

REFERENCE TITLE: PSPRS oversight; rulemaking; procurement

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2060

Introduced by
Representative Kavanagh

AN ACT

AMENDING SECTION 38-848, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-848.04; AMENDING SECTION 41-2501, ARIZONA REVISED STATUTES; RELATING TO THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM BOARD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-848, Arizona Revised Statutes, is amended to
3 read:

4 38-848. Board of trustees; powers and duties; independent trust
5 fund; administrator; agents and employees

6 A. The board of trustees shall consist of seven members and shall have
7 the rights, powers and duties that are set forth in this section. The term
8 of office of members shall be five years to expire on the third Monday in
9 January of the appropriate year. Members are eligible to receive
10 compensation in an amount of fifty dollars a day, but not to exceed one
11 thousand dollars in any one fiscal year, and are eligible for reimbursement
12 of expenses pursuant to chapter 4, article 2 of this title. The board
13 consists of the following members appointed by the governor pursuant to
14 section 38-211:

15 1. Two elected members from a local board to represent the employees.

16 2. One member to represent this state as an employer of public safety
17 personnel. This member shall have the qualifications prescribed in
18 subsection T of this section.

19 3. One member to represent the cities as employers of public safety
20 personnel.

21 4. An elected county or state official or a judge of the superior
22 court, court of appeals or supreme court.

23 5. Two public members. These members shall have the qualifications
24 prescribed in subsection T of this section.

25 B. All monies in the fund shall be deposited and held in a public
26 safety personnel retirement system depository. Monies in the fund shall be
27 disbursed from the depository separate and apart from all monies or funds of
28 this state and the agencies, instrumentalities and subdivisions of this
29 state, except that the board may commingle the assets of the fund and the
30 assets of all other plans entrusted to its management in one or more group
31 trusts, subject to the crediting of receipts and earnings and charging of
32 payments to the appropriate employer, system or plan. The monies shall be
33 secured by the depository in which they are deposited and held to the same
34 extent and in the same manner as required by the general depository law of
35 this state. For purposes of making the decision to invest in securities
36 owned by the fund or any plan or trust administered by the board, the fund
37 and assets of the plans and the plans' trusts are subject to the sole
38 management of the board for the purpose of this article except that, on the
39 board's election to invest in a particular security or make a particular
40 investment, the assets comprising the security or investment may be chosen
41 and managed by third parties approved by the board. The board may invest in
42 portfolios of securities chosen and managed by a third party. The board's
43 decision to invest in securities such as mutual funds, commingled investment
44 funds, exchange traded funds, private equity or venture capital limited
45 partnerships, real estate limited partnerships or limited liability companies

1 and real estate investment trusts whose assets are chosen and managed by
2 third parties does not constitute an improper delegation of the board's
3 investment authority.

4 C. All contributions under this system and other retirement plans that
5 the board administers shall be forwarded to the board and shall be held,
6 invested and reinvested by the board as provided in this article. All
7 property and monies of the fund and other retirement plans that the board
8 administers, including income from investments and from all other sources,
9 shall be retained for the exclusive benefit of members, as provided in the
10 system and other retirement plans that the board administers, and shall be
11 used to pay benefits to members or their beneficiaries or to pay expenses of
12 operation and administration of the system and fund and other retirement
13 plans that the board administers.

14 D. The board shall have the full power in its sole discretion to
15 invest and reinvest, alter and change the monies accumulated under the system
16 and other retirement plans and trusts that the board administers as provided
17 in this article. In addition to its power to make investments managed by
18 others, the board may delegate the authority the board deems necessary and
19 prudent to investment management pursuant to section 38-848.03, as well as to
20 the administrator, employed by the board pursuant to subsection K, paragraph
21 6 of this section, and any assistant administrators to invest the monies of
22 the system and other retirement plans and trusts that the board administers
23 if the administrator, investment management and any assistant administrators
24 follow the investment policies that are adopted by the board. The board may
25 commingle securities and monies of the fund, the elected officials'
26 retirement plan, the corrections officer retirement plan and other plans or
27 monies entrusted to its care, subject to the crediting of receipts and
28 earnings and charging of payments to the account of the appropriate employer,
29 system or plan. In making every investment, the board shall exercise the
30 judgment and care under the circumstances then prevailing that persons of
31 ordinary prudence, discretion and intelligence exercise in the management of
32 their own affairs, not in regard to speculation but in regard to the
33 permanent disposition of their funds, considering the probable income from
34 their funds as well as the probable safety of their capital, provided:

