

Senate Engrossed

groundwater savings certificate; assured water

State of Arizona  
Senate  
Fifty-sixth Legislature  
Second Regular Session  
2024

# SENATE BILL 1041

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; groundwater  
5 savings certificate; designated cities, towns and  
6 private water companies; exemptions; definitions

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 OR A GROUNDWATER SAVINGS  
11 CERTIFICATE from the director before presenting the plat for approval to  
12 the city, town or county in which the land is located, where such is  
13 required, and before filing with the state real estate commissioner a  
14 notice of intention to offer such lands for sale or lease, pursuant to  
15 section 32-2181, unless the subdivider has obtained a written commitment  
16 of water service for the subdivision from a city, town or private water  
17 company designated as having an assured water supply OR A GROUNDWATER  
18 SAVINGS CERTIFICATE pursuant to this section.

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

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

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

41 2. The subdivider has obtained a written commitment of water  
42 service for the lands from a city, town or private water company  
43 designated as having an assured water supply OR A GROUNDWATER SAVINGS  
44 CERTIFICATE pursuant to this section and the subdivider, owner or agent

1 has paid any activation fee required under section 48-3772, subsection A,  
2 paragraph 7.

3 D. The director shall designate private water companies in active  
4 management areas that have an assured water supply. If a city or town  
5 acquires a private water company that has contracted for central Arizona  
6 project water, the city or town shall assume the private water company's  
7 contract for central Arizona project water.

8 E. The director shall designate cities and towns in active  
9 management areas where an assured water supply exists. If a city or town  
10 has entered into a contract for central Arizona project water, the city or  
11 town is deemed to continue to have an assured water supply until December  
12 31, 1997. Commencing on January 1, 1998, the determination that the city  
13 or town has an assured water supply is subject to review by the director  
14 and the director may determine that a city or town does not have an  
15 assured water supply.

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

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

1 H. The director shall adopt rules to carry out the purposes of this  
2 section. ~~On or before January 1, 2008,~~ The rules shall provide for a  
3 reduction in water demand for an application for a designation of assured  
4 water supply or a certificate of assured water supply if a gray water  
5 reuse system will be installed that meets the requirements of the rules  
6 adopted by the department of environmental quality for gray water systems  
7 and if the application is for a certificate of assured water supply, the  
8 land for which the certificate is sought must qualify as a member land in  
9 a conservation district pursuant to title 48, chapter 22, article 4. ON  
10 OR BEFORE JANUARY 1, 2025, THE RULES SHALL PROVIDE FOR A REDUCTION IN  
11 WATER DEMAND FOR AN APPLICATION FOR A GROUNDWATER SAVINGS CERTIFICATE IF A  
12 GRAY WATER SYSTEM WILL BE INSTALLED THAT MEETS THE REQUIREMENTS OF THE  
13 RULES ADOPTED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR GRAY WATER  
14 SYSTEMS AND IF THE APPLICATION IS FOR A GROUNDWATER SAVINGS CERTIFICATE,  
15 THE LAND FOR WHICH THE CERTIFICATE IS SOUGHT MUST QUALIFY AS A MEMBER LAND  
16 IN A CONSERVATION DISTRICT PURSUANT TO TITLE 48, CHAPTER 22, ARTICLE 4.  
17 For the purposes of this subsection, "gray water" has the same meaning  
18 prescribed in section 49-201.

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

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

4 1. The director issued a certificate of assured water supply OR A  
5 GROUNDWATER SAVINGS CERTIFICATE for the land to a previous owner of the  
6 land and the certificate was classified as a type A certificate under  
7 rules adopted by the director pursuant to subsection H of this section.

8 2. The director has not revoked the certificate of assured water  
9 supply OR THE GROUNDWATER SAVINGS CERTIFICATE described in paragraph 1 of  
10 this subsection, and proceedings to revoke the certificate are not pending  
11 before the department or a court. The department shall post on its  
12 website a list of all certificates of assured water supply OR GROUNDWATER  
13 SAVINGS CERTIFICATES that have been revoked or for which proceedings are  
14 pending before the department or a court.

15 3. The plat submitted to the department in the application for the  
16 certificate of assured water supply OR GROUNDWATER SAVINGS CERTIFICATE  
17 described in paragraph 1 of this subsection has not changed.

18 4. Water service is currently available to each lot within the  
19 subdivided land and the water provider listed on the certificate of  
20 assured water supply OR THE GROUNDWATER SAVINGS CERTIFICATE described in  
21 paragraph 1 of this subsection has not changed.

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

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

29 K. Subsection J of this section does not affect the assignment of a  
30 certificate of assured water supply OR A GROUNDWATER SAVINGS CERTIFICATE  
31 as prescribed by section 45-579.

32 L. On or before December 31, 2023, the director shall study and  
33 submit to the governor, president of the senate and speaker of the house  
34 of representatives a report on whether and how a person that seeks a  
35 building permit for six or more residences within an active management  
36 area, without regard to any proposed lease term for those residences,  
37 should apply for and obtain a certificate of assured water supply from the  
38 director before presenting the permit application for approval to the  
39 county in which the land is located, unless the applicant has obtained a  
40 written commitment of water service for the residences from a city, town  
41 or private water company designated as having an assured water supply  
42 pursuant to this section.

