

House Engrossed Senate Bill

FILED

MICHELE REAGAN

SECRETARY OF STATE

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

CHAPTER 179

SENATE BILL 1308

AN ACT

AMENDING SECTION 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 48-3603, Arizona Revised Statutes, is amended to
3 read:
4 48-3603. Powers, duties and immunities of district and board:
5 exemptions
6 A. A county flood control district organized under this article is
7 a political taxing subdivision of this state and has all the powers,
8 privileges and immunities granted generally to municipal corporations by
9 the constitution and laws of this state, including immunity of its
10 property and bonds from taxation.
11 B. The board of directors shall exercise all powers and duties in
12 the acquisition and operation of the properties of the district and in
13 carrying out its regulatory functions under this article as are ordinarily
14 exercised by the governing body of a municipal corporation.
15 C. A district organized under this article, acting through its
16 board of directors, may:
17 1. Acquire by eminent domain, purchase, donation, dedication,
18 exchange or other lawful means rights-of-way for and construct, operate
19 and maintain flood control works and storm drainage facilities within or
20 without the district for the benefit of the district.
21 2. Acquire by eminent domain, purchase, donation, dedication,
22 exchange or other lawful means and dispose of by sale, exchange or other
23 lawful means real and personal property within the boundaries of the
24 district.
25 3. Contract and join with this state, the United States or any
26 other flood control district or floodplain board, municipality, political
27 subdivision, governmental agency, irrigation or agricultural improvement
28 district, association, corporation or individual in acquiring,
29 constructing, maintaining and operating flood control works, and
30 regulating floodplains.
31 4. Enter into contracts of indemnity to indemnify this state, the
32 United States or any other flood control district, municipality, political
33 subdivision, governmental agency, irrigation or agricultural improvement
34 district, association, corporation or individual against liability by
35 virtue of injuries, losses or damages occurring through the use of their
36 facilities, structures, streets, rights-of-way or properties in connection
37 with the operation of a flood control district and the regulation of
38 floodplains.
39 5. Acquire and maintain existing flood control and drainage
40 facilities within the district for the benefit of the district if mutually
41 agreeable to the owners of such facilities.
42 6. Acquire, convert and maintain surplus irrigation facilities as
43 storm drainage facilities if mutually agreeable to owners of such
44 facilities.

- 1 7. Construct, maintain and operate flood control and storm drainage
2 facilities and regulate floodplains in the district by agreement with this
3 state, counties, other municipal corporations, political subdivisions and
4 other persons and reimburse such agencies or persons for the cost of the
5 work.
- 6 8. On the dissolution of any other flood control district, assume
7 the assets and obligations of the other district.
- 8 9. Enter into intergovernmental agreements with other public
9 agencies pursuant to title 11, chapter 7, article 3 to carry out the
10 objects and purposes of the district.
- 11 10. Apply for, obtain, expend and repay flood control loans
12 pursuant to title 45, chapter 8, article 5.
- 13 11. Apply to the director of water resources for alternative flood
14 control assistance for flood control projects pursuant to section 45-1471,
15 except that the director shall not grant any such assistance for any
16 project unless the director has approved the project in advance of
17 planning.
- 18 12. Sue and be sued, enter into contracts and generally do all
19 things that may be necessary to construct, acquire and maintain
20 facilities, operate the district and perform its regulatory functions and
21 that are in the interests of the district.
- 22 13. Adopt such rules and bylaws for its orderly operation as it
23 sees fit.
- 24 14. Appoint a chief engineer and general manager, who may be the
25 county engineer.
- 26 15. Appoint a treasurer, who may be the county treasurer, an
27 attorney, who may be the county attorney, and other employees it considers
28 desirable and necessary to carry out the purposes of the district. Any
29 other work required by the district may be performed by regular employees
30 of the county on assignment by the board of supervisors, except that
31 regular county employees shall not undertake construction projects with an
32 estimated cost of five thousand dollars or more.
- 33 16. Allow variances from the terms or regulations adopted pursuant
34 to this article to the extent permitted by section 48-3609, subsection B,
35 paragraph 7 and if, owing to peculiar conditions, a strict interpretation
36 would work an unnecessary hardship, if in granting the variance the
37 general intent and purposes of this article and the regulations will be
38 preserved.
- 39 17. Construct, operate and maintain artificial groundwater recharge
40 facilities, and, if organized in a county having a population of more than
41 five hundred thousand persons according to the most recent United States
42 decennial census, underground storage and recovery facilities, if they
43 have flood control benefits, and contract and join with the United States,
44 this state and other governmental units for the purpose of constructing,
45 operating and maintaining multipurpose groundwater recharge, underground

