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REFERENCE TITLE: charter schools; procurement requirements

State of Arizona
Senate
Fifty-second Legislature
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SB 1052

Introduced by
Senators Quezada, Sherwood; Representative Andrade

AN ACT

AMENDING SECTIONS 15-183, 15-189.02 AND 15-213, ARIZONA REVISED STATUTES; RELATING TO CHARTER SCHOOLS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 15-183, Arizona Revised Statutes, is amended to read:

15-183. Charter schools; application; requirements; immunity; exemptions; renewal of application; reprisal; fee; funds; annual reports

A. An applicant seeking to establish a charter school shall submit a written application to a proposed sponsor as prescribed in subsection C of this section. The application, application process and application time frames shall be posted on the sponsor's website and shall include the following, as specified in the application adopted by the sponsor:

1. A detailed educational plan.

2. A detailed business plan.

3. A detailed operational plan.

4. Any other materials required by the sponsor.

B. The sponsor of a charter school may contract with a public body, private person or private organization for the purpose of establishing a charter school pursuant to this article.

C. The sponsor of a charter school may be either a school district governing board, the state board of education, the state board for charter schools, a university under the jurisdiction of the Arizona board of regents, a community college district with enrollment of more than fifteen thousand full-time equivalent students or a group of community college districts with a combined enrollment of more than fifteen thousand full-time equivalent students, subject to the following requirements:

1. For charter schools that submit an application for sponsorship to a school district governing board:

(a) An applicant for a charter school may submit its application to a school district governing board, which shall either accept or reject sponsorship of the charter school within ninety days. An applicant may submit a revised application for reconsideration by the governing board. If the governing board rejects the application, the governing board shall notify the applicant in writing of the reasons for the rejection. The applicant may request, and the governing board may provide, technical assistance to improve the application.

(b) In the first year that a school district is determined to be out of compliance with the uniform system of financial records, within fifteen days of the determination of noncompliance, the school district shall notify by certified mail each charter school sponsored by the school district that the school district is out of compliance with the uniform system of financial records. The notification shall include a statement that if the school district is determined to be out of compliance for a second consecutive year, the charter school will be required to transfer sponsorship to another entity pursuant to subdivision (c) of this paragraph.

(c) In the second consecutive year that a school district is determined to be out of compliance with the uniform system of financial records, within fifteen days of the determination of noncompliance, the school district shall notify by certified mail each charter school sponsored by the school district that the school district is out of compliance with the uniform system of financial records. A charter school that receives a notification of school district noncompliance pursuant to this subdivision shall file a written sponsorship transfer application within forty-five days with the state board of education, the state board for charter schools or the school district governing board if the charter school is located within the geographic boundaries of that school district. A charter school that receives a notification of school district noncompliance may request an extension of time to file a sponsorship transfer application, and the state board of education, the state board for charter schools or a school district governing board may grant an extension of not more than an additional thirty days if good cause exists for the extension. The state board of education and the state board for charter schools shall approve a sponsorship transfer application pursuant to this paragraph.

(d) A school district governing board shall not grant a charter to a charter school that is located outside the geographic boundaries of that school district.

(e) A school district that has been determined to be out of compliance with the uniform system of financial records during either of the previous two fiscal years shall not sponsor a new or transferring charter school.

(f) Notwithstanding any other law, a school district governing board shall not grant a charter to a new charter school that begins initial operations after June 30, 2013 or convert an existing district public school to a charter school that begins initial operations after June 30, 2013.

2. The applicant may submit the application to the state board of education or the state board for charter schools. Notwithstanding any other law, neither the state board for charter schools nor the state board of education shall grant a charter to a school district governing board for a new charter school that begins initial operations after June 30, 2013 or for the conversion of an existing district public school to a charter school that begins initial operations after June 30, 2013. The state board of education or the state board for charter schools may approve the application if the application meets the requirements of this article and may approve the charter if the proposed sponsor determines, within its sole discretion, that the applicant is sufficiently qualified to operate a charter school and that the applicant is applying to operate as a separate charter holder by considering factors such as whether:

(a) The schools have separate governing bodies, governing body membership, staff, facilities and student population.

