

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 254

SENATE BILL 1190

AN ACT

AMENDING SECTION 45-454, ARIZONA REVISED STATUTES; AMENDING SECTION 45-596, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2003, CHAPTER 165, SECTION 1; AMENDING SECTION 48-2978, 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 ~~the provisions of this~~
10 chapter, except 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 ~~F, G and H~~ I, J AND K of this section
15 and must be registered pursuant to section 45-593. If two or more wells in
16 an active management area are exempt under this paragraph and are used to
17 serve the same non-irrigation use at the same location, the aggregate
18 quantity of groundwater withdrawn from the wells shall not exceed fifty-six
19 acre-feet per 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, E, F, and G~~ H, I
24 AND J of 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 ~~the provisions of this~~
30 chapter, except that:

31 1. Such wells are subject to subsections ~~G- F~~ through ~~G- J~~ of this
32 section.

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

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40 Arizona, groundwater withdrawn from such wells may be used only for domestic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

42 C. ON OR AFTER JANUARY 1, 2006, AN EXEMPT WELL OTHERWISE ALLOWED BY
43 THIS SECTION MAY NOT BE DRILLED ON LAND IF ANY PART OF THE LAND IS WITHIN ONE
44 HUNDRED FEET OF THE OPERATING WATER DISTRIBUTION SYSTEM OF A MUNICIPAL
45 PROVIDER WITH AN ASSURED WATER SUPPLY DESIGNATION WITHIN THE BOUNDARIES OF AN

1 ACTIVE MANAGEMENT AREA ESTABLISHED ON OR BEFORE JULY 1, 1994, AS SHOWN ON A
2 DIGITIZED SERVICE AREA MAP PROVIDED TO THE DIRECTOR BY THE MUNICIPAL PROVIDER
3 AND UPDATED BY THE MUNICIPAL PROVIDER AS SPECIFIED BY THE DIRECTOR.

4 D. ON REQUEST FROM THE OWNER OF THE LAND ON WHICH AN EXEMPT WELL IS
5 PROHIBITED PURSUANT TO SUBSECTION C OF THIS SECTION ON A FORM PRESCRIBED BY
6 THE DIRECTOR, THE DIRECTOR SHALL ISSUE AN EXEMPTION FROM SUBSECTION C OF THIS
7 SECTION IF THE LANDOWNER DEMONSTRATES TO THE SATISFACTION OF THE DIRECTOR
8 THAT ANY OF THE FOLLOWING APPLIES:

9 1. THE LANDOWNER SUBMITTED A WRITTEN REQUEST FOR SERVICE TO THE
10 MUNICIPAL PROVIDER THAT OPERATES THE DISTRIBUTION SYSTEM AND THE MUNICIPAL
11 PROVIDER DID NOT PROVIDE WRITTEN VERIFICATION TO THE LANDOWNER WITHIN THIRTY
12 CALENDAR DAYS AFTER RECEIPT OF THE REQUEST THAT WATER SERVICE IS AVAILABLE TO
13 THE LANDOWNER AFTER PAYMENT OF ANY APPLICABLE FEE TO THE MUNICIPAL PROVIDER.

14 2. THE TOTAL CAPITAL COST AND FEES FOR CONNECTING TO THE OPERATING
15 WATER DISTRIBUTION SYSTEM EXCEED THE TOTAL CAPITAL COST AND FEES FOR DRILLING
16 AND FULLY EQUIPPING AN EXEMPT WELL.

17 3. IF THE APPLICANT MUST OBTAIN AN EASEMENT ACROSS OTHER LAND TO
18 CONNECT TO THE WATER DISTRIBUTION SYSTEM OF THE MUNICIPAL PROVIDER, THE
19 APPLICANT SENT THE OWNER OF THE LAND A REQUEST FOR THE EASEMENT BY CERTIFIED
20 MAIL, RETURN RECEIPT REQUESTED, AND EITHER THE APPLICANT DID NOT RECEIVE A
21 RESPONSE TO THE REQUEST WITHIN THIRTY CALENDAR DAYS OF MAILING THE REQUEST OR
22 THE REQUEST WAS DENIED.

