Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 230

HOUSE BILL 2181

AN ACT

AMENDING SECTIONS 11-952, 11-952.01, 15-382, 15-387, 15-1444, 41-621.01, 41-2631 AND 41-2632, ARIZONA REVISED STATUTES; RELATING TO GOVERNMENT PROCUREMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

SENATE

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 11-952, Arizona Revised Statutes, is amended to
3 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
10 a nonprofit corporation, to contract for or perform some or all of the
11 services specified in the contract or agreement or exercise those powers
12 jointly held 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
17 of establishing and maintaining a budget therefor.
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 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 it by law.
26 D. Except as provided in subsection E, every agreement or contract
27 involving any public agency, board or commission made pursuant to this
28 article shall, prior to its execution, be submitted to the attorney for each
29 such public agency, board or commission, who shall determine whether the
30 agreement is in proper form and is within the powers and authority granted
31 under the laws of this state to such public agency, board or commission.
32 E. A federal department or agency which is a party to an agreement or
33 contract made pursuant to this article is not required to submit the
34 agreement or contract to the attorney for the federal department or agency
35 unless required under federal law.
36 F. Any agreement or contract submitted to the attorney general shall
37 be filed with the secretary of state and shall become effective on the date
38 provided in the agreement. The secretary of state shall prepare a
39 cross-index of the names of all public agencies which coordinate with the
40 attorney general and secretary of state and file an agreement under this
41 section.
42 G. Any agreement or contract submitted to an attorney other than the
43 attorney general shall be filed with the secretary of state if the agreement
44 affects more than one county and shall be filed with the county recorder if

only one county is affected and shall become effective on the date provided in the agreement.

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

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

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

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

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

Sec. 2. Section 11-952.01, Arizona Revised Statutes, is amended to read:

11-952.01. <u>Public agency pooling of property, fidelity, liability, workers' compensation, life, health, accident and disability coverage; exemptions; board of trustees; contract; termination; audit; insolvency; definition</u>

A. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements pursuant to this article for the joint purchasing of insurance, INCLUDING PREPAID LEGAL INSURANCE OR REINSURANCE, or to pool retention of their risks for property, FIDELITY and liability losses and to provide for the payment of such property loss, FIDELITY LOSS, PREPAID LEGAL INSURANCE or claim of liability made against any member of the pool, including any elected or appointed official, officer or employee covered by the pool, on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out the provisions of this section in their behalf directly or by contract with a private party.

B. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements pursuant to

1 this article to establish a workers' compensation pool to provide for the
2 payment of workers' compensation claims pursuant to title 23, chapter 6 on
3 a cooperative or contract basis with one another or may jointly form a
4 nonprofit corporation or enter into a trust agreement to carry out the
5 provisions of this section in their behalf directly or by contract with a
6 private party. A workers' compensation pool established pursuant to this
7 subsection may provide coverage for workers' compensation, employers'
8 liability and occupational disease claims. A workers' compensation pool is
9 subject to approval as a self-insurer by the industrial commission pursuant
10 to section 23-961, subsection A, paragraph 2 and is subject to title 23,
11 chapter 6 and rules adopted pursuant to that chapter in addition to the
12 requirements of this section. The industrial commission, by rule, resolution
13 or order, may adopt requirements for the administration of a workers'
14 compensation pool under this subsection, including separation or commingling
15 of funds, accounting, auditing, reporting, actuarial standards and
16 procedures.
17 C. In addition to other authority granted pursuant to this title, two
18 or more public agencies may enter into contracts or agreements for the joint
19 purchase of life insurance, disability insurance, accident insurance or
20 health benefits plan insurance or may pool retention of their risks of loss
21 for life, disability, health or accident claims made against any public
22 agency member of the pool or to jointly provide the health and medical
23 services authorized in section 36-2907. Public agencies may establish pools
24 for the purposes of this subsection by any of the following methods:
25 1. On a cooperative or contract basis.
26 2. By the formation of a nonprofit corporation.
27 3. By contracts or intergovernmental agreements with the Arizona
28 health care cost containment system administration.
29 4. By the execution of a trust agreement directly by the agencies or
30 by contracting with a third party.
31 D. In addition to other authority granted pursuant to this title, two
32 or more public agencies may enter into contracts or agreements pursuant to
33 this article for the joint purchasing of insurance for property, liability
34 or workers' compensation losses or to pool retention of their risks for
35 property and liability loss to cover the public agency, its elected officials
36 and employees and the contractor and subcontractor of every tier engaged in
37 the performance of a construction project for the public agency. Public
38 agencies may establish pools for the purpose of this subsection by any of the
39 following methods:
40 1. On a cooperative or contract basis.
41 2. By the formation of a nonprofit corporation.
42 3. By the execution of a trust agreement directly by the agencies or
43 by contracting with a third party.
44 E. Section 10-11301 does not apply to nonprofit corporations formed
45 pursuant to this section.

