

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1523

AN ACT

AMENDING TITLE 48, CHAPTER 14, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING
SECTION 48-2033; RELATING TO SANITARY DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 48, chapter 14, article 1, Arizona Revised Statutes,
3 is amended by adding section 48-2033, to read:

4 48-2033. Standards for adoption of moratorium: extensions:
5 limitations: definitions

6 A. A SANITARY DISTRICT SHALL PROVIDE CONTINUOUS SERVICE AND SHALL NOT
7 ADOPT A MORATORIUM ON CONSTRUCTION OR LAND DEVELOPMENT UNLESS THE BOARD OF
8 DIRECTORS OF THE DISTRICT FIRST:

9 1. PROVIDES NOTICE TO THE PUBLIC THAT IS PUBLISHED ONCE IN A NEWSPAPER
10 OF GENERAL CIRCULATION IN THE COMMUNITY AT LEAST THIRTY DAYS BEFORE A FINAL
11 PUBLIC HEARING IS HELD TO CONSIDER THE ADOPTION OF THE MORATORIUM.

12 2. MAKES WRITTEN FINDINGS JUSTIFYING THE NEED FOR THE MORATORIUM AS
13 PROVIDED FOR IN SUBSECTION B OF THIS SECTION.

14 3. HOLDS A PUBLIC HEARING ON THE ADOPTION OF THE MORATORIUM AND THE
15 FINDINGS THAT SUPPORT THE MORATORIUM.

16 B. A MORATORIUM MAY ONLY BE JUSTIFIED BY DEMONSTRATION OF A NEED TO
17 PREVENT A SHORTAGE OF ESSENTIAL PUBLIC FACILITIES THAT WOULD OTHERWISE OCCUR
18 DURING THE EFFECTIVE PERIOD OF THE MORATORIUM. THIS DEMONSTRATION SHALL BE
19 BASED ON REASONABLY AVAILABLE INFORMATION AND SHALL INCLUDE AT LEAST THE
20 FOLLOWING FINDINGS:

21 1. THE ACTUAL CAPACITY OF THE EXISTING ESSENTIAL PUBLIC FACILITIES
22 BASED ON CURRENT USE.

23 2. THE EXTENT OF NEED BEYOND THE ESTIMATED CAPACITY OF EXISTING
24 ESSENTIAL PUBLIC FACILITIES EXPECTED TO RESULT FROM CONSTRUCTION OR NEW LAND
25 DEVELOPMENT, INCLUDING IDENTIFICATION OF ANY ESSENTIAL PUBLIC FACILITIES
26 CURRENTLY OPERATING BEYOND CAPACITY AND THE PORTION OF THIS CAPACITY ALREADY
27 COMMITTED TO DEVELOPMENT.

28 3. THE MORATORIUM IS REASONABLY LIMITED TO THOSE AREAS OF THE SANITARY
29 DISTRICT WHERE A SHORTAGE OF ESSENTIAL PUBLIC FACILITIES WOULD OTHERWISE
30 OCCUR AND ON PROPERTY THAT HAS NOT RECEIVED DEVELOPMENT APPROVALS BASED ON
31 THE SUFFICIENCY OF EXISTING ESSENTIAL PUBLIC FACILITIES.

32 4. THE HOUSING AND ECONOMIC DEVELOPMENT NEEDS OF THE AREA AFFECTED
33 HAVE BEEN ACCOMMODATED AS MUCH AS POSSIBLE IN ANY PROGRAM FOR ALLOCATING ANY
34 REMAINING ESSENTIAL PUBLIC FACILITY CAPACITY.

35 C. A MORATORIUM ADOPTED PURSUANT TO THIS SECTION:

36 1. DOES NOT AFFECT ANY EXPRESS PROVISION IN A DEVELOPMENT AGREEMENT
37 ENTERED INTO PURSUANT TO SECTION 11-1101 GOVERNING THE RATE, TIMING AND
38 SEQUENCING OF DEVELOPMENT.

39 2. DOES NOT AFFECT RIGHTS ACQUIRED PURSUANT TO A VESTED DEVELOPMENT
40 RIGHT.

41 3. SHALL PROVIDE A PROCEDURE FOR AN INDIVIDUAL LANDOWNER TO APPLY FOR
42 A WAIVER OF THE MORATORIUM'S APPLICABILITY TO THE LANDOWNER'S PROPERTY BY
43 CLAIMING RIGHTS OBTAINED PURSUANT TO A DEVELOPMENT AGREEMENT, A PROTECTED
44 DEVELOPMENT RIGHT OR ANY VESTED RIGHT, OR BY PROVIDING THE PUBLIC FACILITIES
45 THAT ARE THE SUBJECT OF THE MORATORIUM AT THE LANDOWNER'S COST.