(b) Daily operations are carried out by different administrators.

(c) The applicant intends to have an affiliation agreement for the purpose of providing enrollment preferences.

(d) The applicant's charter management organization has multiple charter holders serving varied grade configurations on one physical site or nearby sites serving one community.

(e) It is reconstituting an existing school site population at the same or new site.

(f) It is reconstituting an existing grade configuration from a prior charter holder with at least one grade remaining on the original site with the other grade or grades moving to a new site. The state board of education or the state board for charter schools may approve any charter schools transferring charters. The state board of education and the state board for charter schools shall approve any charter schools transferring charters from a school district that is determined to be out of compliance with the uniform system of financial records pursuant to this section, but may require the charter school to sign a new charter that is equivalent to the charter awarded by the former sponsor. If the state board of education or the state board for charter schools rejects the preliminary application, the state board of education or the state board for charter schools shall notify the applicant in writing of the reasons for the rejection and of suggestions for improving the application. An applicant may submit a revised application for reconsideration by the state board of education or the state board for charter schools. The applicant may request, and the state board of education or the state board for charter schools may provide, technical assistance to improve the application.

3. The applicant may submit the application to a university under the jurisdiction of the Arizona board of regents, a community college district or a group of community college districts. A university, a community college district or a group of community college districts shall not grant a charter to a school district governing board for a new charter school that begins initial operations after June 30, 2013 or for the conversion of an existing district public school to a charter school that begins initial operations after June 30, 2013. A university, a community college district or a group of community college districts may approve the application if it meets the requirements of this article and if the proposed sponsor determines, in its sole discretion, that the applicant is sufficiently qualified to operate a charter school.

4. Each applicant seeking to establish a charter school shall submit a full set of fingerprints to the approving agency for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. If an applicant will have direct contact with students, the applicant shall possess a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1. The department of public safety may exchange this fingerprint data with the federal bureau of

investigation. The criminal records check shall be completed before the issuance of a charter.

5. All persons engaged in instructional work directly as a classroom, laboratory or other teacher or indirectly as a supervisory teacher, speech therapist or principal shall have a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1, unless the person is a volunteer or guest speaker who is accompanied in the classroom by a person with a valid fingerprint clearance card. A charter school shall not employ a teacher whose certificate has been surrendered or revoked, unless the teacher's certificate has been subsequently reinstated by the state board of education. All other personnel shall be fingerprint checked pursuant to section 15-512, or the charter school may require those personnel to obtain a fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1. Before employment, the charter school shall make documented, good faith efforts to contact previous employers of a person to obtain information and recommendations that may be relevant to a person's fitness for employment as prescribed in section 15-512, subsection F. The charter school shall notify the department of public safety if the charter school or sponsor receives credible evidence that a person who possesses a valid fingerprint clearance card is arrested for or is charged with an offense listed in section 41-1758.03, subsection B. Charter schools may hire personnel that have not yet received a fingerprint clearance card if proof is provided of the submission of an application to the department of public safety for a fingerprint clearance card and if the charter school that is seeking to hire the applicant does all of the following:

(a) Documents in the applicant's file the necessity for hiring and placement of the applicant before receiving a fingerprint clearance card.

(b) Ensures that the department of public safety completes a statewide criminal records check on the applicant. A statewide criminal records check shall be completed by the department of public safety every one hundred twenty days until the date that the fingerprint check is completed or the fingerprint clearance card is issued or denied.

(c) Obtains references from the applicant's current employer and the two most recent previous employers except for applicants who have been employed for at least five years by the applicant's most recent employer.

(d) Provides general supervision of the applicant until the date that the fingerprint card is obtained.

(e) Completes a search of criminal records in all local jurisdictions outside of this state in which the applicant has lived in the previous five years.

