

REFERENCE TITLE: water infrastructure finance authority; cities

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1079

Introduced by
Senator Shope

AN ACT

AMENDING SECTIONS 9-571, 49-1216 AND 49-1307, ARIZONA REVISED STATUTES;
RELATING TO MUNICIPAL 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 9-571, Arizona Revised Statutes, is amended to
3 read:

4 9-571. Wastewater treatment and drinking water treatment
5 facilities and nonpoint source projects; financial
6 assistance loan repayment agreements; definitions

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

12 B. To repay financial assistance from the water infrastructure
13 finance authority of Arizona, a city or town may enter into a financial
14 assistance loan repayment agreement with the authority. A financial
15 assistance loan repayment agreement is payable from any revenues otherwise
16 authorized by law to be used to repay long-term obligations. If revenue
17 from a property tax assessment is the designated source of repayment under
18 the agreement, the property tax assessed and levied is a secondary
19 property tax levy for purposes of article IX, Constitution of Arizona.

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

21 ~~1. For a city or town with a population of more than one hundred~~
22 ~~fifty thousand persons, the governing body of the city or town shall~~
23 ~~submit the question of entering and performing a financial assistance loan~~
24 ~~repayment agreement to the qualified electors voting at a regular or~~
25 ~~special election in the city or town, except that if revenue from a~~
26 ~~secondary property tax levy is the designated source of repayment or if~~
27 ~~the project is constructed with an improvement district, the question~~
28 ~~shall be submitted to the qualified electors at an election held on the~~
29 ~~first Tuesday following the first Monday in November.~~

30 ~~2. For a city or town with a population of one hundred fifty~~
31 ~~thousand persons or less, the revenues of the city's or town's utility~~
32 ~~system or systems may be pledged to the payment of the repayment agreement~~
33 ~~without an election, if the pledge of revenues does not violate any~~
34 ~~covenant pertaining to the utility system or systems or the revenues~~
35 ~~pledged to secure outstanding bonds or other obligations of the city or~~
36 ~~town.~~

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

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

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

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

1 D. Payments made pursuant to a financial assistance loan repayment
2 agreement are not subject to section 42-17106.

3 E. A financial assistance loan repayment agreement entered into
4 pursuant to this section shall contain the covenants and conditions
5 pertaining to constructing, acquiring or improving a wastewater treatment
6 or drinking water facility or nonpoint source project and repaying the
7 loan as the water infrastructure finance authority of Arizona deems
8 proper. Financial assistance loan repayment agreements may provide for
9 paying interest on the unpaid principal balance of such agreement at the
10 rates established in the agreement. The agreement may also provide for
11 paying the city's or town's proportionate share of the expenses of
12 administering the clean water and drinking water revolving funds
13 established by sections 49-1221 and 49-1241 and may provide that the city
14 or town pay financing and loan administration fees approved by the water
15 infrastructure finance authority OF ARIZONA. These costs may be included
16 in the levy or assessment amounts pledged to repay the financial
17 assistance. Cities and towns are bound by and shall fully perform the
18 loan repayment agreements, and the agreements are incontestable after the
19 loan is funded by the water infrastructure finance authority of
20 Arizona. The city or town shall also agree to pay the authority's costs
21 in issuing bonds or otherwise borrowing to fund a loan.

22 F. A financial assistance loan repayment agreement under this
23 section does not create a debt of the city or town, and the authority
24 shall not require that payment of a financial assistance loan repayment
25 agreement be made from other than those sources allowed in subsection B of
26 this section and as prescribed by sections 49-1225 and 49-1245.

27 G. A city or town may employ attorneys, accountants, financial
28 consultants and such other experts in their field as deemed necessary to
29 perform services with respect to the financial assistance loan repayment
30 agreement.

31 H. This section is supplemental and alternative to any other law
32 under which a city or town may borrow money or issue bonds. This section
33 is not the exclusive authorization to enter into loan agreements with the
34 authority.

35 ~~I. A city or town may borrow additional monies or enter into~~
36 ~~additional financial assistance loan repayment agreements with the water~~
37 ~~infrastructure finance authority in an amount up to the amount approved by~~
38 ~~the voters pursuant to subsection C of this section less the amount that~~
39 ~~the city or town is already obligated to repay to the water infrastructure~~
40 ~~finance authority pursuant to a financial assistance loan repayment~~
41 ~~agreement.~~

42 ~~I.~~ I. The water infrastructure finance authority OF ARIZONA may
43 not provide funds MONIES to a city or town to either:

44 1. Condemn or acquire through eminent domain any assets of a public
45 service corporation that is regulated by the corporation commission

1 without a written statement from the public service corporation certifying
2 that it is a willing seller and consenting to the provision of funding.

3 2. Refinance any loan, bond or other financing arrangement used by
4 ~~a~~ THE city or town to condemn or acquire through eminent domain any
5 assets of a public service corporation that is regulated by the
6 corporation commission without a written statement from the public service
7 corporation certifying that it is a willing seller and consenting to the
8 provision of funding.

9 ~~K~~ J. For the purposes of this section:

10 1. "City" includes both cities formed pursuant to this title and
11 charter cities.

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

14 Sec. 2. Section 49-1216, Arizona Revised Statutes, is amended to
15 read:

16 49-1216. Financial assistance; loan repayment agreements;
17 political subdivisions

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

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

32 1. A city or town, ~~without regard to the city or town's population.~~

33 2. A county, ~~without regard to the county's population.~~

34 3. A sanitary district that contains a population of fewer than
35 fifty thousand persons.

36 4. A domestic water IMPROVEMENT DISTRICT or DOMESTIC wastewater
37 improvement district, without regard to the population of that district.

38 Sec. 3. Section 49-1307, Arizona Revised Statutes, is amended to
39 read:

40 49-1307. Financial assistance from the long-term water
41 augmentation fund; terms

42 A. The authority shall consider applications for financial
43 assistance from the long-term water augmentation fund in accordance with
44 section 49-1304 and shall consider the recommendations of the long-term
45 water augmentation committee established by section 49-1208.

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

1 that is a political subdivision of this state may negotiate the sale of
2 its bonds to, or a loan repayment agreement with, the authority without
3 complying with any public or accelerated bidding requirements imposed by
4 any other law for the sale of its bonds.

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

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

11 H. All monies received from eligible entities as loan repayments,
12 interest and penalties shall be deposited, pursuant to sections 35-146 and
13 35-147, in the long-term water augmentation fund.

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

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

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

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

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

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

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

43 P. A loan made to an eligible entity that is a political
44 subdivision of this state may be secured additionally by an irrevocable
45 pledge of any shared state revenues due to the eligible entity for the

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

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