

**YAVAPAI COUNTY BOARD OF SUPERVISORS
SPECIAL DISTRICTS ADMINISTRATION**



**HANDBOOK FOR COUNTY IMPROVEMENT
DISTRICTS WITH LOCAL GOVERNING BOARDS**

MARCH 2013

TABLE OF CONTENTS

	Page
INTRODUCTION.....	3
POST-ESTABLISHMENT BASICS.....	6
AGENDAS AND MEETINGS.....	9
BOUNDARY CHANGES.....	14
BUDGET REQUIREMENTS AND GENERAL OBLIGATIONS OF THE DISTRICT.....	18
ELECTIONS.....	24
IMPROVEMENT PROCESS.....	26
DISSOLUTION OF A DISTRICT.....	30

INTRODUCTION

An improvement district can be an effective way for a community to solve problems related to roads, water, sewer, lighting and other amenities while ensuring that everyone who benefits from the solution also pays their fair share of the solution. While Yavapai County advocates local governing boards for improvement districts whenever possible because it allows for local decision-making, it also wishes to assist new districts by providing basic information and to make those considering establishment of this type of district aware of the responsibilities that follow establishment.

“County Improvement District” is a term used to describe certain types of improvement districts that may be established under Title 48, Chapter 6 of the Arizona Revised Statutes. The types of County Improvement Districts that can have a local governing board are listed below:

- **Domestic Water Improvement District (DWID)** – may be established for the acquisition, construction, reconstruction or repair of waterworks for the delivery of water for domestic purposes. Improvements may be financed through the sale of bonds or through a loan provided by the Water Infrastructure Finance Authority of Arizona. Domestic Water Improvement Districts may charge user fees and connection fees in addition to levying a property tax for maintenance and operation of the district. The district is governed by a local elected board.
- **Domestic Wastewater Improvement District (DWWID)** – may be established for the purpose of building a wastewater system or purchasing an existing domestic wastewater treatment facility within the district and, if necessary, making improvements to the system. Improvements may be financed through the sale of bonds or through a loan provided by the Water Infrastructure Finance Authority of Arizona. Domestic Wastewater Improvement Districts may charge user fees and connection fees in addition to levying a property tax for maintenance and operation of the district. The district is governed by a local elected board.
- **Road Improvement and Maintenance District (RIMD)** – may be established to improve and provide maintenance for a road that is not built to County standard. Roads improved and maintained through this type of district must be public roads. The district is governed by a local elected board.
- **Road Enhancement Improvement District (REID)** - may be established for the purpose of enhancing one or more roads or highways and providing for ongoing maintenance of the enhancements, or a district that is converted from a county improvement district formed for road enhancement improvements that require ongoing maintenance. The district is governed by a local elected board.

When a County Improvement District is established it is a **governmental entity** that has powers similar to those of a County Board of Supervisors. While the County Board of Supervisors is the body authorized to create improvement districts, it is the Arizona State Legislature that grants that authority and it is the State Legislature that makes the laws that govern the operation of improvement districts. In addition to powers that are specifically described in Title 48, Chapter 6 of the Arizona Revised Statutes, County Improvement Districts also have the following powers as defined in A.R.S. §48-909(B):

B. In addition to the powers specifically granted by or reasonably inferred from this article, an improvement district through its board of directors may:

- 1. Acquire by gift, purchase, condemnation or otherwise in the name of the district and own, control, manage and dispose of any real or personal property or interest in such property necessary or convenient for the construction, operation and maintenance of any of the improvements provided for by this article.***
- 2. Join with any other improvement district, any city, town, governmental agency or Indian tribe, or any agency or instrumentality of an Indian tribe, or any person in the construction, operation or maintenance of any of the improvements hereby authorized.***
- 3. Join with any other improvement district or any city, town, county or Indian tribe, or any agency or instrumentality of an Indian tribe, in improving streets running upon or along the boundary of the district and levy assessments and issue bonds for the district's part of the cost of such improvements.***
- 4. Sell, lease or otherwise dispose of any property of the district or interest in such property when the property is no longer required for the purposes of the district or the use of which may be permitted without interfering with the use thereof by the district.***
- 5. Sell or otherwise dispose of any property or material acquired in the construction or operation of any improvements as a by-product or otherwise, and acquire rights-of-way for such disposal by condemnation or otherwise.***
- 6. Accept from the state of Arizona or the federal government, or any agency, department or instrumentality of either, grants for or in aid of the construction of any of the improvements provided for by this chapter.***
- 7. Notwithstanding any other law, sell improvement bonds to the federal government, or any agency, department or instrumentality of the federal government, for the construction of any of the improvements provided by this chapter.***
- 8. Enter into contracts with the state of Arizona or the federal government, or any agency, department or instrumentality of either or both, for the construction or supervision of construction by the state of Arizona or the federal government, or any agency, department or instrumentality of either or both, but reserving to the district the right to assess against the property benefited by the improvement, and located within the district, that portion of the cost of the improvement which does not qualify for aid under a state or federal grant.***
- 9. Operate, maintain and repair the streets within the district and any improvements made pursuant to this chapter.***
- 10. Do all things incidental to the exercise of the powers granted by this article.***

As a **governmental entity**, a County Improvement District has the ability to levy a property tax on the properties located within the boundaries of the improvement district in order to pay for maintenance and operation of the district. Property taxes are levied against the assessed valuation of each property in the district, meaning that each property may pay a different amount of tax depending upon its assessed value. A district also has the authority to levy assessments against real property in the district in

order to pay for improvements. Assessments are not property taxes and are not based on the assessed value of property but instead are based on benefit to each property in the district.

While County Improvement Districts have substantial powers, they also have substantial responsibilities that accompany those powers. The purpose of this handbook is to provide to established districts with local governing boards, and to those who are considering requesting establishment of a County Improvement District with a local governing board, reasonably detailed information about statutorily-required responsibilities inherent to County Improvement Districts. It is hoped that those who read it will find it useful.

