

Alternative Transit Management Models

Agency and Service Delivery Options

September 14, 2016

City Manager's
Transit Stakeholder Advisory Group



Alternative Transit Management Models
Agency and Service Delivery Options

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Advisory Group Listing

<u>Stakeholder Group</u>	<u>Representative</u>
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Alternative Transit Management Models Agency and Service Delivery Options

Purpose

Provide input and advice to the City Manager's Office on alternative transit management models based on the following Mayor and Council direction to staff in October 2015:

Engage the Pima Association of Governments (PAG) and other relevant stakeholders to examine alternative actions and improvements to support the long-term sustainability of the transit system to meet the needs of the community.

Overview of Key Questions

Based on this direction, staff would like to engage in a discussion with the stakeholder group on alternative transit management models. This discussion involves two key questions. The first key question is what agency or institutional structure should be responsible for transit services in Tucson. The second key question is what method the agency should use to deliver the transit services.

Agency Options

There are currently four options available for agency management of transit services in Tucson:

- *City of Tucson (Status Quo) Option.* Under the City's Charter, the City of Tucson is authorized to provide transit services. See Attachment A for additional information on the City of Tucson Option.
- *Regional Transit Authority (RTA) Option.* RTA legislation (A.R.S. Title 48, Chapter 30) was established in 2004 to plan and implement (with voter approval) a 20 year regional multi-modal transportation program, which includes transit improvements. With the RTA legislation, the City of Tucson could enter into agreement with RTA for the delivery of its transit services. Discussion between the City of Tucson and the RTA to transition transit services responsibility to the RTA occurred in 2010. See Attachment B for a summary of the RTA option and the state legislation.
- *Joint Powers Organization (JPO) Option.* Under state legislation (A.R.S. Title 11, Chapter 7, Article 3), the City can enter into agreement with another governmental entity to create a separate agency to operate and maintain transit services. An example of this joint powers authority in transit are the cities of Phoenix, Tempe, Mesa, and Glendale which created Valley Metro Rail as an Arizona non-profit corporation for the purpose of building and operating the METRO light rail system in the Phoenix area. See Attachment C for a summary of joint powers and the state legislation.
- *Metropolitan Public Transit Authority (MPTA) Option.* Under state legislation (A.R.S. Title 40, Chapter 6), the City can establish a metropolitan public transit

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authority to operate transit services. See Attachment C for the MPTA history and legislation.

A comparison of these options is provided on page 6. Existing research by the American Public Transportation Association (APTA) on agency (governance) models indicates that there is no “ideal” model. The major findings of the APTA study along with two other regional transit governance studies are provided in Attachment E.

Service Delivery Options

Once the responsible agency has been determined, then the next key question is determining how the agency will deliver transit service. There are two general service delivery methods:

- *Agency Performed.* Under this option, the agency performs the delivery of service by hiring employees directly, provided there are not conflicts with federal law.¹
- *Contract Out.* Under this option, the agency competitively procures the delivery of transit system and perhaps associated functions (e.g. service planning, marketing, finance, customer service, and safety/security) with private contractors. Within the contracting out option, there are three general sub-options:
 - *Service (O&M) Contract.* Under this delivery method, the City competitively procures the operations and maintenance (O&M) of transit services from a private contractor. Other associated functions may be performed by the agency or be contracted out separately.
 - *Management Contract.* The City is using this method with Sun Tran, Sun Van, and Sun Link. With this option, the agency hires a private contractor to provide top level management team to manage O&M transit services and other associated functions. In addition, sub-corporations are usually created to hire transit staff.
 - *Delegated Management or Public/Private Operating Partnership Contract.* Under this method, the contractor manages all aspects of transit services, including the agency administration. The agency board retains some level of policy control (service objectives, service models, fares, service levels, major service design changes, annual operating budget). There are two agencies,

¹ Pursuant to the Federal Transit Act, the City's ability to receive federal funding for transit is conditioned upon preservation of the transit employees' collective bargaining rights, including their right to strike. However, Tucson's City Charter prohibits city employees from engaging in a strike or work interruption. Therefore, in order to meet FTA requirements and avoid a conflict with the Charter, the city contracts with professional transit management companies, to run its bus, paratransit, and streetcar systems, and the transit employees are not City employees (and thus not subject to the Charter prohibition against a strike). Pursuant to the current management contracts, TransDev and RDMT are responsible for negotiating and administering collective bargaining agreements. Under this structure, and pursuant to the referenced FTA requirements, the city cannot dictate terms to the parties in these negotiations or it risks losing its federal transit funds and breaching its contracts.

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New Orleans and Nassau County, New York, in the U.S. which use this model.

A comparison of the service delivery options is provided on page 9.

Comparison of Agency Options

Agency options can be compared by a number of key factors such as governance structure, powers and responsibility, legal status, funding and ease of implementation. The following table provides a comparison of key factors for the four agency options:

Comparison of Agency Options				
	City of Tucson (Status Quo)	RTA	Joint Powers	MPTA
Legal Source	City Charter	State law (ARS Title 48, Chapter 30)	State law (ARS Title 11, Chapter 7)	State law (ARS Title 40, Chapter 6)
Corporate Status	Municipal Corporation	Municipal Corporation	Independent non-profit corporation	Independent non-profit corporation
Agency Functions	City Government & Services	Development & Implementation of Regional 20-Year Multi-Modal Transportation Plan	As Determined By By-laws	Transit Operations & Maintenance only
Governance				
Board	Mayor & Council	Members are the same as the PAG Board	Determined in By-laws	Elected Board members from authority service area
Members	7 members	9 members	Determined in By-laws	Between 5 and 11 members depending on number of agencies joining
Multiple Jurisdictions	No	Yes	Yes	Yes, can include multiple jurisdictions but not required to form
Voting	One member per member	One per member	As Determined in By-laws	One per member

Alternative Transit Management Models Agency and Service Delivery Options

Comparison of Agency Options				
	City of Tucson (Status Quo)	RTA	Joint Powers	MPTA
<i>Proportional Representation by Population</i>	Yes, based on Wards	No	As Determined in By-laws	Yes, membership by population with minimum one vote per member agency
<i>Implementation</i>	Already established	Already established	Can be established by agreement between at least two agencies	Can be established by City ordinance
<i>Powers Needed to Operate Transit¹</i>	Yes	Yes	Yes	Yes
<i>Ability to hire transit employees</i>	No, due to conflict between City Charter and FTA 13c, labor law	Yes	Yes	Yes
<i>Dedicated Funding</i>	No	Yes, part of RTA ½ cent sales tax	No	Yes, property tax
<i>Other Issues</i>	<ul style="list-style-type: none"> • General Fund revenue under stress to provide resources for city services (Police, Fire, Parks and Recreation) 	<ul style="list-style-type: none"> • Board representation not proportional to population served • Anticipated funding currently not meeting projections • Difference in interpretation of Maintenance of Effort requirement 		<ul style="list-style-type: none"> • As public utility, Corporation Commission oversight required • Not exempt from property tax • Bonding requires election • Does not include Indian communities, colleges and universities as direct members • Legislation requires updating

¹ Powers needed to provide transit service generally consist of the ability to:

- Construct, acquire, and operate transportation facilities and services.

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- Enter into contracts and agreements.
- Apply for and receive grants of money, property, and loans.
- Issue bonds.
- Regulate fares and determine schedules and routes.
- Provide operating and capital funding for services operated by others.
- Acquire land through purchase, lease, gift, condemnation, or otherwise, either for its own use or on behalf of other agencies.

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Comparison of Service Delivery Options

The following table compares the various service delivery options over a variety of areas including:

- Who develops the service policies?
- Who administrates the agency?
- Who directly manages the services?
- Who manages the associated functions?
- Who hires the employees?
- Who owns the transit system assets?
- How are costs incurred?
- Who takes the financial risk?
- How much profit is there?

The differences between the various service delivery options relate to how much control the contractor has, how much of the functions associated with transit service are outsourced and how much risk/reward is being asked of the contractor. As a rule of thumb, the greater the risk the contractor is asked to take, the greater the potential reward/profit for the contractor.

Comparison of Service Delivery Options				
	Agency Performed	Service Contract	Management Contract	Public/Private Partnership
Policies	Agency	Agency	Agency	Board/Contractor
Agency Administration	Agency	Agency	Agency	Contractor
Transit Service Management	Agency	Contractor	Contractor	Contractor
Associated Functions	Agency	Agency	Contractor	Contractor
Employees	Agency Hired	Contractor	Sub-corporation	Contractor
Assets (Equipment + Facilities)	Agency Owned	Agency Owned	Agency Owned	Agency Owned or Contractor Provided
Costs	Agency	Agency with fixed O&M unit costs from Contractor	Agency with fixed fee for Management Contract	Agency with fixed and variable fee from Contractor
Financial Risk	Agency	Contractor	Agency	Contractor
Typical Profit & Overhead	Non-profit	10% to 15% of contract value	10% of fixed fee	Unknown – part of fixed fee

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Current Management Contracts

Assuming the City continues with the transit management service delivery model, the advisory group is asked to provide input on:

- What contract incentives might help the City avoid a future strike?
- What contract incentives might increase ridership and improve operations?

City of Tucson (Status Quo) Option

The following background information is provided for the City of Tucson Option:

- City Charter, Powers of the City
- Transit Services Division Organization Chart and Functions
- Transit Management Contracts, Performance Indicators
- Transit System Overview
- History & Milestones

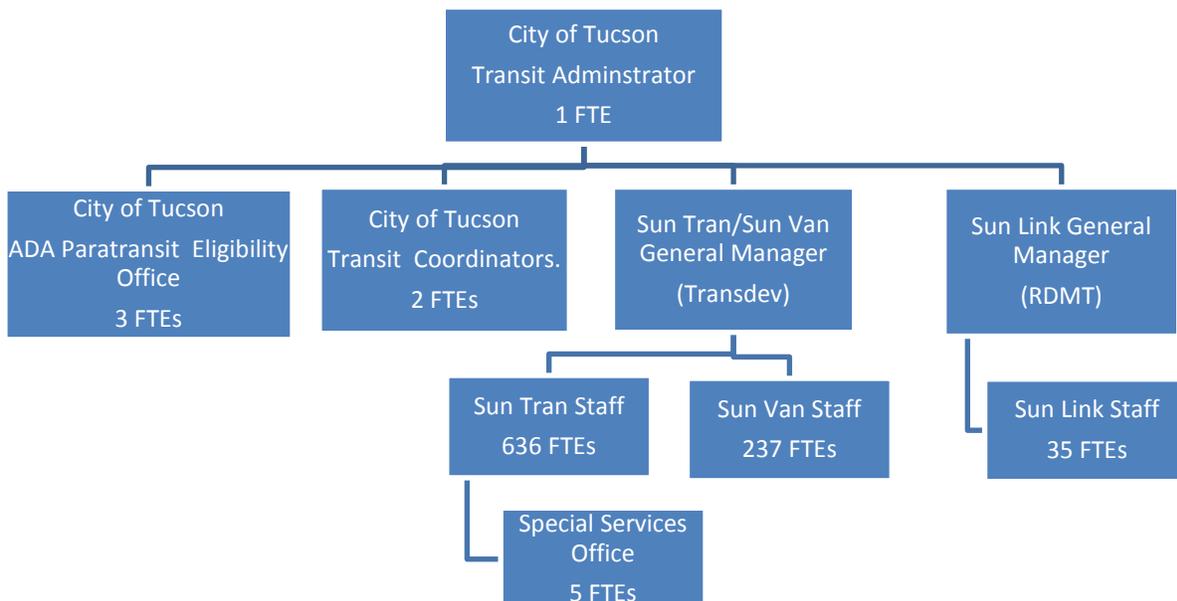
City Charter, Chapter IV Powers of the City

The City of Tucson City Charter enumerates a list of city powers, including the provision to own, maintain and operate transit services (as shown below):

(8) *Acquisition, construction, etc., of transportation system.* To acquire by purchase, condemnation or otherwise, and to construct, establish, own, equip, maintain and operate, electric, steam or other railways or transportation systems, or services, within or without the city, and to sell or lease the same.

Transit Services Division Organizational Chart and Functions

The Transit Services Division, Tucson Department of Transportation, is responsible for administering and coordinating the activities of the public transportation system, which includes Sun Tran, a fixed-route bus service, Sun Van a paratransit service for persons with disabilities, and Sun Link, a modern streetcar system. An organizational chart of the division is shown below.



The Division has six full-time employees (FTEs). Three employees are assigned to administering the program while three employees process applications for ADA

Alternative Transit Management Models Attachment A
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paratransit eligibility (functional ability to ride the bus) run the ADA for Sun Van customers.

The major responsibilities of the Transit Services Administrative are shown in the table below:

Transit Services Administration Responsibilities		
Mayor & Council Communications	ADA Paratransit Eligibility Office	PAG/RTA Coordination (Transit Working Group, Project Prioritization, etc)
Transit Task Force Coordination	Federal Transit Administration (FTA) Compliance	Intergovernmental Agreements
Budgets	Contractor/Subrecipient Oversight	ADOT Coordination (State Safety Oversight)
RFPs/Contracts	Constituent Inquires	Travel Reduction Program
FTA Real Property Inventory & Utilization Plan	Transit Asset Management (TAM)	Various Committees (e.g. CODI, roadway safety audits, bike & ped, etc)

The City of Tucson holds two major contracts for transit services. One contract is with Transdev for Sun Tran/Sun Van and the other contract is with Ratp Dev McDonald Transit (RDMT) for Sun Link. These companies provide General Managers, who manage their respective employees and services.

Sun Tran/Sun Van Management Contract, Performance Indicators

For Sun Tran and Sun Van, the City of Tucson’s contract with Transdev is what is considered in the transit industry as a “management contract.” Per this management contract, there are only three (3) Transdev employees that are assigned to this contract. Those employees are one (1) General Manager and two (2) Assistant General Managers (one at Sun Tran and one at Sun Van). All other employees of Sun Tran and Sun Van are employees of Professional Transit Management of Tucson, Inc. dba Sun Tran or PTM Paratransit of Tucson, Inc., respectively.

Transdev’s contract term is in effect for a two (2) year period and includes renewal options for three additional two-year periods. The total term of the contract could be up to eight years (May 2012 – April 2020). Any termination of the contract requires thirty (30) days written notice. The current annual contract amount: \$566,316.

The City’s contract with Transdev includes numerous roles and responsibilities within the contract’s scope of work. An outline of the contract scope of work is shown in Attachment A-1. As part of the contract, Transdev also manages regional marketing, which supports Sun Link and Sun Shuttle Dial-a-Ride service.

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Currently, there are four (4) performance standards that are monitored on a monthly basis and each can have a direct impact on the fixed fee amount, which Transdev receives on this contract. Those standards are shown in the table below:

Performance Indicators	Measure:
1. Total preventable accidents	Per 100,000 revenue miles.
2. Passenger complaints	Per 100,000 passenger boarding (Sun Tran); and Per 1,000 passenger trips (Sun Van)
3. On-time performance – Preventative Maintenance Plans	On-time performance of maintenance per adopted preventative maintenance plans must be at least 90% on time.
4. Traffic citations	Per each occurrence.

Sun Link Management Contract, Performance Indicators

The City’s contract with RDMT for Sun Link streetcar service is also a management contract. Under the contract, RDMT provides three employees: 1) One General Manager, 2) One Operations Manager and 3) One Safety/Security Officer. All other employees of Sun Link are employees of Tucson Streetcar, Inc.

RDMT’s contract term is in effect for three (3) years and includes renewal options for two additional two-year periods and one (1) additional one-year period. The total term of the contract could be up to eight years (January 2013 – December 2020). The contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving sixty (60) days written notice. The current annual contract amount: \$787,922.

The contract specifies roles and responsibilities related to streetcar operations and maintenance in the scope of work. An outline of the contract scope of work is shown in Attachment A-2.