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

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

H. Each pool shall be operated by a board of trustees consisting of at least three persons who are elected officials or employees of public entities within this state. The board of trustees shall notify the director of the department of insurance of the existence of the pool and shall file with the director and with the attorney general a copy of the intergovernmental agreement or contract. The attorney general shall file a copy of the agreement or contract with the secretary of state as required by section 11-952. The board of trustees of each group shall do all of the following:

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

2. Ensure that all claims are paid promptly.

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

4. Maintain minutes of its meetings.

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

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

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

J. The board of trustees shall not:

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

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

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

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

2. A provision for termination of membership including either:

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

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

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

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

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

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

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

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

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

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

11. A provision that the pool may enter into a financial services agreement with banks and that it may issue checks in its own name.

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

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

N. If, as a result of the annual audit or an examination by the director of the department of insurance, it appears that the assets of the pool are insufficient to enable the pool to discharge its legal liabilities

1 and other obligations, the director of the department of insurance shall
2 notify the administrator and the board of trustees of the pool of the
3 deficiency and the director's list of recommendations to abate the
4 deficiency, including a recommendation not to add any new members until the
5 deficiency is abated. If the pool fails to comply with the recommendations
6 within sixty days after the date of the notice, the director shall notify the
7 chief executive officer or the governing bodies, if any, of the members of
8 the pool, the governor, the president of the senate and the speaker of the
9 house of representatives that the pool has failed to comply with the
10 recommendations of the director.
11 O. If a pool is determined to be insolvent or is otherwise found to
12 be unable to discharge its legal liabilities and other obligations, each
13 agreement or contract shall provide that the members of the pool shall be
14 assessed on a pro rata basis as calculated by the amount of each member's
15 annual contribution in order to satisfy the amount of deficiency. The
16 assessment shall not exceed the amount of each member's annual contribution
17 to the pool.
18 P. A pool established pursuant to this section may make available
19 programs providing for insurance coverages described in subsections A, B and
20 C of this section to those charter schools governed by section 15-183,
21 subsection M and, except for a workers' compensation pool, to private,
22 nonprofit educational institutions.
23 Q. For the purposes of this section, "health benefits plan" means a
24 hospital or medical service corporation policy or certificate, a health care
25 services corporation contract, a multiple employer welfare arrangement or any
26 other arrangement under which health and medical benefits and services are
27 provided to two or more persons.
28 Sec. 3. Section 15-382, Arizona Revised Statutes, is amended to read:
29 15-382. <u>Authorization to self-insure; pooling agreements; joint</u>
30 <u>agreements; trustees; liability coverage and pool</u>
31 <u>requirements; remedies; definition</u>
32 A. The school district governing board may determine that
33 self-insurance is necessary or desirable in the best interest of the district
34 and may provide for a self-insurance program or programs for the district
35 including risk management consultation. Any risk management consultant or
36 insurance administrator employed by a school district governing board must
37 be licensed under title 20, chapter 2, article 3 or 9, and such license shall
38 be verified by the school district governing board prior to employment.
39 B. The school district governing board may:
40 1. Enter into intergovernmental agreements or contracts WITH POOLS
41 OPERATED pursuant to section 11-952.01 for participation in programs offered
42 by public agency pools. IN ADDITION TO THE JOINT PURCHASING OF INSURANCE OR
43 REINSURANCE OR THE POOLING OF THE RETENTION OF RISKS FOR PROPERTY, FIDELITY
44 AND LIABILITY LOSSES, these programs may include the joint purchasing of
45 health benefits plan, life or disability insurance, PREPAID LEGAL INSURANCE

