

State of Arizona  
House of Representatives  
Fifty-second Legislature  
First Regular Session  
2015

**CHAPTER 101**  
**HOUSE BILL 2168**

AN ACT

AMENDING SECTION 11-952.01, ARIZONA REVISED STATUTES; RELATING TO PUBLIC  
AGENCY 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 11-952.01, Arizona Revised Statutes, is amended to  
3 read:

4 11-952.01. Public agency pooling of property, fidelity,  
5 liability, workers' compensation, life, health,  
6 accident and disability coverage; exemptions;  
7 board of trustees; contract; termination; audit;  
8 insolvency; definition

9 A. In addition to other authority granted pursuant to this title, two  
10 or more public agencies may enter into contracts or agreements pursuant to  
11 this article for the joint purchasing of insurance, including prepaid legal  
12 insurance or reinsurance, or to pool retention of their risks for property,  
13 fidelity and liability losses and to provide for the payment of such property  
14 loss, fidelity loss, prepaid legal insurance or claim of liability made  
15 against any member of the pool, including any elected or appointed official,  
16 officer or employee covered by the pool, on a cooperative or contract basis  
17 with one another or may jointly form a nonprofit corporation or enter into a  
18 trust agreement to carry out this section in their behalf directly or by  
19 contract with a private party.

20 B. In addition to other authority granted pursuant to this title, two  
21 or more public agencies may enter into contracts or agreements pursuant to  
22 this article to establish a workers' compensation pool to provide for the  
23 payment of workers' compensation claims pursuant to title 23, chapter 6 on a  
24 cooperative or contract basis with one another or may jointly form a  
25 nonprofit corporation or enter into a trust agreement to carry out this  
26 section in their behalf directly or by contract with a private party. A  
27 workers' compensation pool established pursuant to this subsection may  
28 provide coverage for workers' compensation, employers' liability and  
29 occupational disease claims. A workers' compensation pool is subject to  
30 approval as a self-insurer by the industrial commission pursuant to section  
31 23-961, subsection A, paragraph 2 and is subject to title 23, chapter 6 and  
32 rules adopted pursuant to that chapter in addition to the requirements of  
33 this section. The industrial commission, by rule, resolution or order, may  
34 adopt requirements for the administration of a workers' compensation pool  
35 under this subsection, including separation or commingling of funds,  
36 accounting, auditing, reporting, actuarial standards and procedures.

37 C. In addition to other authority granted pursuant to this title, two  
38 or more public agencies may enter into contracts or agreements for the joint  
39 purchase of life insurance, disability insurance, accident insurance or  
40 health benefits plan insurance or may pool retention of their risks of loss  
41 for life, disability, health or accident claims made against any public  
42 agency member of the pool or to jointly provide the health and medical  
43 services authorized in section 36-2907. Public agencies may establish pools  
44 for the purposes of this subsection by any of the following methods:

- 45 1. On a cooperative or contract basis.
- 46 2. By the formation of a nonprofit corporation.

1           3. By contracts or intergovernmental agreements with the Arizona  
2 health care cost containment system administration.

3           4. By the execution of a trust agreement directly by the agencies or  
4 by contracting with a third party.

5           D. In addition to other authority granted pursuant to this title, two  
6 or more public agencies may enter into contracts or agreements pursuant to  
7 this article for the joint purchasing of insurance for property, liability or  
8 workers' compensation losses or to pool retention of their risks for property  
9 and liability loss to cover the public agency, its elected officials and  
10 employees and the contractor and subcontractor of every tier engaged in the  
11 performance of a construction project for the public agency. Public agencies  
12 may establish pools for the purpose of this subsection by any of the  
13 following methods:

14           1. On a cooperative or contract basis.

15           2. By the formation of a nonprofit corporation.

16           3. By the execution of a trust agreement directly by the agencies or  
17 by contracting with a third party.

