

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1391

Introduced by
Senators Flake, Aguirre

AN ACT

AMENDING SECTIONS 48-3712, 48-3751, 48-3762 AND 48-3772, ARIZONA REVISED STATUTES; RELATING TO MULTI-COUNTY WATER CONSERVATION DISTRICT BONDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 48-3712, Arizona Revised Statutes, is amended to
3 read:

4 48-3712. Powers and duties of the board

5 A. The board shall:

6 1. Manage and conduct the affairs and business of the district.

7 2. Make and execute all necessary contracts and other instruments
8 which shall be signed by the president or, in the president's absence, by
9 another member of the board designated for that purpose, and attested by the
10 secretary.

11 3. Establish bylaws and rules for the governing of the board and for
12 the functions of the district.

13 4. Perform all acts necessary to carry out the purposes of this
14 chapter.

15 5. Except as provided in subsection C of this section and in sections
16 48-3713.03, 48-3715.01, 48-3715.03, 48-3715.05, 48-3772 and 48-3773, require
17 that all funds received on behalf of the district shall be deposited,
18 pursuant to sections 35-146 and 35-147, in a special fund established by the
19 state to be expended at the direction of the board to effectuate the
20 provisions and purposes of this chapter. On notice from the board, the state
21 treasurer shall invest and divest monies in the fund as provided by section
22 35-313, and monies earned from investment shall be credited to the fund.

23 6. Adopt an ordinance or ordinances to establish a revenue bonding
24 program that pledges to bond repayment any monies received or to be received
25 by the district from any source except ad valorem tax revenues, ~~replenishment~~
26 ~~assessment revenues and replenishment tax generated under article 4 of this~~
27 ~~chapter.~~

28 7. Employ such agents, engineers, attorneys and employees not readily
29 available from existing state agencies.

30 B. The board may:

31 1. Accept grants, gifts or donations of money or other property from
32 any source which may be expended for any purpose consistent with ~~the~~
33 ~~provisions of~~ this chapter.

34 2. Establish a revolving fund for the purpose of defraying the costs
35 and expenses of the district.

36 Sec. 2. Section 48-3751, Arizona Revised Statutes, is amended to read:

37 48-3751. Ordinances; revenue bonds

38 A. An ordinance adopted pursuant to section 48-3712 shall set forth a
39 plan for the district to borrow money and issue its negotiable revenue bonds.
40 The ordinance may determine the maximum amount of bonds, the maximum rate of
41 interest and the time of payment of the bonds.

42 B. The principal of and interest and premiums, if any, on bonds are
43 payable solely from revenues of the district as may be pledged by the
44 district including monies received from the sales of services or from
45 contracts of every nature. A bond shall not be issued and interest shall not

1 be paid pursuant to this section if AD VALOREM PROPERTY taxes ~~or assessments~~
2 on or against the real property or other property may be levied. Payment is
3 not enforceable out of any monies other than the revenues pledged to the
4 payment. No referendum or election is required for the issuance of bonds
5 authorized in this article.

6 C. Bonds may bear interest at rates that may fluctuate below a maximum
7 interest rate established in the ordinance. The board may designate a
8 remarketing agent to set and reset interest rates in accordance with the
9 ordinance or any authorizing resolution or trust indenture adopted or entered
10 into by the district in accordance with the ordinance. The district may
11 contract for and purchase credit enhancement in the form of letters of
12 credit, surety bonds, bond insurance policies, bond purchase agreements and
13 other contractual arrangements providing either credit for the bonds,
14 liquidity to the bondholders or credit facilities obtained in lieu of
15 reserves.

16 D. Subject to the limitations of this article, the district may do all
17 things, enter into all contracts and dispose of bond proceeds in the manner
18 deemed necessary by the board to effectuate the purpose for which the bonds
19 are issued and secure payment of the principal and interest on the bonds.

20 Sec. 3. Section 48-3762, Arizona Revised Statutes, is amended to read:

21 48-3762. Limitation on amount, rates, fees and charges

22 A. The district shall not issue any bonds under ~~the provisions of~~ this
23 article that will cause the aggregate principal amount of bonds issued and
24 outstanding under this article to exceed ~~two hundred fifty~~ FIVE HUNDRED
25 million dollars.

