

House Engrossed

water supply development fund; revisions

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 63
HOUSE BILL 2057

AN ACT

AMENDING SECTIONS 49-1203, 49-1273, 49-1274, 49-1275 AND 49-1277, ARIZONA
REVISED STATUTES; RELATING TO THE WATER SUPPLY DEVELOPMENT REVOLVING FUND.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 49-1203, Arizona Revised Statutes, is amended to
3 read:
4 49-1203. Powers and duties of authority; definition
5 A. The authority is a corporate and politic body and shall have an
6 official seal that shall be judicially noticed. The authority may sue and
7 be sued, contract and acquire, hold, operate and dispose of property.
8 B. The authority, through its board, may:
9 1. Issue negotiable water quality bonds pursuant to section 49-1261
10 for the following purposes:
11 (a) To generate the state match required by the clean water act for
12 the clean water revolving fund and to generate the match required by the
13 safe drinking water act for the drinking water revolving fund.
14 (b) To provide financial assistance to political subdivisions,
15 Indian tribes and eligible drinking water facilities for constructing,
16 acquiring or improving wastewater treatment facilities, drinking water
17 facilities, nonpoint source projects and other related water quality
18 facilities and projects.
19 2. Issue water supply development bonds for the purpose of
20 providing financial assistance to water providers for water supply
21 development purposes pursuant to sections 49-1274 and 49-1275.
22 3. Provide financial assistance to political subdivisions and
23 Indian tribes from monies in the clean water revolving fund to finance
24 wastewater treatment projects.
25 4. Provide financial assistance to drinking water facilities from
26 monies in the drinking water revolving fund to finance these facilities.
27 5. Provide financial assistance to water providers from monies in
28 the water supply development revolving fund to finance water supply
29 development.
30 6. Guarantee debt obligations of, and provide linked deposit
31 guarantees through ~~third party~~ THIRD-PARTY lenders to:
32 (a) Political subdivisions that are issued to finance wastewater
33 treatment projects.
34 (b) Drinking water facilities that are issued to finance these
35 facilities.
36 (c) Water providers that are issued to finance water supply
37 development projects.
38 7. Provide linked deposit guarantees through ~~third party~~
39 THIRD-PARTY lenders to political subdivisions, drinking water facilities
40 and water providers.
41 8. Apply for, accept and administer grants and other financial
42 assistance from the United States government and from other public and
43 private sources.
44 9. Enter into capitalization grant agreements with the United
45 States environmental protection agency.

1 10. Adopt rules pursuant to title 41, chapter 6 governing the
2 application for and awarding ~~of~~ wastewater treatment facility, drinking
3 water facility and nonpoint source project financial assistance under this
4 chapter, ~~the administration of~~ ADMINISTERING the clean water revolving
5 fund and the drinking water revolving fund and ~~the issuance of~~ ISSUING
6 water quality bonds.

7 11. Subject to title 41, chapter 4, article 4, hire a director and
8 staff for the authority.

9 12. Contract for the services of outside advisors, attorneys,
10 consultants and aides reasonably necessary or desirable to allow the
11 authority to adequately perform its duties.

12 13. Contract and incur obligations as reasonably necessary or
13 desirable within the general scope of authority activities and operations
14 to allow the authority to adequately perform its duties.

15 14. Assess financial assistance origination fees and annual fees to
16 cover the reasonable costs of administering the authority and the monies
17 administered by the authority. Any fees collected pursuant to this
18 paragraph constitute governmental revenue and may be used for any purpose
19 consistent with the mission and objectives of the authority.

20 15. Perform any function of a fund manager under the CERCLA
21 Brownfields cleanup revolving loan fund program as requested by the
22 department. The board shall perform any action authorized under this
23 article on behalf of the Brownfields cleanup revolving loan fund program
24 established pursuant to chapter 2, article 1.1 of this title at the
25 request of the department. In order to perform these functions, the board
26 shall enter into a written agreement with the department.