POST-ESTABLISHMENT BASICS

Petitions for establishment have been circulated and filed with the County; the Board of Supervisors has held a hearing on the request for establishment of the district, ordered the establishment of the district and appointed the initial governing board for the district. What was a “proposed district” is now a governmental entity. What now?

Sign the oath of office. Yavapai County will provide oath of office forms and copies of the Arizona Open Meetings Law for each person appointed to the initial governing board. A member may not take his seat on the board until the oath of office has been signed and notarized.

Decide which members of the initial governing board will serve 2-year terms and which will serve 4-year terms. Arizona Revised statutes provide that *immediately* after appointment by the Board of Supervisors the members of the governing board “shall meet and divide themselves by lot into two classes as nearly equal in number as possible.” Members of the “first class” serve 4-year terms and members of the “second class” serve 2-year terms. Then, at the district’s first election for governing board members, the positions designated for 2-year terms are elected to 4-year terms so that all members of the governing board serve 4-year terms but the terms are now staggered with a certain number of board positions being up for election every 2 years.

If someone appointed to the initial governing board resigns before the expiration of his term, the remaining members of the board appoint a “qualified” replacement.

- If the improvement district is a DWID or DWWID, “qualified” means the person lives in the district and is registered to vote **or** owns property in the district and is registered to vote anywhere in the state of Arizona.
- If the improvement district is a RIMD or REID, “qualified” means the person lives in the district and is registered to vote.

Determine when, where and at what time the district’s board of directors will hold its meetings and where it will post agendas of those meetings. A special district may post on its website, in a conspicuous manner, a statement indicating where all public notices of their meetings will be posted, including the physical and electronic locations, and also give additional public notice as is reasonable and practicable as to all meetings. A district may also post all of its public meeting notices on its website and give additional public notices as is reasonable and practicable as to all meetings. Technological problems or failures that prevent the posting of public notices does not prevent the district from holding the meeting for which the notice was posted provided that the district complies with all other public notices requirements set forth in A.R.S. §38-431.02.

Districts that do not post public meeting information on their website will need to file with the Clerk of the Board of Supervisors a statement indicating where all public notices of their meetings will be posted. A standard form for this purpose is available on the Special Districts department page of the Yavapai County website. The district should complete the form and send it to the Clerk of the Board. The Clerk will sign the form, file the original in his or her office, and send a copy back to the district, which must post it at the location where notices are posted. The form does not need to be filed with the Board of Supervisors again unless the information on it changes.

Talk to the County Treasurer's Office about services related to district funds. A.R.S. §48-901(18) defines the "treasurer" for the district as the County Treasurer. Contact Sara Davis, Yavapai County Chief Deputy Treasurer, at (928) 771-3233 for information about services provided by the Treasurer's Office. There are some instances in which a district may use services of a bank, but they are limited by statute.

Consider whether the members of the governing board will personally handle day-to-day operations of the district or whether an administrator will need to be hired. Upon establishment improvement districts really don't have any funds and it may take some time before funds are actually available to hire administrative help but it is something to think about, especially if there are no board members willing or able to take on administrative responsibilities. There are companies and/or individuals who can provide services. Check with other improvement districts to see if they are contracting for administrative services and who they are using.

Determine who will serve as the district's legal counsel. The Yavapai County Attorney's Office is not authorized to provide legal advice to improvement districts with local governing boards and an improvement district will have need of legal advice from time to time. A district may also have need of a bond attorney. Check with other improvement districts to find out who they have hired as legal counsel, or contact the State Bar of Arizona toll-free at 866-482-9227 or visit their website at www.azbar.org and click on the "Find a Lawyer" link at the top of the page.

Be aware that improvement district records may be public records. As a **governmental entity** most records of an improvement district are public records and must be made available for public inspection upon request. The most notable exception to this is executive session minutes of the board of directors (this subject is addressed in detail in the "Agendas and Meetings" section of this handbook). When someone asks to see district records, it is very important that their request be responded to as quickly as possible. If someone requests a copy of a district record, the district may charge a reasonable fee to provide the copy but it must provide the copy. A.R.S. §39-121 through §39-121.03 deals with inspection of public records and an improvement district board of directors should be familiar with the requirements as there are statutory penalties for failure to comply.

Become familiar with Title 48, Chapter 6 of the Arizona Revised Statutes. Title 48, Chapter 6 (A.R.S. §48-901 through §48-1098) provides most of the statutory information needed by an improvement district. An improvement district board of directors should be familiar with the statutory requirements contained in this title and chapter. There are certain other statutes related to open meetings, elections, budgeting and public records that a board of directors should also be familiar with and those statutory citations will be provided where appropriate in this handbook. The Arizona State Legislature's website has the Arizona Revised Statutes available online at the following address:

<http://www.azleg.gov/ArizonaRevisedStatutes.asp>

AGENDAS AND MEETINGS

The governing board of a County Improvement District is required by law to adhere to the Arizona Open Meetings Law (A.R.S. §38-431 through §38-431.08), which means that not only must district board meetings be held in public but that an agenda containing information about what will be discussed or considered at the meeting must be posted *at least* 24 hours in advance of the meeting. In addition, the district must also provide for written or recorded minutes of each meeting.

What constitutes a meeting?

- If the district's governing board has three members, then anytime that **two or more** of those members want to discuss district business it's a meeting and an agenda must be posted.
- If the district's governing board has five members, then anytime that **three or more** of those members want to discuss district business it's a meeting and an agenda must be posted.

A definition of "district business" could be considered as anything relating to matters currently pending before the governing board or anything that may come before the governing board at some time in the future.

What does "open meeting" really mean?

A.R.S. §38-431.01(A) defines "open meeting" as follows:

All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.

If the meeting includes a hearing, for example a hearing on user fees, the budget or perhaps a hearing regarding assessments, the governing board must allow public comment. A governing board may also wish to allow public comments on agenda items that are not hearings.

What must be included on an agenda?

