Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 206

HOUSE BILL 2358

AN ACT

CHANGING THE DESIGNATION OF TITLE 48, CHAPTER 36, ARIZONA REVISED STATUTES, TO "THEME PARK DISTRICTS"; AMENDING SECTIONS 48-6201, 48-6202, 48-6204, 48-6231, 48-6233 AND 48-6251, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 36, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 48-6256; AMENDING SECTIONS 48-6271, 48-6272, 48-6274 AND 48-6285, ARIZONA REVISED STATUTES; AMENDING LAWS 2005, CHAPTER 248, SECTION 2, AS AMENDED BY LAWS 2007, CHAPTER 216, SECTION 17; RELATING TO THEME PARK DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Heading change

The chapter heading of title 48, chapter 36, Arizona Revised Statutes, is changed from "THEME PARK AND SUPPORT FACILITY DISTRICT" to "THEME PARK DISTRICTS".

Sec. 2. Section 48-6201, Arizona Revised Statutes, is amended to read:

48-6201. Definitions

In this ~~title~~ CHAPTER, unless the context otherwise requires:

1. "Board" means the board of directors of a district.

2. "District" means a theme park ~~and support facility~~ district established pursuant to this chapter.

3. "Site host" means a city, county or Indian tribe, nation, community or band.

4. "Theme park" means any combination of recreational, entertainment, amusement and cultural venues and parking facilities with a central access designed and built around a particular time, place, story or subject, including consistent presentation of architecture, costuming, merchandise, food, games, rides and attractions.

~~5. "Vehicle support facility" means a new franchise motor vehicle dealer providing sales, rental and repair services.~~

Sec. 3. Section 48-6202, Arizona Revised Statutes, is amended to read:

48-6202. Formation of district

A. The governing bodies of a city with a population of more than one million persons, a county with a population of more than one hundred twenty-five thousand but less than one hundred fifty thousand persons and a city with a population of more than three thousand persons but less than five thousand persons that is located entirely in that county may jointly establish a theme park ~~and vehicle support facility~~ district as provided by this chapter. For the purposes of this subsection, the population shall be determined according to the most recent population estimate data produced by the ~~department of economic security~~ OFFICE OF EMPLOYMENT AND POPULATION STATISTICS at the time the district is established. The district ~~shall~~ MAY include theme park sites in ONE OR both cities ~~and~~ OR in the county establishing the district, ~~and a vehicle support facility site in at least the county establishing the district~~ OR IN ANY COMBINATION OF A CITY OR CITIES AND A COUNTY. The cities and the county shall jointly establish the geographical boundaries of the district, which shall include only the sites of the theme parks ~~and vehicle support facility~~.

B. The district is a corporate and political body and, except as otherwise limited, modified or provided by this chapter, has all of the rights, powers and immunities of municipal corporations.

C. The district is considered to be a tax levying public improvement district for the purposes of article XIII, section 7, Constitution of Arizona.

D. The district is regarded as performing a governmental function in carrying out the purposes of this chapter. The property acquired or constructed by the district, the activities of the district in maintaining and caring for the property and the monies derived by the district from operating the property are exempt from state and local income and property taxation.

Sec. 4. Section 48-6204, Arizona Revised Statutes, is amended to read:

48-6204. Administrative powers and duties

A. The board of directors, on behalf of the district, may:

1. Adopt and use a corporate seal.

2. Sue and be sued.

3. Enter into contracts, including intergovernmental agreements under title 11, chapter 7, article 3, as necessary to carry out the purposes and requirements of this chapter.

4. Adopt administrative rules as necessary to administer and operate the district and any property under its jurisdiction.

5. Acquire by any lawful means, except the power of eminent domain, and operate, maintain, encumber and dispose of real and personal property and interests in property.

6. Retain legal counsel and other consultants as necessary to carry out the purposes of the district.

B. The board of directors shall:

1. Appoint from among its members a chairman, a secretary and such other officers as may be necessary to conduct its business.

2. Designate a fiscal agent to deposit, hold, invest and disburse the district's monies.

3. Provide for the acquisition, construction, use and maintenance of the properties and interests owned or controlled by the district.

4. Keep and maintain a complete and accurate record of all of its proceedings. The board is a public body for purposes of title 38, chapter 3, article 3.1 and title 39, chapter 1.

5. Enter into intergovernmental agreements with the county and city, pursuant to title 11, chapter 7, article 3, for administrative and staff support and meeting accommodations for accomplishing the purposes of the district.

6. Enter into contracts and other agreements in the interest of the district or to carry out and accomplish the purposes of this chapter, including construction contracts and agreements with users of the theme parks ~~and vehicle support facilities~~.

7. Contract for consulting, legal, accounting and other outside professional services, including a professional facility management company.