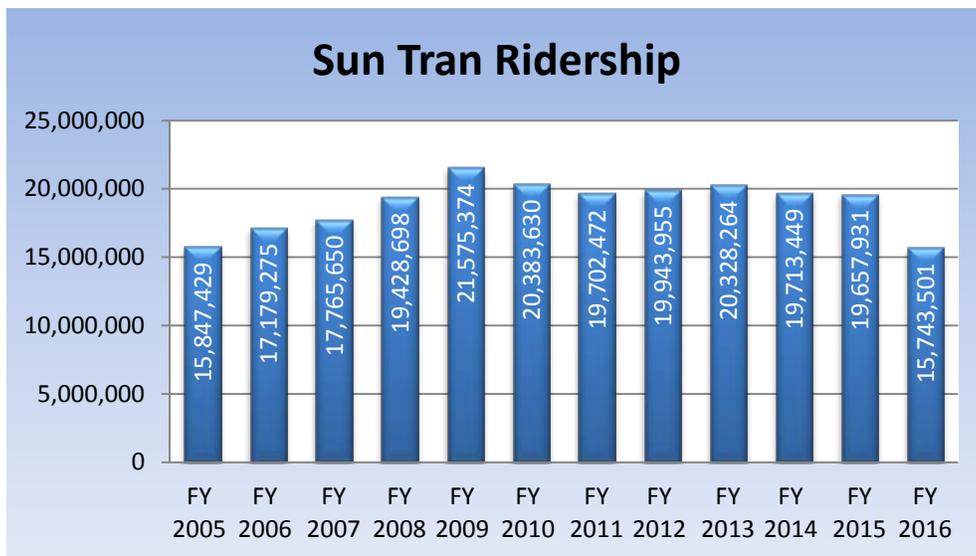
Currently, there are four (4) performance standards that are monitored on a monthly basis and each can have a direct impact on the fixed fee amount, which RDMT receives on this contract. Those standards are shown in the table below:

Performance Indicators	Measure:
1. Total preventable accidents per month	Per accident rate
2. Passenger complaints	Per number of valid complaints
3. Mean Distance Between Failures (MDBF)	Based on 35,000 miles and above
4. Traffic citations	Per each occurrence.

Transit System Overview

Sun Tran

With approximately 640 employees and a fleet of 252 buses, Sun Tran provides fixed route transit service within the City of Tucson, and through intergovernmental agreements, delivers service into Pima County, the City of South Tucson, the Town of Marana, the Town of Oro Valley, the Tohono O’Odham Nation and the Pascua Yaqui Tribe. The system’s 43 fixed routes (30 local and 13 express) cover a 296-square-mile area. Following an increase in passenger trips in 2009, ridership remained relatively constant hovering around 20 million trips per year. Ridership has declined recently as a result of a 45 day service interruption in FY 2016 and declining consumer fuel prices.

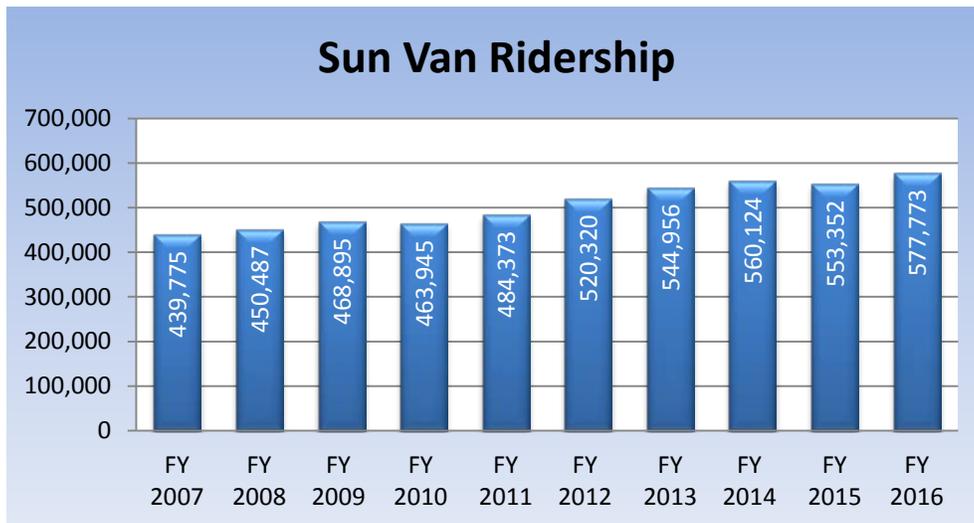


Sun Van

Sun Van, the complementary paratransit provider has roughly 240 employees and a fleet of 125 vans, Sun Van has provided award-winning paratransit service to the Tucson Metropolitan area and portions of Pima County and South Tucson for more than 25 years.

Sun Van meets the standards set by the Americans with Disabilities Act of 1990 by providing demand response public paratransit service for those individuals who, because of their functional ability, are unable to ride Sun Tran.

As depicted in the graph below, there has been a consistent increase in demand for paratransit services in the Tucson region resulting in an increase in ridership. Demographic projections and current land use patterns suggest an increase in the number of annual trips and the average trip length will continue as baby boomers age in place on the urban fringe of our community.

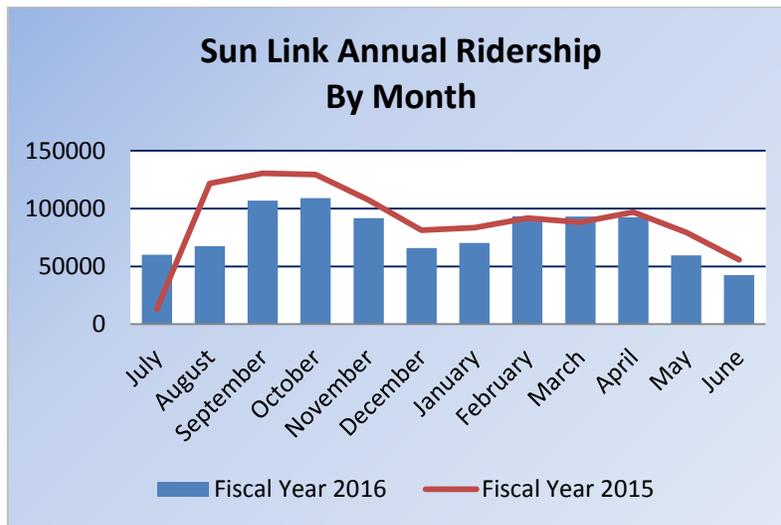


In addition to providing service in the federally–mandated ¾ mile area surrounding fixed-route bus service, Sun Van service is provided in the entire City of Tucson including those areas outside of the ¾ mile area. Also, the Regional Transportation Authority of Pima County (RTA) provides alternative para-transit service for trips within the mandated ¾ mile area surrounding fixed-route bus service (with origins and/or destinations outside of the Tucson city limits) as well as optional ADA trips in defined service areas beyond the mandated service area, providing a comprehensive service area that allow for trips through the metropolitan area. At this time, 21 percent of the City of Tucson mass transit budget is allocated to Sun Van operations while serving 2.2 percent of transit riders.

Sun Link

Starting revenue operations in July 2014, Sun Link, the City of Tucson’s modern streetcar, operates service with approximately 35 employees and eight (8) streetcars. Sun Link serves a 3.9 mile route through four of Tucson’s most unique districts (i.e. the University of Arizona, 4th Avenue, Downtown, Main Gate Square and the Mercado).

Passenger demand for Sun Link is illustrated in the graph on the next page for fiscal years 2015 and 2016. Sun Link’s ridership was 1,078,000 in fiscal year 2015 and 952,000 in fiscal year 2016.



Mass Transit Budget

In regards to the mass transit budget, the City of Tucson Transit Division has provided a five-year forecast of expenditures to plan for maintaining and improving the transit system in the near-term. Due to the transit system’s reliance on the City’s general fund for revenue (\$40 million), this 5-year forecasted budget is analyzed annually in the context of other general fund commitments (police, fire, parks). Despite no dedicated funding source for transit services and competition for slim financial resources, Sun Tran and Sun Van have weathered the recent recession with minimal increases to bus fares and no reduction in services.

Regional Transportation Authority Plan

The 2006 Regional Transportation Authority Plan does have funding dedicated to transit services through a half-cent county-wide sales tax. The RTA Plan identified \$534 million of the \$2.1 billion multi-modal transportation plan for improved transit services. Since 2006, the RTA has provided capital funding for the construction of the Sun Link modern streetcar project, the northwest bus maintenance and storage facility and the SunGO smartcard regional fare payment system. Operating dollars have been allocated to increase bus frequencies, extended late night service hours, express route implementation and neighborhood circulator services.

RTA regional partner jurisdictions have been collaborating with the City of Tucson to build a seamless regional transit system. Considerable effort has been directed towards a single regional fare system, regional branding scheme and service standards to allow residents of the region to travel from one end of the metropolitan area to the other by paying one fare on the transit system.

Changing Ridership

The market assessment as part of the Comprehensive Operational Analysis revealed that Sun Tran and the regional transit system have dedicated riders that travel most-

Alternative Transit Management Models Attachment A Agency and Service Delivery Options

often between the hours of noon and 4 p.m., rely on public transportation to move throughout the region, and have little or no transportation options other than public transportation.

History & Milestones

- In 1905, the company that would eventually be called Sun Tran -- the Tucson Rapid Transit Company (TRT) -- bought the existing horse-drawn streetcar transit system in Tucson. A year later it began an electric streetcar system, ending a 25-year era of animal-powered public transit in Tucson.
- By the mid-1920s, the company recognized its existing streetcar system was not keeping pace with the needs of a growing town. Bus service was needed, and the company started two bus routes.
- The 1920s brought another Sun Tran forerunner into the picture. Transit pioneer Roy Laos began the Occidental Bus Line with one bus. This service provided a critical service to Tucson's south side and his company expanded rapidly.
- By the end of 1930, the versatility of the gas-powered bus was clear. On New Year's Day, 1931, TRT replaced all electric streetcar routes with buses. Demand for bus service grew and a third competitor, Mountain View Bus Line, established service in 1936. Mountain View struggled to survive and eventually was bought out by TRT in 1941.
- Gas-rationing during World War II caused ridership on Tucson's bus companies to skyrocket. Rapid post-war growth followed, and the bus service continued to expand. Larger, more modern buses were added to the fleets, and in 1945, seven million passenger trips were provided by the two systems.
- Diesel buses were introduced in 1951 and gradually replaced all of the gasoline-powered buses. The early 1950s marked a period of steady decline in transit ridership and continued through the 1960s due to labor strikes and increasing competition from the automobile. By 1965, ridership had declined 63 percent.
- In 1969, the City of Tucson purchased Tucson Rapid Transit and ridership grew dramatically. Sixty-five new buses were purchased with the aid of federal grants. The frequency and length of existing routes were increased and new routes were added. A contest ran in the newspaper to rename the system, and the winning name, Sun Tran, was adopted in 1975.
- Meanwhile, Roy Laos' bus company operating on the south and west sides of Tucson, was having trouble keeping pace with the new expansion of the city system. The public in these parts of town wanted additional service the company could not

Alternative Transit Management Models Attachment A Agency and Service Delivery Options

provide, so Sun Tran purchased the company in 1978, and Tucson had a single public transit system.

Important Milestones

- In 1983, Sun Tran spearheaded the idea of several transit centers that would act as transportation hubs in Tucson. The first, named after Roy Laos, was opened on Tucson's south side in 1987.
- Growing concerns about Tucson's air quality led Sun Tran and the city of Tucson to begin experimenting with alternative fuels. In 1987, Sun Tran converted a 35-foot GMC bus to use both compressed natural gas and diesel fuel. This was one of the first such buses in the country.
- As the system continued to evolve with enhanced service and technological advances, Sun Tran achieved the apex of excellence. In 1988, the American Public Transportation Association honored Sun Tran with its America's Best Transit System Award.
- In 1991, the Ronstadt Transit Center opened in downtown Tucson. The city opened a CNG-fueling station adjacent to Sun Tran, paving the way for the system's fleet to be alternatively fueled. Sun Tran purchased three dual-fuel buses, a first for the system.
- Accommodating transit needs on Tucson's booming northwest side, the Tohono Tadaí Transit Center was completed in 1994. It was the first transit center in Arizona designed under the Americans with Disability Act (ADA) guidelines.
- Electronic fareboxes were installed on all Sun Tran buses in 1996. During the six-month period following the introduction of the fareboxes, passenger revenue increased by 7 percent.
- By 1997, almost half of Sun Tran's fleet used CNG technology.
- In 1999, Sun Tran completed installation of its Rockwell Transitmaster Automated Vehicle Location (AVL) system allowing Sun Tran to track every bus while in service. This AVL system was integrated with Sun Tran's new automated annunciator system, which also met ADA guidelines.
- Sun Tran made yet further advancements in November 1999 when Passenger Electronic Revenue Collector (PERC) units were added to its electronic fareboxes. This new technology enabled Sun Tran to convert paper tickets and transfers to magnetic passes and transfers and allowed for the development of new products such as day passes.

Alternative Transit Management Models Attachment A
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- Scheduling, trip planning and operations became easier to manage when these functions were integrated with the addition of the new software system in 2000.
- Operator and passenger security was enhanced in 2001 when digital video recorders were installed on most buses. Later that year, Sun Tran acquired 45 CNG-fueled Nova buses, making 100 percent of its fleet wheelchair accessible.
- In the fall of 2005 Sun Tran received 38 new low-floor bio-diesel buses, and in the spring of 2006 obtained 12 more. Now 100 percent of the fleet is utilizing cleaner-burning fuel. Also at this time, Sun Tran's maintenance facility was the first U.S. transit maintenance facility to receive ISO 14001 certification through a program with Virginia Polytechnic Institute.
- In June 2009, the City of Tucson Mayor & Council approved a transit fare increase effective August 1. Sun Tran's one-way full fare increased from \$1 to \$1.25, the express fare from \$1.00 to \$1.50, & the Day Pass from \$2.00 to \$3.00. All economy fares remained unchanged.
- In March 2010, Sun Tran accepted shipment of its first bus utilizing hybrid technology.
- In April 2011, The City of Tucson Mayor and Council approved another transit fare increase effective July 1, 2011. Sun Tran's one-way full fare increased from \$1.25 to \$1.50, the express fare from \$1.50 to \$2, the Day Pass from \$3 to \$3.50 and the economy one-way from 40 to 50 cents.
- With the completion of the Northwest Bus Facility located at 3920 N. Sun Tran Blvd., the majority of Sun Tran personnel made the move to this new location by mid-February 2012. The completed 25-acre facility was built in three phases:
 - Phase I. Completed in 2005 at a cost of \$8 million, this phase completed the City of Tucson's fleet fueling facility and Sun Tran Boulevard construction and infrastructure.
 - Phase II. At a cost of \$29 million and celebrated in November 2009, this phase completed the Operations building and driver dispatch center, and built half the Maintenance building which consists of 50,000 square feet and 17 bus bays. Parking for 150 buses, and a fueling station and bus were also completed in this phase.
 - Phase III. The final phase of this project provides 95,000 square feet of space and 30 bus bays for Maintenance. It includes a major component rebuild, body shop, paint booth, fuel storage and additional bus wash bays. The Administration building houses the regional center for transit operations in 27,000 square feet of space. An additional bus wash and fuel storage capacity were also included.

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- June 30, 2013, Sun Tran launched SunGO, the smart card fare payment technology designed to make transferring throughout the region easier. Valid on Sun Tran, Sun Express, Sun Shuttle and eventually the Sun Link streetcar in July 2014.
- Sun Tran was named America's Best Transit System for 2005 by the American Public Transportation Association and Arizona's Best Transit System for 2004 and 2012 by the Arizona Transportation Association.
- On July 25, 2014, Tucson introduced the Sun Link streetcar to the public, Tucson's largest and most complex transportation construction project in the City's history. Construction began in March 2012 and was substantially completed in just over 19 months. The 3.9-mile route connects restaurants, shops, and entertainment venues at Main Gate Square, 4th Avenue, Downtown, and Mercado San Agustin and attractions and medical facilities at the University of Arizona.

