

REFERENCE TITLE: watershed health; survey; use

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1558

Introduced by
Senator Sundareshan

AN ACT

AMENDING SECTIONS 45-101, 45-105, 45-151, 45-152.01 AND 45-172, ARIZONA
REVISED STATUTES; RELATING TO WATERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-101, Arizona Revised Statutes, is amended to
3 read:

4 45-101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Appropriator" means the person or persons initiating or
7 perfecting the right to use appropriable water based on state law, or the
8 person's successor or successors in interest.

9 2. "Department" means the department of water resources.

10 3. "Director" means the director of water resources, who is also
11 the director of the department.

12 4. "ECOLOGICAL WATER NEEDS" MEANS WATER SUFFICIENT TO SUSTAIN
13 FRESHWATER ECOSYSTEMS, INCLUDING RIPARIAN AREAS, AND THE WILDLIFE HABITAT,
14 HUMAN LIVELIHOODS AND WELL-BEING THAT DEPEND ON THOSE ECOSYSTEMS.

15 ~~4.~~ 5. "Effluent" means water that has been collected in a sanitary
16 sewer for subsequent treatment in a facility that is regulated pursuant to
17 title 49, chapter 2. Such water remains effluent until it acquires the
18 characteristics of groundwater or surface water.

19 ~~5.~~ 6. "Groundwater" means water under the surface of the earth
20 regardless of the geologic structure in which it is standing or moving.
21 Groundwater does not include water flowing in underground streams with
22 ascertainable beds and banks.

23 ~~6.~~ 7. "Interstate stream" means any stream constituting or flowing
24 along the exterior boundaries of this state, and any tributary originating
25 in another state or foreign country and flowing into or through this
26 state.

27 ~~7.~~ 8. "Riparian area" means a geographically delineated area with
28 distinct resource values, that is characterized by deep-rooted plant
29 species that depend on having roots in the water table or its capillary
30 zone and that occurs within or adjacent to a natural perennial or
31 intermittent stream channel or within or adjacent to a lake, pond or marsh
32 bed maintained primarily by natural water sources. Riparian area does not
33 include areas in or adjacent to ephemeral stream channels, artificially
34 created stockponds, man-made storage reservoirs constructed primarily for
35 conservation or regulatory storage, municipal and industrial ponds or
36 man-made water transportation, distribution, off-stream storage and
37 collection systems.

38 ~~8.~~ 9. "Sanitary sewer" means any pipe or other enclosed conduit
39 that carries, among other substances, any water-carried wastes from the
40 human body from residences, commercial buildings, industrial plants or
41 institutions.

42 ~~9.~~ 10. "Surface water" means the waters of all sources, flowing in
43 streams, canyons, ravines or other natural channels, or in definite
44 underground channels, whether perennial or intermittent, floodwater,
45 wastewater or surplus water, and of lakes, ponds and springs on the

1 surface. For the purposes of administering this title, surface water is
2 deemed to include central Arizona project water.

3 11. "WATERSHED HEALTH USES" MEANS WATER THAT IS CONSERVED IN A
4 NATURAL WATERCOURSE AND NOT OTHERWISE USED AND THAT SUPPORTS THE
5 ATTRIBUTES OF WATERSHED HEALTH FOR AN INDIVIDUAL WATERSHED AS PRESCRIBED
6 IN THE REPORT REQUIRED BY SECTION 45-105, SUBSECTION B.

7 Sec. 2. Section 45-105, Arizona Revised Statutes, is amended to
8 read:

9 45-105. Powers and duties of director

10 A. The director may:

11 1. Formulate plans and develop programs for the practical and
12 economical development, management, conservation and use of surface water,
13 groundwater and the watersheds in this state, including the management of
14 water quantity and quality.

15 2. Investigate works, plans or proposals pertaining to surface
16 water and groundwater, including management of watersheds, and acquire,
17 preserve, publish and disseminate related information the director deems
18 advisable.

