

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

# SENATE BILL 1060

AN ACT

AMENDING SECTION 15-213, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-943.05; RELATING TO SCHOOL FINANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 15-213, Arizona Revised Statutes, is amended to  
3 read:

4 15-213. Procurement practices of school districts and charter  
5 schools; definitions

6 A. The state board of education shall adopt rules prescribing  
7 procurement practices for all school districts in this state as follows:

8 1. The state board shall submit to the auditor general proposed rules  
9 consistent with the procurement practices prescribed in title 41, chapter 23,  
10 modifying the provisions for public notice of invitation for bids, requests  
11 for proposals and requests for qualifications to allow a governing board to  
12 give public notice of the invitation for bids, requests for proposals and  
13 requests for qualifications by publication in the official newspaper of the  
14 county as defined in section 11-255, modifying the provisions relating to  
15 disposal of materials to comply with section 15-342, paragraph 18, providing  
16 for governing board delegation of procurement authority and modifying as  
17 necessary other provisions that the state board determines are not  
18 appropriate for school districts. The rules shall include provisions  
19 specifying that school districts are not required to engage in competitive  
20 bidding in order to make the decision to participate in programs pursuant to  
21 section 15-382 and that a program authorized by section 15-382 is not  
22 required to engage in competitive bidding for the services necessary to  
23 administer the program or for purchase of insurance or reinsurance. The  
24 rules shall include provisions specifying that school districts are not  
25 required to engage in competitive bidding in order to place a pupil in a  
26 private school that provides special education services if such placement is  
27 prescribed in the pupil's individualized education program and the private  
28 school has been approved by the department of education division of special  
29 education pursuant to section 15-765, subsection D. This placement is not  
30 subject to rules adopted by the state board of education before November 24,  
31 2009 pursuant to this section. The rules for procurement of construction  
32 projects shall include provisions specifying that surety bonds furnished as  
33 bid security and performance and payment bonds shall be executed and  
34 furnished as required by title 34, chapter 2 or 6, as applicable. The rules  
35 shall specify the total cost of a procurement that is subject to invitations  
36 for bids, requests for proposals and requests for clarification, using the  
37 aggregate dollar amount limits for procurements prescribed in section  
38 41-2535.

39 2. The state board of education shall adopt rules for procurements  
40 involving construction not exceeding one hundred fifty thousand dollars,  
41 which shall be known as the simplified school construction procurement  
42 program. At a minimum, the rules for a simplified construction procurement  
43 program shall require that:

1 (a) A list be maintained by each county school superintendent of  
2 persons who desire to receive solicitations to bid on construction projects  
3 to which additions shall be permitted throughout the year.

4 (b) The list of persons be available for public inspection.

5 (c) A performance bond and a payment bond as required by this section  
6 be provided for contracts for construction by contractors.

7 (d) All bids for construction be opened at a public opening and the  
8 bids shall remain confidential until the public opening.

9 (e) All persons desiring to submit bids be treated equitably and the  
10 information related to each project be available to all eligible persons.

11 (f) Competition for construction projects under the simplified school  
12 construction procurement program be encouraged to the maximum extent  
13 possible. At a minimum, a school district shall submit information on each  
14 project to all persons listed with the county school superintendent by any  
15 school district within that county.

16 (g) A provision, covenant, clause or understanding in, collateral to  
17 or affecting a construction contract that makes the contract subject to the  
18 laws of another state or that requires any litigation, arbitration or other  
19 dispute resolution proceeding arising from the contract to be conducted in  
20 another state is against this state's public policy and is void and  
21 unenforceable.

22 3. The state board of education shall adopt rules for the procurement  
23 of goods and information services by school districts and charter schools  
24 using electronic, online bidding. The rules adopted by the state board shall  
25 include the use of reverse auctions and shall be consistent with the  
26 procurement practices prescribed in title 41, chapter 23, article 13,  
27 modifying as necessary those provisions and the rules adopted pursuant to  
28 that article that the state board determines are not appropriate for school  
29 districts and charter schools. Until the rules are adopted, school districts  
30 and charter schools may procure goods and information services pursuant to  
31 title 41, chapter 23, article 13 using the rules adopted by the department of  
32 administration in implementing that article.

33 4. The auditor general shall review the proposed rules to determine  
34 whether the rules are consistent with the procurement practices prescribed in  
35 title 41, chapter 23 and any modifications are required to adapt the  
36 procedures for school districts.

