

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

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TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 8. GREATER ARIZONA DEVELOPMENT AUTHORITY

PREAMBLE

1. **Sections Affected**

R20-8-101	<u>Rulemaking Action</u>
R20-8-102	Amend
R20-8-103	Amend
R20-8-104	Amend
Table A	Repeal
Table A	New Table
Table B	New Table
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 41-1554.04

Implementing statute: A.R.S. §§ 41-1554.04 and 41-1554.05
3. **A list of all previous notices appearing in the register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 5 A.A.R. 4011, October 22, 1999.
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Tom Belshe, Executive Director

Address: Greater Arizona Development Authority
3800 North Central Avenue, Suite 1650
Phoenix, Arizona 85012

Telephone: (602) 280-8121

Fax: (602) 280-8145
5. **An explanation of the rule, including the agency's reasons for amending the rule:**

During its 1997 session, the Arizona State Legislature established the Greater Arizona Development Authority for the purpose of making funds available to provide technical assistance to infrastructure projects of political subdivisions, Indian tribes, and special districts, and financial assistance for infrastructure projects of political subdivisions, Indian tribes, and special districts. The proposed rule amendments accomplish the following:

 - (1) Create 2 distinct funds within the Technical Assistance Program and the prioritization criteria for those 2 funds.
 - (2) Prohibit a community that has already received financial assistance for a specific project from afterwards

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receiving technical assistance for that same project.

(3) Prohibit a community that has an open Technical Assistance contract with the Authority from receiving further technical assistance until that contract is closed.

(4) Create an incentive for eligible applicants who have not yet applied or been awarded technical assistance.

One of the newly created funds within the Technical Assistance Program, with the proposed name of Project Development Fund, is designed to assist applicants with infrastructure projects in the early stages of development. This fund would be used to provide technical assistance to an applicant that is deciding on the feasibility of a certain project. Market studies, feasibility studies, capital improvement plans, and development fee studies are examples of the types of technical assistance that would be provided through the Project Development Fund. The priority criteria for this fund would not include points for evidence of a permanent funding source or voter authorization because the technical assistance is intended to be exploratory in nature.

The 2nd fund, with the proposed name of Project Assistance Fund, would be designed to assist applicants with infrastructure projects in later stages of development. This fund would be used to provide technical assistance to an applicant that is moving an infrastructure project to a point where the project can be funded and commenced. Architectural design, engineering, and development of RFPs for specific consultation are examples of the types of technical assistance that would be provided through the Project Development Fund. The awards made from this fund would be based on the existing prioritization criteria.

A.R.S. § 41-1554.04 provides that the Authority shall establish application forms for technical assistance, a procedure to review and approve or disapprove applications for technical assistance, criteria by which technical assistance will be awarded, and a means to prioritize applications for technical assistance. A.R.S. § 41-1554.05(C) provides that the Authority shall establish an application process and method of determining the allocation of technical assistance in accordance with A.R.S. § 41-1554.04. These proposed amendments will strengthen the process for awarding technical assistance by providing a more uniform and consistent method for prioritizing technical assistance applications, while not unduly penalizing applications with projects in the early stages of development.

Tables A and B contain the proposed point systems for prioritization of technical assistance applications made to the Authority. The point system will provide the Authority with a mechanism for awarding technical assistance awards as well as the ability to transfer award monies to the next highest ranking application if, for any reason, an applicant who receives a technical assistance award is not able to use that award. The point system also provides a mechanism for prioritizing 2 applications that receive the same point score. It should be noted that, in certain instances, the point system uses a range of points for scoring a particular priority criterion, as opposed to using a set point value for scoring the criterion. These point ranges are necessary for the following reasons:

(1) The types of infrastructure projects that the Authority was designed to foster are highly diverse. Creating set point scores requires very specific prioritization criteria. Determining the specific criteria necessary to prioritize the variety of projects that are reviewed by the Authority would create an unnecessarily complicated point system.

(2) The Authority has only finished 2 rounds of technical assistance. These proposed rules are a product of several meetings with stakeholders concerning the outcome of the 1st 2 rounds of technical assistance. The proposed rules target the shortcomings of the initial rulemaking and it is the intent of the Authority to continue revising the application prioritization process so that the process is as objective as possible.

