State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 63

HOUSE BILL 2057

AN ACT

AMENDING SECTIONS 49-1203, 49-1273, 49-1274, 49-1275 AND 49-1277, ARIZONA REVISED STATUTES; RELATING TO THE WATER SUPPLY DEVELOPMENT REVOLVING FUND.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 49-1203, Arizona Revised Statutes, is amended to read:

49-1203. Powers and duties of authority; definition

A. The authority is a corporate and politic body and shall have an official seal that shall be judicially noticed. The authority may sue and be sued, contract and acquire, hold, operate and dispose of property.

B. The authority, through its board, may:

1. Issue negotiable water quality bonds pursuant to section 49-1261 for the following purposes:
   (a) To generate the state match required by the clean water act for the clean water revolving fund and to generate the match required by the safe drinking water act for the drinking water revolving fund.
   (b) To provide financial assistance to political subdivisions, Indian tribes and eligible drinking water facilities for constructing, acquiring or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects and other related water quality facilities and projects.

2. Issue water supply development bonds for the purpose of providing financial assistance to water providers for water supply development purposes pursuant to sections 49-1274 and 49-1275.

3. Provide financial assistance to political subdivisions and Indian tribes from monies in the clean water revolving fund to finance wastewater treatment projects.

4. Provide financial assistance to drinking water facilities from monies in the drinking water revolving fund to finance these facilities.

5. Provide financial assistance to water providers from monies in the water supply development revolving fund to finance water supply development.

6. Guarantee debt obligations of, and provide linked deposit guarantees through third-party lenders to:
   (a) Political subdivisions that are issued to finance wastewater treatment projects.
   (b) Drinking water facilities that are issued to finance these facilities.
   (c) Water providers that are issued to finance water supply development projects.

7. Provide linked deposit guarantees through third-party lenders to political subdivisions, drinking water facilities and water providers.

8. Apply for, accept and administer grants and other financial assistance from the United States government and from other public and private sources.

9. Enter into capitalization grant agreements with the United States environmental protection agency.
10. Adopt rules pursuant to title 41, chapter 6 governing the application for and awarding of wastewater treatment facility, drinking water facility and nonpoint source project financial assistance under this chapter, the administration of ADMINISTERING the clean water revolving fund and the drinking water revolving fund and the issuance of ISSUING water quality bonds.

11. Subject to title 41, chapter 4, article 4, hire a director and staff for the authority.

12. Contract for the services of outside advisors, attorneys, consultants and aides reasonably necessary or desirable to allow the authority to adequately perform its duties.

13. Contract and incur obligations as reasonably necessary or desirable within the general scope of authority activities and operations to allow the authority to adequately perform its duties.

14. Assess financial assistance origination fees and annual fees to cover the reasonable costs of administering the authority and the monies administered by the authority. Any fees collected pursuant to this paragraph constitute governmental revenue and may be used for any purpose consistent with the mission and objectives of the authority.

15. Perform any function of a fund manager under the CERCLA Brownfields cleanup revolving loan fund program as requested by the department. The board shall perform any action authorized under this article on behalf of the Brownfields cleanup revolving loan fund program established pursuant to chapter 2, article 1.1 of this title at the request of the department. In order to perform these functions, the board shall enter into a written agreement with the department.

16. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance to political subdivisions, any county with a population of less than five hundred thousand persons, Indian tribes and community water systems in connection with the development DEVELOPING or financing of wastewater, drinking water, water reclamation or related water infrastructure. Assistance provided under a technical assistance loan repayment agreement shall be in a form and under terms determined by the authority and shall be repaid not more than three years after the date that the monies are advanced to the applicant. The provision of Technical assistance PROVIDED by the authority does not create any liability for the authority or this state regarding the design, construction DESIGNING, CONSTRUCTING or operation of OPERATING any infrastructure project.

17. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance to water providers in connection with the planning or design of water supply development projects. A single grant shall not exceed one hundred thousand dollars $250,000. Assistance provided under a technical assistance loan repayment agreement shall be repaid not more than three
years after the date that the monies are advanced to the applicant. The
provision of Technical assistance PROVIDED by the authority does not
create any liability for the authority or this state regarding the design,
construction DESIGNING, CONSTRUCTING or operation of OPERATING any water
supply development project.

