Senate Engrossed House Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 132

HOUSE BILL 2236

AN ACT

AMENDING SECTIONS 48-701, 48-707, 48-709, 48-717, 48-719 AND 48-723, ARIZONA REVISED STATUTES; RELATING TO COMMUNITY FACILITIES DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 48-701, Arizona Revised Statutes, is amended to read:

48-701. Definitions

In this article, unless the context otherwise requires:

1. "Clerk" includes any person or official who performs the duties of clerk of the municipality or county or any person appointed by the district board to be the district clerk pursuant to section 48-711, subsection D.

2. "County" means a county that forms a community facilities district pursuant to this article in an unincorporated area or in an incorporated area with the municipality's consent ~~for the sole purpose of financing school sites and facilities as prescribed in paragraph 12, subdivision (k) of this section~~.

3. "Debt service" means the principal of, interest on and premium, if any, on the bonds, when due, whether at maturity or prior redemption and fees and costs of registrars, trustees, paying agents or other agents necessary to handle the bonds and the costs of credit enhancement or liquidity support.

4. "District" means a tax levying community facilities district formed pursuant to this article 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 ~~for the sole purpose of financing school sites and facilities as prescribed in paragraph 12, subdivision (k) of this section~~.

5. "District board" means the board of directors of the district, which shall be comprised of the members of the governing body of the municipality or county, ex officio, or, at the option of the governing body, five directors appointed by the governing body under this article.

6. "Enhanced municipal services" means public service provided by a COUNTY OR municipality within the district at a higher level or to a greater degree than provided in the remainder of the COUNTY OR municipality, including such services as public safety, fire protection, street or sidewalk cleaning or landscape maintenance in public areas.

7. "General obligation bond" means a bond that is issued pursuant to section 48-719 and that is secured by a pledge of ad valorem taxes levied by the district.

8. "General plan" means the general plan described in section 48-702, subsection B, as the plan may be amended.

9. "Governing body" means the body or board which by law is constituted as the legislative department of the municipality or county.

10. "Municipality" means an incorporated city or town.

11. "Owner" means the person who, on the day the action, election or proceeding is begun or held, appears to be the owner of real property as shown on the property tax assessment roll.

12. "Public infrastructure" means all improvements listed in this paragraph that will result in a beneficial use principally to land within the geographical limits of the district and may include a district's share of any

improvements listed in this paragraph if the district board determines such share is proportionate to the beneficial use of such improvements to land within the geographical limits of the district, improvements within or outside the geographical limits of the district, necessary or incidental work, whether newly constructed, renovated or existing, and all necessary or desirable appurtenances. For the purposes of this paragraph, adoption by the district board of a resolution of intent pursuant to section 48-715 shall conclusively establish that the improvements or, if applicable, share of the improvements that are the subject of the resolution will result in a beneficial use principally to land within the geographical limits of the district. Public infrastructure improvements are:

(a) Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge.

(b) Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge.

(c) Water systems for domestic, industrial, irrigation, municipal or fire protection purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal, but not including facilities for agricultural irrigation purposes unless for the repair or replacement of existing facilities when required by other improvements permitted by this article.

(d) Highways, streets, roadways and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking.

(e) Areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking.

(f) Pedestrian malls, parks, recreational facilities other than stadiums, and open space areas for the use of members of the public for entertainment, assembly and recreation.

(g) Landscaping, including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems.

(h) Public buildings, public safety facilities and fire protection facilities.

(i) Lighting systems.

(j) Traffic control systems and devices, including signals, controls, markings and signage.

~~(k) School sites and facilities with the consent of the governing board of the school district for which the site or facility is to be acquired, constructed or renovated.~~

~~(l)~~ (k) Equipment, vehicles, furnishings and other personalty related to the items listed in this paragraph.

13. "Public infrastructure purpose" means:

(a) Planning, design, engineering, construction, acquisition or installation of public infrastructure.

(b) Acquiring, converting, renovating or improving existing facilities for public infrastructure.

(c) Acquiring interests in real property for public infrastructure.

