

Arizona Department of Water Resources

S.B. 1624 - Municipality Fees

S.B. 1624 – Environment Budget Reconciliation Bill

- Enacted during the 2011 regular legislative session and becomes effective July 20, 2011.
- A budget reconciliation bill - a bill that contains substantive statutory and session law changes to implement an appropriation bill.
- Sections 2 and 7 relate to the fee to be assessed on municipalities.

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Sec. 2. Title 45, chapter 1, article 1, Arizona Revised Statutes, is amended by adding section 45-118, to read:

45-118. Water resources; fee; municipalities

Notwithstanding any other law, the director of the department may assess and collect a fee from each municipality in this state. The fee shall be assessed proportionally based on the population of each municipality. The director shall deposit monies collected pursuant to this section in the water resources fund established by section 45-117.

Water Resources Fund

A.R.S. § 45-117

- Created by the Legislature in 2010.
- Funded with fees paid to the Department, EXCEPT Colorado River water use fees, groundwater withdrawal fees, and application fees for Assured and Adequate Water Supply, NOIs, well permits and dams.
- Monies in the fund are to be used by the Department to carry out the purposes of Title 45, Arizona Revised Statutes.
- Monies in the fund are subject to legislative appropriation. This means that in any fiscal year, the Department can use monies in the fund only in the amount that the Legislature appropriates to it from the fund for that fiscal year.
- Any monies remaining in the fund at the end of a fiscal year remain in the fund and are exempt from lapsing.

Guidelines for Establishing Municipality Fee

- A.R.S. § 45-118 requires the Department to assess the municipality fee proportionally based on population.
- A.R.S. § 45-118 does not set any limit on the total amount of municipality fees the Department may collect in a year.
- A limitation on the total amount of fees the Department may collect is contained in section 7 of S.B. 1624.

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Section 7. Water resources fees; deposit; fiscal year 2011-2012; exemption from rulemaking

A. Notwithstanding any other law, the director of the department of water resources may increase fees in fiscal year 2011-2012 for services in fiscal year 2011-2012, except that no fees may be increased pursuant to this subsection for any municipality subject to the fee assessed and collected pursuant to section 45-118, Arizona Revised Statutes, as added by this act.

*B. * * **

*C. * * **

- The Department recently increased its fees for services through a formal rulemaking that became effective prior to FY 2011-2012.
- The Department does not intend to adopt additional fee increases for services in FY 2011-2012.
- Therefore, the Department will not collect any additional fees pursuant to subsection A of Section 7.

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Section 7. Water resources fees; deposit; fiscal year 2011-2012; exemption from rulemaking

A. * * *

B. It is the intent of the legislature that the revenue generated by the fees collected pursuant to subsection A of this section and section 45-118, Arizona Revised Statutes, as added by this act, shall not exceed \$7,000,000.

C. * * *

- Because the Department will not collect any fees pursuant to subsection A of Section 7, the \$7 million limit mentioned in Subsection B applies only to the municipality fees collected pursuant to A.R.S. § 45-118.

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Section 7. Water resources fees; deposit; fiscal year 2011-2012; exemption from rulemaking

*A. * * **

*B. * * **

C. The department of water resources is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for the purpose of establishing fees pursuant to this section and section 45-118, Arizona Revised Statutes, as added by this act, until July 1, 2012.

- This subsection allows the Department to adopt a temporary rule establishing the municipality fee for FY 2011-2012 without following the formal rulemaking requirements.
- This means that the Department can adopt the temporary rule without:
 - Publishing a Notice of Proposed Rulemaking in the Arizona Administrative Register;
 - Receiving formal written and oral comments on a proposed rule;
 - Submitting a proposed rule to the Governor's Regulatory Review Council for approval.
- The Department must file a Notice of Exempt Rulemaking containing the text of the temporary rule with the Secretary of State. The rule becomes effective when the Notice is filed.
- The Subsection does not provide an exemption from the formal rulemaking requirements for a rule establishing the municipality fee for FY 2012-2013 and thereafter.

Department Procedure to Adopt Rules Establishing Municipality Fee

Temporary Rule for Fiscal Year 2011-2012:

- The Department will adopt a temporary rule establishing the fee for FY 2011-2012 through a rulemaking exempt from the formal rulemaking requirements, as authorized by Section 7(C) of S.B. 1624.
- The rule will become effective immediately when the Notice of Exempt Rulemaking is filed with the Secretary of State.
- The rule will repeal automatically effective July 1, 2012.
- The Department intends to file a Notice of Exempt Rulemaking containing the text of the rule with the Secretary of State in late July or early August, 2011.