1 storage and recovery and flood control facilities, except that a district
2 shall not expend district funds for any underground storage and recovery
3 facility that does not have flood control benefits.

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

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

11 20. Either alone, or by entering into any combination of contracts
12 with this state, the United States, any other flood control district, a
13 floodplain board, a municipality or other political subdivision, a
14 government agency, an irrigation or agricultural improvement district or
15 an association, corporation or individual, implement flood control
16 enhancement solutions including:

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

20 (b) Preservation and restoration of the floodplain.

21 (c) Maintenance of flood warning systems and associated flood
22 response plans.

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

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

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

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

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

42 25. Establish a board of hearing review to review decisions of
43 hearing officers that are issued pursuant to section 48-3615.01. The
44 board of hearing review shall consist of one member from each board of
45 directors' district or the board of directors may authorize the citizens'

1 flood control advisory board or the board of review to designate a like
2 number of its members to serve as the board of hearing review.

3 26. Authorize the chief engineer of the district to apply for and
4 obtain administrative search warrants for entry and inspection from a
5 local court of general jurisdiction to determine if violations of section
6 48-3609, 48-3613, 48-3614 or 48-3615 have occurred. The warrants shall be
7 served by a peace officer as defined in section 1-215. A report of any
8 inspections made pursuant to this section shall be prepared and made
9 available in the records of the district and a copy mailed or otherwise
10 delivered to the owner within fifteen days after the inspection of the
11 owner's premises.

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

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

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

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

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

24 I. Section 9-403 does not apply to a flood control district
25 organized under this article and section 9-402 does not apply when the
26 district is selling property to this state or a political subdivision.
27 Before selling any property to this state or a political subdivision of
28 this state, the flood control district shall obtain an appraisal of the
29 fair market value of the property by a person who is certified pursuant to
30 title 32, chapter 36. If any property sold by the district to this state
31 or a political subdivision without complying with section 9-402 is
32 subsequently sold by this state or political subdivision as undeveloped
33 property for a price exceeding the original sale price, the district shall
34 be paid the difference between the original price and the subsequent sale
35 price. For the purposes of this subsection, "political subdivision" means
36 any incorporated city or town, county, school district, fire district,
37 charter school, community college or university.

38 J. The district and its employees and officers are not liable for
39 any injury or property damage that may arise out of a plan or design for
40 construction, maintenance or improvement to a dam, levee, berm, channel,
41 canal, OR culvert or any other flood control project the district is
42 authorized to plan, design, construct, maintain or improve when a
43 reasonably adequate warning of any unreasonably dangerous hazard is given
44 to potentially affected property owners in a manner that owners may take
45 suitable precautions to protect themselves and their property. The

1 warning shall include information for the property owner regarding a
2 national flood insurance program. A warning is sufficient pursuant to
3 this subsection if the warning is provided to a single property owner of
4 the parcel, and notice to subsequent property owners is not required. The
5 immunities prescribed by this subsection are in addition to and not in
6 derogation or limitation of the immunities granted a district, employee or
7 officer as otherwise provided by law and apply if either or both of the
8 following conditions ~~is~~ ARE met:

9 1. The project is funded wholly or partially by federal monies.

10 2. The project is planned or designed to meet a recurrence interval
11 approved by the district's board of directors.

