

REFERENCE TITLE: environmental permitting; burdened communities;  
requirements

State of Arizona  
Senate  
Fifty-fifth Legislature  
Second Regular Session  
2022

## **SB 1429**

Introduced by  
Senators Mendez: Gonzales, Quezada, Terán; Representatives Andrade,  
Dalessandro, Hernandez M, Liguori, Salman, Solorio

AN ACT

AMENDING TITLE 49, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY  
ADDING SECTION 49-119; RELATING TO THE DEPARTMENT OF ENVIRONMENTAL  
QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 49, chapter 1, article 1, Arizona Revised  
3 Statutes, is amended by adding section 49-119, to read:

4 49-119. Agency permitting; burdened communities; hearings;  
5 rules; definitions

6 A. NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE  
7 OF THIS SECTION, THE DIRECTOR SHALL ADOPT A LIST OF BURDENED COMMUNITIES  
8 IN THIS STATE. THE DEPARTMENT SHALL UPDATE THE LIST OF BURDENED  
9 COMMUNITIES PERIODICALLY AS NEW DATA ON MEDIAN HOUSEHOLD INCOME BECOMES  
10 AVAILABLE AND ON ISSUANCE OF A NEW DECENNIAL CENSUS.

11 B. NOT LATER THAN SIXTY DAYS AFTER THE BURDENED COMMUNITY IS  
12 DESIGNATED PURSUANT TO SUBSECTION A OF THIS SECTION, THE GOVERNING BODY OF  
13 THE MUNICIPALITY IN WHICH THE BURDENED COMMUNITY IS LOCATED, IN  
14 CONSULTATION WITH APPROPRIATE COMMUNITY GROUPS, SHALL DESIGNATE A  
15 REPRESENTATIVE OF THE BURDENED COMMUNITY.

16 C. BEGINNING ONE HUNDRED EIGHTY DAYS AFTER THE EFFECTIVE DATE OF  
17 THIS SECTION, THE DEPARTMENT SHALL NOT GRANT A PERMIT FOR A NEW FACILITY  
18 OR FOR THE EXPANSION OF AN EXISTING FACILITY THAT IS LOCATED IN WHOLE OR  
19 IN PART IN A BURDENED COMMUNITY UNLESS THE PERMIT APPLICANT FIRST DOES ALL  
20 OF THE FOLLOWING:

21 1. PREPARES A REPORT ASSESSING THE ENVIRONMENTAL IMPACT OF THE  
22 PROPOSED NEW FACILITY OR EXPANSION OF AN EXISTING FACILITY, INCLUDING ANY  
23 CUMULATIVE IMPACTS ON THE BURDENED COMMUNITY, ANY ADVERSE ENVIRONMENTAL  
24 EFFECTS THAT CANNOT BE AVOIDED IF THE PERMIT IS GRANTED AND THE PUBLIC  
25 HEALTH IMPACT ON THE BURDENED COMMUNITY OF THE PROPOSED NEW FACILITY OR  
26 EXPANSION OF AN EXISTING FACILITY.

27 2. TRANSMITS THE REPORT REQUIRED TO BE PREPARED PURSUANT TO  
28 PARAGRAPH 1 OF THIS SUBSECTION AT LEAST THIRTY DAYS BEFORE THE PUBLIC  
29 HEARING REQUIRED PURSUANT TO PARAGRAPH 3 OF THIS SUBSECTION TO THE  
30 DEPARTMENT, THE GOVERNING BODY OF THE MUNICIPALITY IN WHICH THE BURDENED  
31 COMMUNITY IS LOCATED AND THE DESIGNATED REPRESENTATIVE OF THE BURDENED  
32 COMMUNITY. THE REPORT SHALL BE MADE AVAILABLE TO THE PUBLIC AT LEAST  
33 THIRTY DAYS BEFORE THE PUBLIC HEARING REQUIRED PURSUANT TO PARAGRAPH 3 OF  
34 THIS SUBSECTION.