37 5. If the auditor general approves the proposed rules, the auditor  
38 general shall notify the state board in writing and the state board shall  
39 adopt such rules.

40 6. If the auditor general objects to the proposed rules, the auditor  
41 general shall notify the state board of the objections in writing and the  
42 state board, in adopting the rules, shall conform the proposed rules to meet  
43 the objections of the auditor general or revise the proposed rules to which  
44 an objection has been made and submit the revisions to the auditor general  
45 for approval.

1           B. After the bids submitted in response to an invitation for bids are  
2 opened and the award is made or after the proposals or qualifications are  
3 submitted in response to a request for proposals or a request for  
4 qualifications and the award is made, the governing board shall make  
5 available for public inspection all information, all bids, proposals and  
6 qualifications submitted and all findings and other information considered in  
7 determining whose bid conforms to the invitation for bids and will be the  
8 most advantageous with respect to price, conformity to the specifications and  
9 other factors or whose proposal or qualifications are to be selected for the  
10 award. The invitation for bids, request for proposals or request for  
11 qualifications shall include a notice that all information and bids,  
12 proposals and qualifications submitted will be made available for public  
13 inspection. The rules adopted by the state board shall prohibit the use in  
14 connection with procurement of specifications in any way proprietary to one  
15 supplier unless the specification includes all of the following:

16           1. A statement of the reasons why no other specification is  
17 practicable.

18           2. A description of the essential characteristics of the specified  
19 product.

20           3. A statement specifically permitting an acceptable alternative  
21 product to be supplied.

22           C. No project or purchase may be divided or sequenced into separate  
23 projects or purchases in order to avoid the limits prescribed by the state  
24 board under subsection A of this section.

25           D. A contract for the procurement of construction or construction  
26 services shall include a provision that provides for negotiations between the  
27 school district and the contractor for the recovery of damages related to  
28 expenses incurred by the contractor for a delay for which the school district  
29 is responsible, ~~which~~ THAT is unreasonable under the circumstances and ~~which~~  
30 THAT was not within the contemplation of the parties to the contract. This  
31 subsection shall not be construed to void any provision in the contract that  
32 requires notice of delays, provides for arbitration or ANY other procedure  
33 for settlement or provides for liquidated damages.

34           E. The auditor general may conduct discretionary reviews,  
35 investigations and audits of the financial and operational procurement  
36 activities of school districts, nonexempt charter schools and school  
37 purchasing cooperatives. The auditor general has final review and approval  
38 authority over all school district, nonexempt charter school and school  
39 purchasing cooperative audit contracts and any audit reports issued in  
40 accordance with this section.

41           F. In addition to the requirements of sections 15-914 and 15-914.01,  
42 school districts, nonexempt charter schools and school purchasing  
43 cooperatives, in connection with any audit conducted by a certified public  
44 accountant, shall contract for a systematic review of purchasing practices  
45 using methodology consistent with sampling guidelines established by the

1 auditor general. The auditor general shall consider cost when establishing  
2 guidelines pursuant to this subsection and to the extent possible shall  
3 attempt to minimize the cost of the review. The purpose of the review is to  
4 determine whether the school district, nonexempt charter school or school  
5 purchasing cooperative is in compliance with the procurement laws and  
6 applicable procurement rules of this state. A copy of the review shall be  
7 submitted on completion to the auditor general. The auditor general may  
8 conduct discretionary reviews of school districts, nonexempt charter schools  
9 and school purchasing cooperatives not required to contract for independent  
10 audits.

11 G. The attorney general or county attorney has jurisdiction to enforce  
12 this section. The attorney general or county attorney may seek relief for  
13 any violation of this section through an appropriate civil or criminal action  
14 in superior court, including an action to enjoin a threatened or pending  
15 violation of this section and including an action to enforce compliance with  
16 any request for documents made by the auditor general pursuant to this  
17 section.

18 H. The department of education shall enact policies and procedures for  
19 the acceptance and disposition of complaints from the public regarding school  
20 procurement practices and shall forward all school procurement complaints to  
21 the attorney general. Notwithstanding rules adopted by the state board,  
22 school districts shall not be required to prepare or submit an annual report  
23 on the benefits associated with the use of construction-manager-at-risk,  
24 design-build, qualified select bidders list and job-order-contracting  
25 methods.

26 I. The state board of education shall adopt, and the auditor general  
27 shall review, rules authorizing school districts to procure construction  
28 services by construction-manager-at-risk, design-build, qualified select  
29 bidders list and job-order-contracting methods of project delivery. The  
30 rules shall not require school districts to obtain bid security for the  
31 construction-manager-at-risk method of project delivery.