18           E. Section 10-11301 does not apply to nonprofit corporations formed  
19 pursuant to this section.

20           F. Title 41, chapter 23 does not apply to the procurement of insurance  
21 or reinsurance, or to the procurement of the services provided for in  
22 subsection K, paragraph 8 of this section, by any pool established pursuant  
23 to this section.

24           G. Title 43 does not apply to any pool established pursuant to this  
25 section. Any pool established pursuant to this section is exempt from  
26 taxation under title 43.

27           H. Each pool shall be operated by a board of trustees consisting of at  
28 least three persons who are elected officials or employees of public entities  
29 within this state. The board of trustees shall notify the director of the  
30 department of insurance of the existence of the pool and shall file with the  
31 director and with the attorney general a copy of the intergovernmental  
32 agreement or contract. ~~The attorney general shall file a copy of the~~

33 ~~agreement or contract with the secretary of state as required by section~~  
34 ~~11-952.~~ The board of trustees of each group shall do all of the following:

35           1. Establish terms and conditions of coverage within the pool,  
36 including exclusions of coverage.

37           2. Ensure that all claims are paid promptly.

38           3. Take all necessary precautions to safeguard the assets of the  
39 group.

40           4. Maintain minutes of its meetings.

41           5. Designate an administrator to carry out the policies established by  
42 the board of trustees and to provide day-to-day management of the group and  
43 delineate in the written minutes of its meetings the areas of authority it  
44 delegates to the administrator.

45           6. If the pool is a workers' compensation pool, file a copy of the  
46 agreement with the director of the industrial commission.

1 I. If the pool includes private, nonprofit educational institutions,  
2 each private, nonprofit educational institution shall post a bond, cash  
3 deposit or other comparable financial security in an amount that is equal to  
4 at least one and one-half times the amount of the private, nonprofit  
5 educational institution's annual premium to ensure payment of the school's or  
6 institution's legal liabilities and other obligations if the pool is  
7 determined to be insolvent or is otherwise found to be unable to discharge  
8 the pool's legal liabilities and other obligations pursuant to subsection N  
9 of this section.

10 J. The board of trustees shall not:

11 1. Extend credit to individual members for payment of a premium,  
12 except pursuant to payment plans established by the board.

13 2. Borrow any monies from the group or in the name of the group except  
14 in the ordinary course of business.

15 K. In addition to the requirements of section 11-952, a contract or  
16 agreement made pursuant to this section shall contain the following:

17 1. A provision for a system or program of loss control.

18 2. A provision for termination of membership, including either:

19 (a) Cancellation of individual members of the pool by the pool.

20 (b) Election by an individual member of the pool to terminate its  
21 participation.

22 3. A provision requiring the pool to pay all claims for which each  
23 member incurs liability during each member's period of membership.

24 4. A provision stating that each member is not relieved of its  
25 liability incurred during the member's period of membership except through  
26 the payment of losses by the pool or by the member.

27 5. A provision for the maintenance of claim reserves equal to known  
28 incurred losses and an estimate of incurred but not reported claims.

29 6. A provision for a final accounting and settlement of the  
30 obligations of or refunds to a terminating member to occur when all incurred  
31 claims are concluded, settled or paid.

32 7. A provision that the pool may establish offices where necessary in  
33 this state and employ necessary staff to carry out the purposes of the pool.

34 8. A provision that the pool may retain legal counsel, actuaries,  
35 auditors, engineers, private consultants and advisors.

36 9. A provision that the pool may make and alter bylaws and rules  
37 pertaining to the exercise of its purpose and powers.

38 10. A provision that the pool may purchase, lease or rent real and  
39 personal property it deems necessary.

1           11. A provision that the pool may enter into financial services  
2 agreements with banks and other financial institutions, that it may issue  
3 checks in its own name and that it may invest its monies in equity  
4 securities, mutual funds and investment funds registered with the United  
5 States securities and exchange commission, debt obligations and any eligible  
6 investment permitted by section 35-323.

