

HOUSE OF REPRESENTATIVES

SB 1575

water adequacy amendments

Sponsors: Senator Arzberger, Senator Aguirre, Senator Landrum Taylor et al

X As Transmitted to Governor (Substituted for HB 2693 at Third Reading)

HB 1575 allows counties, cities and towns to require new subdivisions that are located outside an Active Management Area (AMA) to have an adequate water supply in order for the proposed development to be approved.

History

The Statewide Water Advisory Group (SWAG) was formed in 2006 to discuss statewide water resource issues, methods to provide reliable future water supplies issues and to develop recommendations regarding long-term water resource development for the state. SWAG began meeting in May 2006 and continued through the summer and fall. HB 2693 includes SWAG recommendations regarding adequate water supplies for new subdivisions that are located outside AMAs.

Under current law, real estate developers must follow certain requirements when subdividing land. When a developer applies for approval of a subdivision that is outside an AMA, the Arizona Department of Water Resources (ADWR) determines if the subdivision will have an adequate or inadequate water supply. An adequate water supply is one that will be available for current and committed uses for at least 100 years. The one hundred year supply must be physically, legally and continuously available.

If the supply is determined to be inadequate, lots may still be sold, however the information regarding the supply must be included in documents pertaining to the initial sale of the property.

Provisions

Authority to adopt adequate water supply requirements

- Authorizes a county board of supervisors to adopt a provision, by unanimous vote, that requires a new subdivision, located outside an AMA, to have an adequate water supply in order for the subdivision to be approved by the platting authority. (ARS 11-806.01, subsection F)
- Provides that if a county adopts an adequacy provision, cities and towns within the county may not approve a new subdivision, located outside an AMA, unless the subdivision has an adequate water supply. (ARS 9-463.01, subsection J)

- If a county does not adopt an adequacy provision, a city or town may adopt a local adequacy ordinance to require that a new subdivision, located outside an AMA, demonstrate that an adequate water supply exists before the final plat can be approved. A municipality that enacts a local adequacy ordinance must notify the Director of ADWR, the Department of Environmental Quality (DEQ), State Real Estate Commissioner and the Board of Supervisors of the county in which the city is located. (ARS 9-463.01, subsection O)
- States that a county shall not rescind the adequacy requirement. (ARS 11-806.01, subsection G, paragraph 3)
- Provides that a water provider in a city, town or county that has adopted an adequate water supply requirement may be eligible for financial assistance. (ARS 9-463.01, subsection O and ARS 11-806.01, subsection G)

Adequate Water Supply

- Defines *adequate water supply* as sufficient groundwater, surface water or effluent of adequate quality to satisfy the needs of the proposed use for at least 100 years. The supply must be continuously, legally and physically available. In addition, the financial capability to construct the water delivery, treatment and storage facilities must exist. (ARS 45-108, subsection I)

Exemptions from Adequacy Requirements

- Allows a city, town or county to provide an exemption for a subdivision if the water supply will be delivered by motor vehicle or train. The local governing body must determine there is no alternative water supply and the delivery will not cause significant risk to the residents of the subdivision. If the transported water will be taken from the service area of a municipal provider, the provider must consent to the withdrawal or diversion. (ARS 9-463.01 subsection K and ARS 11-806.01 subsection G)
- Requires written notice and certified copy of approval of the hauled water exemption to be provided to the Director of ADWR, DEQ and the State Real Estate Commissioner. Requires notice to the same parties if the exemption is rescinded. If the exemption is rescinded it can not be readopted for at least five years after the rescission becomes effective. (ARS 9-463.01 subsection L and ARS 11-806.01 subsection G)
- Provides an exemption for subdividers who have made a substantial capital investment toward construction of the project or received a final plat approval before the adequacy provision was adopted by the city, town or county. Requires ADWR to determine whether a development qualifies for this exemption. (ARS 45-108.02, ARS 9-463.01, subsection P and ARS 11-806.01, subsection H)

- Provides an exemption from the adequacy requirement if the subdivision will be served by a water supply project that is under construction. The project must be completed within 20 years, the subdivision must have an adequate water supply when the project is completed and an interim water supply must provide enough water until the project is completed. Requires ADWR to determine whether a development qualifies for this exemption. (ARS 45-108.03)