A.R.S. §38-431.02(H) states that:

Agendas required under this section shall list the specific matters to be discussed, considered or decided at the meeting. The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.

In addition to listing specific matters, the agenda also includes the name of the district, the location of the meeting, the date of the meeting and what time the meeting will begin. Here's an example of what an agenda might look like:

NOTE: This agenda may be amended subject to the provisions of A.R.S. §38-431.02.

**NOTICE OF PUBLIC MEETING & AGENDA
ABC DOMESTIC WATER IMPROVEMENT DISTRICT**

October 1, 2007

**1234 Washington Avenue
Anytown, Arizona**

7:00 p.m.

1. Approve minutes of meeting of September 1, 2007.
2. Consider approval of two-year Intergovernmental Agreement with the Arizona Department of Water Resources, in the amount of \$10,000 (\$5,000 per year) for the State Standards Work Group.
3. Consider quitclaiming an easement on parcel 108-32-039, to Joe and Jane Citizen.
4. Consider approval of a professional services contract with XYZ Associates, L.L.C. for evaluation of the district's water delivery system at a total cost of \$20,000.
5. Study session regarding new Arizona Department of Environmental Quality regulations. No action will be taken on this item.
6. Convene in executive session pursuant to A.R.S. §38-431.03(A)(3) and (A)(4) for legal advice, discussion and consultation regarding contract with AAA Water Line Maintenance Company.
7. Reconvene in open session for discussion and possible action regarding renewal of contract with AAA Water Line Maintenance Company.

COPIES OF THE AGENDA ARE AVAILABLE AT THE DISTRICT OFFICE, 1234 WASHINGTON AVENUE, ANYTOWN, ARIZONA, MONDAY THROUGH FRIDAY BETWEEN THE HOURS OF 8:00 A.M. AND 5:00 P.M.

Minutes of Board Meetings

A.R.S. §38-431.01(B) requires the following with regard to the minutes of governmental entities:

All public bodies shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, such minutes or recording shall include, but not be limited to:

- 1. The date, time and place of the meeting.***
- 2. The members of the public body recorded as either present or absent.***
- 3. A general description of the matters considered.***
- 4. An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material.***

It is recommended that a district keep written minutes of all meetings on a permanent basis. With the exception of executive session minutes, the minutes of a governing board's meetings are public record.

Executive Sessions

Sometimes a governing board may find it necessary to meet in "executive session", which is a meeting from which the general public is excluded. While state law allows for such private meetings, the law is also very specific about the purposes for which executive sessions may be held and a governing board is prohibited from taking any action in executive session. A.R.S. §38-431.03 sets forth the requirements for executive session as follows:

A. Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:

- 1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.***
- 2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.***
- 3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.***
- 4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding***

contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.

5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.

6. Discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.

7. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.

B. Minutes of and discussions made at executive sessions shall be kept confidential except from:

1. Members of the public body which met in executive session.

2. Officers, appointees or employees who were the subject of discussion or consideration pursuant to subsection A, paragraph 1 of this section.

3. The auditor general on a request made in connection with an audit authorized as provided by law.

4. A county attorney or the attorney general when investigating alleged violations of this article.

C. The public body shall instruct persons who are present at the executive session regarding the confidentiality requirements of this article.

D. Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorneys or representatives as provided in subsection A, paragraphs 4, 5 and 7 of this section. A public vote shall be taken before any legal action binds the public body.

E. Except as provided in section 38-431.02, subsections I and J, a public body shall not discuss any matter in an executive session which is not described in the notice of the executive session.

F. Disclosure of executive session information pursuant to this section or section 38-431.06 does not constitute a waiver of any privilege, including the attorney-client privilege. Any person receiving executive session information pursuant to this section or section 38-431.06 shall not disclose that information except to the attorney general or county attorney, by agreement with the public body or to a court in camera for purposes of enforcing this article. Any court that reviews executive session information shall take appropriate action to protect privileged information.

Minutes of executive sessions are not public records. It is recommended that executive sessions not be recorded electronically.

Emergency Meetings

Sometimes it is necessary to have an emergency meeting of the governing board. In the case of a true emergency, the governing board should give such notice as is possible but in any event it must post notice of the emergency meeting within 24 hours after the meeting. The notice that is posted must include the specific matters discussed, considered or decided at the meeting.

More Information about the Open Meetings Law

The Arizona Ombudsman – Citizens' Aide has developed an excellent handbook about the Open Meetings Law and it is available on the Special Districts department page of the Yavapai County website at the following address:

<http://yavapai.us/sd>

Posting agendas, holding meetings in public and providing minutes of governing board meetings is very serious business. The Arizona Attorney General's Office has a team of attorneys devoted to enforcement of the Open Meetings Law. It is known as the Open Meetings Law Enforcement Team or OMLET for short. Just think about eggs that have been broken and beaten, and you'll have a pretty good idea of what it will feel like if you run afoul of the Open Meetings Law!

BOUNDARY CHANGES

County Improvement Districts have the ability to change their boundaries, either by annexing new properties or by deannexing properties that are currently in the district. The process for boundary changes is the same as the process for establishment of a County Improvement District and it is set forth in A.R.S. §48-906(D) below:

Additions to and alterations of an improvement district shall be made as follows:

1. A petition addressed to the district governing board requesting the addition or alteration may be filed with the clerk of the governing body, if signed by a majority of the persons owning property and by the owners of fifty-one per cent or more of the assessed valuation of the property within the limits of the proposed addition or alteration.

2. A petition with the required number of signatures shall not be declared void on account of any alleged defect, but the governing body shall allow the petition to be amended in form and substance to conform to the requirements of this article. One or more similar petitions, or copies of the same petition with additional signatures, for the addition to or alteration of the improvement district may be filed before the time of the hearing on the first petition, and shall be considered as though filed with the first petition. The petition shall be presumed to contain the signatures of the persons whose signatures appear on the petition, unless the contrary is proved.

3. The petition shall set forth:

(a) The name of the improvement district to which the addition or alteration is proposed.

