

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HOUSE BILL 2175

AN ACT

AMENDING SECTIONS 48-910 AND 48-2027, ARIZONA REVISED STATUTES; RELATING TO
SPECIAL TAXING DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 48-910, Arizona Revised Statutes, is amended to
3 read:
4 48-910. Domestic water and domestic wastewater services:
5 authority to set fees; liens; foreclosure
6 A. The board of directors of a domestic water improvement district, a
7 domestic wastewater improvement district or a county improvement district
8 that provides or is established for the purpose of providing water or
9 wastewater services ~~shall have the authority to~~ MAY set fees for the district
10 following a public hearing. Fees may include any of the following:
11 1. User fees that are proportionate shares of the cost of operation,
12 maintenance and replacement of a water delivery system, a water disposal
13 system or a wastewater treatment and disposal system or any combination of
14 those systems, including a system for the treatment and use of effluent, and
15 may include the cost of administrators, surveyors, sanitation experts,
16 engineers, legal counsel and other persons as are reasonably necessary for
17 the operation, maintenance and replacement of the systems. The fees may also
18 include any contractual amounts required to meet covenants relating to bonds
19 or other obligations of the district secured by a pledge of, or promise to
20 pay from, the district's fees.
21 2. Hookup fees for connection to the district water or wastewater
22 system, not including the cost of the actual physical connection.
23 3. Lateral fees for the cost of constructing a water or wastewater
24 lateral from the property line of the user to the middle of the easement or
25 right-of-way in which the water system or wastewater system is located.
26 ~~4. For a domestic wastewater improvement district or a county~~
27 ~~improvement district that provides or is established for the purpose of~~
28 ~~providing wastewater systems or services, either of the following:~~
29 ~~(a)~~ 4. A capacity fee based on the cost of developing the wastewater
30 collection, treatment and disposal facilities that are required to treat the
31 flows into the system from a particular wastewater connection.
32 ~~(b)~~ 5. An availability fee that is charged on all property in the
33 district that is not connected to the existing WATER OR wastewater ~~treatment~~
34 system but that is adjacent to a WATER OR wastewater line and that is based
35 on the cost of having the ~~wastewater~~ line and treatment facility ~~capacity~~ to
36 accommodate that property if it is developed. An availability fee is limited
37 to fifty per cent of the user fee.
38 B. Notice announcing the hearing shall be posted in ~~not less than AT~~
39 ~~LEAST~~ three places within the district ~~for not less than AT LEAST~~ ten days
40 before the date of the hearing and shall be published twice in a newspaper of
41 general circulation within the district. The newspaper publications shall be
42 ~~not less than AT LEAST~~ one week apart, and the first publication shall be ~~not~~
43 ~~less than AT LEAST~~ ten days before the date of the hearing. The district may
44 also mail notice of the hearing to all district customers. The notice may be

1 included in the district's regular billings and shall be mailed at least ten
2 days before the date of the hearing.

3 C. The board of supervisors shall be notified by mail of the hearing
4 ~~not less than~~ AT LEAST ten days before the date of the hearing. The board of
5 supervisors may be represented at the hearing and may advise the board of
6 directors.

7 D. At the hearing all interested district property owners and
8 customers may appear and be heard on any matter relating to the establishment
9 of the proposed fees. Any person wishing to object to the establishment of
10 the proposed fees, before the date set for the hearing, may file objections
11 with the chairman or the clerk of the board of directors.

12 E. A domestic water improvement district, A domestic wastewater
13 improvement district or a county improvement district that provides or is
14 established for the purpose of providing water or wastewater systems or
15 services may file a lien on property for the nonpayment of user fees OR
16 AVAILABILITY FEES, OR BOTH, for services provided to the property if the fees
17 are delinquent for more than ninety days. At least thirty days before filing
18 the lien, the district shall provide written notice OF THE LIEN to the owner
19 of the property and shall include notice of an opportunity for a hearing
20 before a designated officer of the district. The notice of lien shall be
21 personally served on the property owner or mailed by certified mail to the
22 property owner's last known address or to the address to which the most
23 recent property tax assessment was mailed. If the property owner does not
24 reside on the property, the notice shall be mailed by certified mail to the
25 owner's last known address.

26 F. The unpaid user fees AND AVAILABILITY FEES are a lien on the
27 property from the date of recording in the office of the county recorder in
28 the county in which the property is located until the fees and all costs are
29 paid. The lien is subject and inferior to the lien for general taxes and to
30 all prior recorded mortgages and encumbrances of record. A sale of the
31 property to satisfy a lien assessed pursuant to this section shall be made on
32 a judgment of foreclosure and order of sale. A domestic water or domestic
33 wastewater improvement district or a county improvement district that
34 provides or is established for the purpose of providing water or wastewater
35 systems or services may bring an action to foreclose the lien in the superior
36 court in the county in which the property is located any time after
37 recording. Failure to foreclose the lien does not affect its validity. The
38 recorded unpaid user fees AND AVAILABILITY FEES are prima facie evidence of
39 the truth of all matters recited in the recording and of the regularity of
40 all proceedings before the recording.

