

REFERENCE TITLE: **intergovernmental agreements; separate legal entities**

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2509

Introduced by
Representatives Pratt, Mason, Senator Allen S: Representative Brown,
Senator Rios

AN ACT

AMENDING SECTION 11-952, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 273, SECTION 2; AMENDING SECTION 11-952, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 273, SECTION 3; AMENDING TITLE 11, CHAPTER 7, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-952.02; RELATING TO INTERGOVERNMENTAL AGREEMENTS FOR JOINT EXERCISE OF POWERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 11-952, Arizona Revised Statutes, as amended by
3 Laws 2005, chapter 273, section 2, is amended to read:
4 11-952. Intergovernmental agreements and contracts
5 A. If authorized by their legislative or other governing bodies, two
6 or more public agencies or public procurement units by direct contract or
7 agreement may contract for services or jointly exercise any powers common to
8 the contracting parties and may enter into agreements with one another for
9 joint or cooperative action or may form a separate legal entity, including a
10 nonprofit corporation, to contract for or perform some or all of the services
11 specified in the contract or agreement or exercise those powers jointly held
12 by the contracting parties.
13 B. Any such contract or agreement shall specify the following:
14 1. Its duration.
15 2. Its purpose or purposes.
16 3. The manner of financing the joint or cooperative undertaking and of
17 establishing and maintaining a budget ~~therefore~~ FOR THE UNDERTAKING.
18 4. The permissible method or methods to be employed in accomplishing
19 the partial or complete termination of the agreement and for disposing of
20 property ~~upon~~ ON such partial or complete termination.
21 5. If a separate legal entity is formed pursuant to subsection A, the
22 precise organization, composition, title and nature of the entity.
23 6. Any other necessary and proper matters.
24 C. No agreement made pursuant to this article shall relieve any public
25 agency of any obligation or responsibility imposed ~~upon~~ ON it by law.
26 D. Except as provided in subsection E, every agreement or contract
27 involving any public agency, ~~board or commission~~ OR PUBLIC PROCUREMENT UNIT
28 OF THIS STATE made pursuant to this article ~~shall, prior to~~ BEFORE its
29 execution, SHALL be submitted to the attorney for each such public agency,
30 ~~board or commission~~ OR PUBLIC PROCUREMENT UNIT, who shall determine whether
31 the agreement is in proper form and is within the powers and authority
32 granted under the laws of this state to such public agency, ~~board or~~
33 ~~commission~~ OR PUBLIC PROCUREMENT UNIT.
34 E. A federal department or agency ~~which~~ OR PUBLIC AGENCY OF ANOTHER
35 STATE THAT is a party to an agreement or contract made pursuant to this
36 article is not required to submit the agreement or contract to the attorney
37 for the ~~federal~~ department or agency unless required under federal law OR THE
38 LAW OF THE OTHER STATE.
39 F. Any agreement or contract submitted to the attorney general
40 PURSUANT TO SUBSECTION D shall be filed with the secretary of state and shall
41 become effective on the date provided in the agreement. The secretary of
42 state shall prepare a cross-index of the names of all public agencies ~~which~~
43 THAT coordinate with the attorney general and secretary of state and file an
44 agreement under this section.

1 G. Any agreement or contract submitted to an attorney other than the
2 attorney general PURSUANT TO SUBSECTION D shall be filed with the secretary
3 of state if the agreement affects more than one county and shall be filed
4 with the county recorder if only one county is affected and shall become
5 effective on the date provided in the agreement.

6 H. Appropriate action by ordinance, resolution or otherwise pursuant
7 to the laws applicable to the governing bodies of the participating PUBLIC
8 agencies approving or extending the duration of the agreement or contract
9 shall be necessary before any such agreement, contract or extension may be
10 filed or become effective.

11 I. If a school district is a party to an agreement made pursuant to
12 subsection A, the parties to such agreement may extend the duration of the
13 agreement by notification to the secretary of state if the agreement is filed
14 pursuant to subsection F. Such agreement may be extended as many times as is
15 desirable, but each extension may not exceed the duration of the previous
16 agreement.

17 J. Payment for services under this section shall not be made unless
18 pursuant to a fully approved written contract.

19 K. A person who authorizes payment of any monies in violation of this
20 section is liable for the monies paid plus twenty per cent of such amount and
21 legal interest from the date of payment.

