

REFERENCE TITLE: expenditures; authority; water; wastewater

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
Second Regular Session  
2022

# HB 2037

Introduced by  
Representatives Cook: Carter

AN ACT

AMENDING SECTIONS 11-254.04 AND 48-3603, ARIZONA REVISED STATUTES;  
RELATING TO WATER AND WASTEWATER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 11-254.04, Arizona Revised Statutes, is amended  
3 to read:

4 11-254.04. Expenditures for economic development; definition

5 A. In addition to the authority granted under section 11-254, a  
6 board of supervisors may appropriate and spend public monies for and in  
7 connection with economic development activities.

8 B. To fund economic development activities under this section, a  
9 county shall not impose a new fee or tax on a single specific industry or  
10 type of business.

11 C. For the purposes of this section, "economic development  
12 activities" means any project, assistance, undertaking, program or study,  
13 whether within or outside the boundaries of the county, including  
14 acquisition, improvement, leasing or conveyance of real or personal  
15 property, PARTICIPATING IN WATER REUSE AND RECYCLING PROGRAMS OR REGIONAL  
16 WATER RECHARGE PROJECTS, PURCHASING WATER RIGHTS TO DEMONSTRATE AN ASSURED  
17 WATER SUPPLY or other activity, that the board of supervisors has found  
18 and determined will assist in the creation or retention of jobs or will  
19 otherwise improve or enhance the economic welfare of the inhabitants of  
20 the county.

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

23 48-3603. Powers, duties and immunities of district and board;  
24 exemptions

25 A. A county flood control district organized under this article is  
26 a political taxing subdivision of this state and has all the powers,  
27 privileges and immunities granted generally to municipal corporations by  
28 the constitution and laws of this state, including immunity of its  
29 property and bonds from taxation.

30 B. The board of directors shall exercise all powers and duties in  
31 ~~the acquisition~~ ACQUIRING and ~~operation of~~ OPERATING the properties of the  
32 district and in carrying out its regulatory functions under this article  
33 as are ordinarily exercised by the governing body of a municipal  
34 corporation.

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

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

41 2. Acquire by eminent domain, purchase, donation, dedication,  
42 exchange or other lawful means and dispose of by sale, exchange or other  
43 lawful means real and personal property within the boundaries of the  
44 district.

1           3. Contract and join with this state, the United States or any  
2 other flood control district or floodplain board, municipality, political  
3 subdivision, governmental agency, irrigation or agricultural improvement  
4 district, association, corporation or individual in acquiring,  
5 constructing, maintaining and operating flood control works, and  
6 regulating floodplains.

7           4. Enter into contracts of indemnity to indemnify this state, the  
8 United States or any other flood control district, municipality, political  
9 subdivision, governmental agency, irrigation or agricultural improvement  
10 district, association, corporation or individual against liability by  
11 virtue of injuries, losses or damages occurring through the use of their  
12 facilities, structures, streets, rights-of-way or properties in connection  
13 with ~~the operation of~~ OPERATING a flood control district and ~~the~~  
14 ~~regulation of~~ REGULATING floodplains.

15           5. Acquire and maintain existing flood control and drainage  
16 facilities within the district for the benefit of the district if mutually  
17 agreeable to the owners of such facilities.

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

21           7. Construct, maintain and operate flood control and storm drainage  
22 facilities and regulate floodplains in the district by agreement with this  
23 state, counties, other municipal corporations, political subdivisions and  
24 other persons and reimburse the agencies or persons for the cost of the  
25 work.

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

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

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

33           11. Apply to the director of water resources for alternative flood  
34 control assistance for flood control projects pursuant to section 45-1471,  
35 except that the director shall not grant any such assistance for any  
36 project unless the director has approved the project in advance of  
37 planning.

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

42           13. Adopt rules and bylaws for its orderly operation as it sees  
43 fit.

44           14. Appoint a chief engineer and general manager, who may be the  
45 county engineer.

1           15. Appoint a treasurer, who may be the county treasurer, an  
2 attorney, who may be the county attorney, and other employees it considers  
3 desirable and necessary to carry out the purposes of the district. Any  
4 other work required by the district may be performed by regular employees  
5 of the county on assignment by the board of supervisors, except that  
6 regular county employees shall not undertake construction projects with an  
7 estimated cost of \$5,000 or more.

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

14           17. Construct, operate and maintain artificial groundwater recharge  
15 facilities, and, if organized in a county having a population of more than  
16 five hundred thousand persons, underground storage and recovery  
17 facilities, if they have flood control benefits, and contract and join  
18 with the United States, this state and other governmental units for the  
19 purpose of constructing, operating and maintaining multipurpose  
20 groundwater recharge, underground storage and recovery and flood control  
21 facilities, except that a district shall not expend district funds for any  
22 underground storage and recovery facility that does not have flood control  
23 benefits.

