

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

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

# SB 1497

Introduced by  
Senator Allen: Representative Crandell

## AN ACT

**AMENDING SECTION 11952.02, ARIZONA REVISED STATUTES; RELATING TO JOINT EXERCISE OF POWERS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 11-952.02, Arizona Revised Statutes, is amended to read:

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

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

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

2. Employ agents and employees.
3. Acquire, hold or dispose of property.
4. Acquire, construct, manage, maintain and operate buildings, works, infrastructure and improvements.

5. Incur debts, liabilities and obligations.

6. Sue and be sued.

7. **EXERCISE THE GOVERNMENTAL AND PROPRIETARY POWERS OF THE CONTRACTING PARTIES SPECIFIED IN THE AGREEMENT.**

**B. IN ITS OWN NAME AND SUBJECT TO THE PROVISIONS OF THE AGREEMENT, THE SEPARATE LEGAL ENTITY, SUBJECT TO EXISTING APPLICABLE LAW, HAS THE RIGHTS AND IMMUNITIES OF THE PARTIES THAT ARE GRANTED BY THE CONSTITUTION OF ARIZONA AND STATUTES OF THIS STATE, INCLUDING IMMUNITY OF THE ENTITY'S PROPERTY FROM TAXATION.**

**B. C.** Cities, towns, counties, **THE ARIZONA BOARD OF REGENTS** and special taxing districts established pursuant to title 48, chapters 11, 12, 17, 18, 19 and 22 may form a separate legal entity pursuant to section 11952, for the purposes of this subsection. The intergovernmental agreement must state the intent to form a separate legal entity pursuant to this subsection. The governing body of a separate legal entity formed pursuant to this subsection shall be composed of ~~officials elected to one or more~~ **MEMBERS** of the governing bodies of the ~~political subdivisions~~ **PUBLIC AGENCIES** that are parties to the agreement, or their designees. A separate legal entity identified pursuant to this subsection:

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

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

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

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

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

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

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

- (c) The entity may pledge to the payment of its bonds all revenues it has or will receive from the sales of goods or services of the undertaking. Any pledge made to secure the bonds is valid and binding from the time the pledge is made. The monies pledged and received by the entity to be placed in the fund established for the purpose of securing and paying the bonds are immediately subject to the lien on or the pledge of the monies without any future physical delivery, **ANY** recording of any instrument or any further act. Any lien or pledge is valid and binding against all parties who have claims of any kind in tort, contract or otherwise against the entity or the ~~political subdivisions~~ **PUBLIC AGENCIES** that formed the entity regardless of whether the claimants have notice of the pledge. The official resolution or trust indenture or any instrument

by which the pledge is created when placed in the entity's official records is notice to all concerned of the creation of the pledge, and those documents need not be recorded in any other place to perfect the pledge.

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

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

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

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

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

(i) Bonds issued pursuant to this paragraph shall be issued only after consultation with the state certification board established by section 48101.

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

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

~~C. D.~~ For the purposes of subsection ~~B- C~~ of this section, "undertaking":

1. Means one or more of the following:

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

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

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

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

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

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

1. Title 40, chapter 2, article 6.2.

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

**F. THE REAL PROPERTY OF A SEPARATE LEGAL ENTITY FORMED PURSUANT TO THIS SECTION IS NOT SUBJECT TO THE ZONING RESTRICTIONS OF ANY OF THE PUBLIC AGENCIES FORMING THE ENTITY IF THE ENTITY'S GOVERNING BOARD APPROVES A MASTER PLAN FOR THE REAL PROPERTY.**