

REFERENCE TITLE: Pinal groundwater infrastructure fund; appropriation.

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HB 2540

Introduced by
Representatives Bowers: Griffin

AN ACT

AMENDING SECTIONS 45-611, 45-613 AND 45-615, ARIZONA REVISED STATUTES;
AMENDING TITLE 45, CHAPTER 2, ARTICLE 11, ARIZONA REVISED STATUTES, BY
ADDING SECTION 45-615.01; REPEALING SECTION 45-615.01, ARIZONA REVISED
STATUTES; AMENDING SECTION 45-2425, ARIZONA REVISED STATUTES;
APPROPRIATING MONIES; RELATING TO WATER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-611, Arizona Revised Statutes, is amended to
3 read:

4 45-611. Groundwater withdrawal fee; amounts and purposes of
5 fee; exception

6 A. Except as provided in subsection B of this section, the director
7 shall levy and collect an annual groundwater withdrawal fee from each
8 person withdrawing groundwater in the Prescott active management area or
9 the person who owns the right to withdraw the groundwater, in an amount
10 not to exceed ~~five dollars~~ \$5 per acre-foot of groundwater withdrawn and
11 beneficially used. The director shall levy and collect an annual
12 withdrawal fee from each person withdrawing water, other than stored
13 water, from a well in the Santa Cruz active management area or the person
14 who owns the right to withdraw the water, in an amount not to exceed ~~five~~
15 ~~dollars~~ \$5 per acre-foot of water, other than stored water, that is
16 withdrawn and beneficially used. For THE purposes of this article, the
17 annual withdrawal fee levied and collected in the Santa Cruz active
18 management area shall be considered a groundwater withdrawal fee. The
19 actual amount of the fee levied and collected by the director pursuant to
20 this subsection shall be set by the director as follows:

21 1. For administration and enforcement of this chapter, an amount
22 not less than ~~fifty cents~~ \$.50 and not greater than ~~one dollar~~ \$1 per
23 acre-foot per year. The initial fee for administration and enforcement
24 shall be levied as soon as practicable after the active management area is
25 established.

26 2. For augmentation of the water supply of the active management
27 area, conservation assistance to water users within the active management
28 area and monitoring and assessing water availability within the active
29 management area, an amount not greater than ~~two dollars~~ \$2 per acre-foot
30 per year.

31 3. For purchasing and retiring grandfathered rights, an amount not
32 greater than ~~two dollars~~ \$2 per acre-foot per year. The initial fee for
33 purchasing and retiring grandfathered rights shall be levied in the first
34 year in which the director develops and implements a program for the
35 purchase and retirement of grandfathered rights as part of the management
36 plan for the active management area, but not earlier than January 1, 2006.
37 The director may not levy a fee under this paragraph on a district member
38 of a groundwater replenishment district that withdraws groundwater in the
39 district for a non-irrigation use in the district.

40 B. A person, other than an irrigation district, who withdraws
41 groundwater in an active management area from a non-exempt well for use
42 pursuant to an irrigation grandfathered right that is appurtenant to ten
43 or fewer irrigation acres and the person who owns the right to withdraw
44 the groundwater are exempt from the groundwater withdrawal fee

1 requirements of subsections A and C of this section for those withdrawals
 2 unless the irrigation acres are part of an integrated farming operation.

3 C. Except as provided in section 45-411.01, subsection C and
 4 subsection B of this section, the director shall levy and collect an
 5 annual groundwater withdrawal fee from each person who withdraws
 6 groundwater in the Tucson, Phoenix and Pinal active management areas or
 7 the person who owns the right to withdraw the groundwater, in an amount of
 8 not more than ~~five dollars~~ \$5 per acre-foot of groundwater withdrawn and
 9 beneficially used. The director shall set the actual amount of the fee as
 10 follows:

11 1. In the Tucson and Phoenix active management areas, beginning in
 12 2017, for administration and enforcement of this chapter, an amount of at
 13 least ~~fifty cents~~ \$.50 but not more than ~~one dollar~~ \$1 per acre-foot per
 14 year. In the Pinal active management area, beginning in 2017, for
 15 administration and enforcement of this chapter, an amount of not more than
 16 ~~one dollar~~ \$1 per acre-foot per year.