22 L. Notwithstanding any other provision of law, public agencies may
23 enter into a contract or agreement pursuant to this section with the superior
24 court, justice courts and police courts for related services and facilities
25 of such courts for a term not to exceed ten years, with the approval of such
26 contract or agreement by the presiding judge of the superior court in the
27 county in which the court or courts ~~which~~ THAT provide the facilities or
28 services are located.

29 M. A county with a population of more than one million two hundred
30 thousand persons may enter into an intergovernmental agreement with a city or
31 town to allow the city or town to enforce the provisions of the county's
32 ordinances regulating adult entertainment businesses and the county's
33 building codes, excluding the issuance of licenses or permits, in a specified
34 portion of the county. An intergovernmental agreement pursuant to this
35 subsection shall apply only to a portion of a county that is entirely
36 surrounded by one or more cities or towns.

37 Sec. 2. Section 11-952, Arizona Revised Statutes, as amended by Laws
38 2005, chapter 273, section 3, is amended to read:

39 11-952. Intergovernmental agreements and contracts

40 A. If authorized by their legislative or other governing bodies, two
41 or more public agencies or public procurement units by direct contract or
42 agreement may contract for services or jointly exercise any powers common to
43 the contracting parties and may enter into agreements with one another for
44 joint or cooperative action or may form a separate legal entity, including a
45 nonprofit corporation, to contract for or perform some or all of the services

1 specified in the contract or agreement or exercise those powers jointly held
2 by the contracting parties.

3 B. Any such contract or agreement shall specify the following:

4 1. Its duration.

5 2. Its purpose or purposes.

6 3. The manner of financing the joint or cooperative undertaking and of
7 establishing and maintaining a budget ~~therefore~~ FOR THE UNDERTAKING.

8 4. The permissible method or methods to be employed in accomplishing
9 the partial or complete termination of the agreement and for disposing of
10 property ~~upon~~ ON such partial or complete termination.

11 5. If a separate legal entity is formed pursuant to subsection A, the
12 precise organization, composition, title and nature of the entity.

13 6. Any other necessary and proper matters.

14 C. No agreement made pursuant to this article shall relieve any public
15 agency of any obligation or responsibility imposed ~~upon~~ ON it by law.

16 D. Except as provided in subsection E, every agreement or contract
17 involving any public agency, ~~board or commission~~ OR PUBLIC PROCUREMENT UNIT
18 OF THIS STATE made pursuant to this article ~~shall, prior to~~ BEFORE its
19 execution, SHALL be submitted to the attorney for each such public agency,
20 ~~board or commission~~ OR PUBLIC PROCUREMENT UNIT, who shall determine whether
21 the agreement is in proper form and is within the powers and authority
22 granted under the laws of this state to such public agency, ~~board or~~
23 ~~commission~~ OR PUBLIC PROCUREMENT UNIT.

24 E. A federal department or agency ~~which~~ OR PUBLIC AGENCY OF ANOTHER
25 STATE THAT is a party to an agreement or contract made pursuant to this
26 article is not required to submit the agreement or contract to the attorney
27 for the ~~federal~~ department or agency unless required under federal law OR THE
28 LAW OF THE OTHER STATE.

29 F. Any agreement or contract submitted to the attorney general
30 PURSUANT TO SUBSECTION D shall be filed with the secretary of state and shall
31 become effective on the date provided in the agreement. The secretary of
32 state shall prepare a cross-index of the names of all public agencies ~~which~~
33 THAT coordinate with the attorney general and secretary of state and file an
34 agreement under this section.

35 G. Any agreement or contract submitted to an attorney other than the
36 attorney general PURSUANT TO SUBSECTION D shall be filed with the secretary
37 of state if the agreement affects more than one county and shall be filed
38 with the county recorder if only one county is affected and shall become
39 effective on the date provided in the agreement.

40 H. Appropriate action by ordinance, resolution or otherwise pursuant
41 to the laws applicable to the governing bodies of the participating PUBLIC
42 agencies approving or extending the duration of the agreement or contract
43 shall be necessary before any such agreement, contract or extension may be
44 filed or become effective.

1 I. If a school district is a party to an agreement made pursuant to
2 subsection A, the parties to such agreement may extend the duration of the
3 agreement by notification to the secretary of state if the agreement is filed
4 pursuant to subsection F. Such agreement may be extended as many times as is
5 desirable, but each extension may not exceed the duration of the previous
6 agreement.