Real Estate Provisions

- Requires the Real Estate Commissioner to deny issuance of a public report for a subdivision or timeshare that is located in a city, town or county that has adopted a local adequacy requirement if the subdivision or timeshare does not have: 1) an adequate water supply, 2) an exemption from the adequacy requirements or 3) final plat approval before the adequacy requirement has become effective. (ARS 32-2183 and ARS 32-2197.08)
- Requires specific information regarding adequacy of water supplies and any exemptions to be included in promotional material and contracts for the sale of the lot. This information must also be recorded on the face of the subdivision's plat.
- Requires information regarding any exemption from an adequate water supply requirement based on hauled water to be recorded with the plat. (ARS 33-406)

Department of Water Resources (DWR)

- Requires the Director of ADWR to send a copy of an adequacy determination for a subdivision that is located outside an AMA to the city, town or county responsible for platting the subdivision. (ARS 45-108, subsection B) The Director is currently required to provide this information to the Real Estate Commissioner.
- Requires the Director to notify cities and towns that are located in a county that has adopted an adequate water supply provision. States that the city or town must comply with the provisions. (ARS 45-108, subsection H)
- Outlines the process for ADWR to provide notice and an opportunity for residents and landowners to file a written objection to an application for a water report or a designation of an adequate water supply. (ARS 45-108.01, subsections A and B)
- Authorizes the Director to conduct an administrative hearing on an application before making a decision. If a hearing is held, a notice of the hearing must be provided to the applicant and to anyone who filed an objection. The hearing must be held in the groundwater basin in which the use is located. (45-108.01, subsection C and G)

- Allows an applicant or a person who filed an objection to seek judicial review of the Director's final decision in superior court.(45-108.01. subsection F)
- Requires the Director to consider existing and projected uses when determining whether an adequate water supply exists. (Session law)
- Requires the Director to adopt rules that incorporate the adequate water supply provisions included in HB 1575. (Session law)

F. To protect the public health and safety, the general regulations adopted by the board pursuant to subsection E of this section, if approved by unanimous vote of the board of supervisors, may provide that, except as provided in subsection G, paragraph 1 and subsection H of this section, the board shall not approve a final plat for a subdivision composed of subdivided lands, as defined in section 32-2101, located outside of an active management area, as defined in section 45-402, unless one of the following applies:

1. The director of water resources has determined that there is an adequate water supply for the subdivision pursuant to section 45-108 and the subdivider has included the report with the plat.
2. The subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

G. If the board unanimously adopts the provision authorized by subsection F of this section:

1. The board may include in the general regulations an exemption from the provision for a subdivision that the director of water resources has determined will have an inadequate water supply because the water supply will be transported to the subdivision by motor vehicle or train if all of the following apply:

(a) The board determines that there is no feasible alternative water supply for the subdivision and that the transportation of water to the subdivision will not constitute a significant risk to the health and safety of the residents of the subdivision.

(b) If the water to be transported to the subdivision will be withdrawn or diverted in the service area of a municipal provider as defined in section 45-561, the municipal provider has consented to the withdrawal or diversion.

(c) If the water to be transported is groundwater, the transportation complies with the provisions governing the transportation of groundwater in title 45, chapter 2, article 8.

(d) The transportation of water to the subdivision meets any additional conditions imposed by the county.

2. The board shall promptly give written notice of the adoption of the provision to the director of water resources, the director of environmental quality and the state real estate commissioner. The notice shall include a certified copy of the provision and any exemptions

adopted pursuant to paragraph 1 of this subsection. Water providers may be eligible to receive monies in a water supply development fund, as otherwise provided by law.

3. The board shall not rescind the provision or amend it in a manner that is inconsistent with subsection F of this section. If the board amends the provision, it shall give written notice of the amendment to the director of water resources, the director of environmental quality and the state real estate commissioner. The board may rescind an exemption adopted pursuant to paragraph 1 of this subsection. If the board rescinds the exemption, it shall give written notice of the rescission to the director of water resources, the director of environmental quality and the state real estate commissioner, and the board shall not readopt the exemption for at least five years after the rescission becomes effective.

