House Engrossed Senate Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

CHAPTER 168

SENATE BILL 1417

AN ACT

REPEALING SECTION 43-1074.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2012, CHAPTER 170, SECTION 59; REPEALING SECTION 43-1168, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2012, CHAPTER 170, SECTION 74; AMENDING SECTION 45-802.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 131, SECTION 2; REPEALING SECTION 45-802.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2012, CHAPTER 312, SECTION 3; REPEALING LAWS 2008, CHAPTER 243, SECTION 6, AS AMENDED BY LAWS 2012, CHAPTER 241, SECTION 8; RELATING TO MULTIPLE, DEFECTIVE AND CONFLICTING LEGISLATIVE DISPOSITIONS OF STATUTORY TEXT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Purpose

1. Section 43-1074.01, Arizona Revised Statutes, as amended by Laws 2011, Second Special Session, chapter 1, section 97, was amended by Laws 2012, chapter 3, section 47 and Laws 2012, chapter 170, section 59. The Laws 2011, Second Special Session, chapter 1, section 97 version of section 43-1074.01, Arizona Revised Statutes, is not effective until January 1, 2018. The chapter 3 version included a delayed effective date of January 1, 2018 and also included all the changes made by the chapter 170 version. The chapter 170 version failed to include the delayed effective date of January 1, 2018 and was effective on August 2, 2012. In order to repeal the double amendment activity and correct a potentially defective enactment, this act repeals section 43-1074.01, Arizona Revised Statutes, as amended by Laws 2012, chapter 170, section 59.

2. Section 43-1168, Arizona Revised Statutes, as amended by Laws 2011, Second Special Session, chapter 1, section 114, was amended by Laws 2012, chapter 3, section 54 and Laws 2012, chapter 170, section 74. The Laws 2011, Second Special Session, chapter 1, section 114 version of section 43-1168, Arizona Revised Statutes, is not effective until January 1, 2018. The chapter 3 version included a delayed effective date of January 1, 2018 and also included all the changes made by the chapter 170 version. The chapter 170 version failed to include the delayed effective date of January 1, 2018 and was effective on August 2, 2012. In order to repeal the double amendment activity and correct a potentially defective enactment, this act repeals section 43-1168, Arizona Revised Statutes, as amended by Laws 2012, chapter 170, section 74.

3. Section 45-802.01, Arizona Revised Statutes, as amended by Laws 2010, chapter 131, section 2, was amended by Laws 2012, chapter 312, section 3. The Laws 2010, chapter 131, section 2 version of section 45-802.01, Arizona Revised Statutes, is not effective until January 1, 2025 and the Laws 2012, chapter 312, section 3 amendment failed to include the delayed effective date of January 1, 2025 and was effective on August 2, 2012. In order correct a potentially defective enactment, this act amends the previous valid version of section 45-802.01, Arizona Revised Statutes, to incorporate the amendments made by Laws 2012, chapter 312, section 3 and the chapter 312 version is repealed.

4. Laws 2012, chapter 241, section 8 and Laws 2012, chapter 281, section 2 both amended Laws 2008, chapter 243, section 6. The chapter 281 version included all of the changes made by the chapter 241 version. In order to eliminate the double amendment activity, this act repeals Laws 2008, chapter 243, section 6, as amended by Laws 2012, chapter 241, section 8.

Sec. 2. Repeal

Section 43-1074.01, Arizona Revised Statutes, as amended by Laws 2012, chapter 170, section 59, is repealed.

Sec. 3. Repeal

Section 43-1168, Arizona Revised Statutes, as amended by Laws 2012, chapter 170, section 74, is repealed.

Sec. 4. Section 45-802.01, Arizona Revised Statutes, as amended by Laws 2010, chapter 131, section 2, is amended to read:

45-802.01. Definitions

Unless the context otherwise requires, the terms defined in section 45-402 have the same meanings in this chapter and:

1. "Aquifer" means a geologic formation that contains sufficient saturated material to be capable of storing water and transmitting water in usable quantities to a well.

2. "Area of impact" means, as projected on the land surface, the area where the stored water has migrated or is located.

3. "CERCLA" means the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".

4. "Constructed underground storage facility" means a facility that meets the requirements of section 45-811.01 and that is designed and constructed to store water underground pursuant to permits issued under this chapter.

5. "District" means a groundwater replenishment district established under title 48, chapter 27.

6. "District member" means a member of the groundwater replenishment district as provided by title 48, chapter 27.

7. "Electrical district" means a corporate body established pursuant to title 48, chapter 12.