1 D. A MORATORIUM SHALL NOT REMAIN IN EFFECT FOR MORE THAN ONE HUNDRED
2 TWENTY DAYS, EXCEPT THAT A MORATORIUM MAY BE EXTENDED FOR ADDITIONAL PERIODS
3 OF NOT MORE THAN ONE HUNDRED TWENTY DAYS IF THE SANITARY DISTRICT ADOPTING
4 THE MORATORIUM HOLDS A PUBLIC HEARING ON THE PROPOSED EXTENSION. THE
5 DISTRICT SHALL PROVIDE NOTICE TO THE GENERAL PUBLIC PUBLISHED ONCE IN A
6 NEWSPAPER OF GENERAL CIRCULATION IN THE COMMUNITY AT LEAST THIRTY DAYS BEFORE
7 THE HEARING ON THE PROPOSED EXTENSION. AFTER THE HEARING, THE DISTRICT MAY
8 EXTEND THE MORATORIUM IF IT MAKES WRITTEN FINDINGS THAT:

9 1. VERIFY THE PROBLEM REQUIRING THE NEED FOR THE MORATORIUM TO BE
10 EXTENDED.

11 2. DEMONSTRATE THAT REASONABLE PROGRESS IS BEING MADE TO ALLEVIATE THE
12 PROBLEM RESULTING IN THE MORATORIUM.

13 3. SET A SPECIFIC DURATION FOR THE RENEWAL OF THE MORATORIUM.

14 E. THIS SECTION DOES NOT PREVENT A SANITARY DISTRICT FROM COMPLYING
15 WITH ANY STATE OR FEDERAL LAW, REGULATION OR ORDER ISSUED IN WRITING BY AN
16 AUTHORIZED GOVERNMENTAL ENTITY.

17 F. A LANDOWNER AGGRIEVED BY A SANITARY DISTRICT'S ADOPTION OF A
18 MORATORIUM PURSUANT TO THIS SECTION MAY FILE, AT ANY TIME WITHIN THIRTY DAYS
19 AFTER THE MORATORIUM IS ADOPTED, A COMPLAINT FOR A TRIAL DE NOVO IN THE
20 SUPERIOR COURT ON THE FACTS AND THE LAW REGARDING THE MORATORIUM. ALL
21 MATTERS PRESENTED TO THE SUPERIOR COURT PURSUANT TO THIS SECTION HAVE
22 PREFERENCE ON THE COURT CALENDAR ON THE SAME BASIS AS CONDEMNATION MATTERS
23 AND THE COURT SHALL FURTHER HAVE THE AUTHORITY TO AWARD REASONABLE ATTORNEY
24 FEES INCURRED IN THE APPEAL AND TRIAL PURSUANT TO THIS SECTION TO THE
25 PREVAILING PARTY.

26 G. FOR THE PURPOSES OF THIS SECTION:

27 1. "ESSENTIAL PUBLIC FACILITIES" MEANS SEWER IMPROVEMENTS TO THE
28 EXTENT THAT THESE IMPROVEMENTS PROVIDE SERVICE TO THE SANITARY DISTRICT.

29 2. "MORATORIUM ON CONSTRUCTION OR LAND DEVELOPMENT":

30 (a) MEANS ENGAGING IN A PATTERN OR PRACTICE OF DELAYING OR STOPPING
31 ISSUANCE OF PERMITS, AUTHORIZATIONS OR APPROVALS NECESSARY FOR A SUBDIVISION
32 AND PARTITIONING OF, CONSTRUCTION ON, OR PROVISION OF SEWER SERVICE TO, ANY
33 LAND IN THE DISTRICT.

34 (b) DOES NOT INCLUDE DENIAL OR DELAY OF PERMITS OR AUTHORIZATIONS
35 BECAUSE THEY ARE INCONSISTENT WITH APPLICABLE STATUTES, RULES OR ORDINANCES.

36 3. "VESTED RIGHT" MEANS A RIGHT TO DEVELOP PROPERTY ESTABLISHED BY THE
37 EXPENDITURE OF SUBSTANTIAL SUMS OF MONEY PURSUANT TO A PERMIT OR APPROVAL
38 GRANTED BY THE COUNTY OR SANITARY DISTRICT.