

REFERENCE TITLE: local stormwater quality programs

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1288

Introduced by
Senators Flake, Rios: Representative Barnes

AN ACT

AMENDING TITLE 49, CHAPTER 2, ARTICLE 3.1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-255.04; AMENDING TITLE 49, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-263.03; RELATING TO LOCAL STORMWATER QUALITY PROGRAMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 49, chapter 2, article 3.1, Arizona Revised Statutes,
3 is amended by adding section 49-255.04, to read:

4 49-255.04. Local stormwater quality programs; authority;
5 limitations; penalties

6 A. A POLITICAL SUBDIVISION OR AGENCY OF THIS STATE THAT IS REQUIRED BY
7 THE CLEAN WATER ACT TO OBTAIN COVERAGE UNDER A NATIONAL OR STATE POLLUTANT
8 DISCHARGE ELIMINATION SYSTEM STORMWATER PROGRAM BY ADOPTING AND IMPLEMENTING
9 STORMWATER POLLUTION PREVENTION PLANS OR STORMWATER MANAGEMENT PROGRAMS
10 PURSUANT TO THIS CHAPTER MAY DO ALL OF THE FOLLOWING:

11 1. DEVELOP STORMWATER POLLUTION PREVENTION PLANS AND STORMWATER
12 MANAGEMENT PROGRAMS AS PRESCRIBED BY THE CLEAN WATER ACT.

13 2. ADOPT, AMEND, REPEAL AND IMPLEMENT ANY ORDINANCES, RULES,
14 REGULATIONS OR OTHER SPECIFICATIONS NECESSARY TO COMPLY WITH THE MINIMUM
15 REQUIREMENTS OF THE CLEAN WATER ACT, INCLUDING THE IMPOSITION AND COLLECTION
16 OF APPROPRIATE FEES.

17 3. ADOPT RULES OR ORDINANCES REGULATING THE USE OF LANDS OR
18 RIGHTS-OF-WAY OWNED AND CONTROLLED BY THE POLITICAL SUBDIVISION OR AGENCY AS
19 MAY BE NECESSARY TO IMPLEMENT AND ENFORCE THE STORMWATER POLLUTION PREVENTION
20 PLAN OR STORMWATER MANAGEMENT PROGRAM ADOPTED PURSUANT TO THIS SECTION.
21 RULES OR ORDINANCES ADOPTED PURSUANT TO THIS PARAGRAPH MAY INCLUDE PROVISIONS
22 FOR ALL OF THE FOLLOWING:

23 (a) ESTABLISHMENT OF A PERMIT SYSTEM, INCLUDING CONDITIONS FOR THE
24 ISSUANCE, RENEWAL AND REVOCATION OF A PERMIT.

25 (b) ESTABLISHMENT OF FEES FOR THE USE OF LANDS OR RIGHTS-OF-WAY AND
26 THE DISCHARGE OF STORM OR OTHER WATERS ONTO OR ACROSS THOSE LANDS OR
27 RIGHTS-OF-WAY PURSUANT TO A PERMIT.

28 (c) ENFORCEMENT OF THE PERMIT SYSTEM.

29 4. ENFORCE THE ORDINANCES, RULES, REGULATIONS OR SPECIFICATIONS BY
30 ADMINISTRATIVE ENFORCEMENT AND IMPOSING AND RECOVERING A CIVIL PENALTY OF NOT
31 MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS FOR EACH VIOLATION. EACH DAY OF
32 A VIOLATION CONSTITUTES A SEPARATE OFFENSE.

33 5. ADOPT AND ENFORCE CIVIL PENALTIES FOR VIOLATIONS OF THE ORDINANCES,
34 RULES, REGULATIONS OR SPECIFICATIONS ESTABLISHED PURSUANT TO THIS SECTION. A
35 CIVIL PENALTY MAY BE IMPOSED OR ENFORCED, OR BOTH, BY ANY OF THE FOLLOWING:

36 (a) AN ADMINISTRATIVE PROCESS ESTABLISHED PURSUANT TO RULES ADOPTED AS
37 PROVIDED BY LAW.

38 (b) AN ACTION IN SUPERIOR COURT.

39 (c) A NEGOTIATED SETTLEMENT AGREEMENT.

