

REFERENCE TITLE: charter schools; procurement requirements

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2364

Introduced by
Representatives Blanc: Alston, Andrade, Benally, Bolding, Butler,
Chávez, Clark, Descheenie, Engel, Epstein, Espinoza, Fernandez, Friese,
Gabaldón, Gonzales, Martinez, Navarrete, Peten, Powers Hannley, Rios,
Saldate, Salman

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)

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

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

4 15-183. Charter schools; application; requirements; immunity;
5 exemptions; renewal of application; reprisal; fee;
6 funds; annual reports

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

- 12 1. A detailed educational plan.
- 13 2. A detailed business plan.
- 14 3. A detailed operational plan.
- 15 4. Any other materials required by the sponsor.

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

19 C. The sponsor of a charter school may be either the state board of
20 education, the state board for charter schools, a university under the
21 jurisdiction of the Arizona board of regents, a community college district
22 or a group of community college districts, subject to the following
23 requirements:

24 1. An applicant may not submit an application for sponsorship to
25 any person or entity other than those prescribed in this subsection.

26 2. The applicant may submit the application to the state board of
27 education or the state board for charter schools. Notwithstanding any
28 other law, neither the state board for charter schools nor the state board
29 of education shall grant a charter to a school district governing board
30 for a new charter school or for the conversion of an existing district
31 public school to a charter school. The state board of education or the
32 state board for charter schools may approve the application if the
33 application meets the requirements of this article and may approve the
34 charter if the proposed sponsor determines, within its sole discretion,
35 that the applicant is sufficiently qualified to operate a charter school
36 and that the applicant is applying to operate as a separate charter holder
37 by considering factors such as whether:

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

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

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

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

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

3 (f) It is reconstituting an existing grade configuration from a
4 prior charter holder with at least one grade remaining on the original
5 site with the other grade or grades moving to a new site. The state board
6 of education or the state board for charter schools may approve any
7 charter schools transferring charters. If the state board of education or
8 the state board for charter schools rejects the preliminary application,
9 the state board of education or the state board for charter schools shall
10 notify the applicant in writing of the reasons for the rejection and of
11 suggestions for improving the application. An applicant may submit a
12 revised application for reconsideration by the state board of education or
13 the state board for charter schools. The applicant may request, and the
14 state board of education or the state board for charter schools may
15 provide, technical assistance to improve the application.

16 3. The applicant may submit the application to a university under
17 the jurisdiction of the Arizona board of regents, a community college
18 district or a group of community college districts. A university, a
19 community college district or a group of community college districts shall
20 not grant a charter to a school district governing board for a new charter
21 school or for the conversion of an existing district public school to a
22 charter school. A university, a community college district or a group of
23 community college districts may approve the application if it meets the
24 requirements of this article and if the proposed sponsor determines, in
25 its sole discretion, that the applicant is sufficiently qualified to
26 operate a charter school.

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

36 5. All persons engaged in instructional work directly as a
37 classroom, laboratory or other teacher or indirectly as a supervisory
38 teacher, speech therapist or principal shall have a valid fingerprint
39 clearance card that is issued pursuant to title 41, chapter 12, article
40 3.1, unless the person is a volunteer or guest speaker who is accompanied
41 in the classroom by a person with a valid fingerprint clearance card. A
42 charter school shall not employ a teacher whose certificate has been
43 surrendered or revoked, unless the teacher's certificate has been
44 subsequently reinstated by the state board of education. All other
45 personnel shall be fingerprint checked pursuant to section 15-512, or the