35 1. That not more than eighty per cent of the combined assets of the
36 system or other plans that the board manages shall be invested at any given
37 time in corporate stocks, based on cost value of such stocks irrespective of
38 capital appreciation.

39 2. That no more than five per cent of the combined assets of the
40 system or other plans that the board manages shall be invested in corporate
41 stock issued by any one corporation, other than corporate stock issued by
42 corporations chartered by the United States government or corporate stock
43 issued by a bank or insurance company.

44 3. That not more than five per cent of the voting stock of any one
45 corporation shall be owned by the system and other plans that the board

1 administers, except that this limitation does not apply to membership
2 interests in limited liability companies.

3 4. That corporate stocks and exchange traded funds eligible for direct
4 purchase shall be restricted to stocks and exchange traded funds that, except
5 for bank stocks, insurance stocks, stocks acquired for coinvestment in
6 connection with the system's or the plans' or trusts' commingled investments
7 and interests in limited liability companies and mutual funds, are either:

8 (a) Listed or approved on issuance for listing on an exchange
9 registered under the securities exchange act of 1934, as amended (15 United
10 States Code sections 78a through 7811).

11 (b) Designated or approved on notice of issuance for designation on
12 the national market system of a national securities association registered
13 under the securities exchange act of 1934, as amended (15 United States Code
14 sections 78a through 7811).

15 (c) Listed or approved on issuance for listing on an exchange
16 registered under the laws of this state or any other state.

17 (d) Listed or approved on issuance for listing on an exchange of a
18 foreign country with which the United States is maintaining diplomatic
19 relations at the time of purchase, except that no more than twenty per cent
20 of the combined assets of the system and other plans that the board manages
21 shall be invested in foreign securities, based on the cost value of the
22 stocks irrespective of capital appreciation.

23 (e) An exchange traded fund that is recommended by the chief
24 investment officer of the system, that is registered under the investment
25 company act of 1940 (15 United States Code sections 80a-1 through 80a-64) and
26 that is both traded on a public exchange and based on a publicly recognized
27 index.

28 E. Notwithstanding any other law, the board shall not be required to
29 invest in any type of investment that is dictated or required by any entity
30 of the federal government and that is intended to fund economic development
31 projects, public works or social programs, but may consider such economically
32 targeted investments pursuant to its fiduciary responsibility. The board, on
33 behalf of the system and all other plans or trusts the board administers, may
34 invest in, lend monies to or guarantee the repayment of monies by a limited
35 liability company, limited partnership, joint venture, partnership, limited
36 liability partnership or trust in which the system and plans or trusts have a
37 financial interest, whether the entity is closely held or publicly traded and
38 that, in turn, may be engaged in any lawful activity, including venture
39 capital, private equity, the ownership, development, management, improvement
40 or operation of real property and any improvements or businesses on real
41 property or the lending of monies.

42 F. Conference call meetings of the board that are held for investment
43 purposes only are not subject to chapter 3, article 3.1 of this title, except
44 that the board shall maintain minutes of these conference call meetings and
45 make them available for public inspection within twenty-four hours after the

1 meeting. The board shall review the minutes of each conference call meeting
2 and shall ratify all legal actions taken during each conference call meeting
3 at the next scheduled meeting of the board.

4 G. The board shall not be held liable for the exercise of more than
5 ordinary care and prudence in the selection of investments and performance of
6 its duties under the system and shall not be limited to so-called "legal
7 investments for trustees", but all monies of the system and other plans that
8 the board administers shall be invested subject to all of the conditions,
9 limitations and restrictions imposed by law.

