

Senate Engrossed

REFERENCE TITLE: assured water supply; subdivisions.

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 17
SENATE BILL 1274

AN ACT

AMENDING TITLE 45, CHAPTER 2, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 45-576.08 AND 45-576.09; AMENDING SECTION 45-579, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-579.01; 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. Title 45, chapter 2, article 9, Arizona Revised
3 Statutes, is amended by adding sections 45-576.08 and 45-576.09, to read:

4 45-576.08. Pinal active management area; assured water
5 supply; physical availability; definitions

6 A. ALL OF THE FOLLOWING APPLY IN THE PINAL ACTIVE MANAGEMENT AREA
7 FOR AN APPLICATION TO MODIFY A DESIGNATION OF ASSURED WATER SUPPLY:

8 1. IF THE TOTAL VOLUME OF GROUNDWATER AND STORED WATER TO BE
9 RECOVERED OUTSIDE THE AREA OF IMPACT OF STORAGE SOUGHT TO BE INCLUDED IN
10 THE DESIGNATION DOES NOT EXCEED THE TOTAL VOLUME OF THOSE SOURCES OF WATER
11 INCLUDED IN THE PREVIOUS DESIGNATION MINUS THE SUM OF THE VOLUME OF
12 GROUNDWATER ACTUALLY WITHDRAWN AND THE VOLUME OF STORED WATER RECOVERED
13 OUTSIDE THE AREA OF IMPACT OF STORAGE BY THE APPLICANT SINCE ISSUANCE OF
14 THE PREVIOUS DESIGNATION ORDER:

15 (a) THE DIRECTOR SHALL NOT REVIEW THE PHYSICAL AVAILABILITY OF THE
16 GROUNDWATER AND STORED WATER TO BE RECOVERED OUTSIDE OF THE AREA OF IMPACT
17 OF STORAGE SOUGHT TO BE INCLUDED IN THE DESIGNATION.

18 (b) THE PHYSICAL AVAILABILITY OF THE GROUNDWATER AND STORED WATER
19 TO BE RECOVERED OUTSIDE THE AREA OF IMPACT OF STORAGE SOUGHT TO BE
20 INCLUDED IN THE DESIGNATION SHALL NOT BE GROUNDS FOR AN OBJECTION.

21 2. PARAGRAPH 1 OF THIS SUBSECTION SHALL NOT AFFECT THE DIRECTOR'S
22 REVIEW OF ASSURED WATER SUPPLY CRITERIA OTHER THAN THE PHYSICAL
23 AVAILABILITY OF GROUNDWATER AND STORED WATER TO BE RECOVERED OUTSIDE THE
24 AREA OF IMPACT OF STORAGE.

25 3. BOTH OF THE FOLLOWING ARE DEEMED PHYSICALLY AVAILABLE FOR
26 PURPOSES OF AN ASSURED WATER SUPPLY DESIGNATION:

27 (a) STORED WATER THAT IS TO BE RECOVERED BY THE APPLICANT WITHIN
28 THE AREA OF IMPACT OF STORAGE PURSUANT TO EXISTING LONG-TERM STORAGE
29 CREDITS PLEDGED TO THE DESIGNATION OF ASSURED WATER SUPPLY.

30 (b) STORED WATER THAT IS TO BE RECOVERED BY THE APPLICANT WITHIN
31 THE AREA OF IMPACT OF STORAGE EITHER ON AN ANNUAL BASIS PURSUANT TO
32 SECTION 45-851.01 OR AS LONG-TERM STORAGE CREDITS TO BE EARNED IN THE
33 FUTURE IF THE WATER TO BE STORED MEETS THE PHYSICAL AVAILABILITY
34 REQUIREMENTS FOR THE WATER SUPPLY UNDER RULES ADOPTED PURSUANT TO SECTION
35 45-576, SUBSECTION H.

36 B. FOR THE PURPOSES OF THIS SECTION:

37 1. "AREA OF IMPACT OF STORAGE" MEANS ANY OF THE FOLLOWING:

38 (a) WITHIN ONE MILE OF AN EXISTING OR PROPOSED UNDERGROUND STORAGE
39 FACILITY WHERE THE WATER TO BE RECOVERED IS OR WILL BE STORED.

40 (b) WITHIN THE DISTRICT BOUNDARIES OF AN IRRIGATION DISTRICT THAT
41 HAS A PERMIT FOR A GROUNDWATER SAVINGS FACILITY AND WHERE THE WATER TO BE
42 RECOVERED IS OR WILL BE STORED.

43 (c) AN AREA NOT DESCRIBED IN SUBDIVISION (a) OR (b) OF THIS
44 PARAGRAPH THAT HAS BEEN SHOWN TO HAVE BEEN POSITIVELY IMPACTED BY THE

1 STORAGE OF THE WATER TO BE RECOVERED AS DEMONSTRATED BY A HYDROLOGIC MODEL
2 APPROVED BY THE DIRECTOR.

3 2. "LONG-TERM STORAGE CREDIT" HAS THE SAME MEANING PRESCRIBED IN
4 SECTION 45-802.01.

5 3. "STORED WATER" HAS THE SAME MEANING PRESCRIBED IN SECTION
6 45-802.01.

7 45-576.09. Active management areas; director's authority to
8 change assured water supply rules

9 NOTWITHSTANDING ANY OTHER LAW, THE DIRECTOR MAY REVISE THE RULES
10 ADOPTED PURSUANT TO SECTION 45-576, SUBSECTION H TO APPLY SECTION
11 45-576.08 TO OTHER ACTIVE MANAGEMENT AREAS.

