Senate Engrossed House Bill

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 328

HOUSE BILL 2653

AN ACT

AMENDING SECTION 11-952, ARIZONA REVISED STATUTES; AMENDING TITLE 11, CHAPTER 7, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-952.02; RELATING TO INTERGOVERNMENTAL AGREEMENTS FOR 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, Arizona Revised Statutes, is amended to read:

11-952. Intergovernmental agreements and contracts

A. If authorized by their legislative or other governing bodies, two or more public agencies or public procurement units by direct contract or agreement may contract for services or jointly exercise any powers common to the contracting parties and may enter into agreements with one another for joint or cooperative action or may form a separate legal entity, including a nonprofit corporation, to contract for or perform some or all of the services specified in the contract or agreement or exercise those powers jointly held by the contracting parties.

B. Any such contract or agreement shall specify the following:

1. Its duration.

2. Its purpose or purposes.

3. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget ~~therefore~~ FOR THE UNDERTAKING.

4. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property on such partial or complete termination.

5. If a separate legal entity is formed pursuant to subsection A, the precise organization, composition, title and nature of the entity.

6. Any other necessary and proper matters.

C. No agreement made pursuant to this article shall relieve any public agency of any obligation or responsibility imposed on it by law.

D. Except as provided in subsection E, every agreement or contract involving any public agency~~, board or commission~~ OR PUBLIC PROCUREMENT UNIT OF THIS STATE made pursuant to this article, before its execution, shall be submitted to the attorney for each such public agency~~, board or commission~~ OR PUBLIC PROCUREMENT UNIT, who shall determine whether the agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency~~, board or commission~~ OR PUBLIC PROCUREMENT UNIT.

E. A federal department or agency OR PUBLIC AGENCY OF ANOTHER STATE that is a party to an agreement or contract made pursuant to this article is not required to submit the agreement or contract to the attorney for the ~~federal~~ department or agency unless required under federal law OR THE LAW OF THE OTHER STATE.

F. Appropriate action by ordinance or 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.

G. An agreement or contract may be extended as many times as is desirable, but each extension may not exceed the duration of the previous agreement.

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

I. 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.

J. 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 that provide the facilities or services are located.

Sec. 2. Title 11, chapter 7, article 3, Arizona Revised Statutes, is amended by adding section 11-952.02, 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 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.

B. CITIES, TOWNS, COUNTIES 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 11-952, 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 OF THE GOVERNING BODIES OF THE POLITICAL SUBDIVISIONS 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 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, 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 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 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 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 48-101.

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. FOR THE PURPOSES OF SUBSECTION B 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 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. 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.

APPROVED BY THE GOVERNOR MAY 11, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2010.