19 3. Collect and investigate information on and prepare and devise
20 means and plans for the development, conservation and use of all
21 waterways, watersheds, surface water, groundwater and groundwater basins
22 in this state and of all related matters and subjects, including
23 irrigation, drainage, water quality maintenance, regulation of flow,
24 diversion of running streams adapted for development in cooperating with
25 the United States or by this state independently, flood control, use of
26 water power, prevention of soil waste and storage, conservation and
27 development of water for every useful purpose.

28 4. Measure, survey and investigate the water resources of this
29 state and their potential development and cooperate and contract with
30 agencies of the United States for such purposes.

31 5. Acquire, hold and dispose of property, including land,
32 rights-of-way, water and water rights, as necessary or convenient for the
33 performance of the groundwater and water quality management functions of
34 the department.

35 6. Acquire, other than by condemnation, construct, improve,
36 maintain and operate early warning systems for flood control purposes and
37 works for the recovery, storage, treatment and delivery of water.

38 7. Accept grants, gifts or donations of money or other property
39 from any source, which may be used for any purpose consistent with this
40 title. All property acquired by the director is public property and is
41 subject to the same tax exemptions, rights and privileges granted to
42 municipalities, public agencies and other public entities.

43 8. Enter into an interagency contract or agreement with any public
44 agency pursuant to title 11, chapter 7, article 3 and contract, act

1 jointly or cooperate with any person to carry out the purposes of this
2 title.

3 9. Prosecute and defend all rights, claims and privileges of this
4 state respecting interstate streams.

5 10. Initiate and participate in conferences, conventions or
6 hearings, including congressional hearings, court hearings or hearings of
7 other competent judicial or quasi-judicial departments, agencies or
8 organizations, and negotiate and cooperate with agencies of the United
9 States or of any state or government and represent this state concerning
10 matters within the department's jurisdiction.

11 11. Apply for and hold permits and licenses from the United States
12 or any agency of the United States for reservoirs, dam sites and
13 rights-of-way.

14 12. Receive and review all reports, proposed contracts and
15 agreements from and with the United States or any agencies, other states
16 or governments or their representatives and recommend to the governor and
17 the legislature action to be taken on such reports, proposed contracts and
18 agreements. The director shall take action on such reports, if authorized
19 by law, and review and coordinate the preparation of formal comments of
20 this state on both the preliminary and final reports relating to water
21 resource development of the United States army corps of engineers, the
22 United States secretary of the interior and the United States secretary of
23 agriculture, as provided for in the flood control act of 1944 (58 Stat.
24 887; 33 United States Code section 701-1).

25 13. Contract with any person for imported water or for the
26 acquisition of water rights or rights to withdraw, divert or use surface
27 water or groundwater as necessary for the performance of the groundwater
28 management functions of the director prescribed by chapter 2 of this
29 title. If water becomes available under any contract executed under this
30 paragraph, the director may contract with any person for its delivery or
31 exchange for any other water available.

32 14. Recommend to the administrative heads of agencies, boards and
33 commissions of this state, and political subdivisions of this state, rules
34 to promote and protect the rights and interests of this state and its
35 inhabitants in any matter relating to the surface water and groundwater in
36 this state.

37 15. Conduct feasibility studies and remedial investigations
38 relating to groundwater quality and enter into contracts and cooperative
39 agreements under section 104 of the comprehensive environmental response,
40 compensation, and liability act of 1980 (P.L. 96-510) to conduct such
41 studies and investigations.

42 16. Dispose informally by stipulation, agreed settlement, consent
43 order or alternative means of dispute resolution, including arbitration,
44 if the parties and director agree, or by default of any case in which a
45 hearing before the director is required or allowed by law.

1 17. Cooperate and coordinate with the appropriate governmental
2 entities in Mexico regarding water planning in areas near the border
3 between Mexico and Arizona and for the exchange of relevant hydrological
4 information.

5 B. The director shall:

6 1. Exercise and perform all powers and duties vested in or imposed
7 on the department and adopt and issue rules necessary to carry out the
8 purposes of this title.

