

House Engrossed Senate Bill
groundwater sales; online exchange.

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

SENATE BILL 1243

AN ACT

AMENDING SECTION 45-558, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 13; REPEALING TITLE 45, CHAPTER 2, ARTICLE 13, 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 45-558, Arizona Revised Statutes, is amended to
3 read:

4 45-558. Weeds and dust

5 A person shall maintain property owned by the person and from which
6 groundwater is or will be transported pursuant to this article **OR FROM**
7 **WHICH GROUNDWATER MAY BE SOLD, LEASED OR OTHERWISE CONVEYED PURSUANT TO**
8 **ARTICLE 13 OF THIS CHAPTER** free of noxious weeds as defined in section
9 3-201, Russian thistles (*salsola kali*) and blowing dust that creates a
10 threat to health or safety.

11 Sec. 2. Title 45, chapter 2, Arizona Revised Statutes, is amended
12 by adding article 13, to read:

13 ARTICLE 13. WATER MARKETPLACE

14 45-651. Right to buy and sell groundwater; notice; exemption;
15 disclosure

16 A. NOTWITHSTANDING ANY OTHER LAW, A PERSON WITH A GRANDFATHERED
17 RIGHT TO GROUNDWATER AS PRESCRIBED IN SECTION 45-462 IN THE TUCSON ACTIVE
18 MANAGEMENT AREA MAY SELL, LEASE OR OTHERWISE CONVEY ANY PORTION OF THE
19 RIGHT TO PUMP GROUNDWATER OR THE GROUNDWATER ITSELF TO ANY OTHER PERSON IN
20 THE TUCSON ACTIVE MANAGEMENT AREA FOR ANY USE IN THE TUCSON ACTIVE
21 MANAGEMENT AREA. THIS ARTICLE DOES NOT AUTHORIZE A PERSON TO SELL, LEASE
22 OR OTHERWISE CONVEY THE RIGHT TO PUMP GROUNDWATER OR GROUNDWATER ITSELF IN
23 ONE SUBBASIN FOR USE OR WITHDRAWAL IN ANOTHER SUBBASIN BUT GROUNDWATER MAY
24 BE TRANSPORTED BETWEEN SUBBASINS WITHIN THE TUCSON ACTIVE MANAGEMENT AREA
25 BY OTHER MEANS. ANY GROUNDWATER WITHDRAWN PURSUANT TO THIS SECTION SHALL
26 BE WITHDRAWN AT EITHER OF THE FOLLOWING:

27 1. THE SAME LOCATION AUTHORIZED IN THE ORIGINAL GRANDFATHERED
28 RIGHT.

29 2. ANY OTHER LOCATION IN THE SAME SUBBASIN IF THE PROPOSED LOCATION
30 OF WITHDRAWAL COMPLIES WITH RULES ADOPTED PURSUANT TO SECTION 45-598,
31 SUBSECTION A.

32 B. A PERSON WHO SELLS, LEASES OR OTHERWISE CONVEYS THE RIGHT TO
33 PUMP GROUNDWATER OR GROUNDWATER ITSELF AS PRESCRIBED BY SUBSECTION A OF
34 THIS SECTION SHALL NOTIFY THE DEPARTMENT IN WRITING OF THE FOLLOWING WITH
35 RESPECT TO THE TRANSACTION:

36 1. IF THE TRANSACTION IS A SALE, THE NAME AND ADDRESS OF THE BUYER
37 AND SELLER.

38 2. IF THE TRANSACTION IS FOR A LEASE, THE NAME AND ADDRESS OF THE
39 LESSOR AND LESSEE.

40 3. IF THE TRANSACTION IS A LEASE OR SALE.

41 4. IF FOR A LEASE, THE DURATION OF THE LEASE.

42 5. IF KNOWN, IF THE TRANSACTION IS FOR THE RIGHT TO PUMP
43 GROUNDWATER OR THE RIGHT TO GROUNDWATER ITSELF.

44 6. IF KNOWN AND IF THE TRANSACTION IS ONLY FOR A SALE OF THE RIGHT
45 TO PUMP GROUNDWATER, THE ANTICIPATED POINT OF REDUCTION AND WITHDRAWAL.

