

REFERENCE TITLE: community facilities districts; prompt pay

State of Arizona
Senate
Fifty-seventh Legislature
First Regular Session
2025

SB 1145

Introduced by
Senators Carroll: Gowan, Kavanagh, Leach; Representative Livingston

AN ACT

**AMENDING SECTIONS 48-708 AND 48-709, ARIZONA REVISED STATUTES; RELATING TO
COMMUNITY FACILITIES DISTRICTS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 48-708, Arizona Revised Statutes, is amended to
3 read:

4 48-708. Formation; debt limitation; disclosure; unpaid
5 payments

6 A. If the formation of the district is approved by a majority of
7 the votes cast at the election, the governing body shall order the
8 formation and if applicable, appoint the initial directors of the district
9 board who are not members of the governing body, ex officio, set the
10 district boundaries and order that a map showing the district boundaries
11 be drawn and a copy of the order forming the district be delivered to the
12 county assessor and the board of supervisors of the county in which the
13 district is located and to the department of revenue. A notice of the
14 formation showing the number and date of the order and giving a
15 description of the land included in the district shall be recorded with
16 the county recorder.

17 B. On its formation, the district is a special purpose district for
18 purposes of article IX, section 19, Constitution of Arizona, a tax levying
19 public improvement district for the purposes of article XIII, section 7,
20 Constitution of Arizona, and a municipal corporation for all purposes of
21 title 35, chapter 3, articles 3, 3.1, 3.2, 4 and 5. A district that
22 distributes or sells groundwater is a private water company only for
23 purposes of title 45, chapters 2 and 3.1. Except as otherwise provided in
24 this section, a district is considered to be a municipal corporation and
25 political subdivision of this state, separate and apart from the
26 municipality or county. ~~Under no circumstances may~~ The amount of
27 indebtedness evidenced by general obligation bonds issued pursuant to
28 section 48-719 and revenue bonds issued pursuant to section 48-720 **MAY NOT**
29 exceed the estimated cost of the public infrastructure improvements plus
30 all costs connected with the public infrastructure purposes and issuance
31 and sale of bonds, including, without limitation, credit enhancement and
32 liquidity support fees and costs. The total aggregate outstanding amount
33 of bonds and any other indebtedness for which the full faith and credit of
34 the district are pledged shall not exceed sixty percent of the aggregate
35 of the estimated market value of the real property and improvements in the
36 district after the public infrastructure of the district is completed plus
37 the value of the public infrastructure owned or to be acquired by the
38 district with the proceeds of the bonds.

39 C. On formation of the district, the district board shall make a
40 good faith effort to implement the general plan for the public
41 infrastructure of the district and any development agreement entered into
42 pursuant to section 9-500.05 or 11-1101, as applicable, between the
43 governing body and owners of land in the district. The district board
44 shall be considered a party to that agreement.

D. For districts approved after August 9, 2017, the district board shall require that a seller of a property in the district who is otherwise required to obtain a subdivision public report as prescribed by section 32-2183 disclose to a prospective purchaser the existence of the district, the purpose for which the district was formed as set forth in the resolution adopted by the governing body, the estimated tax rate and the estimated annual tax amount that is based on applying that tax rate to a hypothetical residential property value.

E. Fees and other charges assessed by a municipality or county in connection with the submission and consideration of an application to form a district shall not exceed \$15,000. If an application is denied by the governing body, the municipality or county may not assess a fee or other charge in connection with the submission and consideration of a substantially similar application that is submitted within one year following the denial. Fees and other charges assessed by a municipality, county or district in connection with the administration of a district, including the issuance and sale of bonds, shall not exceed the actual expense incurred by the municipality, county or district for staff and consultant services and support facilities supplied by the municipality, county or district or the financial, legal and administrative costs of the district that are not reimbursed from proceeds of the bonds or other district revenue. Any fees or other charges paid by the applicant before formation of the district that exceed the actual costs of forming the district shall be transferred by the municipality or county to the district and the district shall use the transferred monies solely to support the formation or administration of the district, including the issuance and sale of bonds.

