Senate Engrossed

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1638

AN ACT

AMENDING SECTION 45-596, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 56, SECTION 1; AMENDING SECTION 45-596, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 56, SECTION 2; AMENDING SECTION 45-606, ARIZONA REVISED STATUTES; RELATING TO WELLS; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 45-596, Arizona Revised Statutes, as amended by Laws 2006, chapter 56, section 1, 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 drill or cause to be drilled any well or deepen an existing well without 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 which is prescribed and furnished by the director and which shall include:

1. The name and mailing address of the person filing the notice.

2. The legal description of the land upon 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 upon 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. Upon receiving a notice of intention to drill and the fee required by subsection ~~I~~ 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 of 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. Upon 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 authority is unable to determine whether the proposed well location complies with 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.

(e) THE SITE OF 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).

(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, IF A PROPOSED WELL IS LOCATED IN OR NEAR A REMEDIAL ACTION SITE, AS DETERMINED BY THE

DIRECTOR, THE DIRECTOR SHALL APPROVE OR DENY THE DRILLING OF THE WELL WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF THE NOTICE OF INTENTION TO DRILL.

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.

~~I.~~ L. A notice of intention to drill filed under this section shall be accompanied by a filing fee of one hundred fifty dollars, 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 ~~fifty dollars if filed before July 1, 2004, seventy-five dollars if filed from July 1, 2004 through June 30, 2005 and~~ one hundred dollars ~~if filed on or after July 1, 2005~~. 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.

Sec. 2. Section 45-596, Arizona Revised Statutes, as amended by Laws 2006, chapter 56, section 2, is amended to read:

45-596. Notice of intention to drill

A. In an area not subject to active management, a person may not drill or cause to be drilled any well or deepen an existing well without first filing notice of intention to drill pursuant to subsection C of this section or obtaining a permit pursuant to section 45-834.01.

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.

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

1. The name and mailing address of the person filing the notice.

2. The legal description of the land upon 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 upon 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. If the proposed well would pump Colorado river water, proof that the director determines to be satisfactory that the person who files the notice has the legal right to use Colorado river water. This paragraph does not apply to a proposed well that will have a pump with a maximum capacity of not more than thirty-five gallons per minute and that will be used for the supply, service and activities of households and private residences, including the application of water to less than two acres of land to produce plants or parts of plants for sale or human consumption or for use as feed for livestock, range livestock or poultry, as those terms are defined in section 3-1201.

12. 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.

13. 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.

14. Such other information as the director may require.

D. Upon receiving a notice of intention to drill, the director shall endorse on the notice the date of its receipt. The director shall determine whether all information that is required has been submitted and, if applicable, whether the requirements of subsection C, paragraphs 11, 12 and 13 AND SUBSECTION I of this section have been met. If so, within fifteen days of 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. Upon 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, if applicable, that the requirements of subsection C, paragraphs 11, 12 and 13 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, 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 authority is unable to determine whether the proposed

well location complies with this title, 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, 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.

(e) THE SITE OF 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).

(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, IF A PROPOSED WELL IS LOCATED IN OR NEAR A REMEDIAL ACTION SITE, AS DETERMINED BY THE DIRECTOR, THE DIRECTOR SHALL APPROVE OR DENY THE DRILLING OF THE WELL WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF THE NOTICE OF INTENTION TO DRILL.

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.

Sec. 3. Section 45-606, Arizona Revised Statutes, is amended to read:

45-606. Well administration and enforcement fund; purpose

A. The well administration and enforcement fund is established consisting of fees paid to the department pursuant to section 45-596, subsection ~~I~~ L and section 45-599, subsection J. The department shall administer the fund. Monies in the fund are continuously appropriated and shall be used by the director for the following purposes:

1. For the reasonable and necessary costs of the department to implement this article.

2. For compliance monitoring, investigation and enforcement activities of the department pertaining to the construction, replacement, deepening and abandonment of wells and capping of open wells under this article.

B. The fund shall be a separate account on the books of the department. Monies remaining in the fund at the end of the fiscal year remain in the fund and are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

Sec. 4. Conditional enactment

If section 45-596, Arizona Revised Statutes, as amended by Laws 2006, chapter 56, section 2, is not repealed by another act of the forty-eighth legislature, first regular session, section 45-596, Arizona Revised Statutes, as amended by Laws 2006, chapter 56, section 2 and section 2 of this act, is effective as prescribed in Laws 2002, chapter 133, section 15.