17 2. ~~Through 2016,~~ For augmentation of the water supply of the active
 18 management area, conservation assistance to water users within the active
 19 management area and monitoring and assessing water availability within the
 20 active management area, ~~an amount of not more than fifty cents per acre-~~
 21 ~~foot per year, and after 2016,~~ an amount of not more than ~~two dollars~~ \$2
 22 per acre-foot per year. If a permanent board of directors of an active
 23 management area water district assumes office under section 48-4831, the
 24 fee for augmentation under this paragraph shall not be levied in that
 25 active management area.

26 3. In the Tucson and Phoenix active management areas, for Arizona
 27 water banking purposes, the amount of ~~two dollars fifty cents~~ \$2.50 per
 28 acre-foot per year. In the Pinal active management area, ~~through 2016,~~
 29 ~~for Arizona water banking purposes, including replenishment under chapter~~
 30 ~~15, article 3 of this title, the amount of two dollars fifty cents per~~
 31 ~~acre-foot per year and, beginning in 2017,~~ for Arizona water banking
 32 purposes, including replenishment under chapter 15, article 3 of this
 33 title, an amount of not more than ~~two dollars fifty cents~~ \$2.50 per
 34 acre-foot per year, EXCEPT THAT NO FEE SHALL BE LEVIED IN THE PINAL ACTIVE
 35 MANAGEMENT AREA FOR THIS PURPOSE DURING CALENDAR YEARS 2020 THROUGH 2026.

36 4. For purchasing and retiring grandfathered rights, an amount of
 37 not more than ~~two dollars~~ \$2 per acre-foot per year. The initial fee for
 38 purchasing and retiring grandfathered rights shall be levied in the first
 39 year in which the director develops and implements a program for the
 40 purchase and retirement of grandfathered rights as part of the management
 41 plan for the active management area, but not earlier than January 1, 2006.
 42 The director may not levy a fee pursuant to this paragraph on a district
 43 member of a groundwater replenishment district that withdraws groundwater
 44 in the district for non-irrigation use in the district.

1 5. IN THE PINAL ACTIVE MANAGEMENT AREA, BEGINNING FROM AND AFTER
2 DECEMBER 31, 2019 THROUGH FROM AND AFTER DECEMBER 31, 2026, AN AMOUNT OF
3 NOT MORE THAN \$2.50 PER ACRE-FOOT PER YEAR FOR GROUNDWATER AND IRRIGATION
4 EFFICIENCY PROJECTS.

5 Sec. 2. Section 45-613, Arizona Revised Statutes, is amended to
6 read:

7 45-613. Use of withdrawal fees collected for augmentation and
8 conservation and purchase and retirement of
9 grandfathered rights, Arizona water banking
10 purposes and groundwater and irrigation efficiency
11 projects

12 A. Except as provided in section 45-615, paragraph 2 and sections
13 45-1972 and 48-4504, monies collected in an active management area for
14 purposes of augmentation, conservation assistance and monitoring and
15 assessing water availability under section 45-611, subsection A, paragraph
16 2 and subsection C, paragraph 2 shall be used only to finance the
17 augmentation and conservation assistance programs that are part of the
18 management plan for the active management area and to fund any projects
19 that are authorized by the director for monitoring and assessing water
20 availability within the active management area.

21 B. Monies collected in an active management area for the purpose of
22 purchasing and retiring grandfathered rights under section 45-611,
23 subsection A, paragraph 3 and subsection C, paragraph 4 shall be used only
24 to finance the program for the purchase and retirement of grandfathered
25 rights that is part of the management plan for the active management area.