(b) The necessity for the proposed addition or alteration.

(c) That the public convenience, necessity or welfare will be promoted by the addition or alteration of the district and that the property to be included in the district will be benefited.

(d) The boundaries of the proposed addition or alteration.

4. Each copy of the petition shall be verified by one of the petitioners and shall be accompanied by a plat or sketch indicating the approximate area and boundaries of the district.

5. On receipt of a petition for an addition or alteration of a district, the governing body shall set a date for a hearing on the petition not later than forty days after presentation of the petition. At the hearing all interested property owners may appear and be heard on any matter relating to the addition to or alteration of the district. Any person wishing to object to the addition or alteration may file, before the date set for the hearing, the person's objections with the clerk of the governing body.

6. Notice announcing the hearing and stating the boundaries of the proposed addition or alteration shall be published twice in a newspaper of general circulation in the county within which the district is located. The publications shall be one week apart, and the first publication shall be not less than ten days before the date of the hearing. The notice shall also be mailed by first class mail at least twenty days before the hearing to the property owners within the area of the proposed addition or alteration according to the names and addresses that appear on the most recent property tax assessment roll.

7. Notice announcing the hearing and stating boundaries of the proposed addition or alteration shall be mailed by first class mail at least twenty days before the hearing to the corporation commission, if the petition requests an addition or alteration of a district for the purposes described in section 48-909, subsection A, paragraph 5 or 6 and the boundaries of the proposed addition or alteration to a district are wholly or partially within either of the following:

(a) The boundaries of the existing service territory of a public service corporation that provides domestic water or wastewater services as defined by a certificate of convenience and necessity issued by the corporation commission.

(b) The boundaries of the proposed service territory of a public service corporation that provides domestic water or wastewater services as defined in an application for a certificate of convenience and necessity that is pending before the corporation commission or that has been considered by the commission within one year before the date the petition for an addition or alteration of a district is filed with the clerk of the governing board.

8. At the hearing, if it appears after consideration of all objections that the petition is signed by the requisite number of property owners, and that the public convenience, necessity or welfare will be promoted by the addition to or alteration of the district, the governing body by formal order shall declare its findings and order the addition to or alteration of the district.

9. If the governing board finds that the public convenience, necessity or welfare will not be promoted by the addition to or alteration of the district, the governing body by formal order shall declare its findings.

E. Notwithstanding subsection D of this section, any property owner whose land is within a county that contains an improvement district and whose land is adjacent to the boundaries of the improvement district may request in writing that the governing body of the district amend the district boundaries to include that property owner's land. If the governing body determines that the inclusion of that property will benefit the district and the property owner, the boundary change may be made by order of the governing body and is final on the recording of the governing body's order that includes a legal description of the property that is added to the district. A petition is not required for an amendment to an improvement district's boundaries made pursuant to this subsection.

F. On approval of any boundary change of the district, the district board may order the successful petitioners or requester to pay all of the costs of the boundary change.

If the boundary change is approved by the district's governing board, an "Order of Boundary Change") should be recorded with the County Recorder. A copy of the recorded Order of Boundary Change should be sent to the Arizona Department of Revenue with a request that it be included in the district's tax area code, and a copy should also be provided to the U.S. Department of Justice with a request that it be included in the district for purposes of future elections. Finally, a copy should be sent to the Yavapai County Special Districts Coordinator, who will ensure that the County Elections Department receives a copy. Here are the necessary addresses:

Arizona Department of Revenue

Flo Villaverde, Program Project Specialist
CIS/GIS Section
Property Tax Division - GIS
Arizona Department of Revenue
1600 West Monroe Street
Phoenix, AZ 85007-2612
602-716-6832
fvillaverde@azdor.gov

U.S. Department of Justice

For requests sent by regular mail:

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

For requests sent by Airborne, DHL, Federal Express or UPS:

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
1800G Street, N.W.
Washington, DC 20006

The above addresses for the Department of Justice may be subject to change and it is recommended that addresses be confirmed prior to making submissions. The Voting Section Home Page for the Department of Justice is found at the following address, and may provide additional information: www.justice.gov/crt/about/vot/

Yavapai County Special Districts

Kim Kapin, Clerk of the Board/Special Districts Coordinator
1015 Fair Street
Prescott, AZ 86305
(928) 771-3200

In order to have a boundary change included in the district for tax purposes (or to have one excluded), the Arizona Department of Revenue must receive notice of the boundary change by November 1 of the year *prior* to the year in which taxes will be levied. An example of what this means is that if a district's governing board approves a boundary change to annex a property in 2013 and wants to be sure that property will be included for property tax purposes in 2014, it must file the boundary change with the Department of Revenue by November 1, 2013. It is possible to request an extension of the November 1 deadline to February 15 of the year in which taxes will be levied, but the request for extension must be made to the Department of Revenue by December 31. A request for extension should be sent to Flo Villaverde at the above address.

BUDGET REQUIREMENTS AND GENERAL OBLIGATIONS OF THE DISTRICT

Budget Requirements

County Improvement Districts are required by A.R.S. §48-954 to follow the same budget process set out for counties and municipalities in Title 42 of the Arizona Revised Statutes:

48-954. Annual statements and estimates

The board of directors of a district organized under the provisions of this article shall make annual statements and estimates for the district, publish notice thereof, have hearings thereon and adopt them at the times and in the manner provided for county statements and estimates by title 42, chapter 17, article 3.