23 4. THE LANDOWNER DOES NOT QUALIFY FOR AN EXEMPTION PURSUANT TO
24 PARAGRAPHS 1, 2 OR 3 OF THIS SUBSECTION AND THE LANDOWNER PROVIDES WRITTEN
25 VERIFICATION FROM THE MUNICIPAL PROVIDER THAT THE LANDOWNER SHALL NOT RECEIVE
26 OR REQUEST WATER SERVICE FROM THE MUNICIPAL PROVIDER WHILE THE EXEMPT WELL IS
27 OPERATIONAL. THE EXEMPTION FOR THAT WELL IS REVOKED IF THE LANDOWNER OR ANY
28 SUBSEQUENT LANDOWNER RECEIVES WATER SERVICE FROM THE MUNICIPAL PROVIDER. IN
29 DETERMINING WHETHER TO APPROVE OR REJECT A PERMIT APPLICATION FILED UNDER
30 SECTION 45-599, THE DIRECTOR SHALL NOT CONSIDER ANY IMPACTS THE PROPOSED WELL
31 MAY HAVE ON AN EXEMPT WELL DRILLED PURSUANT TO THIS PARAGRAPH.

32 E. THIS SECTION DOES NOT PROHIBIT A PROPERTY OWNER, AFTER JANUARY 1,
33 2006, FROM DRILLING A REPLACEMENT EXEMPT WELL FOR A LAWFUL EXEMPT WELL IF THE
34 REPLACEMENT WELL DOES NOT INCREASE THE TOTAL NUMBER OF OPERABLE EXEMPT WELLS
35 ON THE APPLICANT'S LAND.

36 F. A REMEDIATION WELL DRILLED FOR THE PURPOSE OF REMEDIATING
37 GROUNDWATER IS EXEMPT FROM THIS SECTION IF IT MEETS ONE OF THE FOLLOWING:

38 1. THE REMEDIATION WELL IS FOR AN APPROVED DEPARTMENT OF ENVIRONMENTAL
39 QUALITY OR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REMEDIATION PROGRAM.

40 2. A REGISTERED GEOLOGIST CERTIFIES THAT THE REMEDIATION WELL IS FOR
41 THE PURPOSE OF REMEDIATION.

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

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

6 ~~I.~~ I. In an active management area only one exempt well may be
7 drilled or used to serve the same non-irrigation use at the same location,
8 except that a person may drill or use a second exempt well to serve the same
9 non-irrigation use at the same location if the director determines that all
10 of the following apply:

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

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

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

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

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

28 ~~F.~~ J. An exempt well is subject to sections 45-594 and 45-595.

29 ~~G.~~ K. Groundwater withdrawn from an exempt well may be transported
30 only pursuant to the provisions of articles 8 and 8.1 of this chapter.

31 ~~H.~~ L. A person who owns land from which exempt withdrawals were being
32 made as of the date of the designation of the active management area is not
33 eligible for a certificate of grandfathered right for a type 2 non-irrigation
34 use for such withdrawals.

35 ~~I.~~ M. ~~IN~~ FOR THE PURPOSES OF this section:

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

41 2. "MUNICIPAL PROVIDER" MEANS A CITY, TOWN, PRIVATE WATER COMPANY OR
42 IRRIGATION DISTRICT THAT SUPPLIES WATER FOR NON-IRRIGATION USE.

43 ~~2.~~ 3. "Stock watering" means the watering of livestock, range
44 livestock or poultry, as such terms are defined in section 3-1201.

1 Sec. 2. Section 45-596, Arizona Revised Statutes, as amended by Laws
2 2003, chapter 165, section 1, is amended to read:

3 45-596. Notice of intention to drill; fee

4 A. In an area not subject to active management, a person may not drill
5 or cause to be drilled any well or deepen an existing well without first
6 filing notice of intention to drill pursuant to subsection C of this section
7 or obtaining a permit pursuant to section 45-834.01. Only one notice of
8 intention to drill is required for all wells that are drilled by or for the
9 same person to obtain geophysical, mineralogical or geotechnical data within
10 a single section of land.

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

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

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

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

4 13. If for a second exempt well at the same location for the same use
5 pursuant to section 45-454, subsection E- 1, proof that the requirements of
6 that subsection are met.

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

11 15. Such other information as the director may require.