C. The authority may adopt rules pursuant to title 41, chapter 6
governing the application for and awarding of water supply development
fund project financial assistance under this chapter and the
administration of ADMINISTERING the water supply development revolving
fund.

D. The board shall deposit, pursuant to sections 35-146 and 35-147,
any monies received pursuant to subsection B, paragraph 8 of this section
in the appropriate fund as prescribed by the grant or other financial
assistance agreement.

E. Disbursements of monies by the water infrastructure finance
authority pursuant to a financial assistance agreement are not subject to
title 41, chapter 23.

F. For the purposes of the safe drinking water act and the clean
water act, the department of environmental quality is the state agency
with primary responsibility for administration of ADMINISTERING this
state's public water system supervision program and water pollution
control program and, in consultation with other appropriate state agencies
as appropriate, is the lead agency in establishing assistance priorities
as prescribed by section 49-1224, subsection B, paragraph 3, section
49-1243, subsection A, paragraph 6 and section 49-1244, subsection B,
paragraph 3.

G. For the purposes of this section, "CERCLA" has the same meaning
prescribed in section 49-201.

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

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

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

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

2. Making loans or grants OR PROVIDING TECHNICAL ASSISTANCE to
water providers for planning or designing water supply development
projects. A single grant shall not exceed $250,000.

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

4. Providing financial assistance to water providers with bonding
authority to purchase insurance for local bond obligations incurred by
them for water supply development purposes.
5. Paying the costs to administer the fund.

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

7. Conducting water supply studies.

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

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

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

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

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

4. The water provider is located outside of an active management area and either of the following applies:
   (a) The director of water resources has designated the water provider as having an adequate water supply pursuant to section 45-108.
   (b) The water provider will use the financial assistance for a water supply development project and the director of water resources has determined pursuant to section 45-108 that there is an adequate water supply for all subdivided land that will be served by the project and for which a public report was issued after July 24, 2014.

5. The water provider is located in a county with a population of less than one million five hundred thousand persons.
Sec. 3. Section 49-1274, Arizona Revised Statutes, is amended to read:

49-1274. Water supply development revolving fund financial assistance; procedures

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

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

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

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

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

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

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

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

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

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

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

   (a) Existing, near-term and long-term water demands of the water provider compared to the existing water supplies of the water provider.
(b) Existing and planned conservation and water management programs of the water provider, including watershed management or protection.
(c) Benefits of the project.
(d) The sustainability of the water supply to be developed through the project.
(e) The water provider's need for financial assistance.
(f) The cost-effectiveness of the project.
C. The committee BOARD shall review on its merits each application received and shall inform the applicant of the committee's BOARD's determination within ninety days after receipt of a complete and correct application. If the application is not approved, the committee BOARD shall notify the applicant, stating the reasons. If the application is approved, the committee BOARD may condition the approval on assurances the committee BOARD deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.
D. On approval of an application under this section by the committee BOARD, the authority shall use monies in the water supply development revolving fund to finance the project.
Sec. 4. Section 49-1275, Arizona Revised Statutes, is amended to read:
49-1275. Water supply development revolving fund financial assistance; terms
A. A loan from the water supply development revolving fund shall be evidenced by bonds, if the water provider has bonding authority, or by a financial assistance agreement, delivered to and held by the authority.
B. A loan under this section shall:
1. Be repaid not more than forty years after the date incurred.
2. 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. If the loan is for construction of water supply development facilities, the authority may provide that loan interest accruing during construction and one year after completion of the construction be capitalized in the loan.
3. Be conditioned on the establishment of a dedicated revenue source for repaying the loan.
C. The authority, in consultation with the committee BOARD, 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, on recommendations from the committee BOARD, may adopt rules that provide for flexible interest rates and interest-free loans. All financial assistance agreements or bonds of a water provider shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date.
D. The approval of a loan is conditioned on a written commitment by
the water provider to complete all applicable reviews and approvals and to
secure all required permits in a timely manner.