4. If the board approves a subdivision plat pursuant to subsection F, paragraph 1 or 2 of this section, the board shall note on the face of the plat that the director of water resources has reported that the subdivision has an adequate water supply or that the subdivider has obtained a commitment of water service for the proposed subdivision from a city, town or private water company designated as having an adequate water supply pursuant to section 45-108.

5. If the board approves a subdivision plat pursuant to an exemption authorized by paragraph 1 of this subsection or granted by the director of water resources pursuant to section 45-108.02 or 45-108.03:

(a) The board shall give written notice of the approval to the director of water resources and the director of environmental quality.

(b) The board shall include on the face of the plat a statement that the director of water resources has determined that the water supply for the subdivision is inadequate and a statement describing the exemption under which the plat was approved, including a statement that the board or the director of water resources, whichever applies, has determined that the specific conditions of the exemption were met. If the director of water resources subsequently informs the board that the subdivision is being served by a water provider that has been designated by the director as having an adequate water supply pursuant to section 45-108, the board shall record in the county recorder's office a statement disclosing that fact.

H. Subsection F of this section does not apply to:

1. A proposed subdivision that the director of water resources has determined will have an inadequate water supply pursuant to section 45-108 if the director grants an exemption for the subdivision pursuant to section 45-108.02 and the exemption has not expired or the director grants an exemption pursuant to section 45-108.03.

2. A proposed subdivision that received final plat approval from the county before the requirement for an adequate water supply became effective in the county if the plat has not been materially changed since it received the final plat approval. If changes were made to the plat after the plat received the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108. If the county approves a plat pursuant to this paragraph and the director of water resources has determined that there is an inadequate water supply for the subdivision pursuant to section 45-108, the county shall note this on the face of the plat.

I. If the subdivision is comprised of subdivided lands, as defined in section 32-2101, and is within an active management area, as defined in section 45-402, the final plat shall not be approved unless it is accompanied by a certificate of assured water supply issued by the director of water resources, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576. The legislative body of the municipality shall note on the face of the final plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply, pursuant to section 45-576, or is exempt from the requirement pursuant to section 45-576.

J. Except as provided in subsections K and P of this section, if the subdivision is composed of subdivided lands as defined in section 32-2101 outside of an active management area and the director of water resources has given written notice to the municipality pursuant to section 45-108, subsection H, the final plat shall not be approved unless one of the following applies:

1. The director of water resources has determined that there is an adequate water supply for the subdivision pursuant to section 45-108 and the subdivider has included the report with the plat.
2. The subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

K. The legislative body of a municipality that has received written notice from the director of water resources pursuant to section 45-108, subsection H or that has adopted an ordinance pursuant to subsection O of this section may provide by ordinance an exemption from the requirement in subsection J or O of this section for a subdivision that the director of water resources has determined will have an inadequate water supply because the water supply will be transported to the subdivision by motor vehicle or train if all of the following apply:

1. The legislative body determines that there is no feasible alternative water supply for the subdivision and that the transportation of water to the subdivision will not constitute a significant risk to the health and safety of the residents of the subdivision.
2. If the water to be transported to the subdivision will be withdrawn or diverted in the service area of a municipal provider as defined in section 45-561, the municipal provider has consented to the withdrawal or diversion.
3. If the water to be transported is groundwater, the transportation complies with the provisions governing the transportation of groundwater in title 45, chapter 2, article 8.
4. The transportation of water to the subdivision meets any additional conditions imposed by the legislative body.

L. A municipality that adopts the exemption authorized by subsection K of this section shall give written notice of the adoption of the exemption, including a certified copy of the ordinance containing the exemption, to the director of water resources, the director of environmental quality and the state real estate commissioner. If the municipality later rescinds the exemption, the municipality shall give written notice of the rescission to the director of water resources, the director of environmental quality and the state real estate commissioner. A municipality that rescinds an exemption adopted pursuant to subsection K of this

section shall not readopt the exemption for at least five years after the rescission becomes effective.

M. If the legislative body of a municipality approves a subdivision plat pursuant to subsection J, paragraph 1 or 2 or subsection O of this section, the legislative body shall note on the face of the plat that the director of water resources has reported that the subdivision has an adequate water supply or that the subdivider has obtained a commitment of water service for the proposed subdivision from a city, town or private water company designated as having an adequate water supply pursuant to section 45-108.