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

27           19. Cooperate and join with other entities that engage in  
28 underground water storage and recovery projects under title 45, chapter  
29 3.1, including multi-county water conservation districts, PRIVATE WATER  
30 AND WASTEWATER UTILITIES and other political subdivisions.

31           20. Either alone, or by entering into any combination of contracts  
32 with this state, the United States, any other flood control district, a  
33 floodplain board, a municipality or other political subdivision, a  
34 government agency, an irrigation or agricultural improvement district or  
35 an association, corporation or individual, implement flood control  
36 enhancement solutions including:

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

40           (b) Preservation and restoration of the floodplain.

41           (c) Maintenance of flood warning systems and associated flood  
42 response plans.

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

1           21. If a part of a parcel of land is to be taken for drainage,  
2 basins, impoundments or any other flood ~~control-related~~ CONTROL-RELATED  
3 use and the board and the affected property owner determine that the  
4 remainder will be left in such a condition as to give rise to a claim or  
5 litigation concerning severance or other damage, acquire the whole parcel  
6 by purchase, donation, dedication, exchange, condemnation or other lawful  
7 means, and the remainder may be sold or exchanged for other properties  
8 needed for flood control use.

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

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

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

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

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

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

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

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

40           G. The board shall keep a proper written record of all of the  
41 board's proceedings, which shall be open to public inspection.

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

44           I. Section 9-403 does not apply to a flood control district  
45 organized under this article and section 9-402 does not apply when the

1 district is selling property to this state, a political subdivision, any  
2 special district with taxing authority, a public school, a community  
3 college or a university. Before selling any property to this state, a  
4 political subdivision of this state, any special district with taxing  
5 authority, a public school, a community college or a university, the flood  
6 control district shall obtain an appraisal of the market value of the  
7 property as defined in section 28-7091 prepared by a person who is  
8 licensed or certified pursuant to title 32, chapter 36. If any property  
9 sold by the district to this state, a political subdivision, any special  
10 district with taxing authority, a public school, a community college or a  
11 university without complying with section 9-402 is subsequently sold by  
12 the grantee as undeveloped property for a price exceeding the original  
13 sale price, the district shall be paid the difference between the original  
14 price and the subsequent sale price.

15 J. The district and its employees and officers are not liable for  
16 any injury or property damage that may arise out of a plan or design for  
17 construction, maintenance or improvement to a dam, levee, berm, channel,  
18 canal or culvert or any other flood control project the district is  
19 authorized to plan, design, construct, maintain or improve when a  
20 reasonably adequate warning of any unreasonably dangerous hazard is given  
21 to potentially affected property owners in a manner that owners may take  
22 suitable precautions to protect themselves and their property. The  
23 warning shall include information for the property owner regarding a  
24 national flood insurance program. A warning is sufficient pursuant to  
25 this subsection if the warning is provided to a single property owner of  
26 the parcel, and notice to subsequent property owners is not required. The  
27 immunities prescribed by this subsection are in addition to and not in  
28 derogation or limitation of the immunities granted a district, employee or  
29 officer as otherwise provided by law and apply if either or both of the  
30 following conditions are met:

- 31 1. The project is funded wholly or partially by federal monies.
- 32 2. The project is planned or designed to meet a recurrence interval  
33 approved by the district's board of directors.

34 K. Section 9-402 does not apply to the grant of an easement on or a  
35 lease of district real property to any party other than this state or a  
36 political subdivision of this state as prescribed by this subsection. A  
37 district may authorize the grant of an easement on or a lease of district  
38 real property without public auction under the following conditions:

- 39 1. The district posts a notice in a conspicuous place on the  
40 affected property. The notice shall summarize the proposed easement or  
41 lease and shall provide information on the process for an interested  
42 person to request that the proposed action be submitted to public auction.  
43 The notice shall be posted for at least fifteen days before the execution  
44 of the easement or lease.

1           2. The district posts a notice on the district's website that  
2 specifies the affected property, summarizes the proposed easement or lease  
3 and provides information on the process for an interested person to  
4 request that the proposed action be submitted to public auction. The  
5 notice shall be posted on the website for at least fifteen days before the  
6 execution of the easement or lease.

7           3. The district publishes in the local newspaper where the district  
8 regularly publishes notices at the beginning of the fifteen-day posting  
9 period a summary of the proposed easement or lease that provides  
10 information on the process for an interested person to request that the  
11 proposed action be submitted to public auction.

12           4. The district establishes a process that allows an interested  
13 person to request in writing that the proposed easement or lease be  
14 submitted to public auction. If during the fifteen-day posting period a  
15 person requests that the proposed easement or lease be submitted to public  
16 auction the district shall follow the procedure set forth in section  
17 9-402.

18           5. For proposed leases only, the market value for the rental of the  
19 district real property is less than \$5,000 per month.

20           6. The reimbursement to the district for the easement granted or  
21 the lease executed is not less than the market value of the property as  
22 determined by the district.