

REFERENCE TITLE: water treatment facilities; loan repayment

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2406

Introduced by
Representatives Terech: Travers

AN ACT

AMENDING SECTIONS 9-514, 9-571, 11-671, 49-1216 AND 49-1307, ARIZONA
REVISED STATUTES; RELATING TO WATER INFRASTRUCTURE FINANCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 9-514, Arizona Revised Statutes, is amended to
3 read:

4 9-514. Authority to engage in utility business

5 A. ~~Except as provided in section 9-571,~~ Before construction,
6 purchase, acquisition or lease by a municipal corporation, as authorized
7 in sections 9-511, 9-511.01, 9-511.02, 9-512 and 9-513, of any plant or
8 property or portion of plant or property devoted to the business of or
9 services rendered by a public utility shall be undertaken, the
10 construction, purchase, acquisition or lease shall be authorized by the
11 affirmative vote of a majority of the qualified electors who are taxpayers
12 of the municipal corporation voting at a general or special municipal
13 election duly called and held for the purpose of voting on the question.

14 B. This section does not apply to the construction, purchase,
15 acquisition or lease of water or sewage system utilities by a city or town
16 incorporated pursuant to section 9-101.02.

17 Sec. 2. Section 9-571, Arizona Revised Statutes, is amended to
18 read:

19 9-571. Wastewater treatment and drinking water treatment
20 facilities and nonpoint source projects; financial
21 assistance loan repayment agreements; definitions

22 A. Notwithstanding any other law, a city or town may construct,
23 acquire from a willing seller or improve a wastewater treatment facility,
24 drinking water facility or nonpoint source project with monies borrowed
25 from or financial assistance, including forgivable principal, provided by
26 the water infrastructure finance authority of Arizona.

27 B. To repay financial assistance from the water infrastructure
28 finance authority of Arizona, a city or town may enter into a financial
29 assistance loan repayment agreement with the authority. A financial
30 assistance loan repayment agreement is payable from any revenues otherwise
31 authorized by law to be used to repay long-term obligations. If revenue
32 from a property tax assessment is the designated source of repayment under
33 the agreement, the property tax assessed and levied is a secondary
34 property tax levy for purposes of article IX, Constitution of Arizona.

35 ~~C. For any city or town, the following apply:~~

36 ~~1. For a city or town with a population of more than one hundred~~
37 ~~fifty thousand persons, the governing body of the city or town shall~~
38 ~~submit the question of entering and performing a financial assistance loan~~
39 ~~repayment agreement to the qualified electors voting at a regular or~~
40 ~~special election in the city or town, except that if revenue from a~~
41 ~~secondary property tax levy is the designated source of repayment or if~~
42 ~~the project is constructed with an improvement district, the question~~
43 ~~shall be submitted to the qualified electors at an election held on the~~
44 ~~first Tuesday following the first Monday in November.~~

1 ~~2. For a city or town with a population of one hundred fifty~~
2 ~~thousand persons or less, the revenues of the city's or town's utility~~
3 ~~system or systems may be pledged to the payment of the repayment agreement~~
4 ~~without an election, if the pledge of revenues does not violate any~~
5 ~~covenant pertaining to the utility system or systems or the revenues~~
6 ~~pledged to secure outstanding bonds or other obligations of the city or~~
7 ~~town.~~

8 ~~3. An election is not required if voter approval has previously~~
9 ~~been obtained for substantially the same project with another funding~~
10 ~~source.~~

11 ~~4. If a majority of the qualified electors voting on the question:~~

12 ~~(a) Approves, the governing body may execute, deliver and perform~~
13 ~~the financial assistance loan repayment agreement.~~

14 ~~(b) Disapproves, the governing body shall not execute a financial~~
15 ~~assistance loan repayment agreement.~~

16 ~~D.~~ C. Payments made pursuant to a financial assistance loan
17 repayment agreement are not subject to section 42-17106.

