

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
Second Regular Session  
2020

# HOUSE BILL 2677

AN ACT

AMENDING SECTIONS 48-3701 AND 48-3772, ARIZONA REVISED STATUTES; RELATING  
TO MULTI-COUNTY WATER CONSERVATION DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 48-3701, Arizona Revised Statutes, is amended to  
3 read:

4 48-3701. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Active management area" means an active management area  
7 established under title 45, chapter 2, article 2.

8 2. "Board" means the board of directors of a multi-county water  
9 conservation district.

10 3. "Contract replenishment obligation" means an amount of  
11 groundwater that the district contracts to replenish in a year on behalf  
12 of a municipal provider pursuant to a contract authorized under section  
13 48-3772, subsection B, paragraph 9.

14 4. "Credits" means any groundwater in addition to the amount of  
15 groundwater that may be used at a member land or delivered within a member  
16 service area for use within the member service area pursuant to the  
17 applicable assured water supply rules adopted by the department of water  
18 resources.

19 5. "Declaration" means an instrument recorded against real property  
20 and conforming to the requirements prescribed by section 48-3774,  
21 subsection A, paragraph 5.

22 6. "District" means a multi-county water conservation district  
23 organized under the authority of this chapter.

24 7. "Excess groundwater" means an amount of groundwater equal to  
25 that amount of groundwater delivered to a member land in a calendar year  
26 or delivered within a member service area by the municipal provider for  
27 that member service area in a calendar year in excess of the amount of  
28 groundwater that may be used at the member land in that calendar year or  
29 that may be delivered by the municipal provider for use within the member  
30 service area in that calendar year and consistent with the applicable  
31 assured water supply rules adopted by the department of water resources  
32 for the active management area where the member land or the member service  
33 area is located.

34 8. "Excess groundwater increment" means the amount by which excess  
35 groundwater reported for a member service area under section 48-3775,  
36 subsection B in any year exceeds the maximum amount of excess groundwater  
37 reported for that member service area in any prior year.

38 9. "Groundwater replenishment obligation" means, for each active  
39 management area in which member lands or member service areas are or may  
40 be located, the total of the cumulative parcel replenishment obligation of  
41 all parcels of member land in that active management area for a particular  
42 calendar year plus the cumulative service area replenishment obligation of  
43 all member service areas in that active management area for a particular  
44 calendar year.

- 1           10. "Member land" means any real property that meets the  
2 requirements of section 48-3774.
- 3           11. "Member service area" means the service area of a municipal  
4 provider that qualifies as a member service area under section 48-3780,  
5 including any additions to or extensions of the service area.
- 6           12. "Multi-county water conservation district" means a district  
7 composed of three or more counties that have joined together for the  
8 creation of a district.
- 9           13. "Municipal provider" means a city, town or private water company  
10 or an irrigation district that supplies water for non-irrigation use.
- 11           14. "Parcel of member land" means any portion of member land for  
12 which the tax assessor for the county in which the member land is located  
13 has issued a separate county parcel number.
- 14           15. "Parcel replenishment obligation" means, with respect to any  
15 particular parcel of member land, an amount of groundwater that is equal  
16 to the amount of groundwater delivered to the parcel of member land in a  
17 calendar year multiplied by the percentage that the excess groundwater of  
18 the applicable member land for that year bears to the total amount of  
19 groundwater delivered to the applicable member land during that year.
- 20           16. "Population" means the population determined in the most recent  
21 United States decennial census.
- 22           17. "Private water company" has the same meaning prescribed in  
23 section 45-402.
- 24           18. "Projected ~~one hundred year~~ replenishment obligation" means for  
25 each active management area, the district's total projected annual  
26 groundwater replenishment obligation ~~at active management area build-out,~~  
27 ~~multiplied by one hundred~~ FOR EACH OF THE ONE HUNDRED YEARS FOLLOWING  
28 SUBMISSION OF THE DISTRICT PLAN OF OPERATION.
- 29           19. "Replenish" means to increase the amount of groundwater in an  
30 aquifer through water storage pursuant to title 45, chapter 3.1 for the  
31 purpose of meeting the obligations of article 4 of this chapter.
- 32           20. "Reserve target" means the volume calculated for each active  
33 management area as prescribed by section 48-3772, subsection E.
- 34           21. "Resolution" means a resolution adopted by the governing body of  
35 a city or town, by the board of directors of a private water company that  
36 is a corporation, by the general partners of a private water company that  
37 is a partnership or by the individual owners of a private water company  
38 that is individually owned.
- 39           22. "Secretary" means the secretary of the interior of the United  
40 States of America.
- 41           23. "Service area" has the same meaning prescribed in section  
42 45-402.
- 43           24. "Service area replenishment obligation" means, with respect to  
44 any particular member service area, the excess groundwater of that member  
45 service area in a particular calendar year reduced by the replenishment

