House Engrossed

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 62

HOUSE BILL 2135

AN ACT

AMENDING SECTIONS 48-2021, 48-2045, 48-2065 AND 48-2081, ARIZONA REVISED STATUTES; RELATING TO SANITARY DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 48-2021, Arizona Revised Statutes, is amended to read:

48-2021. Issuance of bonds; subsequent bond issues

A. If a majority of the votes cast at a bond election favors the bonded indebtedness proposed, bonds of the district for the amount stated shall be issued and sold.

B. The board of directors ~~shall~~, subject to ~~the provisions of~~ this article, SHALL prescribe by resolution the form of the bonds and interest coupons attached thereto. The bonds shall be payable serially over a period of not more than twenty years from the date thereof at a place fixed by the board and designated in the bonds, together with the interest thereon from the date of the bonds until paid, EXCEPT THAT IF THE INITIAL PURCHASER OF THE BONDS IS THE UNITED STATES OF AMERICA OR ANY DEPARTMENT, DIVISION OR AGENCY OF THE UNITED STATES OF AMERICA, THE BONDS MAY MATURE OVER A PERIOD THAT DOES NOT EXCEED FORTY YEARS AND THREE MONTHS. Interest shall be payable semiannually at the rate or rates set by the accepted bid, which shall not exceed the maximum rate of interest set forth in the resolution calling the election. The bonds may be refunded. The board of directors may provide for their redemption before maturity on giving such notice as the board determines to be reasonable and for the payment of a premium at redemption if the board determines the premium to be reasonable or advisable.

C. The bonds may be issued in such denominations as the board of directors determines, except that no bond shall be of a denomination less than five hundred nor more than ten thousand dollars. Each bond shall be signed by the chairman of the board of directors and countersigned by the auditor of the sanitary district, and the seal of the district shall be affixed thereto. The interest coupons of the bonds, if any, shall be numbered consecutively and shall be signed by the chairman of the board of directors and the auditor of the district by their engraved or lithographed signatures. If any officer whose signature or countersignature appears on a bond or interest coupon ceases to be such officer, either before or after delivery of the bond to the purchaser, the signature or countersignature shall be valid for all purposes as if the officer had remained in office.

D. The validity of the bonds, after their issuance, shall not be questioned in any court, except on the ground that a provision of this article authorizing their issuance is unconstitutional or that proper notice of the bond election was not given.

E. When bonds have been issued by a sanitary district and the proceeds of the sale thereof have been expended as authorized by this article, the board of directors may, by resolution passed by a vote of not less than two-thirds of its members, determine that additional bonds for carrying out the purposes of the district should be issued. Thereupon the board of directors shall cause another survey and report to be made. ~~Upon~~ ON approval thereof as provided by this article for an original report, the board shall

submit to the qualified electors of the district, in the manner prescribed by section 48-2020, the question of issuing additional bonds. If a majority of the votes cast thereon is in favor of issuing the additional bonds, they may be issued and sold and the proceeds disposed of in the manner prescribed by subsections A, B, C and D of this section and by section 48-2022.

F. The district may issue refunding bonds to refund all or any portion of an issue of bonds issued pursuant to this section in the manner prescribed by title 35, chapter 3, article 4.

Sec. 2. Section 48-2045, Arizona Revised Statutes, is amended to read:

48-2045. Plans; limitation on assessment

Before passing the resolution of intention, PRELIMINARY plans~~, specifications and estimates of the cost~~ THAT SHOW THE LOCATION AND THE TYPE AND CHARACTER OF THE PROPOSED IMPROVEMENT and THE expenses of the improvement shall be prepared by the engineer and filed with the clerk. The assessment for any lot shall not exceed its proportion of the estimate.

Sec. 3. Section 48-2065, Arizona Revised Statutes, is amended to read:

48-2065. List of unpaid assessments; issuance of bonds; denominations; due date

A. After the prescribed time from the date of the warrant has expired and after the sanitary district has recorded the return, the board shall make and certify a complete list of all unpaid assessments ~~which~~ THAT amount to twenty-five dollars or more on any assessment.