E. A loan made to a water provider under this section may be
secured additionally by an irrevocable pledge of any shared state revenues
due to the water provider for the duration of the loan as prescribed by a
resolution of the committee BOARD. If the committee BOARD requires an
irrevocable pledge of the shared state revenues for financial assistance
loan repayment agreements, the authority 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 water provider 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 water provider that the water provider has failed
to make the required payment and shall direct a withholding of state
shared revenues as prescribed in subsection F 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 water provider.

F. On receipt of a certificate of default from the authority, the
state treasurer, to the extent not expressly prohibited by law, shall
withhold any monies due to the defaulting water provider 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
water supply development revolving 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 water provider if so certified by the defaulting water provider to the
state treasurer and the authority. The water provider 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. 5. Section 49-1277, Arizona Revised Statutes, is amended to
read:

49-1277. Water supply development bonds

A. The authority may issue negotiable water supply development
bonds in a principal amount necessary to provide sufficient monies for
those projects approved under this article and including such items as
maintaining sufficient reserves to secure the bonds, to pay the necessary
costs of issuing, selling and redeeming the bonds and to pay other
expenditures of the authority incidental to and necessary and convenient
to carry out the purposes of this article. The board shall issue the
bonds pursuant to subsections C and D OF THIS SECTION.
B. The board shall authorize the bonds by resolution. The
resolution shall prescribe:
1. The rate or rates of interest and the denominations of the
bonds.
2. The date or dates of the bonds and maturity.
3. The coupon or registered form of the bonds.
4. The manner of executing the bonds.
5. The medium and place of payment.
6. The terms of redemption.
C. The bonds shall be sold at public or private sale at the price
and on the terms determined by the board. All proceeds from the issuance
of ISSUING bonds shall be deposited in the appropriate accounts of the
funds administered by the authority.
D. The board shall publish a notice of its intention to issue bonds
under this article for at least five consecutive days in a newspaper
published in this state. The last day of publication must be at least ten
days before issuing the bonds. The notice shall state the amount of the
bonds to be sold and the intended date of issuance. A copy of the notice
shall be hand delivered or sent, by certified mail, return receipt
requested, to the director of the department of administration on or
before the last day of publication.
E. To secure any bonds authorized by this section, the board by
resolution may:
1. Provide that bonds issued under this section may be secured by a
first lien on all or part of the monies paid into the appropriate account
or subaccount of the funds administered by the authority.
2. Pledge or assign to or in trust for the benefit of the holder or
holders of the bonds any part or appropriate account or subaccount of the
monies in the funds as is necessary to pay the principal and interest of
the bonds as they come due.
3. Set aside, regulate and dispose of reserves and sinking funds.
4. Provide that sufficient amounts of the proceeds from the sale of
the bonds may be used to fully or partly fund any reserves or sinking
funds set up by the bond resolution.
5. Prescribe the procedure, if any, by which the terms of any
contract with bondholders may be amended or abrogated, the amount of bonds
the holders of which must consent to and the manner in which consent may
be given.
6. Provide for payment from the proceeds of the sale of the bonds
of all legal and financial expenses incurred by the board in issuing,
selling, delivering and paying the bonds.
7. Do any other matters that in any way may affect the security and
protection of the bonds.

F. Any member of the board, any member of the committee or any
person executing the bonds is not personally liable for the payment of the
bonds. The bonds are valid and binding obligations notwithstanding that
before the delivery of the bonds any of the persons whose signatures
appear on the bonds cease to be members of the board. From and after the
sale and delivery of the bonds, they are incontestable by the board and
the committee.

G. The board, out of any available monies, may purchase bonds,
which may be canceled, at a price not exceeding either of the following:
1. If the bonds are then redeemable, the redemption price then
applicable plus accrued interest to the next interest payment date.
2. If the bonds are not then redeemable, the redemption price
applicable on the first date after purchase on which the bonds become
subject to redemption plus accrued interest to that date.

APPROVED BY THE GOVERNOR MARCH 25, 2022.