1 credits, if any, applied by the municipal provider with respect to the  
2 member service area under section 48-3772, subsection H.

3 25. "Water storage" has the same meaning prescribed in section  
4 45-802.01.

5 Sec. 2. Section 48-3772, Arizona Revised Statutes, is amended to  
6 read:

7 48-3772. Duties and powers of district regarding  
8 replenishment

9 A. The district shall:

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

22 2. Provide for the payment of all costs and expenses to replenish  
23 groundwater pursuant to this chapter and the payment of operation,  
24 maintenance, replacement and administrative costs and expenses and debt  
25 service expenses of the district.

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

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

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

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

39 7. Levy an activation fee as follows:

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

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

5 (c) The activation fee shall be paid to the district according to  
6 either of the following schedules, whichever the subdivider elects:

7 (i) Paid in full before issuance of a public report for each real  
8 estate subdivision identified in subdivision (a) or (b) of this paragraph.

9 (ii) One-half paid before issuance of a public report for each real  
10 estate subdivision identified in subdivision (a) or (b) of this paragraph  
11 and the remaining amount paid no later than one year after the issuance of  
12 the public report. The total amount of the activation fee must be the  
13 amount of the activation fee in effect at the time of the initial payment.  
14 Payment of the initial one-half of the activation fee pursuant to this  
15 item constitutes sufficient payment of applicable fees for notice of  
16 intent to subdivide as prescribed in section 32-2181, subsection C and for  
17 issuance of a public report as prescribed in section 32-2183, subsection G  
18 and section 45-576, subsection C, except that on failure to pay the  
19 remaining amount, the commissioner shall suspend the public report for  
20 that subdivision pursuant to section 32-2183.

21 (d) The activation fee shall be established annually by the  
22 district. The amount of the activation fee to be paid to the district  
23 under subdivision (c) of this paragraph must be the amount of the  
24 activation fee in effect at the time of payment. Revenues from the  
25 activation fee together with revenues from other sources that are legally  
26 available to the district for those uses shall be used by the district to  
27 acquire, lease or exchange water or water rights and develop  
28 infrastructure necessary for the district to perform its replenishment  
29 obligations.

30 8. For any year, set all of its rates and charges associated with  
31 the acquisition, lease or exchange of water or water rights and  
32 development of infrastructure necessary for the district to perform its  
33 replenishment obligations, other than the annual membership dues  
34 established pursuant to section 48-3779, so that the total projected  
35 revenues from revenue sources other than the annual membership dues, that  
36 are legally available to the district in that year to pay costs associated  
37 with the acquisition, lease or exchange of water or water rights and  
38 development of infrastructure necessary for the district to perform its  
39 replenishment obligations, shall be at least three times the total  
40 projected revenues from the annual membership dues in that year. For the  
41 purposes of this paragraph, costs associated with the acquisition, lease  
42 or exchange of water or water rights do not include the annual costs  
43 associated with delivery of water for replenishment purposes.