(f) Verifies the fingerprint status of the applicant with the department of public safety.

6. A charter school that complies with the fingerprinting requirements of this section shall be deemed to have complied with section 15-512 and is

entitled to the same rights and protections provided to school districts by section 15-512.

7. If a charter school operator is not already subject to a public meeting or hearing by the municipality in which the charter school is located, the operator of a charter school shall conduct a public meeting at least thirty days before the charter school operator opens a site or sites for the charter school. The charter school operator shall post notices of the public meeting in at least three different locations that are within three hundred feet of the proposed charter school site.

8. A person who is employed by a charter school or who is an applicant for employment with a charter school, who is arrested for or charged with a nonappealable offense listed in section 41-1758.03, subsection B and who does not immediately report the arrest or charge to the person's supervisor or potential employer is guilty of unprofessional conduct and the person shall be immediately dismissed from employment with the charter school or immediately excluded from potential employment with the charter school.

9. A person who is employed by a charter school and who is convicted of any nonappealable offense listed in section 41-1758.03, subsection B or is convicted of any nonappealable offense that amounts to unprofessional conduct under section 15-550 shall immediately do all of the following:

(a) Surrender any certificates issued by the department of education.

(b) Notify the person's employer or potential employer of the conviction.

(c) Notify the department of public safety of the conviction.

(d) Surrender the person's fingerprint clearance card.

D. An entity that is authorized to sponsor charter schools pursuant to this article has no legal authority over or responsibility for a charter school sponsored by a different entity. This subsection does not apply to the state board of education's duty to exercise general supervision over the public school system pursuant to section 15-203, subsection A, paragraph 1.

E. The charter of a charter school shall do all of the following:

1. Ensure compliance with federal, state and local rules, regulations and statutes relating to health, safety, civil rights and insurance. The department of education shall publish a list of relevant rules, regulations and statutes to notify charter schools of their responsibilities under this paragraph.

2. Ensure that it is nonsectarian in its programs, admission policies and employment practices and all other operations.

3. Ensure that it provides a comprehensive program of instruction for at least a kindergarten program or any grade between grades one and twelve, except that a school may offer this curriculum with an emphasis on a specific learning philosophy or style or certain subject areas such as mathematics, science, fine arts, performance arts or foreign language.

4. Ensure that it designs a method to measure pupil progress toward the pupil outcomes adopted by the state board of education pursuant to

section 15-741.01, including participation in the Arizona instrument to measure standards test and the nationally standardized norm-referenced achievement test as designated by the state board and the completion and distribution of an annual report card as prescribed in chapter 7, article 3 of this title.

5. Ensure that, except as provided in this article and in its charter, it is exempt from all statutes and rules relating to schools, governing boards and school districts.

6. Ensure that, except as provided in this article, it is subject to the same financial and electronic data submission requirements as a school district, including the uniform system of financial records as prescribed in chapter 2, article 4 of this title, procurement rules as prescribed in section 15-213 and audit requirements. The auditor general shall conduct a comprehensive review and revision of the uniform system of financial records to ensure that the provisions of the uniform system of financial records that relate to charter schools are in accordance with commonly accepted accounting principles used by private business. ~~A school's charter may include exceptions to the requirements of this paragraph that are necessary as determined by the district governing board, the university, the community college district, the group of community college districts, the state board of education or the state board for charter schools.~~ The department of education or the office of the auditor general may conduct financial, program or compliance audits.

7. Ensure compliance with all federal and state laws relating to the education of children with disabilities in the same manner as a school district.

8. Ensure that it provides for a governing body for the charter school that is responsible for the policy decisions of the charter school. Notwithstanding section 1-216, if there is a vacancy or vacancies on the governing body, a majority of the remaining members of the governing body constitute a quorum for the transaction of business, unless that quorum is prohibited by the charter school's operating agreement.