10 H. Except as provided in subsection D of this section, the board may:

11 1. Invest and reinvest the principal and income of all assets that the
12 board manages without distinction between principal and income.

13 2. Sell, exchange, convey, transfer or otherwise dispose of any
14 investments made on behalf of the system or other plans the board administers
15 in the name of the system or plans by private contract or at public auction.

16 3. Also:

17 (a) Vote on any stocks, bonds or other securities.

18 (b) Give general or special proxies or powers of attorney with or
19 without power of substitution.

20 (c) Exercise any conversion privileges, subscription rights or other
21 options and make any payments incidental to the exercise of the conversion
22 privileges, subscription rights or other options.

23 (d) Consent to or otherwise participate in corporate reorganizations
24 or other changes affecting corporate securities, delegate discretionary
25 powers and pay any assessments or charges in connection therewith.

26 (e) Generally exercise any of the powers of an owner with respect to
27 stocks, bonds, securities or other investments held in or owned by the system
28 or other plans whose assets the board administers.

29 4. Make, execute, acknowledge and deliver any other instruments that
30 may be necessary or appropriate to carry out the powers granted in this
31 section.

32 5. Register any investment held by the system or other plans whose
33 assets the board administers in the name of the system or plan or in the name
34 of a nominee or trust.

35 6. At the expense of the system or other plans that the board
36 administers, enter into an agreement with any bank or banks for the
37 safekeeping and handling of securities and other investments coming into the
38 possession of the board. The agreement shall be entered into under terms and
39 conditions that secure the proper safeguarding, inventory, withdrawal and
40 handling of the securities and other investments. No access to and no
41 deposit or withdrawal of the securities from any place of deposit selected by
42 the board shall be permitted or made except as the terms of the agreement may
43 provide.

44 7. Appear before local boards and the courts of this state and
45 political subdivisions of this state through counsel or appointed

1 representative to protect the fund or the assets of other plans that the
2 board administers. The board is not responsible for the actions or omissions
3 of the local boards under this system but may seek review or rehearing of
4 actions or omissions of local boards. The board does not have a duty to
5 review actions of the local boards but may do so in its discretion in order
6 to protect the fund. No limitations period precludes the board or
7 administrator from contesting, or requires the board or administrator to
8 implement or comply with, a local board decision that violates the internal
9 revenue code or that threatens to impair the tax qualified status of the
10 system or any plan administered by the board or administrator.

11 8. Empower the fund administrator to take actions on behalf of the
12 board that are necessary for the protection and administration of the fund or
13 the assets of other plans that the board administers pursuant to the
14 guidelines of the board.

15 9. Do all acts, whether or not expressly authorized, that may be
16 deemed necessary or proper for the protection of the investments held in the
17 fund or owned by other plans or trusts that the board administers.

18 10. Settle threatened or actual litigation against any system or plan
19 that the board administers.

20 I. Investment expenses and operation and administrative expenses of
21 the board shall be accounted for separately and allocated against investment
22 income.

23 J. The board, as soon as possible within a period of six months
24 following the close of any fiscal year, shall transmit to the governor and
25 the legislature a comprehensive annual financial report on the operation of
26 the system and other plans that the board administers containing, among other
27 things:

- 28 1. A balance sheet.
- 29 2. A statement of income and expenditures for the year.
- 30 3. A report on an actuarial valuation of its assets and liabilities.
- 31 4. A list of investments owned.
- 32 5. The total rate of return, yield on cost, and per cent of cost to
33 market value of the fund and the assets of other plans that the board
34 administers.

35 6. Any other statistical and financial data that may be necessary for
36 the proper understanding of the financial condition of the system and other
37 plans that the board administers and the results of their operations. A
38 synopsis of the annual report shall be published for the information of
39 members of the system, the elected officials' retirement plan or the
40 corrections officer retirement plan.

41 7. An analysis of the long-term level per cent of employer
42 contributions and compensation structure and whether the funding methodology
43 is sufficient to pay one hundred per cent of the unfunded accrued liability
44 under the elected officials' retirement plan.

