

REFERENCE TITLE: disaster; reimbursement of emergency expenses

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

## **HB 2329**

Introduced by  
Representative Payne

### **AN ACT**

REPEALING SECTION 35-192, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 405, SECTION 9; AMENDING SECTION 35-192, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2016, CHAPTER 128, SECTION 51; AMENDING SECTIONS 35-192.01 AND 48-3609, ARIZONA REVISED STATUTES; RELATING TO REIMBURSEMENT OF EMERGENCY EXPENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Section 35-192, Arizona Revised Statutes, as amended by Laws 2021,  
4 chapter 405, section 9, is repealed.

5 Sec. 2. Section 35-192, Arizona Revised Statutes, as amended by  
6 Laws 2016, chapter 128, section 51, is amended to read:

7 35-192. Authorization for declaration of disaster;  
8 authorization for liabilities and expenses;  
9 priorities and limitations; review and report of  
10 expenditures

11 A. The governor may declare an emergency arising from major  
12 disasters as provided in this section and incur liabilities therefor,  
13 regardless of whether or not the legislature is in session.

14 B. When the governor, or the director of the division of emergency  
15 management in the department of emergency and military affairs pursuant to  
16 section 26-303, subsection H, determines that a contingency or disaster so  
17 justifies, and declares an emergency, specific liabilities and expenses  
18 provided for in this section are authorized to be incurred against and to  
19 be paid as claims against the state from unrestricted monies from the  
20 general fund to mitigate and meet contingencies and emergencies arising  
21 from:

- 22 1. Invasions, hostile attacks, riots or insurrections.
- 23 2. Epidemics of disease or plagues of insects.
- 24 3. Floods or floodwaters.
- 25 4. Acts of God or any major disaster.
- 26 5. Wildland fires, ~~—~~ but only after all necessary authorizations  
27 under section 37-1305 are exhausted.

28 C. When authorized by the governor, specific liabilities and  
29 expenses provided for in this section may be incurred against and may be  
30 paid as claims against the state from unrestricted monies from the general  
31 fund to meet contingencies and emergencies arising from incidents relating  
32 to hazardous materials as defined in section 26-301 and search or rescue  
33 operations conducted pursuant to section 11-251.02, section 11-441,  
34 subsection C or section 26-306 subject to the limitations provided in  
35 section 35-192.01. Within ninety days after monies are awarded under this  
36 section, the department of emergency and military affairs shall post in a  
37 prominent location on the department's official website the amount of  
38 monies awarded under this section, who received the monies and how the  
39 monies were spent.

40 D. Liabilities and expenses authorized under subsection B of this  
41 section may be incurred for any of the emergencies or contingencies  
42 prescribed in subsection B of this section in the following order of  
43 priority:

1           1. Reimbursement for expenses incurred to combat a menace to the  
2 health, lives or property of any considerable number of persons of the  
3 state, or to property of ~~the~~ THIS state or its political subdivisions.

4           2. REIMBURSEMENT FOR EXPENSES INCURRED IN SEARCH OR RESCUE  
5 OPERATIONS.

6           ~~2.~~ 3. Reimbursement for expenses incurred to repair damage to any  
7 property of ~~the~~ THIS state.

8           ~~3.~~ 4. Reimbursement for expenses incurred to repair damage to any  
9 property of the political subdivisions of ~~the~~ THIS state.

10           ~~4. Reimbursement for expenses incurred in search or rescue~~  
11 ~~operations.~~

12           5. Reimbursement for expenses incurred in emergency or disaster  
13 recovery activities or in matching federal disaster recovery programs.

14           6. Reimbursement for expenses for property loss mitigation measures  
15 or to match federal property loss mitigation programs.

16           E. The auditor of the department of emergency and military affairs  
17 shall review liabilities incurred and expenditures made under this section  
18 and report to the state emergency council at ninety-day intervals during  
19 the emergency and conduct a final review of each emergency within ninety  
20 days after the termination of the emergency. The state emergency council  
21 shall make a written report not later than September 1 of each year to the  
22 legislature of the actions of the state emergency council during the  
23 preceding fiscal year, including an itemized statement of expenditures for  
24 each emergency during the year. The department of emergency and military  
25 affairs shall post the report in a prominent location on the department's  
26 official website.

27           F. All liabilities incurred under this section ~~shall be~~ ARE subject  
28 to the following limitations:

29           1. ~~No~~ A liability shall NOT be incurred against the monies  
30 authorized without the approval of the governor, or the adjutant general  
31 pursuant to section 26-303, subsection H, for each contingency or  
32 emergency.