1 or the pooling of the retention OF THEIR RISKS of losses for health,
2 accident, life or disability claims or the provision of the health and
3 medical services enumerated in section 36-2907.
4 2. Separately contract with a trustee or board of trustees ~~which~~ THAT
5 provides a common self-insurance program or programs with pooled funds and
6 risks to more than one district, A COMMUNITY COLLEGE DISTRICT FORMED PURSUANT
7 TO TITLE 15, CHAPTER 12, ARTICLE 3 or an association of school districts
8 within this state that is funded by member school districts pursuant to
9 section 15-342, paragraph 8.
10 3. Enter into cooperative procurement agreements with other districts
11 pursuant to rules adopted pursuant to section 15-213 to participate in
12 programs for either self-insurance or the joint purchase of insurance.
13 4. Separately establish a self-insurance program solely for its
14 district.
15 C. If the school district governing board, either alone or in
16 combination with another school district or an association of school
17 districts in this state that is funded by member school districts pursuant
18 to section 15-342, paragraph 8, establishes a self-insurance program, the
19 governing board or an association of school districts shall place all funds
20 into a trust to be used for payment of uninsured losses, claims, defense
21 costs, costs of training designed to reduce losses and claims, the cost of
22 related employee benefits including wellness programs, life, disability and
23 other fully and partially insured group insurance plans, programs that allow
24 for participation in a cafeteria plan that meets the requirements of the
25 United States internal revenue code of 1986, costs of administration and
26 other related expenses. If a member of the governing board or employee of
27 the school district is acting as a trustee, the trust shall be administered
28 by at least five joint trustees, of whom no more than one may be a member of
29 the governing board and no more than one may be an employee of the school
30 district. Funds budgeted for self-insurance programs shall be subject to
31 district budgetary requirements, including but not limited to the
32 requirements that the funds be budgeted within the maintenance and operation
33 section and the budget limitation on increases as prescribed in section
34 15-905. The funds, upon being placed in the trust, shall not lapse at the
35 close of the fiscal year, except that any cash balance remaining after
36 termination of the program and settlement of all outstanding claims shall be
37 used for reduction of school district taxes for the budget year. The
38 trustees of the trust must be bonded, a stop-loss provision must be
39 incorporated in the trust agreement, and an annual audit must be performed
40 by a certified public accountant and a copy of the report kept on file in the
41 district office for a period of not less than five years.
42 D. If the self-insurance is for liability losses, excess liability
43 coverage OR REINSURANCE must be obtained as follows:
44 1. For a single school district, the coverage may include an annual
45 aggregate limit of no more than three million dollars and the maximum

retention per occurrence shall be one-half of one per cent of the district's maintenance and operation budget.

2. For a pool, the coverage may include an annual aggregate limit set by the pool and the maximum retention per occurrence shall not exceed one-half of one per cent of the combined maintenance and operation budgets of the districts in the pool.

E. "Self-insurance program" as used in this section means programs established and wholly or partially funded by the school district governing board. Self-insurance programs shall not include a decision by the governing board not to carry insurance upon a particular risk or risks.

Sec. 4. Section 15-387, Arizona Revised Statutes, is amended to read:

15-387. Procurement of insurance; eligibility of governing board members, former board members and surviving spouse and dependents; deposit of monies

A. Notwithstanding section 15-323, the governing board may procure insurance from any insurer authorized by the director of the department of insurance or may establish a self-insurance program as provided in section 15-382 for the management and administration of a system for direct payment of benefits, losses or claims or any combination of insurance and direct payments, including risk management consultation, to provide:

1. Health, accident, life or disability benefits for employees of the school district and their dependents and for members of the governing board and their dependents as provided in subsection B of this section.

