

House Engrossed Senate Bill

assured water; small residential developments..

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

SENATE BILL 1432

AN ACT

AMENDING TITLE 9, CHAPTER 4, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 9-500.40; REPEALING SECTION 9-500.40, ARIZONA REVISED STATUTES; AMENDING SECTION 45-576, ARIZONA REVISED STATUTES; RELATING TO ASSURED WATER SUPPLY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 9, chapter 4, article 8, Arizona Revised Statutes,
3 is amended by adding section 9-500.40, to read:

4 9-500.40. Water service outside city or town; requirements;
5 standpipe district

6 A. A CITY OR TOWN THAT PROVIDES WATER SERVICE SHALL PROVIDE WATER
7 SERVICE THROUGH AN INTERGOVERNMENTAL AGREEMENT WITH A STANDPIPE DISTRICT
8 FOR A PERIOD OF NOT MORE THAN THREE YEARS BY USE OF A STANDPIPE FOR WATER
9 HAULING TO RESIDENCES OUTSIDE THE CITY'S OR TOWN'S WATER SERVICE AREA THAT
10 DO NOT HAVE ACCESS TO SUFFICIENT WATER IF ALL OF THE FOLLOWING APPLY:

11 1. THE NUMBER OF IMPACTED RESIDENCES TO BE SERVICED IS NOT MORE
12 THAN SEVEN HUNDRED FIFTY AND THE RESIDENCES ARE IN AN AREA THAT IS AN
13 UNINCORPORATED COMMUNITY WITHIN THE STANDPIPE DISTRICT AND ADJACENT TO THE
14 CITY OR TOWN.

15 2. THE CITY OR TOWN PREVIOUSLY PROVIDED WATER SERVICE TO THE
16 RESIDENCES THAT DO NOT HAVE ACCESS TO SUFFICIENT WATER.

17 3. THERE IS NO OTHER ADEQUATE SOURCE OF WATER FOR THOSE PERSONS
18 WITHIN TEN MILES OF THEIR RESIDENCES.

19 4. THE CITY OR TOWN IS REIMBURSED FOR THE FULL REASONABLE COSTS OF
20 PROVIDING AND DELIVERING THE WATER.

21 5. THE IMPACTED AREA IS IN A COUNTY WITH A POPULATION OF MORE THAN
22 SEVEN HUNDRED FIFTY THOUSAND PERSONS.

23 6. PROVIDING THE WATER AT THE STANDPIPE DOES NOT, WITHOUT THE
24 CITY'S OR TOWN'S CONSENT, REDUCE THE AMOUNT OF WATER AVAILABLE TO
25 RESIDENCES AND BUSINESSES WITHIN THE CITY'S OR TOWN'S WATER SERVICE AREA
26 OR TO RESIDENCES AND BUSINESSES OUTSIDE OF THE CITY'S OR TOWN'S WATER
27 SERVICE AREA WITH WHOM THE CITY OR TOWN HAS DIRECTLY CONTRACTED TO PROVIDE
28 WATER THROUGH MEANS OTHER THAN HAULING WATER.

29 B. THE STANDPIPE DISTRICT SHALL ENTER INTO AN INTERGOVERNMENTAL
30 AGREEMENT WITH THE CITY OR TOWN, AND THE INTERGOVERNMENTAL AGREEMENT SHALL
31 PROVIDE THAT THE STANDPIPE DISTRICT AGREES TO BE RESPONSIBLE FOR ALL OF
32 THE FOLLOWING:

33 1. DELIVERING WATER PURSUANT TO THIS SECTION TO WATER HAULERS
34 SERVING MEMBERS OF THE STANDPIPE DISTRICT. SELF HAULING OF WATER IS
35 ALLOWED.

36 2. PAYING THE CITY OR TOWN FOR THE FULL COSTS OF PROVIDING THE
37 WATER TO THE RESIDENCES ELIGIBLE TO RECEIVE WATER SERVICES PURSUANT TO
38 THIS SECTION. THE STANDPIPE DISTRICT MAY DO SO EITHER DIRECTLY OR THROUGH
39 ONE OR MORE THIRD PARTIES.