7 J. Payment for services under this section shall not be made unless
8 pursuant to a fully approved written contract.

9 K. A person who authorizes payment of any monies in violation of this
10 section is liable for the monies paid plus twenty per cent of such amount and
11 legal interest from the date of payment.

12 L. Notwithstanding any other provision of law, public agencies may
13 enter into a contract or agreement pursuant to this section with the superior
14 court, justice courts and police courts for related services and facilities
15 of such courts for a term not to exceed ten years, with the approval of such
16 contract or agreement by the presiding judge of the superior court in the
17 county in which the court or courts ~~which~~ THAT provide the facilities or
18 services are located.

19 Sec. 3. Title 11, chapter 7, article 3, Arizona Revised Statutes, is
20 amended by adding section 11-952.02, to read:

21 11-952.02. Separate legal entities; joint exercise of powers

22 A. IF PUBLIC AGENCIES ESTABLISH A SEPARATE LEGAL ENTITY PURSUANT TO
23 SECTION 11-952, SUBSECTION A, THE ENTITY HAS THE COMMON POWERS SPECIFIED IN
24 THE AGREEMENT AND MAY EXERCISE THEM IN A MANNER OR ACCORDING TO THE METHOD
25 PROVIDED IN THE AGREEMENT. NOTWITHSTANDING TITLE 38, AN OFFICER OR ELECTED
26 MEMBER OF THE GOVERNING BODY OF A PARTY TO THE AGREEMENT MAY ALSO ACT IN THE
27 CAPACITY OF A MEMBER OF THE GOVERNING BODY OF THE SEPARATE LEGAL ENTITY. IN
28 ITS OWN NAME AND SUBJECT TO THE PROVISIONS OF THE AGREEMENT, THE SEPARATE
29 LEGAL ENTITY, SUBJECT TO EXISTING APPLICABLE LAW, MAY:

30 1. MAKE AND ENTER INTO CONTRACTS, INCLUDING CONTRACTS, LEASES OR OTHER
31 TRANSACTIONS WITH ONE OR MORE OF THE PARTIES TO THE AGREEMENT FORMING THE
32 SEPARATE LEGAL ENTITY.

33 2. EMPLOY AGENTS AND EMPLOYEES.

34 3. ACQUIRE, HOLD OR DISPOSE OF PROPERTY.

35 4. ACQUIRE, CONSTRUCT, MANAGE, MAINTAIN AND OPERATE BUILDINGS, WORKS,
36 INFRASTRUCTURE AND IMPROVEMENTS.

37 5. INCUR DEBTS, LIABILITIES AND OBLIGATIONS.

38 6. SUE AND BE SUED.

39 B. CITIES, TOWNS, COUNTIES AND SPECIAL TAXING DISTRICTS ESTABLISHED
40 PURSUANT TO TITLE 48, CHAPTERS 11, 12, 17, 18, 19 AND 22 MAY ESTABLISH A
41 SEPARATE LEGAL ENTITY PURSUANT TO SECTION 11-952, SUBSECTION A FOR THE
42 PURPOSES OF THIS SUBSECTION. THE INTERGOVERNMENTAL AGREEMENT MUST STATE THE
43 INTENT TO FORM A SEPARATE LEGAL ENTITY PURSUANT TO THIS SUBSECTION. THE
44 GOVERNING BODY OF A SEPARATE LEGAL ENTITY FORMED PURSUANT TO THIS SUBSECTION
45 SHALL BE COMPOSED OF OFFICIALS ELECTED TO ONE OR MORE OF THE GOVERNING BODIES

1 OF THE POLITICAL SUBDIVISIONS THAT ARE PARTIES TO THE AGREEMENT, OR THEIR
2 DESIGNEES. A SEPARATE LEGAL ENTITY THAT IS FORMED PURSUANT TO THIS
3 SUBSECTION:

4 1. IS A POLITICAL SUBDIVISION OF THIS STATE HAVING:

5 (a) THE GOVERNMENTAL AND PROPRIETARY POWERS THAT ARE COMMON TO THE
6 CONTRACTING PARTIES SPECIFIED IN THE AGREEMENT, INCLUDING, IF APPLICABLE, THE
7 POWER TO MAKE VOLUNTARY CONTRIBUTIONS IN LIEU OF TAXES AND THOSE POWERS
8 PROVIDED FOR IN SECTION 11-952 AND THIS SECTION.