1           B. The district may:  
2           1. Acquire, develop, construct, operate, maintain, replace and  
3 acquire permits for water storage, storage facilities and recovery wells  
4 for replenishment purposes.  
5           2. Acquire, transport, hold, exchange, own, lease, store or  
6 replenish water, except groundwater withdrawn from an active management  
7 area, subject to the provisions of title 45, for the benefit of member  
8 lands and member service areas.  
9           3. Acquire, hold, exchange, own, lease, retire or dispose of water  
10 rights for the benefit of member lands and member service areas.  
11           4. Require municipal providers to provide such information, in such  
12 form and within the time limits prescribed by the district, as may be  
13 necessary to carry out the purpose of this chapter.  
14           5. Levy and collect assessments, fees, charges, taxes and other  
15 revenues as are provided in this chapter for the financing of  
16 replenishment activities.  
17           6. Contract for or perform feasibility studies of water storage,  
18 storage facilities and recovery wells for replenishment purposes.  
19           7. Acquire real and personal property for water storage, storage  
20 facilities and recovery wells for replenishment purposes by purchase,  
21 lease, donation, dedication, exchange or other lawful means.  
22           8. Use any facilities and any excess storage capacity of any state  
23 demonstration projects undertaken pursuant to title 45, chapter 3.1 for  
24 water storage for replenishment purposes.  
25           9. Subject to subsection G of this section, contract with any  
26 municipal provider having a member service area to replenish groundwater  
27 on behalf of the municipal provider and with respect to the member service  
28 area in an amount in excess of the sum of the service area replenishment  
29 obligations applicable to the member service area for all years in which  
30 the district has not completed the replenishment of the groundwater  
31 replenishment obligation for the member service area.  
32           10. Adopt resolutions granting water availability status to a member  
33 service area of a city, town or private water company and committing to  
34 replenish a specified average annual volume of water in a location where  
35 the city, town or private water company may physically access the water  
36 for service to its customers, if all of the following apply:  
37           (a) The district has reviewed its requirements for transportation  
38 of central Arizona project water, its contracts, subcontracts, letter  
39 agreements, excess water contracts, and other contractual obligations and  
40 its member service area and member land requirements and has determined  
41 that the district can meet those obligations and that capacity remains in  
42 the central Arizona project to meet the obligations undertaken through the  
43 resolution.

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

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

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

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

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

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

29 (f) The director of water resources has found, pursuant to section  
30 45-576.07, subsection H, that the district has the capability to grant  
31 water availability status to member service areas.

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

37 (a) The district has reviewed its requirements for transportation  
38 of central Arizona project water, its contracts, subcontracts, letter  
39 agreements, ~~excess water contracts,~~ and other contractual  
40 obligations, ~~AND~~ AND its member service area and member land requirements and  
41 has determined that the district can meet those obligations and that  
42 capacity remains in the central Arizona project to make direct deliveries  
43 pursuant to this paragraph.

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

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

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

15 (a) The principal of, interest and premiums, if any, on revenue  
16 bonds issued pursuant to article 3 of this chapter to acquire, lease or  
17 exchange water or water rights and develop infrastructure necessary for  
18 the district to perform its replenishment obligations are not payable from  
19 any revenues of the district other than revenues generated or collected  
20 pursuant to this article that are legally available to the district for  
21 those purposes and revenues from the investment of the proceeds of the  
22 bonds.

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

25 (i) Groundwater, as defined in section 45-101, except as expressly  
26 authorized in sections 45-547, 45-553 and 45-554.

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

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

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

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

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



1 E. The district shall establish and maintain a replenishment  
2 reserve as follows:

3 1. The district shall calculate a reserve target for each of the  
4 three active management areas within the district and shall identify the  
5 reserve target in the plan of operation prepared pursuant to section  
6 45-576.02. The reserve target for each active management area shall be  
7 calculated as follows:

8 (a) ~~Establish~~ FOR EACH ACTIVE MANAGEMENT AREA, ADD TOGETHER the  
9 projected ~~one hundred year~~ replenishment obligation for each ~~active~~  
10 ~~management area~~ OF THE ONE HUNDRED YEARS FOLLOWING SUBMISSION OF THE PLAN  
11 OF OPERATION. For the purposes of this subdivision, each active  
12 management area's projected ~~one hundred year~~ replenishment obligation does  
13 not include replenishment obligations under resolutions adopted pursuant  
14 to subsection B, paragraph 10 of this section or replenishment obligations  
15 for category 2 member lands.

