State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
First Regular Session  
2023

HOUSE BILL 2442

AN ACT

AMENDING TITLE 45, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3.1; AMENDING SECTION 45-596, ARIZONA REVISED STATUTES; RELATING TO GROUNDWATER.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 45, chapter 2, Arizona Revised Statutes, is amended by adding article 3.1, to read:

ARTICLE 3.1. TEMPORARY NON-EXPANSION AREAS

45-445. Temporary non-expansion areas; initiation procedures; petition; definition

A. THE DESIGNATION OF A TEMPORARY NON-EXPANSION AREA IN ANY LOCATION NOT INCLUDED IN AN ACTIVE MANAGEMENT AREA OR AN IRRIGATION NON-EXPANSION AREA MAY BE INITIATED BY PETITION TO THE DIRECTOR SIGNED BY BOTH:

1. AT LEAST ONE-HALF OF THE NUMBER OF IRRIGATION USERS OF GROUNDWATER WITHIN THE BOUNDARIES OF THE GROUNDWATER BASIN OR SUBBASIN SPECIFIED IN THE PETITION.


C. AFTER RECEIVING A PETITION SIGNED BY REGISTERED VOTERS PURSUANT TO SUBSECTION A, PARAGRAPH 2 OF THIS SECTION, THE DIRECTOR SHALL TRANSMIT THE PETITION TO THE COUNTY RECORDER OF EACH COUNTY IN WHICH THE GROUNDWATER BASIN OR SUBBASIN IS LOCATED FOR VERIFICATION OF SIGNATURES. IN ADDITION, THE DIRECTOR SHALL TRANSMIT A MAP OF THE GROUNDWATER BASIN OR SUBBASIN TO THE COUNTY RECORDER OF EACH SUCH COUNTY INCLUDED. THE MAP SHALL BE ON A SCALE ADEQUATE TO SHOW WITH SUBSTANTIAL ACCURACY WHERE THE BOUNDARIES OF THE GROUNDWATER BASIN OR SUBBASIN CROSS THE BOUNDARIES OF COUNTY VOTING PRECINCTS. THE DIRECTOR SHALL ALSO TRANSMIT TO THE COUNTY RECORDER ALL OTHER FACTUAL DATA CONCERNING THE BOUNDARIES OF THE GROUNDWATER BASIN OR SUBBASIN THAT MAY AID THE COUNTY RECORDER IN DETERMINING WHICH REGISTERED VOTERS OF THE COUNTY ARE RESIDENTS OF THE GROUNDWATER BASIN OR SUBBASIN.
D. On verification that a sufficient number of persons signed the petition in support of establishing an temporary non-expansion area, the department shall hold a meeting as prescribed in section 45-445.01.

E. If procedures are initiated for designating a temporary non-expansion area, an irrigation user may irrigate within the proposed temporary non-expansion area only acres of land that were irrigated at any time during the five years preceding the date of the notice of the initiation of designation procedures.

F. The limitation on the acres that may be irrigated shall continue in effect until an election is held pursuant to section 45-445.02.

G. For the purposes of this section, "irrigation user of groundwater" means any person who has withdrawn groundwater to irrigate acres within the proposed temporary non-expansion area at any time in the ten years preceding when the petition is submitted to initiate designation procedures.

45-445.01. Meetings; boundaries; notice

A. If a petition is filed pursuant to section 45-445 with a sufficient number of signatures, the director shall hold a public meeting to describe the boundaries of the proposed temporary non-expansion area and to describe the effect of a temporary non-expansion area if established.

B. The director shall give reasonable notice of the meeting, including publishing the notice once each week for two consecutive weeks in a newspaper of general circulation in each county in which the proposed temporary non-expansion area is located. The notice shall contain the time and place of the meeting, the legal description and a map clearly identifying and describing all lands to be included in the proposed temporary non-expansion area and any other information the director deems necessary.

