



County Supervisors A S S O C I A T I O N o f a r i z o n a

2015 Legislative Policy Statement **10th Annual CSA Legislative Summit** **Yavapai County, Arizona** **October 8-10, 2014**

A. What is the legislative proposal?

The proposal would amend the floodplain violation enforcement procedure set forth in A.R.S. § 48-3615.01 by adding certain due process protections and eliminating ambiguity and unnecessary steps in the procedure. The proposal would apply only in counties with a population less than 175,000.

B. Describe the problem and explain how the proposal solves it.

Cochise County has been going through a floodplain violation enforcement procedure pursuant to A.R.S. § 48-3615.01 and found it very awkward. It calls for a hearing by a hearing officer, but the hearing officer only makes a recommendation to the chief engineer, who then renders a final order and decision. In a small county such as Cochise, the engineer who would render that final order and decision is also the engineer who has already made the determination that a violation has occurred and will be the chief witness for the flood control district at the hearing. Needless to say, the respondent property owner will see all of this as fundamentally unfair—the engineer as the investigator, prosecutor, judge and jury. While we realize that administrative procedures don't need to have all of the due process safeguards as a court procedure, the process and outcome does look ridiculously rigged.

The proposed amendment calls for the hearing officer to make the final order and decision rather than the chief engineer. The proposal makes that procedure available to counties less than 175,000 because perhaps the existing procedure works well in larger counties where there may be more engineering layers. But we would certainly have no problem adjusting that number up or down depending on the wishes of other counties.

The proposed amendment also eliminates a very needless step in the enforcement process: a show cause meeting (or something—it's not really a hearing) between the respondent property owner and the chief engineer; the actual hearing process before the hearing officer doesn't commence until after that show cause meeting. In our County, by the time we've gotten to that point, the engineer (or other representative of the flood control district) will have met with the property owner on one or more occasions to discuss and attempt to resolve the violation. So the show cause meeting just unnecessarily causes the respondent property owner to show up at a meeting and the engineer to sit around to see if the respondent will show up at the meeting. This part of the process is actually more confusing than I've just outlined, as you can see if you read through subsection B of § 48-3615.01. The proposed amendment eliminates that step.

As currently in effect, § 48-3615.01 does not provide for a complaint or answer, which hearing officers (and others) are accustomed to. Accordingly, the proposed amendment adds that if the matter goes to a hearing, the notice of violation serves as the complaint and the respondent's response to the notice of violation serves as the answer.



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The proposed amendment is attached with changes in redline.

C. What is the fiscal impact to the state or county budgets of the proposal?

None.

D. What is the preliminary analysis of the political environment and stakeholders' and affiliates' comments?

I sent an email to my counterparts in the other counties for review and received two comments, both favorable. Pima County initiated the legislation and procedure currently in effect, but would not be affected since the amendment would apply only to counties smaller than Pima.

E. Who is the primary county contact information for the proposal (name, phone, email and other relevant information)?

Name: Britt Hanson, Chief Civil Deputy, Cochise County Attorney

Phone: 520/432-8755

E-mail: bhanson@cochise.az.gov