1 charter school may require those personnel to obtain a fingerprint
 2 clearance card issued pursuant to title 41, chapter 12, article 3.1.
 3 Before employment, the charter school shall make documented, good faith
 4 efforts to contact previous employers of a person to obtain information
 5 and recommendations that may be relevant to a person's fitness for
 6 employment as prescribed in section 15-512, subsection F. The charter
 7 school shall notify the department of public safety if the charter school
 8 or sponsor receives credible evidence that a person who possesses a valid
 9 fingerprint clearance card is arrested for or is charged with an offense
 10 listed in section 41-1758.03, subsection B. A person who is employed at a
 11 charter school that has met the requirements of this paragraph is not
 12 required to meet any additional requirements that are established by the
 13 department of education or that may be established by rule by the state
 14 board of education. The state board of education may not adopt rules that
 15 exceed the requirements for persons qualified to teach in charter schools
 16 prescribed in title I of the every student succeeds act (P.L. 114-95) or
 17 the individuals with disabilities education improvement act of 2004
 18 (P.L. 108-446). Charter schools may hire personnel who have not yet
 19 received a fingerprint clearance card if proof is provided of the
 20 submission of an application to the department of public safety for a
 21 fingerprint clearance card and if the charter school that is seeking to
 22 hire the applicant does all of the following:

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

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

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

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

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

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

40 6. A charter school that complies with the fingerprinting
 41 requirements of this section shall be deemed to have complied with section
 42 15-512 and is entitled to the same rights and protections provided to
 43 school districts by section 15-512.

44 7. If a charter school operator is not already subject to a public
 45 meeting or hearing by the municipality in which the charter school is

1 located, the operator of a charter school shall conduct a public meeting
2 at least thirty days before the charter school operator opens a site or
3 sites for the charter school. The charter school operator shall post
4 notices of the public meeting in at least three different locations that
5 are within three hundred feet of the proposed charter school site.

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

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

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

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

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

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

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

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

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

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

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

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

1 section 15-741.01, including participation in the statewide assessment and
2 the nationally standardized norm-referenced achievement test as designated
3 by the state board and the completion and distribution of an annual report
4 card as prescribed in chapter 7, article 3 of this title.

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

8 6. Ensure that, except as provided in this article, it is subject
9 to the same financial and electronic data submission requirements as a
10 school district, including the uniform system of financial records as
11 prescribed in chapter 2, article 4 of this title, procurement rules as
12 prescribed in section 15-213 and audit requirements. The auditor general
13 shall conduct a comprehensive review and revision of the uniform system of
14 financial records to ensure that the provisions of the uniform system of
15 financial records that relate to charter schools are in accordance with
16 commonly accepted accounting principles used by private business.

17 ~~A school's charter may include exceptions to the requirements of this~~
18 ~~paragraph that are necessary as determined by the university, the~~
19 ~~community college district, the group of community college districts, the~~
20 ~~state board of education or the state board for charter schools. The~~
21 ~~department of education or the office of the auditor general may conduct~~
22 ~~financial, program or compliance audits.~~

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

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

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

38 F. A charter school shall keep in the personnel file of all current
39 employees who provide instruction to pupils at the charter school
40 information about the employee's educational and teaching background and
41 experience in a particular academic content subject area. A charter
42 school shall inform parents and guardians of the availability of the
43 information and shall make the information available for inspection on
44 request of parents and guardians of pupils enrolled at the charter school.
45 This subsection does not require any charter school to release personally

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

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

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

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

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

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

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

27 (c) Complete the obligations of the contract.

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

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

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

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

1 (c) Complete the obligations of the contract.

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

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

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

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

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

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

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

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

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

37 L. A governing board or a school district employee who has control
38 over personnel actions shall not take unlawful reprisal against another
39 employee of the school district because the employee is directly or
40 indirectly involved in an application to establish a charter school. A
41 governing board or a school district employee shall not take unlawful
42 reprisal against an educational program of the school or the school
43 district because an application to establish a charter school proposes the
44 conversion of all or a portion of the educational program to a charter
45 school. For the purposes of this subsection, "unlawful reprisal" means an

1 action that is taken by a governing board or a school district employee as
2 a direct result of a lawful application to establish a charter school and
3 that is adverse to another employee or an education program and:

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

- 6 (a) Disciplinary or corrective action.
- 7 (b) Detail, transfer or reassignment.
- 8 (c) Suspension, demotion or dismissal.
- 9 (d) An unfavorable performance evaluation.
- 10 (e) A reduction in pay, benefits or awards.
- 11 (f) Elimination of the employee's position without a reduction in
12 force by reason of lack of monies or work.
- 13 (g) Other significant changes in duties or responsibilities that
14 are inconsistent with the employee's salary or employment classification.

