

REFERENCE TITLE: projects; water supply development

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2523

Introduced by
Representatives Barton, Thorpe, Tobin: Escamilla, Mitchell, Otondo, Pratt,
Seel, Shope, Smith, Senator Crandell

AN ACT

AMENDING SECTIONS 49-1201, 49-1273, 49-1274 AND 49-1275, ARIZONA REVISED
STATUTES; MAKING AN APPROPRIATION; 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 49-1201, Arizona Revised Statutes, is amended to
3 read:

4 49-1201. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Authority" means the water infrastructure finance authority of
7 Arizona.

8 2. "Board" means the board of directors of the authority.

9 3. "Bonds of a political subdivision" means bonds issued by a
10 political subdivision as authorized by law.

11 4. "Clean water act" means the federal water pollution control act
12 amendments of 1972 (P.L. 92-500; 86 Stat. 816), as amended by the water
13 quality act of 1987 (P.L. 100-4; 101 Stat. 7).

14 5. "Committee" means the water supply development fund committee
15 established by section 49-1202, subsection B.

16 6. "Drinking water facility" means a community water system or a
17 nonprofit noncommunity water system as defined in the safe drinking water act
18 (P.L. 93-523; 88 Stat. 1660; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110
19 Stat. 1613) that is located in this state. For purposes of this ~~article~~
20 ~~CHAPTER~~, drinking water facility does not include water systems owned by
21 federal agencies.

22 7. "Financial assistance loan repayment agreement" means an agreement
23 to repay a loan provided to design, construct, acquire, rehabilitate or
24 improve water or wastewater infrastructure, related property and
25 appurtenances or a loan provided to finance a water supply development
26 project.

27 8. "Indian tribe" means any Indian tribe, band, group or community
28 that is recognized by the United States secretary of the interior and that
29 exercises governmental authority within the limits of any Indian reservation
30 under the jurisdiction of the United States government, notwithstanding the
31 issuance of any patent and including rights-of-way running through the
32 reservation.

33 9. "Nonpoint source project" means a project designed to implement a
34 certified water quality management plan.

35 10. "Political subdivision" means a county, city, town or special
36 taxing district authorized by law to construct wastewater treatment
37 facilities, drinking water facilities or nonpoint source projects.

38 11. "Safe drinking water act" means the federal safe drinking water act
39 (P.L. 93-523; 88 Stat. 1660; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110
40 Stat. 1613), as amended in 1996.

41 12. "Technical assistance loan repayment agreement" means either of the
42 following:

43 (a) An agreement to repay a loan provided to develop, plan and design
44 water or wastewater infrastructure, related property and appurtenances. The
45 agreement shall be for a term of not more than three years and the maximum

1 amount that may be borrowed is limited to not more than five hundred thousand
2 dollars.

3 (b) An agreement to repay a loan provided to develop, plan or design a
4 water supply development project.

5 13. "Wastewater treatment facility" means a treatment works, as defined
6 in section 212 of the clean water act, that is located in this state and that
7 is designed to hold, cleanse or purify or to prevent the discharge of
8 untreated or inadequately treated sewage or other polluted waters for
9 purposes of complying with the clean water act.

10 14. "Water provider" means any of the following:

11 (a) A municipal water delivery system as defined in section 42-5301,
12 paragraphs 1 and 3.

13 (b) A municipal water delivery system as defined in section 42-5301,
14 paragraph 2, which has entered into a partnership with a city, town or county
15 for a water supply augmentation plan.

16 (c) A county water augmentation authority established under title 45,
17 chapter 11.

18 (d) A county water authority established under title 45, chapter 13.

19 (e) An Indian tribe.

20 (f) A community facilities district as established by title 48,
21 chapter 4.

22 (g) FOR PURPOSES OF FUNDING FROM THE WATER SUPPLY DEVELOPMENT
23 REVOLVING FUND PURSUANT TO ARTICLE 3 OF THIS CHAPTER ONLY, A COUNTY THAT
24 ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT OR OTHER FORMAL WRITTEN AGREEMENT
25 WITH A CITY, TOWN OR OTHER WATER PROVIDER REGARDING A WATER SUPPLY
26 DEVELOPMENT PROJECT.

27 15. "Water supply development" means either of the following:

28 (a) The acquisition of water or rights to or contracts for water to
29 augment the water supply of a water provider, INCLUDING ANY ENVIRONMENTAL OR
30 OTHER REVIEWS, PERMITS OR PLANS REASONABLY NECESSARY FOR THAT ACQUISITION.

31 (b) The development of facilities, INCLUDING ANY ENVIRONMENTAL OR
32 OTHER REVIEWS, PERMITS OR PLANS REASONABLY NECESSARY FOR THOSE FACILITIES,
33 for any of the following purposes:

34 (i) Conveyance, storage or recovery of water.

35 (ii) Reclamation and reuse of water.

36 (iii) Replenishment of groundwater.