40 3. BILLING THE RESIDENCES FOR THE COST OF THE WATER BEING
41 RECEIVED. THE STANDPIPE DISTRICT MAY DO SO EITHER DIRECTLY OR THROUGH ONE
42 OR MORE THIRD PARTIES.

43 4. PROVIDING AN ANNUAL AMOUNT OF WATER TO THE RESIDENCES THAT MAY
44 EXCEED THE ANNUAL AMOUNT OF WATER THE RESIDENCES IN THE AREA PRESCRIBED BY
45 THIS SECTION PREVIOUSLY RECEIVED IF THE ADDITIONAL AMOUNTS DO NOT VIOLATE

1 SUBSECTION A, PARAGRAPH 6 OF THIS SECTION. THE STANDPIPE DISTRICT MAY
2 PROVIDE THE WATER THROUGH ONE OR MORE THIRD PARTIES.

3 5. IF THE ANNUAL AMOUNT OF WATER PROVIDED PURSUANT TO THE
4 INTERGOVERNMENTAL AGREEMENT IS EXCEEDED, SUSPENDED OR REDUCED,
5 IMPLEMENTING AND ENFORCING ANY NECESSARY WATER CONSERVATION MEASURES.

6 6. WORKING TO IDENTIFY A LONG-TERM SOLUTION FOR THE WATER NEEDS OF
7 THE AREA PRESCRIBED BY THIS SECTION.

8 C. THE INTERGOVERNMENTAL AGREEMENT EXECUTED PURSUANT TO THIS
9 SECTION SHALL INDEMNIFY THE CITY OR TOWN WITH RESPECT TO ANY ACTIONS TAKEN
10 OR OCCURRENCES AFTER WATER IS PROVIDED AT THE STANDPIPE.

11 D. THE PROVISION OF WATER PURSUANT TO THIS SECTION AND THE
12 INTERGOVERNMENTAL AGREEMENT AUTHORIZED BY THIS SECTION ARE CONTINGENT ON A
13 STANDPIPE DISTRICT OBTAINING A SOURCE OF WATER FROM A THIRD PARTY ABSENT A
14 CITY'S OR TOWN'S CONSENT TO USE THE CITY'S OR TOWN'S OWN SOURCE OF WATER.

15 E. NOT MORE THAN SEVEN HUNDRED FIFTY RESIDENCES SHALL BE ALLOWED TO
16 RECEIVE WATER FROM ANY STANDPIPE DISTRICT.

17 F. A CITY OR TOWN MAY REDUCE OR SUSPEND THE AMOUNT OF WATER
18 PROVIDED PURSUANT TO THIS SECTION IF WATER BECOMES UNAVAILABLE FROM A
19 THIRD PARTY.

20 G. A CITY OR TOWN IS NOT LIABLE TO ANY PERSON OR ENTITY FOR
21 PROVIDING OR FAILING TO PROVIDE WATER PURSUANT TO THIS SECTION.

22 H. THIS SECTION DOES NOT PRECLUDE EXECUTION OR IMPLEMENTATION OF A
23 VOLUNTARY AGREEMENT BEFORE THE EFFECTIVE DATE OF THIS SECTION. THIS
24 SECTION DOES NOT APPLY IF SUCH A VOLUNTARY AGREEMENT RESULTS IN ADEQUATE
25 WATER BEING SUPPLIED TO THE RESIDENCES THAT WOULD OTHERWISE BE SERVED.

26 I. PROPERTY OWNERS IN THE IMPACTED AREA MAY JOIN, OR NOT JOIN, THE
27 STANDPIPE DISTRICT. THE STANDPIPE DISTRICT SHALL ONLY PROVIDE WATER TO
28 THE MEMBERS OF THE STANDPIPE DISTRICT.

