Senate Engrossed House Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 257

HOUSE BILL 2474

AN ACT

AMENDING SECTIONS 48-3609 AND 48-3643, 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 48-3609, Arizona Revised Statutes, is amended to read:

48-3609. Floodplain delineation; regulation of use; federal requirements and definitions

A. Except as provided in section 48-3610, the board within its area of jurisdiction shall delineate or may by rule require developers of land to delineate for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by the director of water resources.

B. Except as provided in section 48-3610, the board shall adopt and enforce regulations governing floodplains and floodplain management in its area of jurisdiction which shall include the following:

1. Regulations for all development of land, construction of residential, commercial or industrial structures or uses of any kind which may divert, retard or obstruct floodwater and threaten public health or safety or the general welfare.

2. Regulations which establish minimum flood protection elevations and flood damage prevention requirements for uses, structures and facilities which are vulnerable to flood damage. Regulations adopted under this section shall comply with state and local land use plans and ordinances, if any.

3. Regulations which provide for coordination by the district with all other interested and affected political subdivisions and state agencies.

4. Regulations that require any residential structure built in a floodplain to be constructed so as to place the lowest floor elevation of the structure at or above the regulatory flood elevation, that require commercial or industrial structures to be flood proofed or elevated to or above the regulatory flood elevation and that prohibit any activity in a designated floodway, including fill, that would increase the water surface elevation during a base flood.

5. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, regulations to allow a mobile home located in a floodplain on August 3, 1984 to be replaced by another mobile home if:

(a) The mobile home to be replaced was not damaged by a flood to more than fifty ~~per cent~~ PERCENT of its value before the flood.

(b) The replacement mobile home is elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the regulatory flood elevation.

6. Regulations that require all new placement of mobile homes to be anchored to prevent flotation, collapse or movement.

7. Variance procedures to permit variances from the regulations that do not result in danger or damage to persons or property in floodplains in the area of jurisdiction. Variances may be granted only if special circumstances, such as size, shape, topography, location or surroundings of the property, would cause the strict application of the regulations to

deprive the property of privileges enjoyed by similar property in the floodplain. A variance is subject to conditions to ensure that the variance does not constitute a grant of special privileges inconsistent with the limitations on similar property in the floodplain.

C. A CITY OR TOWN WITH A POPULATION OF LESS THAN ONE THOUSAND FIVE HUNDRED PERSONS THAT IS LOCATED IN A COUNTY WITH A POPULATION OF LESS THAN SEVENTY THOUSAND PERSONS AND THAT HAS ASSUMED THE POWERS AND DUTIES FOR FLOODPLAIN MANAGEMENT PURSUANT TO SECTION 48-3610, SUBSECTION A MAY ADOPT AS A PART OF THE REGULATIONS REQUIRED BY SUBSECTION B, PARAGRAPH 5 OF THIS SECTION A REGULATION THAT ALLOWS A MOBILE HOME THAT QUALIFIES UNDER THIS SUBSECTION TO BE REPLACED WITH A MOBILE HOME THAT EITHER IS ELEVATED SO THAT THE BOTTOM OF THE STRUCTURAL FRAME OR THE LOWEST POINT OF ANY ATTACHED APPLIANCES, WHICHEVER IS LOWER, IS AT OR ABOVE THE BASE FLOOD ELEVATION OR HAS A CHASSIS SUPPORTED BY REINFORCED PIERS OR OTHER FOUNDATION ELEMENTS OF EQUIVALENT STRENGTH THAT ARE NOT LESS THAN THIRTY-SIX INCHES IN HEIGHT ABOVE GRADE AND THAT ARE SECURELY ANCHORED TO AN ADEQUATELY ANCHORED FOUNDATION SYSTEM TO RESIST FLOTATION, COLLAPSE AND LATERAL MOVEMENT. A MOBILE HOME QUALIFIES UNDER THIS SUBSECTION IF BOTH OF THE FOLLOWING APPLY:

1. THE MOBILE HOME WAS LOCATED IN A MOBILE HOME PARK OR SUBDIVISION ON AUGUST 3, 1984 OR BEFORE THE EFFECTIVE DATE OF THE CITY'S OR TOWN'S INITIAL FLOODPLAIN MANAGEMENT REGULATIONS, WHICHEVER DATE IS EARLIER.

2. NO MOBILE HOME THAT IS LOCATED IN THAT MOBILE HOME PARK OR SUBDIVISION HAS BEEN DAMAGED BY A FLOOD TO MORE THAN FIFTY PERCENT OF ITS VALUE BEFORE THE FLOOD.

~~C.~~ D. Waste disposal systems shall not be installed wholly or partially in a regulatory floodway.