27 16. Provide grants, staff assistance or technical assistance in the
28 form of loan repayment agreements and other professional assistance to
29 political subdivisions, any county with a population of less than five
30 hundred thousand persons, Indian tribes and community water systems in
31 connection with ~~the development~~ DEVELOPING or financing ~~of~~ wastewater,
32 drinking water, water reclamation or related water infrastructure.
33 Assistance provided under a technical assistance loan repayment agreement
34 shall be in a form and under terms determined by the authority and shall
35 be repaid not more than three years after the date that the monies are
36 advanced to the applicant. ~~The provision of~~ Technical assistance PROVIDED
37 by the authority does not create any liability for the authority or this
38 state regarding ~~the design, construction~~ DESIGNING, CONSTRUCTING or
39 ~~operation of~~ OPERATING any infrastructure project.

40 17. Provide grants, staff assistance or technical assistance in the
41 form of loan repayment agreements and other professional assistance to
42 water providers in connection with the planning or design of water supply
43 development projects. A single grant shall not exceed ~~one hundred~~
44 ~~thousand dollars~~ \$250,000. Assistance provided under a technical
45 assistance loan repayment agreement shall be repaid not more than three

1 years after the date that the monies are advanced to the applicant. ~~The~~
2 ~~provision of~~ Technical assistance PROVIDED by the authority does not
3 create any liability for the authority or this state regarding ~~the design,~~
4 ~~construction~~ DESIGNING, CONSTRUCTING or ~~operation of~~ OPERATING any water
5 supply development project.

6 C. The authority may adopt rules pursuant to title 41, chapter 6
7 governing the application for and awarding ~~of~~ water supply development
8 fund project financial assistance under this chapter and ~~the~~
9 ~~administration of~~ ADMINISTERING the water supply development revolving
10 fund.

11 D. The board shall deposit, pursuant to sections 35-146 and 35-147,
12 any monies received pursuant to subsection B, paragraph 8 of this section
13 in the appropriate fund as prescribed by the grant or other financial
14 assistance agreement.

15 E. Disbursements of monies by the water infrastructure finance
16 authority pursuant to a financial assistance agreement are not subject to
17 title 41, chapter 23.

18 F. For the purposes of the safe drinking water act and the clean
19 water act, the department ~~of environmental quality~~ is the state agency
20 with primary responsibility for ~~administration of~~ ADMINISTERING this
21 state's public water system supervision program and water pollution
22 control program and, in consultation with other appropriate state agencies
23 as appropriate, is the lead agency in establishing assistance priorities
24 as prescribed by section 49-1224, subsection B, paragraph 3, section
25 49-1243, subsection A, paragraph 6 and section 49-1244, subsection B,
26 paragraph 3.

27 G. For the purposes of this section, "CERCLA" has the same meaning
28 prescribed in section 49-201.

29 Sec. 2. Section 49-1273, Arizona Revised Statutes, is amended to
30 read:

31 49-1273. Water supply development revolving fund; purposes;
32 limitation

33 A. Monies in the water supply development revolving fund may be
34 used for the following purposes:

35 1. Making water supply development loans to water providers in this
36 state under section 49-1274 for water supply development purposes.

37 2. Making loans or grants OR PROVIDING TECHNICAL ASSISTANCE to
38 water providers for planning or designing water supply development
39 projects. A single grant shall not exceed \$250,000.

40 3. Purchasing or refinancing debt obligations of water providers at
41 or below market rate if the debt obligation was issued for a water supply
42 development purpose.

43 4. Providing financial assistance to water providers with bonding
44 authority to purchase insurance for local bond obligations incurred by
45 them for water supply development purposes.

1 5. Paying the costs to administer the fund.

2 6. Providing linked deposit guarantees through third-party lenders
3 by depositing monies with the lender on the condition that the lender make
4 a loan on terms approved by the ~~committee~~ BOARD, at a rate of return on
5 the deposit approved by the ~~committee~~ BOARD and the state treasurer and by
6 giving the lender recourse against the deposit of loan repayments that are
7 not made when due.

8 7. Conducting water supply studies.

