

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1566

AN ACT

AMENDING SECTION 45-454, ARIZONA REVISED STATUTES; RELATING TO THE
GROUNDWATER CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-454, Arizona Revised Statutes, is amended to
3 read:

4 45-454. Exemption of small non-irrigation wells; definitions

5 A. Withdrawals of groundwater for non-irrigation uses from wells
6 having a pump with a maximum capacity of not more than thirty-five gallons
7 per minute which were drilled before April 28, 1983 or which were drilled
8 after April 28, 1983 pursuant to a notice of intention to drill which was on
9 file with the department on such date are exempt from this chapter, except
10 that:

11 1. Wells drilled before June 12, 1980 which are not abandoned or
12 capped or wells which were not completed on June 12, 1980 but for which a
13 notice of intention to drill was on file with the Arizona water commission on
14 such date are subject to subsections J, K and L of this section and must be
15 registered pursuant to section 45-593. If two or more wells in an active
16 management area are exempt under this paragraph and are used to serve the
17 same non-irrigation use at the same location, the aggregate quantity of
18 groundwater withdrawn from the wells shall not exceed fifty-six acre-feet per
19 year.

20 2. Wells drilled between June 12, 1980 and April 28, 1983, except as
21 provided in paragraph 1 of this subsection, and wells drilled after April 28,
22 1983 pursuant to a notice of intention to drill which was on file with the
23 department on April 28, 1983, are subject to subsections G, I, J and K of
24 this section.

25 B. Withdrawals of groundwater for non-irrigation uses from wells
26 having a pump with a maximum capacity of not more than thirty-five gallons
27 per minute drilled on or after April 28, 1983, except wells drilled after
28 April 28, 1983 pursuant to a notice of intention to drill which was on file
29 with the department on such date, are exempt from this chapter, except that:

30 1. Such wells are subject to subsections G through K of this section.

31 2. In an active management area, other than a subsequent active
32 management area designated for a portion of a groundwater basin in the
33 regional aquifer systems of northern Arizona, withdrawals of groundwater from
34 such wells for non-irrigation uses other than domestic purposes and stock
35 watering shall not exceed ten acre-feet per year.

36 3. In a subsequent active management area that is designated for a
37 portion of a groundwater basin in the regional aquifer systems of northern
38 Arizona, groundwater withdrawn from such wells may be used only for domestic
39 purposes and stock watering.

40 C. On or after January 1, 2006, an exempt well otherwise allowed by
41 this section may not be drilled on land if any part of the land is within one
42 hundred feet of the operating water distribution system of a municipal
43 provider with an assured water supply designation within the boundaries of an
44 active management area established on or before July 1, 1994, as shown on a

1 digitized service area map provided to the director by the municipal provider
2 and updated by the municipal provider as specified by the director.

3 D. On request from the owner of the land on which an exempt well is
4 prohibited pursuant to subsection C of this section on a form prescribed by
5 the director, the director shall issue an exemption from subsection C of this
6 section if the landowner demonstrates to the satisfaction of the director
7 that any of the following applies:

8 1. The landowner submitted a written request for service to the
9 municipal provider that operates the distribution system and the municipal
10 provider did not provide written verification to the landowner within thirty
11 calendar days after receipt of the request that water service is available to
12 the landowner after payment of any applicable fee to the municipal provider.

13 2. The total capital cost and fees for connecting to the operating
14 water distribution system exceed the total capital cost and fees for drilling
15 and fully equipping an exempt well.

16 3. If the applicant must obtain an easement across other land to
17 connect to the water distribution system of the municipal provider, the
18 applicant sent the owner of the land a request for the easement by certified
19 mail, return receipt requested, and either the applicant did not receive a
20 response to the request within thirty calendar days of mailing the request or
21 the request was denied.

22 4. ALL OF THE FOLLOWING APPLY:

23 (a) THE LAND ON WHICH THE EXEMPT WELL IS TO BE LOCATED IS CONNECTED TO
24 THE MUNICIPAL PROVIDER'S OPERATING WATER DISTRIBUTION SYSTEM AND IS ZONED FOR
25 AGRICULTURAL USE.

26 (b) THE LANDOWNER WILL OPERATE THE WELL ONLY FOR URBAN LIVESTOCK
27 WATERING ON THE PROPERTY ON WHICH THE WELL IS LOCATED WHEN WATER SERVICE IS
28 NOT AVAILABLE FROM THE WATER PROVIDER DUE TO AN EMERGENCY THAT RESULTS IN A
29 TEMPORARY SYSTEM DISRUPTION, AS DETERMINED BY THE MUNICIPAL PROVIDER.