9 2. Administer all laws relating to groundwater, as provided in this
10 title.

11 3. Be responsible for the supervision and control of reservoirs and
12 dams of this state and, when deemed necessary, conduct investigations to
13 determine whether the existing or anticipated condition of any dam or
14 reservoir in this state is or may become a menace to life and property.

15 4. Coordinate and confer with and may contract with:

16 (a) The Arizona power authority, the game and fish commission, the
17 state land department, the Arizona outdoor recreation coordinating
18 commission, the Arizona commerce authority, the department of health
19 services, active management area water authorities or districts and
20 political subdivisions of this state with respect to matters within their
21 jurisdiction relating to surface water and groundwater and the development
22 of state water plans.

23 (b) The department of environmental quality with respect to title
24 49, chapter 2 for its assistance in the development of state water plans.

25 (c) The department of environmental quality regarding water plans,
26 water resource planning, water management, wells, water rights and
27 permits, and other appropriate provisions of this title pertaining to
28 remedial investigations, feasibility studies, site prioritization,
29 selection of remedies and implementation of the water quality assurance
30 revolving fund program pursuant to title 49, chapter 2, article 5.

31 (d) The department of environmental quality regarding coordination
32 of databases that are necessary for activities conducted pursuant to title
33 49, chapter 2, article 5.

34 5. Cooperate with the Arizona power authority in the performance of
35 the duties and functions of the authority.

36 6. Maintain a permanent public depository for existing and future
37 records of stream flow, groundwater levels and water quality and other
38 data relating to surface water and groundwater.

39 7. Maintain a public docket of all matters before the department
40 that may be subject to judicial review pursuant to this title.

41 8. Investigate and take appropriate action on any complaints
42 alleging withdrawals, diversions, impoundments or uses of surface water or
43 groundwater that may violate this title or the rules adopted pursuant to
44 this title.

1 9. Adopt an official seal for the authentication of records,
2 orders, rules and other official documents and actions.

3 10. Provide staff support to the Arizona water protection fund
4 commission established pursuant to chapter 12 of this title.

5 11. Exercise and perform all powers and duties invested in the
6 chairperson of the Arizona water banking authority commission as
7 prescribed by chapter 14 of this title.

8 12. Provide staff support to the Arizona water banking authority
9 established pursuant to chapter 14 of this title.

10 13. In the year following each regular general election, present
11 information to the committees with jurisdiction over water issues in the
12 house of representatives and the senate. A written report is not required
13 but the presentation shall include information concerning the following:

14 (a) The current status of the water supply in this state and any
15 likely changes in that status.

16 (b) Issues of regional and local drought effects, short-term and
17 long-term drought management efforts and the adequacy of drought
18 preparation throughout the state.

19 (c) The status of current water conservation programs in this
20 state.

21 (d) The current state of each active management area and the level
22 of progress toward management goals in each active management area.

23 (e) Issues affecting management of the Colorado river and the
24 reliability of this state's two million eight hundred thousand acre-foot
25 allocation of Colorado river water, including the status of water supplies
26 in and issues related to the Colorado river basin states and Mexico.

27 (f) The status of any pending or likely litigation regarding
28 surface water adjudications or other water-related litigation and the
29 potential impacts on this state's water supplies.

30 (g) The status of Indian water rights settlements and related
31 negotiations that affect this state.

32 (h) Other matters related to the reliability of this state's water
33 supplies, the responsibilities of the department and the adequacy of the
34 department's and other entities' resources to meet this state's water
35 management needs.

36 14. Not later than December 1, 2023 and on or before December 1 of
37 each year thereafter, prepare and issue a water supply and demand
38 assessment for at least six of the forty-six groundwater basins
39 established pursuant to section 45-403. The director shall ensure that a
40 water supply and demand assessment is completed for all groundwater basins
41 at least once every five years. The director may contract with outside
42 entities to perform some or all of the assessments and those outside
43 entities shall be identified in the assessment.