41 G. Unpaid user fees pursuant to this section accrue interest at the
42 rate prescribed by section 44-1201.

43 H. The district shall add all costs incurred by the district,
44 including interest, attorney fees and costs in filing and enforcing the lien,

1 to the unpaid user fees **AND AVAILABILITY FEES**, and the costs are a liability
2 of the property owner payable from the proceeds of the sale.

3 I. A prior assessment of unpaid user fees pursuant to this section
4 does not bar a subsequent assessment pursuant to this section, and any number
5 of liens on the same parcel of property may be enforced in the same action.

6 J. A district shall not file a lien for unpaid user fees against a
7 residential property that is occupied by a lessee and at which the lessee is
8 responsible for payment of the user fees. The district shall determine the
9 status of leased residential property before filing the lien.

10 Sec. 2. Section 48-2027, Arizona Revised Statutes, is amended to read:

11 48-2027. Fees, rentals and service charges; reserve fund;
12 investments; lien

13 A. The board of directors of a sanitary district may charge and
14 collect fees, including the fees listed in subsection G of this section, and
15 sewer rentals and service charges for any service performed or property
16 furnished by the district.

17 B. The board of directors may charge and collect fees and service
18 charges for any plan reviews, site evaluations, construction inspections,
19 monitoring inspections, follow-up inspections and any other service performed
20 by the department of environmental quality if the sanitary district and the
21 department of environmental quality have entered into an intergovernmental
22 agreement pursuant to title 11, chapter 7, article 3 in which the department
23 of environmental quality has agreed to provide any of such services in the
24 sanitary district, except that:

25 1. Such fees and service charges shall not exceed the actual cost of
26 performing such services.

27 2. State agencies are exempt from paying such fees and service
28 charges.

29 3. Fees shall not be charged or collected by both the department of
30 environmental quality and a sanitary district for the same service.

31 C. Revenue collected under subsections A and B of this section shall
32 be paid into the county treasury to be credited first to the bond fund of the
33 district to be used in the payment of principal and interest on the bonds if
34 the proceedings relative to the issuance of the bonds provide for a pledge of
35 such revenues or if the district has budgeted all or a portion of such
36 revenues to the payment of the bonds in the certificate submitted to the
37 board of supervisors pursuant to section 48-2025, subsection C and, second,
38 to the operating fund of the district.

39 D. The proceedings relative to the issuance of any bonds may provide
40 for a pledge of all or any part of the revenues of the district derived from
41 any source other than taxes levied pursuant to section 48-2025 as additional
42 security and source of payment of all or any specific issue of the district's
43 bonds. The pledge shall be supplemental to and not ~~in-lieu~~ **INSTEAD** of the
44 liability of all taxable real property for the payment of the bonds. The
45 pledge may be secured by an assignment of all or a part of such revenues to a

1 bank doing business in this state. The treasurer may be instructed by the
2 board of directors of the district to make monthly, semiannual or annual
3 payments to such bank to provide for payment of the bonds and coupons as the
4 same shall mature. When revenues are assigned to a bank for payment, such
5 bank may be named as a paying agent on the bonds and coupons so secured ~~in~~
6 ~~the~~ ~~INSTEAD~~ of the county treasurer, and in that event, the county treasurer
7 shall remit any taxes collected pursuant to section 48-2025 to such paying
8 agent in time for prompt payment of maturing bonds and coupons.

9 E. The proceedings for the issuance of bonds may provide for a reserve
10 fund in a sum found by the board of directors of the district to be
11 sufficient to secure payment of maturing principal and interest in the event
12 of a deficiency. The reserve fund may be funded from either bond proceeds or
13 revenues available for that purpose in any fiscal year after provision has
14 been made for payment of principal and interest and operating costs. The
15 district may covenant to maintain the reserve fund throughout the life of any
16 bonds. Whenever the annual revenues are insufficient to meet maturing
17 principal or interest or sinking fund payments in any fiscal year, the
18 reserve fund shall be exhausted prior to the making of an emergency levy.

19 F. Upon direction of the board of directors of the district, monies
20 held in any fund may be invested by the county treasurer or the bank acting
21 as assignee under any pledge in any securities or obligations qualifying as
22 investments for state monies under section 35-324.