B. If any person, before certification of the list, presents to the board an affidavit that he is the owner of a lot on the list, accompanied by the certificate of a searcher of record that the person is the owner of record, and notifies the board, in writing, that he desires no bond to be issued for the assessment on the lot, the assessment shall not be included in the list and shall remain collectible as provided in this article. The failure to file the notice bars any defense against the bonds, except for the defense that the board did not have authority to issue the bonds.

C. The clerk shall present the list to the district at its next meeting after the return has been recorded. At any time after awarding a contract for construction or acquisition, the district ~~may,~~ by resolution, MAY direct improvement bonds to be issued in an amount, which shall not exceed the amount of unpaid assessments exceeding twenty-five dollars as may be shown on the certified list. The resolution shall prescribe the maximum number and denomination of the bonds, and the times when payable, which shall be so fixed that an approximately equal amount of principal shall be paid each year or any approximately equal aggregate amount of principal and interest shall be paid each year until the whole amount is paid. The bonds shall mature in a period ~~which~~ THAT does not exceed twenty-five years and three months from the date of the bonds, EXCEPT THAT IF THE INITIAL PURCHASER OF THE BONDS IS THE UNITED STATES OF AMERICA OR ANY DEPARTMENT, DIVISION OR AGENCY OF THE UNITED STATES OF AMERICA, THE BONDS MAY MATURE OVER A PERIOD THAT DOES NOT EXCEED FORTY YEARS AND THREE MONTHS. The denominations of the

bonds shall be fixed by the district. The district may provide in the form of the bond for redemption before maturity by giving such notice as the district determines to be reasonable and by the payment of a premium at redemption if the district determines a premium is advisable. The resolution shall also fix the place, if any, other than the office of the treasurer, at which the bonds and the interest are payable.

D. The bonds shall be issued as of the date determined by the district and shall bear interest from such date at the rate not to exceed that specified in the resolution of intention. They shall have semiannual interest payments, the first of which is payable on January 1 or July 1, as the case may be, occurring no earlier than ninety days after the later of the date of the bond or the expected completion of the work, and shall be for the interest accrued at that time.

E. The due date of all bonds is January 1 or July 1, as stated on the face of the bonds, in the years in which they respectively become due.

F. The district may sell the bonds at public sale, or if the district has a population of more than two thousand persons and has been in existence for ten or more years at public or private sale, at a price at or above par and accrued interest to the date of payment, and at an interest rate not exceeding the maximum rate set in the resolution of intention. If the bonds are not sold by the district they shall be delivered to the contractor for the amount of the assessments remaining unpaid, and the bonds shall bear interest at the maximum interest rate set forth in the resolution of intention.

G. If the bonds are sold before the work or acquisition is completed, the proceeds from the sale of the bonds shall be placed in a special fund to be held by the treasurer and to be used to pay incidental expenses and payments for construction or acquisition. Proceeds from the sale of the bonds shall be used for the acquisition mentioned in the resolution of intention or to make semimonthly or monthly payments to the contractor on a basis of ninety per cent of the value of the work actually performed as estimated by the district or engineer employed for such purposes to and including the fifteenth or last day of each calendar month. The balance shall be paid after the district has recorded a certificate of substantial completion of the work described in the resolution of intention, in the same manner as the recording of the assessment. The district shall record the certificate after the work has been completed to its satisfaction. The district shall also cause a copy of the notice of completion to be mailed to each property owner in the same manner as the notice of hearing on the assessment. Pending use of the bond proceeds, the treasurer may invest the proceeds in any investments for which sinking funds of this state may be invested or in the pooled investment fund established under section 35-326. Notwithstanding the foregoing, if bond anticipation notes have been issued, the bond proceeds, or so much as are necessary, shall be used to redeem the notes.

H. Refunding bonds may be issued to refund all or any portion of an issue of bonds issued and sold pursuant to this section in the manner prescribed by title 35, chapter 3, article 4.

