



**ARIZONA STATE SENATE**  
*Fifty-Second Legislature, Second Regular Session*

**AMENDED**  
FACT SHEET FOR H.B. 2568

community facilities Districts; formation; governance

Purpose

Outlines new requirements for the formation and governance of a community facilities District (District) if the proposed land totals more than 600 acres, meets certain stipulations and is formed after the effective date of the Act.

Background

Currently, a declaration of intention to form a District requires 25 percent of the land owners of the proposed land area to sign a petition and permits the governing body to adopt a resolution declaring its intention to form a District. The resolution must include: a) the area to be included; b) the purpose of the District; c) a general plan that is to be filed with the clerk; d) the date, time and place of the hearing to form the District; e) the location to send written objections; e) that the formation of the District may result in a levy of taxes to pay the cost of District-made improvements; f) a reference to A.R.S. Title 49, Chapter 6; and g) whether the District is to be run by a board that consists of members of the governing body, ex officio, or if more than 600 acres, five directors appointed by the governing body (A.R.S. § 48-702).

Districts have the authority to enter into contracts and spend money to operate and maintain public infrastructure. If legally permitted, the District can sell lease or dispose of property and establish, charge and collect user fees and rates (A.R.S. § 48-709).

Constructed or acquired projects may be financed by: a) proceeds from the sale of District bonds; b) contributions from the municipality, county, state, federal government or private sector; c) annual tax levies; d) special assessments; e) grants from the state or federal governments; f) landowner, user and other fees and charges; g) proceeds from loans or advances; or h) any other legally available money (A.R.S. § 48-717).

According to the Maricopa County Assessor's Office website, an *ad valorem tax* is a tax based on an item's value. For example, a property tax is an ad valorem tax that is based on the assessed value of the property.

*Governing body* means the body or board which, by law, is constituted as the legislative department of the municipality or county (A.R.S. § 48-701).

*District* means a tax-levying community facilities district, formed pursuant to statute, by a municipality or formed pursuant to this article by a county in an unincorporated area or in an incorporated area with the municipality's consent (A.R.S. § 48-701).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

***Resolution of Intent to Form a District***

1. Requires the governing body to adopt a resolution ordering the formation of a District within 90 days of submission of a petition, if the following are met:
  - a) all land owners have signed the petition;
  - b) the proposed land totals more than 600 acres;
  - c) it is formed after the effective date of the Act; and
  - d) if the land is located in an unincorporated area of a county, the land meets the stipulated requirements.
2. Stipulates that land located in an unincorporated area of a county to meet the following requirements before its declaration of intent to form a District:
  - a) be zoned to allow for development for at least one residential dwelling per acre;
  - b) be part of a county approved specific plan or development agreement; and
  - c) be either:
    - i. included within a municipality's planning area;
    - ii. included in the land use element of a municipality's general plan; or
    - iii. located immediately adjacent to the municipality.
3. Stipulates that a District with more than 600 acres and formed after the effective date of the Act and if formed in an unincorporated area of a county the land meets the stipulated requirements, may include noncontiguous property if both the following apply:
  - a) the property is under common ownership or control; and
  - b) the property would be served by common infrastructure.
4. Requires District land owners to provide the governing body with an agreement to indemnify the governing body from liabilities, claims, costs and expenses that are incurred during the offer, sale and repayments of District bonds and the levying of any tax, assessment or charge.
5. Requires the indemnification agreement to establish a land owner's general obligations, but the agreement cannot be secured by the land.
6. Requires the governing body's acceptance of the indemnification agreement without reference to the owner's ability to make repayments.
7. Terminates the indemnification agreement upon the final repayment of any District issued debt.

***District Formation***

8. Requires the governing body to adopt a resolution ordering the formation of the District within 90 days after the adoption of the resolution of intent to form if:
  - a) all land owners have signed the formation petition;
  - b) the proposed land totals more than 600 acres;
  - c) it is formed after the effective date of the Act; and
  - d) if the land is located in an unincorporated area of a county, the land meets the stipulated requirements.
9. Permits the governing body to modify the general plan or delete any property that is determined to not benefit the District.