30 (c) THE OPERATOR OF THE WELL WILL MEASURE WITHDRAWALS FROM THE WELL
31 WITH A MEASURING DEVICE APPROVED BY THE DIRECTOR PURSUANT TO SECTION 45-604
32 AND THE WELL WILL BE SUBJECT TO THE WRITTEN INSPECTION AND RECORD KEEPING
33 REQUIREMENTS PRESCRIBED BY THE MUNICIPAL PROVIDER.

34 (d) THE MUNICIPAL PROVIDER CONSENTS TO THE DRILLING AND OPERATION OF
35 THE WELL UNDER THIS PARAGRAPH AND SUBMITS A LETTER OF CONSENT TO THE
36 LANDOWNER AND THE DEPARTMENT. THE MUNICIPAL PROVIDER MAY RESCIND ITS CONSENT
37 TO THE CONTINUED OPERATION OF THE WELL UNDER THIS PARAGRAPH IF THE MUNICIPAL
38 PROVIDER DETERMINES THAT THE WELL HAS BEEN USED FOR A PURPOSE NOT AUTHORIZED
39 BY THIS PARAGRAPH, EXCLUDING ROUTINE MAINTENANCE. ON THE MUNICIPAL
40 PROVIDER'S WRITTEN NOTIFICATION TO THE DEPARTMENT THAT IT RESCINDS ITS
41 CONSENT TO THE CONTINUED OPERATION OF THE WELL, THE EXEMPTION FOR THAT WELL
42 UNDER THIS PARAGRAPH IS REVOKED.

43 ~~4.~~ 5. The landowner does not qualify for an exemption pursuant to
44 paragraph 1, 2 or 3 of this subsection and the landowner provides written
45 verification from the municipal provider that the landowner shall not receive

1 or request water service from the municipal provider while the exempt well is
2 operational. The exemption for that well is revoked if the landowner or any
3 subsequent landowner receives water service from the municipal provider. ~~In
4 determining whether to approve or reject a permit application filed under
5 section 45-599, the director shall not consider any impacts the proposed well
6 may have on an exempt well drilled pursuant to this paragraph.~~

7 E. This section does not prohibit a property owner, after January 1,
8 2006, from drilling a replacement exempt well for a lawful exempt well if the
9 replacement well does not increase the total number of operable exempt wells
10 on the applicant's land.

11 F. A remediation well drilled for the purpose of remediating
12 groundwater is exempt from this section if it meets one of the following:

13 1. The remediation well is for an approved department of environmental
14 quality or United States environmental protection agency remediation program.

15 2. A registered geologist certifies that the remediation well is for
16 the purpose of remediation.

17 G. A person shall file a notice of intention to drill with the
18 director pursuant to section 45-596 before drilling an exempt well or causing
19 an exempt well to be drilled.

20 H. The registered well owner shall file a completion report pursuant
21 to section 45-600, subsection B.

22 I. In an active management area only one exempt well may be drilled or
23 used to serve the same non-irrigation use at the same location, except that a
24 person may drill or use a second exempt well to serve the same non-irrigation
25 use at the same location if the director determines that all of the following
26 apply:

27 1. Because of its location, the first exempt well is not capable of
28 consistently producing more than three gallons per minute of groundwater when
29 equipped with a pump with a maximum capacity of thirty-five gallons per
30 minute.

31 2. The second exempt well is located on the same parcel of land as the
32 first exempt well, the parcel of land is at least one acre in size, all
33 groundwater withdrawn from both exempt wells is used on that parcel of land
34 and there are no other exempt wells on that parcel of land.

35 3. Combined withdrawals from both wells do not exceed five acre-feet
36 per year.

37 4. If the second exempt well is drilled after January 1, 2000, the
38 county health authority for the county in which the well is located or any
39 other local health authority that controls the installation of septic tanks
40 or sewer systems in the county has approved the location of the well in
41 writing after physically inspecting the well site.

42 5. Use of two wells for the same non-irrigation use at the same
43 location is not contrary to the health and welfare of the public.

44 J. An exempt well is subject to sections 45-594 and 45-595.

1 K. Groundwater withdrawn from an exempt well may be transported only
2 pursuant to articles 8 and 8.1 of this chapter.

3 L. A person who owns land from which exempt withdrawals were being
4 made as of the date of the designation of the active management area is not
5 eligible for a certificate of grandfathered right for a type 2 non-irrigation
6 use for such withdrawals.