44 15. ON OR BEFORE DECEMBER 31 EVERY THREE YEARS AFTER THE INITIAL
45 PRELIMINARY SURVEY, ISSUE A REPORT THAT INCLUDES AN ASSESSMENT OF THE

1 OVERALL HEALTH OF EACH WATERSHED IN THIS STATE. ANY AGENCY OR POLITICAL
2 SUBDIVISION OF THIS STATE THAT HAS INFORMATION RELEVANT TO DEVELOPING THE
3 SURVEY AND REPORT PRESCRIBED BY THIS PARAGRAPH, INCLUDING THE
4 DETERMINATIONS, ASSESSMENTS, AND RECOMMENDATIONS PRESCRIBED BY THIS
5 PARAGRAPH, SHALL COOPERATE WITH THE DIRECTOR AND SHALL TIMELY PROVIDE
6 INFORMATION REQUESTED BY THE DIRECTOR. THE ASSESSMENT IF THE OVERALL
7 HEALTH OF EACH WATERSHED IN THIS STATE SHALL BE BASED ON AN EVALUATION OF
8 THE FOLLOWING ATTRIBUTES OF THE WATERSHED:

9 (a) HYDROLOGY.

10 (b) LANDSCAPE CONDITION.

11 (c) HABITAT CONDITION.

12 (d) GEOMORPHOLOGY.

13 (e) WATER QUALITY.

14 (f) BIOLOGICAL CONDITION, INCLUDING THE BIODIVERSITY OF PLANTS,
15 ANIMALS AND AQUATIC SPECIES.

16 (g) THREATS OR VULNERABILITIES OF THE WATERSHED THAT IMPACT THE
17 ATTRIBUTES PRESCRIBED BY THIS PARAGRAPH.

18 Sec. 3. Section 45-151, Arizona Revised Statutes, is amended to
19 read:

20 45-151. Right of appropriation; permitted uses; water rights
21 in stockponds

22 A. Any person, ~~the THIS state of Arizona~~ or a political subdivision
23 ~~thereof~~ OF THIS STATE may appropriate unappropriated water for domestic,
24 municipal, irrigation, stock watering, water power, recreation, wildlife,
25 including fish, nonrecoverable water storage pursuant to section
26 45-833.01, ~~or~~ mining uses OR WATERSHED HEALTH USES, for ~~his~~ personal use
27 or for delivery to consumers. The person, ~~the THIS state of Arizona~~ or a
28 political subdivision ~~thereof~~ OF THIS STATE first appropriating the water
29 shall have the better right.

30 B. To effect the beneficial use, the person, ~~the THIS state of~~
31 ~~Arizona~~ or a political subdivision ~~thereof~~ OF THIS STATE appropriating the
32 water may construct and maintain reservoirs, storage facilities pursuant
33 to chapter 3.1 of this title, dams, canals, ditches, flumes and other
34 necessary waterways OR USE EXISTING WATERWAYS.

35 C. A water right in a stockpond, certified pursuant to article 10
36 of this chapter, shall be recognized as if such water had been
37 appropriated pursuant to this article.

38 Sec. 4. Section 45-152.01, Arizona Revised Statutes, is amended to
39 read:

40 45-152.01. Instream flow applications; process; definition

41 A. In addition to the information prescribed in section 45-152, any
42 person, including the United States, this state or a municipality, who
43 files an instream flow application after ~~the effective date of this~~
44 ~~section~~ AUGUST 2, 2012 shall comply with the following:

1 1. The applicant shall submit at least five years of streamflow
2 measurement data to support the proposed beneficial use which shall be
3 submitted at the time the application is filed. The director shall not
4 accept for filing an instream flow application that is not accompanied by
5 at least five years of continuous streamflow measurement data. The
6 streamflow data submitted shall consist of gauged on-site measurements of
7 available water flow from the area in which the claimed beneficial use
8 occurs.