45 K. The board shall:

- 1 1. Maintain the accounts of the system and other plans that the board
2 administers and issue statements to each employer annually and to each member
3 who may request it.
- 4 2. Report the results of the actuarial valuations to the local boards
5 and employers.
- 6 3. Contract on a fee basis with an independent investment counsel to
7 advise the board in the investment management of the fund and assets of other
8 plans that the board administers and with an independent auditing firm to
9 audit the board's accounting.
- 10 4. Permit the auditor general to make an annual audit and the results
11 shall be transmitted to the governor and the legislature.
- 12 5. Contract on a fee basis with an actuary who shall make actuarial
13 valuations of the system and other plans that the board administers, be the
14 technical adviser of the board on matters regarding the operation of the
15 funds created by the provisions of the system, the elected officials'
16 retirement plan, the corrections officer retirement plan and the fire fighter
17 and peace officer cancer insurance policy program and perform other duties
18 required in connection therewith. The actuary must be a member of a
19 nationally recognized association or society of actuaries.
- 20 6. Employ, as administrator, a person, state department or other body
21 to serve at the pleasure of the board.
- 22 7. Establish procedures and guidelines for contracts with actuaries,
23 auditors, investment counsel and legal counsel and for safeguarding of
24 securities.
- 25 L. The administrator, under the direction of the board, shall:
 - 26 1. Administer this article.
 - 27 2. Be responsible for the recruitment, hiring and day-to-day
28 management of employees.
 - 29 3. Invest the funds of the system and other plans that the board
30 administers as the board deems necessary and prudent as provided in
31 subsections D and H of this section and subject to the investment policies
32 and fund objectives adopted by the board.
 - 33 4. Establish and maintain an adequate system of accounts and records
34 for the system and other plans that the board administers, which shall be
35 integrated with the accounts, records and procedures of the employers so that
36 the system and other plans that the board administers operates most
37 effectively and at minimum expense and that duplication of records and
38 accounts is avoided.
 - 39 5. In accordance with the board's governance policy and procedures and
40 the budget adopted by the board, hire such employees and services the
41 administrator deems necessary and prescribe their duties, including the
42 hiring of one or more assistant administrators to manage the system's
43 operations, investments and legal affairs.
 - 44 6. Be responsible for income, the collection of the income and the
45 accuracy of all expenditures.

1 7. Recommend to the board annual contracts for the system's actuary,
2 auditor, investment counsel, legal counsel and safeguarding of securities.

3 8. Perform additional duties and powers prescribed by the board and
4 delegated to the administrator.

5 M. The system is an independent trust fund ~~and the board is not~~
6 ~~subject to title 41, chapter 6. Contracts for goods and services approved by~~
7 ~~the board are not subject to title 41, chapter 23.~~ As an independent trust
8 fund whose assets are separate and apart from all other funds of this state,
9 the system and the board are not subject to the restrictions prescribed in
10 section 35-154 or article IX, sections 5 and 8, Constitution of Arizona.
11 Loans, guarantees, investment management agreements and investment contracts
12 that are entered into by the board are contracts memorializing obligations or
13 interests in securities that the board has concluded, after thorough due
14 diligence, do not involve investments in Sudan or Iran or otherwise provide
15 support to terrorists or in any way facilitate illegal immigration into the
16 United States. These contracts do not involve the procurement, supply or
17 provision of goods, equipment, labor, materials or services that would
18 require the ~~certifications or~~ warranties required by ~~sections 35-391.06,~~
19 ~~35-393.06 and~~ SECTION 41-4401.

20 N. The board, the administrator, the assistant administrators and all
21 persons employed by them are subject to title 41, chapter 4, article 4. The
22 administrator, assistant administrators and other employees of the board are
23 entitled to receive compensation pursuant to section 38-611.

24 O. In consultation with the director of the department of
25 administration, the board may enter into employment agreements and establish
26 the terms of those agreements with persons holding any of the following
27 system positions:

- 28 1. Administrator.
- 29 2. Deputy or assistant administrator.
- 30 3. Chief investment officer.
- 31 4. Deputy chief investment officer.
- 32 5. Fiduciary or investment counsel.