9. Ensure that it provides a minimum of one hundred eighty instructional days before June 30 of each fiscal year unless it is operating on an alternative calendar approved by its sponsor. The superintendent of public instruction shall adjust the apportionment schedule accordingly to accommodate a charter school utilizing an alternative calendar.

F. A charter school shall keep on file the resumes of all current and former employees who provide instruction to pupils at the charter school. Resumes shall include an individual's educational and teaching background and experience in a particular academic content subject area. A charter school shall inform parents and guardians of the availability of the resume information and shall make the resume information available for inspection on request of parents and guardians of pupils enrolled at the charter school. This subsection does not require any charter school to release personally

identifiable information in relation to any teacher or employee, including the teacher's or employee's address, salary, social security number or telephone number.

G. The charter of a charter school may be amended at the request of the governing body of the charter school and on the approval of the sponsor.

H. Charter schools may contract, sue and be sued.

I. The charter is effective for fifteen years from the first day of the fiscal year as specified in the charter, subject to the following:

1. At least eighteen months before the expiration of the charter, the sponsor shall notify the charter school that the charter school may apply for renewal and shall make the renewal application available to the charter school. A charter school that elects to apply for renewal shall file a complete renewal application at least fifteen months before the expiration of the charter. A sponsor shall give written notice of its intent not to renew the charter school's request for renewal to the charter school at least twelve months before the expiration of the charter. The sponsor shall make data used in making renewal decisions available to the school and the public and shall provide a public report summarizing the evidence basis for each decision. The sponsor may deny the request for renewal if, in its judgment, the charter holder has failed to do any of the following:

(a) Meet or make sufficient progress toward the academic performance expectations set forth in the performance framework.

(b) Meet the operational performance expectations set forth in the performance framework or any improvement plans.

(c) Complete the obligations of the contract.

(d) Comply with this article or any provision of law from which the charter school is not exempt.

2. A charter operator may apply for early renewal. At least nine months before the charter school's intended renewal consideration, the operator of the charter school shall submit a letter of intent to the sponsor to apply for early renewal. The sponsor shall review fiscal audits and academic performance data for the charter school that are annually collected by the sponsor, review the current contract between the sponsor and the charter school and provide the qualifying charter school with a renewal application. On submission of a complete application, the sponsor shall give written notice of its consideration of the renewal application. The sponsor may deny the request for early renewal if, in the sponsor's judgment, the charter holder has failed to do any of the following:

(a) Meet or make sufficient progress toward the academic performance expectations set forth in the performance framework.

(b) Meet the operational performance expectations set forth in the performance framework or any improvement plans.

(c) Complete the obligations of the contract.

(d) Comply with this article or any provision of law from which the charter school is not exempt.

3. A sponsor shall review a charter at five-year intervals using a performance framework adopted by the sponsor and may revoke a charter at any time if the charter school breaches one or more provisions of its charter or if the sponsor determines that the charter holder has failed to do any of the following:

(a) Meet or make sufficient progress toward the academic performance expectations set forth in the performance framework.

(b) Meet the operational performance expectations set forth in the performance framework or any improvement plans.

(c) Comply with this article or any provision of law from which the charter school is not exempt.

4. In determining whether to renew or revoke a charter holder, the sponsor must consider making sufficient progress toward the academic performance expectations set forth in the sponsor's performance framework as one of the most important factors.

5. At least sixty days before the effective date of the proposed revocation, the sponsor shall give written notice to the operator of the charter school of its intent to revoke the charter. Notice of the sponsor's intent to revoke the charter shall be delivered personally to the operator of the charter school or sent by certified mail, return receipt requested, to the address of the charter school. The notice shall incorporate a statement of reasons for the proposed revocation of the charter. The sponsor shall allow the charter school at least sixty days to correct the problems associated with the reasons for the proposed revocation of the charter. The final determination of whether to revoke the charter shall be made at a public hearing called for such purpose.

J. The charter may be renewed for successive periods of twenty years.

K. A charter school that is sponsored by the state board of education, the state board for charter schools, a university, a community college district or a group of community college districts may not be located on the property of a school district unless the district governing board grants this authority.