40 6. MAKE INSPECTIONS AS PROVIDED UNDER APPLICABLE PERMITS. FOR
41 PROPERTIES THAT ARE NOT SUBJECT TO A PERMIT, THE POLITICAL SUBDIVISION OF
42 AGENCY OF THIS STATE MAY ENTER AND INSPECT ANY DEVELOPMENT ON REAL PROPERTY
43 THAT DISCHARGES ANY WATERS OR POLLUTANTS OFF ITS PROPERTY IN ORDER TO
44 DETERMINE THE SOURCE AND QUALITY OF ANY DISCHARGE TO THE WATERCOURSE. ENTRY
45 AND INSPECTION OF REAL PROPERTY THAT IS NOT SUBJECT TO A PERMIT MAY OCCUR

1 ONLY ON WRITTEN AUTHORIZATION FROM A PROPERTY OWNER, OR IF NO AUTHORIZATION
2 HAS BEEN ISSUED, ONLY DURING BUSINESS HOURS. IN THE CASE OF AN EMERGENCY,
3 ENTRY AND INSPECTION MAY OCCUR AT ANY TIME. FOR ANY INSPECTION OF PROPERTY
4 THAT IS NOT SUBJECT TO A PERMIT, THE FOLLOWING APPLY:

5 (a) EXCEPT IN THE CASE OF AN EMERGENCY, WRITTEN NOTICE SHALL BE
6 PROVIDED TO THE OWNER AT LEAST FORTY-EIGHT HOURS IN ADVANCE THAT THE REAL
7 PROPERTY IS TO BE INSPECTED AND THAT THE OWNER OR THE OWNER'S AGENT MAY
8 ACCOMPANY THE INSPECTOR ON THE INSPECTION.

9 (b) AN INSPECTOR SHALL COMPLY WITH ANY SAFETY REQUIREMENTS THAT MAY BE
10 APPLICABLE AT A PARTICULAR SITE.

11 (c) A WRITTEN REPORT SHALL BE MADE OF EACH INSPECTION MADE ON PROPERTY
12 THAT IS NOT SUBJECT TO A PERMIT AND SHALL BE PROVIDED TO THE OWNER WITHIN
13 THIRTY DAYS AFTER THE INSPECTION. THE REPORT SHALL BE MAINTAINED AS A PUBLIC
14 RECORD SUBJECT TO INSPECTION AS PRESCRIBED BY TITLE 39, CHAPTER 1.

15 (d) FOR PROPERTIES THAT ARE NOT SUBJECT TO A PERMIT, THIS PARAGRAPH
16 DOES NOT AUTHORIZE THE INSPECTION OF ANY RECORDS OR FILES ON A SITE OR THE
17 INTERIOR OF ANY BUILDING.

18 B. AN ORDINANCE, RULE, REGULATION OR SPECIFICATION ADOPTED PURSUANT TO
19 THIS SECTION SHALL NOT BE MORE STRINGENT THAN OR CONFLICT WITH ANY
20 REQUIREMENT OF THE CLEAN WATER ACT.

21 C. A POLITICAL SUBDIVISION OR AGENCY OF THIS STATE THAT ADOPTS
22 ORDINANCES, RULES OR REGULATIONS PURSUANT TO THIS SECTION MAY ENFORCE THOSE
23 ORDINANCES, RULES OR REGULATIONS AS PRESCRIBED BY SECTIONS 49-262 AND 49-263.
24 FOR PURPOSES OF ENFORCEMENT PURSUANT TO SECTIONS 49-262 AND 49-263, THE
25 POLITICAL SUBDIVISION'S ATTORNEY AND THE POLITICAL SUBDIVISION'S DESIGNATED
26 DEPARTMENT HEAD SHALL HAVE THE AUTHORITY PRESCRIBED FOR THE ATTORNEY GENERAL
27 AND THE DIRECTOR OF ENVIRONMENTAL QUALITY, RESPECTIVELY, PURSUANT TO THOSE
28 SECTIONS.

29 D. NOTWITHSTANDING SECTION 49-263, SUBSECTION G, MONIES RECEIVED BY A
30 POLITICAL SUBDIVISION PURSUANT TO AN ORDINANCE OR RULE ADOPTED PURSUANT TO
31 THIS ARTICLE SHALL BE DEPOSITED WITH THE POLITICAL SUBDIVISION.

32 Sec. 2. Title 49, chapter 2, article 4, Arizona Revised Statutes, is
33 amended by adding section 49-263.03, to read:

34 49-263.03. Local stormwater quality programs; administrative
35 enforcement

36 A. A POLITICAL SUBDIVISION BY ORDINANCE, OR AN AGENCY OF THIS STATE,
37 MAY DESIGNATE AND AUTHORIZE AN ADMINISTRATIVE DIRECTOR FOR THE PROGRAM OR
38 PLAN PRESCRIBED BY SECTION 49-255.04 TO PERFORM ADMINISTRATIVE ENFORCEMENT
39 DUTIES. IF THE ADMINISTRATIVE DIRECTOR DETERMINES THAT A PERSON IS IN
40 VIOLATION OF AN ORDINANCE ADOPTED PURSUANT TO SECTION 49-255.04 OR A PERMIT
41 OR RULE AUTHORIZED PURSUANT TO THAT SECTION, THE ADMINISTRATIVE DIRECTOR
42 MAY ISSUE AN ORDER REQUIRING COMPLIANCE IMMEDIATELY OR WITHIN A SPECIFIED
43 TIME PERIOD AND MAY INCLUDE A CIVIL PENALTY. A COMPLIANCE ORDER SHALL
44 STATE WITH REASONABLE SPECIFICITY THE NATURE OF THE VIOLATION, A TIME FOR
45 COMPLIANCE IF APPLICABLE AND THE ALLEGED VIOLATOR'S RIGHT TO A HEARING. THE