12 K. SECTION 9-402 DOES NOT APPLY TO THE GRANT OF AN EASEMENT ON OR A
13 LEASE OF DISTRICT REAL PROPERTY TO ANY PARTY OTHER THAN THIS STATE OR A
14 POLITICAL SUBDIVISION OF THIS STATE AS PRESCRIBED BY THIS SUBSECTION. A
15 DISTRICT MAY AUTHORIZE THE GRANT OF AN EASEMENT ON OR A LEASE OF DISTRICT
16 REAL PROPERTY WITHOUT PUBLIC AUCTION UNDER THE FOLLOWING CONDITIONS:

17 1. THE DISTRICT POSTS A NOTICE IN A CONSPICUOUS PLACE ON THE
18 AFFECTED PROPERTY. THE NOTICE SHALL SUMMARIZE THE PROPOSED EASEMENT OR
19 LEASE AND SHALL PROVIDE INFORMATION ON THE PROCESS FOR AN INTERESTED
20 PERSON TO REQUEST THAT THE PROPOSED ACTION BE SUBMITTED TO PUBLIC AUCTION.
21 THE NOTICE SHALL BE POSTED FOR AT LEAST FIFTEEN DAYS BEFORE THE EXECUTION
22 OF THE EASEMENT OR LEASE.

23 2. THE DISTRICT POSTS A NOTICE ON THE DISTRICT'S WEBSITE THAT
24 SPECIFIES THE AFFECTED PROPERTY, SUMMARIZES THE PROPOSED EASEMENT OR LEASE
25 AND PROVIDES INFORMATION ON THE PROCESS FOR AN INTERESTED PERSON TO
26 REQUEST THAT THE PROPOSED ACTION BE SUBMITTED TO PUBLIC AUCTION. THE
27 NOTICE SHALL BE POSTED ON THE WEBSITE FOR AT LEAST FIFTEEN DAYS BEFORE THE
28 EXECUTION OF THE EASEMENT OR LEASE.

29 3. THE DISTRICT PUBLISHES IN THE LOCAL NEWSPAPER WHERE THE DISTRICT
30 REGULARLY PUBLISHES NOTICES AT THE BEGINNING OF THE FIFTEEN-DAY POSTING
31 PERIOD A SUMMARY OF THE PROPOSED EASEMENT OR LEASE THAT PROVIDES
32 INFORMATION ON THE PROCESS FOR AN INTERESTED PERSON TO REQUEST THAT THE
33 PROPOSED ACTION BE SUBMITTED TO PUBLIC AUCTION.

34 4. THE DISTRICT ESTABLISHES A PROCESS THAT ALLOWS AN INTERESTED
35 PERSON TO REQUEST IN WRITING THAT THE PROPOSED EASEMENT OR LEASE BE
36 SUBMITTED TO PUBLIC AUCTION. IF DURING THE FIFTEEN-DAY POSTING PERIOD A
37 PERSON REQUESTS THAT THE PROPOSED EASEMENT OR LEASE BE SUBMITTED TO PUBLIC
38 AUCTION THE DISTRICT SHALL FOLLOW THE PROCEDURE SET FORTH IN SECTION
39 9-402.

40 5. FOR PROPOSED LEASES ONLY, THE APPRAISED VALUE FOR THE RENTAL OF
41 THE DISTRICT REAL PROPERTY IS LESS THAN FIVE THOUSAND DOLLARS PER MONTH.

42 6. THE REIMBURSEMENT TO THE COUNTY FOR THE EASEMENT GRANTED OR THE
43 LEASE EXECUTED SHALL NOT BE LESS THAN THE APPRAISED VALUE OF THE PROPERTY
44 AS DETERMINED BY THE COUNTY.

APPROVED BY THE GOVERNOR APRIL 21, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 21, 2017.

Passed the House April 17, 2017,

Passed the Senate February 16, 2017,

by the following vote: 57 Ayes,

by the following vote: 29 Ayes,

1 Nays, 1 Not Voting
vacant
Speaker of the House

0 Nays, 1 Not Voting
President of the Senate

Jim Duke
Chief Clerk of the House

Susan Alvarez
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. 1308

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 18, 2017

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting

Steven B. Galbraith
President of the Senate

Suzanne Owens
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

18th day of April, 2017

at 12:19 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 21st day of

April, 2017

at 9:37 o'clock A M.

Jaygo A. Ivey
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 21 day of April, 2017

at 2:46 o'clock P M.

Michele Reagan
Secretary of State