16 (b) Subtract from the SUM OF THE active management area's projected  
17 ~~one hundred year~~ replenishment obligation OVER THE ONE HUNDRED YEAR PERIOD  
18 the sum of the following volumes of water derived from sources identified  
19 in the plan as water that the district plans to use to meet its  
20 replenishment obligations for that active management area:

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

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

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

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

40 (c) Multiply the result from subdivision (b) of this paragraph by  
41 twenty ~~per cent~~ PERCENT. The result is the reserve target for the active  
42 management area.

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

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

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

6 3. The district shall include a replenishment reserve charge in the  
7 annual replenishment assessment levied against all parcels of category 1  
8 member land as provided in section 48-3774.01 and in the annual  
9 replenishment tax levied against all municipal providers that have member  
10 service areas as provided in section 48-3780.01. The replenishment  
11 reserve charge for each active management area is established annually by  
12 the district based on the reserve target for that active management area.

13 4. The district shall levy a replenishment reserve fee against  
14 category 1 member lands pursuant to section 48-3774.01 and against member  
15 service areas pursuant to section 48-3780.01. For category 1 member lands  
16 the fee is equal to twice the applicable replenishment reserve charge  
17 multiplied by the total projected average annual replenishment obligation  
18 for the member lands as reported by the director of water resources  
19 pursuant to section 45-578, subsection F. For member service areas the  
20 fee is equal to twice the applicable replenishment reserve charge  
21 multiplied by the excess groundwater increment. With the approval of the  
22 district and the director of water resources, long-term storage credits as  
23 defined in section 45-802.01 may be assigned to the district's  
24 replenishment reserve subaccount in lieu of paying the replenishment  
25 reserve fee.

26 5. The district shall use replenishment reserve charges and  
27 replenishment reserve fees collected within each active management area  
28 together with all interest earned on the charges and fees to store water  
29 in that active management area in advance of groundwater replenishment  
30 obligations for the purpose of developing long-term storage credits as  
31 defined in section 45-802.01 that shall be credited to the replenishment  
32 reserve subaccount for that active management area as provided in section  
33 45-859.01.

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

39 7. If the district transfers credits from the replenishment reserve  
40 subaccount for an active management area pursuant to section 45-859.01,  
41 subsection E, the district shall include in the annual replenishment  
42 assessment levied against all parcels of category 1 member land in that  
43 active management area and, except as provided in section 48-3780.01,  
44 subsection B, in the annual replenishment tax levied against all municipal  
45 providers that have member service areas in that active management area a

1 reserve replacement component to fund the replacement of the transferred  
2 credits. The district shall use all monies from the reserve replacement  
3 component collected within an active management area together with all  
4 interest earned on the monies to develop long-term storage credits as  
5 defined in section 45-802.01 within that active management area to be  
6 credited to the replenishment reserve subaccount for that active  
7 management area as provided in section 45-859.01.

8 8. For the purposes of establishing and maintaining the  
9 replenishment reserve, the district shall have access to excess central  
10 Arizona project water equivalent to but ~~no~~ NOT more than the access the  
11 Arizona water banking authority has for the purposes specified in section  
12 45-2401, subsection H, paragraph 2.

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

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

25 H. If the district replenishes groundwater on behalf of a municipal  
26 provider pursuant to a contract to replenish groundwater under subsection  
27 B, paragraph 9 of this section, the amount of groundwater so replenished  
28 shall be a replenishment credit to the municipal provider that may be  
29 applied by the municipal provider on notice to the district to reduce the  
30 service area replenishment obligations applicable to the municipal  
31 provider.

32 I. In the Phoenix active management area, the district, to the  
33 extent reasonably feasible, shall replenish groundwater in the east  
34 portion of the active management area and in the west portion of the  
35 active management area in the approximate proportion that the groundwater  
36 replenishment obligation attributable in a particular year to member lands  
37 and member service areas located in the east portion of the active  
38 management area bears to the groundwater replenishment obligation  
39 attributable in that year to member lands and member service areas located  
40 in the west portion of the active management area. For the purposes of  
41 this subsection, the boundary between the east Salt river valley subbasin  
42 and the west Salt river valley subbasin is the boundary between the east  
43 and west portions of the active management area.

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