23 G. Fees ~~which~~ ~~THAT~~ the district may charge pursuant to this section
24 include:

25 1. User fees, which are proportional shares of the cost of the
26 operation, maintenance and replacement of the wastewater collection,
27 treatment and effluent disposal system.

28 2. Hookup fees for connection to the district sewer system, not
29 including the cost of the actual physical connection.

30 3. A lateral fee, which is a fee for the cost of constructing a sewer
31 lateral from the property line of the user to the middle of the easement or
32 right-of-way in which the sewer is located.

33 4. A capacity fee based on the cost of developing the sewage
34 collection, treatment and effluent disposal facilities required to treat the
35 flow of sewage ~~which~~ ~~THAT~~ enters the sewage system from a particular sewer
36 connection.

37 5. An availability fee, which is a charge levied against all property
38 in the district ~~which~~ ~~THAT~~ is not connected to the sewer system but ~~which~~
39 ~~THAT~~ lies adjacent to a sewer line for the benefit to that particular parcel
40 of property of having the sewer line and capacity in the treatment works and
41 effluent disposal facilities to accommodate the development of the property.
42 The availability fee shall be no more than fifty per cent of the user fee.

43 6. A late fee if the payment of any fee prescribed by this section is
44 delinquent for more than fifteen days.

1 H. All fees shall be initially determined and annually reviewed by the
2 board of directors following a public hearing at which all interested persons
3 may appear and be heard on any matter relating to the amount of the fees or
4 the method of determining the fees. ~~Not less than~~ AT LEAST twenty ~~or~~ BUT NOT
5 more than thirty days before the public hearing the board of directors shall
6 publish a notice of the time and place of the hearing and a statement of the
7 rates to be considered or reviewed. Any person wishing to object to the
8 establishment or continuation of the rates, before the date set for the
9 hearing, may file the objection with the chairman of the board of directors.

10 I. A sanitary district may file a lien on property for the nonpayment
11 of user fees OR AVAILABILITY FEES, OR BOTH, for services provided to the
12 property if the payment of the fees is delinquent for more than ninety days.

13 J. Before filing the lien, the sanitary district shall provide written
14 notice OF THE LIEN to the owner of the property. The notice shall be given
15 at least thirty days before filing the lien and shall include an opportunity
16 for a hearing with a designated sanitary district official. The notice shall
17 be either personally served or mailed BY CERTIFIED MAIL to the property
18 owner, at the last known address ~~by certified mail~~, or to the address to
19 which the tax bill for the property was last mailed. If the owner does not
20 reside on the property, the notice shall be sent BY CERTIFIED MAIL to the
21 last known address.

22 K. The unpaid user fees AND AVAILABILITY FEES, from the date of
23 recording in the office of the county recorder in the county in which the
24 property is located, are a lien on the property until the fees are paid. The
25 lien is subject and inferior to the lien for general taxes and to all prior
26 recorded mortgages and encumbrances of record. A sale of the property to
27 satisfy a lien obtained under this section shall be made on judgment of
28 foreclosure and order of sale. A sanitary district may bring an action to
29 enforce the lien in the superior court in the county in which the property is
30 located at any time after the recording, but failure to enforce the lien by
31 this action does not affect its validity. The recorded unpaid user fees AND
32 AVAILABILITY FEES are prima facie evidence of the truth of all matters
33 recited in the recording and of the regularity of all proceedings before the
34 recording.

35 L. Unpaid user fees AND AVAILABILITY FEES including any late fees
36 assessed pursuant to this section accrue interest at the rate prescribed by
37 section 44-1201.

38 M. THE DISTRICT SHALL ADD ALL COSTS INCURRED BY THE DISTRICT,
39 INCLUDING INTEREST, ATTORNEY FEES AND COSTS IN FILING AND ENFORCING THE LIEN,
40 TO THE UNPAID USER FEES AND AVAILABILITY FEES, AND THE COSTS ARE A LIABILITY
41 OF THE PROPERTY OWNER PAYABLE FROM THE PROCEEDS OF THE SALE.

42 ~~M.~~ N. A prior assessment of unpaid user fees for the purposes
43 provided in this section does not bar a subsequent assessment for these
44 purposes and any number of liens on the same lot or tract of land may be
45 enforced in the same action.

1 ~~N.~~ 0. The sanitary district shall determine the status of leased
2 residential property before filing a lien pursuant to subsection I of this
3 section and a lien may not be filed if both of the following apply:
4 1. The lessee of the leased residential property has agreed in writing
5 to be responsible for those fees.
6 2. The owner of the leased residential property has recorded a copy of
7 the written agreement of the lessee's responsibility for payment of the user
8 fees pursuant to this section. The copy of the written agreement shall be
9 recorded in the office of the county recorder in the county in which the
10 residential property is located.