A.R.S. §42-17101 and §42-17102 prescribe the date by which the budget must be prepared and what must be included in it:

42-17101. Annual county and municipal financial statement and estimate of expenses

On or before the third Monday in July each year the governing body of each county and incorporated city or town shall prepare:

- 1. A full and complete statement of the political subdivision's financial affairs for the preceding fiscal year.*
- 2. An estimate of the different amounts that will be required to meet the political subdivision's public expense for the current fiscal year entered in the minutes of the governing body and containing the items prescribed by section 42-17102.*
- 3. A summary schedule of estimated expenditures and revenues that shall be:
(a) Entered in the minutes of the governing body.
(b) Prepared according to forms supplied by the auditor general.*

42-17102. Contents of estimate of expenses

A. The annual estimate of expenses of each county, city and town shall include:

- 1. An estimate of the amount of money required for each item of expenditure necessary for county, city or town purposes.*
- 2. The amounts necessary to pay the interest and principal of outstanding bonds.*
- 3. The items and amounts of each special levy provided by law.*
- 4. An amount for unanticipated contingencies or emergencies.*
- 5. A statement of the receipts for the preceding fiscal year from sources other than direct property taxes.*
- 6. The amounts that are estimated to be received during the current fiscal year from sources other than direct property taxes and voluntary contributions.*
- 7. The amounts that were actually levied and the amounts that were actually collected for county, city or town purposes on the primary and secondary property tax rolls of the preceding fiscal year.*
- 8. The amounts that were collected through primary property taxes and secondary property taxes levied for the years before the preceding fiscal year.*

9. *The amount that is proposed to be raised by direct property taxation for the current fiscal year for the general fund, bonds, special assessments and district levies.*
 10. *The separate amounts to be raised by primary property tax levies and by secondary property tax levies for the current fiscal year.*
 11. *The amount of voluntary contributions estimated to be received pursuant to section 48-242, based on the information transmitted to the governing body by the department of revenue.*
 12. *The maximum amount that can be raised by primary property tax levies by the county, city or town pursuant to article 2 of this chapter for the current fiscal year.*
 13. *The amount that the county, city or town proposes to raise by secondary property tax levies and the additional amounts, if any, that the county, city or town will levy pursuant to the authority given to the governing body by the voters at an election called pursuant to article 5 of this chapter.*
 14. *The property tax rate for county, city or town purposes for the preceding fiscal year for the primary property tax and the secondary property tax.*
 15. *The estimated property tax rate for county, city or town purposes for the current fiscal year for the primary property tax and the secondary property tax.*
 16. *The expenditure limitation for the preceding fiscal year and the total amount that was proposed to be spent for the preceding fiscal year.*
 17. *The total expenditure limitation for the current fiscal year.*
 18. *The amount of monies received from primary property taxation in the preceding fiscal year in excess of the maximum allowable amount as computed pursuant to article 2 of this chapter.*
- B. The estimate shall be fully itemized according to forms supplied by the auditor general showing under separate headings:*
1. *The amounts that are estimated as required for each department, public office or official.*
 2. *A complete disclosure and statement of the contemplated expenditures for the current fiscal year, showing the amount proposed to be spent from each fund and the total amount of proposed public expense.*
- C. The total of amounts proposed in the estimates to be spent shall not exceed the expenditure limitation established for the county, city or town.*

Following approval of the estimated or “tentative” budget by the district’s governing board, the governing board must publish the budget and include in that publication notice of a public hearing to allow comment on the budget. The notice also includes notice regarding any property tax levy, if the district intends to levy such taxes.

42-17103. Public access to estimates of revenues and expenses; notice of public hearing; access to adopted budget

A. The governing body of each county, city or town shall publish the estimates of revenues and expenses, or a summary of the estimates of revenues and expenses, and a notice of a public hearing of the governing body to hear taxpayers and make tax levies at designated times and places. The summary shall set forth the total estimated revenues and expenditures by fund type, truth in taxation calculations and primary and secondary property tax levies for all districts. A complete copy of the estimates of revenues and expenses shall be made available at the city, town or county libraries and city, town or county administrative offices and shall be posted in a prominent location on the official websites, or on a website of an association of cities and towns for cities and towns that

do not have official websites, no later than seven business days after the estimates of revenues and expenses are initially presented before the governing body. A complete copy of the budget finally adopted under section 42-17105 shall be posted in a prominent location on the official websites no later than seven business days after final adoption.

B. Beginning with fiscal year 2011-2012, both the estimates of revenues and expenses initially presented before the governing body and the budget finally adopted under section 42-17105 shall be retained and accessible in a prominent location on the official websites, or on a website of an association of cities and towns for cities and towns that do not have official websites, for at least sixty months.

C. The summary of estimates and notice, together with the library addresses and websites where the complete copy of estimates may be found, shall be published once a week for at least two consecutive weeks after the estimates are tentatively adopted in the official newspaper of the county, city or town, if there is one, and, if not, in a newspaper of general circulation in the county, city or town.

D. If a truth in taxation notice and hearing is required under section 42-17107, the governing body may combine the notice under this section with the truth in taxation notice.

At the hearing, the governing board must allow any taxpayer in the district to appear and speak in favor of or against any part of the budget or tax levy. The total amount of the final budget that is adopted cannot be higher than the total amount that was approved in the "tentative" budget and subsequently published prior to the hearing.

42-17104. Public hearing on expenditures and tax levy

A. The governing body of each county, city or town shall hold a public hearing on or before the fourteenth day before the day on which it levies taxes as stated in the notice under section 42-17103. Any taxpayer may appear and be heard in favor of or against any proposed expenditure or tax levy.

B. If a truth in taxation notice and hearing is required under section 42-17107, the governing body may combine the hearing under this section with the truth in taxation hearing.

42-17105. Adoption of budget

A. After the hearing on estimates under section 42-17104 is concluded, the governing body shall convene in a special meeting and finally determine and adopt estimates of proposed expenditures for the purposes stated in the published proposal.

B. The adopted estimates constitute the budget of the county, city or town for the current fiscal year.

C. The total amounts that are proposed to be spent in the budget shall not exceed the total of amounts that were proposed for expenditure in the published estimates.

After adoption of the final budget, the district must adhere to the provisions of A.R.S. §42-17106, as follows:

42-17106. Expenditures limited to budgeted purposes; transfer of monies

A. Except as provided in subsection B, a county, city or town shall not:

- 1. Spend money for a purpose that is not included in its budget.**
- 2. Spend money or incur or create a debt, obligation or liability in a fiscal year in excess of the amount stated for each purpose in the finally adopted budget for that year, except as provided by law, regardless of whether the county, city or town has received at any**

time, or has on hand, monies or revenue in excess of the amount required to meet expenditures, debts, obligations and liabilities that are incurred under the budget.

