Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 238

HOUSE BILL 2278

AN ACT

AMENDING TITLE 45, CHAPTER 2, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-579; RELATING TO THE GROUNDWATER CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

SENATE

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

Section 1. Title 45, chapter 2, article 9, Arizona Revised Statutes, is amended by adding section 45-579, to read:

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

A. A HOLDER OF A CERTIFICATE OF ASSURED WATER SUPPLY ISSUED PURSUANT TO SECTION 45-576 MAY ASSIGN THE CERTIFICATE, IN WHOLE OR IN PART, TO ANOTHER PERSON IF THE HOLDER APPLIES TO THE DIRECTOR FOR APPROVAL WITHIN TEN YEARS AFTER THE ORIGINAL CERTIFICATE WAS ISSUED AND THE DIRECTOR APPROVES THE APPLICATION. AN APPLICATION MAY BE FILED UNDER THIS SECTION MORE THAN TEN YEARS AFTER THE ORIGINAL CERTIFICATE WAS ISSUED IF A MINIMUM OF FIVE HUNDRED LOTS WITHIN THE SUBDIVISION COVERED BY THE CERTIFICATE HAVE BEEN SOLD TO INDIVIDUAL HOME BUYERS BY THE HOLDER OF THE CERTIFICATE AND ANY PREVIOUS HOLDERS OF THE CERTIFICATE. AN APPLICATION FILED UNDER THIS SECTION SHALL BE ON A FORM PRESCRIBED BY THE DIRECTOR. THE DIRECTOR SHALL APPROVE A TIMELY APPLICATION FOR ASSIGNMENT OF A CERTIFICATE OF ASSURED WATER SUPPLY IF THE DIRECTOR DETERMINES THAT ALL OF THE FOLLOWING APPLY:

1. THE PROPOSED ASSIGNEE OWNS OR IS ACQUIRING THE SUBDIVISION TO WHICH THE CURRENT CERTIFICATE APPLIES, OR IF THE APPLICATION IS FOR A PARTIAL ASSIGNMENT, THE PORTION OF THE SUBDIVISION TO WHICH THE CURRENT CERTIFICATE APPLIES THAT IS THE SUBJECT OF THE PROPOSED ASSIGNMENT.

2. THERE HAS NOT BEEN ANY MATERIAL CHANGE IN THE SUBDIVISION PLAT, PLAN OR MAP SINCE THE CERTIFICATE WAS ORIGINALLY ISSUED, INCLUDING AN INCREASE IN THE TOTAL NUMBER OF HOUSING UNITS OR AN INCREASE IN THE TOTAL WATER DEMAND FOR THE SUBDIVISION, INCLUDING ALL ASSIGNMENTS.

3. EITHER THERE IS WATER DELIVERY INFRASTRUCTURE IN PLACE THAT IS CAPABLE OF DELIVERING WATER TO EACH LOT WITHIN THE SUBDIVISION OR THE PROPOSED ASSIGNEE HAS DEMONSTRATED FINANCIAL CAPABILITY TO COMPLETE THE INFRASTRUCTURE. IN DETERMINING WHETHER THE PROPOSED ASSIGNEE HAS DEMONSTRATED FINANCIAL CAPABILITY TO COMPLETE THE INFRASTRUCTURE, THE DIRECTOR SHALL APPLY THE SAME STANDARDS THAT ARE USED IN EVALUATING FINANCIAL CAPABILITY FOR A NEW CERTIFICATE APPLICATION.

4. THE WATER PROVIDER SERVING THE SUBDIVISION AND THE SOURCE OF SUPPLY HAVE NOT CHANGED SINCE THE CURRENT CERTIFICATE WAS ISSUED AND THE WATER PROVIDER HAS AGREED TO SERVE THE SUBDIVISION AFTER THE ASSIGNMENT.

5. WATER RIGHTS, PERMITS, LICENSES, CONTRACTS AND EASEMENTS OTHER THAN THE MUNICIPAL PROVIDER'S SERVICE AREA RIGHTS AT THE TIME THE CURRENT CERTIFICATE WAS ISSUED HAVE BEEN ASSIGNED AND MAY BE USED TO SUPPORT WATER SERVICE TO THE PORTION OF THE SUBDIVISION THAT IS THE SUBJECT OF THE ASSIGNMENT AND TO ANY REMAINING PORTIONS OF THE SUBDIVISION THAT ARE RETAINED BY THE SUBDIVIDER.

6. THERE HAS NOT BEEN ANY CHANGE IN THE MANNER IN WHICH THE CONSISTENCY WITH MANAGEMENT GOAL REQUIREMENTS WERE SATISFIED AT THE TIME THE ORIGINAL CERTIFICATE WAS ISSUED.

B. AFTER A CHANGE OF OWNERSHIP HAS OCCURRED AND ON APPROVAL OF AN ASSIGNMENT, THE DIRECTOR SHALL ISSUE A CERTIFICATE OF ASSURED WATER SUPPLY IN THE NAME OF THE ASSIGNEE, RETAINING THE DATE OF THE ORIGINAL CERTIFICATE AS THE DATE OF ISSUANCE.