C. The meeting shall be held at a location in the county in which the major portion of the proposed temporary non-expansion area is located not more than sixty days after the first publication of the notice of the meeting. At the meeting, the director shall present any data on groundwater levels for the proposed temporary non-expansion area from the department and shall describe the effects of the proposed formation of the temporary non-expansion area. Any person may appear at the meeting, either in person or by representative, and submit oral or documentary information regarding the proposed action.

45-445.02. Election; eligible voters; map

A. The department shall notify the county recorder of each county in which a proposed temporary non-expansion area is located when the meeting prescribed in section 45-445.01 is completed, and the county recorder shall provide notice to the county board of supervisors, the board shall call for an election on the question of designating a temporary non-expansion area with boundaries that are coterminous with boundaries of
THE GROUNDWATER BASIN OR SUBBASIN SPECIFIED IN THE PETITION. IF THE
PROPOSED TEMPORARY NON-EXPANSION AREA IS LOCATED IN MORE THAN ONE COUNTY,
THE RESPECTIVE COUNTIES SHALL COOPERATE TO ADMINISTER THE
ELECTION. NOTWITHSTANDING ANY OTHER LAW, THE ELECTION SHALL BE CONDUCTED
AS PRESCRIBED IN TITLE 16, CHAPTER 4, ARTICLE 8.1, EXCEPT THAT THE
ELECTION SHALL INCLUDE ONLY REGISTERED VOTERS WHO RESIDE INSIDE THE
BOUNDARIES OF THE PROPOSED TEMPORARY NON-EXPANSION AREA AS ELIGIBLE
VOTERS.

B. IF A MAJORITY OF THE PERSONS VOTING ON THE QUESTION APPROVE THE
FORMATION OF THE TEMPORARY NON-EXPANSION AREA, THE TEMPORARY NON-EXPANSION
AREA IS ESTABLISHED, AND THE DIRECTOR SHALL FILE A TRUE COPY OF THE MAP OF
THE TEMPORARY NON-EXPANSION AREA IN THE OFFICE OF THE COUNTY RECORDER OF
THE COUNTY OR COUNTIES IN WHICH THE TEMPORARY NON-EXPANSION AREA IS
LOCATED.

C. A TEMPORARY NON-EXPANSION AREA ESTABLISHED PURSUANT TO THIS
SECTION MAY INCLUDE MORE THAN ONE GROUNDWATER SUBBASIN BUT MAY NOT BE
SMALLER THAN A GROUNDWATER SUBBASIN OR INCLUDE ONLY A PORTION OF A
GROUNDWATER SUBBASIN.

45-445.03. Temporary non-expansion areas; groundwater users;
report

A. IF A TEMPORARY NON-EXPANSION AREA IS ESTABLISHED PURSUANT TO
SECTION 45-445.02:

1. ONLY ACRES OF LAND THAT WERE IRRIGATED AT ANY TIME DURING THE
FIVE YEARS PRECEDING THE DATE OF THE NOTICE OF THE INITIATION OF
DESIGNATION PROCEDURES MAY BE IRRIGATED WITH GROUNDWATER. NO ADDITIONAL
LANDS MAY BE IRRIGATED WITH GROUNDWATER FOR A PERIOD OF FIVE YEARS AFTER
THE DATE THAT THE TEMPORARY NON-EXPANSION AREA IS ESTABLISHED. LAND THAT
WAS NOT IRRIGATED AT ANY TIME DURING THIS FIVE-YEAR PERIOD IS DEEMED TO
HAVE BEEN IN IRRIGATION IF THE DIRECTOR FINDS THAT SUBSTANTIAL CAPITAL
INVESTMENT HAS BEEN MADE FOR THE SUBJUGATION OF THE LAND FOR AN IRRIGATION
USE, INCLUDING ON-SITE IRRIGATION DISTRIBUTION FACILITIES AND A WELL OR
WELLS THE DRILLING AND CONSTRUCTION OF WHICH WERE SUBSTANTIALLY COMMENCED
BEFORE THE DATE OF THE NOTICE OF THE INITIATION OF DESIGNATION PROCEDURES.