18 ~~E.~~ D. A financial assistance loan repayment agreement entered into
19 pursuant to this section shall contain the covenants and conditions
20 pertaining to constructing, acquiring or improving a wastewater treatment
21 or drinking water facility or nonpoint source project and repaying the
22 loan as the water infrastructure finance authority of Arizona deems
23 proper. Financial assistance loan repayment agreements may provide for
24 paying interest on the unpaid principal balance of such agreement at the
25 rates established in the agreement. The agreement may also provide for
26 paying the city's or town's proportionate share of the expenses of
27 administering the clean water and drinking water revolving funds
28 established by sections 49-1221 and 49-1241 and may provide that the city
29 or town pay financing and loan administration fees approved by the water
30 infrastructure finance authority OF ARIZONA. These costs may be included
31 in the levy or assessment amounts pledged to repay the financial
32 assistance. Cities and towns are bound by and shall fully perform the
33 loan repayment agreements, and the agreements are incontestable after the
34 loan is funded by the water infrastructure finance authority of Arizona.
35 The city or town shall also agree to pay the authority's costs in issuing
36 bonds or otherwise borrowing to fund a loan.

37 ~~F.~~ E. A financial assistance loan repayment agreement under this
38 section does not create a debt of the city or town, and the authority
39 shall not require that payment of a financial assistance loan repayment
40 agreement be made from other than those sources allowed in subsection B of
41 this section and as prescribed by sections 49-1225 and 49-1245.

42 ~~G.~~ F. A city or town may employ attorneys, accountants, financial
43 consultants and such other experts in their field as deemed necessary to
44 perform services with respect to the financial assistance loan repayment
45 agreement.

1 ~~H.~~ G. This section is supplemental and alternative to any other
2 law under which a city or town may borrow money or issue bonds. This
3 section is not the exclusive authorization to enter into loan agreements
4 with the authority.

5 ~~I. A city or town may borrow additional monies or enter into~~
6 ~~additional financial assistance loan repayment agreements with the water~~
7 ~~infrastructure finance authority in an amount up to the amount approved by~~
8 ~~the voters pursuant to subsection C of this section less the amount that~~
9 ~~the city or town is already obligated to repay to the water infrastructure~~
10 ~~finance authority pursuant to a financial assistance loan repayment~~
11 ~~agreement.~~

12 ~~J.~~ H. The water infrastructure finance authority OF ARIZONA may
13 not provide funds MONIES to a city or town to either:

14 1. Condemn or acquire through eminent domain any assets of a public
15 service corporation that is regulated by the corporation commission
16 without a written statement from the public service corporation certifying
17 that it is a willing seller and consenting to the provision of funding.

18 2. Refinance any loan, bond or other financing arrangement used by
19 ~~a~~ THE city or town to condemn or acquire through eminent domain any
20 assets of a public service corporation that is regulated by the
21 corporation commission without a written statement from the public service
22 corporation certifying that it is a willing seller and consenting to the
23 provision of funding.

24 ~~K.~~ I. For the purposes of this section:

25 1. "City" includes both cities formed pursuant to this title and
26 charter cities.

27 2. "Nonpoint source project" has the same meaning prescribed in
28 section 49-1201.

29 Sec. 3. Section 11-671, Arizona Revised Statutes, is amended to
30 read:

31 11-671. Financing wastewater treatment facilities and
32 nonpoint source projects; financial assistance loan
33 repayment agreements; definition

34 A. Notwithstanding any other law, a county authorized to operate a
35 sewage system pursuant to section 11-264 may construct or improve a
36 wastewater treatment facility or nonpoint source project with monies
37 borrowed from or financial assistance provided by the water infrastructure
38 finance authority of Arizona.

39 B. To repay financial assistance from the water infrastructure
40 finance authority of Arizona, a county may enter into a financial
41 assistance loan repayment agreement with the authority. A financial
42 assistance loan repayment agreement is payable from any revenues otherwise
43 authorized by law to be used to pay long-term obligations. If revenue
44 from a property tax assessment is the designated source of repayment under

1 the agreement, the property tax assessed and levied is a secondary
2 property tax levy for purposes of article IX, Constitution of Arizona.

