

# CRESA's Legal Formation Strengths and Weaknesses

## Summary Table

Powers and Authorities	Public Development Authority (RCW 35.21.730)	Interlocal Cooperation Act (RCW 39.34)		
		RCW 39.34.030(4)	RCW 39.34.030(3)(b)	
		Non-Legal Entity (current status)	Non-Profit Corporation (RCW 24.03)	Limited Liability Partnership (RCW 25.05)
Ability to administer federal and state grants or programs	Yes <i>RCW 35.2.730(5)</i>	Yes <i>RCW 39.34.030</i>	Questionable	Questionable
Limits liability to participating members (i.e., cities, county & fire districts)	Yes <i>RCW 35.2.730(5)</i>	No	Yes <i>RCW 24.03.035(14)</i>	Yes <i>RCW 25.05.130(3)</i>
Own and sell real and personal property	Yes <i>RCW 35.2.745(2)</i>	Yes <i>RCW 39.34.030</i>	Yes <i>RCW 24.03.035(4 &amp; 5)</i>	Yes <i>RCW 25.05.060</i>
Enter into agreements with federal, state or political subdivision (i.e., payroll, financial, legal, benefits)	Yes <i>RCW 35.2.735(2)</i>	Yes <i>RCW 39.34.030</i>	No	No
Enhanced attraction to potential customers	Yes <i>RCW 35.2.759</i>	Yes <i>RCW 39.34.030</i>	No	No
Sue and be sued	Yes <i>RCW 35.2.745(2)</i>	Yes <i>RCW 39.34.030</i>	Yes <i>RCW 24.03.035(2)</i>	Yes <i>RCW 25.05.130(1)</i>
Loan and borrow funds	Yes <i>RCW 35.2.745(2)</i>	Yes <i>RCW 39.34.030</i>	Yes <i>RCW 24.03.035(8 &amp; 9)</i>	Yes <i>RCW 25.05.165(6)</i>
Issue bonds and other instruments evidencing indebtedness	Yes <i>RCW 35.2.745(2)</i>	Yes <i>RCW 39.34.030</i>	Yes <i>RCW 24.03.035(8)</i>	No
Perform all manner and type of community services	Yes <i>RCW 35.2.745(2)</i>	Yes <i>RCW 39.34.030</i>	No	No
Immunity or exemption from taxation	Yes <i>RCW 35.2.755(1)</i>	Yes <i>RCW 39.34.030</i>	Yes <i>RCW 24.03.490</i>	No
Eminent domain	No <i>RCW 35.2.745(2)</i>	No	No	No
Levy taxes or special assessments	No <i>RCW 35.2.745(2)</i>	No	No	No

- Authority granted under organizations legal structure (i.e., PDA, Non-Profit, LLP/LLC)
- Authority granted through members of interlocal agreement (typically a lead public agency, or the joint board enables the powers and authority listed)
- Being formed as a private legal entity will create challenges in CRESA's ability to receive or administer federal and state grants

# CRESA's Legal Formation Strengths and Weaknesses

## Legal Entity Definitions

### Public Development Authorities

Special purpose quasi-municipal corporations known as Public Development Authorities (PDAs) are authorized under RCW 35.21.730, et seq., which allows cities, towns, and counties to establish "public corporations, commissions, or authorities." The purpose for the creation of a public corporation under these statutes is to improve the administration of authorized federal grants or programs, to improve governmental efficiency and services, or to improve the general living conditions in the urban areas of the state. The provision was initially enacted to authorize cities, towns, and counties to participate in and implement federally assisted programs, including revenue sharing.<sup>1</sup>

### Nonprofit Corporation

A Nonprofit corporation is a special type of corporation that has been organized to meet specific tax-exempt purposes. To qualify for nonprofit status, the corporation must be formed to benefit: (1) the public, (2) a specific group of individuals, or (3) the membership of the Nonprofit.<sup>2</sup> Purposes of nonprofits in Washington include: charitable, benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial or trade association; but labor unions, cooperative organizations, and organizations subject to any of the provisions of the banking or insurance laws of this state may not be organized under RCW 25.03.

### Limited Liability Partnership

The Limited Liability Partnership (LLP) is essentially a general partnership in form, with one important difference. Unlike a general partnership, in which individual partners are liable for the partnership's debts and obligations, an LLP provides each of its individual partners protection against personal liability for certain partnership liabilities.<sup>3</sup> A partnership qualifies as an LLP by registering with the appropriate state authority and fulfilling various requirements under RCW 25.05.

## Legal Entity Strengths and Weaknesses

### Public Development Authorities

Washington's public corporations law [RCW 35.21.730 – 759] specifically establishes and favorably addresses the powers and authorities of most concern to the CRESA Administrative Board, including: 1) limiting liability to the assets of the PDA and preventing recourse to members of the PDA; 2) ability to continue to administer federal and state grants and

<sup>1</sup> Municipal Research and Services Center, <http://mrsc.org/Home/Explore-Topics/Economic-Development/Financing-Economic-Development>

<sup>2</sup> LegalZoom, <https://www.legalzoom.com>

<sup>3</sup> The Free Dictionary, <http://legal-dictionary.thefreedictionary.com>

programs; and 3) own and sell real and personal property (see detailed list of powers and authorities for PDAs listed in the Summary Table, page 1)

### Non-Legal Entity

Washington's interlocal cooperation act allows organizations being formed under this act to be separate legal entities (Nonprofit Corporations and Limited Liability Partnerships/Companies, *see below*) [RCW 39.34.030(3)(b); or not legal entities [RCW 39.34.030(4)]

CRESA's Interlocal Agreement (ILA) states CRESA is a separate legal entity pursuant to RCW 39.34.030(3)(b). Yet due to no corporation documents having been filed with the Secretary of State, CRESA by default has been operating as a non-legal entity.

Non-legal organizations are limited to carrying out powers and authorities of participating ILA members based on specific delegations established in the ILA. As a result of such powers and authorities being dependent on the participating members, there is increased risk of liability to members should claims exceed the assets of CRESA. There is also question regarding CRESA's ability to independently being able own and sell property or sue and be sued.

### Nonprofit Corporation

Washington's nonprofit corporation act [RCW 24.03] establishes some, but not all of the powers and authorities of concern to the CRESA Administrative Board. For example, a nonprofit corporation limits the liability to the extent CRESA indemnifies its board members [RCW 24.03.035(14)]. Also, as a separate legal entity it can independently carry out business of the organization such as own and sell property [RCW 24.03.035(4 & 5)] and as well as loan and barrow funds [RCW 24.03.035(8 & 8)]. Finally, as a public benefit nonprofit corporation, it holds tax exempt status as provided under 26 U.S.C. Sec. 501(c)(3).

The challenges in being formed as a nonprofit corporation include:

- Ability to administer federal and state grants or programs – There would most likely be increased difficulty in receiving or administering federal and state grants due eligibility limited to jurisdiction, or government.
- Enter into agreements with federal, state or political subdivisions – As a private legal entity, CRESA would be unable to contract for governmental services.
- Attraction by potential customers - Governmental entities may have to go through RFP process to purchase services from CRESA.

### Limited Liability Partnership

The Limited Liability Partnership (LLP) establishes some, but not all of the powers and authorities of concern to the CRESA Administrative Board. For example, a LLP limits the liability to CRESA's assets unless there is also judgment against another partner [RCW 25.05.130(3)]. Also, as a separate legal entity it can independently carry out business of the organization such as own and sell property [RCW 25.05.060] and as well as loan and barrow funds [RCW 25.05.165(6)].

The challenges in being formed as an LLP are the same as those for a nonprofit corporation listed above.