(d) Establishing, maintaining and replenishing reserves from any source described in section 48-717 or from any other source in order to secure payment of debt service on bonds.

(e) Notwithstanding section 48-589, funding and paying from bond proceeds interest accruing on bonds for a period of not to exceed three years from their date of issuance.

(f) Providing for the timely payment of debt service on bonds or other indebtedness of the district.

(g) Refinancing any matured or unmatured bonds with new bonds.

(h) Incurring expenses of the district incident to and reasonably necessary to carry out the purposes specified in this paragraph.

14. "Revenue bonds" means those bonds that are issued pursuant to section 48-720 and THAT are secured by a pledge of revenues of the district or revenues collected by the COUNTY OR municipality and returned to the district.

15. "Treasurer" includes any person or official who performs the duties of treasurer of the municipality or county or any person appointed by the district board as the district treasurer pursuant to section 48-711, subsection D.

Sec. 2. Section 48-707, Arizona Revised Statutes, is amended to read:

48-707. <u>Notice and conduct of elections; waiver</u>

A. Any election under this article shall be a nonpartisan election called by posting notices in three public places within the boundaries of the district not less than twenty days before the election. Notice shall also be published in a newspaper of general circulation in the municipality or county or if there is no newspaper so circulated in the municipality in a newspaper of general circulation in the county in which the municipality is located once a week for two consecutive weeks before the election. The notice shall state:

1. The place of holding the election.

2. The hours during the day, not less than six, in which the polls will be open.

3. If it is a formation election, the boundaries of the proposed district.

4. If it is a bond election, the amount of bonds to be authorized for the district, the maximum rate of interest to be borne on the bonds, the maximum term of the bonds, not exceeding twenty-five years, and the purposes for which the monies raised will be used.

5. If it is an ad valorem tax levy election pursuant to section 48-723, the maximum tax rate per one hundred dollars of assessed valuation to be imposed, the purposes for which the monies raised will be used and the existing maximum tax rate, if any.

6. That a general plan is on file with the clerk.

B. The district board or the governing body, as applicable, shall determine the date of the election and the polling places for the election and may consolidate county precincts. For other than a formation election pursuant to section 48-705, subsection B, and an election held pursuant to subsection G of this section, precinct registers shall be used. The county recorder shall submit precinct registers on the request of the clerk, and if the district includes land lying partly in and partly out of any county election precinct, the precinct registers may contain the names of all registered voters in the precinct and the election boards at those precincts shall require that a prospective elector execute an affidavit stating that the elector is also a qualified elector of the district. For formation elections and elections held pursuant to subsection G of this section, a prospective elector shall execute an affidavit stating that the elector is the owner of land in the proposed district and is a qualified elector of this state or otherwise qualified to vote pursuant to section 48-3043 and stating the area of land in acres owned by the elector. Election board members may administer oaths or take all affirmations for these purposes. A community facilities district election held pursuant to this article is not subject to title 16, chapter 2, article 3.

C. Except as otherwise provided by this article, the election shall comply with the general election laws of this state, except that the words to appear on the ballots shall be for a formation election "district, yes" and "district, no", for a bond election "bonds, yes" and "bonds, no", for a tax election if no tax is in place "tax, yes" and "tax, no" and for a tax election to change an existing maximum or eliminate an existing tax "tax change, yes" and "tax change, no". The returns of election shall be made to the governing body or, if after formation, to the district board.

D. Within fourteen days after an election, the governing body, or if after formation, the district board, shall meet and canvass the returns, and if a majority of the votes cast at the election is in favor of formation, issuing the bonds, imposing the tax or changing the tax, the governing body or the district board, as appropriate, shall enter that fact on its minutes. The canvass may be continued from time to time. Failure of a majority to vote in favor of the matter submitted does not prejudice the submission of the same or similar matters at a later election.

E. If a person listed on the assessment roll is no longer the owner of land in the district and the name of the successor owner becomes known and is verified by recorded deed or other similar evidence of transfer of ownership, the successor owner is deemed to be the owner for the purposes of this article.