9 (b) THE RIGHTS AND IMMUNITIES OF THE PARTIES THAT ARE GRANTED BY THE
10 CONSTITUTION AND STATUTES OF THIS STATE, INCLUDING IMMUNITY OF ITS PROPERTY
11 FROM TAXATION.

12 2. MAY SEPARATELY CONTRACT FOR AN UNDERTAKING WITH ANY TWO OR MORE OF
13 THE PARTIES OR OTHER PUBLIC AGENCIES OR OTHER ENTITIES. LIMITATIONS ON THE
14 EXERCISE OF COMMON POWERS SHALL BE APPLICABLE ONLY TO THE PARTIES TO THE
15 AGREEMENT PARTICIPATING IN THE UNDERTAKING.

16 3. WITHOUT ELECTION, IN ADDITION TO OTHER POWERS PROVIDED FOR IN THE
17 AGREEMENT AND WHETHER OR NOT ONE OR MORE PARTIES TO THE AGREEMENT DO NOT HAVE
18 BONDING AUTHORITY FOR THE UNDERTAKING, MAY ISSUE REVENUE BONDS, OR INCUR
19 OBLIGATIONS PAYABLE FROM THE ENTITY'S REVENUES, TO PAY THE COSTS AND EXPENSES
20 OF ACQUIRING OR CONSTRUCTING ANY STRUCTURES, FACILITIES OR EQUIPMENT
21 NECESSARY TO EFFECTUATE THE PURPOSES OF THE AGREEMENT SUBJECT TO THE
22 FOLLOWING CONDITIONS AND REQUIREMENTS:

23 (a) THE REVENUE BONDS ARE PAYABLE SOLELY FROM THE REVENUES OF THE
24 UNDERTAKING FOR WHICH THEY WERE ISSUED AND ARE NOT PAYABLE FROM ANY REVENUES,
25 TAXES OR ASSESSMENTS PAID TO, OR TO BE LEVIED OR COLLECTED BY, THE ENTITY OR
26 THE POLITICAL SUBDIVISIONS THAT ARE PARTIES TO THE AGREEMENT THAT FORMS THE
27 ENTITY.

28 (b) THE BONDS AND THE INCOME ON THE BONDS ARE AT ALL TIMES FREE FROM
29 TAXATION BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE.

30 (c) THE ENTITY MAY PLEDGE TO THE PAYMENT OF ITS BONDS ALL REVENUES IT
31 HAS OR WILL RECEIVE FROM THE SALES OF GOODS OR SERVICES OF THE UNDERTAKING.
32 ANY PLEDGE MADE TO SECURE THE BONDS IS VALID AND BINDING FROM THE TIME THE
33 PLEDGE IS MADE. THE MONIES PLEDGED AND RECEIVED BY THE ENTITY TO BE PLACED
34 IN THE FUND ESTABLISHED FOR THE PURPOSE OF SECURING AND PAYING THE BONDS ARE
35 IMMEDIATELY SUBJECT TO THE LIEN ON OR THE PLEDGE OF THE MONIES WITHOUT ANY
36 FUTURE PHYSICAL DELIVERY, RECORDING OF ANY INSTRUMENT OR ANY FURTHER ACT.
37 ANY LIEN OR PLEDGE IS VALID AND BINDING AGAINST ALL PARTIES WHO HAVE CLAIMS
38 OF ANY KIND IN TORT, CONTRACT OR OTHERWISE AGAINST THE ENTITY OR THE
39 POLITICAL SUBDIVISIONS THAT FORMED THE ENTITY REGARDLESS OF WHETHER THE
40 CLAIMANTS HAVE NOTICE OF THE PLEDGE. THE OFFICIAL RESOLUTION OR TRUST
41 INDENTURE OR ANY INSTRUMENT BY WHICH THE PLEDGE IS CREATED WHEN PLACED IN THE
42 ENTITY'S OFFICIAL RECORDS IS NOTICE TO ALL CONCERNED OF THE CREATION OF THE
43 PLEDGE, AND THOSE DOCUMENTS NEED NOT BE RECORDED IN ANY OTHER PLACE TO
44 PERFECT THE PLEDGE.