3 ~~C. The county board of supervisors shall submit the question of~~
4 ~~entering and performing a financial assistance loan repayment agreement to~~
5 ~~the qualified electors voting at a regular or special general election in~~
6 ~~the county, except that if revenue from a secondary property tax levy is~~
7 ~~the designated source of repayment or if the project is constructed with~~
8 ~~an improvement district, the question shall be submitted to the qualified~~
9 ~~electors at an election held on the first Tuesday following the first~~
10 ~~Monday in November. Otherwise, an election is not required if voter~~
11 ~~approval has previously been obtained for substantially the same project~~
12 ~~with another funding source. If a majority of the qualified electors~~
13 ~~voting on the question:~~

14 ~~1. Approves, the board of supervisors may execute, deliver and~~
15 ~~perform the financial assistance loan repayment agreement.~~

16 ~~2. Disapproves, the board of supervisors shall not execute a~~
17 ~~financial assistance loan repayment agreement.~~

18 ~~D.~~ C. Payments made pursuant to a financial assistance loan
19 repayment agreement are not subject to section 42-17106.

20 ~~E.~~ D. A financial assistance loan repayment agreement entered into
21 pursuant to this section shall contain the covenants and conditions
22 pertaining to the construction of a wastewater treatment facility or
23 nonpoint source project and repayment of the loan as the water
24 infrastructure finance authority of Arizona deems proper. Financial
25 assistance loan repayment agreements may provide for the payment of
26 interest on the unpaid principal balance of such agreement at the rates
27 established in the agreement. The agreement may also provide for payment
28 of the county's proportionate share of the expenses of administering the
29 clean water revolving fund established by section 49-1221 and may provide
30 that the county pay financing and loan administration fees approved by the
31 water infrastructure finance authority OF ARIZONA. These costs may be
32 included in the levy or assessment amounts pledged to repay the financial
33 assistance. Counties are bound by and shall fully perform the loan
34 repayment agreements, and the agreements are incontestable after the loan
35 is funded by the water infrastructure finance authority of Arizona. The
36 county shall also agree to pay the authority's costs in issuing bonds or
37 otherwise borrowing to fund a loan.

38 ~~F.~~ E. A financial assistance loan repayment agreement under this
39 section does not create a debt of the county, and the authority shall not
40 require that payment of a financial assistance loan agreement be made from
41 other than those sources ~~permitted~~ ALLOWED in subsection B of this
42 section.

43 ~~G.~~ F. A county may employ attorneys, accountants, financial
44 consultants and such other experts in their field as deemed necessary to

1 perform services with respect to the financial assistance loan repayment
2 agreement.

3 ~~H.~~ G. This section is supplemental and alternative to any other
4 law under which a county may borrow money or issue bonds. This section
5 shall IS not be construed as the exclusive authorization to enter into
6 loan agreements with the authority.

7 ~~I. A county may borrow additional monies or enter into additional
8 financial assistance loan repayment agreements with the water
9 infrastructure finance authority in an amount up to the amount approved by
10 the voters pursuant to subsection C of this section less the amount that
11 the county is already obligated to repay to the water infrastructure
12 finance authority pursuant to a financial assistance loan repayment
13 agreement.~~

14 ~~J.~~ H. For purposes of this section, "nonpoint source project" has
15 the same meaning as prescribed in section 49-1201.

16 Sec. 4. Section 49-1216, Arizona Revised Statutes, is amended to
17 read:

18 49-1216. Financial assistance; loan repayment agreements;
19 political subdivisions

20 A. Notwithstanding sections ~~9-571, 11-671,~~ 48-1019 and 48-2011.01,
21 during fiscal years 2022-2023, 2023-2024, 2024-2025, 2025-2026 and
22 2026-2027, the political subdivisions described in subsection B of this
23 section may enter into a financial assistance loan repayment agreement
24 with the authority without submitting the question of entering and
25 performing the financial assistance loan repayment agreement to the
26 qualified electors of the political subdivision if the agreement is
27 financed with funding made available to the authority under the
28 infrastructure investment and jobs act, division J, title VI (P.L. 117-58)
29 and the financial assistance LOAN REPAYMENT agreement is not payable from
30 secondary property tax revenue.