33 P. The attorney general or an attorney approved by the attorney
34 general and paid by the fund shall be the attorney for the board and shall
35 represent the board in any legal proceeding or forum that the board deems
36 appropriate. The board, administrator, assistant administrators and
37 employees of the board are not personally liable for any acts done in their
38 official capacity in good faith reliance on the written opinions of the
39 board's attorney.

40 Q. At least once in each five-year period after the effective date,
41 the actuary shall make an actuarial investigation into the mortality, service
42 and compensation experience of the members and beneficiaries of the system
43 and other plans that the board administers and shall make a special valuation
44 of the assets and liabilities of the monies of the system and plans. Taking
45 into account the results of the investigation and special valuation, the

1 board shall adopt for the system and other plans that the board administers
2 those mortality, service and other tables deemed necessary.

3 R. On the basis of the tables the board adopts, the actuary shall make
4 a valuation of the assets and liabilities of the funds of the system and
5 other plans that the board administers not less frequently than every year.
6 By November 1 of each year the board shall provide a preliminary report and
7 by December 15 of each year provide a final report to the governor, the
8 speaker of the house of representatives and the president of the senate on
9 the contribution rate for the ensuing fiscal year.

10 S. Neither the board nor any member or employee of the board shall
11 directly or indirectly, for himself or as an agent, in any manner use the
12 monies or deposits of the fund except to make current and necessary payments,
13 nor shall the board or any member or employee become an endorser or surety or
14 in any manner an obligor for monies loaned by or borrowed from the fund or
15 the assets of any other plans that the board administers.

16 T. The members of the board who are appointed pursuant to subsection
17 A, paragraphs 2 and 5 of this section shall have at least ten years'
18 substantial experience as any one or a combination of the following:

19 1. A portfolio manager acting in a fiduciary capacity.

20 2. A securities analyst.

21 3. An employee or principal of a trust institution, investment
22 organization or endowment fund acting either in a management or an investment
23 related capacity.

24 4. A chartered financial analyst in good standing as determined by the
25 association for investment management and research.

26 5. A professor at the university level teaching economics or
27 investment related subjects.

28 6. An economist.

29 7. Any other professional engaged in the field of public or private
30 finances.

31 U. Financial or commercial information that is provided to the board,
32 employees of the board and attorneys of the board in connection with
33 investments in which the board has invested or investments the board has
34 considered for investment is confidential, proprietary and not a public
35 record if the information is information that would customarily not be
36 released to the public by the person or entity from whom the information was
37 obtained.

38 Sec. 2. Title 38, chapter 5, article 4, Arizona Revised Statutes, is
39 amended by adding section 38-848.04, to read:

40 38-848.04. Public safety personnel retirement system
41 administration account

42 A. THE BOARD SHALL ESTABLISH AND MAINTAIN AN ADMINISTRATION ACCOUNT
43 CONSISTING OF ALL MONIES FOR ADMINISTRATIVE PURPOSES. THE FOLLOWING MONIES
44 SHALL BE DEPOSITED IN THE ADMINISTRATION ACCOUNT:

1 1. ALL MONIES APPROPRIATED BY THE LEGISLATURE TO PAY ADMINISTRATIVE
2 EXPENSES OF THE SYSTEM AND ADMINISTRATIVE EXPENSES UNDER ARTICLES 3, 3.1 AND
3 6 OF THIS CHAPTER.

4 2. ALL MONIES RECEIVED FOR PROPORTIONATE SHARES OF ADMINISTRATIVE
5 EXPENSES FROM DEPARTMENTS THAT PAY THE SALARIES OF THEIR OFFICERS AND
6 EMPLOYEES WHOLLY OR IN PART FROM MONIES RECEIVED FROM SOURCES OTHER THAN
7 APPROPRIATIONS FROM THE STATE GENERAL FUND.

8 3. ALL MONIES RECEIVED FOR PROPORTIONATE SHARES OF ADMINISTRATIVE
9 EXPENSES FROM PARTICIPATING EMPLOYERS PAYING EMPLOYER CONTRIBUTIONS.

