



Bill Number: H.B. 2083

Nelson Floor Amendment

Reference to: House engrossed bill

Amendment drafted by: Marge Ray – Leg Council

FLOOR AMENDMENT EXPLANATION

H.B. 2083 is the annual drought emergency groundwater transfer bill that allows groundwater to be transported away from a groundwater basin that is outside an active management area, under specific emergency circumstances and on a temporary basis.

The Nelson Floor Amendment to H.B. 2083 amends S.B. 1141 (CAGRD revenue bonding; sustainability policies). It removes the Central Arizona Groundwater Replenishment District's (CAGRD) authority to use bond monies to acquire and transfer groundwater from the McMullen Valley basin. The provisions of the Nelson Floor Amendment are conditioned upon the enactment of the CAGRD bonding bill into law.

Amendment explanation prepared by Tony DeMarco

4/1/2010

NELSON FLOOR AMENDMENT
SENATE AMENDMENTS TO H.B. 2083
(Reference to House engrossed bill)

1 Page 1, between lines 1 and 2, insert:

2 "Section 1. Section 48-3772, Arizona Revised Statutes, as amended by
3 Senate Bill 1141, section 7, forty-ninth legislature, second regular session,
4 as transmitted to the governor, is amended to read:

5 48-3772. Duties and powers of district regarding replenishment

6 A. The district shall:

7 1. Establish annually the costs and expenses to replenish groundwater
8 pursuant to this article with respect to all parcels of member lands and all
9 member service areas located in each active management area, including
10 capital expenses, debt service expenses, the operation, maintenance,
11 replacement and administrative costs and expenses of the district,
12 replenishment reserve costs and expenses as provided in subsection E of this
13 section and reasonable reserves. Separate calculations of costs and expenses
14 shall be made for each active management area in which member lands or member
15 service areas are located and for each membership category. Costs and
16 expenses attributed by the district to contract replenishment obligations
17 shall not be included in these calculations.

18 2. Provide for the payment of all costs and expenses to replenish
19 groundwater pursuant to this chapter and the payment of operation,
20 maintenance, replacement and administrative costs and expenses and debt
21 service expenses of the district.

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

27 4. Levy a contract replenishment tax against municipal providers that
28 are parties to contracts authorized under subsection B, paragraph 9 of this

1 section to pay the district's costs and expenses to replenish groundwater
2 based on contract replenishment obligations.

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

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

7 7. Levy an activation fee as follows:

8 (a) For subdivisions within member lands and member service areas that
9 are enrolled before May 6, 2004 and that had not been issued a public report
10 before August 12, 2005, the district shall levy a one-time activation fee
11 against each housing unit to be constructed within the subdivision.

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

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

19 (d) The activation fee shall be established annually by the district.
20 Revenues from the activation fee together with revenues from other sources
21 that are legally available to the district for those uses shall be used by
22 the district to acquire, lease or exchange water or water rights and develop
23 infrastructure necessary for the district to perform its replenishment
24 obligations.

25 8. For any year, set all of its rates and charges associated with the
26 acquisition, lease or exchange of water or water rights and development of
27 infrastructure necessary for the district to perform its replenishment
28 obligations, other than the annual membership dues established pursuant to
29 section 48-3779, so that the total projected revenues from revenue sources
30 other than the annual membership dues, that are legally available to the
31 district in that year to pay costs associated with the acquisition, lease or
32 exchange of water or water rights and development of infrastructure necessary

1 for the district to perform its replenishment obligations, shall be at least
2 three times the total projected revenues from the annual membership dues in
3 that year. For the purposes of this paragraph, costs associated with the
4 acquisition, lease or exchange of water or water rights do not include the
5 annual costs associated with delivery of water for replenishment purposes.

6 B. The district may:

7 1. Acquire, develop, construct, operate, maintain, replace and acquire
8 permits for water storage, storage facilities and recovery wells for
9 replenishment purposes.