By prohibiting technical assistance for a project that has already received a GADA financial assistance loan, GADA will ensure that any technical assistance provided will be used for the development of infrastructure projects and not as “stop gap” financing. The new rule changes will also help create an incentive for new communities to use the Technical Assistance Program.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The rule does not diminish a previous grant of authority to a political subdivision of this state.

8. The preliminary summary of the economic, small business, and consumer impact:

The impact is expected to be positive. While small business and consumers may have user rates and fees increased to pay for the new infrastructure financed by the Greater Arizona Development Authority, the net effect is expected to

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be positive for 2 reasons:

(1) The projects will be developed more quickly with GADA participation, thereby accelerating the benefits to the local community.

(2) The Authority will provide financial support and technical assistance to local communities for infrastructure development.

Because of the wide range of possible projects with varying local impacts, it is difficult to estimate or generalize about the potential economic impact of the Authority. It can be said that the Authority's beneficial contribution will be in the acceleration of the development of necessary projects. In some cases, the acceleration may be 2 years, in other cases, longer. This allows the community to begin utilizing this benefit at an earlier date to improve the economic well being of its residents and improve the overall quality of life.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Tom Belshe, Executive Director
Address: Greater Arizona Development Authority
3800 North Central Avenue, Suite 1650
Phoenix, Arizona 85012
Telephone: (602) 280-8121
Fax: (602) 280-8145

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

A person may submit written comments on the proposed rules or preliminary economic, small business, and consumer impact statement to the person listed above no later than 5 p.m., December 30, 1999. Oral proceedings are scheduled as follows:

Date: December 28, 1999
Time: 1:30 p.m.
Location: Greater Arizona Development Authority Conference Room
3800 N. Central Avenue, Suite 1650
Phoenix, AZ 85012
Nature: Public hearing to receive oral comments.

(The close of record has been extended to December 30 from the date listed in the Notice of Rulemaking Docket Opening: 5 A.A.R. 4011, October 22, 1999, which was December 13.)

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

None.

13. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 8. GREATER ARIZONA DEVELOPMENT AUTHORITY

ARTICLE 1. TECHNICAL ASSISTANCE

Sections

- R20-8-101. Definitions
- R20-8-102. Application Process
- R20-8-103. Eligibility Criteria
- R20-8-104. Priority; Approval and Disapproval; Protest

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<u>Table A</u>	<u>Priority Criteria Repealed</u>
<u>Table A</u>	<u>Priority Criteria – Project Development Fund</u>
<u>Table B</u>	<u>Priority Criteria – Project Assistance Fund</u>

ARTICLE 1. TECHNICAL ASSISTANCE

R20-8-101. Definitions

In addition to the definitions prescribed in A.R.S. § 41-1554, the following definitions apply in this Article:

1. “Administratively complete” means that an applicant has completed the application for technical assistance and provided all of the required information.
2. “Applicant” means a political subdivision, special district, or Indian tribe that applies to the Authority for technical assistance.
3. “Authority” means the Greater Arizona Development Authority.
4. “Board” means the board of directors of the Authority.
5. “Economic impact summary” means an economic analysis that establishes the economic context for a project based on information provided by the applicant.
6. “Economic overview” means an economic analysis that establishes the economic context for a project based on public data.
7. “Infrastructure” means any facility located in this state for public use owned by a political subdivision, special district or Indian tribe that retains responsibility for its operation and maintenance.
8. “Project” means the whole, or any distinguishable segment or segments, of publicly owned infrastructure for which technical assistance is being requested or provided.
9. “Project Assistance Fund” means a fund within the Technical Assistance Program of the Authority designed to provide technical assistance to eligible infrastructure projects that are in the final phases of project development.
10. “Project Development Fund” means a fund within the Technical Assistance Program of the Authority designed to provide technical assistance to eligible infrastructure projects that are in the early or exploratory phases of project development.
911. “Staff” means the Executive Director and the Finance Director of the Authority.
1012. “Technical assistance round” means a period of time established by the Board during which applications for technical assistance are sent to potential applicants, returned to the Authority, analyzed by Staff, and submitted to the Board for approval or disapproval.