9 2. The instream flow application shall describe the proposed
10 beneficial use and shall specify both of the following:

11 (a) The amount of streamflow required for the proposed beneficial
12 use.

13 (b) The availability of the requested flows during claimed periods
14 of beneficial use.

15 B. Applications that are submitted after ~~the effective date of this~~
16 ~~section~~ AUGUST 2, 2012 shall be rejected if the application does not
17 comply with this section.

18 C. THIS SECTION DOES NOT APPLY TO APPLICATIONS FOR A PERMIT TO MAKE
19 AN APPROPRIATION OF WATER FOR WATERSHED HEALTH USES UNDER SECTION 45-152.

20 ~~C.~~ D. For the purposes of this section, "instream flow
21 application" means an application for a permit to make an appropriation of
22 water for purposes of recreation or wildlife, including fish, in a
23 specific stream reach without diverting the water from the stream.

24 Sec. 5. Section 45-172, Arizona Revised Statutes, is amended to
25 read:

26 45-172. Transfer of water rights; application; limitations;
27 required consent

28 A. A water right may be severed from the land to which it is
29 appurtenant or from the site of its use if for other than irrigation
30 purposes and with the consent and approval of the owner of such right may
31 be transferred for use for irrigation of agricultural lands or for
32 municipal, WATERSHED HEALTH, stock watering, power and mining purposes and
33 to the state or its political subdivisions for use for recreation and
34 wildlife purposes, including fish, without losing priority theretofore
35 established, subject to the following limitations and conditions:

36 1. Except as otherwise provided in this section no such severance
37 or transfer shall be made unless approved by the director, and the
38 approval of the director shall prescribe the conditions of the approval.

39 2. Vested or existing rights to the use of water shall not be
40 affected, infringed ~~upon nor~~ ON OR interfered with, and in no event shall
41 the water diverted or used after the transfer of such rights exceed the
42 vested rights existing at the time of such severance and transfer, and the
43 director shall by order so define and limit the amount of water to be
44 diverted or used annually subsequent to such transfer.

1 3. The water rights sought to be transferred shall have been
2 lawfully perfected under the laws of the territory or the state of Arizona
3 and shall not have thereafter been forfeited or abandoned.

4 4. No such severance or transfer of water rights shall be permitted
5 or allowed from lands within the exterior boundaries of any irrigation
6 district, agricultural improvement district or water users' association
7 without first having obtained the written consent and approval of such
8 irrigation district, agricultural improvement district or water users'
9 association.

10 5. No right to the use of water on or from any watershed or
11 drainage area ~~which~~ THAT supplies or contributes water for the irrigation
12 of lands within an irrigation district, agricultural improvement district
13 or water users' association shall be severed or transferred without the
14 consent of the governing body of such irrigation district, agricultural
15 improvement district or water users' association. All proposed
16 applications for the severance and transfer of a right to use water of or
17 from any watershed or drainage area ~~which~~ THAT supplies or contributes
18 water for the irrigation of lands within any irrigation district,
19 agricultural improvement district or water users' association shall be
20 submitted to the governing body of such irrigation district, agricultural
21 improvement district or water users' association ~~prior to~~ BEFORE the
22 filing of such application with the director. Within forty-five days
23 after the receipt of the application such governing body shall reject or
24 approve the proposed application. Failure of such governing body to
25 approve or reject the proposed application within forty-five days after
26 receipt shall constitute approval of the proposed application by such
27 governing body. No application for the severance or transfer of a right
28 to the use of water of or from any watershed or drainage area ~~which~~ THAT
29 supplies or contributes water for the irrigation of lands within any
30 irrigation district, agricultural improvement district or water users'
31 association shall be accepted for filing by the director unless
32 accompanied by the written consent of the governing body of such
33 irrigation district, agricultural improvement district or water users'
34 association to the proposed application or by satisfactory evidence that
35 such governing body failed to either accept or reject the proposed
36 application within forty-five days after receipt by such governing body.