26 C. Monies collected in an active management area for the purpose of
27 Arizona water banking under section 45-611, subsection C, paragraph 3
28 shall be used only for the benefit of the active management area in which
29 they are collected.

30 D. MONIES COLLECTED IN THE PINAL ACTIVE MANAGEMENT AREA FOR THE
31 PURPOSE OF GROUNDWATER AND IRRIGATION EFFICIENCY PROJECTS UNDER SECTION
32 45-611, SUBSECTION C, PARAGRAPH 5 SHALL BE USED ONLY TO FINANCE PROJECTS
33 FOR THE CONSTRUCTION AND REHABILITATION OF WELLS AND RELATED
34 INFRASTRUCTURE FOR THE WITHDRAWAL AND EFFICIENT DELIVERY OF GROUNDWATER BY
35 IRRIGATION DISTRICTS IN THE PINAL ACTIVE MANAGEMENT AREA.

36 Sec. 3. Section 45-615, Arizona Revised Statutes, is amended to
37 read:

38 45-615. Deposits; divisions of collections into funds

39 Except as provided in section 45-113, subsection C, the director
40 shall deposit, pursuant to sections 35-146 and 35-147, all monies
41 collected by the department pursuant to section 45-611, subsection A,
42 paragraphs 2 and 3 and subsection C, paragraphs 2, 3 and 4 and any other
43 monies received for that purpose. Based on the statement of the director
44 transmitted pursuant to section 45-614, subsection B, the monies collected
45 shall be allocated as follows:

1 1. Except as provided in paragraph 2 of this section, monies
2 received for the purpose of augmentation of the water supply of the active
3 management area, conservation assistance to water users within the active
4 management area and monitoring and assessing water availability within the
5 active management area shall be kept in an augmentation and conservation
6 assistance fund. Separate accounts for each active management area shall
7 be maintained within the fund. On notice from the director, the state
8 treasurer shall invest and divest monies in the fund as provided by
9 section 35-313, and monies earned from investment shall be credited to the
10 fund.

11 2. If an active management area water district has been established
12 in an active management area, all monies received pursuant to section
13 45-611, subsection A, paragraph 2 for the purpose of augmentation of the
14 water supply of that active management area shall be transmitted to the
15 secretary-treasurer of the district for deposit in the general fund of the
16 district.

17 3. Monies received for the purpose of purchase and retirement of
18 grandfathered rights shall be kept in a purchase and retirement fund.
19 Separate accounts for each active management area shall be maintained
20 within the fund. On notice from the director, the state treasurer shall
21 invest and divest monies in the fund as provided by section 35-313, and
22 monies earned from investment shall be credited to the fund.

23 4. Monies received for the purpose of Arizona water banking shall
24 be deposited, pursuant to sections 35-146 and 35-147, in the Arizona water
25 banking fund.

26 5. MONIES COLLECTED BY THE DIRECTOR PURSUANT TO SECTION 45-611,
27 SUBSECTION C, PARAGRAPH 5 SHALL BE DEPOSITED IN THE TEMPORARY GROUNDWATER
28 AND IRRIGATION EFFICIENCY PROJECTS FUND ESTABLISHED BY SECTION 45-615.01.

29 Sec. 4. Title 45, chapter 2, article 11, Arizona Revised Statutes,
30 is amended by adding section 45-615.01, to read:

31 45-615.01. Temporary groundwater and irrigation efficiency
32 projects fund; purpose; report