1 7. IF KNOWN, THE ANTICIPATED METHOD OF CONVEYANCE OR TRANSPORT.
2 8. THE VOLUME OF GROUNDWATER TO BE FORGONE BY THE SELLER OR LESSOR.
3 9. THE VOLUME OF GROUNDWATER TO BE RECEIVED OR WITHDRAWN BY THE
4 BUYER OR LESSEE.
5 10. THE AMOUNT OF ANY TRANSACTION COSTS INCURRED FROM THE
6 TRANSACTION.
7 11. THE PRICE PER ACRE-FOOT TO BE PAID FOR ANY GROUNDWATER RECEIVED
8 OR WITHDRAWN BY THE BUYER OR LESSEE.
9 12. ANY OTHER RELEVANT INFORMATION PRESCRIBED BY THE DEPARTMENT.
10 C. THE DEPARTMENT MAY PRESCRIBE A FORM FOR THE NOTICE REQUIRED
11 UNDER SUBSECTION B OF THIS SECTION. THE PARTIES TO A TRANSACTION
12 AUTHORIZED BY THIS SECTION MAY UPDATE THE INFORMATION PROVIDED TO THE
13 DEPARTMENT AT ANY TIME.
14 D. FOR ANY SALE, LEASE OR CONVEYANCE PRESCRIBED BY SUBSECTION A OF
15 THIS SECTION, THE BUYER OR LESSEE SHALL RECEIVE THE RIGHT TO RECEIVE OR
16 WITHDRAW SIXTY-FIVE PERCENT OF THE TOTAL VOLUME OF GROUNDWATER FORGONE BY
17 A SELLER OR LESSOR RESULTING FROM THE TRANSACTION.
18 E. FOR ANY SALE AUTHORIZED BY THIS SECTION, THIRTY-FIVE PERCENT OF
19 THE ORIGINAL GRANDFATHERED RIGHT CONVEYED TO A SELLER MAY NOT BE PUMPED,
20 OTHERWISE USED OR FURTHER CONVEYED.
21 F. FOR ANY LEASE AUTHORIZED BY THIS SECTION, THIRTY-FIVE PERCENT OF
22 THE ORIGINAL GRANDFATHERED RIGHT CONVEYED TO A SELLER MAY NOT BE PUMPED,
23 OTHERWISE USED OR FURTHER CONVEYED DURING THE DURATION OF THE LEASE.
24 G. IN CALCULATING THE VOLUME OF GROUNDWATER ITSELF OR RIGHT TO PUMP
25 GROUNDWATER THAT A SELLER OR LESSOR MAY FORGO PURSUANT TO THIS SECTION,
26 THE DEPARTMENT SHALL USE THE AVERAGE VOLUME OF WATER PUMPED PURSUANT TO
27 THE GRANDFATHERED RIGHT OVER THE PRECEDING FIVE YEARS.
28 H. ANY GROUNDWATER OR RIGHT TO GROUNDWATER ITSELF CONVEYED PURSUANT
29 TO SUBSECTION A OF THIS SECTION AND THE USE OF SUCH GROUNDWATER SHALL BE:
30 1. EXCEPT AS PROVIDED IN SUBSECTION I OF THIS SECTION, EXEMPT FROM
31 ANY REPLENISHMENT OBLIGATION ON THE PART OF THE BUYER OR LESSEE, INCLUDING
32 A REPLENISHMENT TAX.
33 2. EXCLUDED FROM A CITY'S OR TOWN'S GROUNDWATER USE FOR THE
34 PURPOSES OF DETERMINING THE CITY'S OR TOWN'S GROUNDWATER ALLOWANCE.
35 3. DEEMED CONSISTENT WITH THE MANAGEMENT PLAN AND ACHIEVEMENT OF
36 THE MANAGEMENT GOAL FOR THE ACTIVE MANAGEMENT AREA UNLESS THE PERSON USES
37 THE GROUNDWATER OR RIGHT TO GROUNDWATER TO MEET OR OBTAIN A CERTIFICATE,
38 DESIGNATION OR REDESIGNATION OF ASSURED WATER SUPPLY PURSUANT TO SECTION
39 45-576.
40 4. FOR THE PURPOSE OF OBTAINING A CERTIFICATE, DESIGNATION OR
41 REDESIGNATION OF ASSURED WATER SUPPLY, DEEMED PHYSICALLY AVAILABLE TO THE
42 BUYER OR TO THE LESSEE FOR THE NUMBER OF YEARS THAT THE DEPARTMENT
43 DETERMINES THE CONVEYED GROUNDWATER OR RIGHT TO GROUNDWATER, WHETHER SOLD
44 OR LEASED, IS PHYSICALLY AVAILABLE AT THE PROPOSED POINT OF WITHDRAWAL AND
45 PROPOSED RATE OF WITHDRAWAL, AFTER A THIRTY-FIVE PERCENT REDUCTION HAS

1 BEEN APPLIED PURSUANT TO SUBSECTION E OF THIS SECTION. NOTWITHSTANDING
2 THIS PARAGRAPH, AN APPLICANT FOR A CERTIFICATE, DESIGNATION OR
3 REDESIGNATION OF ASSURED WATER SUPPLY SHALL COMPLY WITH THE ONE HUNDRED
4 YEAR REQUIREMENT PRESCRIBED IN SECTION 45-576 FOR AN ASSURED WATER SUPPLY.
5 IF THE DEPARTMENT DETERMINES THAT THE PHYSICAL AVAILABILITY OF THE
6 GROUNDWATER OR THE RIGHT TO GROUNDWATER CONVEYED PURSUANT TO THIS SECTION
7 IS LESS THAN ONE HUNDRED YEARS AS REQUIRED UNDER SECTION 45-576, THE
8 APPLICANT SHALL DEMONSTRATE AN ADDITIONAL SOURCE OF WATER FOR THE
9 REMAINING NUMBER OF YEARS.

