

REFERENCE TITLE: assured water supply; service area

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

HB 2256

Introduced by
Representative Cook

AN ACT

AMENDING SECTION 45-576, ARIZONA REVISED STATUTES; RELATING TO THE
GROUNDWATER CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-576, Arizona Revised Statutes, is amended to
3 read:

4 45-576. Certificate of assured water supply; designated
5 cities, towns and private water companies;
6 exemptions; definition

7 A. Except as provided in subsections G and J of this section, a
8 person who proposes to offer subdivided lands, as defined in section
9 32-2101, for sale or lease in an active management area shall apply for
10 and obtain a certificate of assured water supply from the director ~~prior~~
11 ~~to~~ BEFORE presenting the plat for approval to the city, town or county in
12 which the land is located, where such is required, and ~~prior to~~ BEFORE
13 filing with the state real estate commissioner a notice of intention to
14 offer such lands for sale or lease, pursuant to section 32-2181, unless
15 the subdivider has obtained a written commitment of water service for the
16 subdivision from a city, town or private water company designated as
17 having an assured water supply pursuant to this section.

18 B. Except as provided in subsections G and J of this section, a
19 city, town or county may approve a subdivision plat only if the subdivider
20 has obtained a certificate of assured water supply from the director or
21 the subdivider has obtained a written commitment of water service for the
22 subdivision from a city, town or private water company designated as
23 having an assured water supply pursuant to this section. The city, town
24 or county shall note on the face of the approved plat that a certificate
25 of assured water supply has been submitted with the plat or that the
26 subdivider has obtained a written commitment of water service for the
27 proposed subdivision from a city, town or private water company designated
28 as having an assured water supply pursuant to this section.

29 C. Except as provided in subsections G and J of this section, the
30 state real estate commissioner may issue a public report authorizing the
31 sale or lease of subdivided lands only on compliance with either of the
32 following:

33 1. The subdivider, owner or agent has paid any activation fee
34 required under section 48-3772, subsection A, paragraph 7 and any
35 replenishment reserve fee required under section 48-3774.01, subsection A,
36 paragraph 2 and has obtained a certificate of assured water supply from
37 the director.

38 2. The subdivider has obtained a written commitment of water
39 service for the lands from a city, town or private water company
40 designated as having an assured water supply pursuant to this section and
41 the subdivider, owner or agent has paid any activation fee required under
42 section 48-3772, subsection A, paragraph 7.

43 D. The director shall designate private water companies in active
44 management areas that have an assured water supply. If a city or town
45 acquires a private water company that has contracted for central Arizona

1 project water, the city or town shall assume the private water company's
2 contract for central Arizona project water.

3 E. The director shall designate cities and towns in active
4 management areas where an assured water supply exists. If a city or town
5 has entered into a contract for central Arizona project water, the city or
6 town is deemed to continue to have an assured water supply until December
7 31, 1997. Commencing on January 1, 1998, the determination that the city
8 or town has an assured water supply is subject to review by the director
9 and the director may determine that a city or town does not have an
10 assured water supply.

11 F. The director shall notify the mayors of all cities and towns in
12 active management areas and the chairmen of the boards of supervisors of
13 counties in which active management areas are located of the cities, towns
14 and private water companies designated as having an assured water supply
15 and any modification of that designation within thirty days of the
16 designation or modification. If the service area of the city, town or
17 private water company has qualified as a member service area pursuant to
18 title 48, chapter 22, article 4, the director shall also notify the
19 conservation district of the designation or modification and shall report
20 the projected average annual replenishment obligation for the member
21 service area based on the projected and committed average annual demand
22 for water within the service area during the effective term of the
23 designation or modification subject to any limitation in an agreement
24 between the conservation district and the city, town or private water
25 company. For each city, town or private water company that qualified as a
26 member service area under title 48, chapter 22 and was designated as
27 having an assured water supply before January 1, 2004, the director shall
28 report to the conservation district on or before January 1, 2005 the
29 projected average annual replenishment obligation based on the projected
30 and committed average annual demand for water within the service area
31 during the effective term of the designation subject to any limitation in
32 an agreement between the conservation district and the city, town or
33 private water company. Persons proposing to offer subdivided lands served
34 by those designated cities, towns and private water companies for sale or
35 lease are exempt from applying for and obtaining a certificate of assured
36 water supply.

37 G. This section does not apply in the case of the sale of lands for
38 developments that are subject to a mineral extraction and processing
39 permit or an industrial use permit pursuant to sections 45-514 and 45-515.

40 H. The director shall adopt rules to carry out the purposes of this
41 section. On or before January 1, 2008, the rules shall provide for a
42 reduction in water demand for an application for a designation of assured
43 water supply or a certificate of assured water supply if a gray water
44 reuse system will be installed that meets the requirements of the rules
45 adopted by the department of environmental quality for gray water systems

1 and if the application is for a certificate of assured water supply, the
2 land for which the certificate is sought must qualify as a member land in
3 a conservation district pursuant to title 48, chapter 22, article 4. For
4 the purposes of this subsection, "gray water" has the same meaning
5 prescribed in section 49-201.