F. AFTER FORMATION OF THE DISTRICT, THE COUNTY OR MUNICIPALITY THAT AUTHORIZED THE DISTRICT IS LIABLE FOR UNPAID PAYMENTS OWED BY THE DISTRICT FOR THE CONSTRUCTION OF THE DISTRICT'S PUBLIC INFRASTRUCTURE. THE COUNTY OR MUNICIPALITY THAT AUTHORIZED THE FORMATION OF THE DISTRICT:

1. SHALL MONITOR PROGRESS AND PAYMENTS MADE UNDER CONSTRUCTION CONTRACTS WITH THE DISTRICT.

2. MAY PERIODICALLY AUDIT THE DISTRICT'S CONSTRUCTION CONTRACT PAYMENTS.

3. MAY REQUIRE THE DISTRICT TO PAY FOR THE COUNTY'S OR MUNICIPALITY'S MONITORING AND AUDITING AND TO PAY A PENALTY TO THE COUNTY OR MUNICIPALITY FOR FAILING TO MAKE LEGALLY REQUIRED PAYMENTS UNDER A CONSTRUCTION CONTRACT.

Sec. 2. Section 48-709, Arizona Revised Statutes, is amended to read:

48-709. Powers of a community facilities district;
construction contracts

A. In addition to the powers otherwise granted to a district pursuant to this article, a district may to further the general plan:

1 1. Enter into contracts and expend monies for any public
2 infrastructure purpose with respect to the district.

3 2. Enter into intergovernmental agreements as prescribed in title
4 11, chapter 7, article 3 for the planning, design, inspection, ownership,
5 control, maintenance, operation or repair of public infrastructure or the
6 provision of enhanced municipal services by the municipality in the
7 district.

8 3. Sell, lease or otherwise dispose of district property if the
9 sale, lease or conveyance is not a violation of the terms of any contract
10 or bond resolution of the district.

11 4. Reimburse the municipality for providing enhanced municipal
12 services in the district.

13 5. Operate, maintain and repair public infrastructure.

14 6. Establish, charge and collect user fees, rates or charges for
15 the use of any public infrastructure or service.

16 7. Employ staff, counsel and consultants.

17 8. Reimburse the municipality or county for staff and consultant
18 services and support facilities supplied by the municipality or county.

19 9. Accept gifts or grants and incur and repay loans for any public
20 infrastructure purpose.

21 10. Enter into agreements with landowners and the municipality or
22 county for the collection of fees and charges from landowners for public
23 infrastructure purposes, the advance of monies by landowners for public
24 infrastructure purposes or the granting of real property by the landowner
25 for public infrastructure purposes.

26 11. By resolution, levy and assess the costs of any public
27 infrastructure purpose on any land benefited in the district.

28 12. Pay the financial, legal and administrative costs of the
29 district.

30 13. Enter into contracts, agreements and trust indentures to obtain
31 credit enhancement or liquidity support for its bonds and process the
32 issuance, registration, transfer and payment of its bonds and the
33 disbursement and investment of proceeds of the bonds.

34 14. With the consent of the governing body of the municipality or
35 county that formed the district, enter into agreements with persons
36 outside of the district to provide services to persons and property
37 outside of the district.

38 15. Use public easements and rights-of-way in or across public
39 property, roadways, highways, streets or other thoroughfares and other
40 public easements and rights-of-way, whether in or out of the geographical
41 limits of the district, the municipality or the county.

42 B. This article does not authorize:

43 1. A district to acquire, construct, operate or maintain an
44 electric generation or distribution system or natural gas distribution
45 system without the written consent of any affected public service

corporation, electric cooperative, agricultural improvement or power district or other district described in article XIII, section 7, Constitution of Arizona, the service area of which encompasses all or part of the district, if that entity is providing or is capable of adequately providing electrical utility service or natural gas utility service in the district.