10 I. NOTWITHSTANDING ANY OTHER LAW AND AFTER APPLYING THE THIRTY-FIVE
11 PERCENT REDUCTION PURSUANT TO SUBSECTION E OF THIS SECTION, A PERSON WHO
12 RECEIVES OR WITHDRAWS GROUNDWATER OR A RIGHT TO GROUNDWATER PURSUANT TO
13 THIS SECTION AND WHO USES OR RELIES ON THAT GROUNDWATER OR RIGHT TO
14 GROUNDWATER TO MEET OR OBTAIN AN ASSURED WATER SUPPLY MAY NOT BE SUBJECT
15 TO ANY REPLENISHMENT OBLIGATION GREATER THAN ONE HUNDRED PERCENT OF THE
16 ACTUAL VOLUME OF GROUNDWATER THAT THE PERSON ACTUALLY RECEIVES OR
17 WITHDRAWS PURSUANT TO SUBSECTION D OF THIS SECTION.

18 J. GROUNDWATER THAT IS FORGONE BY A SELLER AS PRESCRIBED BY
19 SUBSECTION G OF THIS SECTION SHALL BE TREATED BY THE DEPARTMENT AS
20 FOLLOWS:

21 1. FIFTY PERCENT SHALL BE ALLOCATED TO THE COMMON AQUIFER AND
22 TREATED AS INFLOW FOR THE PURPOSES OF ANY WATER MODELING COMPLETED BY THE
23 DEPARTMENT.

24 2. FIFTY PERCENT SHALL BE TREATED AS INFLOW FOR THE PURPOSES OF ANY
25 WATER MODELING COMPLETED BY THE DEPARTMENT, SEPARATELY ACCOUNTED FOR AND
26 RESERVED FOR THE EXCLUSIVE BENEFIT OF AN APPLICATION FOR A CERTIFICATE OF
27 ASSURED WATER SUPPLY.

28 3. FOR THE PURPOSES OF ANY WATER OR POTENTIAL WATER USE FOR THE
29 SELLER, ALL GROUNDWATER SHALL BE DEEMED PERMANENTLY RETIRED, RELINQUISHED
30 OR EXTINGUISHED FOR THE PURPOSES OF THE SELLER.

31 K. GROUNDWATER THAT IS FORGONE BY A LESSOR AS PRESCRIBED BY
32 SUBSECTION G OF THIS SECTION SHALL:

33 1. BE EXCLUDED FROM ANY WATER MODELING USED TO EVALUATE AN
34 APPLICATION FOR A CERTIFICATE OR DESIGNATION OF ASSURED WATER SUPPLY,
35 UNLESS THE LEASE IS FOR A PERIOD OF ONE HUNDRED YEARS OR LONGER IN WHICH
36 CASE FIFTY PERCENT SHALL BE TREATED AS INFLOW FOR THE PURPOSES OF ANY
37 WATER MODELING COMPLETED BY THE DEPARTMENT, SEPARATELY ACCOUNTED FOR AND
38 RESERVED FOR THE EXCLUSIVE BENEFIT OF AN APPLICATION FOR A CERTIFICATE OF
39 ASSURED WATER SUPPLY.

40 2. REVERT BACK TO THE LESSOR AT THE END OF THE LEASE TERM.

41 L. THIS SECTION DOES NOT APPLY TO APPROPRIABLE SURFACE WATER OR
42 SUBFLOW AND SHALL NOT BE CONSTRUED TO MODIFY EXISTING LAW IN ANY WAY WITH
43 RESPECT TO DETERMINING WHICH WATER IS SURFACE WATER AND WHICH WATER IS
44 GROUNDWATER.

1 M. THIS SECTION DOES NOT AUTHORIZE THE DEPARTMENT OR ANY POLITICAL
2 SUBDIVISION OF THIS STATE TO:

3 1. CURTAIL THE SCOPE OF EXISTING GRANDFATHERED RIGHTS UNLESS THE
4 RIGHTS ARE SOLD, LEASED OR OTHERWISE CONVEYED PURSUANT TO THIS SECTION.

5 2. IMPOSE ADDITIONAL REQUIREMENTS OR RESTRICTIONS ON THE USE OR
6 EXERCISE OF TYPE 2 NON-IRRIGATION GRANDFATHERED RIGHTS.