8. "Groundwater savings facility" means a facility that meets the requirements of section 45-812.01 in an active management area or an irrigation non-expansion area at which groundwater withdrawals are eliminated or reduced by recipients who use in lieu water on a gallon-for-gallon substitute basis for groundwater that otherwise would have been pumped from within that active management area or irrigation non-expansion area.

9. "In lieu water" means water that is delivered by a storer to a groundwater savings facility pursuant to permits issued under this chapter and that is used in an active management area or an irrigation non-expansion area by the recipient on a gallon-for-gallon substitute basis for groundwater that otherwise would have been pumped from within that active management area or irrigation non-expansion area.

10. "Long-term storage account" means an account established pursuant to section 45-852.01.

11. "Long-term storage credit" means stored water that meets the requirements of section 45-852.01 and that has been credited to a long-term storage account.

12. "Managed underground storage facility" means a facility that meets the requirements of section 45-811.01 and that is designed and managed to utilize the natural channel of a stream to store water underground pursuant to permits issued under this chapter through artificial and controlled releases of water other than surface water naturally present in the stream. Surface water flowing in its natural channel is not a managed underground storage facility.

13. "Master replenishment account" means an account established pursuant to section 45-858.01 for a groundwater replenishment district.

14. "Recipient" means a person who receives in lieu water for use at a groundwater savings facility.

15. "Recoverable amount" means the amount of water, as determined by the director, that will reach the aquifer through water storage.

16. "Replenishment" means the storage of water or use of long-term storage credits by a groundwater replenishment district to fulfill its duties under title 48, chapter 27, article 3, by a multi-county water conservation district to fulfill its duties under title 48, chapter 22, article 4 or by an active management area water district to fulfill its duties under title 48, chapter 28, article 7.

17. "Reserve target" has the same meaning prescribed in section 48-3701.

18. "Storage facility" means a groundwater savings facility or an underground storage facility.

19. "Stored water" means water that has been stored or saved underground pursuant to a storage permit issued under this chapter.

20. "Storer" means the holder of a water storage permit issued pursuant to section 45-831.01 or a person to whom a water storage permit has been conveyed pursuant to section 45-831.01, subsection F.

21. "Underground storage facility" means a constructed underground storage facility or a managed underground storage facility.

22. "Water that cannot reasonably be used directly" means water that the storer cannot reasonably put to a direct use during the calendar year, including:

(a) Except as provided in subdivision (b) or except for an agricultural improvement district as provided in subdivision (d), if the storer is a municipal provider, the amount of central Arizona project water that exceeds the amount of mined groundwater withdrawn during the calendar year by the storer in the active management area in which the storer's service area is located. If the storer withdrew mined groundwater during a calendar year in which the storer stored central Arizona project water underground pursuant to the storage permit, the amount of central Arizona project water stored underground during that year equal to the amount of mined groundwater withdrawn from the active management area in which the storer's service area is located shall not be credited to the storer's long-term storage account but may be considered as being available for

recovery by the storer on an annual basis under section 45-851.01. In calculating the amount of mined groundwater withdrawn by the storer from the active management area, the director, at the request of the storer, shall exclude any groundwater withdrawn, treated and delivered for direct use as part of a remedial action undertaken pursuant to CERCLA or title 49, chapter 2, article 5. For the purposes of this subdivision, "mined groundwater" and "municipal provider" have the same meanings prescribed in section 45-561.

(b) If the storer is a municipal provider that has been designated as having an assured water supply pursuant to section 45-576, the amount of central Arizona project water that exceeds the amount of deficit groundwater withdrawn during the calendar year by the storer in the active management area in which the storer's service area is located. If the storer withdrew deficit groundwater during a calendar year in which the storer stored central Arizona project water underground pursuant to the storage permit, the amount of the central Arizona project water stored underground during that year equal to the amount of deficit groundwater withdrawn from the active management area in which the storer's service area is located shall not be credited to the storer's long-term storage account but may be considered as being available for recovery by the storer on an annual basis pursuant to section 45-851.01. In calculating the amount of deficit groundwater withdrawn by the storer from the active management area, the director, at the request of the storer, shall exclude any groundwater withdrawn, treated and delivered for direct use as part of a remedial action undertaken pursuant to CERCLA or title 49, chapter 2, article 5. For the purposes of this subdivision, "municipal provider" has the same meaning prescribed in section 45-561 and "deficit groundwater" means that amount of groundwater withdrawn within an active management area for delivery and use within a service area by a municipal provider in excess of the amount of groundwater that may be withdrawn by the municipal provider consistent with the achievement of the active management area's management goals as prescribed by rules adopted by the director pursuant to section 45-576.

