

REFERENCE TITLE: **separate legal entities; joint powers**

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2066

Introduced by
Representative Blackman

AN ACT

AMENDING SECTION 11-952.02, ARIZONA REVISED STATUTES; RELATING TO INTERGOVERNMENTAL OPERATIONS.

(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
3 to read:

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

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

14 1. Make and enter into contracts, including contracts, leases or
15 other transactions with one or more of the parties to the agreement
16 forming the 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,
20 works, 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
25 tribe may form a separate legal entity pursuant to section 11-952 for the
26 purposes of this subsection. The intergovernmental agreement must state
27 the **SPECIFIC** intent to form a separate legal entity pursuant to this
28 subsection. The governing body of a separate legal entity formed pursuant
29 to this subsection ~~shall~~ **MAY** be composed of officials elected to one or
30 more of the governing bodies of the public agencies that ~~are parties to~~
31 ~~the agreement, or their designees~~ **FORMED THE SEPARATE LEGAL ENTITY. THE**
32 **PUBLIC AGENCIES THAT FORMED THE SEPARATE LEGAL ENTITY HAVE SOLE AUTHORITY**
33 **TO SELECT THE GOVERNING BODY OF THE SEPARATE LEGAL ENTITY AND MAY NOT**
34 **ASSIGN OR DESIGNATE THIS AUTHORITY TO A THIRD PARTY. THE ELECTED**
35 **OFFICIALS WHO ARE MEMBERS OF A SEPARATE LEGAL ENTITY SERVE AT THE SOLE**
36 **DISCRETION OF THE GOVERNING BODIES OF THE PUBLIC AGENCIES THAT FORMED THE**
37 **SEPARATE LEGAL ENTITY AND MAY NOT DELEGATE THEIR DUTIES AS ELECTED**
38 **OFFICIALS OF THE SEPARATE LEGAL ENTITY.** A separate legal entity
39 identified pursuant to this subsection:

40 1. Is a political subdivision of this state ~~having~~ **THAT HAS:**

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

45 (b) The rights and immunities of the parties that are granted by
46 the constitution and statutes of this state, including immunity of its

1 property from taxation, IF AGREED ON BY THE PUBLIC AGENCIES THAT FORMED
2 THE SEPARATE LEGAL ENTITY.

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

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

14 (a) The revenue bonds are payable solely from the revenues of the
15 undertaking for which they were issued and are not payable from any
16 revenues, taxes or assessments paid to, or to be levied or collected by,
17 the entity or the public agencies that are parties to the agreement that
18 forms the entity.

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

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

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

41 (e) The bonds do not constitute an indebtedness of the entity, the
42 public agencies that formed the entity or this state within the meaning of
43 any statutory or constitutional limitation on indebtedness.

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

1 (g) The treasurer of any public agency forming the entity may act
2 as the entity's fiscal agent or the entity may appoint any commercial bank
3 doing business in this state to hold, deposit and invest the entity's
4 monies according to any resolution or other document authorizing the
5 issuance of the bonds.

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

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

11 4. May engage in electric generation and transmission activities
12 but may not engage in electric distribution activities.

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

15 6. SHALL DISCLOSE ALL SOURCES OF REVENUE AND FUNDING FOR THE
16 SEPARATE LEGAL ENTITY.

17 7. SHALL MAKE ACCESSIBLE TO AND SHARE WITH THE PUBLIC AGENCIES THAT
18 FORMED THE SEPARATE LEGAL ENTITY ALL DOCUMENTS, CONTRACTS, BYLAWS,
19 POLICIES AND FINANCIAL STATEMENTS OF THE SEPARATE LEGAL ENTITY.

20 8. SHALL COMPLY WITH THE BUILDING, PLANNING AND ZONING CODES OF THE
21 MUNICIPALITY OR COUNTY IN WHICH THE SEPARATE LEGAL ENTITY HOLDS REAL
22 PROPERTY.

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

24 1. Means one or more of the following:

25 (a) Purchasing, constructing, leasing or acquiring any real or
26 personal property, works or facilities that the public agencies that
27 formed the entity are authorized by law to purchase, construct, lease or
28 otherwise acquire.

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

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

35 (d) Providing utility services, purchasing, constructing, leasing
36 or acquiring, or the extension or addition of, works or facilities
37 designed to serve areas or territories already being served by any of the
38 parties to the agreement.

39 2. Does not include ~~the acquisition~~ ACQUIRING by eminent domain ~~of~~
40 existing works or facilities of a political subdivision or public service
41 corporation.

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

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

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