***Notice and Conduct of Elections***

10. Requires a county or municipality to waive any or all requirements involving the posting, publication, mailing, notice, hearing or landowner election of a District if the formation petition is signed by all the land owners and the proposed District is formed after the effective date of the Act.
11. Permits a county or municipality to waive any or all requirements involving the posting, publication, mailing, notice, hearing or landowner election of a District if the formation petition is signed by all the land owners and the proposed District is formed before the effective date of the Act.
12. Requires the ad valorem tax levy election notice to include the limit on the ad valorem tax levy, if the District is formed after the effective date of the Act.
13. Requires a District's bond election ballot to include language asking for authorization for an ad valorem tax levy and the tax levy limit, if the District was formed after the effective date of the Act.

***Board of Directors and Appointments***

14. Requires a District formed after the effective date of the Act to have a five member board that consists of:
  - a) two members who are directly selected by the governing body; and
  - b) one member, selected by the governing body, from a list of at least four people that is submitted by District landowners who own more than 25 acres; and
  - c) two members, who are selected by the District land owners who own more than 25 acres.
15. Requires the landowners who own more than 25 acres to submit and appoint board members who have expertise in real estate, engineering, land planning, construction, law, finance or other related field.

16. Permits the governing body to remove any one or more of the three board members selected by the governing body at any time.
17. Prohibits a land owner of more than 25 acres to be a member of the board.
18. Prohibits a land owner of 40 acres or more, an elected official of the municipality or county, or an employee or agent of the landowner or municipality or county to be a board member in a District formed before the effective date of the Act.
19. Requires new appointments to the board to follow these same prescribed provisions, if the District is formed after the effective date of the Act.
20. Prohibits members of the governing body of a District to receive compensation for their services as board members.
21. Requires the manager of the county or municipality, clerk and treasurer to hold the same respective positions for the District, unless the Board appoints these positions otherwise.
22. Amends definition of *District Board* to reference the newly prescribed Board.
23. Permits a District that exists on the effective date of the Act, but does not have any qualified electors and has not issued any bonds, to submit a petition to the governing body to request that the District's Board consist of the previously stipulated requirements.
24. Requires the governing body to approve or disapprove this request within 90 days of the petition.

***General Obligation Bonds and Ad Valorem Tax Levy Limit***

25. Permits the Board to limit the tax rate or the amount of ad valorem tax dollars that it is obligated to levy or collect, to the amount authorized by the bond election.
26. Directs the Board to keep within the voter authorized ad valorem tax limit when conducting the required annual bond levy and ad valorem tax collection.

***District Taxes and Annual Financial Estimate***

27. Permits a District to levy at a rate higher than the current maximum rate if the current maximum rate is lower than the voter authorized limit.
28. Stipulates that a District must take into account any bond limitations authorized by the bond election when compiling the annual financial estimate and budget.

***Public Infrastructure Project Approval***

29. Requires the Board to hold a public hearing regarding a public infrastructure's project report within 60 days of receiving one.
30. Permits the Board to reject or approve the report within 60 days after the hearing.
31. Requires an approved report to include the nature and timing of issuing bonds.
32. Requires the District Board to execute the provisions of an approved infrastructure project report within the report's specified time frames.

***Public Infrastructure Acceptance and Maintenance***

33. Requires the governing body, unless previously authorized in a development agreement, to do the following:
  - a) complete and approve their review of an engineer's certification of a discrete segment of public infrastructure (segment) within 30 days of the submission if the certified segment has been constructed in substantial conformance to the governing body's required plans and specifications; and
  - b) adopt and accept the certified segment within 30 days of the governing body's approval of the engineer's certification and must own, operate and maintain the segment.

***Three Year Roadway Maintenance Agreement***

34. Requires the owner of District property that was formed by a county before the effective date of this section and meets the stipulated county land requirements, unless previously authorized in a development agreement, to do the following:
  - a) provide the county with an agreement regarding the provisions for surface maintenance of public roads to be financed by the District, upon the owner's first final plat submission; and
  - b) obligate the owner or owner's assignee to maintain the public roadways' surfaces to the county's standards for three years after the initial acceptance by the county of each discrete segment of each public roadway.
35. Terminates the maintenance agreement if the county approves a new funding source for roadway maintenance or if the property within the District is annexed by a city or town.