Sun Tran/Sun Van Contract Outline

- I. Contractor Responsibilities
 1. Management of the System
General Manager and Assistant General Managers
- Respond to specific requests, Key Personnel assignment, Right to remove GM or AGMs (30-day written notice), Approval of replacement
 2. Availability
Discusses time Key Personnel are to be available
- II. General Operations
 1. Goals and Objectives Relating to Continual Improvement
 2. Development of a System-Wide Five-Year Operational Plan
 3. System Personnel, Records, Background Screening and Training
 4. System Route, Schedule Improvements/Adjustments, Planning, Budgeting, and Reporting
 5. Customer Service
 6. Information Technology (IT)
 7. Marketing Plan/Program
 8. Fleet Maintenance Plans
 9. Fleet Management Plans
 10. Facilities Maintenance Plans
 11. SmartCard Fare Collection Maintenance Plan
 12. System-Wide Standard Operating Procedures (SOPs)
 13. Wheelchair/Mobility Device Rescues
 14. Labor Relations and Labor Negotiating
 15. System Safety and Security Plan
 16. Disadvantaged Business Enterprise (DBE)
 17. Title VI
 18. Procedures for Transportation Workplace Drug & Alcohol Testing Programs and Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations
 19. National Transit Database (NTD) Reports
 20. Seamless Regional Fare System
 21. Special Services Office
 22. Monthly Operations Report
 23. Monthly Compliance Report
 24. Sun Tran Accessible Rider Training (START)
 25. Environmental Management
 26. Maintain a self-insurance program as required by the City for the System
 27. EEO Reports
 28. Warranty Recovery
 29. Management Fee/Operating Expenses
 30. Sun Van ADA Performance Standards

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Attachment A-1

- 31. Contractor's Vehicles
- 32. Trade License Agreement
- 33. Transit Asset Management Plan
- 34. Public Transportation Agency Safety Plan

III. Performance Indicators/Liquidated Damages

- 1. Total preventable accidents per 100,000 revenue vehicle miles
- 2. Passenger complaints
- 3. On-time performance – Preventative Maintenance Plans
- 4. Traffic citations

IV. Fleet Maintenance Requirements

V. Responsibilities of the City of Tucson

VI. Operating Expenses and Method of Payment

VIII. Operating Personnel

IX. Management Fee

X. Accounting Procedures

XI. Road Supervision

XII. Bus, Shelter, and Bench Advertising Policy

XIII. Documents

Sun Link Contract Outline

I. Contractor Responsibilities

1. Management of the Streetcar
General Manager, Operation Manager, Safety and Security Officer
 - Respond to specific requests, Key Personnel assignment, Right to remove GM or Opts/Maint. Mgrs, Safety & Security Officer (30-day written notice), Approval of replacement.
2. Availability (GM 100% of time to be dedicated to Streetcar)
 - Discusses time Key Personnel are to be available

II. General Operations

1. Goals and Objectives Relating to Continual Improvement
2. Development of a Streetcar-Wide Five-Year Operational Plan
3. Streetcar Personnel, Records, Background Screening and Training
4. System Route, Schedule Improvements/Adjustments, Planning, Budgeting, and Reporting
5. Customer Service
6. Information Technology (IT)
7. Marketing Plan/Program
8. Fleet Maintenance Plans
9. Fleet Management Plans
10. Facilities Maintenance Plans
11. Streetcar Standard Operating Procedures (SOPs)
12. Wheelchair/Mobility Device Rescues
13. Labor Relations and Labor Negotiating
14. Streetcar Safety and Security Plan
15. State Safety Oversight Compliance
16. Disadvantaged Business Enterprise (DBE)
17. Title VI
18. Procedures for Transportation Workplace Drug & Alcohol Testing Programs and Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations
19. National Transit Database (NTD) Reports
20. Monthly Operations Report (MOR)
21. Monthly Compliance Report (MCR)
22. Environmental Management
23. Maintain a self-insurance program as required by the City for the Streetcar
24. EEO Reports
25. Warranty Recovery
26. Procurement
27. Management Fee/Operating Expenses
28. Contractor's Vehicles
29. Electronic Communication Device Usage Policy

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- 30. Orderly Transfer
- III. Performance Indicators and Pay-For-Performance Adjustments
 - 1. Total preventable accidents per month
 - 2. Passenger complaints
 - 3. Mean Time Between Failures (MTBF)
 - 4. Traffic citations
- IV. Fleet Maintenance Requirements
- V. Responsibilities of the City of Tucson
- VI. Revenues
- VII. Operating Expenses and Method of Payment
- VIII. Operating Personnel
- IX. Management Fee
- X. Accounting Procedures
- XI. Road Supervision
- XII. Car, Stop, Shelter, Bench Advertising Policy

Regional Public Transportation Authority (RTA) Summary and Legislation

- Formed in 2004
- Members consists of each municipality in the county, the county and any other members of the regional council of governments.
- Scope includes development and implementation of 20 year multi-model transportation plan
- Board of Directors
 - Same members as the PAG Board
- Powers
 - For public transportation, RTA can construct and acquire facilities and equipment, and operate or contract for the operation of service.
- Funding
 - Regional ½ sales tax if approved by voters
 - Member agencies
 - Grants
 - Passenger Fares

Chapter 30 – Regional Transportation Authority

Article 1 – General Provisions

48-5301. Definitions

In this chapter, unless the context otherwise requires:

1. "Arterial street or highway" means a street or highway that is used primarily for through traffic such that vehicular traffic from intersecting streets and highways is required by law to stop or yield before entering or crossing the street or highway.
2. "Authority" means a regional transportation authority organized under this chapter.
3. "Board" means the board of directors of a regional transportation authority established pursuant to section 48-5303.
4. "Controlled access highway" has the same meaning prescribed in section 28-601.
5. "County" means a county with a population of less than one million two hundred thousand persons in which a regional transportation authority is established pursuant to section 48-5302.
6. "Fiscal agent" means a bank or trust company authorized to do business in this state or the county treasurer as designated by the board.
7. "Municipality" means an incorporated city or town.
8. "Population" means the population determined in the most recent United States decennial census or the most recent special census as provided in section 28-6532.
9. "Public transportation" means local transportation of passengers by means of a public conveyance, including para-transit.

48-5302. Regional transportation authority; establishment

A. A regional transportation authority is established in a county with a population of more than four hundred thousand but less than one million two hundred thousand persons. The board of supervisors of a county with a population of four hundred thousand or fewer persons may establish a regional transportation authority in the county.

B. An authority is a public, political, tax levying public improvement and taxing subdivision of this state and a municipal corporation to the extent of the powers and privileges conferred by this chapter or granted generally by the constitution and statutes of this state, including immunity of its property and the interest income and gain on its bonds from taxation.

C. The membership of the authority consists of each municipality in the county, the county and any other members of the regional council of governments. The authority may operate in all areas of the county in which it is organized.

D. The executive director of the regional council of governments acts as the executive director of the authority and serves in that specific role until replaced at the discretion of the board of the regional council of governments.

48-5303. Board of directors; executive director

A. The government of the authority is vested in a board of directors composed of the members of the regional council of governments with one vote each when determining transportation policy as the regional transportation authority.

B. The members of the board shall:

1. Appoint a chairman from among the members at the first official meeting of the board.
2. By rule determine its officers, terms and procedures of appointment.

48-5304. Board duties

The board shall:

1. Determine the exclusive public transportation systems to be acquired and constructed, the means to finance the systems and whether to operate the systems or to let contracts for their operation. In the operation of the public transportation system the board may use public transportation facilities used by a municipality, subject to section 48-5308, subsection F.

2. Approve a request for an election to the board of supervisors for submission of the following issues to the electorate:

- (a) Approval of a transportation excise tax authorized by section 42-6106.
- (b) Approval of elements of the regional transportation plan developed pursuant to section 48-5309.
- (c) Approval of changes in the regional transportation plan pursuant to section 48-5309, subsection B.

3. Produce annually a five year transportation improvement program that is consistent with the regional transportation plan elements and that contains the following:

- (a) Projects financed with monies from the regional transportation fund.
- (b) A description of each project, including a schedule of expenditures and sources of funding for each project.
- (c) The political subdivision with responsibility for project implementation.

4. Assure that projects proposed for federal, state or local funding appear in the authority's transportation improvement program and in the transportation improvement program of the regional council of governments.

5. Not later than January 1 of each year for publication in at least two newspapers of the county in January, assess and analyze the status and implications of the transportation improvement program with respect to the occurrence of substantial change as defined in section 48-5309 and with respect to the potential for or occurrence of the following conditions:

- (a) An actual project expenditure that exceeds the project budget amount shown in the first year of the transportation improvement program by five per cent or more.
- (b) A project cost amount that exceeds by ten per cent or more the project budget amount that appears in the first year of the transportation improvement program.

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(c) First year and five year cumulative projected expenditures for all elements of the regional transportation plan in the five year transportation improvement program that exceed revenue estimates for corresponding periods by twenty per cent or more.

6. Develop supplements to the regional transportation plan that encompass a period of time that is coterminous with the effective period of a transportation excise tax approved pursuant to section 42-6106. A supplement shall not be developed earlier than the fourth year and not later than the second year before the expiration of the regional transportation plan.

7. Adopt an annual budget, hire employees and fix the compensation of its employees.

8. Cause a postaudit of the financial transactions and records of the authority to be made at least annually by a certified public accountant.

9. Adopt rules that are proper or necessary to regulate the use, operation and maintenance of its property and facilities, including its public transportation systems and related transportation facilities and services operating in its area of jurisdiction, and to carry into effect the powers granted to the board.

10. Provide opportunities for involvement in all aspects of the planning and amendment process by all affected interested parties.

11. Appoint advisory committees as it deems necessary.

12. Have sole authority to implement the elements of the regional transportation plan, including authority to contract for, absorb or acquire existing public transportation services as it deems necessary.

13. Coordinate the implementation of the regional transportation plan among the local jurisdictions.

14. Contract for financial, administrative, underwriting and trust services necessary to issue bonds pursuant to sections 48-5341 through 48-5347 and administer the regional transportation fund pursuant to section 48-5307, subsection B.

15. Hire legal counsel to represent the authority in any legal proceeding, accountants and other professional personnel as it deems necessary.

16. Set the priorities of the plan and administer and facilitate the distribution of monies in the regional transportation fund.

17. Delegate to the executive director any of the administrative functions, powers or duties that the board believes the executive director can competently, efficiently and properly perform.

18. Contract and enter into stipulations of any nature necessary and convenient for the full exercise of the powers granted in this chapter.

19. Do all things necessary to carry out the purposes of this chapter.

48-5305. Board powers

The board may:

1. Adopt an administrative code that:

(a) Prescribes the powers and duties of the employees of the authority that are not inconsistent with this chapter, the method of appointing board employees and methods, procedures and systems of operating and managing the board.

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(b) May provide for, among other things, appointing a general manager and organizing the employees of the board into units for administration, design and construction, operation, property acquisition and community relations and other units as the board deems necessary.

2. Sue and be sued.

48-5306. Court; fees

A. In addition to any costs that are awarded as prescribed by statute, a court shall award fees of not more than ten thousand dollars and other expenses to any party, other than this state or a city, town or county, on the merits in an action brought by the party against the authority to challenge right-of-way actions conducted by or on behalf of the authority.

B. In determining the award provided for in this section, the court shall deny or reduce the award if it finds that any of the following applies:

1. During the course of the proceeding the beneficiary of the award unduly and unreasonably protracted the final resolution of the matter.
2. The award is attributable to an intervening change in the applicable law.
3. The beneficiary of the award refused an offer of civil settlement that was at least as favorable to the party as the relief ultimately granted.

48-5307. Regional transportation fund

A. A regional transportation fund is established for the authority. The fund consists of:

1. Monies received from the county transportation excise tax as provided in section 42-6106.
 2. Monies appropriated by each municipality or the county.
 3. Grants, gifts or donations from public or private sources.
 4. Monies granted by the federal government or appropriated by the legislature.
 5. Fares or other revenues collected by the authority in operating a public transportation system.
 6. Monies from bonds issued by the board pursuant to article 2 of this chapter.
- B. Subject to the powers granted to the board in article 2 of this chapter, the fiscal agent on behalf of the authority shall administer monies paid into the regional transportation fund.
- C. The department of revenue shall collect all transportation excise tax monies pursuant to section 42-6106 and shall deposit them monthly pursuant to section 42-5014 in a fund designated for the regional transportation authority as the regional transportation fund.
- D. Except as provided in this section, the beneficial interest in the fund is the authority that levied the transportation excise tax. This state or the county does not have a beneficial interest, either legal or equitable, in the fund, except for the repayment of election expenses.
- E. Monies and investments in the regional transportation fund may be used and spent only as provided in this chapter. An appropriation of any nature is not required before the expenditure of any monies from the fund.
- F. The regional transportation fund shall be divided into three separate accounts, designated as the bond account, the construction account and the bond proceeds account.

Transfers between accounts shall be made only as provided in this section or in article 2 of this chapter.

G. Before the issuance of any bonds payable from the regional transportation fund as provided in article 2 of this chapter, transportation excise tax revenues shall be deposited in the construction account and spent as provided in this article. After the issuance of any bonds payable from the regional transportation fund as provided in article 2 of this chapter, transportation excise tax revenues shall be deposited in the bond account first until the bond account contains monies sufficient to meet all principal, interest or redemption requirements for the current period as required by any resolution of the board pertaining to the issuance of bonds. After all current period requirements for all of the bonds are deposited in the bond account, the balance of transportation excise tax revenues received for the current period shall be deposited in the construction account.

48-5308. Distribution from regional transportation fund

A. All monies in the bond account of the regional transportation fund shall be held in trust for the owners of the bonds. Monies in the bond account:

1. Shall be paid out to paying agents or directly to the owners of the bonds pursuant to the resolution or resolutions of the board authorizing the issuance of the bonds.
2. May be used to pay bond related expenses or recurring expenses pertaining to administration and payment of the bonds.

B. Monies in the bond proceeds account of the regional transportation fund may be obligated or spent as directed by the board for the purposes provided by subsection C of this section.

C. Except as provided in subsection D of this section, monies in the construction account of the regional transportation fund shall be spent, pledged or accumulated for the design, right-of-way purchase, construction, operation, maintenance and contiguous open space preservation purchase compatible with local environmental ordinance of, and within the expenditure limits for, each element of the regional transportation plan.

D. Notwithstanding any other law, from the monies deposited in the construction account of the regional transportation fund in each fiscal year, the board shall distribute:

1. To each municipality, excluding the municipality that has the largest population in the county, the greater amount of one per cent of the revenues collected from the transportation excise tax authorized pursuant to section 42-6106 or three hundred thousand dollars, to be used for purposes consistent with subsection C of this section.
2. An amount of not more than three hundred thousand dollars to the regional council of governments to hire professional planning, technical and administrative staff required to accomplish plan development for the authority pursuant to section 48-5309 and to perform the responsibilities as the authority may require.

E. The three hundred thousand dollar distributions prescribed by subsection D of this section are subject to:

1. Proration for any fiscal year in which a transportation excise tax authorized pursuant to section 42-6106 is collected for less than a full fiscal year.

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2. Adjustment by the annual percentage change for the previous calendar year in the GDP price deflator, as defined in section 41-563, for each fiscal year after the first full fiscal year in which the transportation excise tax is collected.

F. Beginning with the first fiscal year following voter approval of the regional transportation plan, monies appropriated for each of the following purposes, if approved by a majority of the qualified electors voting at a special or general election, by each municipality or the county in the authority shall not be less than the total amount of general monies spent for those purposes in that municipality or county for fiscal year 2003-2004 adjusted by the annual percentage change for the previous calendar year in the GDP price deflator as defined in section 41-563:

1. Roadway improvements, including controlled access highways, parkways and controlled access arterials, arterial upgrades and related grade separations.

2. Transit improvements for buses, including expansion of the bus fleet and its associated maintenance facility, expansion of express routes and associated connecting terminals, ridesharing, van pool fleet acquisition, including special projects for persons with disabilities and elderly individuals, and park and ride lots.