B. A governing body may transfer monies between budget items if all of the following apply:

- 1. The monies are available.***
- 2. The transfer is in the public interest and based on a demonstrated need.***
- 3. The transfer does not result in a violation of the limitations prescribed in article IX, sections 19 and 20, Constitution of Arizona.***
- 4. A majority of the members of the governing body votes affirmatively on the transfer at a public meeting.***

County Improvement Districts are not subject to the provisions of Title 42, Chapter 17, Article 3 related to the Truth in Taxation hearing because the Truth in Taxation provisions deal with the primary property tax levy and taxes levied by improvement districts are secondary taxes.

Levying a Property Tax

A tax levy may be necessary if a district needs more money to operate than can be obtained through non-levy sources such as user fees or grants. The levy amount is the difference between non-levy revenue and the amount that the district needs to provide adequate maintenance and operation. Here's the formula for determining the tax rate:

Tax Levy (budget amount minus non-tax revenues) divided by Total Assessed Value of Jurisdiction = Tax Rate

To obtain the total assessed value for the district, contact the County Assessor's Office at 928-771-3220.

The tax rate is then applied against the assessed value of each property in the district. The assessed value of a property is the full cash value times the assessment ratio, and the assessment ratio depends on the type of property involved. For example, owner-occupied residential properties are assessed at 10% of their value. Therefore, if a home is valued at \$100,000, the assessed value of the property would be \$10,000 (\$100,000 x 10%). The district's tax rate is not levied against the entire assessed value, but instead against each \$100 of assessed value. For example, the following formula would apply to the \$100,000 owner-occupied home mentioned above:

\$100,000 X .10 = \$10,000 divided by \$100 = \$100 X Tax Rate = Tax Liability

Vacant land is assessed at 16%. In the case of a parcel of vacant land valued at \$10,000 the formula would look like this:

\$10,000 X .16 = \$1,600 divided by \$100 = \$16 X Tax Rate = Tax Liability

By law, the County Board of Supervisors sets the tax rate for a County Improvement District based on the levy information provided to the County by the district. The Board of Supervisors typically sets tax rates on the third Monday in August, and in order to ensure that a district's property tax rate is included in that action the governing board of the district should file its levy information (usually the district just submits a copy of its approved final budget) with the County no later than August 1. A copy of the district's budget containing the levy amount should be sent to:

Kim Kapin, Clerk of the Board/Special Districts Coordinator
Yavapai County Board of Supervisors
1015 Fair Street
Prescott, AZ 86305

Review of Financial Transactions; Fees

The County Board of Supervisors is authorized to review and comment on the financial transactions of Domestic Water Improvement Districts and Domestic Wastewater Improvement Districts with populations of less than 10,000 (A.R.S. §48-1015). The Board of Supervisors is also authorized to review and comment on the financial transactions of Road Improvement and Maintenance Districts, regardless of the population of the district (A.R.S. §48-1085). However, the Board of Supervisors does not have the authority to veto any of the financial transactions of these types of districts.

Domestic Water Improvement Districts and Domestic Wastewater Improvement Districts have statutory authority to establish certain kinds of fees (see A.R.S. §48-910 for specific information about the types of fees authorized). A hearing must be held prior to the approval of such fees and the Board of Supervisors must be notified of the hearing at least ten days in advance. The Board of Supervisors has the authority to be represented at the hearing and to advise the district's governing board (A.R.S. §48-910(C)).

General Obligations of the District

General obligations of a county improvement district are defined in A.R.S. §48-952, as follows:

General obligations of the district shall be provided for by the levy and collection of taxes upon all the real and personal property in the district unless otherwise specifically authorized. General obligations shall be limited to the following:

1. The cost of operation, maintenance and repair of improvements made under this article, and the cost of operation and maintenance of streets within the district to the extent that any of the foregoing costs are not assumed by the county.

- 2. The payment of that portion of the cost of any improvement authorized to be assessed as a general obligation of the district by the resolution of intention and contract, including assessments on public property imposed upon the district under the provisions of section 48-920.***
- 3. The payment of the purchase price of lots sold to the district under the provisions of section 48-941, but the total amount of taxes levied upon all the property of the district for the purchase price of lots sold under any proceeding shall be limited to twenty per cent of the aggregate amount of principal and interest on the bonds issued under this proceeding.***
- 4. The payment of preliminary incidental costs for which the district has become liable by abandonment of improvement proceedings under the provisions of section 48-926.***
- 5. Contingent liabilities required to be paid pursuant to section 48-928, subsection K.***
- 6. Repayment of any loans that are required by this article to be made by the district or the county.***
- 7. Attorney fees and other costs of any action brought by or against the district to foreclose an assessment lien or to defend any action brought pursuant to this article.***

ELECTIONS

The petition that is circulated for establishment of the district contains the election date for governing board members and it is critical that the district hold regular elections as requested in the petition for establishment and confirmed in the Order of Establishment.

County Improvement Districts with local governing boards (DWIDs, DWWIDs and RIMDs) have the ability to request cancellation of the election for governing board members in the event that no nominating petitions have been filed or if only one nominating petition is filed for each open position on the board. For example, if two positions on the governing board are up for election and only one nominating petition is filed for each position, the governing board may request that the County Board of Supervisors cancel the election and appoint to the governing board those persons who filed nominating petitions.

All nominating petitions are ultimately filed with the County Elections Department. If a district's election is to be included on a General Election ballot (even-numbered years), the Elections Department will ask the district for permission to cancel the district election if no nominating petitions have been filed or if only one nominating petition for each open position has been filed and the Elections Department will then request approval from the Board of Supervisors. If the district's election is not on the General Election date (even-numbered years), the Elections Department will notify the district if it is eligible to request cancellation of the election but it is the responsibility of the district to send a cancellation request to the Board of Supervisors.