35 3. ORGANIZES AND CONDUCTS A PUBLIC HEARING IN A LOCATION THAT IS  
36 CONVENIENT TO ALL INTERESTED PARTIES AS MUCH AS POSSIBLE. THE PERMIT  
37 APPLICANT SHALL PUBLISH PUBLIC NOTICES OF THE HEARING IN AT LEAST TWO  
38 NEWSPAPERS CIRCULATING WITHIN THE BURDENED COMMUNITY NOT LESS THAN  
39 TWENTY-ONE DAYS BEFORE THE HEARING. AT LEAST FOURTEEN DAYS BEFORE THE  
40 DATE SET FOR THE HEARING, THE PERMIT APPLICANT SHALL SEND A COPY OF THE  
41 PUBLIC NOTICE TO THE DEPARTMENT, THE GOVERNING BODY OF THE MUNICIPALITY IN  
42 WHICH THE BURDENED COMMUNITY IS LOCATED AND THE DESIGNATED REPRESENTATIVE  
43 OF THE BURDENED COMMUNITY. AT THE PUBLIC HEARING, THE PERMIT APPLICANT  
44 SHALL PROVIDE CLEAR, ACCURATE AND COMPLETE INFORMATION ABOUT THE PROPOSED  
45 NEW FACILITY OR EXPANSION OF AN EXISTING FACILITY AND THE POTENTIAL

1 ENVIRONMENTAL AND HEALTH IMPACTS OF THE NEW OR EXPANDED FACILITY. THE  
2 HEARING SHALL PROVIDE AN OPPORTUNITY FOR MEANINGFUL PUBLIC PARTICIPATION  
3 BY THE RESIDENTS OF THE BURDENED COMMUNITY. FOLLOWING THE PUBLIC HEARING,  
4 THE COMMISSIONER SHALL CONSIDER THE TESTIMONY PRESENTED AND EVALUATE ANY  
5 REVISIONS OR CONDITIONS TO THE PERMIT THAT MAY BE NECESSARY TO REDUCE THE  
6 ADVERSE IMPACT TO THE PUBLIC HEALTH OR TO THE ENVIRONMENT IN THE BURDENED  
7 COMMUNITY.

8 D. THE DEPARTMENT SHALL NOT ISSUE A DECISION ON THE PERMIT  
9 APPLICATION UNTIL AT LEAST SIXTY DAYS AFTER THE PUBLIC HEARING HELD  
10 PURSUANT TO THIS SECTION. NOTWITHSTANDING ANY OTHER LAW OR RULE TO THE  
11 CONTRARY, THE DEPARTMENT MAY DENY A PERMIT APPLICATION IN A BURDENED  
12 COMMUNITY ON FINDING THAT THE APPROVAL OF THE PERMIT TOGETHER WITH THE  
13 CUMULATIVE IMPACTS POSED BY THE EXISTING CONDITIONS IN THE BURDENED  
14 COMMUNITY, INCLUDING CONDITIONS RESULTING FROM PERMITTED ACTIVITIES, WOULD  
15 CONSTITUTE AN UNREASONABLE RISK TO THE HEALTH OF THE RESIDENTS OF THE  
16 BURDENED COMMUNITY AND TO THE ENVIRONMENT IN THE BURDENED COMMUNITY.

17 E. WHEN EVALUATING AN APPLICATION FOR A PERMIT PURSUANT TO THIS  
18 SECTION, THE DEPARTMENT SHALL ASSESS THE COMMUNITY SUPPORT FOR THE  
19 PROPOSED NEW FACILITY OR EXPANSION OF AN EXISTING FACILITY, AS  
20 DEMONSTRATED THROUGH THE PUBLIC HEARING CONDUCTED PURSUANT TO SUBSECTION C  
21 OF THIS SECTION, LETTERS OF SUPPORT FOR OR OPPOSITION TO THE PROPOSED NEW  
22 OR EXPANDED FACILITY AND ANY ORDINANCE OR RESOLUTION ADOPTED BY THE  
23 GOVERNING BODY OF THE MUNICIPALITY IN WHICH THE BURDENED COMMUNITY IS  
24 LOCATED. THE DEPARTMENT SHALL CONSIDER COMMUNITY SUPPORT OR THE LACK OF  
25 COMMUNITY SUPPORT IN ITS DECISION TO GRANT OR DENY A PERMIT.