3. An express and light rail system.

4. Bicycle projects, including striped lanes on arterials, neighborhood bike routes and planning of bikeways focused on major regional activity center destinations.

5. Pedestrian projects on arterial and collector streets, neighborhood walkways and walkways focused on major regional activity center destinations.

48-5309. Regional transportation plan; definition

A. The authority shall develop a twenty year regional transportation plan that is subject to approval by the qualified electors of the county and financed by a transportation excise tax approved pursuant to section 42-6106 and bonds issued pursuant to article 2 of this chapter. The regional transportation plan:

1. May give priority to multimodal transportation operations and improvements along corridors where seventy-five per cent or more of the adjacent census tracts had a population density of at least three thousand persons per square mile according to the most recent United States decennial census.

2. Shall include a public transportation component.

3. May, among other things:

(a) Define and identify regional transportation corridors.

(b) Define the transportation problems, goals and needs for each corridor.

(c) Determine environmental, economic, energy and social policies to guide transportation investment decisions.

(d) Determine the impact of the plan on air quality, with one of the goals of the plan being the improvement of air quality.

(e) Order the priority of regional transportation corridors for development.

(f) Determine the mix of alternative transportation modes appropriate for development consistent with the transportation goals and needs for each corridor. The mix may include

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sidewalks, rail service, buses, vans, para-transit, park and ride lots, bicycle facilities and any other facility or service reasonably related to transportation.

- (g) Select appropriate public transportation technology.
- (h) Determine the capacity for exclusive public transportation technologies.
- (i) Determine operating performance criteria and costs for public transportation systems.
- (j) Locate routes and access points to the public transportation systems.
- (k) Determine the ridership of public transportation systems.
- (l) Determine the need for landscape buffers, noise barriers, pedestrian bypasses, multiuse paths and other environmental impact mitigation measures relating to the regional transportation plan.

B. The regional transportation plan may not be amended to add or delete an element or substantially change an element without prior approval of the electorate at a general or special election pursuant to subsection D of this section. The prior approval of the electorate required by this subsection is waived if a political subdivision causing changes within its jurisdiction to the regional transportation plan incurs the incremental costs of implementing the proposed changes.

C. The proposition for a revised regional transportation plan considered at an election held pursuant to subsection D of this section shall adhere to the format applicable to the ballot proposition approved by the qualified electors voting on the initial regional transportation plan.

D. If a substantial change occurs, the board of directors shall request the county board of supervisors to provide a ballot proposition for consideration of a revised regional transportation plan on or before the date of the next general election. The board of supervisors shall provide the proposition at the next general election. If a majority of the qualified electors voting on the issue does not approve a revised regional transportation plan, expenditures authorized pursuant to section 48-5308, subsection C, except those obligated as of the date of the general election, are prohibited.

E. For the purposes of this section, "substantial change" means a change that, based on data in the transportation improvement program developed pursuant to section 48-5304, paragraph 3, results in one or more of the following conditions:

1. A present worth of estimated expenditures required to complete all elements of the regional transportation plan that exceeds the present worth of estimated revenues available to the regional transportation fund during the comparable period by ten per cent or more, except that estimated revenues from bond proceeds, if any, shall not exceed the bond capacity, less associated expenses, supported by estimates of unencumbered revenues for the initial ten years of authorization for the transportation excise tax. The preceding five year average of the GDP price deflator as defined in section 41-563 shall be used to discount the respective series of estimated revenues and expenditures to a present worth.

2. An estimated cost to complete one or more elements of the regional transportation plan that exceeds the expenditure limitations of the plan as adjusted by the GDP price deflator as defined in section 41-563 by the following or greater percentages:

- (a) Ten per cent for a single element of the plan.

- (b) Fifteen per cent for any two elements of the plan.
- (c) Twenty per cent for three or more elements of the plan.

48-5310. Five year transportation facilities construction program update

The director of the department of transportation shall develop and annually update as a component of the five year transportation facilities construction program provided in section 28-6954 the use of monies expected to accrue to the county's regional transportation fund as provided in this article that are dedicated for street and highway purposes and that are in the state highway system.

48-5311. Transportation corridor priority

Through their regional planning agency, the county and municipalities in the county shall list transportation corridors by priority in the regional transportation plan. The regional transportation plan may also provide a suggested construction schedule for the transportation corridors contained in the plan.

48-5312. Highway construction and maintenance

A. The department of transportation shall construct and maintain the controlled access highways approved by a majority of the qualified electors voting at a special or general election and financed pursuant to section 48-5308, subsection C.

B. The authority may contract with municipalities in the county and with the county to allow the municipalities and county to construct the streets or highways approved by a majority of the qualified electors voting at a special or general election and funded by monies distributed pursuant to section 48-5308, subsection C.

C. On completion of construction, the municipality or county in which monies are spent for a project approved by a majority of qualified electors voting at a special or general election and funded by monies distributed pursuant to section 48-5308, subsection C is responsible for maintaining the project.

48-5313. Eminent domain

The cities and towns or county may:

1. Exercise the right of eminent domain pursuant to title 12, chapter 8, article 2 for the purposes prescribed in this chapter on behalf of the authority.
2. Sell or lease to the authority property acquired through eminent domain proceedings.

48-5314. Election on regional transportation plan and excise tax

A. The board shall:

1. Adopt a twenty year comprehensive multimodal regional transportation plan consistent with the requirements of this article, including transportation corridors by priority and a schedule indicating the dates that construction will begin for projects contained in the plan.

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2. Request by resolution certified to the county board of supervisors that the issue of levying a transportation excise tax pursuant to section 42-6106 be submitted to the qualified electors at a countywide special election or placed on the ballot at a countywide general election. Within six months after receiving a certified copy of the resolution, the county board of supervisors shall either call a special election or place the issue on the ballot of a general election, subject to the requirements of this section.

B. The election ballot shall include a description of each transportation element of the regional transportation plan including a separate percentage share and dollar share of the transportation excise tax revenues allocated to each element.

C. In addition to any other requirements prescribed by law, the county board of supervisors shall prepare and print a publicity pamphlet concerning the ballot question and mail one copy of the pamphlet to each household containing a registered voter in the county. The mailings may be made over a period of days but shall be mailed for delivery before the earliest date registered voters may receive early ballots for the election. The publicity pamphlet shall contain:

1. The date of the election.
2. The individual household's polling place and the time the polls will be open.
3. A summary of the principal provisions of the issue presented to the voters, including the rate of the transportation excise tax, the number of years the tax will be in effect and the projected annual and cumulative amount of revenues to be raised.

4. A statement describing the purposes for which the transportation excise tax monies may be spent as provided by law, including:

(a) A summary of the regional transportation plan adopted pursuant to section 48-5309 and subsection A of this section, including a description of each transportation element of the regional transportation plan.

(b) A map of proposed routes and transportation corridors of all major transportation projects and public transportation systems.

(c) The percentage share and dollar amount of transportation excise tax revenues, together with other identified revenues, dedicated for each transportation element, transportation project and public transportation system, and conditions and limitations on the use of the money.

5. The form of the ballot.

6. Any arguments for or against the ballot measure. Affirmative arguments, arranged in the order in which the elections director received them, shall be placed before the negative arguments, also arranged in the order in which they were received.

D. Not later than ninety days before the date of the election, a person may file with the county elections director an argument, not more than three hundred words in length, advocating or opposing the ballot measure, subject to the following requirements:

1. The person who files the argument shall also pay to the elections director a publication fee prescribed by the board of supervisors. Payment of the fee required by this paragraph, or reimbursement of the payor, constitutes sponsorship of the argument.

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2. If the argument is sponsored by one or more individuals, the argument shall be signed by each sponsoring individual.

3. If the argument is sponsored by one or more organizations, the argument shall be signed by two executive officers of each organization.

4. If the argument is sponsored by one or more political committees, the argument shall be signed by each committee's chairperson or treasurer.

5. The names of persons who have signed arguments and the names of sponsoring organizations shall appear with the argument in the pamphlet. The person or persons signing the argument shall also give their residence or post office address and a telephone number, which shall not appear in the pamphlet.

E. In addition to any other ballot requirements prescribed by law, the elections director shall cause the following to be printed on the official ballot:

1. The designation of the measure as follows: "Relating to county transportation excise (sales) taxes".

2. Instructions directing the voter to the full text of the official and descriptive titles containing the summary as printed in the sample ballot and posted in the polling place. The ballot may include the summary of the regional transportation plan.

3. The questions submitted to the voters as follows:

I. Do you approve the regional transportation plan for _____ county? YES _____ NO _____

(A "YES" vote indicates your approval of the proposed regional transportation plan as developed by the regional transportation authority and described in the election materials.)

(A "NO" vote indicates your disapproval of the proposed regional transportation plan.)

II. Do you favor the levy of a transaction privilege (sales) tax for regional transportation purposes in _____ county? YES _____ NO _____

(A "YES" vote has the effect of imposing a transaction privilege (sales) tax in _____ county for _____ years to provide funding for the transportation projects contained in the regional transportation plan.)

(A "NO" vote has the effect of rejecting the transaction privilege (sales) tax for transportation purposes in _____ county.)

F. For either ballot question I or II to be approved, both the proposed regional transportation plan and the proposed transaction privilege tax must be approved by a majority of the qualified electors voting on the measure. If either ballot question I or II fails to be approved by a majority of the qualified electors voting on the measure, both fail.

G. Except as otherwise provided by this section, the election under this section shall be conducted as nearly as practicable in the manner prescribed for general elections in title 16.

H. The county election officer shall account for costs specifically incurred with respect to the ballot issue under this section.

48-5315. Utility relocation reimbursement; definition

A. If county transportation excise tax monies collected pursuant to section 42-6106 are used to construct a light rail system under the regional transportation plan, all costs for the

relocation, and reasonable ongoing costs related to the relocation, of utility facilities incurred as a direct result of the construction and operation of the light rail system shall be reimbursed by the light rail project to the utility. The board shall make the payments from transportation excise tax revenues within ninety days after presentation of a statement of verified expenses. The statement of verified expenses shall not include profit but may include a reasonable allocation of general overhead. The verified expenses may be reviewed and audited by the light rail operator. The audit must be concluded within ninety days and shall be conducted pursuant to standard industry accounting principles.

B. If the relocated utility has existing land rights, the light rail operator shall relocate the utility with equal land rights. If the relocated utility is operating in the right-of-way under a permit, the light rail operator shall relocate the utility according to the utility's existing rights under the permit within the right-of-way.

C. The light rail operator shall be fully responsible for acts, negligence or omissions of all of its employees on the project that result in damage to utility facilities.

D. For the purposes of this section, "utility" means any public service corporation, licensed cable television system, telephone line or telegraph line corporation or person engaged in the generation, transmission or delivery of electricity, natural gas, telephone, cable television, telegraph or water service, including this state or any political subdivision or agency of this state.

Article 2 - Financing

48-5341. Bonds payable from transportation excise taxes

The board is designated as the body having sole and exclusive power to authorize and issue bonds or incur long-term obligations payable in whole or in part from monies collected from the transportation excise tax authorized pursuant to section 42-6106. The board may:

1. Issue negotiable bonds payable solely from monies paid into the bond account of the regional transportation fund in the principal amount that in the opinion of the board is necessary to provide sufficient monies for any lawful purpose for which the regional transportation fund monies may be spent, to establish reserves to secure the bonds and to provide for the payment of all other expenditures of the board incidental, necessary and convenient to carry out these purposes.

2. Issue refunding bonds if the board deems refunding expedient.

3. Refund any bonds issued by the board and payable from regional transportation fund income as authorized in this article by the issuance of refunding bonds, whether the bonds to be refunded have or have not matured. Proceeds of refunding bonds may be used to pay principal, interest or redemption premiums on refunded bonds.

4. Issue bonds partly to refund bonds then outstanding and partly for any other purpose consistent with this article. Regardless of whether or not the bonds are of such form or character as to be negotiable instruments under the terms of the uniform commercial code, the bonds are fully negotiable within the meaning of and for all purposes of the uniform commercial code.

48-5342. Bond requirements

A. The bonds authorized by this article shall:

1. Be authorized by resolution of the board.
2. Bear such date or dates and shall mature at such time or times, not exceeding the earlier of twenty years from their respective dates or the date the transportation excise taxes securing the bonds cease, as the resolution or resolutions may provide.
3. Bear interest at such rate or rates, including rates that may vary from time to time, pursuant to parameters set by the board in the authorizing resolution.
4. Be in the denomination, be in the form, either coupon or registered, be executed in the manner, be payable as to principal, interest or premium in the medium of payment at the office of the state treasurer of this state or at such other place as the board provides either by automatic deposit, wire transfer or mail.
5. Be subject to such terms of redemption, at the option of either the board or the owner of the bond, as the resolution or resolutions may provide.

B. The bonds may be sold at either public or private sale, above, at or below par and on terms the board determines. Bonds to fund or refund other bonds may be exchanged with the holders of bonds being funded or refunded on terms the board determines.

48-5343. Bond payment; security

In connection with the issuance of the bonds authorized by this article or to secure the payment of the bonds and interest on the bonds, the board by resolution may:

1. Provide that bonds issued under this article may be paid with and secured by a pledge on all or any part of the monies paid into the bond account of the regional transportation fund, and if monies in the bond account are ever insufficient, then from any other unobligated monies in the construction account or the bond proceeds account. The board may:

(a) Set the priority of lien or claim of any series or issue of bonds against any other series or issues.

(b) Not abrogate or change the priority unless the affected series or issue is to be fully paid or fully provided for by the issuance of refunding bonds or the holders of the bonds affected agree in writing to the change.

2. Pledge and assign to or in trust, with a trustee appointed by the board, for the benefit of the holder or holders of the bonds all or any part of the monies paid into the bond account of the regional transportation fund as will be necessary to pay the principal of, interest on and premium, if any, on the bonds as the bonds become due.

3. Set aside, regulate and dispose of reserves and sinking funds.

4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund any and all reserves or sinking funds set up by the bond resolution.

5. Prescribe the procedure, if any, by which the terms of a contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which the consent may be given.

6. Provide for payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the board in the issuance, sale, delivery and payment of the bonds.

7. Do any other matters, of like or different character, that may in any way affect the security and protection of the bonds.

48-5344. Pledges; liens

A. A pledge made pursuant to this article is valid and binding from the time when the pledge is made. The monies pledged pursuant to this article when placed in the bond account, bond proceeds account or construction account of the regional transportation fund are immediately subject to the lien of the pledge without any future physical delivery or further act.

B. A lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board, regardless of whether the parties have notice. When placed in the records of the board, the official resolution or trust indenture or any instrument by which this pledge is created is notice to all concerned of the creation of the pledge, and these instruments are not required to be recorded in any other place. A filing or recording of the resolution of the board creating or extending the lien or pledge in order for the pledge or lien to become fully effective is not required in any office other than in the office of the board.

48-5345. Liability; bond validity

A. The members of the board or a person executing the bonds is not personally liable for the payment of the bonds.

B. The bonds are valid and binding obligations of the board notwithstanding the fact that before the delivery of the bonds any of the officers whose signatures appear on the bonds cease to be officers of the board.

C. From and after the sale and delivery of the bonds, the bonds are incontestable by the board or the county.

48-5346. Bond purchase

The board may purchase bonds out of any monies available and cancel these bonds.

48-5347. Notice; bond issuance

A. The board shall publish a notice of its intention to issue bonds under this article for at least five consecutive days in a newspaper published in this state. The last day of publication shall be at least ten days before the issuance of the bonds.

B. The notice shall state the amount of the bonds to be sold and the intended date of issuance.

48-5348. Bond proceeds; distribution; expenditures

A. After deducting the necessary costs and expenses of the issuance and sale of the bonds, the board shall deposit, pursuant to sections 35-146 and 35-147, the proceeds received

from the sale and delivery of bonds issued pursuant to this article in the regional transportation fund. The state treasurer or the fiscal agent shall first apply those amounts of the bond proceeds provided in the resolution issuing the bonds to all reserve and sinking funds created in the bond resolution.