29 J. THE STANDPIPE DISTRICT SHALL BE GOVERNED BY A FIVE-PERSON BOARD
30 OF DIRECTORS WHO SHALL BE MEMBERS OF THE STANDPIPE DISTRICT ON OR BEFORE
31 TAKING OFFICE. APPOINTMENTS SHALL BE MADE WITHIN FOURTEEN DAYS OF THE
32 OCCURRENCE OF THE CONDITIONS IN SUBSECTION A OF THIS SECTION, OR IF SUCH
33 CONDITIONS ALREADY EXIST AS OF THE EFFECTIVE DATE OF THIS SECTION, WITHIN
34 FOURTEEN DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. THE STANDPIPE
35 DISTRICT BOARD SHALL CONSIST OF THE FOLLOWING MEMBERS:

36 1. ONE MEMBER WHO IS APPOINTED BY THE SPEAKER OF THE HOUSE OF
37 REPRESENTATIVES.

38 2. ONE MEMBER WHO IS APPOINTED BY THE PRESIDENT OF THE SENATE.

39 3. ONE MEMBER WHO IS APPOINTED BY THE GOVERNOR AND WHO SERVES AT
40 THE PLEASURE OF THE GOVERNOR.

41 4. ONE MEMBER WHO IS APPOINTED BY THE COMMISSIONER OF THE STATE
42 REAL ESTATE DEPARTMENT AND WHO SERVES AT THE PLEASURE OF THE COMMISSIONER
43 OF THE STATE REAL ESTATE DEPARTMENT.

1 5. ONE MEMBER WHO IS APPOINTED BY THE DIRECTOR OF THE DEPARTMENT OF
2 WATER RESOURCES AND WHO SERVES AT THE PLEASURE OF THE DIRECTOR OF THE
3 DEPARTMENT OF WATER RESOURCES.

4 K. EACH STANDPIPE DISTRICT SHALL HAVE NO POWERS OTHER THAN THOSE
5 EXPRESSLY CONTEMPLATED BY THIS SECTION. THE STANDPIPE DISTRICT MAY LEVY A
6 REASONABLE AND MINIMAL SURCHARGE ON THE PRICE OF WATER TO REIMBURSE THE
7 STANDPIPE DISTRICT FOR COSTS OF BILLING AND ADMINISTRATION AND OTHER
8 REASONABLE EXPENSES. THE SURCHARGE SHALL NOT EXCEED TEN PERCENT OF A
9 CUSTOMER'S BILL WITHOUT THE UNANIMOUS APPROVAL OF THE BOARD OF THE
10 STANDPIPE DISTRICT.

11 L. A STANDPIPE DISTRICT IS NOT SUBJECT TO EMINENT DOMAIN PURSUANT
12 TO SECTION 9-516.

13 M. IN THE EVENT THAT THE CONDITIONS SET FORTH IN SUBSECTION A OF
14 THIS SECTION APPLY TO AN AREA, A STANDPIPE DISTRICT IN THE IMPACTED AREA
15 BEGINS TO EXIST WHEN A MAJORITY OF MEMBERS OF ITS BOARD ARE APPOINTED. A
16 STANDPIPE DISTRICT TERMINATES ON THE REPEAL OF THIS SECTION.

17 Sec. 2. Delayed repeal

18 Section 9-500.40, Arizona Revised Statutes, as added by this act, is
19 repealed from and after December 31, 2025.

20 Sec. 3. Section 45-576, Arizona Revised Statutes, is amended to
21 read:

22 45-576. Certificate of assured water supply; designated
23 cities, towns and private water companies;
24 exemptions; definition

25 A. Except as provided in subsections G and J of this section, a
26 person who proposes to offer subdivided lands, as defined in section
27 32-2101, for sale or lease in an active management area shall apply for
28 and obtain a certificate of assured water supply from the director ~~prior~~
29 ~~to~~ BEFORE presenting the plat for approval to the city, town or county in
30 which the land is located, where such is required, and ~~prior to~~ BEFORE
31 filing with the state real estate commissioner a notice of intention to
32 offer such lands for sale or lease, pursuant to section 32-2181, unless
33 the subdivider has obtained a written commitment of water service for the
34 subdivision from a city, town or private water company designated as
35 having an assured water supply pursuant to this section.