37 6. A severance and transfer of an irrigation water right
38 appurtenant to lands within the boundaries of an irrigation district to
39 other lands within the boundaries of the same irrigation district for
40 agricultural use may be accomplished by the exclusion of lands to which a
41 water right is appurtenant from within the boundaries of an irrigation
42 district, and the inclusion in lieu of other lands within the boundaries
43 of such irrigation district. Such severance and transfer of a water right
44 shall require the consent of only the irrigation district within which the
45 affected lands are situated and of the owners of the lands affected by the

1 severance and transfer. No proceedings before ~~not~~ OR approval by the
2 director shall be required to accomplish such severance and transfer.

3 7. An application for severance and transfer of a water right shall
4 be filed with the director. The director shall give notice of the
5 application by publication once a week for three successive weeks in a
6 newspaper of general circulation in the county or counties in which the
7 watershed or drainage area is located. The notice shall state that any
8 interested person may file written objections to the proposed severance
9 and transfer with the director within thirty days after the last
10 publication of the notice. In appropriate cases, including cases in which
11 an objection has been filed, an administrative hearing may be held before
12 the director's decision on the application if the director deems a hearing
13 necessary.

14 B. Section 45-114, subsections A and B govern administrative
15 proceedings, rehearing or review and judicial review of final decisions of
16 the director under this section.

17 Sec. 6. Survey of status of waters of this state;
18 definitions; delayed repeal

19 A. The director of water resources shall:

20 1. Establish a set of standard measures, using the best available
21 science, to define ecological water needs in this state. The standard
22 measures established by the director of water resources shall include
23 criteria for examining the relationship between ecological water needs,
24 groundwater withdrawal and surface water appropriations in this state.

25 2. On or before December 31, 2024, publish a preliminary survey of
26 the status of the waters of this state, including the following:

27 (a) A watershed by watershed description of the waters of this
28 state, including an assessment of the overall health of the watershed as
29 prescribed by section 45-105, subsection B, Arizona Revised Statutes, as
30 amended by this act.

31 (b) A description of each subwatershed in which there is
32 insufficient water to satisfy the ecological water needs that are
33 identified as prescribed in paragraph 1 of this subsection.

34 (c) A determination of the appropriate methods and steps necessary
35 to monitor, maintain, improve and restore the ecosystems of each
36 watershed.

37 (d) A recommendation of any statutory changes that are needed to
38 facilitate actions supporting the ecological water needs of this state.

39 3. Provide for notice and comment of the preliminary survey by:

40 (a) Posting on the department of water resources' website the
41 preliminary survey prescribed by subsection A, paragraph 2 of this
42 section, copies of all notices required by section 41-1022, Arizona
43 Revised Statutes, and all proposed rulemakings.

1 (b) Notifying by first class mail, fax or email each person who has
2 made a timely request to the department of water resources for
3 notification of the preliminary survey prescribed by subsection A,
4 paragraph 2 of this section or for notification of all proposed
5 rulemakings under section 41-1022, Arizona Revised Statutes.

6 (c) Holding an open meeting and taking public comment not sooner
7 than sixty days after the department of water resources provides
8 notification under subdivisions (a) and (b) of this paragraph.

9 (d) Responding in writing to all public comments, whether received
10 at the hearing or otherwise, that are received by a date announced by the
11 director of water resources in the initial notice.

12 4. Post the final survey and responses to all public comments
13 received on the department of water resources' website for a period of not
14 less than six months.

15 B. Any agency or political subdivision of this state that has
16 information relevant to developing the survey, the determinations and the
17 recommendations prescribed by this section shall cooperate with the
18 director of water resources and shall timely provide information requested
19 pursuant to this section by the director of water resources.

20 C. For the purposes of this section, "ecological water needs",
21 "groundwater" and "surface water" have the same meanings prescribed in
22 section 45-101, Arizona Revised Statutes, as amended by this act.

23 D. This section is repealed from and after September 30, 2025.