A district may choose to conduct its own election, or to contract with Yavapai County or with a private contractor to conduct the election. A district governing board interested in contracting with Yavapai County for election services should be aware that the County only conducts vote-by-mail elections for districts unless the election is held in conjunction with the General Election (even-numbered years), in which case a polling place election will be required. The Elections Department also will not contract with districts during the County Primary Election (even-numbered years). Any notices or publications related to the district's election that may be required by law would still be the responsibility of the district, and not the Elections Department, including the Affidavit of Compliance required by A.R.S. §16-229. If you are interested in contracting with Yavapai County, please contact Lynn Constabile, Elections Director, at 928-771-3250.

If the district decides to conduct its own election, it will need to either provide for mail ballots or obtain polling places, obtain and train poll workers if polling places are used, order ballots, perform a "logic and accuracy" test on the vote tabulating equipment (if applicable), and, of course comply with any statutory requirements for notices or publications related to the election.

A district can request “blanket” approval from the Board of Supervisors to conduct all of its elections by mail ballot, but having done this must request approval for a polling place election if at some point in the future the district decides it wants a polling place election. Again, if the district’s regular election date for members of the board of directors is the General Election (even-numbered years) and the district is contracting with the County Elections Department to conduct the election, the election will be a polling place election.

Finally, be aware that as a governmental entity holding elections in Arizona, the district is required to notify the United States Department of Justice of any changes in district boundaries and request “preclearance” to include those changes for election purposes. There may also be other types of elections for which “preclearance” is required. The address for submissions to the Department of Justice is:

For requests sent by regular mail:

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

For requests sent by Airborne, DHL, Federal Express or UPS:

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
1800G Street, N.W.
Washington, DC 20006

The above addresses for the Department of Justice may be subject to change and it is recommended that addresses be confirmed prior to making submissions. The Voting Section Home Page for the Department of Justice is found at the following address, and may provide additional information: www.justice.gov/crt/about/vot/

IMPROVEMENT PROCESS

The process required for funding improvements in an improvement district is a very complex legal and financial process. The typical method for funding improvements is the sale of bonds, although DWIDs and DWWIDs may have loan options available to them through either the Water Infrastructure Finance Authority of Arizona or possibly through other state or federal agencies involved with water or wastewater issues. It is also possible for a district to have “cash only assessments” to pay for improvements, whereby each property owner agrees to pay his full assessment amount in cash instead of having the district sell bonds.

There are very stringent federal requirements related to the sale of bonds which make it necessary for any improvement district contemplating the sale of bonds to fund improvements to hire a bond attorney and investment banker. The information below is a very general outline of the process.

Development of Improvement Costs

A district engineer is hired to prepare plans and specifications for the improvements.

A bond attorney and investment banker are also hired by the district if bonds are to be sold. They assist the district engineer with the development of the total project cost and are also necessary for the sale of bonds to fund the improvements.

The district engineer files with the Board of Directors an estimate of the total costs of the improvement, including construction, acquisition of rights-of-way, engineering, legal and financial costs, capitalized interest and a reserve fund. Capitalized interest is the interest that accumulates on the bonds between the time they are sold and the first installment payment on the assessment is due. The reserve fund is used to cover delinquent assessments and is replenished as delinquencies are cured.

Debt Authorization

The district’s board of directors passes a “Resolution of Intention” to order the improvements, sets hearing on the “Resolution of Intention” and mails a copy of the resolution and notice of the hearing to all property owners of record in the district. The “Resolution of Intention” includes a description of the work to be done and the property to be assessed, the engineer’s estimate of the total costs of the improvements, and it also includes a maximum interest rate at which bonds to fund the improvements can be sold.

At the hearing, the board of directors considers protests to the “Resolution of Intention”. If the owners of a majority of the acreage within the district protest the improvements, the project is ended. If a majority does not protest, the board of directors next approves

a “Resolution Ordering the Improvements”, publishes notice of the passage of the resolution and calls for bids for the improvements.

Bids for the improvements cannot exceed the engineer’s estimate of the total project cost listed in the “Resolution of Intention.” *(If the bids do exceed the engineer’s estimate, the process must begin all over with a new “Resolution of Intention.”)* The bid is awarded and a contract is entered into with the successful bidder.

Assessment Process

The district engineer prepares an assessment diagram which must be approved by the board of directors. The board of directors then passes a resolution setting a date for hearing on the assessment. Notice of the hearing, along with a cash demand letter, is mailed to property owners of record in the district. Notice is also published in the newspaper.

At the hearing on the assessment, property owners may appear and request modification of their assessment. Elimination or reduction of any assessment results in the amount of that assessment being spread over the remaining property owners.

Property owners have approximately 40 days to pay all or part of their assessment in cash during a time known as the “cash collection” period. Assessments that are not paid or are not paid in full during the cash collection period will go to bond and property owners will make semi-annual payments on the assessment for the life of the bond (generally 10 years, but may be longer).

If an assessment goes to bond, it will increase the amount of the assessment by an amount necessary to contribute to the reserve fund and it will also increase by an amount necessary to pay capitalized interest. If an assessment is allowed to go to bond, the total of principal and interest paid may be double the original cash assessment.

Assessments that are paid in full during the cash collection period are not subject to additional charges for the reserve fund or for capitalized interest. Unpaid assessments are a lien against the property, not against the property owner. An assessment that goes to bond is a first lien on the property assessed, subject only to the lien for general taxes and prior special assessments (ARS §48-927(I)). Once an assessment has gone to bond it is possible to pay off the entire assessment, but it may also be necessary to pay all of the interest due on the assessment for the full life of the bond.

At the end of the cash collection period, bonds are sold for the difference between the cost of the project and what was collected in cash. At the conclusion of the bond sale, construction on the improvements can begin.