31 B. The following political subdivisions may enter into a financial
32 assistance loan repayment agreement described in subsection A of this
33 section:

- 34 1. A city or town, ~~without regard to the city or town's population.~~
- 35 2. A county, ~~without regard to the county's population.~~
- 36 3. A sanitary district that contains a population of fewer than
37 fifty thousand persons.
- 38 4. A domestic water IMPROVEMENT DISTRICT or DOMESTIC wastewater
39 improvement district, without regard to the population of that district.

40 Sec. 5. Section 49-1307, Arizona Revised Statutes, is amended to
41 read:

42 49-1307. Financial assistance from the long-term water
43 augmentation fund; terms

44 A. The authority shall consider applications for financial
45 assistance from the long-term water augmentation fund in accordance with

1 section 49-1304 and shall consider the recommendations of the long-term
2 water augmentation committee established by section 49-1208.

3 B. The authority may provide financial assistance from the
4 long-term water augmentation fund for water supply development projects
5 inside or outside this state. The financial assistance may include:

- 6 1. Loans as provided in this section.
- 7 2. Credit enhancements purchased for an eligible entity's bonds or
8 other forms of indebtedness.

9 C. A loan shall be evidenced by a loan repayment agreement or lease
10 purchase agreement or, to the extent an eligible entity is a political
11 subdivision of this state and has bonding authority, bonds of the eligible
12 entity that are delivered to and held by the authority.

13 D. A loan under this section:

- 14 1. Shall be repaid during a period approved by the authority.
- 15 2. Shall require that interest payments begin not later than the
16 next date that either principal or interest must be paid by the authority
17 to holders of any of the authority's long-term water augmentation bonds
18 that provided funding for the loan. The authority may provide that loan
19 interest accruing during construction of the eligible entity's water
20 supply development project and up to one year after completion of the
21 construction of the water supply development project be capitalized in the
22 loan.
- 23 3. Shall clearly specify the amount of principal, interest and
24 redemption premium, if any, that is due on any payment date.
- 25 4. Shall be conditioned on the identification of pledged revenues
26 for repaying the loan. If the water supply development project financed
27 or refinanced by the loan is part of a municipal utility and the city or
28 town pledges revenues of the utility to repay the loan, the loan may be
29 treated under section 9-530, subsection B as a lawful long-term obligation
30 incurred for a specific purpose.
- 31 5. To the extent allowed by law, shall be secured by a debt service
32 reserve account that is held in trust and that is in an amount, if any, as
33 determined by the authority.
- 34 6. Shall contain the covenants and conditions pertaining to
35 constructing, acquiring, improving or equipping water supply development
36 projects and repaying the loan as the authority deems proper.
- 37 7. May provide for paying interest on the unpaid principal balance
38 of the loan at the rates established in the loan repayment agreement.
- 39 8. May provide for paying the eligible entity's proportionate share
40 of the expenses of administering the long-term water augmentation fund and
41 may provide that the eligible entity pay financing and loan administration
42 fees approved by the authority. The costs may be included in the levy,
43 assessment, rates or charges of the pledged revenues pledged by the
44 eligible entity to repay the loan.

1 E. The authority shall prescribe the rate or rates of interest on
2 loans made under this section, but the rate or rates may not exceed the
3 prevailing market rate for similar types of loans. An eligible entity
4 that is a political subdivision of this state may negotiate the sale of
5 its bonds to, or a loan repayment agreement with, the authority without
6 complying with any public or accelerated bidding requirements imposed by
7 any other law for the sale of its bonds.

8 F. The approval of a loan shall be conditioned on a written
9 commitment by the eligible entity to complete all applicable reviews and
10 approvals and to secure all required permits in a timely manner.

11 G. By resolution of the board, the authority may impose any
12 additional requirements it considers necessary to ensure that the loan
13 principal and interest are timely paid.

14 H. All monies received from eligible entities as loan repayments,
15 interest and penalties shall be deposited, pursuant to sections 35-146 and
16 35-147, in the long-term water augmentation fund.