L. A governing board or a school district employee who has control over personnel actions shall not take unlawful reprisal against another employee of the school district because the employee is directly or indirectly involved in an application to establish a charter school. A governing board or a school district employee shall not take unlawful reprisal against an educational program of the school or the school district because an application to establish a charter school proposes the conversion of all or a portion of the educational program to a charter school. For the purposes of this subsection, "unlawful reprisal" means an action that is taken by a governing board or a school district employee as a direct result of a lawful application to establish a charter school and that is adverse to another employee or an education program and:

1. With respect to a school district employee, results in one or more of the following:

(a) Disciplinary or corrective action.

(b) Detail, transfer or reassignment.

(c) Suspension, demotion or dismissal.

(d) An unfavorable performance evaluation.

(e) A reduction in pay, benefits or awards.

(f) Elimination of the employee's position without a reduction in force by reason of lack of monies or work.

(g) Other significant changes in duties or responsibilities that are inconsistent with the employee's salary or employment classification.

2. With respect to an educational program, results in one or more of the following:

(a) Suspension or termination of the program.

(b) Transfer or reassignment of the program to a less favorable department.

(c) Relocation of the program to a less favorable site within the school or school district.

(d) Significant reduction or termination of funding for the program.

M. Charter schools shall secure insurance for liability and property loss. The governing body of a charter school that is sponsored by the state board of education or the state board for charter schools may enter into an intergovernmental agreement or otherwise contract to participate in an insurance program offered by a risk retention pool established pursuant to section 11-952.01 or 41-621.01 or the charter school may secure its own insurance coverage. The pool may charge the requesting charter school reasonable fees for any services it performs in connection with the insurance program.

N. Charter schools do not have the authority to acquire property by eminent domain.

O. A sponsor, including members, officers and employees of the sponsor, is immune from personal liability for all acts done and actions taken in good faith within the scope of its authority.

P. Charter school sponsors and this state are not liable for the debts or financial obligations of a charter school or persons who operate charter schools.

Q. The sponsor of a charter school shall establish procedures to conduct administrative hearings on determination by the sponsor that grounds exist to revoke a charter. Procedures for administrative hearings shall be similar to procedures prescribed for adjudicative proceedings in title 41, chapter 6, article 10. Except as provided in section 41-1092.08, subsection H, final decisions of the state board of education and the state board for charter schools from hearings conducted pursuant to this subsection are subject to judicial review pursuant to title 12, chapter 7, article 6.

R. The sponsoring entity of a charter school shall have oversight and administrative responsibility for the charter schools that it sponsors. In implementing its oversight and administrative responsibilities, the sponsor shall ground its actions in evidence of the charter holder's performance in accordance with the performance framework adopted by the sponsor. The performance framework shall be publicly available, shall be placed on the sponsoring entity's website and shall include:

1. The academic performance expectations of the charter school and the measurement of sufficient progress toward the academic performance expectations.

2. The operational expectations of the charter school, including adherence to all applicable laws and obligations of the charter contract.

3. Intervention and improvement policies.

S. Charter schools may pledge, assign or encumber their assets to be used as collateral for loans or extensions of credit.

T. All property accumulated by a charter school shall remain the property of the charter school.

U. Charter schools may not locate a school on property that is less than one-fourth mile from agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the charter school may locate a school within the affected buffer zone. The agreement may include any stipulations regarding the charter school, including conditions for future expansion of the school and changes in the operational status of the school that will result in a breach of the agreement.

V. A transfer of a charter to another sponsor, a transfer of a charter school site to another sponsor or a transfer of a charter school site to a different charter shall be completed before the beginning of the fiscal year that the transfer is scheduled to become effective. An entity that sponsors charter schools may accept a transferring school after the beginning of the fiscal year if the transfer is approved by the superintendent of public instruction. The superintendent of public instruction shall have the discretion to consider each transfer during the fiscal year on a case by case basis. If a charter school is sponsored by a school district that is determined to be out of compliance with this title, the uniform system of financial records or any other state or federal law, the charter school may transfer to another sponsoring entity at any time during the fiscal year. A charter holder seeking to transfer sponsors shall comply with the current charter terms regarding assignment of the charter. A charter holder transferring sponsors shall notify the current sponsor that the transfer has been approved by the new sponsor.