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

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

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

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

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

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

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

30 9. Subject to subsection G of this section, contract with any
31 municipal provider having a member service area to replenish groundwater on
32 behalf of the municipal provider and with respect to the member service area

1 in an amount in excess of the sum of the service area replenishment
2 obligations applicable to the member service area for all years in which the
3 district has not completed the replenishment of the groundwater replenishment
4 obligation for the member service area.

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

10 (a) The district has reviewed its requirements for transportation of
11 central Arizona project water, its contracts, subcontracts, letter
12 agreements, excess water contracts, and other contractual obligations and its
13 member service area and member land requirements and has determined that the
14 district can meet those obligations and that capacity remains in the central
15 Arizona project to meet the obligations undertaken through the resolution.

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

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

24 (ii) The requirements of section 45-576.07, subsection A are not met,
25 and thus the director of water resources does not issue an order granting or
26 maintaining the city, town or private water company as having an assured
27 water supply based in whole or in part on section 45-576.07. If no order is
28 issued within two years of the district adopting the resolution, the
29 resolution may be repealed, and the district shall be relieved of all
30 obligations under the resolution.

31 (c) The average annual volume of water specified in the resolution,
32 when added to the average annual volume of water specified in all other

1 resolutions adopted pursuant to this paragraph, does not exceed twenty
2 thousand acre-feet.

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

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

12 (f) The director of water resources has found, pursuant to section
13 45-576.07, subsection H, that the district has the capability to grant water
14 availability status to member service areas.

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

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

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

29 12. Enter into agreements with a city, town or private water company
30 that will have water made available to it through a resolution adopted
31 pursuant to paragraph 10 of this subsection and under which the city, town or

1 private water company compensates the district for the costs and fair value
2 of the water supply provided by the district.

3 13. Issue revenue bonds pursuant to article 3 of this chapter to fund
4 the costs and expenses of the district for the acquisition, lease or exchange
5 of water or water rights and the development of infrastructure necessary for
6 the district to perform its replenishment obligations subject to the
7 following:

8 (a) The principal of, interest and premiums, if any, on revenue bonds
9 issued pursuant to article 3 of this chapter to acquire, lease or exchange
10 water or water rights and develop infrastructure necessary for the district
11 to perform its replenishment obligations are not payable from any revenues of
12 the district other than revenues generated or collected pursuant to this
13 article that are legally available to the district for those purposes and
14 revenues from the investment of the proceeds of the bonds.

15 (b) The district may not use the proceeds of the bonds to acquire or
16 lease:

17 (i) Groundwater, as defined in section 45-101, except as expressly
18 authorized in sections 45-547, ~~45-552~~, 45-553 and 45-554.

19 (ii) Surface water, as defined in section 45-101, that is the subject
20 of a general adjudication pursuant to title 45, chapter 1, article 9.

21 (c) Nothing in subdivision (b) of this paragraph prohibits the
22 district from acquiring or leasing central Arizona project water.

23 14. Except as provided in section 48-3780.01, subsection B, in addition
24 to any other assessments, fees, charges or taxes levied and collected under
25 this chapter, or under any declaration, contract or agreement entered into
26 under this chapter, charge annual dues for membership pursuant to section
27 48-3779 against each parcel of member land and each municipal provider that
28 has a member service area.

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

1 D. The capital costs of the facilities of any state demonstration
2 projects used by the district pursuant to subsection B, paragraph 8 of this
3 section shall not be included in the capital costs and expenses established
4 by the district under subsection A, paragraph 1 of this section.

5 E. The district shall establish and maintain a replenishment reserve
6 as follows:

7 1. The district shall calculate a reserve target for each of the three
8 active management areas within the district and shall identify the reserve
9 target in the plan of operation prepared pursuant to section 45-576.02. The
10 reserve target for each active management area shall be calculated as
11 follows:

12 (a) Establish the projected one hundred year replenishment obligation
13 for each active management area. For the purposes of this subdivision, each
14 active management area's projected one hundred year replenishment obligation
15 does not include replenishment obligations under resolutions adopted pursuant
16 to subsection B, paragraph 10 of this section or replenishment obligations
17 for category 2 member lands.