26 B. Bonds issued before September 21, 1991 are excluded for the
27 purposes of determining the aggregate principal amount.

28 C. Notwithstanding any other law, the district may establish and
29 collect a fee for water for bonding purposes in lieu of or in addition to any
30 rate or charge made pursuant to law or by contract.

31 Sec. 4. Section 48-3772, Arizona Revised Statutes, is amended to read:

32 48-3772. Duties and powers of district regarding replenishment

33 A. The district shall:

34 1. Establish annually the costs and expenses to replenish groundwater
35 pursuant to this article with respect to all parcels of member lands and all
36 member service areas located in each active management area, including
37 capital expenses, DEBT SERVICE EXPENSES, the operation, maintenance,
38 replacement and administrative costs and expenses of the district,
39 replenishment reserve costs and expenses as provided in subsection E of this
40 section and reasonable reserves. Separate calculations of costs and expenses
41 shall be made for each active management area in which member lands or member
42 service areas are located and for each membership category. Costs and
43 expenses attributed by the district to contract replenishment obligations
44 shall not be included in these calculations.

1 2. Provide for the payment of all costs and expenses to replenish
2 groundwater pursuant to this chapter and the payment of operation,
3 maintenance, replacement and administrative costs and expenses **AND DEBT**
4 **SERVICE EXPENSES** of the district.

5 3. Levy an annual replenishment assessment against each parcel of
6 member land pursuant to section 48-3778 and an annual replenishment tax
7 against each municipal provider that has a member service area pursuant to
8 section 48-3781 to pay the district's costs and expenses as established
9 pursuant to paragraph 1 of this subsection.

10 4. Levy a contract replenishment tax against municipal providers that
11 are parties to contracts authorized under subsection B, paragraph 9 of this
12 section to pay the district's costs and expenses to replenish groundwater
13 based on contract replenishment obligations.

14 5. Establish and maintain reserve accounts in amounts as may be deemed
15 necessary to perform the district's obligations under this article.

16 6. Fulfill all obligations under resolutions adopted pursuant to
17 subsection B, paragraph 10 of this section.

18 7. Levy an activation fee as follows:

19 (a) For subdivisions within member lands and member service areas that
20 are enrolled before May 6, 2004 and that had not been issued a public report
21 before ~~the effective date of this amendment to this section~~ **AUGUST 12, 2005**,
22 the district shall levy a one-time activation fee against each housing unit
23 to be constructed within the subdivision.

24 (b) For subdivisions within member lands and member service areas that
25 are enrolled on or after May 6, 2004, the district shall levy a one-time
26 activation fee against each housing unit to be constructed within the
27 subdivision.

28 (c) The activation fee shall be paid to the district before issuance
29 of a public report for each real estate subdivision identified in subdivision
30 (a) or (b) of this paragraph, as provided in section 45-576, subsection C.

31 (d) The activation fee shall be established annually by the district.
32 Revenues from the activation fee together with revenues from other sources
33 that are legally available to the district for those uses shall be used by
34 the district to acquire water rights and develop infrastructure necessary for
35 the district to perform its replenishment obligations.

36 B. The district may:

37 1. Acquire, develop, construct, operate, maintain, replace and acquire
38 permits for water storage, storage facilities and recovery wells for
39 replenishment purposes.

40 2. Acquire, transport, hold, exchange, own, lease, store or replenish
41 water, except groundwater withdrawn from an active management area, subject
42 to the provisions of title 45, for the benefit of member lands and member
43 service areas.

44 3. Acquire, hold, exchange, own, lease, retire or dispose of water
45 rights for the benefit of member lands and member service areas.

1 4. Require municipal providers to provide such information, in such
2 form and within the time limits prescribed by the district, as may be
3 necessary to carry out the purpose of this chapter.

4 5. Levy and collect assessments, fees, charges, taxes and other
5 revenues as are provided in this chapter for the financing of replenishment
6 activities.

7 6. Contract for or perform feasibility studies of water storage,
8 storage facilities and recovery wells for replenishment purposes.

9 7. Acquire real and personal property for water storage, storage
10 facilities and recovery wells for replenishment purposes by purchase, lease,
11 donation, dedication, exchange or other lawful means.