33 A. THE TEMPORARY GROUNDWATER AND IRRIGATION EFFICIENCY PROJECTS
34 FUND IS ESTABLISHED FOR THE PURPOSE OF FUNDING PROJECTS FOR THE
35 CONSTRUCTION AND REHABILITATION OF WELLS AND RELATED INFRASTRUCTURE FOR
36 THE WITHDRAWAL AND EFFICIENT DELIVERY OF GROUNDWATER BY IRRIGATION
37 DISTRICTS IN THE PINAL ACTIVE MANAGEMENT AREA AND THE HARQUAHALA
38 IRRIGATION NON-EXPANSION AREA. THE FUND CONSISTS OF LEGISLATIVE
39 APPROPRIATIONS, GROUNDWATER WITHDRAWAL FEES COLLECTED IN THE PINAL ACTIVE
40 MANAGEMENT AREA PURSUANT TO SECTION 45-611, SUBSECTION C, PARAGRAPH 5,
41 GRANTS FROM FEDERAL AGENCIES AND MONIES DEPOSITED IN THE FUND BY
42 IRRIGATION DISTRICTS IN THE PINAL ACTIVE MANAGEMENT AREA AND THE
43 HARQUAHALA IRRIGATION NON-EXPANSION AREA. GROUNDWATER WITHDRAWAL FEES
44 DEPOSITED IN THE FUND SHALL BE ACCOUNTED FOR SEPARATELY FROM OTHER MONIES
45 IN THE FUND AND SHALL BE USED ONLY FOR CONSTRUCTING AND REHABILITATING

1 WELLS AND RELATED INFRASTRUCTURE IN THE PINAL ACTIVE MANAGEMENT AREA.
2 MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED FOR THE PURPOSES OF THIS
3 SECTION.

4 B. THE DIRECTOR MAY ACCEPT AND DEPOSIT INTO THE FUND MONIES,
5 GRANTS, GIFTS, CONTRIBUTIONS AND DEVICES TO ASSIST IN CARRYING OUT THE
6 PURPOSES OF THIS SECTION.

7 C. THE DIRECTOR SHALL ADMINISTER THE FUND. ON NOTICE FROM THE
8 DIRECTOR, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND
9 AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE
10 CREDITED TO THE FUND.

11 D. THE DIRECTOR MAY GRANT MONIES FROM THE FUND TO IRRIGATION
12 DISTRICTS IN THE PINAL ACTIVE MANAGEMENT AREA AND THE HARQUAHALA
13 IRRIGATION DISTRICT FOR THE PURPOSES DESCRIBED IN SUBSECTION A OF THIS
14 SECTION. IN GRANTING MONIES FROM THE FUND, THE DIRECTOR MAY GIVE
15 PREFERENCE TO WELLS AND RELATED INFRASTRUCTURE THAT WOULD BE USED TO
16 RECOVER STORED WATER. GRANTS MADE TO THESE IRRIGATION DISTRICTS ARE
17 EXEMPT FROM TITLE 41, CHAPTER 24.

18 E. BEFORE DECEMBER 31 OF EACH YEAR, THE DIRECTOR SHALL SUBMIT TO
19 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE
20 SENATE A WRITTEN REPORT DESCRIBING THE ACTIVITIES OF THE DEPARTMENT FOR
21 THE PRECEDING FISCAL YEAR RELATED TO EXPENDITURES FROM THE FUND. THE
22 REPORT SHALL INCLUDE AN ACCOUNTING FOR EXPENDITURES FROM THE FUND AND HOW
23 THE MONIES WERE USED TO FINANCE PROJECTS FOR THE CONSTRUCTION AND
24 REHABILITATION OF WELLS AND RELATED INFRASTRUCTURE FOR THE WITHDRAWAL AND
25 EFFICIENT DELIVERY OF GROUNDWATER BY IRRIGATION DISTRICTS IN THE PINAL
26 ACTIVE MANAGEMENT AREA AND THE HARQUAHALA IRRIGATION NON-EXPANSION AREA.

27 F. EXCEPT AS PROVIDED IN SUBSECTION G OF THIS SECTION, MONIES IN
28 THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTIONS 35-190 RELATING TO
29 LAPSING OF APPROPRIATIONS.