Department Procedure to Adopt Rules Establishing Municipality Fee

Permanent Rule for Fiscal Year 2012-2013 and thereafter:

- The Department will follow the formal rulemaking procedures to adopt a permanent rule establishing the fee for FY 2012-2013 and thereafter.
- The Department intends to file a Notice of Proposed Rulemaking containing the text of the proposed rule with the Secretary of State in late July or early August, 2011.
- The Notice of Proposed Rulemaking will be published in the Arizona Administrative Register approximately three weeks after it is filed with the Secretary of State.
- The Department will hold an oral proceeding on the proposed rule approximately 30 days after the Notice of Proposed Rulemaking is published in the Arizona Administrative Register.
- After close of rulemaking record, the Department will submit the rule, with any changes made in response to public comments, to the Governor's Regulatory Review Council for approval.
- The Department will request the Governor's Regulatory Review Council to approve the rule with an effective date of July 1, 2012.

Draft Rule Language

Methodology for Calculating Each Municipality's Fee (In both the Draft Temporary Rule for FY 2011-2012 and Draft Permanent Rule)

1. Start with the maximum amount of fees allowed to be collected from all municipalities during the year - \$7 million (S.B. 1624, section 7(B)).
2. Reduce that amount by the amount of any unobligated monies in the Water Resources Fund at the beginning of the fiscal year. This reduction is intended to prevent an accumulation of unused monies in the Water Resources Fund by reducing the municipality fee for a year by the amount of any unused monies carried over in the fund from the prior fiscal year. The result is the total amount of fees to be collected from all municipalities during the year.
3. For each municipality, determine the ratio, expressed as a percentage, that the municipality's population bears to the total population of all municipalities in the State by dividing the municipality's population by the total population of all municipalities in the State. In making this calculation, the Department will use population numbers from the most recent U.S. decennial census.
4. Multiply the municipality's percentage of the total population (the result in paragraph 3 above) by the total amount of fees to be collected from all municipalities during the year (the result in paragraph 2 above). The result is the municipality fee for the fiscal year.

Numbers to be used in Calculation of FY 2011-2012 Municipality Fee

- Amount of unobligated monies in Water Resources Fund as of July 1, 2011: \$743,312.46.
- Total amount of fees to be collected from all municipalities during the fiscal year: \$7,000,000 – \$743,312.46 = \$6,256,687.54.
- Population of each municipality: population according to the 2010 U.S. decennial census
- Total population of all municipalities: 5,022,150

Example Calculation of FY 2011-2012 Municipality Fee

City of Flagstaff

1. \$7,000,000
 2. $\$7,000,000 - \$743,312.46$ (amount of unobligated monies in Water Resources Fund as of July 1, 2011) = $\$6,256,687.54$.
 3. $65,870$ (Flagstaff's population according to 2010 U.S. decennial census) $\div 5,022,150$ (total population of all municipalities in the State according to 2010 decennial census) = $.013115897$
 4. $.013115897 \times \$6,256,687.54 = \$82,062.07$
- Flagstaff's municipality fee for FY 2011-2012 is $\$82,062.07$ (approximately \$1.25 per person)

Draft Rule Language

Due Dates for Payment of Fee

Draft Temporary Rule for Fiscal Year 2011-2012:

- ADWR must give each municipality official notice of its fee by August 15, 2011.
- Notice must be given to the municipality's city or town manager and/or city or town attorney.
- At least half of the fee must be paid by October 14, 2011 and any remaining portion of the fee must be paid by January 16, 2012.

Draft Rule Language

Due Dates for Payment of Fee

Draft Permanent Rule:

- ADWR must give each municipality official notice of its fee by August 1 of the fiscal year.
- Notice must be given to the municipality's city or town manager and/or city or town attorney.
- The entire fee must be paid by October 15 of that fiscal year.

Draft Rule Language

Administrative Review of Calculation of Fee

(In both the Draft Temporary Rule for FY 2011-2012 and Draft Permanent Rule)

- A municipality may seek administrative review of the calculation of its fee by filing a written request for review with the Director within 15 calendar days after receiving notice of the fee.
- Review will be limited to whether the Department's calculation of the fee contains a mathematical error.
- The Director will be required to make a decision on a request for review and mail a written decision to the municipality requesting review within 15 calendar days after receiving the request.

Draft Rule Language

Definitions (In both the Draft Temporary Rule for FY 2011-2012 and Draft Permanent Rule)

- “Fiscal year” means the year beginning on July 1 and ending on June 30.
- “Municipality” means an incorporated city or town.
- “Population” means the population according to the most recent United States decennial census.
- “Water resources fund” means the water resources fund established by A.R.S. § 45-117.

Conclusion

- Written comments may be submitted to Doug Dunham, Special Assistant to the Director and Legislative Liaison for ADWR, until Friday, July 22nd 2011 at 5:00 PM PST
- Written comments or questions can be submitted to the following email address: dwdunham@azwater.gov