12 D. Upon receiving a notice of intention to drill and the fee required
13 by subsection I of this section, the director shall endorse on the notice the
14 date of its receipt. The director shall then determine whether all
15 information that is required has been submitted and whether the requirements
16 of subsection C, paragraphs 11 and 12 of this section have been met. If so,
17 within fifteen days of receipt of the notice, the director shall record the
18 notice, mail a drilling card that authorizes the drilling of the well to the
19 well driller identified in the notice and mail written notice of the issuance
20 of the drilling card to the person filing the notice of intention to drill at
21 the address stated in the notice. Upon receipt of the drilling card, the
22 well driller may proceed to drill or deepen the well as described in the
23 notice of intention to drill. If the director determines that the required
24 information has not been submitted or that the requirements of subsection C,
25 paragraphs 11 and 12 of this section have not been met, the director shall
26 mail a statement of the determination to the person giving the notice to the
27 address stated in the notice, and the person giving the notice may not
28 proceed to drill or deepen the well.

29 E. The well shall be completed within one year after the date of the
30 notice. If the well is not completed within one year, the person shall file
31 a new notice before proceeding with further construction.

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

36 1. Include the county assessor's parcel identification number.

37 2. Show the proposed well location and the location of any septic tank
38 or sewer system that is either located on the property or within one hundred
39 feet of the proposed well site.

40 3. Show written approval by the county health authority that controls
41 the installation of septic tanks or sewer systems in the county, or by the
42 local health authority in areas where the authority to control installation
43 of septic tanks or sewer systems has been delegated to a local authority. In
44 areas where there is no local or county authority that controls the

1 installation of septic tanks or sewer systems, the applicant shall apply for
2 approval directly to the department of water resources.

3 G. Before approving a well site plan submitted pursuant to subsection
4 F of this section, the county or local health authority or the department of
5 water resources, as applicable, pursuant to subsection F of this section,
6 shall review the well site plan and determine whether the proposed well
7 location complies with applicable local laws, ordinances and regulations and
8 any laws or rules adopted under this title and title 49 regarding the
9 placement of wells and the proximity of wells to septic tanks or sewer
10 systems. If the health authority or the department of water resources, as
11 applicable, pursuant to subsection F of this section, finds that the proposed
12 well location complies with this title and title 49 and with local
13 requirements, it shall endorse the site plan and the proposed well placement
14 in a manner indicating approval. On endorsement, the director of water
15 resources shall approve the construction of the well, if all remaining
16 requirements have been met. If the health authority is unable to determine
17 whether the proposed well location complies with this title and title 49 and
18 local requirements, it shall indicate this on the site plan and the decision
19 to approve or reject the proposed construction rests with the director of
20 water resources. If parcel size, geology or location of improvements on the
21 property prevents the well from being drilled in accordance with this title
22 and title 49 or local requirements, the property owner may apply for a
23 variance. The property owner shall make the request for a variance to the
24 county or local authority if a county or local law, ordinance or regulation
25 prevents the proposed construction. If a law or rule adopted under this
26 title or title 49 prevents the proposed construction, the property owner
27 shall make the request for a variance directly to the department of water
28 resources. The request for a variance shall be in the form and shall contain
29 the information that the department of water resources, county or local
30 authority may require. The department of water resources, or the county or
31 local authority whose law, ordinance or regulation prevents the proposed
32 construction, may expressly require that a particular variance shall include
33 certification by a registered professional engineer or geologist that the
34 location of the well will not pose a health hazard to the applicant or
35 surrounding property or inhabitants. If all necessary variances are
36 obtained, the director of water resources shall approve the construction of
37 the well if all remaining requirements have been met.

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

44 I. A notice of intention to drill filed under this section shall be
45 accompanied by a filing fee of one hundred fifty dollars, except that a

1 notice filed for a proposed well that will not be located within an active
2 management area or an irrigation nonexpansion area, that will be used solely
3 for domestic purposes as defined in section 45-454 and that will have a pump
4 with a maximum capacity of not more than thirty-five gallons per minute shall
5 be accompanied by a filing fee of fifty dollars if filed before July 1, 2004,
6 seventy-five dollars if filed from July 1, 2004 through June 30, 2005 and one
7 hundred dollars if filed on or after July 1, 2005. The director shall
8 deposit, pursuant to sections 35-146 and 35-147, all fees collected pursuant
9 to this subsection in the well administration and enforcement fund
10 established by section 45-606.