10 4. MONIES THAT THE ADMINISTRATOR TRANSFERS FROM THE FUND AND THAT ARE
11 NECESSARY FOR THE PAYMENT OF EXPENDITURES MADE PURSUANT TO SUBSECTIONS C AND
12 D OF THIS SECTION.

13 B. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, EXPENDITURES
14 FROM THE ADMINISTRATION ACCOUNT SHALL BE MADE IN ACCORDANCE WITH BOARD
15 DIRECTIVES, SUBJECT TO LEGISLATIVE APPROPRIATION.

16 C. EXPENDITURES FOR THE FOLLOWING ARE CONTINUOUSLY APPROPRIATED AND
17 SHALL BE PAID FROM THE ADMINISTRATION ACCOUNT IN AN AMOUNT THE BOARD DEEMS
18 NECESSARY:

19 1. INVESTMENT MANAGEMENT FEES AND RELATED CONSULTING FEES NECESSARY TO
20 MEET THE BOARD'S INVESTMENT OBJECTIVES.

21 2. RENT.

22 3. ACTUARIAL CONSULTING FEES.

23 4. RETIREE PAYROLL.

24 D. WITH THE APPROVAL OF THE BOARD, THE ADMINISTRATOR:

25 1. MAY EXPEND MONIES FROM THE ADMINISTRATION ACCOUNT FOR STAFF,
26 EXPENSES AND RELATED CONSULTING FEES THAT ARE NECESSARY TO IMPLEMENT SECTION
27 38-848, SUBSECTION K, PARAGRAPHS 1, 2, 3, 4 AND 5.

28 2. SHALL PAY FROM THE ADMINISTRATION ACCOUNT THE COST OF CONTINUING
29 EDUCATION PROGRAMS FOR THE BOARD AND THE COST OF LEGAL COUNSEL.

30 Sec. 3. Section 41-2501, Arizona Revised Statutes, is amended to read:

31 41-2501. Applicability

32 A. This chapter applies only to procurements initiated after
33 January 1, 1985 unless the parties agree to its application to procurements
34 initiated before that date.

35 B. This chapter applies to every expenditure of public monies,
36 including federal assistance monies except as otherwise specified in section
37 41-2637, by this state, acting through a state governmental unit as defined
38 in this chapter, under any contract, except that this chapter does not apply
39 to either grants as defined in this chapter, or contracts between this state
40 and its political subdivisions or other governments, except as provided in
41 chapter 24 of this title and in article 10 of this chapter. This chapter
42 also applies to the disposal of state materials. This chapter and rules
43 adopted under this chapter do not prevent any state governmental unit or
44 political subdivision from complying with the terms of any grant, gift,
45 bequest or cooperative agreement.

1 C. All political subdivisions and other local public agencies of this
2 state may adopt all or any part of this chapter and the rules adopted
3 pursuant to this chapter.

4 D. Notwithstanding any other law, section 41-2517 applies to any
5 agency as defined in section 41-1001, including the office of the governor.

6 E. The Arizona board of regents and the legislative and judicial
7 branches of state government are not subject to this chapter except as
8 prescribed in subsection F of this section.

9 F. The Arizona board of regents and the judicial branch shall adopt
10 rules prescribing procurement policies and procedures for themselves and
11 institutions under their jurisdiction. The rules must be substantially
12 equivalent to the policies and procedures prescribed in this chapter.

13 G. The Arizona state lottery commission is exempt from this chapter
14 for procurement relating to the design and operation of the lottery or
15 purchase of lottery equipment, tickets and related materials. The executive
16 director of the Arizona state lottery commission shall adopt rules
17 substantially equivalent to the policies and procedures in this chapter for
18 procurement relating to the design and operation of the lottery or purchase
19 of lottery equipment, tickets or related materials. All other procurement
20 shall be as prescribed by this chapter.

21 H. The Arizona health care cost containment system administration is
22 exempt from this chapter for provider contracts pursuant to section 36-2904,
23 subsection A and contracts for goods and services, including program
24 contractor contracts pursuant to title 36, chapter 29, articles 2 and 3. All
25 other procurement, including contracts for the statewide administrator of the
26 program pursuant to section 36-2903, subsection B, shall be as prescribed by
27 this chapter.