30 G. ON JUNE 30, 2027, ANY UNENCUMBERED MONIES IN THE FUND SHALL BE
31 PROPORTIONALLY DISTRIBUTED TO THE FUND'S CONTRIBUTORS BY DECEMBER 31, 2027
32 ACCORDING TO THE TOTAL AMOUNT OF MONIES DEPOSITED IN THE FUND BY EACH
33 CONTRIBUTOR. THE PROPORTION OF THE UNENCUMBERED MONIES ATTRIBUTABLE TO
34 GROUNDWATER WITHDRAWAL FEES LEVIED UNDER SECTION 45-611, SUBSECTION C,
35 PARAGRAPH 5 SHALL BE DEPOSITED IN THE ARIZONA WATER BANKING FUND
36 ESTABLISHED BY SECTION 45-2425 AND SHALL BE USED ONLY IN THE PINAL ACTIVE
37 MANAGEMENT AREA IN THE SAME MANNER AS GROUNDWATER WITHDRAWAL FEES
38 COLLECTED IN THE PINAL ACTIVE MANAGEMENT AREA PURSUANT TO SECTION 45-611,
39 SUBSECTION C, PARAGRAPH 3.

40 H. ALL MONIES DEPOSITED IN THE TEMPORARY GROUNDWATER AND IRRIGATION
41 EFFICIENCY PROJECTS FUND SHALL BE HELD IN TRUST. THE MONIES IN THE FUND
42 MAY BE USED ONLY FOR THE PURPOSES PRESCRIBED IN THIS SECTION AND MAY NOT
43 BE APPROPRIATED OR TRANSFERRED BY THE LEGISLATURE TO FUND THE GENERAL
44 OPERATIONS OF THIS STATE OR TO OTHERWISE MEET THE OBLIGATIONS OF THE STATE

1 GENERAL FUND. THIS SUBSECTION DOES NOT APPLY TO ANY TAXES OR OTHER LEVIES
2 THAT ARE IMPOSED PURSUANT TO TITLE 42 OR 43.

3 Sec. 5. Delayed repeal

4 Section 45-615.01, Arizona Revised Statutes, as added by this act,
5 is repealed from and after March 31, 2028.

6 Sec. 6. Section 45-2425, Arizona Revised Statutes, is amended to
7 read:

8 45-2425. Arizona water banking fund

9 A. The Arizona water banking fund is established and shall include
10 subaccounts based on funding sources. The authority shall administer the
11 banking fund in accordance with this chapter.

12 B. The banking fund consists of all of the following:

13 1. Monies appropriated from the state general fund by the
14 legislature for water banking purposes other than replenishment under
15 chapter 15, article 3 of this title.

16 2. Monies appropriated from the state general fund by the
17 legislature for replenishment under chapter 15, article 3 of this title.

18 3. Reimbursement for the distribution of long-term storage credits,
19 collected by the authority in accordance with section 45-2457, subsection
20 B, paragraph 2.

21 4. Monies paid to the authority by the recipients of in lieu water
22 at a groundwater savings facility, in accordance with section 45-2455,
23 subsection C.

24 5. Monies collected in accordance with section 45-611, subsection
25 C, paragraph 3.

26 6. Monies deposited in the banking fund in accordance with section
27 48-3715.03, subsection B.

28 7. Monies paid to the authority by agencies that have entered into
29 interstate water banking agreements with the authority in accordance with
30 section 45-2471. All monies received through an interstate water banking
31 agreement with the state of Nevada that are not used to purchase or store
32 water or otherwise fulfill contractual obligations with the state of
33 Nevada are subject to legislative appropriation.

34 8. Monies paid to the authority by persons and Indian communities
35 in this state that have entered into water banking services agreements
36 with the authority in accordance with section 45-2458.

37 9. MONIES DEPOSITED IN THE FUND IN ACCORDANCE WITH SECTION
38 45-615.01, SUBSECTION G.