***County Law Enforcement Agreement***

36. Requires the owner of District property that was formed by a county before the effective date of this Act and meets the stipulated county land requirements, unless previously authorized by a development agreement, and if the property boundary is farther than 10 miles from a county sheriff substation or the county law enforcement has a ratio of less than one officer for 1,000 people, to do the following:
  - a) provide the county with an agreement on the provision of law enforcement services to properties within the District; and

- b) obligate the owner or owner's assignee to fund law enforcement services at the level of service provided by the county.

37. Permits the county, adjacent municipality or other entity to provide law enforcement services.

38. Terminates the law enforcement agreement if the county approves a new funding source for law enforcement services or if the property within the District is annexed by a city or town.

#### *Annual Bond Disclosure*

39. Requires a District to annually provide the Department of Revenue (DOR) with a report that contains information similar to what a District currently submits to the Municipal Securities Rule Making Board regarding continuing disclosure.

40. Stipulates the report must be provided to the DOR by February 1 of each year and must include, at least, the following information:

- a) financial information and operating data provided by the obligated people;
- b) audited financial statements for obligated people, if available;
- c) principal and interest payment delinquencies;
- d) nonpayment-related defaults;
- e) unscheduled draws on debt service reserves or credit enhancements that reflect financial difficulties;
- f) substitution of credit or liquidity providers or their failure to perform;
- g) adverse tax opinions or events that affect the tax exempt status of the security;
- h) modifications to rights of security holders;
- i) bond calls;
- j) defeasances;
- k) release, substitution or sale of property securing repayment of the securities;
- l) rating changes;
- m) bankruptcy, insolvency or receivership;
- n) merger, acquisition or sale of all issuer assets; and
- o) the appointment of a successor trustee.

41. Directs the DOR to provide the Joint Legislative Budget Committee copies of the report.

#### *Miscellaneous*

42. Makes technical and conforming corrections.

43. Becomes effective on the general effective date.

#### Amendments Adopted by Committee

1. Specifies land located in an unincorporated area of a county must meet additional stipulated requirements in order to qualify for the automatic formation of a District.

2. Specifies qualified Districts with owners of 25 acres or more cannot be appointed as a Board director.
3. Stipulates two Board members must have expertise in one or more of the prescribed fields.
4. Requires the automatic order of a general obligation bond's election upon petition of 25 percent of District land owners.
5. Permits qualified Districts to submit a petition to change their Board structure and must receive a vote of approval or disapproval within 90 days.
6. Requires the governing body to take control and maintenance of any discrete segment of public infrastructure completed by the District within 180 days.

Amendments Adopted by COW

1. Replaces previously adopted Committee Amendment.
2. Requires the governing body adopt a resolution ordering formation of the District within 90 days after the adoption of the resolution of intent to form a District if the proposed District meets the stipulated land requirements.
3. Stipulates a District may include noncontiguous property.
4. Requires the District to provide the governing body with an indemnification agreement.
5. Requires, under certain circumstances the municipality or county to waive any or all requirements of posting, publication, mailing, notice, hearing and landowner elections if the district is formed after the effective date of the Act, and permits such a waiver if the district was formed before the effective date of the Act.
6. Outlines how the five-member governing Board is appointed and member requirements.
7. Permits qualified Districts to submit a petition to change their Board structure and must receive a vote of approval or disapproval within 90 days.
8. Requires the District Board to execute provisions of an approved infrastructure project report within the specified time frames.
9. Outlines requirements for accepting a discrete segment of public infrastructure.
10. Stipulates surface maintenance requirements for District financed public roads.
11. Stipulates requirements for of law enforcement services to District properties.
12. Requires the District to provide an annual report to the DOR, no later than February 1.

13. Stipulates that a District must adhere to the voter approved ad valorem tax limit for future levying.

14. Permits the Board, when determining the annual assessment, to limit the tax rate or the amount of ad valorem tax dollars that it is obligated to levy or collect, provided it is within the voter-authorized ad valorem tax's limit.

House Action

Senate Action

WM	2/15/16	DPA	8-0-1	GOV	3/16/16	DPA	5-1-1
3 <sup>rd</sup> Read	2/25/16		60-0-0	3 <sup>rd</sup> Read	5/2/16		21-8-0-1

Prepared by Senate Research

May 2, 2016

RH/SH/rf