Sec. 5. Section 48-6231, Arizona Revised Statutes, is amended to read:

48-6231. Constructing and maintaining theme parks; limitation on retail sales

A. The district may provide for the construction, financing, furnishing and maintenance of one or more theme parks ~~and vehicle support facilities~~ in both the city OR CITIES and the county establishing the district. The district shall own all buildings and other improvements it constructs, subject only to liens and other security interests of record. The district may construct its facilities on real property owned by the district or leased by the district from one or more site hosts as provided by section 48-6233.

B. Not more than one-half of the business conducted at any theme park facility may consist of retail sales of tangible personal property, measured either by the number of employees assigned to retail sales or the square footage of the facility used for retail sales. For the purposes of this subsection, "retail sales" means the sale of tangible personal property to an ultimate consumer. Retail sales do not include:

1. Sales of food and ~~beverage~~ BEVERAGES for consumption on the premises of the theme park facility.

2. The distribution without charge of promotional products that display the theme park logo or trademark.

3. Sales solely to employees of the theme park.

C. Title 34 applies to the district, except that notwithstanding title 41, chapter 23, the district may use alternative systems and procedures, including design-build construction and qualifications-based selection of contractors, either by direct selection or by public competition, to expedite the design and construction of any of its facilities or structures or any facilities or structures leased to it or used by it pursuant to an intergovernmental agreement. For the purposes of this subsection:

1. "Design-build" means a process of entering into and managing a contract between the district and another party in which the other party agrees to both design and build any structure, facility or other items specified in the contract.

2. "Qualifications-based selection" means a process of entering into and managing a contract between the district and another party in which the other party is selected by the district on the basis of the party's qualifications and experience in designing or constructing facilities, structures or other items similar to those the district is authorized to construct or lease.

Sec. 6. Section 48-6233, Arizona Revised Statutes, is amended to read:

48-6233. Site host relations

A. The district may locate any of its facilities on real property leased from one or more site hosts. The district may negotiate agreements with site hosts, including intergovernmental agreements pursuant to title 11,

chapter 7, article 3 if a site host is a public agency as defined in section 11-951, concerning the real property, infrastructure and parking to be provided by the site host. All agreements must:

1. Provide that the site host shall indemnify and hold the district harmless from any liability to the extent resulting from the negligent or intentional acts or omissions of the site host~~,~~ OR its representatives and agents or employees resulting from any access ways provided by the site host and reasonably used by the public for ingress and egress to the land, infrastructure and parking facilities provided by the site host for use in connection with any theme park ~~or vehicle support facility~~.

2. Require the site host to maintain insurance or an adequate self-insurance plan for any liability of the site host, with a waiver of sovereign immunity if necessary.

B. Before entering into an agreement with any site host, the district shall require assurance that the site host has the financial capability to perform its obligations under any agreement with the district.

C. If a site host is an Indian tribe, nation, band or community:

1. The site host must provide assurance to the district that the real property is not and will not be made part of an Indian reservation under the laws of the United States during the term of the lease agreement with the site host.

2. The site host must provide assurance to the district that the site host has legal authority to lease the real property to the district for uses consistent with the purposes of this chapter for the term of the lease agreement with the site host.

3. The district shall require as terms of the agreement between the district and the site host:

(a) A waiver of sovereign immunity to allow the district to enforce the agreement.

(b) The site host's consent to the jurisdiction of state and federal courts.

(c) A waiver of the right to require the district to exhaust tribal remedies before bringing an action in state or federal courts.

(d) That state and federal law will govern the interpretation of any agreements entered into between the district and the site host.

(e) That the site host will not prevent, impair or impede the imposition, collection and administration of district taxes as provided by section 48-6253.

4. Gambling shall not be allowed in the district pursuant to any tribal-state gaming compact under title 5, chapter 6. The district shall require, as a term of the agreement between the district and the site host, that the site host shall not operate or support gambling within fifty miles of the exterior boundaries of the district pursuant to any tribal-state gaming compact under title 5, chapter 6.

Sec. 7. Section 48-6251, Arizona Revised Statutes, is amended to read:

48-6251. Annual budget

A. On or before June 30 of each year, the board shall hold a public hearing to adopt a budget for the following fiscal year that includes:

1. District receipts during the preceding fiscal year.

2. Expenditures during the preceding fiscal year.

3. Estimates of amounts necessary for expenses during the following fiscal year, including amounts proposed for:

(a) Costs of planning, constructing, financing and maintaining the district's facilities.

(b) Administrative costs of the district.