W. Notwithstanding subsection V of this section, a charter holder on an improvement plan must notify parents or guardians of registered students of the intent to transfer the charter and the timing of the proposed transfer. On the approved transfer, the new sponsor shall enforce the improvement plan but may modify the plan based on performance.

X. Notwithstanding subsection Y of this section, the state board for charter schools shall charge a processing fee to any charter school that amends its contract to participate in Arizona online instruction pursuant to section 15-808. The charter Arizona online instruction processing fund is established consisting of fees collected and administered by the state board for charter schools. The state board for charter schools shall use monies in the fund only for the processing of contract amendments for charter schools participating in Arizona online instruction. Monies in the fund are continuously appropriated.

Y. The sponsoring entity may not charge any fees to a charter school that it sponsors unless the sponsor has provided services to the charter school and the fees represent the full value of those services provided by the sponsor. On request, the value of the services provided by the sponsor to the charter school shall be demonstrated to the department of education.

Z. Charter schools may enter into an intergovernmental agreement with a presiding judge of the juvenile court to implement a law related education program as defined in section 15-154. The presiding judge of the juvenile court may assign juvenile probation officers to participate in a law related education program in any charter school in the county. The cost of juvenile probation officers who participate in the program implemented pursuant to this subsection shall be funded by the charter school.

AA. The sponsor of a charter school shall modify previously approved curriculum requirements for a charter school that wishes to participate in the board examination system prescribed in chapter 7, article 6 of this title.

BB. If a charter school decides not to participate in the board examination system prescribed in chapter 7, article 6 of this title, pupils enrolled at that charter school may earn a Grand Canyon diploma by obtaining a passing score on the same board examinations.

CC. Notwithstanding subsection Y of this section, a sponsor of charter schools may charge a new charter application processing fee to any applicant. The application fee shall fully cover the cost of application review and any needed technical assistance. Authorizers may approve policies that allow a portion of the fee to be returned to the applicant whose charter is approved.

DD. A charter school may choose to provide a preschool program for children with disabilities pursuant to section 15-771.

EE. Pursuant to the prescribed graduation requirements adopted by the state board of education, the governing body of a charter school operating a high school may approve a rigorous computer science course that would fulfill a mathematics course required for graduation from high school. The governing

body may approve a rigorous computer science course only if the rigorous computer science course includes significant mathematics content and the governing body determines the high school where the rigorous computer science course is offered has sufficient capacity, infrastructure and qualified staff, including competent teachers of computer science.

FF. A charter school may permit the use of school property, including school buildings, grounds, buses and equipment, by any person, group or organization for any lawful purpose, including a recreational, educational, political, economic, artistic, moral, scientific, social, religious or other civic or governmental purpose. The charter school may charge a reasonable fee for the use of the school property.

GG. A charter school and its employees, including the governing body, or chief administrative officer, are immune from civil liability with respect to all decisions made and actions taken to allow the use of school property, unless the charter school or its employees are guilty of gross negligence or intentional misconduct. This subsection does not limit any other immunity provisions that are prescribed by law.

HH. Sponsors authorized pursuant to this section shall submit an annual report to the auditor general on or before October 1 ~~of each year~~. The report shall include:

1. The current number of charters authorized and the number of schools operated by authorized charter holders.

2. The academic and operational performance of the sponsor's charter portfolio as measured by the sponsor's adopted performance framework.

3. FOR THE PRIOR YEAR, the number of new charters approved, ~~and~~ the number of charter schools closed and THE reason for the closure ~~in the prior year~~.