2. A district to provide service outside its boundaries without the written consent of any affected public service corporation, electric cooperative, agricultural improvement or power district or other district described in article XIII, section 7, Constitution of Arizona, with a service area that lies outside of the district, if that entity is providing or is capable of adequately providing electrical utility service or natural gas utility service in the area that the district proposes to serve.

C. If a district is granted written consent pursuant to this section, the district shall provide a copy to the governor, the president of the senate, the speaker of the house of representatives and each commissioner of the ~~Arizona~~ corporation commission ~~no~~ NOT later than thirty days after consent is granted.

D. In connection with any power authorized by statute, the district may:

1. Contract.
2. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3.
3. Adopt and change a seal.
4. Sue and be sued.
5. Enter into development agreements, as defined in section 9-500.05 or as prescribed by section 11-1101.
6. Exercise the same right and power of eminent domain as a public service corporation pursuant to title 12, chapter 8, articles 2 and 3 to acquire any property or right-of-way, except political subdivision, county, state or federal property, for any public infrastructure purpose.

E. A district ~~which~~ THAT proposes to provide domestic water service in the certificated area of a public service corporation serving domestic water shall provide just compensation to the public service corporation pursuant to section 9-516.

F. Public infrastructure other than personalty may be located only in or on lands owned by ~~the~~ THIS state, a county, a municipality or the district or dedicated or otherwise designated as public roadways, highways, streets, thoroughfares, easements or rights-of-way, whether in or out of the district or the municipality. Personalty may be used only for purposes authorized by the district board.

G. An agreement pursuant to subsection A, paragraph 10 of this section may include agreements to repay all or part of such advances, fees and charges from the proceeds of bonds if issued or from advances, fees

1 and charges collected from other landowners or users or those having a
2 right to use any public infrastructure. A person does not have authority
3 to compel the issuance or sale of the bonds of the district or the
4 exercise of any taxing power of the district to make repayment under any
5 agreement.

6 H. A district shall not contract with a municipality for enhanced
7 municipal services unless the area for which the services are to be
8 provided is designated by the municipality as a slum or blighted area
9 pursuant to title 36, chapter 12, or an urban core business district of
10 the municipality determined by formal resolution of the municipality to be
11 in need of enhanced municipal services to encourage or preserve commercial
12 development in the area.

13 I. Notwithstanding title 34 or article 2 of this chapter, the
14 district at the option of the district board may enter into contracts for
15 the performance of district projects with landowners in the district after
16 calling for bids but before publishing notice of the award of a contract
17 if all of the following conditions are met:

18 1. The landowner or landowners own three-fourths or more of the
19 total land area of the district.

20 2. The landowner or landowners contract to perform the work at a
21 cost that does not exceed the cost specified in the bid of the bidder who
22 would have been awarded that bid.

23 3. The work for which the contract was let is to be financed
24 pursuant to this article.

25 4. All contracts and work executed pursuant to this section are
26 subject to those rules as the district board may prescribe.

27 J. NOTWITHSTANDING SECTION 32-1187, FOR A CONSTRUCTION CONTRACT FOR
28 PUBLIC INFRASTRUCTURE FOR THE DISTRICT:

29 1. TITLE 32, CHAPTER 10, ARTICLE 5 APPLIES.

30 2. THE DISTRICT SHALL REQUIRE THAT PROMPT PAY PROVISIONS DESCRIBED
31 IN TITLE 32, CHAPTER 10, ARTICLE 5 BE INCLUDED IN THE CONSTRUCTION
32 CONTRACT.

33 K. FOR THE PURPOSES OF SUBSECTION J OF THIS SECTION, "CONSTRUCTION
34 CONTRACT" HAS THE SAME MEANING PRESCRIBED IN SECTION 32-1181.