F. Notwithstanding any other provision of this article, if a petition for formation is signed by owners of all of the land in the district described in the petition and is approved by the municipality or county, the municipality or county may waive any or all requirements of posting,

publication, mailing, notice, hearing and landowner election. On receipt of such a petition, and after approval by an election of resident electors, if any, the municipality or county shall declare the district formed without being required to comply with the provisions of this article for posting, publication, mailing, notice, hearing or landowner election.

G. Notwithstanding any other provision of this article, if no person has registered to vote within the district within fifty days immediately preceding any scheduled election date, any election required to be held pursuant to this article shall be held with the vote by the owners of land within the district who are qualified electors of this state and other landowners according to section 48-3043. Each owner has the number of votes or portion of votes equal to the number of acres or portion of acres rounded upward to the nearest one-fifth of an acre owned in the district by that person.

H. FOR A DISTRICT THAT IS PROPOSED TO BE FORMED BY A COUNTY, A DISTRICT MAY BE FORMED ONLY IF A PETITION FOR FORMATION IS SIGNED BY THE OWNERS OF ALL OF THE LAND IN THE DISTRICT THAT IS DESCRIBED IN THE PETITION AND IF IT IS APPROVED BY THE COUNTY. IF THE DISTRICT IS PROPOSED TO BE FORMED IN A COUNTY ISLAND, AS DEFINED IN SECTION 11-251.12, IN EXISTENCE ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, THE PETITION MUST BE SIGNED BY THE OWNERS OF ALL OF THE LAND IN THE DISTRICT THAT IS DESCRIBED IN THE PETITION AND THE DISTRICT MUST BE APPROVED BY THE COUNTY AND BY THE MUNICIPALITY OR ALL MUNICIPALITIES THAT FORM THE COUNTY ISLAND. IF THE PETITION IS SIGNED BY THE OWNERS OF ALL OF THE LAND IN THE DISTRICT, THE COUNTY MAY WAIVE ANY OR ALL REQUIREMENTS OF POSTING, PUBLICATION, MAILING, NOTICE, HEARING AND LANDOWNER ELECTION. ON RECEIPT OF SUCH A PETITION, AND AFTER APPROVAL BY AN ELECTION OF ONE HUNDRED PER CENT OF THE RESIDENT ELECTORS, IF ANY, THE COUNTY SHALL DECLARE THE DISTRICT FORMED WITHOUT BEING REQUIRED TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE FOR POSTING.

Sec. 3. Section 48-709, Arizona Revised Statutes, is amended to read:

48-709. <u>Powers of a community facilities district</u>

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

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

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

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

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

5. Operate, maintain and repair public infrastructure.

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

7. Employ staff, counsel and consultants.

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

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

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

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

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

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

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

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

B. This article does not authorize:

1. A district to acquire, construct, operate or maintain an electric generation or distribution system or natural gas distribution 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 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.

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 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 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. ~~School sites and facilities, by agreement, may be transferred to a school district.~~

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

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

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

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

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

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

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

Sec. 4. Section 48-717, Arizona Revised Statutes, is amended to read:

48-717. Finances

~~A. Except as provided in subsection B of this section,~~ The projects to be constructed or acquired as shown in the general plan may be financed from the following sources of revenue:

1. Proceeds received from the sale of bonds of the district.
2. Monies of the municipality or county contributed to the district.
3. Annual tax levies.
4. Special assessments.
5. State or federal grants or contributions.
6. Private contributions.
7. User, landowner and other fees and charges.
8. Proceeds of loans or advances.
9. Any other monies available to the district by law.

~~B. A district formed by a county shall not levy an ad valorem tax pursuant to section 48-723 or issue general obligation bonds pursuant to section 48-719.~~

Sec. 5. Section 48-719, Arizona Revised Statutes, is amended to read:

48-719. General obligation bonds; tax levy

A. At any time after the hearing on formation of the district, the district board, or, if before formation, the governing body, may from time to time order and call a general obligation bond election to submit to the qualified electors of the district or to those persons who are qualified to vote pursuant to section 48-707, subsection G the question of authorizing the district board to issue general obligation bonds of the district to provide monies for any public infrastructure purposes consistent with the general plan. The election may be held in conjunction with the formation election.