28 I. Arizona industries for the blind is exempt from this chapter for
29 purchases of finished goods from members of national industries for the blind
30 and for purchases of raw materials for use in the manufacture of products for
31 sale pursuant to section 41-1972. All other procurement shall be as
32 prescribed by this chapter.

33 J. Arizona correctional industries is exempt from this chapter for
34 purchases of raw materials, components and supplies that are used in the
35 manufacture or production of goods or services for sale entered into pursuant
36 to section 41-1622. All other procurement shall be as prescribed by this
37 chapter.

38 K. The state transportation board and the director of the department
39 of transportation are exempt from this chapter other than section 41-2586 for
40 the procurement of construction or reconstruction, including engineering
41 services, of transportation facilities or highway facilities and any other
42 services that are directly related to land titles, appraisals, real property
43 acquisition, relocation, property management or building facility design and
44 construction for highway development and that are required pursuant to title
45 28, chapter 20.

1 L. The Arizona highways magazine is exempt from this chapter for
2 contracts for the production, promotion, distribution and sale of the
3 magazine and related products and for contracts for sole source creative
4 works entered into pursuant to section 28-7314, subsection A, paragraph 5.
5 All other procurement shall be as prescribed by this chapter.

6 M. The secretary of state is exempt from this chapter for contracts
7 entered into pursuant to section 41-1012 to publish and sell the
8 administrative code. All other procurement shall be as prescribed by this
9 chapter.

10 N. This chapter is not applicable to contracts for professional
11 witnesses if the purpose of such contracts is to provide for professional
12 services or testimony relating to an existing or probable judicial proceeding
13 in which this state is or may become a party or to contract for special
14 investigative services for law enforcement purposes.

15 O. The head of any state governmental unit, in relation to any
16 contract exempted by this section from this chapter, has the same authority
17 to adopt rules, procedures or policies as is delegated to the director
18 pursuant to this chapter.

19 P. Agreements negotiated by legal counsel representing this state in
20 settlement of litigation or threatened litigation are exempt from this
21 chapter.

22 Q. This chapter is not applicable to contracts entered into by the
23 department of economic security:

24 1. With a provider licensed or certified by an agency of this state to
25 provide child day care services or with a provider of family foster care
26 pursuant to section 8-503 or 36-554.

27 2. With area agencies on aging created pursuant to the older Americans
28 act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code sections 3001
29 through 3058ee).

30 3. For services pursuant to title 36, chapter 29, article 2.

31 4. With an eligible entity as defined by Public Law 105-285, section
32 673(1)(a)(i), as amended, for designated community services block grant
33 program monies and any other monies given to the eligible entity that
34 accomplishes the purpose of Public Law 105-285, section 672.

35 R. The department of health services may not require that persons with
36 whom it contracts follow this chapter for the purposes of subcontracts
37 entered into for the provision of the following:

38 1. Mental health services pursuant to section 36-189, subsection B.

39 2. Services for the seriously mentally ill pursuant to title 36,
40 chapter 5, article 10.

41 3. Drug and alcohol services pursuant to section 36-141.

42 4. Domestic violence services pursuant to title 36, chapter 30,
43 article 1.

44 S. The department of health services is exempt from this chapter for
45 contracts for services of physicians at the Arizona state hospital.

1 ~~T. Contracts for goods and services approved by the board of trustees~~
2 ~~of the public safety personnel retirement system are exempt from this~~
3 ~~chapter.~~

4 ~~U.~~ T. The Arizona department of agriculture is exempt from this
5 chapter with respect to contracts for private labor and equipment to effect
6 cotton or cotton stubble plow-up pursuant to rules adopted under title 3,
7 chapter 2, article 1.

8 ~~V.~~ U. The Arizona state parks board is exempt from this chapter for
9 purchases of guest supplies and items for resale such as food, linens, gift
10 items, sundries, furniture, china, glassware and utensils for the facilities
11 located in the Tonto natural bridge state park.

