

REFERENCE TITLE: environmental permitting; burdened communities; requirements.

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2244

Introduced by
Representatives De Los Santos: Aguilar, Gutierrez, Mathis, Ortiz,
Sandoval, Stahl Hamilton, Travers

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.