~~D.~~ E. Water supply, water treatment and sewage collection and disposal systems built in a regulatory floodplain shall be designed to prevent or minimize floodwater infiltrating the systems and to prevent or minimize floodwater contamination during the base flood.

~~E.~~ F. Floodplain regulations enacted pursuant to this article may only be adopted after a public hearing at which parties in interest and other citizens have an opportunity to be heard. At least thirty days before the hearing, a notice of the time and place of the hearing shall be published in a newspaper of general circulation within the county or, if no newspaper of general circulation is regularly published, in a newspaper of general circulation nearest the area of jurisdiction. A notice of any hearing accompanied by a copy of each of the proposed regulations shall be furnished to the director at least thirty days before the date of the hearing. A copy of any regulation adopted by a district pursuant to this article shall within five days thereafter be filed with the director and with each political subdivision and municipal corporation in the area of jurisdiction.

~~F.~~ G. All development of land, construction of residential, commercial or industrial structures or future development within delineated floodplain areas is prohibited unless floodplain regulations have been

adopted pursuant to this article for such floodplain area and are in full force and effect.

~~G.~~ H. Before adopting regulations the board may issue a special permit authorizing construction or development if the board finds that construction or development is not a danger to persons or property.

~~H.~~ I. Unless expressly provided, this article and any regulations adopted pursuant to this article do not affect:

1. Existing legal uses of property or the right to continuation of such legal use. However, if a nonconforming use of land or a building or structure is discontinued for twelve months or destroyed to the extent of fifty ~~per cent~~ PERCENT of its value, as determined by a competent appraiser, any further use shall comply with this article and regulations of the district.

2. Reasonable repair or alteration of property for the purposes for which the property was legally used on August 3, 1984 or on the date any regulations affecting such property take effect, except that any alteration, addition or repair to a nonconforming building or structure which would result in increasing its flood damage potential by fifty ~~per cent~~ PERCENT or more shall be either flood proofed or elevated to or above the regulatory flood elevation.

3. Reasonable repair of structures constructed with the written authorization required by section 48-3613.

4. Facilities constructed or installed pursuant to a certificate of environmental compatibility issued pursuant to title 40, chapter 2, article 6.2.

~~I.~~ J. Within one hundred twenty days after completion of construction of any flood control protective works which changes the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineation shall be done according to the criteria adopted by the director of water resources.

~~J.~~ K. A flood control district or appropriate public agency which has failed to adopt or enforce floodplain regulations required by this section shall not be eligible for disaster relief identified by section 35-192, subsection D, paragraphs 3 and 5. The director of water resources shall advise the director of the division of emergency management within the department of emergency and military affairs of such failure to comply.

~~K.~~ L. A district and its agents may have reasonable access as provided by written authorization issued pursuant to section 48-3613 or if no authorization has been issued during business hours or in the case of an emergency, at any time, to enter and inspect any development on real property that is located in a floodplain in order to determine whether an owner is in violation of this chapter. This subsection does not authorize the inspection

of any records or files on a site or the interior of any building. A district shall attempt to provide written notice to the owner at least forty-eight hours in advance that the real property is to be inspected and that the owner or the owner's agent may accompany the district inspector on the inspection. A district inspector shall comply with any safety requirements that may be applicable to a particular site. The district shall prepare a report of any inspections made pursuant to this subsection. The report shall be made available in the records of the district and a copy sent to the owner within thirty days after the inspection.

~~L.~~ M. The floodplain regulations adopted by a district pursuant to this chapter are intended to carry out the requirements of the national flood insurance program and any term not otherwise defined in this chapter shall have the meaning set forth in 44 Code of Federal Regulations parts 59 through 78, as effective on January 1, 2005.

Sec. 2. Section 48-3643, Arizona Revised Statutes, is amended to read:

48-3643. Inspections; applicability

A. A district inspector or regulator who enters any premises of a regulated person for the purpose of conducting an inspection shall:

1. Present photo identification on entry of the premises.

2. On initiation of the inspection, state the purpose of the inspection and the legal authority for conducting the inspection.

3. Disclose any applicable inspection fees.

4. Afford an opportunity to have an authorized on-site representative of the regulated person accompany the district inspector or regulator on the premises, except during confidential interviews.

5. Provide notice of the right to have:

(a) Copies of any original documents taken from the premises by the district during the inspection if the district is permitted by law to take original documents.

(b) A split or duplicate of any samples taken during the inspection if the split or duplication of any samples, if appropriate, would not prohibit an analysis from being conducted or render an analysis inconclusive.

(c) Copies of any analysis performed on samples taken during the inspection.

6. Inform each person whose conversation with the district inspector or regulator during the inspection is tape recorded that the conversation is being tape recorded.