33           2. Incurring of liabilities in excess of ~~two hundred thousand~~  
34 ~~dollars~~ \$200,000 in any single disaster or emergency shall not be made  
35 without consent of a majority of the members of the state emergency  
36 council.

37           3. The aggregate amount of all liabilities incurred under this  
38 section shall not exceed ~~four million dollars~~ \$4,000,000 for any fiscal  
39 year beginning July 1 through June 30. Monies authorized for disasters  
40 and emergencies in prior fiscal years may be used in subsequent fiscal  
41 years only for the disaster or emergency for which they were  
42 authorized. Monies authorized for disasters and emergencies in prior  
43 fiscal years, and expended in subsequent fiscal years for the disaster or  
44 emergency for which they were authorized, apply toward the ~~four million~~

1 ~~dollar~~ \$4,000,000 liability limit for the fiscal year in which they were  
2 authorized.

3 4. Notwithstanding the limitations in paragraph 3 of this  
4 subsection, monies that were previously obligated but not used for a  
5 declared emergency or disaster may be reallocated to an outstanding  
6 obligation for another declared emergency or disaster and shall remain  
7 available for expenditure for the outstanding obligation. The  
8 reallocation of monies pursuant to this paragraph does not apply toward  
9 the ~~four million dollar~~ \$4,000,000 liability limit of the fiscal year to  
10 which the monies were reallocated or in which the monies are spent.

11 5. An obligation of monies under this section may be made only when  
12 one or more of the following conditions exist:

13 (a) No appropriation or other authorization is available to meet  
14 the contingency or emergency.

15 (b) An appropriation is insufficient to meet the contingency or  
16 emergency.

17 (c) Federal monies available for such contingency or emergency  
18 require the use of state or other public monies.

19 G. The director of the division of emergency management in the  
20 department of emergency and military affairs shall develop rules for  
21 administering the monies authorized for liabilities under this section,  
22 subject to approval by the governor.

23 Sec. 3. Section 35-192.01, Arizona Revised Statutes, is amended to  
24 read:

25 35-192.01. Reimbursement procedures

26 A. Political subdivisions may apply to the state director of  
27 emergency management for A ONE HUNDRED PERCENT reimbursement of necessary  
28 expenses incurred in search or rescue operations, not including purchase  
29 of equipment or facilities, under section 35-192, subsection C ~~subject to~~  
30 ~~the following limitations:~~

31 ~~1. Not to exceed fifty per cent of the first one thousand dollars~~  
32 ~~or less of such expenditures in any fiscal year.~~

33 ~~2. Not to exceed seventy-five per cent of all such expenditures in~~  
34 ~~excess of one thousand dollars up to twenty-one thousand dollars in any~~  
35 ~~fiscal year.~~

36 ~~3. One hundred per cent of expenditures in excess of twenty-one~~  
37 ~~thousand dollars in any fiscal year.~~

38 B. POLITICAL SUBDIVISIONS MAY APPLY TO THE STATE DIRECTOR OF  
39 EMERGENCY MANAGEMENT FOR UP TO \$1,000 FOR REIMBURSEMENT OF NECESSARY  
40 EXPENSES THAT INCURRED FOR EACH APPROVED SEARCH OR RESCUE OPERATION AND  
41 THAT ARE NOT ELIGIBLE EXPENSES UNDER SECTION 35-192, SUBSECTION C.

42 ~~B.~~ C. A department of ~~the~~ THIS state ~~which~~ THAT expends funds for  
43 search or rescue operations in an amount in excess of that provided for in  
44 the regular appropriation and when directed to do so by the governor or  
45 state director of emergency management may apply for reimbursement of such

1 excess expenditures to the state director of emergency management under  
2 the provisions of section 35-192.

3 ~~C.~~ D. The director of emergency management shall adopt, with the  
4 approval of the governor, rules concerning such reimbursement.

5 Sec. 4. Section 48-3609, Arizona Revised Statutes, is amended to  
6 read:

7 48-3609. Floodplain delineation; regulation of use; federal  
8 requirements and definitions

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

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

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

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

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

29 4. Regulations that:

30 (a) Require any residential structure built in a floodplain to be  
31 constructed so as to place the lowest floor elevation of the structure at  
32 or above the regulatory flood elevation. ~~, that~~

33 (b) Require commercial or industrial structures to be flood proofed  
34 or elevated to or above the regulatory flood elevation. ~~and that~~

35 (c) Prohibit any activity in a designated floodway, including fill,  
36 that would increase the water surface elevation during a base flood.