1 (d) SUBJECT TO ANY REGISTRATION REQUIREMENTS, BONDS ISSUED BY THE
2 ENTITY UNDER THIS PARAGRAPH ARE FULLY NEGOTIABLE WITHIN THE MEANING AND FOR
3 ALL PURPOSES OF THE UNIFORM COMMERCIAL CODE REGARDLESS OF WHETHER THE BONDS
4 ACTUALLY CONSTITUTE NEGOTIABLE INSTRUMENTS UNDER THE UNIFORM COMMERCIAL CODE.

5 (e) THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE ENTITY, THE
6 POLITICAL SUBDIVISIONS THAT FORMED THE ENTITY OR THIS STATE WITHIN THE
7 MEANING OF ANY STATUTORY OR CONSTITUTIONAL LIMITATION ON INDEBTEDNESS.

8 (f) THE BONDS MAY BE SOLD AT PUBLIC OR PRIVATE SALE AT, ABOVE OR BELOW
9 PAR AS DETERMINED BY THE GOVERNING BODY OF THE ENTITY.

10 (g) THE TREASURER OF ANY POLITICAL SUBDIVISION FORMING THE ENTITY MAY
11 ACT AS THE ENTITY'S FISCAL AGENT OR THE ENTITY MAY APPOINT ANY COMMERCIAL
12 BANK DOING BUSINESS IN THIS STATE TO HOLD, DEPOSIT AND INVEST THE ENTITY'S
13 MONIES ACCORDING TO ANY RESOLUTION OR OTHER DOCUMENT AUTHORIZING THE ISSUANCE
14 OF THE BONDS.

15 (h) TITLE 35, CHAPTER 3, ARTICLES 5 AND 7 APPLY TO BONDS ISSUED
16 PURSUANT TO THIS PARAGRAPH.

17 4. MAY ENGAGE IN ELECTRIC GENERATION AND TRANSMISSION ACTIVITIES BUT
18 MAY NOT ENGAGE IN ELECTRIC DISTRIBUTION ACTIVITIES.

19 5. SHALL NOT BE DEEMED A PUBLIC POWER ENTITY PURSUANT TO TITLE 30 BY
20 VIRTUE OF ANY UNDERTAKING OR OTHER CONTRACT.

21 C. FOR THE PURPOSES OF SUBSECTION B OF THIS SECTION, "UNDERTAKING":

22 1. MEANS ONE OR MORE OF THE FOLLOWING:

23 (a) PURCHASING, CONSTRUCTING, LEASING OR ACQUIRING ANY REAL OR
24 PERSONAL PROPERTY, WORKS OR FACILITIES THAT THE POLITICAL SUBDIVISIONS THAT
25 FORMED THE ENTITY ARE AUTHORIZED BY LAW TO PURCHASE, CONSTRUCT, LEASE OR
26 OTHERWISE ACQUIRE.

27 (b) IMPROVING, RECONSTRUCTING, EXTENDING OR ADDING TO ANY REAL OR
28 PERSONAL PROPERTY, WORKS OR FACILITIES OWNED OR OPERATED BY THE ENTITY.

29 (c) ANY PROGRAM OF DEVELOPMENT INVOLVING REAL OR PERSONAL PROPERTY,
30 WORKS OR FACILITIES THAT THE ENTITY IS AUTHORIZED BY LAW TO PURCHASE,
31 CONSTRUCT, LEASE OR OTHERWISE ACQUIRE OR THE IMPROVEMENT, RECONSTRUCTION,
32 EXTENSION OR ADDITION TO THE PROGRAM.

33 (d) PROVIDING UTILITY SERVICES, PURCHASING, CONSTRUCTING, LEASING OR
34 ACQUIRING, OR THE EXTENSION OR ADDITION OF, WORKS OR FACILITIES DESIGNED TO
35 SERVE AREAS OR TERRITORIES ALREADY BEING SERVED BY ANY OF THE PARTIES TO THE
36 AGREEMENT.

37 2. DOES NOT INCLUDE THE ACQUISITION BY EMINENT DOMAIN OF EXISTING
38 WORKS OR FACILITIES OF A POLITICAL SUBDIVISION OR PUBLIC SERVICE CORPORATION.

39 Sec. 4. Effective date

40 Section 11-952, Arizona Revised Statutes, as amended by Laws 2005,
41 chapter 273, section 3 and this act, is effective from and after December 31,
42 2009.