requested by the board and may submit to the board reports and recommendations relating to such studies, but the recommendations are advisory only.

Sec. 2. Section 48-3612, Arizona Revised Statutes, is amended to read:

48-3612. Board of review

A. The board of ~~supervisors~~ DIRECTORS may establish a board of review, which may be the advisory board or a committee of the advisory board to sit in review and make decisions as follows:

1. Interpret regulations adopted pursuant to this article if the meaning of a word, phrase or section is in doubt, if there is dispute between the appellant and district employees or if location of a floodway or floodplain is in doubt.

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

B. Appeals to the review board may be taken by any person who feels that there is error or doubt in the interpretation of the regulation or that due to unusual circumstances attaching to his property an unnecessary hardship is being inflicted on him. The appeal shall state whether it is a plea for an interpretation or a variance and the grounds for the appeal.

C. A person aggrieved in any manner by an action of the review board may within thirty days appeal to the district board.

Sec. 3. Section 48-3615, Arizona Revised Statutes, is amended to read:

48-3615. Violation; classification; civil penalties; strict liability

A. It is unlawful for a person to engage in any development or to divert, retard or obstruct the flow of waters in a watercourse if it creates a hazard to life or property without securing the written authorization required by section 48-3613. Where the watercourse is a delineated floodplain it is unlawful to engage in any development affecting the flow of waters without securing written authorization required by section 48-3613.

B. A person who violates subsection A of this section is guilty of a class 2 misdemeanor.

C. A person who violates this chapter or rules adopted pursuant to this chapter may be assessed a civil penalty not to exceed the fine chargeable for a class 2 misdemeanor OR, BY AGREEMENT WITH THE PERSON IN VIOLATION, A NONMONETARY PENALTY THAT SERVES THE PURPOSES OF THE DISTRICT. Each day the violation continues constitutes a separate violation.

D. A person who without written authorization from the board of directors damages or interferes with a facility that is owned, operated or otherwise under the jurisdiction of the district is strictly liable for both of the following:

1. Any actual damages to persons or property that is caused by the damage or interference.

2. Payment of costs to the district for remediating the damage or interference.

Sec. 4. Section 48-3615.01, Arizona Revised Statutes, is amended to read:

48-3615.01. Notice of violation; hearing; final decision; civil penalty; injunctive relief

A. If the chief engineer finds that a person has engaged or is engaging in development in the floodplain without a floodplain use permit, has engaged or is engaging in any development that is not in compliance with an active floodplain use permit or has damaged or interfered with facilities that are authorized pursuant to this chapter without written authorization of the board of directors, the chief engineer shall issue a notice of violation to the owner, occupant or manager of the real property on which the development is located or to the person who has damaged or interfered with the facilities. The notice of violation shall identify the violations observed and order the violator to cease and desist any ongoing activity that

is not in compliance with the regulations adopted pursuant to this chapter or cease and desist any damage or interference that is not authorized by the board. The notice of violation shall include the date, time and place where the person responding to the notice of violation may appear to show cause why the notice of violation should be vacated.

B. On receipt of the notice of violation, the person may:

1. Admit the allegations by doing either of the following:

(a) Appearing in person, by attorney or by another designated representative at a time and location given in the notice of violation.

(b) Mailing or delivering to the chief engineer a form provided with the notice of violation or a written statement signed by the person in which the person admits the allegations, agrees to acquire any required permit and agrees to remedy the violation, damage or interference in accordance with the terms determined by the chief engineer.

2. Deny the allegations by doing either of the following:

(a) Appearing in person, by attorney or by another designated representative at the time and location given in the notice of violation.

(b) Mailing or delivering to the chief engineer a form provided with the notice of violation or a written statement signed by the person denying the allegations and requesting a hearing on the matter.

C. On request for a hearing, the hearing officer shall set a date, time and place for a hearing and serve a notice of hearing on the person alleged to be in violation and provide a notice of the hearing to the chief engineer. Service of notice shall be by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the alleged violator, the chief engineer and every other party to the action.

D. The hearing officer shall be appointed by the board of directors and may be an employee of the district. Decisions of the hearing officer or by the board of hearing review shall be available to any party to the hearing. The board of directors shall adopt written rules of procedure for the hearing and review of hearings. These rules shall be adopted in the same manner as floodplain ordinances.

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

F. The hearing officer's written finding shall be submitted to the chief engineer and the noticed party within thirty days after the date of the hearing. On receipt of the hearing officer's findings, determination and

recommendation, the chief engineer shall issue a final decision and order. The chief engineer's final decision and order may be in any form as adopted by the board of directors pursuant to its authority under this chapter and may include a determination of violation, an order directing that measures be taken to abate or ameliorate any harm or damage arising from the violation and the imposition of a civil penalty. BY AGREEMENT WITH THE PERSON IN VIOLATION, THE CHIEF ENGINEER MAY ORDER A NONMONETARY PENALTY THAT SERVES THE PURPOSES OF THE DISTRICT.

G. On written request of any party who is subject to the decision and order of the chief engineer pursuant to this section, the board of hearing review may review any decision and order of the chief engineer. The written request for review shall be delivered to the clerk of the board of directors within fifteen days after the date of the final decision and order. THE WRITTEN REQUEST SHALL IDENTIFY SPECIFICALLY THE SECTION OR SECTIONS OF THE CHIEF ENGINEER'S FINAL ORDER THAT IS REQUESTED TO BE REVIEWED BY THE BOARD OF HEARING REVIEW.

H. THE BOARD OF HEARING REVIEW SHALL SET A TIME AND DATE TO HEAR THE MATTER REQUESTED FOR REVIEW. THE HEARING SHALL BE CONDUCTED BASED ON THE INFORMATION PRESENTED TO THE CHIEF ENGINEER IN ISSUING THE FINAL DECISION AND ORDER OR, IN AN APPEAL FROM A DETERMINATION OF A VIOLATION BY A HEARING OFFICER, THE RECORD BEFORE THE HEARING OFFICER. THE INFORMATION PRESENTED TO THE CHIEF ENGINEER IN ISSUING THE FINAL DECISION AND ORDER SHALL BE MADE AVAILABLE TO ALL PARTIES ON REQUEST. BASED ON THE RECORD BEFORE THE BOARD OF HEARING REVIEW, THE BOARD MAY DENY, APPROVE OR MODIFY THE ORDER OF THE CHIEF ENGINEER OR THE ORDER OF THE HEARING OFFICER. THE BOARD SHALL ISSUE A WRITTEN ORDER OF ITS DECISION INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND SHALL SUBMIT ITS FINAL WRITTEN ORDER ON THE MATTER TO THE CHIEF ENGINEER WITHIN THIRTY DAYS AFTER COMPLETION OF THE HEARING.

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

~~I.~~ J. The chief engineer may designate another person to carry out the chief engineer's powers and duties prescribed by this section and that designee is authorized to take all actions prescribed by this section in place of the chief engineer.

APPROVED BY THE GOVERNOR MAY 2, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 2, 2013.

Passed the House February 26, 2013

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate April 25, 2013

by the following vote: 27 Ayes,

2 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

_____ 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. 2178

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

May 1, 2013,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

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

1 day of May, 2013,

at 2:25 o'clock P M.

Mikhaila Howard

Secretary to the Governor

Approved this 2nd day of

May, 2013.,

at 3:08 o'clock P. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 2nd day of May, 2013,

at 4:55 o'clock P M.

Jim Drake

actng Secretary of State

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