9 B. If the monies pledged to secure water supply development bonds
10 issued pursuant to section 49-1278 become insufficient to pay the
11 principal and interest on the water supply development bonds guaranteed by
12 the water supply development revolving fund, the authority shall direct
13 the state treasurer to liquidate securities in the fund as may be
14 necessary and shall apply those proceeds to make current all payments then
15 due on the bonds. The state treasurer shall immediately notify the
16 attorney general and auditor general of the insufficiency. The auditor
17 general shall audit the circumstances surrounding the depletion of the
18 fund and report the findings to the attorney general. The attorney
19 general shall conduct an investigation and report those findings to the
20 governor and the legislature.

21 C. Monies in the water supply development revolving fund shall not
22 be used to provide financial assistance to a water provider, other than an
23 Indian tribe, unless one of the following applies:

24 1. The board of supervisors of the county in which the water
25 provider is located has adopted the provision authorized by section
26 11-823, subsection A.

27 2. The water provider is located in a city or town and the
28 legislative body of the city or town has enacted the ordinance authorized
29 by section 9-463.01, subsection 0.

30 3. The water provider is located in an active management area
31 established pursuant to title 45, chapter 2, article 2.

32 4. The water provider is located outside of an active management
33 area and either of the following applies:

34 (a) The director of water resources has designated the water
35 provider as having an adequate water supply pursuant to section 45-108.

36 (b) The water provider will use the financial assistance for a
37 water supply development project and the director of water resources has
38 determined pursuant to section 45-108 that there is an adequate water
39 supply for all subdivided land that will be served by the project and for
40 which a public report was issued after July 24, 2014.

41 5. The water provider is located in a county with a population of
42 less than one million five hundred thousand persons.

1 Sec. 3. Section 49-1274, Arizona Revised Statutes, is amended to
2 read:

3 49-1274. Water supply development revolving fund financial
4 assistance; procedures

5 A. In compliance with any applicable requirements, a water provider
6 may apply to the authority for and accept and incur indebtedness as a
7 result of a loan or any other financial assistance pursuant to section
8 49-1273 from the water supply development revolving fund for water supply
9 development purposes. In compliance with any applicable requirements, a
10 water provider may also apply to the authority for and accept grants,
11 staff assistance or technical assistance for the planning or design of a
12 water supply development project. A water provider that applies for and
13 accepts a loan or other financial assistance under this article is not
14 precluded from applying for and accepting a loan or other financial
15 assistance under article 2 of this chapter or under any other law.

16 B. The authority, in consultation with the ~~committee~~ BOARD, shall:

17 1. Prescribe a simplified form and procedure to apply for and
18 approve assistance.

19 2. Establish by rule criteria by which assistance will be awarded,
20 including requirements for local participation in project costs, if deemed
21 advisable. The criteria shall include DETERMINING THE FOLLOWING:

22 (a) ~~A determination of~~ The ability of the applicant to repay a loan
23 according to the terms and conditions established by this section. At the
24 option of the ~~committee~~ BOARD, the existence of a current investment grade
25 rating on existing debt of the applicant that is secured by the same
26 revenues to be pledged to secure repayment under the loan repayment
27 agreement constitutes evidence regarding ability to repay a loan.

28 (b) ~~A determination of~~ The applicant's legal capability to enter
29 into a loan repayment agreement.

30 (c) ~~A determination of~~ The applicant's financial ability to
31 construct, operate and maintain the project if it receives the financial
32 assistance.

33 (d) ~~A determination of~~ The applicant's ability to manage the
34 project.

35 (e) ~~A determination of~~ The applicant's ability to meet any
36 applicable environmental requirements imposed by federal or state
37 agencies.

38 (f) ~~A determination of~~ The applicant's ability to acquire any
39 necessary regulatory permits.

40 3. Determine the order and priority of projects assisted under this
41 section based on the merits of the application with respect to water
42 supply development issues, including the following:

43 (a) Existing, near-term and long-term water demands of the water
44 provider compared to the existing water supplies of the water provider.

1 (b) Existing and planned conservation and water management programs
2 of the water provider, including watershed management or protection.

3 (c) Benefits of the project.

4 (d) The sustainability of the water supply to be developed through
5 the project.