Assessment Payments

Payment on the bond is due on January 1 and July 1 of each year, but the payment from property owners is due June 1 and December 1. One payment is for interest only and the other is for principal and interest. The assessment bill is mailed out to property owners, by law, at least 30 days before the payment is due.

By law, an assessment installment, if not paid by the date due, becomes delinquent the day after it is due and a 5% penalty attaches. Within 20 days after the assessment becomes delinquent the district gives notice to property owners of the assessments that are delinquent, the amounts that must be paid to cure the delinquency, a statement that unless the installment along with penalties and fees is paid the entire amount of the assessment will become due and will be sold at an assessment sale, and the date on which the assessment sale will be held along with the time and location of the sale. At least 10 days before the date of the sale, another notice is mailed to the delinquent property owner and to anyone who has a legal interest in the property advising them that if the delinquency is not cured their property will be sold at the assessment sale.

At any time prior to the sale, the property owner or anyone else may pay the delinquent installment along with the penalties and fees due and therefore avoid having the property go up for sale.

When properties are sold at an assessment sale they are sold for the total amount owing on the assessment plus penalties and fees. When the property is sold, the interest rate on the assessment is as follows:

From time of sale through first 3 months:	5%
Months 3 through 6:	10%
Months 6 through 9:	12%
Months 9 through 12:	15%
Month 12 and beyond:	20%

ARS §48-943(A) provides that ***“Redemption may be made by any party having an interest in the lot at any time before the execution and delivery of a deed therefor by paying to the superintendent the amount for which the property was sold and...”*** the appropriate amount of interest due according to the list above.

If the property is not redeemed within 13 months from the date of the sale the superintendent of streets for the district issues a deed to the purchaser of the property and at that point the purchaser is free to follow the process described in §48-944 and foreclose on the property.

Assessment Modification

When a property with an outstanding assessment is split, assessment reallocation is important in order to ensure that the assessment still owed is pro-rated for each of the new parcels and also to ensure the owners of the new parcels receive notification of

payment due on the assessment. The governing body of a county improvement district has the authority under A.R.S. §48-932 to reallocate all or part of an assessment using the following procedures.

The superintendent prepares a list of the assessment(s) to be reallocated. The list includes the assessment number, legal description and amount assessed on each affected parcel before the reallocation, and the assessment number, legal description and name and address of the owner as shown on the most recent tax roll. It also includes the amount to be assessed on each parcel after reallocation.

The superintendent prepares an amendment to the assessment diagram reflecting the new assessment numbers and parcel boundaries.

The superintendent mails notice to each owner of an affected parcel showing the proposed reallocation and stating that the owner may file a written objection to the reallocation within 20 days after the notice was mailed. If no objections are received within the 20-day period, the governing board may approve the reallocation. If timely objections are received the board is required to hold a hearing on the objections and to mail notice of hearing to all affected owners at least 10 days prior to the hearing. At the hearing the objecting parties present evidence supporting their objections, after which the governing board may approve the proposed reallocation or make changes and approve the reallocation with those changes. The board also approves the amendment to the assessment diagram, either as submitted or with changes.

Following the board's decision, the superintendent records the reallocated assessment and amended assessment diagram in the superintendent's office. (The reallocated assessment should also be recorded with the County Recorder.)

The amount assessed immediately after the reallocation shall be equal to the amount assessed immediately before the reallocation.

As a condition to reallocation, the board may require the affected property owners to pay the costs of reallocation, including engineering or legal costs, or may include the costs in the amount assessed against the affected parcels. The costs are due and payable as part of the next installment of the assessment.

The above information regarding the improvement process is only a brief summary of the improvement process. The process is fully outlined in the Arizona Revised Statutes, §48-912 through §48-950. The statutes involved are too numerous to include in this handbook, but they are available online at the Arizona State Legislature's website at the following address:

<http://www.azleg.gov/ArizonaRevisedStatutes.asp>

DISSOLUTION OF A DISTRICT

Sometimes an improvement district is formed with the best intentions of moving forward to acquire or build a water or wastewater system or to improve roads, but then everything falls apart and the community is left with a district that has legal responsibilities and taxing authority but no intention to fulfill the purpose of the district.

There is a way to eliminate the district, provided the district has no outstanding bonds or other financial obligations; or if the maintenance and operation functions of the district are taken over by the county or by an incorporated city or town. It's a simple process, for a change! The board of directors of the district simply approves an "Order of Dissolution" dissolving the district. If things have completely fallen apart and the district's board of directors can't even get together to dissolve the district, then the county Board of Supervisors can order the dissolution of the district as long as the district has been inactive for at least five consecutive years, has no current debt, and is determined to have no future purpose.

If there are surplus bonds or residual assets remaining at the time of dissolution, the district's board of directors directs the disposition of the bonds or assets in accordance with A.R.S. §48-958:

48-958. Disposition of surplus funds

A. If any money or property remains in the special fund for any bond issue after all the bonds are fully paid, it shall go to the general fund of the district, except that if the work has been fully completed and the maintenance of a general fund is not deemed necessary by the board of directors of the district then the surplus funds shall go to the general fund of the county.

B. Notwithstanding subsection A of this section, if any money remains in the special fund for any bond issue after all the bonds are fully paid, and if the maintenance of a district general fund is deemed not necessary by the board of directors of the district, then the funds may be used to pay any outstanding bonds of any improvement district which lacks sufficient funds to fully pay all bonds.

C. On dissolution of a district pursuant to section 48-959 and on the passage of a period of two years with no activity, the county treasurer may request that the board of supervisors transfer all or part of any money remaining in any special or general fund of the district to the county general fund for purposes for which it was collected if required or for appropriation for the health, safety and welfare of the general public.

Although the law does not require that the Order of Dissolution of the district be recorded, in order to ensure that this action becomes part of the permanent record of the history of the district, and in order to ensure that the impact of this action on taxes, assessments, and voting is taken care of, it is critical that the Order be recorded with the county Recorder and that the Arizona Department of Revenue be notified of the dissolution action.