4. The sponsor's application, amendment, renewal and revocation processes, charter contract template and current performance framework as required by this section.

II. The auditor general shall prescribe the format for the annual report required by subsection HH of this section and may require that the annual report be submitted electronically. The auditor general shall review the submitted annual reports to ensure that the reports include the required items in subsection HH of this section and shall make the annual reports available upon request. If the auditor general finds significant noncompliance or ~~a sponsor's failure~~ IF A SPONSOR FAILS to submit the annual report required by subsection HH of this section, on or before December 31 of each year the auditor general shall report to the governor, the president of the senate, the speaker of the house of representatives and the chairs of the senate and house education committees or their successor committees, and the legislature shall consider revoking the sponsor's authority to sponsor charter schools.

Sec. 2. Section 15-189.02, Arizona Revised Statutes, is amended to read:

15-189.02. Charter schools; public bidding; exemption

~~A.~~ EXCEPT AS OTHERWISE PROVIDED IN SECTION 15-213, a charter school's procurement is exempt from public bidding requirements if the aggregate dollar amount of the procurement does not exceed the maximum amount of the exemption authorized by title 41, chapter 23 or pursuant to rules adopted by the director of the department of administration.

~~B. Notwithstanding subsection A, the state board for charter schools may authorize an exemption from public bidding requirements that exceeds the maximum exemption prescribed in subsection A of this section for any charter school sponsored by the state board for charter schools.~~

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

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

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

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

for bids, requests for proposals and requests for clarification, using the aggregate dollar amount limits for procurements prescribed in section 41-2535, EXCEPT THAT ANY QUOTE SOLICITED THAT EXCEEDS FIFTY THOUSAND DOLLARS FOR THE PROVISION OF MATERIALS, SERVICES OR CONSTRUCTION FOR CHARTER SCHOOLS SHALL BE IN WRITING.

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

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

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

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

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

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

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

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

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

4. The auditor general shall review the proposed rules to determine whether the rules are consistent with the procurement practices prescribed in

title 41, chapter 23 and any modifications are required to adapt the procedures for school districts.

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

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

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

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

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

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

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

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

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

F. In addition to the requirements of sections 15-914 and 15-914.01, school districts, nonexempt charter schools and school purchasing cooperatives, in connection with any audit conducted by a certified public accountant, shall contract for a systematic review of purchasing practices using methodology consistent with sampling guidelines established by the auditor general. The auditor general shall consider cost when establishing guidelines pursuant to this subsection and to the extent possible shall attempt to minimize the cost of the review. The purpose of the review is to determine whether the school district, nonexempt charter school or school purchasing cooperative is in compliance with the procurement laws and applicable procurement rules of this state. A copy of the review shall be submitted on completion to the auditor general. The auditor general may conduct discretionary reviews of school districts, nonexempt charter schools and school purchasing cooperatives not required to contract for independent audits.

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

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

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

J. A school district or charter school may evaluate United States general services administration contracts for materials and services. The

governing board or governing body may authorize purchases under a current contract for materials or services without complying with the requirements of the procurement rules adopted by the state board of education if the governing board or governing body determines in writing that all of the following apply:

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

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

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

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

K. Unless otherwise provided by law, multiterm contracts for materials or services and contracts for job-order-contracting construction services may be entered into if the duration of the contract and the conditions of renewal or extension, if any, are included in the invitation for bids or the request for proposals and if monies are available for the first fiscal period at the time the contract is executed. The duration of contracts for materials or services and contracts for job-order-contracting construction services shall be limited to no more than five years unless the governing board determines in writing before the procurement solicitation is issued that a contract of longer duration would be advantageous to the school district. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

L. Notwithstanding the rules adopted by the state board of education, the maximum dollar amount of an individual job order for job-order-contracting construction services shall be one million dollars or a higher or lower amount prescribed by the governing board in a policy adopted in a public meeting held pursuant to title 38, chapter 3, article 3.1. Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies the requirements of this subsection.

M. For the purposes of this section:

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

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

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