B. If general obligation bonds are approved at an election, the district board may issue and sell general obligation bonds of the district.

C. If the bonds are to be sold in a public offering, no bonds may be issued by the district unless the bonds receive one of the four highest investment grade ratings by a nationally recognized bond rating agency.

D. The district may issue and sell refunding bonds to refund any general obligation bonds of the district. If general obligation bonds are issued to refund any general obligation bonds of the district no election on the issuance of such refunding bonds is required.

E. After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall annually levy and cause an ad valorem tax to be collected, at the same time and in the same manner as other taxes are levied and collected on all taxable property in the district, sufficient, together with any monies from the sources described in section 48-717, to pay debt service on the bonds when due. Monies derived from the levy of the tax provided in this section when collected constitute funds to pay the debt service on the bonds and shall be kept separately from other funds of the district.

~~F. A district formed by a county shall not call a general obligation bond election or issue general obligation bonds.~~

Sec. 6. Section 48-723, Arizona Revised Statutes, is amended to read:

48-723. District taxes; annual financial estimate and budget

A. Except as provided in subsection D of this section and at any time after the hearing on formation of the district, the district board, or, if before formation, the governing body, may call an election to submit to the qualified electors of the district or to the persons qualified to vote pursuant to section 48-707, subsection G the question of authorizing the district board to levy an ad valorem tax on the assessed value of all the real and personal property in the district at a rate or rates which do not exceed the maximum rate or rates specified in the ballot. All taxes attributable to the operation and maintenance expenses of the district, excluding expenses for an area described in section 48-709, subsection G, shall not exceed an amount equal to thirty cents per one hundred dollars of assessed valuation for all real and personal property in the district, unless a higher rate is approved by a vote of the electors of the district, or by the persons who are qualified to vote as provided in section 48-707, subsection G, voting at an election not less than three years after the date of the formation of the district. The election may be held in conjunction with the formation election. Once approved at an election, the maximum rate remains in effect until increased or decreased at a subsequent election. If a maximum rate is in effect, the district board, on petition of twenty-five per cent of the qualified electors of the district, or by those persons owning twenty-five per cent of the land area who are qualified to vote pursuant to section 48-707, subsection G, shall call an election to reduce the maximum tax rate but not below the lesser of that rate determined by the district board to be necessary to maintain the district's facilities and improvements or the actual rate then in effect. On the presentation to the district board of a petition signed by the owners of a majority of the property in the district, the district board shall adopt a resolution to reduce or eliminate the portion of the tax, beginning the next fiscal year, required for one or more enhanced municipal services specified in the petition. Signatures on a petition to reduce or eliminate a tax are valid for a period of sixty days.

B. The district may not levy, other than for the payment of debt service on general obligation bonds, at a rate or rates in excess of the maximum rate then in effect.

C. When levying an ad valorem tax, the district board shall make annual statements and estimates of the operation and maintenance expenses of the district, the costs of capital improvements to be financed by the tax levy or levies and the amount of all other expenditures for public infrastructure and enhanced municipal services proposed to be paid from the tax levy or levies and of the amount to be raised to pay general obligation bonds of the district, all of which shall be provided for by the levy and collection of ad valorem taxes on the assessed value of all the real and personal property in the district. The district board shall file the annual statements and estimates with the clerk. The district board shall publish a notice of the filing of the estimate, shall hold hearings on the portions of the estimate not relating to debt service on general obligation bonds and shall adopt a budget. The board, on or before the date set by law for certifying the annual budget of the COUNTY OR municipality, shall fix, levy and assess the amounts to be raised by ad valorem taxes of the district and shall cause certified copies of the order to be delivered to the board of supervisors and to the department of revenue. All statutes relating to the levy and collection of general county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, apply to the district taxes provided for by this section.

~~D. A district formed by a county shall not levy an ad valorem tax.~~

APPROVED BY THE GOVERNOR APRIL 17, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2006.