2. Payment of any property OR FIDELITY loss sustained, LEGAL EXPENSES INCURRED or lawful claim of liability or fortuitous loss made against the school district or its employees, INCLUDING LEASED EMPLOYEES, or officers if the employees, LEASED EMPLOYEES or officers are acting in the scope of their employment or authority.

3. Coverage for all construction projects for purposes of general liability, property damage and workers' compensation.

B. A governing board member is eligible to participate in an insurance plan provided as an employee benefit pursuant to subsection A, paragraph 1 of this section if the member pays the full premium and the participation of the member does not result in an expenditure of school district monies.

C. If the governing board allows its members to participate in the insurance plan, a governing board may also adopt a policy allowing participation in an insurance plan provided as an employee benefit pursuant to subsection A, paragraph 1 of this section for former board members and for surviving spouses and dependents of board members or former board members as follows:

1. The board may allow a former board member to continue to participate if the former board member served at least four consecutive years on the board, was covered under the insurance plan while serving on the board and pays the full premium and the participation does not result in an expenditure of school district monies.

2. The board may allow the surviving spouse and dependent of the board member or former board member to continue to participate in the insurance plan if the surviving spouse or dependent pays the full premium and the participation of the surviving spouse and dependent does not result in an expenditure of school district monies and if:

(a) The deceased board member or former board member met the qualifications for eligibility pursuant to paragraph 1 of this subsection.

(b) The deceased board member or former board member would have met the qualifications for eligibility pursuant to paragraph 1 of this subsection if the deceased board member or former board member had not died in office.

D. Monies ~~which~~ THAT are provided by employees, board members, former board members and surviving spouses and dependents of board members or former board members and THAT are received pursuant to this section shall be deposited in an account as provided in section 15-1223.

Sec. 5. Section 15-1444, Arizona Revised Statutes, is amended to read:

15-1444. General powers of district governing boards

A. Except as otherwise provided, the district board shall:

1. Maintain each community college for a period of not less than eight months in each year and, if the funds of the district are sufficient, maintain each community college for a longer period.

2. Adopt policies in a public forum to offer programs that meet the educational needs of the population served by the community college.

3. Enforce the courses of study prescribed by the district board.

4. Visit each community college under its jurisdiction and examine carefully into its management, conditions and needs.

5. Exclude from each community college all books, publications or papers of a sectarian, partisan or denominational character intended for use as textbooks.

6. Appoint and employ a chancellor or chancellors, vice-chancellors, a president or presidents, vice-presidents, deans, professors, instructors, lecturers, fellows and such other officers and employees it deems necessary. The district board may enter into employment contracts with chancellors, vice-chancellors and presidents for a duration of more than one year but not more than five years.

7. Determine the salaries of persons it appoints and employs.

8. Remove any officer or employee if in its judgment the interests of education in this state require the removal.

9. Award degrees, certificates and diplomas upon the completion of courses and curriculum as it deems appropriate.

10. Appoint or employ, if it deems necessary, police officers who shall have the authority and power of peace officers. The police officers who have received a certificate from the Arizona peace officer standards and training board are eligible for membership in and benefits under either title 38, chapter 5, article 2 or the public safety personnel retirement system under title 38, chapter 5, article 4.

