

House Engrossed

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

CHAPTER 330

HOUSE BILL 2274

AN ACT

AMENDING SECTION 11-952.02, ARIZONA REVISED STATUTES; 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 11-952.02, Arizona Revised Statutes, is amended to
3 read:

4 11-952.02. Separate legal entities; joint exercise of powers

5 A. If public agencies identified in subsection B of this section form
6 a separate legal entity pursuant to section 11-952, the entity has the common
7 powers specified in the agreement and may exercise them in a manner or
8 according to the method provided in the agreement. Notwithstanding title 38,
9 an officer or elected member of the governing body of a party to the
10 agreement may also act in the capacity of a member of the governing body of
11 the separate legal entity. In its own name and subject to the provisions of
12 the agreement, the separate legal entity, subject to existing applicable law,
13 may:

14 1. Make and enter into contracts, including contracts, leases or other
15 transactions with one or more of the parties to the agreement forming the
16 separate legal entity.

17 2. Employ agents and employees.

18 3. Acquire, hold or dispose of property.

19 4. Acquire, construct, manage, maintain and operate buildings, works,
20 infrastructure and improvements.

21 5. Incur debts, liabilities and obligations.

22 6. Sue and be sued.

23 B. Cities, towns, counties and special taxing districts established
24 pursuant to title 48, chapters 11, 12, 17, 18, 19 and 22 AND ANY INDIAN TRIBE
25 may form a separate legal entity pursuant to section 11-952, for the
26 purposes of this subsection. The intergovernmental agreement must state the
27 intent to form a separate legal entity pursuant to this subsection. The
28 governing body of a separate legal entity formed pursuant to this subsection
29 shall be composed of officials elected to one or more of the governing bodies
30 of the ~~political subdivisions~~ PUBLIC AGENCIES that are parties to the
31 agreement, or their designees. A separate legal entity identified pursuant
32 to this subsection:

33 1. Is a political subdivision of this state having:

34 (a) The governmental and proprietary powers that are common to the
35 contracting parties specified in the agreement, including, if applicable, the
36 power to make voluntary contributions in lieu of taxes and those powers
37 provided for in section 11-952 and this section.

38 (b) The rights and immunities of the parties that are granted by the
39 constitution and statutes of this state, including immunity of its property
40 from taxation.

41 2. May separately contract for an undertaking with any two or more of
42 the parties or other public agencies or other entities. Limitations on the
43 exercise of common powers shall be applicable only to the parties to the
44 agreement participating in the undertaking.

1 3. In addition to other powers provided for in the agreement and
2 whether or not one or more parties to the agreement do not have bonding
3 authority for the undertaking, by a vote of its governing body, may issue
4 revenue bonds, or incur obligations payable from the entity's revenues, to
5 pay the costs and expenses of acquiring or constructing any structures,
6 facilities or equipment necessary to effectuate the purposes of the agreement
7 subject to the following conditions and requirements:

8 (a) The revenue bonds are payable solely from the revenues of the
9 undertaking for which they were issued and are not payable from any revenues,
10 taxes or assessments paid to, or to be levied or collected by, the entity or
11 the ~~political subdivisions~~ PUBLIC AGENCIES that are parties to the agreement
12 that forms the entity.

13 (b) The bonds and the income on the bonds are at all times free from
14 taxation by this state or any political subdivision of this state.

15 (c) The entity may pledge to the payment of its bonds all revenues it
16 has or will receive from the sales of goods or services of the undertaking.
17 Any pledge made to secure the bonds is valid and binding from the time the
18 pledge is made. The monies pledged and received by the entity to be placed
19 in the fund established for the purpose of securing and paying the bonds are
20 immediately subject to the lien on or the pledge of the monies without any
21 future physical delivery, ANY recording of any instrument or any further act.
22 Any lien or pledge is valid and binding against all parties who have claims
23 of any kind in tort, contract or otherwise against the entity or the
24 ~~political subdivisions~~ PUBLIC AGENCIES that formed the entity regardless of
25 whether the claimants have notice of the pledge. The official resolution or
26 trust indenture or any instrument by which the pledge is created when placed
27 in the entity's official records is notice to all concerned of the creation
28 of the pledge, and those documents need not be recorded in any other place to
29 perfect the pledge.

30 (d) Subject to any registration requirements, bonds issued by the
31 entity under this paragraph are fully negotiable within the meaning and for
32 all purposes of the uniform commercial code regardless of whether the bonds
33 actually constitute negotiable instruments under the uniform commercial code.

34 (e) The bonds do not constitute an indebtedness of the entity, the
35 ~~political subdivisions~~ PUBLIC AGENCIES that formed the entity or this state
36 within the meaning of any statutory or constitutional limitation on
37 indebtedness.

38 (f) The bonds may be sold at public or private sale at, above or below
39 par as determined by the governing body of the entity.

40 (g) The treasurer of any ~~political subdivision~~ PUBLIC AGENCY forming
41 the entity may act as the entity's fiscal agent or the entity may appoint any
42 commercial bank doing business in this state to hold, deposit and invest the
43 entity's monies according to any resolution or other document authorizing the
44 issuance of the bonds.

1 (h) Title 35, chapter 3, articles 5 and 7 apply to bonds issued
2 pursuant to this paragraph.

3 (i) Bonds issued pursuant to this paragraph shall be issued only after
4 consultation with the state certification board established by section
5 48-101.

6 4. May engage in electric generation and transmission activities but
7 may not engage in electric distribution activities.

8 5. Shall not be deemed a public power entity pursuant to title 30 by
9 virtue of any undertaking or other contract.

10 C. For the purposes of subsection B of this section, "undertaking":

11 1. Means one or more of the following:

12 (a) Purchasing, constructing, leasing or acquiring any real or
13 personal property, works or facilities that the ~~political subdivisions~~ PUBLIC
14 AGENCIES that formed the entity are authorized by law to purchase, construct,
15 lease or otherwise acquire.

16 (b) Improving, reconstructing, extending or adding to any real or
17 personal property, works or facilities owned or operated by the entity.

18 (c) Any program of development involving real or personal property,
19 works or facilities that the entity is authorized by law to purchase,
20 construct, lease or otherwise acquire or the improvement, reconstruction,
21 extension or addition to the program.

22 (d) Providing utility services, purchasing, constructing, leasing or
23 acquiring, or the extension or addition of, works or facilities designed to
24 serve areas or territories already being served by any of the parties to the
25 agreement.

26 2. Does not include the acquisition by eminent domain of existing
27 works or facilities of a political subdivision or public service corporation.

28 D. An entity formed pursuant to this section is subject to:

29 1. Title 40, chapter 2, article 6.2.

30 2. Title 48, chapter 1, article 8 with regard to any property owned by
31 the entity.

APPROVED BY THE GOVERNOR APRIL 29, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 29, 2011.

Passed the House February 21, 20 11

Passed the Senate April 19, 20 11

by the following vote: 51 Ayes,

by the following vote: 30 Ayes.

8 Nays, 1 Not Voting

0 Nays, 0 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
~~Assistant~~ Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

20 day of April, 20 11

at 8:30 o'clock A. M.

[Signature]
Secretary to the Governor

Approved this 29th day of

April

at 11:52 o'clock A. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 29th day of April, 20 11

at 7:30 o'clock P. M.

[Signature]
Secretary of State

H.B. 2274