12 Sec. 2. Section 45-579, Arizona Revised Statutes, is amended to
13 read:

14 45-579. Assignment of certificate of assured water supply;
15 definition

16 A. A holder of a certificate of assured water supply issued
17 pursuant to section 45-576 may assign the certificate, in whole or in
18 part, to another person if the holder applies to the director for approval
19 within ten years after the original certificate was issued and the
20 director approves the application. An application may be filed under this
21 section more than ten years after the original certificate was issued if a
22 minimum of five hundred lots within the subdivision covered by the
23 certificate have been sold to individual home buyers by the holder of the
24 certificate and any previous holders of the certificate. An application
25 filed under this section shall be on a form prescribed by the director.
26 The director shall approve a timely application for assignment of a
27 certificate of assured water supply if the director determines that all of
28 the following apply:

29 1. The proposed assignee owns or is acquiring the subdivision to
30 which the current certificate applies, or if the application is for a
31 partial assignment, the portion of the subdivision to which the current
32 certificate applies that is the subject of the proposed assignment.

33 2. There has not been any material change in the subdivision plat,
34 plan or map since the certificate was originally issued, including ~~an~~
35 ~~increase in the total number of housing units or~~ an increase in the total
36 water demand for the subdivision, including all assignments. **FOR THE**
37 **PURPOSE OF THIS PARAGRAPH, A CHANGE IN THE TOTAL NUMBER OF HOUSING UNITS**
38 **OR LOTS DOES NOT CONSTITUTE A MATERIAL CHANGE IN A SUBDIVISION PLAT, PLAN**
39 **OR MAP IF THERE IS A REDUCTION IN THE TOTAL WATER DEMAND FOR THE**
40 **SUBDIVISION.**

41 3. Either there is water delivery infrastructure in place that is
42 capable of delivering water to each lot within the subdivision or the
43 proposed assignee has demonstrated financial capability to complete the
44 infrastructure. In determining whether the proposed assignee has
45 demonstrated financial capability to complete the infrastructure, the

1 director shall apply the same standards that are used in evaluating
2 financial capability for a new certificate application.

3 4. The water provider serving the subdivision and the source of
4 supply have not changed since the current certificate was issued and the
5 water provider has agreed to serve the subdivision after the assignment.

6 5. Water rights, permits, licenses, contracts and easements other
7 than the municipal provider's service area rights at the time the current
8 certificate was issued have been assigned and may be used to support water
9 service to the portion of the subdivision that is the subject of the
10 assignment and to any remaining portions of the subdivision that are
11 retained by the subdivider.

12 6. There has not been any change in the manner in which the
13 consistency with management goal requirements were satisfied at the time
14 the original certificate was issued.

15 B. After a change of ownership has occurred and on approval of an
16 assignment, the director shall issue a certificate of assured water supply
17 in the name of the assignee, retaining the date of the original
18 certificate as the date of issuance.

19 C. In the case of a partial assignment, the director shall issue a
20 certificate in the name of the assignee for the portion of the subdivision
21 that is the subject of the proposed assignment, and shall issue a
22 certificate in the name of the assignor for the portion of the subdivision
23 retained, each with the date of the original certificate as the date of
24 issuance. The new certificates shall include all water demand for the
25 subdivision represented by the current certificate. The allocation of
26 demand between the certificates shall be based on a reasonable plan for
27 allocation of the total subdivision demand as approved by the director.

28 D. Section 45-578 does not apply to an application filed under this
29 section. Section 45-114, subsections A and B govern administrative
30 proceedings, rehearing and review and judicial review of final decisions
31 of the director under this section. If an administrative hearing is held,
32 it shall be conducted in the active management area in which the use is
33 located.

34 E. Within two business days after receiving an application under
35 subsection A of this section, the director shall post notice of the
36 application on the department's ~~web-site~~ WEBSITE until the director issues
37 a decision on the application. The notice shall include notice of the
38 right to submit comments on the application as provided in this
39 subsection, including a toll free number where comments may be submitted
40 by telephone and the addresses where comments may be submitted by United
41 States mail, electronic mail and hand delivery. Any person may submit
42 comments on the application within fourteen calendar days after the first
43 day that notice of the application is posted on the department's ~~web-site~~
44 WEBSITE. The director shall consider all timely comments submitted on the
45 application before issuing a decision on the application. Within two

1 business days after issuing a decision on the application, the director
2 shall post notice of the decision on the department's ~~web-site~~ WEBSITE for
3 a minimum of fourteen days. Notwithstanding title 41, chapter 6, article
4 10 and section 45-114, a person who submits comments on an application
5 pursuant to this subsection is not a party for purposes of title 41,
6 chapter 6, article 10, is not entitled to an administrative hearing before
7 or after the director's decision on the application and is not entitled to
8 judicial review of the director's decision.

9 F. For the purposes of this section, "original certificate" means
10 the initial certificate of assured water supply that is issued by the
11 director for a subdivision.

12 Sec. 3. Title 45, chapter 2, article 9, Arizona Revised Statutes,
13 is amended by adding section 45-579.01, to read:

14 45-579.01. Certificate of assured water supply; material
15 change; plat

16 FOR THE PURPOSE OF DETERMINING WHETHER CHANGES TO A PLAT FOR WHICH A
17 CERTIFICATE HAS BEEN ISSUED IN AN ACTIVE MANAGEMENT AREA ARE MATERIAL
18 UNDER RULES ADOPTED PURSUANT TO SECTION 45-576, SUBSECTION H, THE DIRECTOR
19 SHALL NOT CONSIDER ANY CHANGE IN THE NUMBER OF HOUSING UNITS OR LOTS IF
20 THERE IS A REDUCTION IN THE TOTAL WATER DEMAND FOR THE SUBDIVISION.

APPROVED BY THE GOVERNOR FEBRUARY 12, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE FEBRUARY 12, 2021.