1 11. Determine the location within the district of a community college
2 and purchase, receive, hold, make and take leases of, sell and convey real
3 or personal property for the benefit of the community colleges under its
4 jurisdiction.
5 12. Obtain insurance or be self-insured, or a combination of insurance
6 and self-insurance, against loss, to the extent it is determined necessary
7 on community college buildings of the district. The local district shall
8 have an insurable interest in the buildings.
9 B. The district board may:
10 1. Administer trusts declared or created for the district and receive
11 by gift or devise and hold in trust or otherwise property wheresoever
12 located, and if not otherwise provided, dispose of the property for the
13 benefit of the district.
14 2. Lease real property, as lessor or as lessee. If a district is the
15 lessee, the lease may contain an option to purchase the property. The
16 district board may adopt policies as are deemed necessary and may delegate
17 in writing to the chancellor or president of the district, or their
18 designees, all or any part of its authority to lease property under this
19 paragraph. A district board shall not delegate the authority to execute a
20 lease that exceeds one hundred thousand dollars per year. Any delegation by
21 the district board pursuant to this paragraph may be rescinded in whole or
22 in part at any time by the district board.
23 3. Sue and be sued.
24 4. Contract. The district board may adopt such policies as are deemed
25 necessary and may delegate in writing to the chancellor or president of the
26 district, or their designees, all or any part of its authority to contract
27 under this paragraph. Any delegation of authority under this paragraph may
28 be rescinded by the district board at any time in whole or in part.
29 5. Construct, remodel and repair buildings.
30 6. In conjunction with other districts, establish policies for
31 procurement of goods and services.
32 7. Provide a plan or plans for employee benefits which may include
33 optional retirement programs pursuant to section 15-1451, subsection A, which
34 allow for participation in a cafeteria plan that meets the requirements of
35 the United States internal revenue code of 1986.
36 8. Accept grants or donations of monies from the United States, or
37 from any of its agencies, departments or officers, or from ~~any~~ persons,
38 corporations, foundations or associations. A district board shall deposit
39 the monies into a specific fund or account and a district board shall
40 administer the monies in accordance with the purpose of the grant or donation
41 with specific policies or restrictions as described or stipulated in the
42 grant or donation. In the case of personal property granted or donated to
43 or for the benefit of a community college district, a district board shall
44 immediately transfer possession and ownership of the property to the
45 designated district.

9. ENTER INTO INTERGOVERNMENTAL AGREEMENTS OR CONTRACTS PURSUANT TO SECTION 11-952.01 FOR PARTICIPATION IN PROGRAMS OFFERED BY PUBLIC AGENCY POOLS OR SEPARATELY CONTRACT WITH A TRUSTEE OR BOARD OF TRUSTEES THAT PROVIDES A COMMON SELF-INSURANCE PROGRAM WITH POOLED FUNDS AND RISKS PURSUANT TO SECTION 15-382, SUBSECTION B, PARAGRAPH 2. THE DISTRICT BOARD IS NOT REQUIRED TO ENGAGE IN COMPETITIVE PROCUREMENT IN ORDER TO MAKE THE DECISION TO PARTICIPATE IN THESE PROGRAMS.

C. If a district acquires real or personal property, whether by purchase, exchange, condemnation, gift or otherwise, the district shall pay to the county treasurer any taxes on the property that were unpaid as of the date of acquisition, including penalties and interest. The lien for unpaid delinquent taxes, penalties and interest on property acquired by the district:

1. Is not abated, extinguished, discharged or merged in the title to the property.

2. Is enforceable in the same manner as other delinquent tax liens.

D. From and after December 31, 1988, in a district whose boundaries encompass a vehicle emissions control area as defined in section 49-541 the district board shall require all out of county and out of state students to sign an affidavit at the time of course registration that the student's vehicle meets the requirements of section 49-542. From and after December 31, 1988, the district board on property under its jurisdiction within a vehicle emissions control area shall prohibit the parking of those vehicles which fail to comply with section 49-542.

E. A community college district and a joint technological education district governing board may enter into agreements for the provision of administrative, operational and educational services and facilities.

Sec. 6. Section 41-621.01, Arizona Revised Statutes, is amended to read:

41-621.01. <u>Contractors or subcontractors; pooling of property, liability and workers' compensation coverage; exemptions; board of trustees; contract; termination; audit; insolvency</u>

A. Pursuant to section 41-621, subsection D and section 41-622.01 two or more contractors or subcontractors licensed to do work for this state or any political subdivision of this state may with the approval of the department of administration enter into contracts or agreements pursuant to this section for the joint purchase of insurance, to pool retention of their risks for property and liability losses and to provide for the payment of the property loss or claim of liability made against any member of the pool on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out the provisions of this section in their behalf directly or by contract with a private party, if the department of administration has determined to sanction such a pool. Two or more contractors may also enter into contracts or