N. If the legislative body of a municipality approves a subdivision plat pursuant to an exemption authorized by subsection K of this section or granted by the director of water resources pursuant to section 45-108.02 or 45-108.03:

1. The legislative body shall give written notice of the approval to the director of water resources and the director of environmental quality.
2. The legislative body shall include on the face of the plat a statement that the director of water resources has determined that the water supply for the subdivision is inadequate and a statement describing the exemption under which the plat was approved, including a statement that the legislative body or the director of water resources, whichever applies, has determined that the specific conditions of the exemption were met. If the legislative body subsequently informs the legislative body that the subdivision is being served by a water provider that has been designated by the director as having an adequate water supply pursuant to section 45-108, the legislative body shall record in the county recorder's office a statement disclosing that fact.

O. If a municipality has not been given written notice by the director of water resources pursuant to section 45-108, subsection H, the legislative body of the municipality, to protect the public health and safety, may provide by ordinance that, except as provided in subsections K and P of this section, the final plat of a subdivision located in the municipality and outside of an active management area will not be approved by the legislative body unless the director of water resources has determined that there is an adequate water supply for the subdivision pursuant to section 45-108 or the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108. Before holding a public hearing to consider whether to enact an ordinance pursuant to this subsection, a municipality shall provide written notice of the hearing to the board of supervisors of the county in which the municipality is located. A municipality that enacts an ordinance pursuant to this subsection shall give written notice of the enactment of the ordinance, including a certified copy of the ordinance, to the director of water resources, the director of environmental quality, the state real estate commissioner and the board of supervisors of the county in which the city is located. If a municipality enacts an ordinance pursuant to this subsection, water providers may be eligible to receive monies in a water supply development fund, as otherwise provided by law.

P. Subsections J and O of this section do not apply to:

1. A proposed subdivision that the director of water resources has determined will have an inadequate water supply pursuant to section 45-108 if the director grants an exemption for the subdivision pursuant to section 45-108.02 and the exemption has not expired or if the director grants an exemption pursuant to section 45-108.03.
2. A proposed subdivision that received final plat approval from the municipality before the requirement for an adequate water supply became effective in the municipality if the plat has not been materially changed since it received the final plat approval. If changes were made to the plat after the plat received the final plat

approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108. If the municipality approves a plat pursuant to this paragraph and the director of water resources has determined that there is an inadequate water supply for the subdivision pursuant to section 45-108, the municipality shall note this on the face of the plat.

Q. If the subdivision is composed of subdivided lands as defined in section 32-2101 outside of an active management area and the municipality has not received written notice pursuant to section 45-108, subsection H and has not adopted an ordinance pursuant to subsection O of this section:

1. If the director of water resources has determined that there is an adequate water supply for the subdivision pursuant to section 45-108 or if the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108, the municipality shall note this on the face of the plat if the plat is approved.

2. If the director of water resources has determined that there is an inadequate water supply for the subdivision pursuant to section 45-108, the municipality shall note this on the face of the plat if the plat is approved.

R. Every municipality is responsible for the recordation of all final plats approved by the legislative body and shall receive from the subdivider and transmit to the county recorder the recordation fee established by the county recorder.

S. Pursuant to provisions of applicable state statutes, the legislative body of any municipality may itself prepare or have prepared a plat for the subdivision of land under municipal ownership.

T. The legislative bodies of cities and towns may regulate by ordinance land splits within their corporate limits. Authority granted under this section refers to the determination of division lines, area and shape of the tracts or parcels and does not include authority to regulate the terms or condition of the sale or lease nor does it include the authority to regulate the sale or lease of tracts or parcels that are not the result of land splits as defined in section 9-463.

U. For any subdivision that consists of ten or fewer lots, tracts or parcels, each of which is of a size as prescribed by the legislative body, the legislative body of each municipality may waive the requirement to prepare, submit and receive approval of a preliminary plat as a condition precedent to submitting a final plat and may waive or reduce infrastructure standards or requirements except for improved dust-controlled access and minimum drainage improvements.

H. If the director receives written notice from the board of supervisors of a county that it has adopted the provision authorized by section 11-806.01, subsection F, the director shall give written notice of the provision to the mayors of all cities and towns in the county. A city or town that receives the notice shall comply with section 9-463.01, subsections J, K, L, M and N.