2. THE DEPARTMENT MAY NOT ISSUE A DRILLING CARD THAT AUTHORIZES THE
DRILLING OF A WELL IN THE TEMPORARY NON-EXPANSION AREA, EXCEPT THAT A
PERSON MAY DEEPEN AN EXISTING WELL OR DRILL OR CAUSE TO BE DRILLED A
REPLACEMENT WELL IN APPROXIMATELY THE SAME LOCATION, A NEW WELL THAT WILL
BE USED AS A RECOVERY WELL PURSUANT TO SECTION 45-834.01 OR AN EXEMPT WELL
IN THE TEMPORARY NON-EXPANSION AREA IF A NOTICE OF INTENTION TO DRILL IS
FIRST FILED PURSUANT TO SECTION 45-596, SUBSECTION C.

B. ON COMPLETION OF THE FIVE-YEAR PERIOD:

1. SUBSECTION A OF THIS SECTION NO LONGER APPLIES AND GROUNDWATER
MAY BE USED TO IRRIGATE ADDITIONAL LANDS AND THE DEPARTMENT MAY ISSUE A
DRILLING CARD THAT AUTHORIZES THE DRILLING OF A WELL IN THE TEMPORARY
NON-EXPANSION AREA.
2. THE DEPARTMENT SHALL REVIEW THE STATUS OF GROUNDWATER IN THE
TEMPORARY NON-EXPANSION AREA, SHALL ESTIMATE THE AMOUNT OF ANY CHANGE IN
GROUNDWATER LEVELS IN THE AREA, SHALL SUBMIT A REPORT ON THE DEPARTMENT'S
FINDINGS TO THE GOVERNOR, THE PRESIDENT OF THE SENATE AND THE SPEAKER OF
THE HOUSE OF REPRESENTATIVES AND SHALL PROVIDE A COPY OF THIS REPORT TO
THE SECRETARY OF STATE.

Sec. 2. Section 45-596, Arizona Revised Statutes, is amended to read:

45-596. Notice of intention to drill; fee

A. In an area not subject to active management, a person may not
first filing notice of intention to drill pursuant to subsection C of this
section or obtaining a permit pursuant to section 45-834.01. Only one
notice of intention to drill is required for all wells that are drilled by
or for the same person to obtain geophysical, mineralogical or
geotechnical data within a single section of land.

B. In an active management area, a person may not drill or cause to
be drilled an exempt well, a replacement well in approximately the same
location or any other well for which a permit is not required under this
article, article 7 of this chapter or section 45-834.01 or deepen an
existing well without first filing a notice of intention to drill pursuant
to subsection C of this section. Only one notice of intention to drill is
required for all wells that are drilled by or for the same person to
obtain geophysical, mineralogical or geotechnical data within a single
section of land.

C. A notice of intention to drill shall be filed with the director
on a form that is prescribed and furnished by the director and that shall
include:

1. The name and mailing address of the person filing the notice.
2. The legal description of the land on which the well is proposed
to be drilled and the name and mailing address of the owner of the land.
3. The legal description of the location of the well on the land.
4. The depth, diameter and type of casing of the proposed well.
5. Such legal description of the land on which the groundwater is
proposed to be used as may be required by the director to administer this
chapter.
6. When construction is to begin.
7. The proposed uses to which the groundwater will be applied.
8. The name and well driller's license number of the well driller
who is to construct the well.
9. The design pumping capacity of the well.
10. If for a replacement well, the maximum capacity of the original
well and the distance of the replacement well from the original well.
11. Proof that the director determines to be satisfactory that the
person proposing to construct the well holds a valid license issued by the
registrar of contractors pursuant to title 32, chapter 10 and that the
license is of the type necessary to construct the well described in the
notice of intention to drill. If the proposed well driller does not hold
a valid license, the director may accept proof that the proposed well
driller is exempt from licensing as prescribed by section 32-1121.

12. If any water from the proposed well will be used for domestic
purposes as defined in section 45-454, evidence of compliance with the
requirements of subsection F of this section.

13. If for a second exempt well at the same location for the same
use pursuant to section 45-454, subsection I, proof that the requirements
of that subsection are met.