1 agreements pursuant to this section to establish a workers' compensation pool
2 to provide for the payment of workers' compensation claims pursuant to title
3 23, chapter 6 on a cooperative or contract basis with one another or may
4 jointly form a nonprofit corporation or enter into a trust agreement to carry
5 out the provisions of this section in their behalf directly or by contract
6 with a private party. A workers' compensation pool established pursuant to
7 this subsection may provide coverage for workers' compensation, employers'
8 liability and occupational disease claims. A workers' compensation pool is
9 subject to approval as a self-insurer by the industrial commission pursuant
10 to section 23-961, subsection A, paragraph 2 and is subject to title 23,
11 chapter 6 and rules adopted pursuant to that chapter in addition to the
12 requirements of this section. The industrial commission, by rule, resolution
13 or order, may adopt requirements for the administration of a workers'
14 compensation pool under this subsection, including separation or commingling
15 of funds, accounting, auditing, reporting, actuarial standards and
16 procedures.
17 B. In addition to other authority granted pursuant to this title, two
18 or more contractors or subcontractors licensed to do work for this state or
19 any political subdivision of this state may enter into contracts or
20 agreements for the joint purchase of life insurance, disability insurance,
21 accident insurance or health benefits plan insurance, to pool retention of
22 their risks of loss for life, disability, health or accident claims made
23 against any contractor or subcontractor member of the pool or to jointly
24 provide the health and medical services authorized in section
25 36-2907. Contractors and subcontractors may establish pools for the purposes
26 of this subsection by any of the following methods:
27 1. On a cooperative or contract basis.
28 2. By the formation of a nonprofit corporation.
29 3. By a contract or intergovernmental agreement with the Arizona
30 health care cost containment system administration.
31 4. By the execution of a trust agreement directly by the contractors
32 and subcontractors or by contracting with a third party.
33 C. Contractors or subcontractors of a political subdivision of this
34 state that is a member of a risk retention pool authorized under title 11 may
35 obtain life insurance, disability insurance, accident insurance or health
36 benefits plan insurance coverage directly from that political subdivision if
37 coverage is available and as authorized by section 11-952.01, subsection C.
38 D. Section 10-11301 does not apply to nonprofit corporations formed
39 pursuant to this section.
40 E. Chapter 23 of this title does not apply to the procurement of
41 insurance or to the procurement of the services provided for in subsection
42 I, paragraph 8 of this section by any pool established pursuant to this
43 section.

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

G. Each pool shall be operated by a board of trustees consisting of at least five members~~, the majority of whom shall be elected officials or employees of the state~~. The board of trustees of each group shall do all of the following:

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

2. Ensure that all claims are paid promptly.

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

4. Maintain minutes of its meetings.

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

6. Notify the director of the department of insurance of the existence of the pool and file a copy of the agreement with him and with the attorney general.

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

H. The board of trustees shall not:

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

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

I. A contract or agreement made pursuant to subsection A of this section shall contain the following:

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

2. A provision for termination of membership including either:

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

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

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

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

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

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

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

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

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

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

11. A provision that the pool shall enter into a financial services agreement with banks and that it may issue checks in its own name.

J. A pool or a terminating member shall provide at least ninety days' written notice of the termination or cancellation. A workers' compensation pool shall notify the industrial commission of the termination or cancellation of a member thirty days before the termination or cancellation of the member.

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

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

M. If a pool is determined to be insolvent or is otherwise found to be unable to discharge its legal liabilities and other obligations, each agreement or contract shall provide that the members of the pool shall be assessed on a pro rata basis as calculated by the amount of each member's annual contribution in order to satisfy the amount of deficiency. The

assessment shall not exceed the amount of each member's annual contribution to the pool.

N. If a workers' compensation pool fails to comply with title 23, chapter 6 or rules adopted pursuant to that chapter, the director of the industrial commission shall immediately notify the director of the department of administration and the director of the department of insurance.

