

REFERENCE TITLE: assured water supply; alternative certificate

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2361

Introduced by
Representatives Shope, Barton, Cardenas: Gray, Pratt

AN ACT

AMENDING TITLE 45, CHAPTER 2, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-576.08; AMENDING SECTION 48-3774, ARIZONA REVISED STATUTES; RELATING TO ASSURED WATER SUPPLY REQUIREMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 45, chapter 2, article 9, Arizona Revised Statutes,
3 is amended by adding section 45-576.08, to read:

4 45-576.08. Reissuance of certificate of assured water supply
5 for land qualifying as member land; objections

6 A. THE OWNER OF LAND THAT HAS QUALIFIED AS MEMBER LAND IN A
7 CONSERVATION DISTRICT AND FOR WHICH THE DIRECTOR HAS ISSUED A CERTIFICATE OF
8 ASSURED WATER SUPPLY BASED ON THAT QUALIFICATION MAY APPLY TO THE DIRECTOR
9 PURSUANT TO RULES ADOPTED BY THE DIRECTOR FOR A REISSUED CERTIFICATE OF
10 ASSURED WATER SUPPLY THAT IS NOT BASED ON THE LAND QUALIFYING AS MEMBER LAND.
11 THE DIRECTOR SHALL GRANT THE APPLICATION IF THE DIRECTOR DETERMINES THAT ALL
12 OF THE FOLLOWING APPLY:

13 1. THE STATE REAL ESTATE COMMISSIONER HAS NOT ISSUED A PUBLIC REPORT
14 FOR THE LAND PURSUANT TO SECTION 32-2183.

15 2. NO INDIVIDUAL LOTS OR PARCELS WITHIN THE LAND HAVE BEEN SOLD UNDER
16 THE EXISTING CERTIFICATE.

17 3. ANY WATER USE ON THE LAND UNDER THE REISSUED CERTIFICATE WILL BE
18 CONSISTENT WITH THE MANAGEMENT GOAL FOR THE ACTIVE MANAGEMENT AREA WITHOUT
19 THE LAND QUALIFYING AS MEMBER LAND.

20 4. THE APPLICATION MEETS ALL THE APPLICABLE CRITERIA FOR REISSUANCE OF
21 A CERTIFICATE UNDER THE RULES ADOPTED BY THE DIRECTOR.

22 B. IF THE DIRECTOR GRANTS AN APPLICATION FOR A REISSUED CERTIFICATE OF
23 ASSURED WATER SUPPLY PURSUANT TO SUBSECTION A OF THIS SECTION, THE DIRECTOR
24 SHALL DO BOTH OF THE FOLLOWING AFTER THE DECISION BECOMES FINAL AND IS NOT
25 SUBJECT TO APPEAL:

26 1. NOTIFY THE CONSERVATION DISTRICT IN WHICH THE LAND IS MEMBER LAND
27 THAT THE APPLICATION HAS BEEN GRANTED AND PROVIDE THE CONSERVATION DISTRICT
28 WITH A COPY OF THE REISSUED CERTIFICATE.

29 2. EXECUTE A DECLARATION IN RECORDABLE FORM THAT HAS BEEN APPROVED BY
30 THE CONSERVATION DISTRICT THAT THE COVENANTS, CONDITIONS AND RESTRICTIONS
31 PREVIOUSLY RECORDED AGAINST THE LAND PURSUANT TO SECTION 48-3774, SUBSECTION
32 A, PARAGRAPH 5 ARE REVOKED. THE DECLARATION SHALL CONTAIN THE LEGAL
33 DESCRIPTION OF THE LAND, WHICH SHALL BE SUBSTANTIALLY SIMILAR TO THE LEGAL
34 DESCRIPTION OF THE LAND THAT WAS INCLUDED IN THE DECLARATION RECORDED
35 PURSUANT TO SECTION 48-3774, SUBSECTION A, PARAGRAPH 5.

36 C. SECTION 45-578 APPLIES TO AN APPLICATION FILED UNDER SUBSECTION A
37 OF THIS SECTION, EXCEPT THAT THE GROUNDS FOR OBJECTION TO THE REISSUANCE OF
38 THE CERTIFICATE ARE LIMITED TO WHETHER THE PROPOSED CHANGES IN THE MANNER IN
39 WHICH THE APPLICATION MEETS THE CRITERIA FOR AN ASSURED WATER SUPPLY UNDER
40 THE RULES ADOPTED BY THE DIRECTOR PURSUANT TO SECTION 45-576, SUBSECTION H
41 WILL RESULT IN THE APPLICATION SATISFYING THOSE CRITERIA.

42 Sec. 2. Section 48-3774, Arizona Revised Statutes, is amended to read:

43 48-3774. Qualification as member land

44 A. Real property qualifies as member land only if all of the following
45 apply:

1 1. The real property is located in an active management area in which
2 a part of the central Arizona project aqueduct is located.

3 2. The real property is not in a member service area or in a
4 groundwater replenishment district under chapter 27 of this title.

5 3. The real property is not a water district member land or a parcel
6 of water district member land, or in a water district member service area
7 established under chapter 28 of this title.

8 4. The conditions stated in section 45-576.01, subsection B,
9 paragraphs 2 and 3 are satisfied with respect to the district at the time of
10 the qualification.

11 5. The owner of the real property, or other person or entity, such as
12 a property owners' or homeowners' association, if the person or entity has
13 proper authority, records a declaration that has been approved by the
14 district against the real property in the official records of the county
15 where the real property is located that:

16 (a) Contains the legal description of the real property.