26 F. IF A PERMIT APPLICANT IS APPLYING FOR MORE THAN ONE PERMIT FOR A  
27 PROPOSED NEW FACILITY OR EXPANSION OF AN EXISTING FACILITY, THE PERMIT  
28 APPLICANT IS REQUIRED TO COMPLY WITH THE PROVISIONS OF THIS SECTION ONLY  
29 ONCE, UNLESS THE DEPARTMENT IN ITS DISCRETION DETERMINES THAT MORE THAN  
30 ONE PUBLIC HEARING IS NECESSARY DUE TO THE COMPLEXITY OF THE PROPOSED NEW  
31 OR EXPANDED FACILITY. THIS SECTION DOES NOT LIMIT THE AUTHORITY OF THE  
32 DEPARTMENT TO HOLD OR REQUIRE ADDITIONAL PUBLIC HEARINGS, AS MAY BE  
33 REQUIRED BY ANY OTHER LAW OR RULE.

34 G. THE DEPARTMENT MAY ADOPT RULES TO IMPLEMENT THIS SECTION AND MAY  
35 ISSUE GUIDANCE ON HOW TO EVALUATE CUMULATIVE IMPACTS PURSUANT TO THIS  
36 SECTION. THE DEPARTMENT SHALL PUBLISH THE GUIDANCE ON ITS WEBSITE.

37 H. FOR THE PURPOSES OF THIS SECTION:

38 1. "BURDENED COMMUNITY" MEANS ANY CENSUS TRACT, AS DELINEATED IN  
39 THE MOST RECENT UNITED STATES DECENNIAL CENSUS, THAT IS RANKED IN THE  
40 BOTTOM THIRTY-THREE PERCENT OF CENSUS TRACTS IN THIS STATE FOR MEDIAN  
41 ANNUAL HOUSEHOLD INCOME.

42 2. "CUMULATIVE IMPACTS" MEANS AN EXPOSURE OR A PUBLIC HEALTH OR  
43 ENVIRONMENTAL RISK, OR OTHER EFFECT OCCURRING IN A SPECIFIC GEOGRAPHICAL  
44 AREA, INCLUDING FROM ANY ENVIRONMENTAL POLLUTION EMITTED OR RELEASED  
45 ROUTINELY, ACCIDENTALLY OR OTHERWISE FROM ANY SOURCE, AND ASSESSED BASED

1 ON THE COMBINED PAST, PRESENT AND REASONABLY FORESEEABLE EMISSIONS AND  
2 DISCHARGES AFFECTING THE GEOGRAPHICAL AREA. CUMULATIVE IMPACTS SHALL BE  
3 EVALUATED BASED ON ANY APPLICABLE GUIDANCE ISSUED BY DEPARTMENT.

4 3. "FACILITY" MEANS ANY OF THE FOLLOWING:

5 (a) AN ELECTRIC GENERATING FACILITY WITH A CAPACITY OF MORE THAN  
6 TEN MEGAWATTS.

7 (b) A RESOURCE RECOVERY FACILITY OR INCINERATOR.

8 (c) A SLUDGE COMBUSTOR OR INCINERATOR.

9 (d) A SEWAGE TREATMENT PLANT WITH A CAPACITY OF MORE THAN FIFTY  
10 MILLION GALLONS PER DAY.

11 (e) A TRANSFER STATION, RECYCLING CENTER OR OTHER SOLID WASTE  
12 FACILITY WITH A COMBINED MONTHLY VOLUME IN EXCESS OF TWENTY-FIVE TONS.

13 (f) A LANDFILL, INCLUDING A LANDFILL THAT ACCEPTS ASH, CONSTRUCTION  
14 OR DEMOLITION DEBRIS, OR SOLID WASTE.

15 (g) A MEDICAL WASTE INCINERATOR.

16 4. "PERMIT":

17 (a) MEANS ANY PERMIT, REGISTRATION OR LICENSE ISSUED BY THE  
18 DEPARTMENT ESTABLISHING THE REGULATORY AND MANAGEMENT REQUIREMENTS FOR AN  
19 ONGOING REGULATED ACTIVITY AS AUTHORIZED BY FEDERAL LAW OR APPLICABLE  
20 STATE LAWS.

21 (b) DOES NOT INCLUDE ANY PERMIT ISSUED FOR REMEDIAL ACTIONS  
22 RELATING TO A WATER QUALITY ASSURANCE REVOLVING FUND SITE.