32 J. A school district or charter school may evaluate United States  
33 general services administration contracts for materials and services. The  
34 governing board or governing body may authorize purchases under a current  
35 contract for materials or services without complying with the requirements of  
36 the procurement rules adopted by the state board of education if the  
37 governing board or governing body determines in writing that all of the  
38 following apply:

39 1. The price for materials or services is equal to or less than the  
40 contractor's current federal supply contract price with the general services  
41 administration.

42 2. The contractor has indicated in writing that the contractor is  
43 willing to extend the current federal supply contract pricing, terms and  
44 conditions to the school district or charter school.

1           3. The purchase order adequately identifies the federal supply  
2 contract on which the order is based.

3           4. The purchase contract is cost effective and is in the best  
4 interests of the school district or charter school.

5           K. Unless otherwise provided by law, **MULTITERM** contracts for materials  
6 or services and contracts for job-order-contracting construction services may  
7 be entered into if the duration of the contract and the conditions of renewal  
8 or extension, if any, are included in the invitation for bids or the request  
9 for proposals and if monies are available for the first fiscal period at the  
10 time the contract is executed. The duration of contracts for materials or  
11 services and contracts for job-order-contracting construction services shall  
12 be limited to no more than five years unless the governing board determines  
13 in writing **BEFORE THE PROCUREMENT SOLICITATION IS ISSUED** that a contract of  
14 longer duration would be advantageous to the school district. Payment and  
15 performance obligations for succeeding fiscal periods are subject to the  
16 availability and appropriation of monies.

17           **L. NOTWITHSTANDING THE RULES ADOPTED BY THE STATE BOARD OF**  
18 **EDUCATION, THE MAXIMUM DOLLAR AMOUNT OF AN INDIVIDUAL JOB ORDER FOR**  
19 **JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL BE ONE MILLION DOLLARS OR A**  
20 **HIGHER OR LOWER AMOUNT PRESCRIBED BY THE GOVERNING BOARD IN A POLICY ADOPTED**  
21 **IN A PUBLIC MEETING HELD PURSUANT TO TITLE 38, CHAPTER 3, ARTICLE 3.1.**  
22 **REQUIREMENTS SHALL NOT BE ARTIFICIALLY DIVIDED OR FRAGMENTED IN ORDER TO**  
23 **CONSTITUTE A JOB ORDER THAT SATISFIES THE REQUIREMENTS OF THIS SUBSECTION.**

24           ~~L.~~ **M.** For the purposes of this section:

25           1. "Nonexempt charter school" means a charter school that is not  
26 exempted from procurement laws pursuant to section 15-183, subsection E,  
27 paragraph 6.

28           2. "School purchasing cooperative" means an entity engaged in  
29 cooperative purchasing as defined in section 41-2631.

30           3. "Total cost" means the cost of all materials and services,  
31 including the cost of labor performed by employees of the school district,  
32 for all construction as provided in subsection A of this section.

33           Sec. 2. Title 15, chapter 9, article 3, Arizona Revised Statutes, is  
34 amended by adding section 15-943.05, to read:

35           **15-943.05. Schoolwide internal service fund**

36           **NOTWITHSTANDING ANY OTHER PROVISION IN THIS ARTICLE, SCHOOL DISTRICTS**  
37 **MAY ESTABLISH AN INTERNAL SERVICE FUND IN ACCORDANCE WITH SECTION 1114 OF**  
38 **TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT THAT ALLOWS A SCHOOL**  
39 **DISTRICT THAT IS ELIGIBLE FOR TITLE I MONIES TO CONSOLIDATE TITLE I MONIES**  
40 **WITH OTHER FEDERAL, STATE, LOCAL AND NONPROFIT MONIES TO IMPLEMENT A**  
41 **SCHOOLWIDE PROGRAM THAT FOCUSES THE SCHOOL'S ENTIRE EDUCATIONAL PROGRAM ON**  
42 **IMPROVING THE ACADEMIC PERFORMANCE OF ALL PUPILS, ESPECIALLY THE**  
43 **LOWEST-ACHIEVING PUPILS. THE SCHOOLWIDE INTERNAL SERVICE FUND IS EXEMPT FROM**  
44 **THE GENERAL AND AGGREGATE BUDGET LIMITS ESTABLISHED BY SECTION 15-905.**