4. Anticipated revenue to the district from each source in the following fiscal year.

5. A complete asset and liability statement.

6. A statement of profit or loss.

7. Cash on hand as of the date the budget is adopted and the anticipated balance at the end of the current fiscal year.

8. An itemized statement of commitments, reserves and anticipated obligations for the following fiscal year.

9. A description of the amount and nature of private funding and financing committed to theme park ~~and vehicle support facility~~ purposes as required by section 48-6272, subsection ~~C~~ D.

B. The board may amend the budget on a finding of good cause.

Sec. 8. Title 48, chapter 36, article 3, Arizona Revised Statutes, is amended by adding section 48-6256, to read:

48-6256. Performance audit; bonds; dissolution of district

A. THE AUDITOR GENERAL SHALL CONDUCT A PERFORMANCE AUDIT OF THE DISTRICT AND ITS OPERATIONS AS DEFINED IN SECTION 41-1278, WHICH SHALL BE COMPLETED NOT MORE THAN THREE HUNDRED MONTHS AFTER THE DATE OF THE INITIAL ISSUANCE OF BONDS AUTHORIZED BY SECTION 48-6272. THE AUDIT SHALL BE SUBMITTED TO THE BOARD OF DIRECTORS OF THE DISTRICT AND TO THE JOINT LEGISLATIVE AUDIT COMMITTEE OR ITS SUCCESSOR. THE AUDITOR GENERAL SHALL PROVIDE COPIES OF THE AUDIT TO THE SECRETARY OF STATE AND THE EXECUTIVE DIRECTOR OF THE ARIZONA LEGISLATIVE COUNCIL.

B. AT THE DIRECTION OF THE BOARD OF DIRECTORS BUT NOT LATER THAN SIXTY MONTHS AFTER THE DATE THE PERFORMANCE AUDIT IS DELIVERED TO THE JOINT LEGISLATIVE AUDIT COMMITTEE PURSUANT TO SUBSECTION A OF THIS SECTION:

1. THE BOARD OF DIRECTORS SHALL WIND UP THE AFFAIRS OF THE DISTRICT.

2. THE BOARD OF DIRECTORS SHALL SELL ALL DISTRICT PROPERTY AND OTHER ASSETS TO THE HIGHEST AND BEST BIDDERS AT PUBLIC AUCTION. THE PROCEEDS OF THE AUCTION SHALL BE USED TO RETIRE ALL OUTSTANDING DISTRICT OBLIGATIONS AND ANY REMAINING PROCEEDS SHALL BE TRANSFERRED TO THE STATE TREASURER FOR CREDIT TO THE STATE GENERAL FUND.

3. THE DISTRICT IS DISSOLVED. ON DISSOLUTION OF THE DISTRICT, THE BOARD SHALL NOTIFY THE EXECUTIVE DIRECTOR OF THE ARIZONA LEGISLATIVE COUNCIL OF THE DATE OF DISSOLUTION.

Sec. 9. Section 48-6271, Arizona Revised Statutes, is amended to read:

48-6271. Definitions

In this article, unless the context otherwise requires:

1. "Bond related expenses" means any expenses incurred by the district to issue and administer its bonds, including underwriting fees and costs, trustee fees, financial consultant fees, printing and advertising costs, paying agent fees, transfer agent fees, legal, accounting, feasibility consultant and other professional fees and expenses, credit enhancement fees, attorney and accounting fees and expenses related to credit enhancement, bond insurance or liquidity enhancement, remarketing fees, rating agency fees and costs, travel and telephone expenses and all other fees considered necessary by the district in order to market and administer the bonds.

2. "Bonds" means the revenue bonds of the district issued pursuant to this article.

3. "Theme park ~~and vehicle support facility~~ purpose" includes the following purposes:

(a) The capital costs of acquiring, designing, developing, constructing, reconstructing, equipping and improving theme park facilities ~~and vehicle support facilities~~ and directly related improvements and of on-site and off-site public infrastructure.

(b) The payment of bond obligations.

(c) Bond related expenses.

Sec. 10. Section 48-6272, Arizona Revised Statutes, is amended to read:

48-6272. Authorization of revenue bonds; conditional expiration

A. Subject to subsections D and E of this section, the district may issue negotiable insured revenue bonds pursuant to this article in a principal amount that is necessary to:

1. Provide sufficient monies for theme park ~~and vehicle support facility~~ purposes. The board ~~shall not~~ MAY segregate any theme park ~~or vehicle support facility~~ purpose for separate financing, ~~but shall include all theme park and vehicle support facility purposes in all areas of the district in the same issue of bonds at the same time~~ AND MAY ISSUE BONDS SEPARATELY OR TOGETHER, IN ONE OR MORE ISSUES.

2. Establish and fully or partially fund any reserves or sinking accounts established by the bond resolution.

3. Issue refunding bonds if the board considers refunding to be expedient. The board may provide for investing and holding the proceeds of the refunding bonds in trust for the benefit of the holders of the bonds being refunded.