36 B. Except as provided in subsections G and J of this section, a
37 city, town or county may approve a subdivision plat only if the subdivider
38 has obtained a certificate of assured water supply from the director or
39 the subdivider has obtained a written commitment of water service for the
40 subdivision from a city, town or private water company designated as
41 having an assured water supply pursuant to this section. The city, town
42 or county shall note on the face of the approved plat that a certificate
43 of assured water supply has been submitted with the plat or that the
44 subdivider has obtained a written commitment of water service for the

1 proposed subdivision from a city, town or private water company designated
2 as having an assured water supply pursuant to this section.

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

7 1. The subdivider, owner or agent has paid any activation fee
8 required under section 48-3772, subsection A, paragraph 7 and any
9 replenishment reserve fee required under section 48-3774.01, subsection A,
10 paragraph 2 and has obtained a certificate of assured water supply from
11 the director.

12 2. The subdivider has obtained a written commitment of water
13 service for the lands from a city, town or private water company
14 designated as having an assured water supply pursuant to this section and
15 the subdivider, owner or agent has paid any activation fee required under
16 section 48-3772, subsection A, paragraph 7.

17 D. The director shall designate private water companies in active
18 management areas that have an assured water supply. If a city or town
19 acquires a private water company that has contracted for central Arizona
20 project water, the city or town shall assume the private water company's
21 contract for central Arizona project water.

22 E. The director shall designate cities and towns in active
23 management areas where an assured water supply exists. If a city or town
24 has entered into a contract for central Arizona project water, the city or
25 town is deemed to continue to have an assured water supply until December
26 31, 1997. Commencing on January 1, 1998, the determination that the city
27 or town has an assured water supply is subject to review by the director
28 and the director may determine that a city or town does not have an
29 assured water supply.

30 F. The director shall notify the mayors of all cities and towns in
31 active management areas and the chairmen of the boards of supervisors of
32 counties in which active management areas are located of the cities, towns
33 and private water companies designated as having an assured water supply
34 and any modification of that designation within thirty days of the
35 designation or modification. If the service area of the city, town or
36 private water company has qualified as a member service area pursuant to
37 title 48, chapter 22, article 4, the director shall also notify the
38 conservation district of the designation or modification and shall report
39 the projected average annual replenishment obligation for the member
40 service area based on the projected and committed average annual demand
41 for water within the service area during the effective term of the
42 designation or modification subject to any limitation in an agreement
43 between the conservation district and the city, town or private water
44 company. For each city, town or private water company that qualified as a
45 member service area under title 48, chapter 22 and was designated as

1 having an assured water supply before January 1, 2004, the director shall
2 report to the conservation district on or before January 1, 2005 the
3 projected average annual replenishment obligation based on the projected
4 and committed average annual demand for water within the service area
5 during the effective term of the designation subject to any limitation in
6 an agreement between the conservation district and the city, town or
7 private water company. Persons proposing to offer subdivided lands served
8 by those designated cities, towns and private water companies for sale or
9 lease are exempt from applying for and obtaining a certificate of assured
10 water supply.

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

14 H. The director shall adopt rules to carry out the purposes of this
15 section. On or before January 1, 2008, the rules shall provide for a
16 reduction in water demand for an application for a designation of assured
17 water supply or a certificate of assured water supply if a gray water
18 reuse system will be installed that meets the requirements of the rules
19 adopted by the department of environmental quality for gray water systems
20 and if the application is for a certificate of assured water supply, the
21 land for which the certificate is sought must qualify as a member land in
22 a conservation district pursuant to title 48, chapter 22, article 4. For
23 the purposes of this subsection, "gray water" has the same meaning
24 prescribed in section 49-201.