1 ADMINISTRATIVE DIRECTOR SHALL TRANSMIT THE COMPLIANCE ORDER TO THE ALLEGED
2 VIOLATOR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY HAND DELIVERY.
3 A COMPLIANCE ORDER BECOMES FINAL AND ENFORCEABLE IN SUPERIOR COURT UNLESS
4 WITHIN THIRTY DAYS AFTER RECEIPT OF THE ORDER THE ALLEGED VIOLATOR REQUESTS
5 A HEARING BEFORE THE ADMINISTRATIVE DIRECTOR. IF A HEARING IS REQUESTED,
6 THE ORDER DOES NOT BECOME FINAL UNTIL THE ADMINISTRATIVE DIRECTOR HAS
7 ISSUED A FINAL DECISION ON THE APPEAL. A FINAL ADMINISTRATIVE DECISION IS
8 SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.
9 AFTER AN ORDER ISSUED PURSUANT TO THIS SUBSECTION BECOMES FINAL, THE
10 POLITICAL SUBDIVISION OR AGENCY MAY BEGIN AN ACTION IN SUPERIOR COURT TO
11 ENFORCE THE ORDER.

12 B. WHEN DETERMINING THE AMOUNT OF A CIVIL PENALTY PURSUANT TO
13 SUBSECTION A OF THIS SECTION, THE ADMINISTRATIVE DIRECTOR SHALL CONSIDER
14 ALL OF THE FOLLOWING:

- 15 1. THE SERIOUSNESS OF THE VIOLATION.
- 16 2. THE ECONOMIC BENEFIT, IF ANY, RESULTING FROM THE VIOLATION.
- 17 3. ANY HISTORY OF SUCH A VIOLATION.
- 18 4. ANY GOOD FAITH EFFORTS TO COMPLY WITH THE APPLICABLE
19 REQUIREMENTS.
- 20 5. THE ECONOMIC IMPACT OF THE PENALTY ON THE VIOLATOR.
- 21 6. SUCH OTHER FACTORS AS JUSTICE MAY REQUIRE.

22 C. IN ADDITION TO THE REMEDIES PROVIDED IN THIS SECTION, ENFORCEMENT
23 OF ANY ORDINANCE, RULE, REGULATION OR SPECIFICATION ADOPTED PURSUANT TO
24 SECTION 49-255.04 MAY INCLUDE INJUNCTIVE OR OTHER EQUITABLE RELIEF.

25 D. CIVIL PENALTIES OBTAINED PURSUANT TO THIS SECTION BY A POLITICAL
26 SUBDIVISION SHALL BE DEPOSITED WITH THE POLITICAL SUBDIVISION FOR USE IN
27 ADMINISTERING THE PROGRAM OR PLAN ADOPTED PURSUANT TO SECTION 49-255.04.
28 FOR AN AGENCY OF THIS STATE, CIVIL PENALTIES SHALL BE DEPOSITED, PURSUANT
29 TO SECTIONS 35-146 AND 35-147, IN THE STATE GENERAL FUND.

30 E. A POLITICAL SUBDIVISION OR AGENCY OF THIS STATE SHALL NOT RECEIVE
31 CIVIL PENALTIES UNDER THIS SECTION IF AN INTERESTED PERSON, THE UNITED
32 STATES, THIS STATE OR ANOTHER POLITICAL SUBDIVISION OR AGENCY OF THIS STATE
33 HAS RECEIVED CIVIL PENALTIES OR IS DILIGENTLY PROSECUTING A CIVIL PENALTY
34 ACTION IN A COURT OF THE UNITED STATES OR THIS STATE, OR IN AN
35 ADMINISTRATIVE ENFORCEMENT PROCEEDING, WITH RESPECT TO THE SAME
36 ALLEGATIONS, STANDARD, REQUIREMENT OR ORDER. THIS STATE, AND ANY POLITICAL
37 SUBDIVISION OR AGENCY OF THIS STATE THAT IS OR MAY BE AFFECTED BY A CIVIL,
38 JUDICIAL OR ADMINISTRATIVE ACTION, MAY INTERVENE AS A MATTER OF RIGHT IN
39 ANY PENDING CIVIL, JUDICIAL OR ADMINISTRATIVE ACTION FOR PURPOSES OF
40 OBTAINING INJUNCTIVE OR DECLARATORY RELIEF.