6 (e) The water provider's need for financial assistance.

7 (f) The cost-effectiveness of the project.

8 C. The ~~committee~~ BOARD shall review on its merits each application
9 received and shall inform the applicant of the ~~committee's~~ BOARD'S
10 determination within ninety days after receipt of a complete and correct
11 application. If the application is not approved, the ~~committee~~ BOARD
12 shall notify the applicant, stating the reasons. If the application is
13 approved, the ~~committee~~ BOARD may condition the approval on assurances the
14 ~~committee~~ BOARD deems necessary to ensure that the financial assistance
15 will be used according to law and the terms of the application.

16 D. On approval of an application under this section by the
17 ~~committee~~ BOARD, the authority shall use monies in the water supply
18 development revolving fund to finance the project.

19 Sec. 4. Section 49-1275, Arizona Revised Statutes, is amended to
20 read:

21 49-1275. Water supply development revolving fund financial
22 assistance; terms

23 A. A loan from the water supply development revolving fund shall be
24 evidenced by bonds, if the water provider has bonding authority, or by a
25 financial assistance agreement, delivered to and held by the authority.

26 B. A loan under this section shall:

27 1. Be repaid not more than forty years after the date incurred.

28 2. Require that interest payments begin not later than the next
29 date that either principal or interest must be paid by the authority to
30 the holders of any of the authority's bonds that provided funding for the
31 loan. If the loan is for ~~construction of~~ CONSTRUCTING water supply
32 development facilities, the authority may provide that loan interest
33 accruing during construction and one year after ~~completion of~~ COMPLETING
34 the construction be capitalized in the loan.

35 3. Be conditioned on ~~the establishment of~~ ESTABLISHING a dedicated
36 revenue source for repaying the loan.

37 C. The authority, in consultation with the ~~committee~~ BOARD, shall
38 prescribe the rate of interest on loans made under this section, but the
39 rate shall not exceed the prevailing market rate for similar types of
40 loans. The authority, on recommendations from the ~~committee~~ BOARD, may
41 adopt rules that provide for flexible interest rates and ~~interest free~~
42 INTEREST-FREE loans. All financial assistance agreements or bonds of a
43 water provider shall clearly specify the amount of principal and interest
44 and any redemption premium that is due on any payment date.

1 D. The approval of a loan is conditioned on a written commitment by
2 the water provider to complete all applicable reviews and approvals and to
3 secure all required permits in a timely manner.

4 E. A loan made to a water provider under this section may be
5 secured additionally by an irrevocable pledge of any shared state revenues
6 due to the water provider for the duration of the loan as prescribed by a
7 resolution of the ~~committee~~ BOARD. If the ~~committee~~ BOARD requires an
8 irrevocable pledge of the shared state revenues for financial assistance
9 loan repayment agreements, the authority shall enter into an intercreditor
10 agreement with the greater Arizona development authority to define the
11 allocation of shared state revenues in relation to individual borrowers.
12 If a pledge is required and a water provider fails to make any payment due
13 to the authority under its loan repayment agreement or bonds, the
14 authority shall certify to the state treasurer and notify the governing
15 body of the defaulting water provider that the water provider has failed
16 to make the required payment and shall direct a withholding of state
17 shared revenues as prescribed in subsection F of this section. The
18 certificate of default shall be in the form determined by the authority,
19 except that the certificate shall specify the amount required to satisfy
20 the unpaid payment obligation of the water provider.

21 F. On receipt of a certificate of default from the authority, the
22 state treasurer, to the extent not expressly prohibited by law, shall
23 withhold any monies due to the defaulting water provider from the next
24 succeeding distribution of monies pursuant to section 42-5029. In the
25 case of a city or town, the state treasurer shall also withhold from the
26 monies due to the defaulting city or town from the next succeeding
27 distribution of monies pursuant to section 43-206 the amount specified in
28 the certificate of default and shall immediately deposit the monies in the
29 water supply development revolving fund. The state treasurer shall
30 continue to withhold and deposit monies until the authority certifies to
31 the state treasurer that the default has been cured. The state treasurer
32 shall not withhold any amount that is necessary to make any required
33 deposits then due for the payment of principal and interest on bonds of
34 the water provider if so certified by the defaulting water provider to the
35 state treasurer and the authority. The water provider shall not certify
36 deposits as necessary for payment for bonds unless the bonds were issued
37 before the date of the loan repayment agreement and the bonds were secured
38 by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