14. If for a well to obtain geophysical, mineralogical or
geotechnical data within a single section of land, the information
prescribed by this subsection for each well that will be included in that
section of land before each well is drilled.

15. Such other information as the director may require.

D. On receiving a notice of intention to drill and the fee required
by subsection L of this section, the director shall endorse on the notice
the date of its receipt. The director shall then determine whether all
information that is required has been submitted and whether the
requirements of subsection C, paragraphs 11 and 12 and subsection I of
this section have been met. If so, within fifteen days AFTER receipt
of the notice, or such longer time as provided in subsection J of this
section, the director shall record the notice, mail a drilling card that
authorizes the drilling of the well to the well driller identified in the
notice and mail written notice of the issuance of the drilling card to the
person filing the notice of intention to drill at the address stated in
the notice. IF THE WELL TO BE DRILLED IS LOCATED IN A TEMPORARY NON-
EXPANSION AREA, THE DIRECTOR MAY ONLY RECORD THE NOTICE, MAIL THE DRILLING
CARD THAT AUTHORIZES THE DRILLING OF THE WELL AND MAIL WRITTEN NOTICE OF
THE ISSUANCE OF THE DRILLING CARD IF THE WELL IS DRILLED PURSUANT TO
SECTION 45-445.03, SUBSECTION A, PARAGRAPH 2. On receipt of the drilling
card, the well driller may proceed to drill or deepen the well as
described in the notice of intention to drill. If the director determines
that the required information has not been submitted or that the
requirements of subsection C, paragraphs 11 and 12 or subsection I of this
section have not been met, the director shall mail a statement of the
determination to the person giving the notice to the address stated in the
notice, and the person giving the notice may not proceed to drill or
deepen the well.

E. The well shall be completed within one year after the date of
the notice unless the director approves a longer period of time pursuant
to this subsection. If the well is not completed within one year or
within the time approved by the director pursuant to this subsection, the
person shall file a new notice before proceeding with further
construction. At the time the drilling card for the well is issued, the
director may provide for and approve a completion period that is greater
than one year but not to exceed five years from the date of the notice if
both of the following apply:

1. The proposed well is a nonexempt well within an active
management area and qualifies as a replacement well in approximately the
same location as prescribed in rules adopted by the director pursuant to
section 45-597.

2. The applicant has submitted evidence that demonstrates one of
the following:
   (a) This state or a political subdivision of this state has
   acquired or has begun a condemnation action to acquire the land on which
   the original well is located.
   (b) The original well has been rendered inoperable due to flooding,
   subsidence or other extraordinary physical circumstances that are beyond
   the control of the well owner.

F. If any water from a proposed well will be used for domestic
purposes as defined in section 45-454 on a parcel of land of five or fewer
acres, the applicant shall submit a well site plan of the property with
the notice of intention to drill. The site plan shall:

1. Include the county assessor's parcel identification number.
2. Show the proposed well location and the location of any septic
tank or sewer system that is either located on the property or within one
hundred feet of the proposed well site.
3. Show written approval by the county health authority that
controls the installation of septic tanks or sewer systems in the county,
or by the local health authority in areas where the authority to control
installation of septic tanks or sewer systems has been delegated to a
local authority. In areas where there is no local or county authority
that controls the installation of septic tanks or sewer systems, the
applicant shall apply for approval directly to the department of water
resources.