43 M. For the purposes of this section: ~~—~~

44 1. "Assured water supply" means all of the following:

1           ~~1.~~ (a) Sufficient groundwater, surface water or effluent of  
2 adequate quality will be continuously available to satisfy the water needs  
3 of the proposed use for at least one hundred years. Beginning January 1  
4 of the calendar year following the year in which a groundwater  
5 replenishment district is required to submit its preliminary plan pursuant  
6 to section 45-576.02, subsection A, paragraph 1, with respect to an  
7 applicant that is a member of the district, "sufficient groundwater" for  
8 the purposes of this paragraph means that the proposed groundwater  
9 withdrawals that the applicant will cause over a period of one hundred  
10 years will be of adequate quality and will not exceed, in combination with  
11 other withdrawals from land in the replenishment district, a depth to  
12 water of one thousand feet or the depth of the bottom of the aquifer,  
13 whichever is less. In determining depth to water for the purposes of this  
14 paragraph, the director shall consider the combination of:

15           ~~(a)~~ (i) The existing rate of decline.  
16           ~~(b)~~ (ii) The proposed withdrawals.  
17           ~~(c)~~ (iii) The expected water requirements of all recorded lots  
18 that are not yet served water and that are located in the service area of  
19 a municipal provider.

20           ~~2.~~ (b) The projected groundwater use is consistent with the  
21 management plan and achievement of the management goal for the active  
22 management area.

23           ~~3.~~ (c) The financial capability has been demonstrated to construct  
24 the water facilities necessary to make the supply of water available for  
25 the proposed use, including a delivery system and any storage facilities  
26 or treatment works. The director may accept evidence of the construction  
27 assurances required by section 9-463.01, ~~11-823~~ 11-822 or 32-2181 to  
28 satisfy this requirement.

29           2. "GROUNDWATER SAVINGS CERTIFICATE" MEANS ALL OF THE FOLLOWING:

30           (a) THE LAND THAT IS THE SUBJECT OF THE APPLICATION FOR A  
31 GROUNDWATER SAVINGS CERTIFICATE IS OR WILL BE ENROLLED AS MEMBER LAND IN A  
32 GROUNDWATER REPLENISHMENT DISTRICT AS AUTHORIZED BY SECTION 48-3774.

33           (b) THE APPLICANT HAS DEMONSTRATED PURSUANT TO GROUNDWATER MODELS  
34 THAT WELLS THAT ARE LOCATED OR HYPOTHETICALLY LOCATED ON THE LAND THAT IS  
35 THE SUBJECT OF THE APPLICATION FOR A GROUNDWATER SAVINGS CERTIFICATE OR  
36 WELLS THAT ARE LEGALLY AUTHORIZED TO PROVIDE WATER SERVICE TO THAT LAND  
37 CAN BE OPERATED CONTINUOUSLY FOR ONE HUNDRED YEARS AT THE ANNUAL DEMAND OF  
38 THE PROPOSED DEVELOPMENT WITHOUT EXCEEDING AT THE LOCATION OF THE WELL OR  
39 WELLS A DEPTH TO WATER OF ONE THOUSAND FEET OR THE DEPTH OF THE BOTTOM OF  
40 THE AQUIFER, WHICHEVER IS LESS.

41           (c) THE APPLICANT FOR A GROUNDWATER SAVINGS CERTIFICATE MAKES NO  
42 CLAIM TO ANY SEWAGE THAT MAY BE PRODUCED FROM THE USE OF WATER ON THE LAND  
43 AND RELINQUISHES ANY CLAIM TO THE AUTHORIZED SEWAGE TREATMENT PROVIDER  
44 THAT WILL PROVIDE SEWER SERVICE TO THE LAND.

1 (d) THE PROJECTED GROUNDWATER USE IS CONSISTENT WITH THE MANAGEMENT  
2 PLAN AND ACHIEVEMENT OF THE MANAGEMENT GOAL FOR THE ACTIVE MANAGEMENT  
3 AREA.

4 (e) THE PROJECTED GROUNDWATER WILL BE OF ADEQUATE QUALITY TO  
5 SATISFY THE PROPOSED WATER NEEDS.

6 (f) THE APPLICANT OR A GROUNDWATER REPLENISHMENT DISTRICT HAS  
7 DEMONSTRATED SUFFICIENT FINANCIAL CAPABILITY TO DELIVER THE NECESSARY  
8 WATER OF ADEQUATE QUALITY.

9 Sec. 2. Short title

10 This act may be cited as the "Groundwater Protection and Housing  
11 Affordability Act".

12 Sec. 3. Conforming legislation

13 The legislative council staff shall prepare proposed legislation  
14 conforming the Arizona Revised Statutes to the provisions of this act for  
15 consideration in the fifty-seventh legislature, first regular session.