R20-8-102. Application Process

- A. The Board shall annually establish a due date by which applications for technical assistance shall be submitted for each technical assistance round, and the number of technical assistance rounds to be held in a given state fiscal year.
- B. The Authority shall send solicitation letters to potential applicants at least 60 days before applications are due. Other interested persons may submit requests to the Authority to be placed on a mailing list to be utilized by the Authority in sending out solicitation letters.
- C. An applicant shall provide the following information to the Authority by the established due date for such applications on a form provided by the Authority:
 1. Contact information for the applicant, including name, address, and telephone number;
 2. A description of the type of technical assistance being requested and an estimate of the cost of the technical assistance;
 3. A detailed description of the project;
 4. A summary of the anticipated economic impact the project will have on the community as estimated by the applicant;
 5. The estimated starting date, completion date, and projected cost of the infrastructure project for which the technical assistance is being requested;
 6. The projected sources and uses of funds for the infrastructure project, including public and private in-kind contributions; and
 7. A list of professional and outside service providers who have worked with the applicant on any part of the project.
 8. An indication of whether the application is for the Project Development Fund or the Project Assistance Fund.
- D. In addition to the application required in subsection (C), an applicant shall provide the following information to the Authority by the established due date for such applications:
 1. A planning document specific to the locality of the project for which the technical assistance is being requested that includes the project, such as a capital improvement plan, local strategic plan, or similar planning document or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant;
 2. If the project is listed on the project priority list of the Water Infrastructure Finance Authority or on the Department of Transportation’s Five-Year State Plan, a document evidencing this fact;
 3. A resolution from the governing body of the applicant stating the following:
 - a. The project is in the best interests of the residents;

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- b. The estimated economic impact on the community; and
 - c. The commitment of local funds, if applicable; and
 - 4. The applicant's most recent financial statements.
- E.** Staff shall analyze each application received on or prior to the due date for applications for technical assistance to determine whether the application is administratively complete and whether an applicant meets the eligibility criteria prescribed in R20-8-103. Applications for technical assistance which are determined to be both administratively complete and eligible for technical assistance under R20-8-103 shall be submitted to the Board for prioritization and possible funding. Applications which are either not administratively complete or do not meet the criteria in R20-8-103 shall not be submitted to the Board.

R20-8-103. Eligibility Criteria

To be eligible to receive technical assistance, an applicant shall satisfy the following criteria:

- 1. The applicant is a political subdivision, Indian tribe, or special district;
- 2. The technical assistance requested is for the development or financing of an infrastructure project;
- 3. The application is administratively complete;
- 4. The applicant provides evidence that the project has public support;
- 5. The applicant provides evidence that the project is part of an adopted comprehensive plan, for example, a capital improvement plan, a local strategic plan, or similar planning document or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant;
- 6. The applicant has the capacity to provide managerial support to the project;
- 7. The cost of the technical assistance does not exceed 10% of the total cost of the final project;
- 8. The applicant does not have an open agreement for technical assistance with the Authority; and
- 9. The applicant is not requesting technical assistance for a project that has already received funds from the Financial Assistance Program.