C. IN THE CASE OF A PARTIAL ASSIGNMENT, THE DIRECTOR SHALL ISSUE A CERTIFICATE IN THE NAME OF THE ASSIGNEE FOR THE PORTION OF THE SUBDIVISION THAT IS THE SUBJECT OF THE PROPOSED ASSIGNMENT, AND SHALL ISSUE A CERTIFICATE IN THE NAME OF THE ASSIGNOR FOR THE PORTION OF THE SUBDIVISION RETAINED, EACH WITH THE DATE OF THE ORIGINAL CERTIFICATE AS THE DATE OF ISSUANCE. THE NEW CERTIFICATES SHALL INCLUDE ALL WATER DEMAND FOR THE SUBDIVISION REPRESENTED BY THE CURRENT CERTIFICATE. THE ALLOCATION OF DEMAND BETWEEN THE CERTIFICATES SHALL BE BASED ON A REASONABLE PLAN FOR ALLOCATION OF THE TOTAL SUBDIVISION DEMAND AS APPROVED BY THE DIRECTOR.

D. SECTION 45-578 DOES NOT APPLY TO AN APPLICATION FILED UNDER THIS SECTION. SECTION 45-114, SUBSECTIONS A AND B GOVERN ADMINISTRATIVE PROCEEDINGS, REHEARING AND REVIEW AND JUDICIAL REVIEW OF FINAL DECISIONS OF THE DIRECTOR UNDER THIS SECTION. IF AN ADMINISTRATIVE HEARING IS HELD, IT SHALL BE CONDUCTED IN THE ACTIVE MANAGEMENT AREA IN WHICH THE USE IS LOCATED.

E. WITHIN TWO BUSINESS DAYS AFTER RECEIVING AN APPLICATION UNDER SUBSECTION A OF THIS SECTION, THE DIRECTOR SHALL POST NOTICE OF THE APPLICATION ON THE DEPARTMENT'S WEB SITE UNTIL THE DIRECTOR ISSUES A DECISION ON THE APPLICATION. THE NOTICE SHALL INCLUDE NOTICE OF THE RIGHT TO SUBMIT COMMENTS ON THE APPLICATION AS PROVIDED IN THIS SUBSECTION, INCLUDING A TOLL FREE NUMBER WHERE COMMENTS MAY BE SUBMITTED BY TELEPHONE AND THE ADDRESSES WHERE COMMENTS MAY BE SUBMITTED BY UNITED STATES MAIL, ELECTRONIC MAIL AND HAND-DELIVERY. ANY PERSON MAY SUBMIT COMMENTS ON THE APPLICATION WITHIN FOURTEEN CALENDAR DAYS AFTER THE FIRST DAY THAT NOTICE OF THE APPLICATION IS POSTED ON THE DEPARTMENT'S WEB SITE. THE DIRECTOR SHALL CONSIDER ALL TIMELY COMMENTS SUBMITTED ON THE APPLICATION BEFORE ISSUING A DECISION ON THE APPLICATION. WITHIN TWO BUSINESS DAYS AFTER ISSUING A DECISION ON THE APPLICATION, THE DIRECTOR SHALL POST NOTICE OF THE DECISION ON THE DEPARTMENT'S WEB SITE FOR A MINIMUM OF FOURTEEN DAYS. NOTWITHSTANDING TITLE 41, CHAPTER 6, ARTICLE 10 AND SECTION 45-114, A PERSON WHO SUBMITS COMMENTS ON AN APPLICATION PURSUANT TO THIS SUBSECTION IS NOT A PARTY FOR PURPOSES OF TITLE 41, CHAPTER 6, ARTICLE 10, IS NOT ENTITLED TO AN ADMINISTRATIVE HEARING BEFORE OR AFTER THE DIRECTOR'S DECISION ON THE APPLICATION AND IS NOT ENTITLED TO JUDICIAL REVIEW OF THE DIRECTOR'S DECISION.

F. FOR THE PURPOSES OF THIS SECTION, "ORIGINAL CERTIFICATE" MEANS THE INITIAL CERTIFICATE OF ASSURED WATER SUPPLY THAT IS ISSUED BY THE DIRECTOR FOR A SUBDIVISION.

Sec. 2. Emergency

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

APPROVED BY THE GOVERNOR MAY 17, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 17, 2004.

Passed the House March 9, 2004,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

With Emergency

Jake Flake

Speaker of the House

Norman L. Moore

Chief Clerk of the House

Passed the Senate May 3, 2004,

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

With Emergency

Ken Bennett

President of the Senate

Charmin Bellington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20___,

at _____ o'clock _____ M.

_____

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

_____

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20___,

at _____ o'clock _____ M.

_____

Secretary of State

H.B. 2278

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 11, 2004,

by the following vote: 52 Ayes,

0 Nays, 8 Not Voting
With Emergency

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

11th day of May, 2004,

at 12:12 o'clock P. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 17 day of

May, 2004,

at 2:40 o'clock P. M.

Governor of Arizona

H.B. 2278

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 17 day of May, 2004,

at 4:14 o'clock P. M.

Janice K. Brewer
Secretary of State