7 M. IN DETERMINING WHETHER TO APPROVE OR REJECT A PERMIT APPLICATION
8 FILED UNDER SECTION 45-599 OR SECTION 45-834.01, SUBSECTION B OR D, THE
9 DIRECTOR SHALL NOT CONSIDER ANY IMPACTS THE PROPOSED WELL MAY HAVE ON AN
10 EXEMPT WELL DRILLED PURSUANT TO SUBSECTION D, PARAGRAPH 4 OR 5 OF THIS
11 SECTION.

12 ~~M.~~ N. For the purposes of this section:

13 1. "Domestic purposes" means uses related to the supply, service and
14 activities of households and private residences and includes the application
15 of water to less than two acres of land to produce plants or parts of plants
16 for sale or human consumption, or for use as feed for livestock, range
17 livestock or poultry, as such terms are defined in section 3-1201.

18 2. "Municipal provider" means a city, town, private water company or
19 irrigation district that supplies water for non-irrigation use.

20 3. "Stock watering" means the watering of livestock, range livestock
21 or poultry, as such terms are defined in section 3-1201.

22 Sec. 2. Drought emergency groundwater transfer; delayed repeal

23 A. Notwithstanding section 45-544, subsection A, paragraph 2, Arizona
24 Revised Statutes, in areas outside of active management areas, groundwater
25 may be transported away from a groundwater basin on application to and
26 approval by the director of the department of water resources pursuant to
27 subsection B of this section. The director shall post the application on the
28 department's website before approving the application.

29 B. The director of the department of water resources shall approve a
30 request to transport groundwater away from a groundwater basin outside of an
31 active management area if the director finds that all of the following apply:

32 1. The governor has declared an emergency due to lack of precipitation
33 or a water shortage pursuant to section 35-192, Arizona Revised Statutes.

34 2. The groundwater to be transported will be withdrawn from a well
35 that is in existence as of the date of the governor's declaration of
36 emergency.

37 3. If the groundwater to be transported will be withdrawn from a well
38 within the incorporated area of a city or town, the city or town has
39 consented to the groundwater withdrawal.

40 4. If the groundwater to be transported will be withdrawn from a well
41 within the boundaries of a political subdivision, however designated,
42 established pursuant to title 48, chapter 17 or 19, Arizona Revised Statutes,
43 the political subdivision has consented to the groundwater withdrawal.

44 5. If the groundwater to be transported will be withdrawn from a well
45 within the boundaries of a county for use in another county, the county from

1 which the groundwater will be withdrawn has consented to the groundwater
2 withdrawal.

3 6. The groundwater to be transported will be transported only by motor
4 vehicle or train.

5 7. The groundwater transportation is necessary to provide water
6 supplies for domestic, stock watering or potable municipal water service
7 purposes in a location included in the emergency declaration.

8 8. The groundwater to be transported will be used only for domestic,
9 stock watering or potable municipal water service purposes.

10 9. The county, city, town or other political subdivision within which
11 the transported water is to be used has implemented an emergency conservation
12 plan sufficient to prevent nonessential use of the groundwater.

13 10. The groundwater to be transported will not be used in an active
14 management area.

15 C. If the director of the department of water resources approves the
16 request to transport groundwater away from a groundwater basin outside of an
17 active management area pursuant to subsection B of this section, the approval
18 is valid for six months, or until the director determines that the
19 groundwater transportation is no longer necessary to provide water supplies
20 for domestic, stock watering or potable municipal water service purposes in a
21 location experiencing a water shortage, whichever occurs first. On request,
22 the director may extend the approval of the groundwater transportation for
23 one additional six month period on the expiration of the original approval
24 period, if the director determines that all of the requirements of subsection
25 B of this section continue to apply. On expiration or revocation of the
26 approval to transport groundwater, the transportation of the groundwater
27 shall immediately cease.

28 D. The director of the department of water resources shall approve or
29 deny a request to transport groundwater away from a groundwater basin outside
30 of an active management area pursuant to subsection B of this section within
31 thirty days of the receipt of the request. Title 41, chapter 6, article 7.1,
32 Arizona Revised Statutes, does not apply to this act.

33 E. Groundwater transported pursuant to this section is subject to the
34 payment of damages.

35 F. Groundwater transported pursuant to this section shall not be
36 transported to subsidize insufficient supplies due to continued growth or
37 deficient base water supplies.

38 G. This section is repealed from and after April 30, 2012.

39 Sec. 3. Legislative intent

40 It is the intent of this legislature by section 2 of this act to
41 provide interim water use for true emergencies.

42 Sec. 4. Retroactivity

43 Section 2 of this act is effective retroactively to from and after
44 April 30, 2011.