25 I. If the director designates a municipal provider as having an
26 assured water supply under this section and the designation lapses or
27 otherwise terminates while the municipal provider's service area is a
28 member service area of a conservation district, the municipal provider or
29 its successor shall continue to comply with the consistency with
30 management goal requirements in the rules adopted by the director under
31 subsection H of this section as if the designation was still in effect
32 with respect to the municipal provider's designation uses. When
33 determining compliance by the municipal provider or its successor with the
34 consistency with management goal requirements in the rules, the director
35 shall consider only water delivered by the municipal provider or its
36 successor to the municipal provider's designation uses. A person is the
37 successor of a municipal provider if the person commences water service to
38 uses that were previously designation uses of the municipal provider. Any
39 groundwater delivered by the municipal provider or its successor to the
40 municipal provider's designation uses in excess of the amount allowed
41 under the consistency with management goal requirements in the rules shall
42 be considered excess groundwater for purposes of title 48, chapter 22.
43 For the purposes of this subsection, "designation uses" means all water
44 uses served by a municipal provider on the date the municipal provider's
45 designation of assured water supply lapses or otherwise terminates and all

1 recorded lots within the municipal provider's service area that were not
2 being served by the municipal provider on that date but that received
3 final plat approval from a city, town or county on or before that date.
4 Designation uses do not include industrial uses served by an irrigation
5 district under section 45-497.

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

9 1. The director issued a certificate of assured water supply for
10 the land to a previous owner of the land and the certificate was
11 classified as a type A certificate under rules adopted by the director
12 pursuant to subsection H of this section.

13 2. The director has not revoked the certificate of assured water
14 supply described in paragraph 1 of this subsection, and proceedings to
15 revoke the certificate are not pending before the department or a court.
16 The department shall post on its website a list of all certificates of
17 assured water supply that have been revoked or for which proceedings are
18 pending before the department or a court.

19 3. The plat submitted to the department in the application for the
20 certificate of assured water supply described in paragraph 1 of this
21 subsection has not changed.

22 4. Water service is currently available to each lot within the
23 subdivided land and the water provider listed on the certificate of
24 assured water supply described in paragraph 1 of this subsection has not
25 changed.

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

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

33 K. Subsection J of this section does not affect the assignment of a
34 certificate of assured water supply as prescribed by section 45-579.

35 L. ON OR BEFORE DECEMBER 31, 2023, THE DIRECTOR SHALL STUDY AND
36 SUBMIT TO THE GOVERNOR, PRESIDENT OF THE SENATE AND SPEAKER OF THE HOUSE
37 OF REPRESENTATIVES A REPORT ON WHETHER AND HOW A PERSON THAT SEEKS A
38 BUILDING PERMIT FOR SIX OR MORE RESIDENCES WITHIN AN ACTIVE MANAGEMENT
39 AREA, WITHOUT REGARD TO ANY PROPOSED LEASE TERM FOR THOSE RESIDENCES,
40 SHOULD APPLY FOR AND OBTAIN A CERTIFICATE OF ASSURED WATER SUPPLY FROM THE
41 DIRECTOR BEFORE PRESENTING THE PERMIT APPLICATION FOR APPROVAL TO THE
42 COUNTY IN WHICH THE LAND IS LOCATED, UNLESS THE APPLICANT HAS OBTAINED A
43 WRITTEN COMMITMENT OF WATER SERVICE FOR THE RESIDENCES FROM A CITY, TOWN
44 OR PRIVATE WATER COMPANY DESIGNATED AS HAVING AN ASSURED WATER SUPPLY
45 PURSUANT TO THIS SECTION.

1 ~~L~~ M. For the purposes of this section, "assured water supply"
2 means all of the following:

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

17 (a) The existing rate of decline.

18 (b) The proposed withdrawals.

19 (c) The expected water requirements of all recorded lots that are
20 not yet served water and that are located in the service area of a
21 municipal provider.

22 2. The projected groundwater use is consistent with the management
23 plan and achievement of the management goal for the active management
24 area.

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

31 Sec. 4. Emergency

32 This act is an emergency measure that is necessary to preserve the
33 public peace, health or safety and is operative immediately as provided by
34 law.