R20-8-104. Priority; Approval and Disapproval; Protest

- A.** The Authority shall request the Department of Commerce prepare an economic overview for each of the projects eligible for technical assistance that establishes the economic context for the project.
- B.** During each technical assistance round, the Board shall determine the order and priority of infrastructure projects, for both the Project Development Fund and the Project Assistance Fund, for which an eligible application for technical assistance has been received. For the Project Development Fund, the Board shall use a scale of 75 points maximum for all applications based on the criteria in Table A. For the Project Assistance Fund, the Board shall use a scale consisting of 95 points maximum for tribal applications and a scale consisting of 100 of 100 points maximum for all others applications others based on the criteria in Table A. Application scores shall then be prioritized based on a percentage of the points received to total points possible.
- C.** Applications for the Project Development Fund with tied scores shall be prioritized by comparing the scores that each application received in Table A under the following categories in descending order of importance:
- 1. Evidence of local support for the project;
 - ~~2. Evidence of a permanent funding source for the project;~~
 - ~~2.3. Evidence of the project's impact on the community; and~~
 - ~~3.4. Evidence of sufficient financial and managerial capacity to operate and maintain the project.~~
- D.** The Prioritization under subsection (C) is as follows:
- 1. The tied application with the higher score under subsection (C)(1) shall have priority over other applications;
 - 2. If the tied applications have the same score under subsection (C)(1), the application with the higher score under subsection (C)(2) shall have priority over the other applications;
 - 3. If the tied applications have the same score under subsections (C)(1) and (C)(2), the application with the higher score under subsection (C)(3) shall have priority over the other applications;
 - ~~4. If the tied applications have the same score under subsections (C)(1), (C)(2) and (C)(3), the application with the higher score under subsection (C)(4) shall have priority over the other applications;~~
 - ~~4. If the tied applications have the same score under subsections (C)(1), (C)(2), and (C)(3) and (C)(4), the Board shall determine the priority of the applications.~~
- E.** Applications for the Project Assistance Fund with tied scores shall be prioritized by comparing the scores that each application received in Table B under the following categories in descending order of importance:
- 1. Evidence of local support for the project;
 - 2. Evidence of a permanent funding source for the project;
 - 3. Evidence of the project's impact on the community; and
 - 4. Evidence of sufficient financial and managerial capacity to operate and maintain the project.
- F.** The Prioritization under subsection (E) is as follows:
- 1. The tied application with the higher score under subsection (E)(1) shall have priority over other applications;

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2. If the tied applications have the same score under subsection (E)(1), the application with the higher score under subsection (E)(2) shall have priority over the other applications;
3. If the tied applications have the same score under subsections (E)(1) and (E)(2), the application with the higher score under subsection (E)(3) shall have priority over the other applications;
4. If the tied applications have the same score under subsections (E)(1), (E)(2) and (E)(3), the application with the higher score under subsection (E)(4) shall have priority over the other applications;
5. If the tied applications have the same score under subsections (E)(1), (E)(2), (E)(3) and (E)(4), the Board shall determine the priority of the applications.

EG. The Board shall approve or disapprove each eligible application for technical assistance based upon the priority list and available funding for technical assistance. The Board may fund all or a portion of a technical assistance request.

FH. The Authority shall mail the Board's written determination to each applicant within 90 days after the date that all applications for technical assistance are due.

GI. For each approved project, the Authority shall establish a date by which the commitment of the Authority to provide technical assistance expires. The Authority shall not provide technical assistance for an approved project if the applicant does not complete all agreements with the Authority on or before that date.

HJ. The Authority shall bypass a project within a technical assistance round and offer funding to the next highest-ranking project if the project is not ready to proceed within the next 6-month period after the award date.

IK. An applicant whose project for technical assistance is disapproved may file a protest with the Board as follows:

1. The applicant shall submit its reasons for protesting the decision of the Board, in writing, within 20 days of the date of the Board's written determination, in a letter addressed to the Chairperson of the Board, with a copy to the Executive Director of the Authority.
2. The Authority shall review the substance of the protest and respond, in writing, and, by mail, to the applicant, within 30 days. Staff shall distribute a copy of the response to the Board.
3. Upon receipt of the Authority's written response, the applicant may request an opportunity to make a direct presentation to the Board. Staff shall schedule the presentation for the next regular Board meeting.
4. Following the applicant's presentation, the Board shall decide whether to review the applicant's request for technical assistance. Within 30 days after the presentation, the Board shall, in writing, notify the applicant of its final decision regarding the applicant's request for technical assistance.