(c) Except as provided in subdivision (d), if the storer is not a municipal provider, the amount of central Arizona project water stored in an active management area that exceeds the amount of groundwater withdrawn during the calendar year by the storer in that active management area. If the storer withdrew groundwater in an active management area during a calendar year in which the storer stored central Arizona project water underground in that active management area pursuant to the storage permit, the amount of central Arizona project water stored underground during that year equal to the amount of groundwater withdrawn from the active management area shall not be credited to the storer's long-term storage account but may be considered as being available for recovery by the storer on an annual basis under section 45-851.01. FOR THE PURPOSES OF THIS SUBDIVISION, "MUNICIPAL PROVIDER" HAS THE SAME MEANING PRESCRIBED IN SECTION 45-561. In

calculating the amount of groundwater withdrawn by the storer from the active management area, the director, at the request of the storer, shall exclude:

(i) THE AMOUNT OF any groundwater withdrawn, treated and delivered for direct use as part of a remedial action undertaken pursuant to CERCLA or title 49, chapter 2, article 5. ~~For the purposes of this subdivision, "municipal provider" has the same meaning prescribed in section 45-561.~~

(ii) THE AMOUNT OF GROUNDWATER WITHDRAWN BY THE STORER DURING THE YEAR FOR MINERAL EXTRACTION OR METALLURGICAL PROCESSING IF THE STORER WAS ENGAGED IN MINERAL EXTRACTION AND METALLURGICAL PROCESSING WITHIN AN INITIAL ACTIVE MANAGEMENT AREA ON OR BEFORE JANUARY 1, 2011.

(d) The amount of central Arizona project water stored in an active management area in any year after 1994 by an agricultural improvement district established pursuant to title 48, chapter 17 for use at those portions of electrical generating facilities that are constructed or expanded after June 12, 1980, subject to both of the following:

(i) If groundwater was used during a year in an active management area at those portions of the electrical generating facilities that were owned and operated by the agricultural improvement district and that were constructed or expanded after June 12, 1980, the amount of the central Arizona project water stored during that year equal to the amount of the groundwater withdrawn during the year for use at those portions of the facilities that were owned and operated by the agricultural improvement district and that were constructed or expanded after June 12, 1980 shall not be credited to the agricultural improvement district's long-term storage account but may be considered as being available for recovery by the agricultural improvement district on an annual basis under section 45-851.01.

(ii) Long-term storage credits accrued as a result of the storage of the central Arizona project water may be recovered within the active management area by the agricultural improvement district only for the purpose of providing central Arizona project water to electrical generating facilities that were owned and operated by the agricultural improvement district and only pursuant to any water requirement included in a facility's certificate of environmental compatibility. Subject to section 45-854.01, the long-term storage credits may be assigned by the agricultural improvement district only to the owner of an electrical generating facility for use pursuant to any water requirement included in that facility's certificate of environmental compatibility.

(e) Surface water made available by dams constructed or modified after August 13, 1986.

(f) Until the year 2025:

(i) Effluent.

(ii) If the storage facility is in an active management area, water from outside the active management area that would not have reached the active management area without the efforts of the storer.

(iii) If the storage facility is outside of an active management area, water from outside the groundwater basin in which the storage facility is located that would not have reached the groundwater basin without the efforts of the storer.

(g) Water that is delivered through the central Arizona project and that is acquired by the Arizona water banking authority.

23. "Water storage" means adding water to an aquifer or saving water in an aquifer pursuant to permits issued under this chapter.

24. "Water storage permit" means a permit issued pursuant to section 45-831.01 to store water at a storage facility.

Sec. 5. Repeal

Section 45-802.01, Arizona Revised Statutes, as amended by Laws 2012, chapter 312, section 3, is repealed.

Sec. 6. Repeal

Laws 2008, chapter 243, section 6, as amended by Laws 2012, chapter 241, section 8, is repealed.

Sec. 7. Retroactive application

Sections 2, 3, 5 and 6 of this act apply retroactively to August 2, 2012.

Sec. 8. Effective date

Section 4 of this act is effective from and after December 31, 2024.

APPROVED BY THE GOVERNOR APRIL 30, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2013.

Passed the House April 15, 2013,

by the following vote: 53 Ayes,

0 Nays, 7 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate March 6, 2013,

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting

President of the Senate

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

S.B. 1417

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 22, 2013

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

30 day of April, 2013

at 9:27 o'clock A M.

Nubhaila Howard
Secretary to the Governor

Approved this 30th day of

April

at 2:23 o'clock P. M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 1st day of May, 2013

at 9:02 o'clock a M.

Jim Drake
acting Secretary of State

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