17 I. If requested by the authority, the attorney general shall take
18 whatever actions are necessary to enforce the loan repayment agreement and
19 achieve repayment of loans provided by the authority pursuant to this
20 article.

21 J. For eligible entities that are political subdivisions of this
22 state, the revenues of the eligible entities' utility system or systems
23 may be pledged to the payment of a loan repayment agreement without an
24 election, if the pledge of revenues does not violate any covenant
25 pertaining to the utility system or systems or the revenues pledged to
26 secure outstanding bonds or other obligations or indebtedness of the
27 eligible entities.

28 K. For an eligible entity that is a political subdivision of this
29 state, ~~and notwithstanding sections 9-571 and 11-671,~~ if the revenues from
30 a secondary property tax levy constitute pledged revenues, the eligible
31 entity is not required to submit to a vote the question of entering and
32 performing a loan repayment agreement.

33 L. Payments made pursuant to a loan repayment agreement are not
34 subject to section 42-17106.

35 M. For eligible entities that are political subdivisions of this
36 state, a loan repayment agreement under this section does not create a
37 debt of the eligible entities, and the authority may not require that
38 payment of a loan repayment agreement be made from other than the pledged
39 revenues pledged by the eligible entities.

40 N. An eligible entity may employ attorneys, accountants, financial
41 consultants and other experts in their fields as deemed necessary to
42 perform services with respect to a loan repayment agreement.

43 O. At the direction of the authority, the eligible entity shall
44 pay, and is hereby authorized to pay, the authority's costs in issuing
45 long-term water augmentation bonds or otherwise borrowing to fund a loan.

1 P. A loan made to an eligible entity that is a political
 2 subdivision of this state may be secured additionally by an irrevocable
 3 pledge of any shared state revenues due to the eligible entity for the
 4 duration of the loan as prescribed by the authority. As applicable to
 5 loans additionally secured with shared state revenues, the authority may
 6 enter into agreements to specify the allocation of shared state revenues
 7 in relation to individual borrowers from such authorities. If a pledge of
 8 shared state revenues as additional security for a loan is required and
 9 the eligible entity fails to make any payment due to the authority under
 10 its loan repayment agreement or the eligible entity's bonds, the authority
 11 shall certify to the state treasurer and notify the governing body of the
 12 defaulting eligible entity that the eligible entity has failed to make the
 13 required payment and shall direct a withholding of shared state revenues
 14 as prescribed in subsection Q of this section. The certificate of default
 15 shall be in the form determined by the authority, except that the
 16 certificate shall specify the amount required to satisfy the unpaid
 17 payment obligation of the eligible entity.

18 Q. On receipt of a certificate of default from the authority, the
 19 state treasurer, to the extent not expressly prohibited by law, shall
 20 withhold any monies due to the defaulting eligible entity from the next
 21 succeeding distribution of monies pursuant to section 42-5029. In the
 22 case of an eligible entity that is a city or town, the state treasurer
 23 shall also withhold from the monies due to the defaulting city or town
 24 from the next succeeding distribution of monies pursuant to section 43-206
 25 the amount specified in the certificate of default and shall immediately
 26 deposit the monies in the ~~water supply development revolving~~ LONG-TERM
 27 WATER AUGMENTATION fund established by section ~~49-1271~~ 49-1302. The state
 28 treasurer shall continue to withhold and deposit monies until the
 29 authority certifies to the state treasurer that the default has been
 30 cured. The state treasurer may not withhold any amount that is necessary
 31 to make any required deposits then due for the payment of principal and
 32 interest on bonds or indebtedness of the eligible entity if so certified
 33 by the defaulting eligible entity to the state treasurer and the
 34 authority. The defaulting eligible entity may not certify deposits as
 35 necessary for payment for bonds or indebtedness unless the bonds were
 36 issued or the indebtedness incurred before the date of the loan repayment
 37 agreement and the bonds or indebtedness was secured by a pledge of
 38 distribution made pursuant to sections 42-5029 and 43-206.