39 C. In addition to the monies prescribed in this section, the
40 authority may accept any gifts, grants or donations and deposit those
41 monies in the banking fund.

42 D. Monies in the banking fund are exempt from the provisions of
43 section 35-190 relating to lapsing of appropriations. On notice from the
44 authority, the state treasurer shall invest and divest monies in the fund
45 as provided by section 35-313, and monies earned from investment shall be

1 credited to the banking fund. The authority may invest the monies paid to
2 the authority in accordance with section 45-2471 with the state treasurer
3 pursuant to section 35-326.

4 E. The authority may use the banking fund to pay all reasonable
5 expenses incurred in carrying out its duties and responsibilities in
6 accordance with this chapter.

7 F. The authority shall establish a reserve subaccount in the fund
8 for the deposit of monies to be used for the purposes of article 5 of this
9 chapter.

10 Sec. 7. Legislative intent: possible Colorado River shortage:
11 temporary groundwater and irrigation efficiency
12 fund; projects

13 A. The legislature finds that the people of Arizona are dependent
14 on Colorado River water to meet a significant portion of their water
15 needs. In times of shortages in this state's annual Colorado River
16 entitlement, deliveries through the central Arizona project are the first
17 to be reduced. In particular, irrigation districts in central Arizona
18 have relied on central Arizona project deliveries of Colorado River water
19 to replace the withdrawal of groundwater for agricultural purposes. As the
20 junior priority users within the central Arizona project system,
21 deliveries for agricultural use are reduced first.

22 B. It is anticipated that the prolonged drought in the Colorado
23 River basin will require the Secretary of the Interior to declare a
24 shortage as soon as 2020. The legislature finds that reductions in
25 deliveries of central Arizona project water to irrigated agriculture in
26 central Arizona would cause substantial injury to the local economy and
27 seriously harm the general economy and welfare of this state and its
28 citizens.

29 C. It is therefore declared to be the public policy of this state
30 that in the interest of protecting and stabilizing the general economy and
31 welfare of this state and its citizens it is necessary to establish the
32 temporary groundwater and irrigation efficiency projects fund to be
33 partially funded by a state general fund appropriation and a temporary
34 groundwater withdrawal fee to be collected in the Pinal active management
35 area in place of a groundwater withdrawal fee authorized to be collected
36 in the active management area for Arizona water banking purposes.
37 Contributions to the fund will also be made by the irrigation districts
38 within the Pinal active management area and the Harquahala irrigation non-
39 expansion area. Monies in the fund are to be used to fund projects to
40 construct and rehabilitate groundwater wells and related infrastructure
41 for the withdrawal and efficient delivery of groundwater by irrigation
42 districts in the Pinal active management area and the Harquahala
43 irrigation non-expansion area. On completion of these construction and
44 rehabilitation projects, the fund will terminate. The legislature does

1 not intend to grant authorities or imply authority to perform any tasks or
2 accept any responsibilities not expressly set forth in this legislation.

3 Sec. 8. Appropriation; temporary groundwater and irrigation
4 efficiency projects fund; exemption

5 A. The sum of \$5,000,000 is appropriated from the state general
6 fund in fiscal year 2018-2019 to the temporary groundwater and irrigation
7 efficiency projects fund established by section 45-615.01, Arizona Revised
8 Statutes, as added by this act.

9 B. The appropriation made in subsection A of this section is exempt
10 from the provisions of section 35-190, Arizona Revised Statutes, relating
11 to lapsing of appropriations.

12 Sec. 9. Severability

13 If a provision of this act or its application to any person or
14 circumstance is held invalid, the invalidity does not affect other
15 provisions or applications of the act that can be given effect without the
16 invalid provision or application, and to this end the provisions of this
17 act are severable.

18 Sec. 10. Emergency

19 This act is an emergency measure that is necessary to preserve the
20 public peace, health or safety and is operative immediately as provided by
21 law.