39 Sec. 5. Section 49-1277, Arizona Revised Statutes, is amended to
40 read:

41 49-1277. Water supply development bonds

42 A. The authority may issue negotiable water supply development
43 bonds in a principal amount necessary to provide sufficient monies for
44 those projects approved under this article and including such items as
45 maintaining sufficient reserves to secure the bonds, to pay the necessary

1 costs of issuing, selling and redeeming the bonds and to pay other
2 expenditures of the authority incidental to and necessary and convenient
3 to carry out the purposes of this article. The board shall issue the
4 bonds pursuant to subsections C and D **OF THIS SECTION**.

5 B. The board shall authorize the bonds by resolution. The
6 resolution shall prescribe:

7 1. The rate or rates of interest and the denominations of the
8 bonds.

9 2. The date or dates of the bonds and maturity.

10 3. The coupon or registered form of the bonds.

11 4. The manner of executing the bonds.

12 5. The medium and place of payment.

13 6. The terms of redemption.

14 C. The bonds shall be sold at public or private sale at the price
15 and on the terms determined by the board. All proceeds from ~~the issuance~~
16 **of ISSUING** bonds shall be deposited in the appropriate accounts of the
17 funds administered by the authority.

18 D. The board shall publish a notice of its intention to issue bonds
19 under this article for at least five consecutive days in a newspaper
20 published in this state. The last day of publication must be at least ten
21 days before issuing the bonds. The notice shall state the amount of the
22 bonds to be sold and the intended date of issuance. A copy of the notice
23 shall be hand delivered or sent, by certified mail, return receipt
24 requested, to the director of the department of administration on or
25 before the last day of publication.

26 E. To secure any bonds authorized by this section, the board by
27 resolution may:

28 1. Provide that bonds issued under this section may be secured by a
29 first lien on all or part of the monies paid into the appropriate account
30 or subaccount of the funds administered by the authority.

31 2. Pledge or assign to or in trust for the benefit of the holder or
32 holders of the bonds any part or appropriate account or subaccount of the
33 monies in the funds as is necessary to pay the principal and interest of
34 the bonds as they come due.

35 3. Set aside, regulate and dispose of reserves and sinking funds.

36 4. Provide that sufficient amounts of the proceeds from the sale of
37 the bonds may be used to fully or partly fund any reserves or sinking
38 funds set up by the bond resolution.

39 5. Prescribe the procedure, if any, by which the terms of any
40 contract with bondholders may be amended or abrogated, the amount of bonds
41 the holders of which must consent to and the manner in which consent may
42 be given.

43 6. Provide for payment from the proceeds of the sale of the bonds
44 of all legal and financial expenses incurred by the board in issuing,
45 selling, delivering and paying the bonds.

1 7. Do any other matters that in any way may affect the security and
2 protection of the bonds.

3 F. Any member of the board, ~~any member of the committee~~ or any
4 person executing the bonds is not personally liable for the payment of the
5 bonds. The bonds are valid and binding obligations notwithstanding that
6 before the delivery of the bonds any of the persons whose signatures
7 appear on the bonds cease to be members of the board. From and after the
8 sale and delivery of the bonds, they are incontestable by the board ~~and~~
9 ~~the committee~~.

10 G. The board, out of any available monies, may purchase bonds,
11 which may be canceled, at a price not exceeding either of the following:

12 1. If the bonds are then redeemable, the redemption price then
13 applicable plus accrued interest to the next interest payment date.

14 2. If the bonds are not then redeemable, the redemption price
15 applicable on the first date after purchase on which the bonds become
16 subject to redemption plus accrued interest to that date.

APPROVED BY THE GOVERNOR MARCH 25, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 25, 2022.