B. The board shall use the bond proceeds solely for the purposes provided in the bond resolution, except that, if the revenues pledged to secure the bonds ever become insufficient to pay the annual principal and interest on the bonds, the board shall order:

1. The liquidation of any investments.
2. The state treasurer or the fiscal agent to apply all of the receipts as necessary to make current all payments then due on the bonds.

48-5349. Agreement of state and county

A. This state pledges to and agrees with the holders of the bonds that this state will not limit or alter the transportation excise taxes in a way that adversely affects the rights of the holders of the bonds, limit or alter the authority of the board levying a transportation excise tax in a way that prevents the imposition of sufficient transportation excise taxes to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, interest on the bonds, interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders are fully met and discharged.

B. The board as agent for this state may include this pledge and undertaking by this state in its resolutions and indentures securing its bonds.

C. A county shall not take any action to lower or terminate any transportation excise tax.

48-5350. Taxation exemption

The board is regarded as performing a governmental function in carrying out the purposes of this article and is not required to pay taxes or assessments on any of the property acquired or constructed or on the activities of the board in maintaining and caring for the real property or in the monies derived from the real property. The bonds, their transfer and the income from the bonds are at all times free from taxation in this state.

48-5351. Attorney general bond certification

A. The board may submit to the attorney general any bonds to be issued under this article after all proceedings for the authorization of the bonds have been taken. On the submission of the proceedings to the attorney general, the attorney general shall investigate and determine the validity of the bonds and the regularity of all proceedings in connection with the issuance.

B. If the proceedings conform to this article and if it is determined that the bonds when delivered and paid for will constitute binding and legal obligations of the board enforceable according to the terms of the bonds, the attorney general shall certify in substance on the back of each of the bonds that it is issued in accordance with the constitution and laws of this state.

48-5352. Bond obligations of the board

Bonds issued pursuant to this article:

1. Are obligations of the board issuing the bonds.
2. Are payable only pursuant to the terms of the bonds.
3. Are not obligations that are general, special or otherwise of this state or the county.
4. Are not a legal debt of this state or of the county.
5. Are not enforceable against this state or that county out of any monies other than the income and revenue pledged and assigned to or in trust for the benefit of the holder or holders of the bonds.

48-5353. Bonds; legal investments

Bonds issued under this article are made securities:

1. In which all of the following may properly and legally invest monies including capital in their control or belonging to them:
 - (a) Public officers and bodies of this state.
 - (b) Municipalities and political subdivisions of this state.
 - (c) Insurance companies and associations and other persons carrying on an insurance business.
 - (d) Banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business.
 - (e) Administrators, guardians, executors, trustees and other fiduciaries.
 - (f) Other persons authorized to invest in bonds or other obligations of this state.
2. That may be deposited with and may be received by all public officers and bodies of this state and all municipalities and political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is authorized.

48-5354. Federal income tax considerations

Title 35, chapter 3, article 7 applies to the bonds and the authority.

Joint Powers Organization (JPO) Summary and Legislation

- Can be formed via intergovernmental governmental agreements by two or more governmental agencies (members)
- Members can include county, cities, towns, Indian communities, and other political subdivisions (e.g. RTA, colleges and universities)
- Once formed JPO is separate legal entity, non-profit corporation
- Board of Directors
 - Board composition, terms and size determined by member agencies
 - Voting also determined by member agencies
- Powers
 - Determined by member agencies
- Funding
 - Member agencies
 - Grants
 - Passenger Fares

Article 3 – Joint Exercise of Power

11-951. Definition of public agency

For the purposes of this article, "public agency" includes the federal government or any federal department or agency, Indian tribes, this state, any other state, all departments, agencies, boards and commissions of this state or any other state, counties, school districts, fire districts, cities, towns, all municipal corporations, and any other political subdivisions of this state or any other state.

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 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 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 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 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 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

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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 percent 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 municipal 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.

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

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 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 this article to establish a workers' compensation pool to provide for the payment of workers' compensation claims pursuant to title 23, chapter 6 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 this section in their behalf directly or by contract with a private party. A workers' compensation pool established pursuant to this subsection may provide coverage for workers' compensation, employers' liability and occupational disease claims. A workers' compensation pool is subject to approval as a self-insurer by the industrial commission pursuant to section 23-961, subsection A, paragraph 2 and is subject to title 23, chapter 6 and rules adopted pursuant to that chapter in addition to the requirements of this section. The industrial commission, by rule, resolution or order, may adopt requirements for the administration of a workers' compensation pool under this subsection, including separation or commingling of funds, accounting, auditing, reporting, actuarial standards and procedures.

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C. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements for the joint purchase of life insurance, disability insurance, accident insurance or health benefits plan insurance or may pool retention of their risks of loss for life, disability, health or accident claims made against any public agency member of the pool or to jointly provide the health and medical services authorized in section 36-2907. Public agencies may establish pools for the purposes of this subsection by any of the following methods:

1. On a cooperative or contract basis.
2. By the formation of a nonprofit corporation.
3. By contracts or intergovernmental agreements with the Arizona health care cost containment system administration.
4. By the execution of a trust agreement directly by the agencies or by contracting with a third party.

D. 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 for property, liability or workers' compensation losses or to pool retention of their risks for property and liability loss to cover the public agency, its elected officials and employees and the contractor and subcontractor of every tier engaged in the performance of a construction project for the public agency. Public agencies may establish pools for the purpose of this subsection by any of the following methods:

1. On a cooperative or contract basis.
2. By the formation of a nonprofit corporation.
3. By the execution of a trust agreement directly by the agencies or by contracting with a third party.

E. Section 10-11301 does not apply to nonprofit corporations formed 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 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.

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Attachment C

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 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 financial services agreements with banks and other financial institutions, that it may issue checks in its own name and that it may invest

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its monies in equity securities, mutual funds and investment funds registered with the United States securities and exchange commission, debt obligations and any eligible investment permitted by section 35-323.

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 five years. The director of the department of insurance may examine a public agency pool sooner than five 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 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 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.

O. 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.

P. A pool established pursuant to this section may make available programs providing for insurance coverages described in subsections A, B and C of this section to those charter schools governed by section 15-183, subsection M and, except for a workers' compensation pool, to private, nonprofit educational institutions.

Q. In addition to the authority set forth in this title, a pool established pursuant to this section may invest public monies on behalf of pool members, but any such investments shall be limited to those permitted by section 35-323, except as provided in section 15-1225, subsection G. A pool established pursuant to this section may not invest monies that are required by law to be deposited with a county treasurer.

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R. A pool established pursuant to this section, by the adoption of a resolution of continuing effect, may authorize and request the state treasurer to invest funds for the pool pursuant to section 35-326.

S. A pool established pursuant to this section may offer services on behalf of pool participants that participate in the unemployment insurance program administered by the department of economic security, including the option to make payments in lieu of contributions as permitted by sections 23-750 and 23-751. The pool is deemed an agent of the pool participants as employers for the purposes of title 23, chapter 4.

T. For the purposes of this section, "health benefits plan" means a hospital or medical service corporation policy or certificate, a health care services corporation contract, a multiple employer welfare arrangement or any other arrangement under which health and medical benefits and services are provided to two or more persons.

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 and any Indian tribe 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 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.

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(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 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 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 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 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.

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(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 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. 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.

11-953. Appropriations

Any public agency entering into an agreement or contract pursuant to this article may appropriate funds and may sell, lease, give or otherwise supply for the benefit of the joint or cooperative undertaking such services or personnel as may be within its legal power to furnish.

11-954. Limitation of powers

Except for the right of joint exercise of powers granted in this article, the provisions of this article shall be cumulative and supplemental and nothing contained in this article shall be so construed as to authorize any public agency to exercise any power or engage in any business or enterprise that such public agency is not authorized to exercise or engage in pursuant to other provisions of law.

11-955. Joint powers public safety committee; powers and duties

A. The chief law enforcement officer or the officer's designee from two or more cities, towns, Indian tribes or counties in this state may establish a joint powers public safety committee for the purpose of facilitating the sharing of criminal justice information between

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law enforcement agencies as authorized by section 41-1750. The chief law enforcement officer or the officer's designee from each city, town, county or Indian tribe shall establish a governing board.

B. The governing board shall:

1. Establish rules related to the governance of the committee.
2. Establish rules related to the security, privacy, confidentiality and dissemination of information maintained by the committee pursuant to state and federal law.

3. Elect a budget officer from among its members to fulfill any administrative duties prescribed by the committee.

4. Annually adopt a budget for the following fiscal year.

C. The committee may accept and spend public monies and private grants, gifts and contributions.

D. Membership on the committee does not constitute the holding of an office, and committee members are not required to take and file oaths of office before serving on the committee. No committee member may be disqualified from holding any public office or employment nor may the member forfeit any office or employment by reason of the member's appointment, notwithstanding the provision of any general, special or local law, ordinance or city charter.

Metropolitan Public Transit Authority Summary and Legislation

- History
 - Legislation passed in 1970 for City of Tucson to address decline and potential loss of private bus service in Tucson
 - City of Tucson formed Tucson Transit Authority (TTA) in July 1970
 - In June 1971, State Supreme Court upheld State Attorney General opinion requiring voter approval for TTA bond issuance
 - Without potential for bonds, the appointed TTA board resigned in March 1972
 - City of Tucson took over transit administration in 1972

- Legislation
 - Mayor and Council can approve the creation of the MPTA and operating area of authority via ordinance
 - Other agencies (Cities, Towns and Pima County) can join authority as member agencies. RTA has municipal powers and should also be able to join (pending legal opinion)
 - Board of Directors
 - Elected board members
 - 5 members to start, up to 11 members with other agencies joining
 - Initial board members appointed by Mayor and Council
 - Must be residents within MPTA operating area
 - Permanent board members elected with first state general election
 - Four year term
 - If multiple member agencies, proportional representation based on population with minimum one vote per member agency
 - Powers
 - Adopt by-laws to govern the board
 - Build, own and operate transit facilities and services
 - Hire employees and contract for services
 - Set fares and charges
 - Enter into agreements with other agencies
 - Develop annual budget
 - Set annual property tax funding amount
 - Accept funding from other agencies
 - Accept federal grants
 - Eminent domain
 - Funding
 - Member agencies
 - Grants
 - Passenger Fares

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Attachment D

- Property Tax (Pima County Board of Supervisors shall provide mechanism for annual levy of a tax for the MPTA)
- Other
 - Various sections need updating such as
 - Ability to operate required ADA paratransit service
 - Procurement – limited to low bid
 - Board reimbursement
 - Limit on Bonding \$2M
 - If federal funds used, prohibited by federal law to provide school bus service
 - Similar to Special Taxing District
 - Per court case (Tucson Transit Authority vs Nelson, as shown on page 73):
 - Must hold election to use general obligation and revenue bonds.
 - Considered a public service corporation. Corporation Commission approval for rates.
 - Not exempt from property taxes.
 - Member agencies may provide transit services separately from the authority

Article 2 - Metropolitan Public Transit Authorities

40-1111. Definitions

In articles 2, 3 and 4, unless the context otherwise requires:

1. "Authority" means a metropolitan public transit authority organized under this article.
2. "Board" means the board of directors of a metropolitan public transit authority.
3. "Director" means a member of the board of directors.
4. "Metropolitan public transit authority" means a political subdivision organized solely to provide necessary plants, equipment, work instrumentalities, and real and personal property and rights thereto, which are used or useful for the transportation of passengers for hire on scheduled routes.
5. "Municipality" means any incorporated city or town.
6. "Operating area" means the area within which the authority provides transportation service, the boundaries of which shall be established in accordance with this article.
7. "Public agency" includes the state of Arizona and any county, city, town, district or other public agency or entity created under the laws of this state or the federal government.
8. "Public transit" means the local transportation of passengers and their incidental baggage on scheduled routes by means of a conveyance on an individual passenger fare-paying basis, and excluding transportation by a sightseeing bus, taxi or any vehicle not operated on a scheduled route basis. Nothing in this paragraph shall be construed to prohibit the authority from providing school bus services for transportation of pupils between their place of residence and school.

40-1112. Qualifying bodies which may form authority; purposes

A. A metropolitan public transit authority may be formed by any of the following:

1. The governing body of a municipality, the population of which is not less than fifty-one per cent of the proposed area of the authority.
2. The governing bodies of more than one municipality acting jointly in a county, the combined population of which are not less than fifty-one per cent of the proposed area of the authority.
3. The board of supervisors of a county if the population of the unincorporated areas of such county within the proposed authority area and the population of any one or more contracting municipalities when combined is not less than fifty-one per cent of the population of the county.

B. Such an authority may acquire, own and operate a metropolitan public transit system including all appurtenances thereof in the area of the authority.

40-1113. Procedures required to organize an authority

A. A metropolitan public transit authority shall be organized and incorporated in the following manner:

1. The governing body of a municipality or county or the governing bodies of more than one municipality or county may pass an ordinance or ordinances declaring that the public convenience and necessity require the incorporation of a metropolitan public transit authority. Such ordinance shall state that it is proposed to incorporate the authority under the provisions of this article and shall include the name of the municipalities or counties, the area or portion of whose area is to be included within the operating area of the authority and a description of the unincorporated area of the county to be included within operating area of the authority. The ordinance shall have no force and effect unless the proposed contracting municipalities and counties described in such ordinance and qualified to participate shall have approved participation by ordinance or resolution similarly worded.

2. The articles of incorporation of a metropolitan public transit authority shall set forth:

(a) The name or names of the originating municipalities or counties.

(b) The name of the metropolitan public transit authority and the area to be served by such authority.

(c) A statement that permission to organize the authority has been granted by resolution duly adopted by the governing body of the initiating municipalities or counties the area or a portion of the area of which is to be included and the date of adoption of such resolution.

B. The articles of incorporation of an authority, any deeds or other documents by which properties are conveyed to the authority, and any mortgages executed by the authority shall be filed for record with the secretary of state.

40-1114. Authority subject to law and regulations; nonprofit status

A. An authority shall be subject, in the operation of its transportation facilities and equipment, to the laws and regulations of the state of Arizona and of the applicable municipalities relating to traffic and operation of vehicles on the streets and highways of the state and of the municipalities.

B. The corporation shall be a nonprofit enterprise, and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm or corporation.

40-1115. Inclusion of additional areas

Additional areas may be included within the boundaries of the authority and become a part of such authority. If a petition for the inclusion of additional territory signed by at least fifty-one per cent of the qualified electors who reside within the limits of the additional territory is filed with the authority, such additional territory may be included in the authority by resolution of the board. Whenever any area shall be annexed or consolidated with a municipality which is a part of and otherwise completely within the boundaries of the authority organized as provided by this article, such annexed or consolidated area shall, by virtue of its annexation or consolidation to such municipality, become and be a part of the authority.

40-1116. Judicial review of action of municipality or county

A party aggrieved by the act of a municipality or county in forming a metropolitan transit authority may, not later than twenty days after passage of the ordinance to incorporate the authority, bring an action in superior court in the county in which the authority is formed to set aside the action of the municipality or county.

40-1117. Condemnation privilege

The authority may use the provisions of law relating to eminent domain. No provision for eminent domain given to the authority by this section or by any provision of law may be exercised against property or any franchise of a common carrier of passengers when a territory is being adequately served by such common carrier of passengers under authority of law. Such condemnation proceedings shall only be applicable to property located within the area of the authority.

40-1118. Exemption from taxation

A. The title to all property acquired under the provisions of this article shall immediately and by operation of law vest in such transit authority, in its corporate name, and is dedicated and set apart for the uses and purposes set forth in this article, and shall be exempt from all taxation, including sales, gross receipts, motor vehicle registration fees, and any use taxes, provided the authority shall not be authorized to acquire title to any property other than property used for transportation purposes or directly connected therewith.

B. Bonds issued pursuant to article 4 of this chapter, their transfer and income therefrom shall at all times be free from taxation within the state.