7           L. A pool or a terminating member shall provide at least ninety days'  
8 written notice of the termination or cancellation. A workers' compensation  
9 pool shall notify the industrial commission of the termination or  
10 cancellation of a member thirty days before the termination or cancellation  
11 of the member.

12           M. The pool shall be audited annually at the expense of the pool by a  
13 certified public accountant, with a copy of the report submitted to the  
14 governing body or chief executive officer of each member of the pool and to  
15 the director of the department of insurance. The board of trustees of the  
16 pool shall obtain an appropriate actuarial evaluation of the claim reserves  
17 of the pool, including an estimate of the incurred but not reported claims.  
18 The department of insurance shall examine each public agency pool once every  
19 five years. The director of the department of insurance may examine a public  
20 agency pool sooner than five years from the preceding examination if the  
21 director has reason to believe that the pool is insolvent. The costs of any  
22 examination shall be paid by the pool subject to the examination.

23           N. If, as a result of the annual audit or an examination by the  
24 director of the department of insurance, it appears that the assets of the  
25 pool are insufficient to enable the pool to discharge its legal liabilities  
26 and other obligations, the director of the department of insurance shall  
27 notify the administrator and the board of trustees of the pool of the  
28 deficiency and the director's list of recommendations to abate the  
29 deficiency, including a recommendation not to add any new members until the  
30 deficiency is abated. If the pool fails to comply with the recommendations  
31 within sixty days after the date of the notice, the director shall notify the  
32 chief executive officer or the governing bodies, if any, of the members of  
33 the pool, the governor, the president of the senate and the speaker of the  
34 house of representatives that the pool has failed to comply with the  
35 recommendations of the director.

36           O. If a pool is determined to be insolvent or is otherwise found to be  
37 unable to discharge its legal liabilities and other obligations, each  
38 agreement or contract shall provide that the members of the pool shall be  
39 assessed on a pro rata basis as calculated by the amount of each member's  
40 annual contribution in order to satisfy the amount of deficiency. The  
41 assessment shall not exceed the amount of each member's annual contribution  
42 to the pool.

43           P. A pool established pursuant to this section may make available  
44 programs providing for insurance coverages described in subsections A, B and  
45 C of this section to those charter schools governed by section 15-183,

1 subsection M and, except for a workers' compensation pool, to private,  
2 nonprofit educational institutions.

3 Q. In addition to the authority set forth in this title, a pool  
4 established pursuant to this section may invest public monies on behalf of  
5 pool members, but any such investments shall be limited to those permitted by  
6 section 35-323, except as provided in section 15-1225, subsection G. A pool  
7 established pursuant to this section may not invest monies that are required  
8 by law to be deposited with a county treasurer.

9 R. A pool established pursuant to this section, by the adoption of a  
10 resolution of continuing effect, may authorize and request the state  
11 treasurer to invest funds for the pool pursuant to section 35-326.

12 S. A POOL ESTABLISHED PURSUANT TO THIS SECTION MAY OFFER SERVICES ON  
13 BEHALF OF POOL PARTICIPANTS THAT PARTICIPATE IN THE UNEMPLOYMENT INSURANCE  
14 PROGRAM ADMINISTERED BY THE DEPARTMENT OF ECONOMIC SECURITY, INCLUDING THE  
15 OPTION TO MAKE PAYMENTS IN LIEU OF CONTRIBUTIONS AS PERMITTED BY SECTIONS  
16 23-750 AND 23-751. THE POOL IS DEEMED AN AGENT OF THE POOL PARTICIPANTS AS  
17 EMPLOYERS FOR THE PURPOSES OF TITLE 23, CHAPTER 4.

18 ~~S.~~ T. For the purposes of this section, "health benefits plan" means  
19 a hospital or medical service corporation policy or certificate, a health  
20 care services corporation contract, a multiple employer welfare arrangement  
21 or any other arrangement under which health and medical benefits and services  
22 are provided to two or more persons.

APPROVED BY THE GOVERNOR MARCH 30, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 31, 2015.