7. Inform each person interviewed during the inspection that statements made by the person may be included in the inspection report.

B. On initiation of, or two working days before, an inspection of any premises of a regulated person, a district inspector or regulator shall provide the following in writing or electronically:

1. The rights described in subsection A of this section.

2. The name and telephone number of a district contact person available to answer questions regarding the inspection.

3. The due process rights relating to an appeal of a final decision of a district based on the results of the inspection, including the name and telephone number of a person to contact within the district and any appropriate municipality, county, district or state government ombudsman.

C. A district inspector or regulator shall obtain the signature of the regulated person or on-site representative of the regulated person on the writing prescribed in subsection B of this section indicating that the regulated person or on-site representative of the regulated person has read the writing and is notified of the regulated person's or on-site representative of the regulated person's inspection and due process rights. The district shall maintain a copy of this signature with the inspection report. Unless the regulated person, at the time of the inspection, is informed how the report can be located electronically, the district shall leave a copy with the regulated person or on-site representative of the regulated person. If a regulated person or on-site representative of the regulated person is not at the site or refuses to sign the writing prescribed in subsection B of this section, the district inspector or regulator shall note that fact on the writing.

D. A district that conducts an inspection pursuant to this section, shall give a copy of, or provide electronic access to, the inspection report to the regulated person or on-site representative of the regulated person either:

1. At the time of the inspection.

2. Notwithstanding any other state law, within thirty working days after the inspection.

3. As otherwise required by federal law.

E. The inspection report shall contain deficiencies identified during an inspection. Unless otherwise provided by law, the district may provide the regulated person an opportunity to correct the deficiencies unless the district determines that the deficiencies are:

1. Committed intentionally.

2. Not correctable within a reasonable period of time as determined by the district.

3. Evidence of a pattern of noncompliance.

4. A risk to any person, the public health, safety or welfare or the environment.

F. If the district allows the regulated person an opportunity to correct the deficiencies pursuant to subsection E of this section, the regulated person shall notify the district when the deficiencies have been corrected. Within thirty working days ~~of~~ AFTER receipt of notification from the regulated person that the deficiencies have been corrected, the district shall determine if the regulated person is in substantial compliance and notify the regulated person whether or not the regulated person is in substantial compliance, unless it is not possible due to conditions of normal operations at the premises. If the regulated person fails to correct the

deficiencies or the district determines the deficiencies have not been corrected within a reasonable period of time, the district may take any enforcement action authorized by law for the deficiencies.

G. A district decision pursuant to subsection E or F of this section is not an appealable district action.

H. At least once every month after the commencement of the inspection a district shall provide a regulated person with an update, in writing or electronically, on the status of any district action resulting from an inspection of the regulated person. A district is not required to provide an update after the regulated person is notified that no district action will result from the district's inspection or after the completion of district action resulting from the district's inspection.

I. This section does not authorize an inspection or any other act that is not otherwise authorized by law.

J. This section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure requirements. This section does not apply:

1. To criminal investigations and undercover investigations that are generally or specifically authorized by law.

2. If the district inspector or regulator has reasonable suspicion to believe that the regulated person may be or has been engaged in criminal activity.

3. If the district inspector or regulator reasonably believes that an emergency exists.

4. To inspections conducted pursuant to section 48-3609, subsection ~~K~~ L of persons not licensed by the district or which are not necessary for the issuance of a license.

K. If a district inspector or regulator gathers evidence in violation of this section, the violation shall not be a basis to exclude the evidence in a civil or administrative proceeding, if the penalty sought is the denial, suspension or revocation of the regulated person's license or a civil penalty of more than one thousand dollars.

L. Failure of a district employee to comply with this section:

1. Constitutes cause for disciplinary action or dismissal pursuant to adopted district personnel policy.

2. Shall be considered by the judge and administrative law judge as grounds for reduction of any fine or civil penalty.

M. A district may adopt rules or ordinances to implement this section.

N. This section:

1. Shall not be used to exclude evidence in a criminal proceeding.

2. Does not apply to district inspections that are requested and scheduled by the regulated person.

APPROVED BY THE GOVERNOR MAY 17, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 17, 2016.

Passed the House March 3, 2016

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate March 30, 2016

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Pro Tempore

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. 2474

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 6, 2016,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

Speaker of the House

Jim Drake
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

7 day of May, 20___,

at 1:18 o'clock A. M.

Valerie Harris
Secretary to the Governor

Approved this 17th day of

May, 2016,

at 10:47 o'clock A. M.

Doug Ducey
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 17th day of May, 2016,

at 11:40 o'clock A M.

Michele Reagan
Secretary of State

H.B. 2474