Article 3 - Organization and Powers of Metropolitan Public Transit Authority

40-1121. Board of directors of authority; qualifications; appointment; terms; oath; meetings; compensation

A. All powers, privileges and duties vested in a metropolitan public transit authority shall be administered by a board of directors consisting of at least five and not more than eleven members. Each member shall be a resident of the area covered by the authority. The initial board shall consist of five members as appointed by the governing body or bodies of the originating municipalities or counties. If the authority is organized by more than one municipality or county the initial board shall be appointed by the governing bodies of such municipalities or counties with each such municipality or county having five votes for such selections. Such vote may be cast by a municipality or county for one member or may be divided among any number of prospective appointees, not exceeding five. The governing bodies of any such municipalities or counties in making such appointments shall provide for equal representation on a population basis to all areas within the operating area except each municipality or county the area or a portion of the area of which is included within the authority shall have at least one resident as a member of the board. The initial board shall serve until January 1 of the year succeeding the next general election of the state. The term of office

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of all elected boards of directors shall be four years. Each four years an election shall be held for the purpose of voting for members of the board and the election shall be held at such time and conducted in such manner as prescribed by the governing body or bodies of the originating municipalities or counties. Appointment to fill a vacancy caused other than by expiration of term shall be made by resolution of the board, upon nomination of the governing body or bodies of the municipalities or counties entitled to representation on the board.

B. At least twelve weeks preceding the date of the next state general election the governing body or bodies of the originating municipalities or counties shall call an election to be held for the succeeding board of directors. The call for election shall specify the number of directors to be voted for and what areas each is to represent. The governing body or bodies calling the election shall provide for equal representation on a population basis to all areas within the operating area except each municipality, county, or portion thereof if all the municipality or county is not within the authority, shall have at least one resident as a member of the board. The governing body or bodies calling the election shall prescribe the manner in which candidates of the board of directors shall qualify in order to have their names printed on the ballots.

C. The governing body or bodies calling the election shall set the day for the election to be held, which day shall be not less than six weeks after the call of the election. Notice of the election must be published once in a daily or weekly newspaper of general circulation within the boundaries of the authority. The election shall be held as nearly as possible in conformity with the general election law. The governing body or bodies shall meet within thirty days following the election to canvass and to certify the results of the election. Only qualified electors residing within the boundaries of the authority on the date of the election shall be entitled to vote at such election. Electors may only vote for qualified candidates to represent the area in which such electors reside.

D. The governing body or bodies calling the election may provide that the election shall be held on the same date as the next state general election. It may require the board of supervisors of the county or counties in which the authority is located to conduct the election for the board of directors in conjunction with its holding of the next state general election. The election shall be held at the same polling places and conducted by the same election officials as at the state general election, but separate ballots shall be used and those offering to vote shall sign an affidavit relating to their qualification to vote in the election for the board of directors. In the event the county sustains any additional expense above the normal expenditures incurred in connection with the general election the authority shall reimburse the county for such additional expenditures.

E. Each director, before entering upon the duties of his office, shall take the oath of office, a copy of which shall be filed with the secretary of state and a copy thereof with the secretary of the authority.

F. The initial meeting of a board shall be held at the time and place fixed by the governing body or bodies creating the authority, and at this first meeting shall elect from among its membership a president, a vice-president and a secretary, each of whom shall serve in such capacity for a period of two years.

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G. A majority of all members of the board shall constitute a quorum for the transaction of business.

H. Directors shall each receive twenty-five dollars a day for attendance at board meetings, but not to exceed fifty dollars in one calendar month, and shall be reimbursed for travel to and from such meetings at the rate of ten cents per mile.

40-1122. Powers and duties of the board

A. The board of directors shall:

1. Be the governing body of the authority and, in compliance with the provisions of this article, shall determine all questions of policy of the authority.

2. Fix the time and place at which its regular meeting shall be held, and shall provide for the calling and holding of special meetings.

3. Determine what transportation facilities should be acquired or constructed to provide the standards of public service determined by it to be necessary and reasonably supportable.

4. Fix the location of the principal place of business of the authority and the location of all offices and departments.

5. Supervise and regulate every transportation facility owned and operated by the authority, including the fixing of routes, rates, fares, rentals, charges and classifications thereof, and the making and enforcement of rules, regulations, contracts, practices, and schedules for or in connection with any transportation facility owned or controlled by the authority. The board shall establish such policies, insofar as practical, so as to result in revenue which will make the authority self-supporting.

6. Prescribe by resolution a system of business administration and create any and all necessary offices and positions of employment, and select and employ, and establish and reestablish, the powers, duties and compensation of all officers and employees, prescribe the periods, terms and conditions of their employment, and require and fix the amount of all official bonds necessary for the protection of funds and property of the authority.

7. Cause a semiannual audit to be made on all books and accounts of the authority by an independent certified public accountant.

8. As soon as practical after the close of each fiscal year, submit to the chief administrative officer and the governing body of any city and any county whose area or a portion thereof is within the authority a financial report showing the result of operations during the preceding fiscal year and the financial status of the authority on the final day thereof. Copies of the report shall be supplied to the general public upon request and shall be published in the newspaper having the largest circulation in the authority.

B. The board of directors may:

1. Contract and take all actions and proceedings and do any and all other things necessary to carry out the purposes of this article.

2. Contract for or employ any professional services required by the authority or for the performance of work or services for the authority, which, in the opinion of the board, cannot satisfactorily be performed by the officers or the employees of the authority.

3. Adopt bylaws to govern the operation of the authority.

4. By resolution, delegate and redelegate to officers of the authority power to employ clerical, legal and engineering assistance and labor, and, under such conditions and restrictions as shall be fixed by the directors, power to bind the authority by contract.

5. Provide by resolution, under such terms and conditions as it sees fit, for the payment of demands against the authority without prior specific approval thereof by the board if the demand is for a purpose for which an expenditure has been previously approved by the board in an amount no greater than the amount so authorized, and if the demand is approved by the general manager or such other officer or deputy as the board may prescribe.

6. On behalf of the authority borrow money and issue bonds.

40-1123. Officers and employees of authority

A. Officers of an authority may consist of the board of directors, and a general manager, a general counsel, a treasurer and a comptroller, as may be appointed by the board of directors to serve at the pleasure of the board. All other officers, deputies and employees shall be appointed by the board or its designee.

B. The oath of office of all officers appointed by the board of directors or by the general manager of the authority shall be taken, subscribed, and filed with the secretary of the authority any time after the officer has notice of his appointment but not later than fifteen days after the commencement of his term of office. No other filing shall be required.

C. The general manager shall serve full time.

D. The general counsel shall be a person admitted to practice law in the state of Arizona and shall have been engaged in the practice of law for not less than seven years next preceding his appointment.

E. The person appointed comptroller shall have been actively engaged in the practice of accounting for not less than three years next preceding his appointment.

F. The treasurer shall be the custodian of the funds of the authority and shall make payments only upon warrants duly and regularly signed by the president or vice president of the board or other person authorized by the board so to do, and by the secretary or general manager. The treasurer shall keep an account of all receipts and disbursements. The treasurer shall furnish, at the expense of the originating political subdivision or subdivisions, a bond in the amount of fifty thousand dollars. The bond shall be conditioned upon the proper discharge of the powers and duties by the treasurer in accordance with the provisions of this article. The bond shall be approved by the attorney general and the board of directors of the authority and kept on file in the office of the board of directors.

40-1124. General powers of an authority

A metropolitan public transit authority may:

1. Sue and be sued.
2. Adopt a corporate seal.
3. Take by grant, purchase, bequest, devise, or lease, and hold, enjoy, lease, sell, encumber, or otherwise dispose of real property or personal property of every kind within the purview of authority.

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4. Make contracts and enter into stipulations of any nature whatsoever, including without limitations the generality of such contracts and stipulations to indemnify and save harmless, and to do all acts necessary and convenient for the full exercise of the powers granted in this article and may contract with any department or agency of the United States or the state of Arizona or with any public agency or private person, firm or corporation upon such terms and conditions as the board of directors may determine in the best interests of the authority.

5. Insure against any accident to or destruction of the system or any part thereof, and against loss of revenues from any cause whatsoever against public liability or property damage, or both, or against all other types of events, acts or omissions.

6. Provide a public transportation system using the roadways of the areas served by the authority for the transportation of passengers and their incidental baggage.

7. Acquire, contract for, lease, construct, own, operate, control or use rights of way, facilities and works for monorails, bus lines, stations, platforms, yards, terminals, parking lots and any and all other facilities necessary or convenient for public transportation service within or partly within the boundaries of the authority, whether underground, upon, or above the ground, and under, upon, or over public streets, highways, bridges, viaducts, or other public ways or waterways, together with all physical structures necessary or convenient for access for persons or vehicles thereto, and to acquire or contract for any interest in or rights to the use or joint use with a municipality or another authority of any or all of the foregoing, provided that installations in streets of a municipality or county or on the state highways or freeways shall be subject to approval of the state highway commission or governing body of the municipality or county. It shall be presumed that the use of the streets, highways, freeways and other public places by the authority for any purposes permitted under this article constitutes no greater burden on the adjoining properties than the uses existing as of the effective date of this article. If the facilities, other than state highways or freeways including streets, highways, lines, sewers, water mains, storm drains, poles, communications wires, of another public agency, of the state, or of a private owner must necessarily be relocated, replaced, or altered in order for the authority to construct or operate its system, or if the construction or operation by the authority of its system makes necessary the relocation, replacement or alteration of any such facilities of another public agency, of the state, or of a private owner in order to maintain the functioning of such facilities at their previous level of service, such facilities shall be relocated, replaced or altered within reasonable promptness by the respective public corporation, state or private owner, and the authority shall by prior agreement reimburse such public corporation, state or private owner for the actual cost necessarily incurred in such relocation, replacement or alteration. The authority may enter into an agreement with any city or county having jurisdiction over the street or highway involved, and, as may be provided in such an agreement, may close any such street or county highway at or near the point of its inception with any facility of the authority or may make provision for carrying such city street or county highway over or under or to a connection with such facility of the authority and may do any and all work on such city street, or county highway as is necessary. No city street or county highway shall be

closed, either directly or indirectly, by construction of facilities of the authority except pursuant to such an agreement, or temporarily while necessary during the construction of such facilities.

8. Operate such feeder bus lines and other feeder services as necessary.

9. Collect revenues and monies of a public nature or from other sources as provided for in this article.

10. Borrow money and issue bonds.

40-1125. Cooperation with state or other agencies

An authority may cooperate with and enter into agreements with the state of Arizona or any public agency for the acquisition, construction, improvement, completion, maintenance, operation or repair, joint or otherwise, and in whole or in part, of public transportation facilities and equipment, and for study and planning thereof. In connection with any such cooperation or contract, the state or any public agency may make public contributions to the authority as in the judgment of the legislature, or the governing board of the agency, are necessary or proper for its undertaking, and the authority may reimburse the state or public agency for any such advance or contribution from the proceeds of the sale of bonds or any other funds available to the authority. The state or any public agency may also authorize, aid and assist the authority to carry out any activity which the state or public agency is by law authorized to perform and carry out in its own behalf.

40-1126. Cooperation with federal government

An authority may contract for and cooperate with and may accept grants, contributions, or loans directly through the sale of securities or equipment, trust certificates, or otherwise, from the United States, or any department, instrumentality, or agency thereof, for the purpose of financing the acquisition, construction, improvement, maintenance and operation of transportation facilities and equipment or for the study and planning thereof, in accordance with any legislation which Congress may have heretofore adopted or may hereafter adopt, under which aid, assistance and cooperation may be furnished by the United States in the acquisition, construction, improvement, maintenance and operation or in the financing of the acquisition, construction, improvement, maintenance and operation of any such transit facility or equipment. An authority, in dealing with the federal government or agencies thereof, may waive any privilege or immunity if such action is deemed in the best interest of the authority.

40-1127. Rates and charges

The rates and charges for service furnished pursuant to this article shall be determined by vote of the majority of all of the members of the board. Such rates shall be reasonable, and, insofar as is practical, the revenue derived therefrom shall be sufficient to pay, in the following priority:

1. Interest and principal of the bonds, subject to the applicable provisions of this chapter authorizing issuance and retirement of bonds.

2. Operating expenses of the authority.

3. Repairs, maintenance and depreciation of works and property owned or operated by the authority.
4. Amounts necessary for the purchase, lease, or acquisition of property and equipment.
5. Amounts necessary for the payment of contracts, agreements, leases and other legal liabilities entered into by the authority.

40-1128. Dissolution of authority

Whenever the board of directors of an authority, by resolution, determines that the purposes for which the authority was formed have been substantially complied with, that the need for the authority has terminated, and that all obligations incurred by the authority have been fully paid, the members of the board of directors of the authority shall, upon concurrence by resolution of the governing body creating the authority, thereupon dissolve the authority in accordance with provisions of title 10. A certificate of dissolution of the authority shall be filed for record with the secretary of state. Upon dissolution all property and funds of the authority shall revert to and be the property of the creating political subdivision or subdivisions in the proportion that the population of each contracting political subdivision bears to the total population of the area of the authority.

Article 4 - Financing for Metropolitan Public Transit Authority

40-1131. Bonds

A. For the purpose of acquiring, improving, enlarging or extending a transit system, the authority may issue self-liquidating revenue bonds. Bonds issued under this article shall be authorized by resolution of the board and may be issued in one or more series and shall bear the date of their issuance, mature at such time or times during a period of not to exceed thirty years from date of issuance, be in such denomination or denominations and in the form, coupon, registered, or registered as to principal only, carry the conversion or registration privileges, have the rank or priority, be executed in the manner, payable in the medium of payment, at the place or places and subject to the terms of redemption, with or without premium, as the resolution may provide, the total principle amount of all such bonds of the authority shall not exceed at any time the sum of two million dollars. Notwithstanding any provisions of law to the contrary, bonds issued pursuant to this section are negotiable.

B. The bonds shall provide that:

1. No holder may compel the authority or any municipality the area or a portion of the area of which is included in the operating area thereof to exercise its ad valorem taxing power.
2. The bond does not constitute a debt of the authority and is payable only from revenues from the operation of the authority and its equipment and facilities.

C. The bonds may be sold at public or private sale, at not less than the par value thereof with all accrued interest to date of delivery. In the event such bonds are sold at public sale, the board shall call for bids by publishing a notice inviting proposals for the purchase of the bonds at least once a week for two successive weeks prior to the date fixed for sale of the bonds, in a daily or weekly newspaper, published and of general circulation in the involved county and

designated for such purpose, which notice shall be in the form the board shall prescribe. Pending preparation of the definitive bonds, interim receipts or certificates may be issued to the purchaser of the bonds in the form and containing the provisions determined by the board.

40-1132. Power to secure bonds; reimbursement for advance

A. The board, in connection with the issuance of bonds and in order to secure the payment of the bonds and the interest thereon, shall have power by resolution:

1. To fix and maintain fees and other charges on equipment and facilities of or operated on behalf of the authority.

2. To provide that the bonds issued hereunder may be secured by a first and exclusive lien on the income and revenues derived from, and shall be payable from fees, and other charges on equipment and facilities of or operated on behalf of the authority as provided in paragraph 1.

3. To pledge and assign to or in trust for the benefit of the holder or the holders of bonds any part of the metropolitan public transit authority revenues as will be necessary to pay the principal of and interest on the bonds as the same become due.

4. To covenant with or for the benefit of the holder or holders of bonds issued hereunder, that so long as any of the bonds remain outstanding and unpaid, the board will prescribe fees and other charges on equipment and facilities of or operated on behalf of the authority and will revise the same when necessary so that the project for which the bonds are issued shall be self-supporting.

B. An authority may reimburse the state or a public agency for any advance or contribution from the proceeds of the sale of bonds or any other funds available to the authority as provided for in section 40-1125.

40-1133. Provision of bond resolution; covenants

A. A resolution pertaining to issuance of bonds under this article may contain covenants as to:

1. The purpose to which the proceeds of sale of the bonds may be applied and to the use and disposition thereof.

2. The use and disposition of the revenues of the project for which the bonds are to be issued.

3. The issuance of other or additional bonds, payable from the revenue received from the operation of the authority and its equipment and facilities.