6 I. If the director designates a municipal provider as having an
7 assured water supply under this section and the designation lapses or
8 otherwise terminates while the municipal provider's service area is a
9 member service area of a conservation district, the municipal provider or
10 its successor shall continue to comply with the consistency with
11 management goal requirements in the rules adopted by the director under
12 subsection H of this section as if the designation was still in effect
13 with respect to the municipal provider's designation uses. When
14 determining compliance by the municipal provider or its successor with the
15 consistency with management goal requirements in the rules, the director
16 shall consider only water delivered by the municipal provider or its
17 successor to the municipal provider's designation uses. A person is the
18 successor of a municipal provider if the person commences water service to
19 uses that were previously designation uses of the municipal provider. Any
20 groundwater delivered by the municipal provider or its successor to the
21 municipal provider's designation uses in excess of the amount allowed
22 under the consistency with management goal requirements in the rules shall
23 be considered excess groundwater for purposes of title 48, chapter 22.
24 For the purposes of this subsection, "designation uses" means all water
25 uses served by a municipal provider on the date the municipal provider's
26 designation of assured water supply lapses or otherwise terminates and all
27 recorded lots within the municipal provider's service area that were not
28 being served by the municipal provider on that date but that received
29 final plat approval from a city, town or county on or before that date.
30 Designation uses do not include industrial uses served by an irrigation
31 district under section 45-497.

32 J. Subsections A, B and C of this section do not apply to a person
33 who proposes to offer subdivided land for sale or lease in an active
34 management area if all the following apply:

35 1. The director issued a certificate of assured water supply for
36 the land to a previous owner of the land and the certificate was
37 classified as a type A certificate under rules adopted by the director
38 pursuant to subsection H of this section.

39 2. The director has not revoked the certificate of assured water
40 supply described in paragraph 1 of this subsection, and proceedings to
41 revoke the certificate are not pending before the department or a court.
42 The department shall post on its website a list of all certificates of
43 assured water supply that have been revoked or for which proceedings are
44 pending before the department or a court.

1 3. The plat submitted to the department in the application for the
2 certificate of assured water supply described in paragraph 1 of this
3 subsection has not changed.

4 4. Water service is currently available to each lot within the
5 subdivided land and the water provider listed on the certificate of
6 assured water supply described in paragraph 1 of this subsection has not
7 changed.

8 5. The subdivided land qualifies as a member land under title 48,
9 chapter 22 and the subdivider has paid any activation fee required under
10 section 48-3772, subsection A, paragraph 7 and any replenishment reserve
11 fee required under section 48-3774.01, subsection A, paragraph 2.

12 6. The plat is submitted for approval to a city, town or county
13 that is listed on the department's website as a qualified platting
14 authority.

15 K. Subsection J of this section does not affect the assignment of a
16 certificate of assured water supply as prescribed by section 45-579.

17 L. FOR THE PURPOSES OF DETERMINING THE PHYSICAL AVAILABILITY OF
18 GROUNDWATER TO BE WITHDRAWN THROUGH FUTURE WELLS FOR ALL ASSURED WATER
19 SUPPLY DETERMINATIONS, THE DIRECTOR SHALL ASSUME THAT:

20 1. THE SERVICE AREA OF A WATER PROVIDER THAT IS A CITY OR TOWN IS
21 COTERMINOUS WITH THE CITY OR TOWN BOUNDARIES.

22 2. THE SERVICE AREA OF A WATER PROVIDER THAT IS AN IMPROVEMENT
23 DISTRICT FORMED PURSUANT TO TITLE 48 IS COTERMINOUS WITH ITS DISTRICT
24 BOUNDARIES.

25 3. THE SERVICE AREA OF A WATER PROVIDER THAT IS A PRIVATE WATER
26 COMPANY REGULATED BY THE CORPORATION COMMISSION IS COTERMINOUS WITH ITS
27 CERTIFICATE OF CONVENIENCE AND NECESSITY BOUNDARIES.

28 ~~L.~~ M. For the purposes of this section, "assured water supply"
29 means all of the following:

30 1. Sufficient groundwater, surface water or effluent of adequate
31 quality will be continuously available to satisfy the water needs of the
32 proposed use for at least one hundred years. Beginning January 1 of the
33 calendar year following the year in which a groundwater replenishment
34 district is required to submit its preliminary plan pursuant to section
35 45-576.02, subsection A, paragraph 1, with respect to an applicant that is
36 a member of the district, "sufficient groundwater" for the purposes of
37 this paragraph means that the proposed groundwater withdrawals that the
38 applicant will cause over a period of one hundred years will be of
39 adequate quality and will not exceed, in combination with other
40 withdrawals from land in the replenishment district, a depth to water of
41 one thousand feet or the depth of the bottom of the aquifer, whichever is
42 less. In determining depth to water for the purposes of this paragraph,
43 the director shall consider the combination of:

44 (a) The existing rate of decline.

45 (b) The proposed withdrawals.

1 (c) The expected water requirements of all recorded lots that are
2 not yet served water and that are located in the service area of a
3 municipal provider.

4 2. The projected groundwater use is consistent with the management
5 plan and achievement of the management goal for the active management
6 area.

7 3. The financial capability has been demonstrated to construct the
8 water facilities necessary to make the supply of water available for the
9 proposed use, including a delivery system and any storage facilities or
10 treatment works. The director may accept evidence of the construction
11 assurances required by section 9-463.01, 11-823 or 32-2181 to satisfy this
12 requirement.