37 5. Except as provided in subsection C of this section, regulations  
38 to allow a mobile home located in a floodplain on August 3, 1984 to be  
39 replaced by another mobile home if:

40 (a) The mobile home to be replaced was not damaged by a flood to  
41 more than fifty percent of its value before the flood.

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

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

3           7. Variance procedures to permit variances from the regulations  
4 that do not result in danger or damage to persons or property in  
5 floodplains in the area of jurisdiction. Variances may be granted only if  
6 special circumstances, such as size, shape, topography, location or  
7 surroundings of the property, would cause the strict application of the  
8 regulations to deprive the property of privileges enjoyed by similar  
9 property in the floodplain. A variance is subject to conditions to ensure  
10 that the variance does not constitute a grant of special privileges  
11 inconsistent with the limitations on similar property in the floodplain.

12           C. A city or town with a population of less than one thousand five  
13 hundred persons, that is located in a county with a population of less  
14 than seventy thousand persons, and that has assumed the powers and duties  
15 for floodplain management pursuant to section 48-3610, subsection A may  
16 adopt as a part of the regulations required by subsection B, paragraph 5  
17 of this section a regulation that allows a mobile home that qualifies  
18 under this subsection to be replaced with a mobile home that either is  
19 elevated so that the bottom of the structural frame or the lowest point of  
20 any attached appliances, whichever is lower, is at or above the base flood  
21 elevation or has a chassis supported by reinforced piers or other  
22 foundation elements of equivalent strength that are not less than  
23 thirty-six inches in height above grade and that are securely anchored to  
24 an adequately anchored foundation system to resist flotation, collapse and  
25 lateral movement. A mobile home qualifies under this subsection if both  
26 of the following apply:

27           1. The mobile home was located in a mobile home park or subdivision  
28 on August 3, 1984 or before the effective date of the city's or town's  
29 initial floodplain management regulations, whichever date is earlier.

30           2. ~~No~~ A mobile home that is located in that mobile home park or  
31 subdivision has **NOT** been damaged by a flood to more than fifty percent of  
32 its value before the flood.

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

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

39           F. Floodplain regulations enacted pursuant to this article may only  
40 be adopted after a public hearing at which parties in interest and other  
41 citizens have an opportunity to be heard. At least thirty days before the  
42 hearing, a notice of the time and place of the hearing shall be published  
43 in a newspaper of general circulation within the county or, if no  
44 newspaper of general circulation is regularly published, in a newspaper of  
45 general circulation nearest the area of jurisdiction. A notice of any

1 hearing accompanied by a copy of each of the proposed regulations shall be  
2 furnished to the director at least thirty days before the date of the  
3 hearing. A copy of any regulation adopted by a district pursuant to this  
4 article ~~shall~~, within five days thereafter, **SHALL** be filed with the  
5 director and with each political subdivision and municipal corporation in  
6 the area of jurisdiction.

7 G. All development of land, construction of residential, commercial  
8 or industrial structures or future development within delineated  
9 floodplain areas is prohibited unless floodplain regulations have been  
10 adopted pursuant to this article for such floodplain ~~area~~ **AREAS** and are in  
11 full force and effect.

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

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

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

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

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

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

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

43 K. A flood control district or appropriate public agency which has  
44 failed to adopt or enforce floodplain regulations required by this section  
45 shall not be eligible for disaster relief identified by section 35-192,

1 subsection D, paragraphs ~~3~~ 4 and 5. The director of water resources  
2 shall advise the director of the division of emergency management within  
3 the department of emergency and military affairs of such failure to  
4 comply.

5 L. A district and its agents may have reasonable access as provided  
6 by written authorization issued pursuant to section 48-3613 or if no  
7 authorization has been issued during business hours or in the case of an  
8 emergency, at any time, to enter and inspect any development on real  
9 property that is located in a floodplain in order to determine whether an  
10 owner is in violation of this chapter. This subsection does not authorize  
11 the inspection of any records or files on a site or the interior of any  
12 building. A district shall attempt to provide written notice to the owner  
13 at least forty-eight hours in advance that the real property is to be  
14 inspected and that the owner or the owner's agent may accompany the  
15 district inspector on the inspection. A district inspector shall comply  
16 with any safety requirements that may be applicable to a particular site.  
17 The district shall prepare a report of any inspections made pursuant to  
18 this subsection. The report shall be made available in the records of the  
19 district and a copy sent to the owner within thirty days after the  
20 inspection.

21 M. The floodplain regulations adopted by a district pursuant to  
22 this chapter are intended to carry out the requirements of the national  
23 flood insurance program and any term not otherwise defined in this chapter  
24 shall have the meaning set forth in 44 Code of Federal Regulations parts  
25 59 through 78, as effective on January 1, 2005.