4. The operation and maintenance of the authority and its equipment and facilities.

5. The insurance to be carried thereon and the use and disposition of insurance monies.

6. The use of capitalized interest, reserve and sinking funds and any other funds as the authority deems necessary to the proper handling of authority monies.

7. Books of account and the inspection and audit thereof.

8. The terms and conditions upon which the holders of the bonds, or any proportion of them, or a trustee therefor, shall be entitled to the appointment of a receiver, who may enter and take possession of the authority's records, equipment and facilities, operate and maintain

it, prescribe charges, fees and rentals and collect, receive and apply all revenues therefrom thereafter arising in the same manner as the board itself might do, until such time as the terms and conditions of the bonds are satisfied, at which time the receiver shall return possession of the authority and its equipment and facilities to the board.

B. The provisions of this article and any such resolution shall be deemed a contract with the holders of the bonds, and the duties of the board under this article and resolution shall be enforceable by mandamus or other appropriate action in a court of competent jurisdiction.

C. Neither the members of the board nor any person executing the bonds shall be personally liable for the payment of the bonds.

40-1134. Validity of bonds

A. Bonds issued under this article and bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon have ceased to be officers of the board.

B. The validity of the bonds shall not be dependent on or affected by the validity or regularity of any proceedings relating to the construction, acquisition, improvement, reconstruction or extension of the facilities of the authority from the proceeds of the sale of the bonds or the proceedings taken in connection therewith.

40-1135. Prior lien of bonds

A. Except as otherwise provided in the resolution authorizing the bonds, all bonds of the same issue under this article shall have a prior and paramount lien on the revenues of the authority and its equipment and facilities for which the bonds have been issued over and ahead of bonds of an issue payable from that revenue which may be subsequently authorized, and over and ahead of claims or other obligations of any nature against that revenue subsequently arising or subsequently incurred.

B. Bonds of the same issue issued under this article shall be equally and ratably secured, without priority by reason of number, date, sale, execution or delivery, by a lien on the revenue in accordance with the terms of the resolution authorizing the bonds.

40-1136. Bond obligations of the metropolitan public transit authority

All bonds issued pursuant to this article shall be obligations of the authority issuing such bonds, and payable only in accordance with the terms thereof and shall not be obligations general, special or otherwise of the state of Arizona or any county or municipality thereof. Such bonds shall not constitute a legal debt of the state of Arizona or any county or municipality thereof, and shall not be enforceable out of any funds of the authority other than the income and revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of such bonds.

40-1137. Bonds as legal investments

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Bonds issued under the provisions of this article are made securities in which all public officers and bodies of the state and all municipalities and political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries and all other persons whomever are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and may be received by all public officers and bodies of the state and all municipalities and political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

40-1138. Limitation on indebtedness

An authority shall not incur an indebtedness which exceeds one million dollars. As used in this section, "indebtedness" includes, without limitation, any and all forms thereof which an authority is authorized to incur by this article or by any other law.

40-1139. Annual financial statement of authority; estimate of expenses; notice of hearing on estimate

A. The board of directors of each metropolitan public transit authority, on or before the third Monday in July each year, shall prepare a full and complete statement of the financial affairs for the preceding fiscal year and an estimate of the different amounts which will be required to meet the expense for the current fiscal year. The estimate shall include an estimate of the amount of money required for each item of expenditure necessary for authority purposes, the amounts necessary to pay the interest and principal of outstanding bonds, the items and amounts of levy provided by law and an amount for unanticipated contingencies or emergencies.

B. The estimate shall be entered upon the minutes of the board and shall be fully itemized showing under separate heads the following:

1. The amounts estimated as required for each department, office or official, for each improvement, for the maintenance of structures and institutions and for the salaries of officers.

2. The separate amounts proposed for construction, maintenance, engineering and administration of the facilities of the authority.

3. A full and complete disclosure and statement of the contemplated expenditures for the ensuing year, showing the amount proposed to be expended from each separate fund and the total amount of proposed expense.

C. The estimate shall also contain:

1. A statement of the receipts for the previous year from sources other than direct property taxes.

2. The amounts estimated to be received during the current fiscal year from sources other than direct property taxes.

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3. The amounts actually levied and the amounts actually collected for authority purposes upon the tax rolls of the previous fiscal year.

4. The amount proposed to be raised by direct property taxation for the current fiscal year.

D. The estimate required by this section shall be published with a notice that the board will hold a hearing on such estimate for the purposes provided in section 40-1140. Such publication shall be once a week for at least two consecutive weeks in the official newspaper of the county, if there is one, and if not, in a newspaper of general circulation therein.

40-1140. Hearing on estimates; adoption of proposed budget

A. The board of directors of each metropolitan public transit authority shall meet on the day designated in the notice provided by subsection D of section 40-1139, and any taxpayer may appear and be heard in favor of or against any proposed expenditure or tax levy.

B. When the hearing is concluded, the governing board shall determine and adopt estimates of proposed expenditures for the various purposes set forth in the published proposal and such adopted estimates shall constitute the budget of the authority for the current fiscal year.

C. The total amounts in the budget proposed for expenditure shall not exceed the total of amounts proposed for expenditure in the published estimates.

D. No expenditures shall be made for a purpose not included in such budget, and no expenditure shall be made, nor debt, obligation or liability incurred or created in any fiscal year in excess of the amount specified for each purpose in the budget for such fiscal year as adopted.

E. The board of directors shall file, in writing, with the board of supervisors its estimate of the amount of money required by the authority for the ensuing year. If the board of directors determines that the estimated amount to be received from the anticipated revenue of the authority will not produce the amount of money budgeted the board of directors shall include with the estimate the additional amount needed for the authority and shall certify such amount to the board of supervisors at the time of filing the estimate.

40-1141. Metropolitan public transit authority levy

The board of supervisors of each county where a metropolitan public transit authority has been established shall annually, at the time of levying other taxes, levy a metropolitan public transit authority tax on the property in the area of a public transit authority in which an additional amount is required, as determined by the authority pursuant to section 40-1140. The tax shall be at a rate sufficient to provide the additional amount. The tax shall be added to and collected in the same manner as other county taxes on the property within the area of the authority. The amount of the metropolitan public transit authority tax levied upon the property in the area of a particular authority shall be paid to the treasurer of such authority.

40-1142. Investment of funds by board

The board may, by resolution, order that any of the monies in the funds under its control which are not necessary for current operating expenses be invested in any obligation, bonds or securities in which a city or county could invest such funds, provided that:

1. Any such investment shall be made in such a manner that the monies in such funds will be available at the times and in the amounts necessary to accomplish the purpose for which such funds were established.

2. No such investment shall be made in contravention of any provision or covenant in any proceedings for the authorization and issuance of bonds, notes, contracts or other evidences of indebtedness.

40-1143. Bids required by board; exception

The purchase of all supplies, equipment and materials, and construction facilities and works, when the expenditure required exceeds two thousand five hundred dollars shall be by contract let to the lowest responsible bidder. Notice requesting bids shall be published in a newspaper of general circulation in the area at least once and not less than ten days prior to expiration of the period within which bids shall be received. The board may reject any and all bids and readvertise at its discretion. If, after rejecting bids, the board determines and declares by vote of two-thirds of all its members that in its opinion supplies, equipment and materials may be purchased at a lower price on the open market, the board may proceed to purchase the same in the open market without further observances of the provisions requiring contracts, bids or notice. Contracts, in writing or otherwise, may be let without advertising for or inviting bids when any repairs, alterations or other work or for the purchase of materials, supplies, equipment or other property shall be deemed by the board of directors to be of urgent necessity, and shall be authorized by a two-thirds vote of the entire board membership.

40-1144. Claims against the authority

Every claim against an authority for damages or injuries alleged to have been caused by the negligent act or omission of the authority shall be presented to the board in writing within fifteen days after the happening of such injury, or damage, signed by the claimant or some person duly authorized to sign for same, and properly verified, stating the time and place at which the injury or damage occurred and a general statement of the cause or circumstances of the death, injury or damages. No action shall be commenced to recover for such death, injury or damages until thirty days after such presentation or unless the board shall sooner deny such claim.

40-1146. Certification of bonds and approval of contracts by attorney general

A. The board may submit to the attorney general of this state any bonds to be issued under this article after all proceedings for the authorization of such bonds have been taken. Upon the submission of such proceedings to the attorney general, the attorney general shall examine into and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this article, and it is determined that such bonds when delivered and paid for will constitute binding and legal

obligations of the authority enforceable according to the terms thereof, the attorney general shall certify in substance upon the back of each of such bonds that it is issued in accordance with the Constitution and laws of the state of Arizona.

B. All agreements for the purpose of carrying out the provisions of this article shall be subject to the approval of the attorney general as to form and content.

Article 5 - Intergovernmental Contract and Agreements for Public Transportation Services

40-1151. Definition

For the purposes of this article, "public transportation services" means the local transportation of passengers and their incidental baggage by means of a public conveyance, including personalized public transit, jitney buses or conveyances, commuter buses, other such systems and excluding sightseeing buses and taxi services.

40-1152. Public transportation services; contracts and agreements; fares and service charges; educational institutions; financial grants

A. In addition to other authority granted pursuant to titles 9 and 11 and this title, or city charter, any county or incorporated city or town may provide public transportation services directly or by contract with a private party, motor carrier or public service corporation, within or without the corporate limits, within or without the county boundaries or to any portion as determined by the board of supervisors or the mayor and council, and may expend public funds for such purposes. Counties, cities and towns and contractors furnishing public transportation services solely at the direction of and in accordance with a system adopted by the governing body of such county, city or town are not subject to the provisions of title 28, chapter 9, article 2 (*provision dealing with Transportation, Vehicle Insurance and Financial Responsibility*) and chapter 16, article 4 (*provision dealing with Transportation, Taxes, Motor Carrier Fee*).

B. Any county, city or town may, by resolution, provide for a system of fares or service charges to defray all or part of the costs of providing public transportation services.

C. Any county, city or town may enter into contracts or agreements pursuant to title 11, chapter 7, article 3 (*Counties, Intergovernmental Operations, Joint Exercise of Powers*) to provide public transportation services on a cooperative or contract basis with one another or may jointly form a nonprofit corporation to carry out public transportation services in their behalf directly or by contract with a private party, motor carrier or public service corporation.

D. In addition to other provisions of law, school districts, universities or colleges may enter into contracts or agreements with cities, towns, counties, any combination thereof, or a nonprofit corporation created by such units of government to provide public transportation services directly or by contract with a private party, motor carrier or public service corporation. Such agreements may include provisions for the sale of school buses to such entities for the purpose of providing joint school and public transportation and for reasonable charges for transportation of the general public by school districts, universities or colleges provided adequate liability insurance has been obtained.

E. Any county, city or town or a nonprofit corporation created by such units of government may accept grants, contributions or loans from this state or the United States, or

Alternative Transit Management Models
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Attachment D

any instrumentality thereof, for the purpose of financing the acquisition, construction, improvement, operation and maintenance of a public transportation service system directly or by contract with a private party, motor carrier or public service corporation.

F. Nothing contained in this article shall permit or be construed to permit a regional council of governments or a regional planning agency created pursuant to a joint exercise of powers agreement or pursuant to nonprofit corporation statutes to provide public transportation services nor to operate such services contrary to the provisions of section 9-519 *(Common carriers; duplication of service prohibited)*.

Tucson Transit Authority, Inc. v. Nelson

107 Ariz. 246 (1971)

485 P.2d 816

TUCSON TRANSIT AUTHORITY, INC., Petitioner, v. Gary K. NELSON, Attorney General, Respondent.

No. 10350.

Supreme Court of Arizona, In Banc.

June 4, 1971.

Rehearing Denied June 29, 1971.

*247 Gust, Rosenfeld & Divelbess, by Fred W. Rosenfeld, Jane Rex Greer, Phoenix, for petitioner.

Gary K. Nelson, Atty. Gen., by Charles S. Pierson, Asst. Atty. Gen., Ralph E. Willey, Asst. Atty. Gen., Phoenix, for respondent.

UDALL, Justice:

The petitioner, Tucson Transit Authority, Inc., has invoked the original jurisdiction of this Court by filing a petition for special action seeking to compel the Attorney General, as respondent, to execute his approval and certification of a proposed \$2,000,000 issuance of Tucson Transit Authority, Inc. Bonds.

The facts surrounding the proposed issuance of the Transit Authority Bonds are as follows: Tucson Transit Authority, Inc., hereinafter referred to as the Transit Authority,

was formed pursuant to the Urban Mass Transportation Systems Act. Sections 40-1101 to 40-1147, A.R.S. On July 27, 1970, the City of Tucson, pursuant to A.R.S. § 40-1113, adopted Ordinance No. 3473 declaring that it was "necessary for the preservation of the peace, health, and safety" of the City of Tucson that this ordinance, granting permission to incorporate a transit authority, become effective immediately. A board of directors to the proposed Transit Authority was appointed, and immediately thereafter the Transit Authority was organized and the Articles of Incorporation filed with the Arizona Corporation Commission and the Secretary of State.

On November 18, 1970, the board of directors met and adopted a resolution authorizing the issuance of \$2,000,000 principal amount of Tucson Transit Authority, Inc. Bonds. On December 15, 1970, this resolution was submitted to the Attorney General for his approval, but approval was not forthcoming. The Transit Authority, thereupon commenced this Special Action to compel the Attorney General, as respondent, to approve the proceedings relative to the proposed issuance of the Transit Authority's bonds and to certify such bonds in accordance with § 40-1146, A.R.S.

The statutory procedures relative to formation and incorporation of the Transit Authority are not in dispute. Respondent has acknowledged that the Transit Authority was formed and the bonds prepared in accordance with the provisions of the Act. He, nevertheless, has declined to certify the bonds on the grounds that the Act, itself, is unconstitutional. In support of this assertion of unconstitutionality respondent has advanced several arguments. ***We have considered these arguments and having found that the Act contravenes Article 7, Section 13 of the Arizona Constitution, A.R.S., in that it fails to provide for prior electorate approval of the bonds sought to be issued, we need not indulge in any lengthy discussion of respondent's other contentions. We hold that the bonds sought to be issued are general obligation bonds and are not revenue bonds so as to exempt their issuance from the prior electorate***

approval requirement of Article 7, Section 13. We also hold that the Transit Authority, being a public service corporation, cannot be exempted from taxation and *248 must be subject to Corporation Commission control.

Article 7, Section 13, Arizona Constitution reads, in part, as follows:

"§ 13. Submission of questions upon bond issues or special assessments Section 13. Questions upon bond issues or special assessments shall be submitted to the vote of * * * qualified electors of this State, and of the political subdivisions thereof affected by such question."

The prior electorate approval requirement of this section remains unaffected in spite of the recent United States Supreme Court decision in *City of Phoenix v. Kolodziejski*, [399 U.S. 204](#), 90 S. Ct. 1990, 26 L. Ed. 2d 523 (1970), wherein the Supreme Court found Arizona's constitutional and statutory provisions, excluding nonproperty owners from voting in elections for the approval of the issuance of general obligation bonds, to violate the equal protection clause of the Fourteenth Amendment. The Court held that a state may not condition one's right to vote in elections for the approval of general obligation bonds on being a real property owner, since the difference between a property owner's interests and those of a nonproperty owner in the outcome of such elections is not sufficiently substantial to justify exclusion of the latter from the franchise.

With regard to Article 7, Section 13 of the Arizona Constitution, the *Kolodziejski* case, involving general obligation bonds, has not abrogated the requirement that bond issuances affecting the political subdivision seeking to issue same must first be submitted to a vote. To this general rule there is one notable exception. It is now well-established that "revenue bonds" are exempt from the constitutional requirement of prior electorate approval where a "special fund" is created into which certain designated funds are to be deposited and from which all expenses are to be paid; providing,

however, that the issuing entity does not, in any form whatsoever, assume any liability therefor. The use of the "special fund" method of financing, i.e., "revenue bonds", has been approved by this Court on numerous occasions. *City of Globe v. Willis*, 16 Ariz. 378, 146 P. 544 (1915); *Board of Regents v. Sullivan*, 45 Ariz. 245, 42 P.2d 619 (1935); *Arizona State Highway Commission v. Nelson*, 105 Ariz. 76, [459 P.2d 509](#) (1969).