7 N. A SELLOR OR LEASOR THAT SELLS, LEASES OR OTHERWISE CONVEYS THE
8 RIGHT TO PUMP GROUNDWATER OR GROUNDWATER ITSELF PURSUANT TO THIS SECTION
9 SHALL DISCLOSE ANY TRANSACTION COSTS RELATED TO THE SALE, LEASE OR
10 CONVEYANCE IN THE CONTRACT FOR ANY SUCH SALE, LEASE OR CONVEYANCE.

11 45-652. Department of water resources; online water exchange

12 THE DEPARTMENT SHALL ESTABLISH, MAINTAIN AND HOST ON ITS WEBSITE AN
13 ONLINE WATER EXCHANGE FOR GROUNDWATER AND GROUNDWATER RIGHTS THAT ARE
14 TRANSFERRED, SOLD, LEASED OR OTHERWISE CONVEYED AS PRESCRIBED BY SECTION
15 45-651. THE ONLINE WATER EXCHANGE SHALL BE PUBLICLY ACCESSIBLE AND SHALL
16 INCLUDE FOR EACH TRANSACTION THE INFORMATION SUBMITTED IN THE NOTICES
17 PRESCRIBED BY SECTION 45-651.

18 Sec. 3. Delayed repeal; applicability; report

19 A. Title 45, chapter 2, article 13, Arizona Revised Statutes, as
20 added by this act, is repealed from and after December 31, 2029.

21 B. A sale of groundwater or the right to pump groundwater pursuant
22 to title 45, chapter 2, article 13, Arizona Revised Statutes, as added by
23 this act, that was effective on or before January 1, 2030 is valid and
24 enforceable on and after January 1, 2030, except that any agreement for
25 the sale of groundwater or the right to pump groundwater executed pursuant
26 to title 45, chapter 2, article 13, Arizona Revised Statutes, as added by
27 this act, may not include terms or provisions that allow for the sale or
28 lease of groundwater or the right to pump groundwater after January 1,
29 2030.

30 C. A lease of groundwater or the right to pump groundwater executed
31 pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, as
32 added by this act:

33 1. Shall have an effective date on or before January 1, 2030.

34 2. Shall be valid and enforceable until January 1, 2030.

35 3. May not have a lease term beyond January 1, 2030, unless the
36 lease includes in clear and conspicuous terms a provision stating that the
37 conveyance of groundwater or the right to pump groundwater after
38 January 1, 2030 is contingent on legislation extending or repealing the
39 date prescribed in subsection A of this section.

40 D. The director of the department of water resources shall:

41 1. Monitor the depth-to-static level and aquifer health of each
42 subbasin affected by transactions made pursuant to section 45-651, Arizona
43 Revised Statutes, as added by this act.

44 2. On the occurrence of any of the following, quantify the total
45 acute and aggregate volume of groundwater transacted, withdrawn, conveyed

1 and foregone in each subbasin since the effective date of this act, and
2 the total increases, decreases and net increases and decreases to
3 depth-to-static levels in each affected subbasin resulting from such
4 transactions, withdrawals, conveyances and foregone volumes:

5 (a) Receipt of a written notification made pursuant to section
6 45-651, subsection B, Arizona Revised Statutes, as added by this act.

7 (b) Receipt of updated information received pursuant to section
8 45-651, subsection C, Arizona Revised Statutes, as added by this act.

9 (c) Approval of a new pumping location pursuant to section 45-651,
10 subsection A, Arizona Revised Statutes, as added by this act, and the
11 rules adopted pursuant to section 45-598, subsection A, Arizona Revised
12 Statutes.

13 3. Not later than January 1, 2025, 2027 and 2029, prepare and
14 submit to the governor, speaker of the house of representatives and
15 president of the senate a report including all of the following:

16 (a) The total volume of groundwater and number of grandfathered
17 rights conveyed, leased, sold or otherwise transacted pursuant to this
18 act, disaggregated by grandfathered right type and subbasin, in each year
19 since the effective date of this act.

20 (b) The total volume of groundwater saved or otherwise left in the
21 aquifer pursuant to section 45-651, subsection E, Arizona Revised
22 Statutes, as added by this act, in each year since the effective date of
23 this act.

24 (c) The average price per acre-foot for groundwater or groundwater
25 rights conveyed, leased, sold or otherwise transacted pursuant to this
26 act, disaggregated by grandfathered right type and subbasin, in each year
27 since the effective date of this act.

28 (d) The total and net increases and decreases to depth-to-static
29 levels in each subbasin resulting from transactions made pursuant to this
30 act in each year since the effective date of this act.

31 (e) A brief narrative describing the director's opinion on the
32 effectiveness of this act to secure future water supplies, strengthen
33 existing water supplies, support continued growth and economic development
34 and improve the overall health and depth-to-water level across the aquifer
35 and each subbasin since the effective date of this act.

36 (f) Any other information the director deems relevant to the
37 report.