Sec. 7. Section 41-2631, Arizona Revised Statutes, is amended to read:

41-2631. Definitions

In this article, unless the context otherwise requires:

1. "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.

2. "Local public procurement unit" means any political subdivision, ~~and~~ any agency, board, department or other instrumentality of such political subdivision AND ANY NONPROFIT CORPORATION CREATED SOLELY FOR THE PURPOSE OF ADMINISTERING A COOPERATIVE PURCHASE UNDER THIS ARTICLE.

3. "Nonprofit educational or public health institution" means any educational or public health institution, no part of the income of which is distributable to its members, directors or officers, as defined in rules adopted by the director and includes certified nonprofit agencies for disabled individuals as defined in section 41-2636.

4. "Public procurement unit" means either a local public procurement unit, the department, any other state or an agency of the United States.

Sec. 8. Section 41-2632, Arizona Revised Statutes, is amended to read:

41-2632. Cooperative purchasing authorized

A. Any public procurement unit may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, services or construction with one or more public procurement units in accordance with an agreement entered into between the participants. A nonprofit educational or public health institution may enter into an agreement pursuant to this section if one or more of the parties involved is a public procurement unit. An agreement entered into as provided in this article is exempt from section 11-952, subsections D and F. Parties under a cooperative purchasing agreement may:

1. Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services or construction.

2. Cooperatively use materials or services.

3. Commonly use or share warehousing facilities, capital equipment and other facilities.

4. Provide personnel, except that the requesting public procurement unit shall pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.

5. On request, make available to other public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing

1 the informational or technical services has the right to request
2 reimbursement for the reasonable and necessary costs of providing such
3 services.
4 B. The school facilities board or school districts, or both, may enter
5 into an agreement with a public procurement unit pursuant to this section for
6 the purpose of procuring materials and services needed to correct
7 deficiencies in school facilities as determined in section 15-2021.
8 C. The activities described in this section do not limit what parties
9 may do under a cooperative purchasing agreement.
10 D. A NONPROFIT CORPORATION OPERATING AS A PUBLIC PROCUREMENT UNIT
11 UNDER THIS SECTION SHALL, ON REQUEST OF THE AUDITOR GENERAL, PROVIDE ALL
12 DOCUMENTATION CONCERNING ANY COOPERATIVE PURCHASING TRANSACTION THE PUBLIC
13 PROCUREMENT UNIT ADMINISTERS UNDER THIS SECTION TO THE AUDITOR GENERAL.
14 E. A NONPROFIT CORPORATION OPERATING AS A PUBLIC PROCUREMENT UNIT
15 UNDER THIS SECTION SHALL COMPLY WITH ALL PROCUREMENT LAWS APPLICABLE TO THE
16 PUBLIC PROCUREMENT UNIT PARTICIPATING IN A COOPERATIVE PURCHASING TRANSACTION
17 THAT THE NONPROFIT CORPORATION ADMINISTERS.
18 F. THIS SECTION DOES NOT ABROGATE THE RESPONSIBILITY OF EACH PUBLIC
19 PROCUREMENT UNIT TO ENSURE COMPLIANCE WITH PROCUREMENT LAWS THAT APPLY TO THE
20 PARTICULAR PUBLIC PROCUREMENT, NOTWITHSTANDING THE FACT THAT THE COOPERATIVE
21 PURCHASE IS ADMINISTERED BY A NONPROFIT CORPORATION OPERATING UNDER THIS
22 SECTION.

APPROVED BY THE GOVERNOR MAY 14, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 14, 2004.

SENATE

Passed the House February 10, 2004,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 26, 2004

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Ken Bennett
President of the Senate

Charmine Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20___,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20___,

at _____ o'clock _____ M.

_____
Secretary of State

H.B. 2181

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 10, 2004,

by the following vote: 51 Ayes,

0 Nays, 9 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

10th day of May, 2004,

at 2:40 o'clock P. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 14 day of

May, 2004,

at 1:50 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 14 day of May, 2004,

at 3:17 o'clock P. M.

Janice K. Brewer
Secretary of State

H.B. 2181