17 (b) Declares the intent of the owner that the real property qualify as
18 member land under this chapter.

19 (c) Declares that, in order to permit the delivery of excess
20 groundwater to the real property, each parcel of member land thereafter
21 established at the real property is subject to a parcel replenishment
22 obligation and to a replenishment assessment to be determined by the
23 district.

24 (d) Declares that qualifying as member land and subjecting the real
25 property to the parcel replenishment obligation and the replenishment
26 assessment directly benefits the real property by increasing the potential of
27 the property to qualify for a certificate of assured water supply issued by
28 the department of water resources pursuant to title 45, chapter 2, article 9,
29 thereby allowing the development, use and enjoyment of the real property.

30 (e) Contains a covenant that is binding against the real property and
31 each parcel of member land thereafter established at the real property to pay
32 to the district a replenishment assessment based on the parcel replenishment
33 obligation in an amount determined by the district pursuant to section
34 48-3772, subsection A.

35 (f) Declares that the district may impose a lien on the real property
36 and each parcel of member land thereafter established at the real property to
37 secure payment of the replenishment assessment and any applicable
38 replenishment reserve fee.

39 (g) Declares that the covenants, conditions and restrictions contained
40 in the declaration run with the land and bind all successors and assigns of
41 the owner.

42 B. The declaration may contain covenants, conditions and restrictions
43 in addition to those prescribed by this section. The declaration may be an
44 amendment or supplement to covenants, conditions and restrictions recorded
45 against developed or undeveloped land.

C. Notwithstanding subsection A of this section, no real property qualifies as member land unless the municipal provider that will provide water to the real property that is subject to the declaration records in the official records of the county where the real property is located an agreement between the district and the municipal provider that contains both of the following:

1. The legal description of the real property and the tax parcel numbers for the real property.

2. An agreement by the municipal provider to submit to the district by March 31 of each year after the recordation of the instrument the information prescribed by section 48-3775, subsection A and such other information as the district may reasonably request.

D. IF THE DIRECTOR OF WATER RESOURCES NOTIFIES THE DISTRICT PURSUANT TO SECTION 45-576.08, SUBSECTION B, PARAGRAPH 1 THAT THE DIRECTOR HAS GRANTED AN APPLICATION FOR A REISSUED CERTIFICATE OF ASSURED WATER SUPPLY FOR REAL PROPERTY THAT PREVIOUSLY QUALIFIED AS MEMBER LAND UNDER SUBSECTION A OF THIS SECTION AND IF NO INDIVIDUAL LOT OR PARCEL OF SUBDIVIDED LAND WITHIN THE REAL PROPERTY HAS BEEN SOLD OR LEASED AND THE STATE REAL ESTATE COMMISSIONER HAS NOT ISSUED A PUBLIC REPORT FOR THE LAND PURSUANT TO SECTION 32-2183, THE FOLLOWING SHALL APPLY:

1. THE DISTRICT SHALL EXECUTE BOTH OF THE FOLLOWING:

(a) A DECLARATION IN RECORDABLE FORM THAT HAS BEEN APPROVED BY THE DISTRICT REVOKING THE COVENANTS, CONDITIONS AND RESTRICTIONS PREVIOUSLY RECORDED AGAINST THE REAL PROPERTY PURSUANT TO SUBSECTION A, PARAGRAPH 5 OF THIS SECTION. THE DECLARATION SHALL CONTAIN THE LEGAL DESCRIPTION OF THE REAL PROPERTY, WHICH SHALL BE SUBSTANTIALLY SIMILAR TO THE LEGAL DESCRIPTION OF THE REAL PROPERTY INCLUDED IN THE DECLARATION RECORDED PURSUANT TO SUBSECTION A, PARAGRAPH 5 OF THIS SECTION.

(b) A DOCUMENT THAT HAS BEEN APPROVED BY THE DISTRICT REVOKING THE AGREEMENT RECORDED PURSUANT TO SUBSECTION C OF THIS SECTION FOR THE REAL PROPERTY.

2. THE REAL PROPERTY TERMINATES ITS MEMBER LAND STATUS ONLY IF ALL OF THE FOLLOWING APPLY:

(a) THE DISTRICT AND THE DIRECTOR OF WATER RESOURCES HAVE SIGNED THE DECLARATION DESCRIBED IN PARAGRAPH 1, SUBDIVISION (a) OF THIS SUBSECTION AND THE OWNER OF THE REAL PROPERTY OR OTHER PERSON OR ENTITY, SUCH AS A PROPERTY OWNERS' OR HOMEOWNERS' ASSOCIATION, IF THE PERSON OR ENTITY HAS PROPER AUTHORITY, RECORDS THE DECLARATION AGAINST THE REAL PROPERTY IN THE OFFICIAL RECORDS OF THE COUNTY WHERE THE REAL PROPERTY IS LOCATED.

(b) THE AGREEMENT RECORDED PURSUANT TO SUBSECTION C OF THIS SECTION HAS BEEN REVOKED BY MUTUAL AGREEMENT OF THE PARTIES TO THAT AGREEMENT AND THE MUNICIPAL PROVIDER HAS RECORDED NOTICE OF THAT REVOCATION IN THE OFFICIAL RECORDS OF THE COUNTY WHERE THE REAL PROPERTY IS LOCATED.