REFERENCE TITLE: water infrastructure finance authority; prepayment

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2142

Introduced by
Representatives Borrelli, Barton, Cardenas, Cobb, Coleman, Fann, Senator Ward: Representatives Ackerley, Bowers, Boyer, Campbell, Carter, Finchem, Hale, Kern, Larkin, Lawrence, Mitchell, Pratt, Shope, Thorpe, Townsend, Senators Griffin, Yee

AN ACT

AMENDING SECTIONS 49-1225 AND 49-1245, ARIZONA REVISED STATUTES; RELATING TO THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 49-1225, Arizona Revised Statutes, is amended to read:

49-1225. Clean water revolving fund financial assistance; terms

A. Financial assistance from the clean water revolving fund shall be evidenced by a financial assistance agreement or bonds of a political subdivision, delivered to and held by the authority.

B. A loan under this section:

1. Shall be repaid in not to exceed thirty years from the date incurred for wastewater treatment facility and nonpoint source loans.

2. Shall require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided funding for the loan. The authority may provide that loan interest accruing during construction and one year beyond completion of the construction be capitalized in the loan.

3. Shall be conditioned on the establishment of a dedicated revenue source for repaying the loan.

4. To an Indian tribe shall either be conditioned on the establishment of a dedicated revenue source under the control of a tribally chartered corporation, or any other tribal entity that is subject to suit by the attorney general to enforce the loan contract, or be secured by assets that, in the event of default of the loan contract, are subject to execution by the attorney general without the waiver of any claim of sovereign immunity by the tribe.

C. The authority shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority may also provide for flexible interest rates and interest free loans under rules adopted by the authority. All financial assistance agreements or bonds of a political subdivision shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. THE AUTHORITY SHALL NOT UNILATERALLY AMEND A FINANCIAL ASSISTANCE AGREEMENT, LOAN OR BOND AFTER ITS EXECUTION. THE AUTHORITY SHALL NOT IMPOSE A REDEMPTION PREMIUM AS A CONDITION OF REFINANCING OR RECEIVING PREPAYMENT ON A FINANCIAL ASSISTANCE AGREEMENT, LOAN OR BOND IF THE FINANCIAL ASSISTANCE AGREEMENT, LOAN OR BOND DID NOT CONTAIN A REDEMPTION PREMIUM.

D. The approval of a loan is conditioned on a written commitment by the political subdivision or Indian tribe to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. All monies received from political subdivisions or Indian tribes as loan repayments, interest and penalties shall be deposited in the appropriate accounts of the clean water revolving fund.

F. A loan made to a political subdivision under this section after June 30, 2001 may be secured additionally by an irrevocable pledge of the shared state revenues due to the political subdivision for the duration of the loan as prescribed by a resolution of the authority's board. If the authority's board requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements after June 30, 2001, the authority's board shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers. If a pledge is required and a political subdivision fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the required payment and shall direct a withholding of state shared revenues as prescribed in subsection G of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the political subdivision.

G. On receipt of a certificate of default from the authority, the state treasurer to the extent not expressly prohibited by law shall withhold the monies due to the defaulting political subdivision from the next succeeding distribution of monies pursuant to section 42-5029. In the case of a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision if so certified by the defaulting political subdivision to the state treasurer and the authority. The political subdivision shall not certify deposits as necessary for payment for bonds unless the bonds were issued before the date of the loan repayment agreement and the bonds were secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

Sec. 2. Section 49-1245, Arizona Revised Statutes, is amended to read:

49-1245. Drinking water revolving fund financial assistance; terms

A. A loan from the drinking water revolving fund shall be evidenced by a loan repayment agreement or bonds of a political subdivision, delivered to and held by the authority.

B. A loan under this section:

1. Shall be repaid in not to exceed thirty years from the date incurred for drinking water facility loans.

2. Shall require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided funding for the loan.

The authority may provide that loan interest accruing during construction and one year beyond completion of the construction be capitalized in the loan.

3. Shall be conditioned on the establishment of a dedicated revenue source for repaying the loan.

4. To an Indian tribe shall either be conditioned on the establishment of a dedicated revenue source under the control of a tribally chartered corporation, or any other tribal entity that is subject to suit by the attorney general to enforce the loan contract, or be secured by assets that, in the event of default of the loan contract, are subject to execution by the attorney general without the waiver of any claim of sovereign immunity by the tribe.

C. The authority shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority may also provide for flexible interest rates, interest free loans and forgivable principal under rules adopted by the authority. All financial assistance agreements or bonds of a political subdivision shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. THE AUTHORITY SHALL NOT UNILATERALLY AMEND THE FINANCIAL ASSISTANCE AGREEMENT, LOAN OR BOND AFTER ITS EXECUTION. THE AUTHORITY SHALL NOT IMPOSE A REDEMPTION PREMIUM AS A CONDITION OF REFINANCING OR RECEIVING PREPAYMENT ON A FINANCIAL ASSISTANCE AGREEMENT, LOAN OR BOND IF THE FINANCIAL ASSISTANCE AGREEMENT, LOAN OR BOND DID NOT CONTAIN A REDEMPTION PREMIUM.

D. The approval of a loan is conditioned on a written commitment by the political subdivision or Indian tribe to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. All monies received from political subdivisions or Indian tribes as loan repayments, interest and penalties shall be deposited in the appropriate accounts of the drinking water revolving fund.

F. A loan made to a political subdivision under this section after June 30, 2001 may be secured additionally by an irrevocable pledge of the shared state revenues due to the political subdivision for the duration of the loan as prescribed by a resolution of the authority's board. If the authority's board requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements after June 30, 2001, the authority's board shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers. If a pledge is required and a political subdivision fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the required payment and shall direct a withholding of state shared revenues as prescribed in subsection G of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the political subdivision.

G. On receipt of a certificate of default from the authority, the state treasurer to the extent not expressly prohibited by law shall withhold the monies due to the defaulting political subdivision from the next succeeding distribution of monies pursuant to section 42-5029. In the case of a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision if so certified by the defaulting political subdivision to the state treasurer and the authority. The political subdivision shall not certify deposits as necessary for payment for bonds unless the bonds were issued before the date of the loan repayment agreement and the bonds were secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

Sec. 3. Applicability

This act applies to all financial assistance agreements, loans or bonds issued or executed by the water infrastructure financial authority of Arizona whether issued or executed before or after the effective date of this act.

Sec. 4. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.