12 8. Use any facilities and any excess storage capacity of any state
13 demonstration projects undertaken pursuant to title 45, chapter 3.1 for water
14 storage for replenishment purposes.

15 9. Subject to subsection G of this section, contract with any
16 municipal provider having a member service area to replenish groundwater on
17 behalf of the municipal provider and with respect to the member service area
18 in an amount in excess of the sum of the service area replenishment
19 obligations applicable to the member service area for all years in which the
20 district has not completed the replenishment of the groundwater replenishment
21 obligation for the member service area.

22 10. Adopt resolutions granting water availability status to a member
23 service area of a city, town or private water company and committing to
24 replenish a specified average annual volume of water in a location where the
25 city, town or private water company may physically access the water for
26 service to its customers, if all of the following apply:

27 (a) The district has reviewed its requirements for transportation of
28 central Arizona project water, its contracts, subcontracts, letter
29 agreements, excess water contracts, and other contractual obligations and its
30 member service area and member land requirements and has determined that the
31 district can meet those obligations and that capacity remains in the central
32 Arizona project to meet the obligations undertaken through the resolution.

33 (b) The resolution acknowledges that the commitment to replenish the
34 specified average annual volume of water in the location cited in the
35 resolution shall be a permanent obligation of the district, unless one of the
36 following applies:

37 (i) A permanent substitute supply of water is found for the city, town
38 or private water company and the substitution is approved by the director of
39 water resources, thus terminating the water availability status of the member
40 service area.

41 (ii) The requirements of section 45-576.07, subsection A are not met,
42 and thus the director of water resources does not issue an order granting or
43 maintaining the city, town or private water company as having an assured
44 water supply based in whole or in part on section 45-576.07. If no order is
45 issued within two years of the district adopting the resolution, the

1 resolution may be repealed, and the district shall be relieved of all
2 obligations under the resolution.

3 (c) The average annual volume of water specified in the resolution,
4 when added to the average annual volume of water specified in all other
5 resolutions adopted pursuant to this paragraph, does not exceed twenty
6 thousand acre-feet.

7 (d) The district has entered into an agreement with the city, town or
8 private water company under which the city, town or private water company
9 will hold for the district's future use, and provide to the district when
10 needed, sufficient water to meet the obligations undertaken by the district
11 through the resolution.

12 (e) The district determines that the obligations undertaken by the
13 district through the resolution will not increase annual replenishment
14 assessment rates or costs to central Arizona project contract and subcontract
15 holders and its member service areas and member lands.

16 (f) The director of water resources has found, pursuant to section
17 45-576.07, subsection H, that the district has the capability to grant water
18 availability status to member service areas.

19 11. Provide in resolutions adopted pursuant to paragraph 10 of this
20 subsection that the district may fulfill its obligations under the resolution
21 in any year by directly delivering to the city, town or private water company
22 the water that otherwise would have been replenished pursuant to the
23 resolution, if all of the following apply:

24 (a) The district has reviewed its requirements for transportation of
25 central Arizona project water, its contracts, subcontracts, letter
26 agreements, excess water contracts, and other contractual obligations, its
27 member service area and member land requirements and has determined that the
28 district can meet those obligations and that capacity remains in the central
29 Arizona project to make direct deliveries pursuant to this paragraph.

30 (b) The district determines that the delivery will not increase annual
31 replenishment assessment rates or costs to central Arizona project contract
32 and subcontract holders, its member service area and member lands.

33 12. Enter into agreements with a city, town or private water company
34 that will have water made available to it through a resolution adopted
35 pursuant to paragraph 10 of this subsection and under which the city, town or
36 private water company compensates the district for the costs and fair value
37 of the water supply provided by the district.

38 13. ISSUE REVENUE BONDS PURSUANT TO ARTICLE 3 OF THIS CHAPTER TO FUND
39 THE COSTS AND EXPENSES OF THE DISTRICT WITH RESPECT TO REPLENISHMENT,
40 INCLUDING THE ACQUISITION OF WATER, WATER RIGHTS AND EFFLUENT, AS DEFINED IN
41 SECTION 45-101.