The purpose in requiring an election on general obligation bond issuances is to provide the electors of an affected district with a voice in accepting or rejecting a proposed expenditure which they ultimately may bear. Because bond issues in most instances involve the borrowing of large sums of money, the repayment of which is ordinarily projected over a considerable period of time, this Court has held that the creation of an indebtedness to be evidenced by bonds payable not in the immediate future but rather over a considerable number of years should only be with the consent of the qualified electorate of the affected district. *Ackerman v. Boyd*, 74 Ariz. 77, 244 P.2d 351 (1952). An election is required even though the proposed increase in indebtedness would not violate the political subdivision's constitutional debt limitations. The only exception to this rule requiring prior electorate approval is the special fund method of financing mentioned above and first espoused in *City of Globe v. Willis*, supra, where we stated our reasons for so holding:

"Bonds issued by a municipality as evidence of its obligations are included within the terms of this provision, as also special assessments for the payment of which it becomes liable, for in both cases the municipality, as such, is `affected by such question.' But a municipality is not `affected' by a bond issue or a special assessment when it in no way incurs liability for their payment, even though it be constituted under the law the agency by and through which the bonds are issued or the special assessment, is made. `Questions upon bond *249 issues or special assessment' that is, questions affecting the primary liability of the municipality must be submitted to the

property taxpayers therein, otherwise qualified as electors. Bond issues and special assessments that do not become a direct charge against the municipality, and do not increase its indebtedness, cannot be said to `affect' it, and are not under this provision of the Constitution to be submitted to a vote as therein prescribed. That the first state Legislature understood section 13, article 7, to mean what we have indicated is clearly shown by its legislation." 16 Ariz. 378 at 382, 146 P. 544 at 545.

Of crucial importance in arriving at this decision was the fact that the Sewer Act specifically provided that the city was to incur no liability, direct or contingent, in issuing the bonds and undertaking the improvement and only the real property benefitted was to bear the cost of all expenditures made for such improvement.

In *Guthrie v. City of Mesa*, 47 Ariz. 336, 56 P.2d 655 (1936), this Court had occasion to construe the validity of a pledge of gross income to payment of bond principal and interest which made no provision for prior payment of expenses incurred in maintaining and operating the water plant and system. We held that the amount thus pledged would be upheld, although it purported to be a "gross pledge" of revenue, as long as it was taken

"* * * from what remains after the expenses of operation and maintenance are taken care of, that is, from the net income, a result that follows from the direction to the governing body that it shall at all times prescribe rates that will make the utility self-liquidating, namely, pay all operating and maintenance costs and in addition, take care of the bonds and interest thereon as they become due." 47 Ariz. 336 at 346, 56 P.2d 655 at 659.

A gross pledge of all income to the payment of a revenue bond cannot be sanctioned where there are maintenance, operation or other expenses which will have to be provided for by resort to the general credit of the originating entity, i.e., the City of

Tucson. In the instant case it is common knowledge that municipal transit systems are financially a losing proposition. That deficits are anticipated is evidenced by the legislature's grant of taxing power to supplement the income of the Transit Authority in covering its expenses. By pledging the taxing power of the district to be served, i.e., the City of Tucson, the legislature has thereby pledged the district's general credit and such pledge necessarily results in a transformation in the nature of the proposed bond issuance from revenue bonds to general obligation bonds; thus subjecting the issuance to the prior electorate approval requirement of Article 7, Section 13.

Such method of funding bonds unquestionably creates an indebtedness on the part of the district serviced by pledging its taxing power. An identical problem was recently brought before the Supreme Court of Appeals of Virginia in Board of Supervisors of Fairfax County v. Massey, 210 Va. 253, 169 S.E.2d 556 (1969). There, the transit authority was created as a body corporate and politic by the Washington Metropolitan Area Transit Authority Compact (Compact), an interstate agreement between Virginia, Maryland and the District of Columbia. In contemplation of the Compact the General Assembly of Virginia enacted legislation (Transportation District Act of 1964, codified as §§ 15.1-1342 through 15.1-1372, Code of 1950, 1964 Repl.Vol.), authorizing the creation of transportation districts to cooperate and participate with the transit authority in planning and financing an interstate regional system.

As completed, the "Agreement" provided, in part, that the transit authority was required to annually make a complete review of its financial situation. It was also required to determine whether the estimated revenues of the transit system, after first having made provision for debt service and reserve requirements for that year on the transit authority's revenue bonds, would *250 be sufficient to cover the costs of operation and maintenance. Under this financial plan gross income, generated by the transit system, was first to be pledged to the payment of bond principal and interest, with any excess to

be applied toward operation and maintenance expenses incurred. Any resulting deficit was to be borne by the city and county serviced by the transit system. When the county executive and city manager refused to execute the contract petitioners instituted proceedings for writs of mandamus to compel execution of the contract. In answer to respondents' argument that such bond issuance would incur debts in violation of Virginia's constitutional debt limitation provisions, petitioner argued that in order to constitute an indebtedness within the meaning of constitutional debt limitations there must be a "present obligation." They asserted that the Agreement required the city and county to pay their share of the deficits only should there be deficits, and since there were as yet no deficits, this would create nothing more than a contingent liability and not a present indebtedness.

The Virginia court rejected this argument, holding that the obligations of the county and city under the Agreement constituted a debt or indebtedness within the meaning of constitutional prohibitions:

"Although the County's and City's contract is designated a `Transit Service Agreement,' the label placed upon it does not necessarily make it such. The obligations of the County and City under the Agreement are for more than just payments for transit service. They agree to pay that amount by which the `operating expenses' exceed the revenues from the transit system after provision is first made for debt service and reserve requirements for the revenue bonds issued by the Authority. The `operating expenses' include all the expenses of operation, maintenance, renewals and replacement of the facilities of the system, interest on temporary borrowings to meet expenses of operation, and payments to reserves for such expenses as may be required by the terms of any contract of the Authority with or for the benefit of the transit bond holders. The payments to be made by the County and City guarantee the continued operation of the transit system during the life of the contract, which expires

June 30, 2040, since the operating revenues are pledged to the payment of the transit bonds. While it is true that the payments required of the County and City do not go directly to the payment of debt service, their obligations to pay the 'operating expense' deficit in effect amount to making payments on the Authority's bonds. The obligations of the County and City to underwrite and guarantee an unknown 'operating expense' deficit of the transit system are fixed and absolute and constitute a present debt within the meaning of the constitutional limitations on County and City debt or indebtedness. "There are no facts in the record, by stipulation or evidence, to show that the County's obligation under the Agreement can be paid out of current revenues or that there has been an election by the people of the County authorizing the obligation to be incurred. In the case of the City, there is nothing showing the value of its taxable property, or what is the aggregate amount of its indebtedness, or the amount of its constitutional debt limit." [Emphasis added] 210 Va. 253, 169 S.E.2d 556 at 561.

With this decision we are in complete agreement. The legislature, in the case at bar, seeks to utilize this same method in financing the Tucson Transit Authority. Here, as in Massey, supra, "revenue" bonds, so called, are to be financed by pledging the gross income derived from operation of the transit system, leaving any resulting deficits to be borne by the area serviced by the transit system. Clearly, the bonds in both cases create an indebtedness and are general obligation bonds. As such, prior electorate approval is a pre-requisite to issuance.

*251 Revenue bonds, on the other hand, generally do not require prior electorate approval; nor are they subject to constitutional debt limitations, since the political subdivision issuing them assumes no liability, actual or potential and is therefore not "affected" by it in any manner. Revenue bonds may be made payable from a special fund supplied with revenue generated by the proprietary project itself, Crawford v. City of Prescott, 52 Ariz. 471, 83 P.2d 789 (1938); with revenues supplied "by voluntary

contributions of the state to the city" derived from fees, penalties or excise taxes, already in existence and not created in anticipation of the bond issue, *Switzer v. City of Phoenix*, 86 Ariz. 121, [341 P.2d 427](#) (1959); or with revenues supplied from a constitutionally authorized fund, separate and distinct from the state's general revenues, *Arizona State Highway Commission v. Nelson*, 105 Ariz. 76, [459 P.2d 509](#) (1969). They may not be supplied from general taxes levied specifically to provide revenue for a proprietary project, such as the Transit Authority, and still retain the status and resulting privileges of revenue bonds.

With respect to the case at bar, A.R.S. § 40-1131(A) refers to the proposed bond as a "self-liquidating revenue bond." The legislature has sought to qualify the bond as a revenue bond by providing that it is to be "payable only from revenues [derived] from the operation of the authority and its equipment and facilities." A.R.S. § 40-1131(B) (2). This provision, when viewed alone, is deceiving in that it creates the appearance that the proposed bond is a revenue bond because it is payable exclusively from revenues to be generated by the Transit Authority, and that such revenues will be sufficient to pay all expenses incurred. Yet, when viewed in its proper perspective, i.e., in conjunction with the power of the board of directors to request and obtain a tax levy in the amount requested (A.R.S. § 40-1139), the true character of the bond comes to light. By pledging the general taxing power of the City of Tucson and pledging gross income to payment of bond principal and interest, the legislature effectively transformed this bond into a general obligation bond; thus bringing it within the purview of Article 7, Section 13. An election thereby became a prerequisite to issuance of the bonds. While it may be true that a large portion of the maintenance and operational expenses may be paid from funds generated by the operation of the Transit Authority, the fact remains that the City of Tucson has pledged its taxing power. We must look to the transaction for what it is and not for what it is called. *Rodriguez v. Williams*, 104 Ariz. 280, [451 P.2d 609](#) (1969); *Goodman v. State*, 96 Ariz. 139, [393 P.2d 148](#) (1964). Merely calling a bond a revenue

bond does not make it such. We cannot permit the bond to be issued without compliance with Article 7, Section 13 of our Constitution. Prior electorate approval of this bond is essential.

In reference to respondent's other contentions we are inclined to agree with respondent that the Transit Authority, as created, is a "public service corporation" and not a "municipal" or "municipally owned corporation." By constitutional definition "all corporations other than municipal engaged in carrying persons or property for hire * * * shall be deemed public service corporations", Article 15, Section 2 of the Arizona Constitution. Quite clearly, the Transit Authority cannot, by any stretch of one's imagination, be classified as a "municipal corporation". The Transit Authority also cannot be considered to be a "municipally owned corporation since: "title to all property acquired under the provisions of this article shall immediately and by operation of law vest in such transit authority", A.R.S. § 40-1118 (A); the originating municipality, i.e., the City of Tucson, assumes no financial responsibility for any debts incurred by the Transit Authority, A.R.S. § 40-1136; and full power to regulate the Transit Authority is vested in the board of directors of the Transit Authority, A.R.S. § 40-1122.

Being a public service corporation, Article 15, Section 3 of the Arizona Constitution *252 governs. This section provides that the Corporation Commission shall have "full power" to prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected by public service corporations for services rendered within this state. It also has full power to make reasonable rules, regulations and orders by which such corporations shall be governed in the transaction of business. One exception to this general rule is provided for in Article 15, Section 3: where the legislature specifically authorizes an incorporated city or town to "exercise supervision over public service corporations doing business therein." Such is not the case at bar,

however, since the board of directors of the Transit Authority, and not the City of Tucson, was given rate-making and regulatory power over the Transit Authority.

Also, being a public service corporation, the Transit Authority cannot lawfully be exempted from taxation as § 40-1118, A.R.S., attempts to so provide. Article 9, Section 2, Arizona Constitution, specifically enumerates that property which is to be granted tax exempt status. A tax exemption cannot be implied, *Arizona State Tax Commission v. F. Harmonson Company Metal Products*, 63 Ariz. 452, 163 P.2d 667 (1945), and laws exempting property from taxation are to be strictly construed; the presumption being against such exemption. *City of Phoenix v. Bowles*, 65 Ariz. 315, 180 P.2d 222 (1947); *Conrad v. Maricopa County*, 40 Ariz. 390, 12 P.2d 613 (1932). The Transit Authority fails to fall within any of the enumerated exemptions.

The infirmities mentioned above, as well as the failure to provide for prior electorate approval of the bond issuance as required by Article 7, Section 13 of the Arizona Constitution require us to deny petitioner's request for relief seeking to compel the Attorney General to execute his approval and certification of the proposed issuance of Tucson Transit Authority, Inc. Bonds. The Attorney General properly refused to approve and certify the proposed issuance of Tucson Transit Authority, Inc. Bonds.

Petition for Relief Denied.

STRUCKMEYER, C.J., HAYS, V.C.J., and LOCKWOOD and CAMERON, JJ., concur.

Summaries of Three Regional Transit/Governance Studies

- *Regional Organizational Models for Public Transportation, American Public Transportation Association, January 2011*

A primary objective of the study was to identify effective regional organizational models that could be used elsewhere in the country. However, in the course of the study, it became apparent that models are not directly or easily transferrable, and that governance choices must be tailored to a region's specific needs and characteristics. The case studies also suggest seven strategies for successful organizational transformation for public transportation:

1. Every region is unique and precise governance choices for public transportation must fit the region.
2. It is important to recognize and capitalize on windows of opportunity for governance change.
3. Governance and financing for public transportation are so closely inter-related, they must be addressed together.
4. Governance change takes time and is never static.
5. Leadership and champions are critical to change in public transportation governance.
6. Advocacy groups and individuals can be extremely helpful.
7. Good working relationships with other public agencies are critical to successful organizational transformation in public transportation.

- *Getting to the Route of It, The Role of Governance In Regional Transit, Eno Center for Transportation and Transit Center, October 2014*

When it comes to creating a regional transit network that is useful and efficient to users, regions across the United States struggle with a variety of challenges including the ability to implement technological advances, make investment decisions that benefit the riders, and coordinate service and interfaces between different operators or transit modes. While it may appear that a region's inability to update its farecard or to maintain a state good repair is the result of technological or funding barriers, it is often a result of a governance structure that does not have the proper capacity to implement change or make effective investment decisions. As this research revealed, the biggest challenges of regional transit are often rooted in the governance of and subsequent interaction between regional bodies.

This research was the result of extensive interviews with senior level officials from a range of organizations in each of the case study regions. Though it is primarily qualitative, and inherently subjective, the discussions with stakeholders nonetheless revealed several insights as to how regions might improve their governance approach.

The lessons learned from the examination of all the cases together provides a resource for local and state level policy makers to aide in their understanding of how governance is structured in other regions, and to explore how various structures can help support the usability of the system. While each region is unique in its history, jurisdictional boundaries, and transit network organizations, there are common themes and lessons that can be drawn from the diverse experiences included in this report. By applying these lessons to regions across the country, regional transit within the United States can perform better and provide a service that is more usable for riders.

Lessons Learned:

- An effective metropolitan planning organization (MPO) can be a valuable mechanism for regional transit coordination
 - Access to an independent source of funding can benefit transit planning and operations
 - State involvement, with appropriate accountability for outcomes, can provide benefits for transit
 - Regions need a performance-based capital planning system
 - Board representation and selection is critical
 - Consolidating agencies typically provides policy and service benefits
- *Does Government Structure Matter? A Comparative Analysis of Urban Bus Transit Efficiency, Journal of Public Transportation, 2008*

As public transit becomes more and more important to our economy, it is imperative that we understand which governing system achieves optimal efficiency. Following up on the work of Perry and Babitsky (1986), we quantitatively test whether certain forms of public governance are more efficient administrators of bus service. We utilize 2004 data from the National Transit Association database and control for federal funding, whether services are contracted out, region, population density, whether the system has a fixed guideway, the presence of local dedicated funding, and the ratio of local to federal funding. We find that special-purpose governments are more likely than general-purpose governments (cities and counties) to operate more efficiently. We also discovered that governments that contract out for some or all of their bus services are also more likely to be efficient than those public agencies that directly operate all of their services.