12 ~~W.~~ V. The Arizona state parks board is exempt from this chapter for
13 the purchase, production, promotion, distribution and sale of publications,
14 souvenirs and sundry items obtained and produced for resale.

15 ~~X.~~ W. The Arizona state schools for the deaf and the blind are exempt
16 from this chapter for the purchase of textbooks and when purchasing products
17 through a cooperative that is organized and operates in accordance with state
18 law if such products are not available on a statewide contract and are
19 related to the operation of the schools or are products for which special
20 discounts are offered for educational institutions.

21 ~~Y.~~ X. Expenditures of monies in the morale, welfare and recreational
22 fund established by section 26-153 are exempt from this chapter.

23 ~~Z.~~ Y. Notwithstanding section 41-2534, the director of the state
24 department of corrections may contract with local medical providers in
25 counties with a population of less than four hundred thousand persons
26 according to the most recent United States decennial census for the following
27 purposes:

28 1. To acquire hospital and professional medical services for inmates
29 who are incarcerated in state department of corrections facilities that are
30 located in those counties.

31 2. To ensure the availability of emergency medical services to inmates
32 in all counties by contracting with the closest medical facility that offers
33 emergency treatment and stabilization.

34 ~~AA.~~ Z. The department of environmental quality is exempt from this
35 chapter for contracting for procurements relating to the water quality
36 assurance revolving fund program established pursuant to title 49, chapter 2,
37 article 5. The department shall engage in a source selection process that is
38 similar to the procedures prescribed by this chapter. The department may
39 contract for remedial actions with a single selection process. The exclusive
40 remedy for disputes or claims relating to contracting pursuant to this
41 subsection is as prescribed by article 9 of this chapter and the rules
42 adopted pursuant to that article. All other procurement by the department
43 shall be as prescribed by this chapter.

44 ~~BB.~~ AA. The motor vehicle division of the department of
45 transportation is exempt from this chapter for third-party authorizations

1 pursuant to title 28, chapter 13, only if all of the following conditions
2 exist:

- 3 1. The division does not pay any public monies to an authorized third
4 party.
- 5 2. Exclusivity is not granted to an authorized third party.
- 6 3. The director has complied with the requirements prescribed in title
7 28, chapter 13 in selecting an authorized third party.

8 ~~CC.~~ BB. This section does not exempt third-party authorizations
9 pursuant to title 28, chapter 13 from any other applicable law.

10 ~~DD.~~ CC. The state forester is exempt from this chapter for purchases
11 and contracts relating to wildland fire suppression and pre-positioning
12 equipment resources and for other activities related to combating wildland
13 fires and other unplanned risk activities, including fire, flood, earthquake,
14 wind and hazardous material responses. All other procurement by the state
15 forester shall be as prescribed by this chapter.

16 ~~EE.~~ DD. The cotton research and protection council is exempt from
17 this chapter for procurements.

18 ~~FF.~~ EE. Expenditures of monies in the Arizona agricultural protection
19 fund established by section 3-3304 are exempt from this chapter.

20 ~~GG.~~ FF. The Arizona commerce authority is exempt from this chapter,
21 except article 10 for the purpose of cooperative purchases. The authority
22 shall adopt policies, procedures and practices, in consultation with the
23 department of administration, that are similar to and based on the policies
24 and procedures prescribed by this chapter for the purpose of increased public
25 confidence, fair and equitable treatment of all persons engaged in the
26 process and fostering broad competition while accomplishing flexibility to
27 achieve the authority's statutory requirements. The authority shall make its
28 policies, procedures and practices available to the public. The authority
29 may exempt specific expenditures from the policies, procedures and practices.

30 ~~HH.~~ GG. The Arizona exposition and state fair board is exempt from
31 this chapter for contracts for professional entertainment.

32 ~~II.~~ HH. This chapter does not apply to the purchase of water, gas or
33 electric utilities.

34 ~~JJ.~~ II. This chapter does not apply to professional certifications,
35 professional memberships and conference registrations.