

NOTICE OF EXEMPT RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

PREAMBLE

1. Sections Affected

Rulemaking Action

R12-15-107

New Section

2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the implementing statutes (specific):

Authorizing statutes: A.R.S. § 45-118

Statute or session law authorizing the exemption: Laws 2011, Ch. 36, § 7(C)

3. The effective date of the rule:

August 10, 2011

4. A list of all previous notices appearing in the *Register* addressing the proposed rule:

None

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

Reasons for initiating the rule

During the 2011 regular legislative session, the legislature passed and the Governor signed into law Senate Bill (“S.B.”) 1624, the Environment Budget Reconciliation Bill (Laws 2011, Ch. 36, § 2, effective July 20, 2011). Section 2 of S.B. 1624 amended the Arizona Revised Statutes by adding section 45-118 which authorizes the Department of Water Resources (“Department”) to assess and collect a fee from each municipality in the state (“municipality fees”). Section 7(C) of S.B. 1624 provides that the Department is exempt from the rulemaking requirements in A.R.S. Title 41, Chapter 6 for the purposes of establishing the municipality fees until July 1, 2012. The purpose of this exempt rulemaking is to establish the municipality fees for fiscal year 2011-2012.

A.R.S. § 45-118 provides that the municipality fees shall be assessed proportionately, based on the population of each municipality. A.R.S. § 45-118 further provides that the Director of the Department (“Director”) shall deposit all municipality fees in the water resources fund established by A.R.S. § 45-117. The water resources fund was established in 2010 and, in addition to the municipality fees authorized by A.R.S. § 45-118, the fund consists of certain application and filing fees paid to the Department. A.R.S. § 45-117(A). Monies in the water resources fund are to be used by the Department to carry out the purposes of title 45, Arizona Revised Statutes. A.R.S. § 45-117(C). Monies in the fund are subject to legislative

appropriation, and any monies remaining in the fund at the end of a fiscal year remain in the fund and are exempt from lapsing. A.R.S. § 45-117(B).

Because A.R.S. § 45-118 requires the Director to assess the municipality fees proportionately based on each municipality's population, the only thing the Director must determine in establishing the fees is the total amount of fees to be assessed and collected from all municipalities during the fiscal year. After the total amount of municipality fees is determined, the amount to be assessed and collected from each municipality is arrived at by performing a simple mathematical calculation. A.R.S. § 45-118 does not provide any guidance to the Director on how to determine the total amount of municipality fees to be assessed and collected during a fiscal year. However, Section 7 of S.B. 1624 does contain language expressing the legislature's intent regarding the maximum amount of municipality fees the Department may assess and collect during a fiscal year.

Section 7(A) of S.B. 1624 authorizes the Department to increase its fees for services in fiscal year 2011-2012. Section 7(B) of S.B. 1624 provides that it is the intent of the legislature that the revenue generated by the fees collected pursuant to section 7(A) and the municipality fees collected pursuant to A.R.S. § 45-118 shall not exceed \$7,000,000. The Department has determined that it will not increase fees for services in fiscal year 2011-2012. Therefore, the \$7,000,000 maximum referred to in section 7(B) applies only to the municipality fees.

Although the Department may assess a total of \$7,000,000 in municipality fees in fiscal year 2011-2012, the Department recognizes that its authority to use fees in the water resources fund during a fiscal year is restrained by the amount of money the legislature appropriates to it from the fund for that fiscal year. For fiscal year 2011-2012, the legislature appropriated \$6,458,500 to the Department from the water resources fund. The Department has determined that if it were to assess and collect the full \$7,000,000 in municipality fees during fiscal year 2011-2012, the amount of fees deposited in the water resources fund during the fiscal year, together with the amount of monies carried over in the fund from the prior fiscal year, would greatly exceed the amount of money appropriated to the Department from the fund for the fiscal year. For that reason, the Department has decided to reduce the \$7,000,000 maximum amount by the amount of money carried over in the water resources fund from fiscal year 2010-2011 (\$743,312.46). As a result, the Department will assess municipality fees in the total amount of \$6,256,687.54 for fiscal year 2011-2012.

An explanation of the rule

Subsection (A) of R12-15-107 requires each municipality in the state to pay a fee to the Department in fiscal year 2011-2012 in the amount calculated pursuant to subsection (B) and by the dates specified in subsection (E).

Subsection (B) provides that a municipality's fee will be calculated in the following manner:

1. Divide the municipality's population by the total population of all municipalities in the state. The population numbers will all be based on the most recent United States decennial census.

2. Subtract the amount of unobligated monies in the water resources fund at the beginning of the fiscal year from \$7 million.
3. Multiply the result obtained in step 1 by the dollar amount obtained in step 2. This number will be the municipality's fee fiscal year 2011-2012.

Subsection (C) states that the Director shall notify each municipality of its municipality fee in writing by August 15, 2011. Such notice shall be provided to the municipality's city or town manager or city or town attorney.

Subsection (D) allows each municipality to seek review of the calculation of its fee. Review shall be limited only to whether the Director's calculation of the fee contained a mathematical, clerical or typographical error.

Subsection (E) establishes the timing of payment of the municipality fee. A municipality shall pay at least one-half of its fee by October 17, 2011 and any remaining portion of the fee by January 16, 2012. Should a municipality choose to do so, it may pay more than one-half of its fee by October 17, 2011.

Subsection (F) contains definitions of terms used in the Section. Subsection (G) provides that the entire Section repeals automatically on July 1, 2012.

- 7. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not to rely on in its evaluation of or justification for the rule,**

where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

Not applicable

10. A description of the changes between the proposed rules, including supplemental notices, and the final rules, (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

Not applicable

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was the rule previously made as an emergency rule? If so, please indicate the *Register* citation:

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 1. FEES

Section

R12-15-107. Municipality Fee for Fiscal Year 2012

ARTICLE 1. FEES

R12-15-107. Municipality Fee For Fiscal Year 2012

- A.** Each municipality in this state shall pay a fee to the Department in fiscal year 2012 in the amount calculated by the Director under subsection (B). The fee shall be paid by the dates specified in subsection (E).
- B.** The Director shall calculate a municipality's fee for fiscal year 2012 as follows:
1. 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.
 2. Subtract the amount of unobligated monies in the water resources fund at the beginning of the fiscal year from \$7 million.
 3. Multiply the percentage calculated in subsection (B)(1) by the result in subsection (B)(2).
- C.** No later than August 15, 2011, the Director shall notify each municipality in writing of the municipality's fee for fiscal year 2012 as calculated in subsection (B), including the

manner in which the fee was calculated. The notice shall be given to the municipality's city or town manager or city or town attorney.

D. A municipality may seek review of the calculation of its fee by filing a written request for review with the Director within 15 calendar days after receipt of the initial written notice of the fee given under subsection (C). Review shall be limited to whether the Director's calculation of the fee contains a mathematical, clerical or typographical error. The Director shall make a final decision on a request for review and mail a final written decision to the municipality requesting the review within 10 calendar days after the date the Director receives the written request. The Director's final written decision shall state the municipality's fee following review.

E. A municipality shall pay at least one-half of its fee by October 17, 2011 and any remaining portion of the fee by January 16, 2012.

F. As used in this Section, the following terms have the meaning indicated:

1. "Fiscal year 2012" means the year beginning July 1, 2011 and ending June 30, 2012.
2. "Municipality" means an incorporated city or town.
3. "Population" means the population according to the most recent United States decennial census.

G. This Section shall repeal automatically, effective July 1, 2012.