4. Refund any bonds issued by the district if the bonds are secured from the same source of revenues as the bonds authorized in this article by issuing new bonds, whether the bonds to be refunded have or have not matured.

5. Issue bonds partly to refund outstanding bonds and partly for any theme park ~~and vehicle support facility~~ purpose consistent with this article.

B. Bonds issued pursuant to this article shall not exceed an outstanding principal amount of one billion dollars, except for refunding bonds and other bonds issued to refund outstanding bonds of the district.

C. The board shall authorize the bonds by resolution. The resolution shall prescribe:

1. The district's revenue sources that are pledged and dedicated to secure the bonds.

2. The rate or rates of interest, which may be fixed or variable, the date or dates on which interest is payable and the denominations of the bonds.

3. The date or dates of the bonds and maturity, which shall be within thirty years after the date of issuance.

4. The manner of executing the bonds.

5. The medium and place of payment.

6. The terms of redemption, which may provide for a premium for early redemption.

D. The board shall not issue bonds under this article unless it receives irrevocable and legally enforceable financial participation commitments from private nongovernmental entities for theme park ~~and vehicle support facility~~ purposes, INCLUDING FROM NEW MARKET TAX CREDITS, in an amount equal to ~~one-half~~ TWENTY PER CENT of the principal amount of the bond issue.

E. The authority of the board of directors to issue bonds under this article expires if the board fails to issue any bonds on or before December 31, ~~2013~~ 2020.

Sec. 11. Section 48-6274, Arizona Revised Statutes, is amended to read:

48-6274. Bond proceeds account

A. If the district issues bonds under this article, the board shall establish a bond proceeds account within the general fund consisting of monies received from the sale of the bonds.

B. The district may use monies in the bond proceeds account only for theme park ~~and vehicle support facility~~ purposes in the manner prescribed by this chapter.

C. The fiscal agent of the district shall administer and account for the bond proceeds account.

Sec. 12. Section 48-6285, Arizona Revised Statutes, is amended to read:

48-6285. Characteristics of bonds; negotiability; obligation; legal investments; exemption from taxation

A. Bonds issued under this article are fully negotiable within the meaning and for all purposes of the uniform commercial code, subject only to any provisions for registration, regardless of whether the bonds actually constitute negotiable instruments under the uniform commercial code.

B. The bonds, their transfer and the income from the bonds are at all times free from taxation in this state, EXCEPT THAT THE BOARD OF DIRECTORS IN ITS DISCRETION MAY ELECT THAT THE BONDS, THEIR TRANSFER AND THE INCOME FROM THOSE BONDS BE ISSUED AS TAXABLE IN THIS STATE.

C. Bonds issued under this article:

1. Are obligations of the district and are not general, special or other obligations of this state or of the county or city establishing the district. The members of the board and persons who execute the bonds are not personally liable for payment of the bonds.

2. Are payable only according to their terms.

3. Do not constitute a debt of this state or of the county or city establishing the district.

4. Are not enforceable against this state and payment of the bonds is not enforceable out of any monies other than the revenue pledged and assigned to or in trust for the benefit of the holder or holders of the bonds.

5. Are securities in which public officers and bodies of this state and of municipalities and political subdivisions of this state, all companies, associations and other persons carrying on an insurance business, all financial institutions, investment companies and other persons carrying on a banking business, all fiduciaries and all other persons who are authorized to invest in government obligations may properly and legally invest.

6. Are securities that may be deposited with public officers or bodies of this state and municipalities and political subdivisions of this state for purposes that require the deposit of government bonds or obligations.

Sec. 13. Laws 2005, chapter 248, section 2, as amended by Laws 2007, chapter 216, section 17, is amended to read:

Sec. 2. Conditional delayed repeal

Title 48, chapter 36, Arizona Revised Statutes, is repealed from and after December 31, ~~2013~~ 2020 if the board of directors fails to issue bonds pursuant to that chapter by that date.

APPROVED BY THE GOVERNOR APRIL 5, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2012.

Passed the House March 13, 20 12

by the following vote: 42 Ayes,

18 Nays, 0 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate March 28, 20 12

by the following vote: 18 Ayes,

12 Nays, 0 Not Voting

Steve Pierce

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____

Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____

Secretary of State

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

April 2, 2012,

by the following vote: 36 Ayes,

24 Nays, 0 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

2 day of April, 2012,

at 3:20 o'clock P M.

Secretary to the Governor

Approved this 5th day of

April, 2012,

at 10:28 o'clock A. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 5th day of April, 2012,

at 4:20 o'clock P M.

Jim Drake

acting Secretary of State

H.B. 2358