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

38 49-1273. Water supply development revolving fund; purposes;
39 limitation

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

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

1 2. Making loans or grants to water providers for the planning or
2 design of water supply development projects. A single grant shall not exceed
3 one hundred thousand dollars.

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

7 4. Providing financial assistance to water providers with bonding
8 authority to purchase insurance for local bond obligations incurred by them
9 for water supply development purposes.

10 5. Paying the costs to administer the fund.

11 6. Providing linked deposit guarantees through third party lenders by
12 depositing monies with the lender on the condition that the lender make a
13 loan on terms approved by the committee, at a rate of return on the deposit
14 approved by the committee and the state treasurer and by giving the lender
15 recourse against the deposit of loan repayments that are not made when due.

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

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

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

33 2. The water provider is located in a city or town and the legislative
34 body of the city or town has enacted the ordinance authorized by section
35 9-463.01, subsection 0.

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

38 4. FOR SUBDIVIDED LAND THAT IS LOCATED OUTSIDE OF AN ACTIVE MANAGEMENT
39 AREA AND FOR WHICH A PUBLIC REPORT IS ISSUED AFTER THE EFFECTIVE DATE OF THIS
40 AMENDMENT TO THIS SECTION, THE DIRECTOR HAS DETERMINED THAT THERE IS AN
41 ADEQUATE WATER SUPPLY FOR THAT SUBDIVIDED LAND PURSUANT TO SECTION 45-108 OR
42 THE DIRECTOR HAS DESIGNATED THE PROVIDER AS HAVING AN ADEQUATE WATER SUPPLY
43 PURSUANT TO SECTION 45-108.

1 Sec. 3. Section 49-1274, Arizona Revised Statutes, is amended to read:
 2 49-1274. Water supply development revolving fund financial
 3 assistance; procedures

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

15 B. The authority, in consultation with the committee, shall:

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

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

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

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

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

31 (d) A determination of the applicant's ability to manage the project.

32 (e) A determination of the applicant's ability to meet any applicable
 33 environmental requirements imposed by federal or state agencies.

34 (f) A determination of the applicant's ability to acquire any
 35 necessary regulatory permits.

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

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

41 (b) Existing and planned conservation and water management programs of
 42 the water provider, INCLUDING WATERSHED MANAGEMENT OR PROTECTION.

43 (c) Benefits of the project.

44 (d) The sustainability of the water supply to be developed through the
 45 project.

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

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

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

11 D. On approval of an application under this section by the committee,
12 the authority shall use monies in the water supply development revolving fund
13 to finance the project.

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

15 49-1275. Water supply development revolving fund financial
16 assistance; terms

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

20 B. A loan under this section shall:

21 1. Be repaid not more than ~~thirty~~ FIFTY years after the date incurred.

22 2. Require that interest payments begin not later than the next date
23 that either principal or interest must be paid by the authority to the
24 holders of any of the authority's bonds that provided funding for the loan.
25 If the loan is for construction of water supply development facilities, the
26 authority may provide that loan interest accruing during construction and one
27 year after completion of the construction be capitalized in the loan.

28 3. Be conditioned on the establishment of a dedicated revenue source
29 for repaying the loan.

30 C. The authority, in consultation with the committee, shall prescribe
31 the rate of interest on loans made under this section, but the rate shall not
32 exceed the prevailing market rate for similar types of loans. The authority,
33 ~~upon~~ ON recommendations from the committee, may adopt rules ~~which~~ THAT
34 provide for flexible interest rates and interest free loans. All financial
35 assistance agreements or bonds of a water provider shall clearly specify the
36 amount of principal and interest and any redemption premium that is due on
37 any payment date.

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

41 E. A loan made to a water provider under this section may be secured
42 additionally by an irrevocable pledge of any shared state revenues due to the
43 water provider for the duration of the loan as prescribed by a resolution of
44 the committee. If the committee requires an irrevocable pledge of the shared
45 state revenues for financial assistance loan repayment agreements, the

1 authority shall enter into an intercreditor agreement with the greater
2 Arizona development authority to define the allocation of shared state
3 revenues in relation to individual borrowers. If a pledge is required and a
4 water provider fails to make any payment due to the authority under its loan
5 repayment agreement or bonds, the authority shall certify to the state
6 treasurer and notify the governing body of the defaulting water provider that
7 the water provider has failed to make the required payment and shall direct a
8 withholding of state shared revenues as prescribed in subsection F of this
9 section. The certificate of default shall be in the form determined by the
10 authority, except that the certificate shall specify the amount required to
11 satisfy the unpaid payment obligation of the water provider.

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

30 Sec. 5. Appropriation; water supply development revolving fund;
31 exemption from lapsing

32 A. The sum of \$30,000,000 is appropriated from the state general fund
33 in fiscal year 2014-2015 to the water supply development revolving fund
34 established pursuant to section 49-1271, Arizona Revised Statutes.

35 B. The appropriation made in this section is exempt from the
36 provisions of section 35-190, Arizona Revised Statutes, relating to lapsing
37 of appropriations.