11 Sec. 3. Section 48-2978, Arizona Revised Statutes, is amended to read:
12 48-2978. General powers of board of directors

13 In order to accomplish the purposes of the district the board may:

- 14 1. Purchase or acquire water rights.
- 15 2. Acquire or lease real estate and personal property when necessary.
- 16 3. Acquire and hold stock in irrigation ditch and reservoir companies.
- 17 4. Lease, sell and otherwise dispose of real estate and personal
18 property.
- 19 5. Construct, acquire or purchase canals, ditches, reservoirs,
20 reservoir sites, water, water rights, rights-of-way or other property deemed
21 necessary for the use of the district.
- 22 6. Acquire the right to enlarge any ditch, canal or reservoir already
23 constructed or partially constructed.
- 24 7. Provide for the construction, operation, leasing and control of
25 plants for the generation, distribution, sale and lease of electrical energy,
26 including sale to municipalities, corporations, public utility districts or
27 individuals of electrical energy so generated.
- 28 8. Make appropriations of water for irrigation and power purposes.
- 29 9. Refer to the qualified electors of the district any optional or
30 administrative measure or method of procedure or any other matter or
31 proposition the board deems necessary or advisable.
- 32 10. Establish tolls or charges for service of irrigation, domestic
33 water, electricity and other commodities.
- 34 11. Control the finances and property of the district.
- 35 12. Appropriate money and provide for the payment of district debts and
36 expenses.
- 37 13. Exercise exclusive control over the laterals, ditches, canals,
38 rights-of-way and other property of the district, prevent encumbering
39 thereof, abate and remove all encumbrances and obstructions thereon, make
40 improvements thereon, vacate any right-of-way not necessary for the further
41 use of the district and protect such right-of-way from encroachment and
42 injuries.
- 43 14. Erect and maintain transmission lines and pipelines, culverts,
44 roads and crossways, and prevent obstructions thereon.

1 15. Provide the district with water, electricity and other public
2 conveniences and necessities, and engage in any and all activities,
3 enterprises and occupations within the powers and privileges of
4 municipalities generally.

5 16. Apply surplus money in the district treasury to liquidation of
6 district debts or to the creation of a sinking fund pursuant to section
7 48-2979.

8 17. Make, amend or repeal resolutions, bylaws and rules necessary for
9 the government of or for carrying into effect the powers vested in irrigation
10 districts or any department or officer thereof, and enforce observance
11 thereof by imposition of penalties. The board may impose penalties not
12 exceeding:

13 (a) Five hundred dollars for violations by persons who use water for
14 domestic purposes, as defined by IN section 45-454, ~~subsection I.~~

15 (b) Five thousand dollars for violations by persons who use water for
16 purposes other than domestic purposes.

APPROVED BY THE GOVERNOR MAY 4, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2005.

Passed the House April 20, 2005

by the following vote: 48 Ayes,

11 Nays, 1 Not Voting



Speaker of the House
Pro Tempore


Chief Clerk of the House

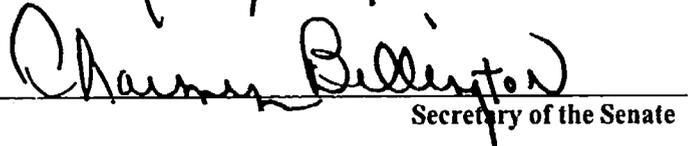
Passed the Senate February 28, 2005

by the following vote: 24 Ayes,

4 Nays, 2 Not Voting



President of the Senate


Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20__

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20__

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1190

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20__

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate April 28, 2005,

by the following vote: 26 Ayes,

4 Nays, 0 Not Voting

Klu Blumett
President of the Senate
Charmine Bellister
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

28th day of April, 2005

at 4:00 o'clock P. M.

Jennifer Herrera
Secretary to the Governor

Approved this 4 day of

May, 2005,

at 2:55 o'clock P. M.

Jan Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 4 day of May, 2005,

at 4:19 o'clock P. M.

Janice K. Brewer
Secretary of State