42 14. IN ADDITION TO ANY OTHER ASSESSMENTS, FEES, CHARGES OR TAXES LEVIED
43 AND COLLECTED UNDER THIS CHAPTER, CHARGE AN ANNUAL FEE FOR MEMBERSHIP WITHOUT
44 REGARD TO EXCESS GROUNDWATER USE. THE FEE MAY BE COLLECTED IN THE SAME
45 MANNER AS OTHER FEES, CHARGES AND TAXES OF THE DISTRICT ARE COLLECTED.

1 C. The functions of the district under subsection B, paragraph 1 of
2 this section may be performed on behalf of the district by other persons
3 under contract with the district.

4 D. For THE purposes of determining the annual costs and expenses of
5 the district under subsection A, paragraph 1 of this section, the district
6 shall amortize capital costs and expenses, including interest as determined
7 by the district, over the useful life of the capital improvements, as
8 determined by the district. The capital costs of the facilities of any state
9 demonstration projects used by the district pursuant to subsection B,
10 paragraph 8 of this section shall not be included in the capital costs and
11 expenses amortized by the district under this subsection. DEBT SERVICE ON
12 BONDS ISSUED PURSUANT TO SUBSECTION B, PARAGRAPH 13 OF THIS SECTION IS AN
13 EXPENSE IN THE YEAR PAID AND SHALL NOT BE INCLUDED IN THE CAPITAL COSTS AND
14 EXPENSES AMORTIZED BY THE DISTRICT UNDER THIS SUBSECTION.

15 E. The district shall establish and maintain a replenishment reserve
16 as follows:

17 1. The district shall calculate a reserve target for each of the three
18 active management areas within the district and shall identify the reserve
19 target in the plan of operation prepared pursuant to section 45-576.02. The
20 reserve target for each active management area shall be calculated as
21 follows:

22 (a) Establish the projected one hundred year replenishment obligation
23 for each active management area. For the purposes of this subdivision, each
24 active management area's projected one hundred year replenishment obligation
25 does not include replenishment obligations under resolutions adopted pursuant
26 to subsection B, paragraph 10 of this section or replenishment obligations
27 for category 2 member lands.

28 (b) Subtract from the active management area's projected one hundred
29 year replenishment obligation the sum of the following volumes of water
30 derived from sources identified in the plan as water that the district plans
31 to use to meet its replenishment obligations for that active management area:

32 (i) The annual volume of each nondeclining, long-term municipal and
33 industrial subcontract for central Arizona project water multiplied by one
34 hundred.

35 (ii) The annual volume of water under leases or contracts that can be
36 made physically and legally available to the district consistent with the
37 rules adopted pursuant to section 45-576, subsection H, multiplied by the
38 number of years, not to exceed one hundred, in which the water is to be made
39 available to the district. The water need not be continuously available to
40 be included in this item. A lease or contract shall not be considered under
41 this item if the water to be made available under the lease or contract is
42 for a term of less than twenty years.

43 (iii) The total volume of groundwater that the district plans to
44 transport to the active management area during the next one hundred years as
45 allowed by title 45, chapter 2, article 8.1.

1 (iv) The total volume of all sources of water not identified in items
2 (i), (ii) or (iii) of this subdivision that will not be held by the district
3 under a lease or contract. Volumes to be included under this item must be
4 consistent with the rules adopted by the director pursuant to section 45-576,
5 subsection H.

6 (c) Multiply the result from subdivision (b) of this paragraph by
7 twenty per cent. The result is the reserve target for the active management
8 area.

9 2. The reserve target for an active management area may be adjusted by
10 the district, subject to the approval of the director of water resources,
11 based on changes in either of the following:

12 (a) The active management area's projected one hundred year
13 replenishment obligation.

14 (b) The volumes of water identified in the plan of operation prepared
15 pursuant to section 45-576.02 as water that the district plans to use to meet
16 its replenishment obligations for that active management area.

17 3. The district shall include a replenishment reserve charge in the
18 annual replenishment assessment levied against all parcels of category 1
19 member land as provided in section 48-3774.01 and in the annual replenishment
20 tax levied against all municipal providers that have member service areas as
21 provided in section 48-3780.01. The replenishment reserve charge for each
22 active management area is established annually by the district based on the
23 reserve target for that active management area.