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

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

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

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

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

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

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

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

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

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

27 4. The district shall levy a replenishment reserve fee against
28 category 1 member lands pursuant to section 48-3774.01 and against member
29 service areas pursuant to section 48-3780.01. For category 1 member lands
30 the fee is equal to twice the applicable replenishment reserve charge
31 multiplied by the total projected average annual replenishment obligation for
32 the member lands as reported by the director of water resources pursuant to

1 section 45-578, subsection F. For member service areas the fee is equal to
2 twice the applicable replenishment reserve charge multiplied by the excess
3 groundwater increment. With the approval of the district and the director of
4 water resources, long-term storage credits as defined in section 45-802.01
5 may be assigned to the district's replenishment reserve subaccount in lieu of
6 paying the replenishment reserve fee.

7 5. The district shall use replenishment reserve charges and
8 replenishment reserve fees collected within each active management area
9 together with all interest earned on the charges and fees to store water in
10 that active management area in advance of groundwater replenishment
11 obligations for the purpose of developing long-term storage credits as
12 defined in section 45-802.01 that shall be credited to the replenishment
13 reserve subaccount for that active management area as provided in section
14 45-859.01.

15 6. Beginning on January 1, 2030 or earlier, on approval of the
16 director of water resources pursuant to section 45-859.01, subsection K, the
17 district may transfer credits from a replenishment reserve subaccount to a
18 conservation district account as provided in section 45-859.01 to satisfy its
19 groundwater replenishment obligations.

20 7. If the district transfers credits from the replenishment reserve
21 subaccount for an active management area pursuant to section 45-859.01,
22 subsection E, the district shall include in the annual replenishment
23 assessment levied against all parcels of category 1 member land in that
24 active management area and, except as provided in section 48-3780.01,
25 subsection B, in the annual replenishment tax levied against all municipal
26 providers that have member service areas in that active management area a
27 reserve replacement component to fund the replacement of the transferred
28 credits. The district shall use all monies from the reserve replacement
29 component collected within an active management area together with all
30 interest earned on the monies to develop long-term storage credits as defined
31 in section 45-802.01 within that active management area to be credited to the

1 replenishment reserve subaccount for that active management area as provided
2 in section 45-859.01.

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

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

12 G. The district shall not enter into a contract authorized under
13 subsection B, paragraph 9 of this section unless the district has determined
14 that the contract will not adversely affect the district's ability to fulfill
15 its obligations under this chapter. For each contract entered into under
16 subsection B, paragraph 9 of this section, the district shall perform its
17 contract replenishment obligations in the active management area in which the
18 service area of the municipal provider that is the party to the contract is
19 located.

20 H. If the district replenishes groundwater on behalf of a municipal
21 provider pursuant to a contract to replenish groundwater under subsection B,
22 paragraph 9 of this section, the amount of groundwater so replenished shall
23 be a replenishment credit to the municipal provider that may be applied by
24 the municipal provider on notice to the district to reduce the service area
25 replenishment obligations applicable to the municipal provider.

26 I. In the Phoenix active management area, the district, to the extent
27 reasonably feasible, shall replenish groundwater in the east portion of the
28 active management area and in the west portion of the active management area
29 in the approximate proportion that the groundwater replenishment obligation
30 attributable in a particular year to member lands and member service areas
31 located in the east portion of the active management area bears to the
32 groundwater replenishment obligation attributable in that year to member

1 lands and member service areas located in the west portion of the active
2 management area. For the purposes of this subsection, the boundary between
3 the east Salt river valley subbasin and the west Salt river valley subbasin
4 is the boundary between the east and west portions of the active management
5 area.

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

14 Renumber to conform

15 Page 2, line 21, after "by" insert "section 2 of"

16 Line 24, before "This" insert "Section 2 of"

17 After line 24, insert:

18 "Sec. 5. Conditional enactment

19 Section 48-3772, Arizona Revised Statutes, as amended by this act, does
20 not become effective unless Senate Bill 1141, forty-ninth legislature, second
21 regular session, relating to groundwater replenishment, becomes law."

22 Amend title to conform

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