Sec. 4. Section 48-2081, Arizona Revised Statutes, is amended to read:

48-2081. Bond anticipation notes; form; procedures applicable

A. If the board determines and states in the resolution of intention that improvement bonds shall be issued, bond anticipation notes may be sold at any time after the award of a construction contract, EXCEPT THAT BOND ANTICIPATION NOTES TO PAY THE ESTIMATED ENGINEERING FEES MAY BE ISSUED AT ANY TIME AFTER THE ADOPTION OF THE RESOLUTION ORDERING THE IMPROVEMENT.

B. Bond anticipation notes shall be paid solely from the proceeds of the sale of improvement bonds and monies collected from property owners who want to pay all or part of their assessments in cash before the filing of the certified list of unpaid assessments as provided in section 48-2065, OR FOR BOND ANTICIPATION NOTES ISSUED TO PAY ESTIMATED ENGINEERING FEES, FROM THE PROCEEDS OF THE SALE OF IMPROVEMENT BONDS OR FROM A TAX LEVY IMPOSED BY THE DISTRICT PURSUANT TO SECTION 48-2056, SUBSECTION B. The notes may be in such form and denomination as the board provides. The notes shall be executed by the chairman of the board and attested by the secretary. The notes may bear interest from their date at a rate not in excess of the maximum rate shown in the resolution of intention. The term of the notes shall not be more than six months beyond the date set for completion of the construction. The board may repay such notes before maturity and without penalty or extend the life of the notes if the term of the construction contract is extended or if any default is made by the contractor. The notes shall be authorized by resolution of the board.

C. The total amount of notes issued for any improvement shall not be greater than the aggregate of ninety per cent of the contract price and the total estimated amount of incidental expenses. The notes shall be sold at not less than par at either public or private sale. If authorized by the board, the chairman may enter into loan agreements with the purchaser of the notes relative to:

1. The time and place of delivery.

2. The sale of improvement bonds to the purchaser of the notes if the district is unable to procure a purchaser willing to purchase the bonds when issued.

3. Making the demand on the owners of property for payment in cash.

4. Collection of cash payments from persons who want to pay their assessments in cash and application of such cash payments to the repayment of the notes.

5. Payment of an additional fee to the purchaser of the note to cover the administrative expenses of the cash collections if the purchaser is the person to whom cash collections are made.

D. To secure the payment of the notes the loan agreements may also provide for a collateral assignment to the purchaser of the notes of all cash collections, the warrant and the district's interest in the performance bond.

E. The proceeds from the sale of the notes shall be placed in a special fund to be held by the treasurer and used for payment of incidental expenses and payments to the construction contractor.

F. Proceeds from the sale of the notes shall be used to make semimonthly or monthly payments to the contractor on a basis of ninety per cent of the value of the work actually performed, as estimated by the engineer employed for such purpose, up to and including the fifteenth or last day of each calendar month. The balance shall be paid to the contractor after the sale of the bonds solely from the proceeds from the bond sale, or if bonds equal to the balance remaining cannot be sold, the balance shall be paid by delivery of a similar principal amount of bonds to the contractor.

G. The issuance of bond anticipation notes constitutes an assignment to the district of the monies due the contractor under the construction contract. The district may agree with the contractor that the district will make the demands for cash payments as provided in section 48-2058 or may authorize the purchaser of the bond anticipation notes to make the cash collections.

H. If bonds are issued to represent any assessments remaining unpaid on the date the list is certified, the district shall sell the bonds and use the proceeds to redeem the notes and pay the balance due to the contractor.

I. In addition to any incidental expenses included in the assessment, if bond anticipation notes are issued, the notes may also include in the incidental expenses all interest accruing on the bond anticipation notes, the added costs of cash collections, if any, and all legal or financial fees incurred in the issuance and sale of the bond anticipation notes.

J. If bond anticipation notes have been issued and the contractor has been paid in accordance with subsection F of this section, the district shall apply the proceeds collected from demands on the property owners to the reduction of the outstanding portion of the bond anticipation notes and, if the notes have been paid, to the contractor to reduce any balance due him.

Sec. 5. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

NOT ENACTED

APPROVED BY THE GOVERNOR APRIL 16, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 2010.