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TABLE A

Priority Criteria	Point Total
1. Evidence of local support for the project based on the following:	35 points
The project is included in the General Plan, Capital Improvement Plan or other similar planning document of the applicant or has been discussed in meetings or study sessions of the applicant's governing board.	Up to 15 points
The project has public/private partnerships that provide financial or in-kind services.	Up to 10 points
The project has received a resolution of support from the governing board of the applicant.	5 points
The project has received voter authorization.*	5 points
2. Evidence of the project's impact on the community based on the following:	30 points
An economic overview prepared by the Department of Commerce.	Up to 10 points
The economic impact summary as prepared and submitted by the applicant.	Up to 10 points
The project addresses health, safety and welfare issues.	Up to 10 points
3. Evidence of a permanent funding source for the project:	20 points
The project is a likely candidate for a GADA Financial Assistance loan.	Up to 10 points
A revenue stream has been identified to pay for the project.	5 points
A funding source has been identified for the project.	5 points
4. Evidence of sufficient financial and managerial capacity to operate and maintain the project.	15 points
Maximum Point Total	95/100 points

* State law does not require tribal governments to obtain voter authorization for infrastructure projects, therefore, technical applications received from tribal governments will be based on a 95 point scale as described in R20-8-104(B) and (C).

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TABLE A

<u>Priority Criteria – PROJECT DEVELOPMENT FUND</u>		<u>Point Total</u>
<u>1. Evidence of local support for the project based on the following:</u>		<u>30 points</u>
<u>The project is included in the General Plan, Capital Improvement Plan or other similar planning document of the applicant or has been discussed in meetings or study sessions of the applicant’s governing board.</u>	<u>Up to 15 points</u>	
<u>The project has public/private partnerships that will provide financial or in-kind services.</u>	<u>Up to 10 points</u>	
<u>The project has received a resolution of support from the governing board of the applicant.</u>	<u>5 points</u>	
<u>2. Evidence of the project’s impact on the community based on the following:</u>		<u>30 points</u>
<u>An economic impact summary as prepared and submitted by the applicant.</u>	<u>Up to 10 points</u>	
<u>The project addresses health, safety and welfare issues.</u>	<u>Up to 10 points</u>	
<u>An economic overview prepared by the Department of Commerce.</u>	<u>Up to 5 points</u>	
<u>The applicant has not previously received funding from the GADA Technical Assistance Program.</u>	<u>Up to 5 points</u>	
<u>3. Evidence of sufficient financial and managerial capacity to operate and maintain the project.</u>		<u>15 points</u>
<u>Maximum Point Total</u>		<u>75 points</u>

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TABLE B

<u>Priority Criteria – PROJECT ASSISTANCE FUND</u>		<u>Point Total</u>
<u>1. Evidence of local support for the project based on the following:</u>		<u>35 points</u>
<u>The project is included in the General Plan, Capital Improvement Plan or other similar planning document of the applicant or has been discussed in meetings or study sessions of the applicant’s governing board.</u>	<u>Up to 15 points</u>	
<u>The project has public/private partnerships that provide financial or in-kind services.</u>	<u>Up to 10 points</u>	
<u>The project has received a resolution of support from the governing board of the applicant.</u>	<u>5 points</u>	
<u>The project has received voter authorization.*</u>	<u>5 points</u>	
<u>2. Evidence of the project’s impact on the community based on the following:</u>		<u>30 points</u>
<u>An economic impact summary as prepared and submitted by the applicant.</u>	<u>Up to 10 points</u>	
<u>The project addresses health, safety and welfare issues.</u>	<u>Up to 10 points</u>	
<u>An economic overview prepared by the Department of Commerce</u>	<u>Up to 5 points</u>	
<u>The applicant has not previously received funding from the GADA Technical Assistance program.</u>	<u>5 points</u>	
<u>3. Evidence of a permanent funding source for the project:</u>		<u>20 points</u>
<u>The project is a likely candidate for a GADA Financial Assistance loan.</u>	<u>Up to 10 points</u>	
<u>A revenue stream has been identified to pay for the project.</u>	<u>5 points</u>	
<u>A funding source has been identified for the project.</u>	<u>5 points</u>	
<u>4. Evidence of sufficient financial and managerial capacity to operate and maintain the project.</u>		<u>15 points</u>
<u>Maximum Point Total</u>		<u>95/100 points</u>

* State law does not require tribal governments to obtain voter authorization for infrastructure projects, therefore, technical applications received from tribal governments will be based on an adjusted 95-point scale, as described in R20-8-104 B.