G. Before approving a well site plan submitted pursuant to
subsection F of this section, the county or local health authority or the
department of water resources, as applicable, pursuant to subsection F of
this section, shall review the well site plan and determine whether the
proposed well location complies with applicable local laws, ordinances and
regulations and any laws or rules adopted under this title and title 49
regarding the placement of wells and the proximity of wells to septic
tanks or sewer systems. If the health authority or the department of
water resources, as applicable, pursuant to subsection F of this section,
finds that the proposed well location complies with this title and title
49 and with local requirements, it shall endorse the site plan and the
proposed well placement in a manner indicating approval. On endorsement,
the director of water resources shall approve the construction of the
well, if all remaining requirements have been met. If the health
corresponding to this title and title 49 and local requirements, it shall
indicate this on the site plan and the decision to approve or reject the
proposed construction rests with the director of water resources. If
parcel size, geology or location of improvements on the property prevents
the well from being drilled in accordance with this title and title 49 or
local requirements, the property owner may apply for a variance. The
property owner shall make the request for a variance to the county or
local authority if a county or local law, ordinance or regulation prevents
the proposed construction. If a law or rule adopted under this title or
title 49 prevents the proposed construction, the property owner shall make
the request for a variance directly to the department of water resources.
The request for a variance shall be in the form and shall contain the
information that the department of water resources, county or local
authority may require. The department of water resources, or the county
or local authority whose law, ordinance or regulation prevents the
proposed construction, may expressly require that a particular variance
shall include certification by a registered professional engineer or
geologist that the location of the well will not pose a health hazard to
the applicant or surrounding property or inhabitants. If all necessary
variances are obtained, the director of water resources shall approve the
construction of the well if all remaining requirements have been met.

H. If a well that was originally drilled as an exploration well, a
monitor well or a piezometer well or for any use other than domestic use
is later proposed to be converted to use for domestic purposes as defined
in section 45-454, the well owner shall file a notice of intention to
drill and shall comply with this section before the well is converted and
any water from that well is used for domestic purposes.

I. Except as prescribed in subsection K of this section, the
director shall not approve the drilling of the well if the director
determines that the well will likely cause the migration of contaminated
groundwater from a remedial action site to another well, resulting in
unreasonably increasing damage to the owner of the well or persons using
water from the well. In making this determination, the director of water
resources shall follow the applicable criteria in the rules adopted by the
director of water resources pursuant to section 45-598, subsection A and
shall consult with the director of environmental quality. For the
purposes of this subsection:

1. "Contaminated groundwater" means groundwater that has been
contaminated by a release of a hazardous substance, as defined in section
49-201, or a pollutant, as defined in section 49-201.
2. "Remedial action site" means any of the following:
   (a) The site of a remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".
   (b) The site of a corrective action undertaken pursuant to title 49, chapter 6.
   (c) The site of a voluntary remediation action undertaken pursuant to title 49, chapter 1, article 5.
   (d) The site of a remedial action undertaken pursuant to title 49, chapter 2, article 5, including mitigation of a nonhazardous release undertaken pursuant to an order issued by the department of environmental quality pursuant to section 49-286.
   (f) The site of remedial action undertaken pursuant to the department of defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10 United States Code section 2701).

J. Except as prescribed in subsection K of this section, the director shall approve or deny the drilling of a well within forty-five days after receipt of the notice of intention to drill if one of the following applies:
   1. The proposed well is located within a remedial action site.
   2. The proposed well is located within one mile of any of the following remedial action sites:
      (a) A remedial action undertaken pursuant to title 49, chapter 2, article 5, including mitigation of a nonhazardous release undertaken pursuant to an order issued by the department of environmental quality pursuant to section 49-286.
      (b) A remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".
      (c) A remedial action undertaken pursuant to the department of defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10 United States Code section 2701).
   3. The proposed well is located within one-half mile of either of the following remedial action sites:
      (a) A remedial action undertaken pursuant to title 49, chapter 1, article 5.
      (b) A remedial action undertaken pursuant to the resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code sections 6901 through 6992).
4. The proposed well is located within five hundred feet of the site of a corrective action undertaken pursuant to title 49, chapter 6.

K. Subsections I and J of this section do not apply to the deepening of a well or to the drilling of a replacement well in approximately the same location.

L. A notice of intention to drill filed under this section shall be accompanied by a filing fee of one hundred fifty dollars $150, except that a notice filed for a proposed well that will not be located within an active management area or an irrigation nonexpansion area, that will be used solely for domestic purposes as defined in section 45-454 and that will have a pump with a maximum capacity of not more than thirty-five gallons per minute shall be accompanied by a filing fee of one hundred dollars $100. The director shall deposit, pursuant to sections 35-146 and 35-147, all fees collected pursuant to this subsection in the well administration and enforcement fund established by section 45-606.