24 4. The district shall levy a replenishment reserve fee against
25 category 1 member lands pursuant to section 48-3774.01 and against member
26 service areas pursuant to section 48-3780.01. For category 1 member lands
27 the fee is equal to twice the applicable replenishment reserve charge
28 multiplied by the total projected average annual replenishment obligation for
29 the member lands as reported by the director of water resources pursuant to
30 section 45-578, subsection F. For member service areas the fee is equal to
31 twice the applicable replenishment reserve charge multiplied by the excess
32 groundwater increment. With the approval of the district and the director of
33 water resources, long-term storage credits as defined in section 45-802.01
34 may be assigned to the district's replenishment reserve subaccount in lieu of
35 paying the replenishment reserve fee.

36 5. The district shall use replenishment reserve charges and
37 replenishment reserve fees collected within each active management area
38 together with all interest earned on the charges and fees to store water in
39 that active management area in advance of groundwater replenishment
40 obligations for the purpose of developing long-term storage credits as
41 defined in section 45-802.01 that shall be credited to the replenishment
42 reserve subaccount for that active management area as provided in section
43 45-859.01.

44 6. Beginning on January 1, 2030 or earlier, on approval of the
45 director of water resources pursuant to section 45-859.01, subsection K, the

1 district may transfer credits from a replenishment reserve subaccount to a
2 conservation district account as provided in section 45-859.01 to satisfy its
3 groundwater replenishment obligations.

4 7. If the district transfers credits from the replenishment reserve
5 subaccount for an active management area pursuant to section 45-859.01,
6 subsection E, the district shall include in the annual replenishment
7 assessment levied against all parcels of category 1 member land in that
8 active management area and, except as provided in section 48-3780.01,
9 subsection B, in the annual replenishment tax levied against all municipal
10 providers that have member service areas in that active management area a
11 reserve replacement component to fund the replacement of the transferred
12 credits. The district shall use all monies from the reserve replacement
13 component collected within an active management area together with all
14 interest earned on the monies to develop long-term storage credits as defined
15 in section 45-802.01 within that active management area to be credited to the
16 replenishment reserve subaccount for that active management area as provided
17 in section 45-859.01.

18 8. For the purposes of establishing and maintaining the replenishment
19 reserve, the district shall have access to excess central Arizona project
20 water equivalent to but no more than the access the Arizona water banking
21 authority has for the purposes specified in section 45-2401, subsection H,
22 paragraph 2.

23 F. Groundwater replenished by the district pursuant to a contract to
24 replenish groundwater under subsection B, paragraph 9 of this section shall
25 not be credited to a replenishment reserve subaccount established under
26 section 45-859.01.

27 G. The district shall not enter into a contract authorized under
28 subsection B, paragraph 9 of this section unless the district has determined
29 that the contract will not adversely affect the district's ability to fulfill
30 its obligations under this chapter. For each contract entered into under
31 subsection B, paragraph 9 of this section, the district shall perform its
32 contract replenishment obligations in the active management area in which the
33 service area of the municipal provider that is the party to the contract is
34 located.

35 H. If the district replenishes groundwater on behalf of a municipal
36 provider pursuant to a contract to replenish groundwater under subsection B,
37 paragraph 9 of this section, the amount of groundwater so replenished shall
38 be a replenishment credit to the municipal provider that may be applied by
39 the municipal provider on notice to the district to reduce the service area
40 replenishment obligations applicable to the municipal provider.

41 I. In the Phoenix active management area, the district, to the extent
42 reasonably feasible, shall replenish groundwater in the east portion of the
43 active management area and in the west portion of the active management area
44 in the approximate proportion that the groundwater replenishment obligation
45 attributable in a particular year to member lands and member service areas

1 located in the east portion of the active management area bears to the
2 groundwater replenishment obligation attributable in that year to member
3 lands and member service areas located in the west portion of the active
4 management area. For the purposes of this subsection, the boundary between
5 the east Salt river valley subbasin and the west Salt river valley subbasin
6 is the boundary between the east and west portions of the active management
7 area.

8 J. The costs and expenses charged by the district to an active
9 management area water district established under chapter 28 of this title for
10 delivery of surplus central Arizona project water to such active management
11 area water district for replenishment purposes shall not exceed the costs and
12 expenses for delivery of such water that are or would be included by the
13 district in the costs and expenses of replenishment for member lands and
14 member service areas within the active management area in which such active
15 management area water district is situated.