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

- 17 (a) Suspension or termination of the program.
- 18 (b) Transfer or reassignment of the program to a less favorable
19 department.
- 20 (c) Relocation of the program to a less favorable site within the
21 school or school district.
- 22 (d) Significant reduction or termination of funding for the
23 program.

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

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

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

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

41 Q. The sponsor of a charter school shall establish procedures to
42 conduct administrative hearings on determination by the sponsor that
43 grounds exist to revoke a charter. Procedures for administrative hearings
44 shall be similar to procedures prescribed for adjudicative proceedings in
45 title 41, chapter 6, article 10. Except as provided in section

1 41-1092.08, subsection H, final decisions of the state board of education
2 and the state board for charter schools from hearings conducted pursuant
3 to this subsection are subject to judicial review pursuant to title 12,
4 chapter 7, article 6.

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

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

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

18 3. Intervention and improvement policies.

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

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

23 U. Charter schools may not locate a school on property that is less
24 than one-fourth mile from agricultural land regulated pursuant to section
25 3-365, except that the owner of the agricultural land may agree to comply
26 with the buffer zone requirements of section 3-365. If the owner agrees
27 in writing to comply with the buffer zone requirements and records the
28 agreement in the office of the county recorder as a restrictive covenant
29 running with the title to the land, the charter school may locate a school
30 within the affected buffer zone. The agreement may include any
31 stipulations regarding the charter school, including conditions for future
32 expansion of the school and changes in the operational status of the
33 school that will result in a breach of the agreement.

34 V. A transfer of a charter to another sponsor, a transfer of a
35 charter school site to another sponsor or a transfer of a charter school
36 site to a different charter shall be completed before the beginning of the
37 fiscal year that the transfer is scheduled to become effective. An entity
38 that sponsors charter schools may accept a transferring school after the
39 beginning of the fiscal year if the transfer is approved by the
40 superintendent of public instruction. The superintendent of public
41 instruction shall have the discretion to consider each transfer during the
42 fiscal year on a case-by-case basis. A charter holder seeking to transfer
43 sponsors shall comply with the current charter terms regarding assignment
44 of the charter. A charter holder transferring sponsors shall notify the
45 current sponsor that the transfer has been approved by the new sponsor.

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

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

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

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

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

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

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

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

1 EE. Pursuant to the prescribed graduation requirements adopted by
2 the state board of education, the governing body of a charter school
3 operating a high school may approve a rigorous computer science course
4 that would fulfill a mathematics course required for graduation from high
5 school. The governing body may approve a rigorous computer science course
6 only if the rigorous computer science course includes significant
7 mathematics content and the governing body determines the high school
8 where the rigorous computer science course is offered has sufficient
9 capacity, infrastructure and qualified staff, including competent teachers
10 of computer science.

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

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

23 HH. Sponsors authorized pursuant to this section shall submit an
24 annual report to the auditor general on or before October 1. The report
25 shall include:

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

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

31 3. For the prior year, the number of new charters approved, the
32 number of charter schools closed and the reason for the closure.

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

36 II. The auditor general shall prescribe the format for the annual
37 report required by subsection HH of this section and may require that the
38 annual report be submitted electronically. The auditor general shall
39 review the submitted annual reports to ensure that the reports include the
40 required items in subsection HH of this section and shall make the annual
41 reports available on request. If the auditor general finds significant
42 noncompliance or if a sponsor fails to submit the annual report required
43 by subsection HH of this section, on or before December 31 of each year
44 the auditor general shall report to the governor, the president of the
45 senate, the speaker of the house of representatives and the chairs of the

1 senate and house education committees or their successor committees, and
2 the legislature shall consider revoking the sponsor's authority to sponsor
3 charter schools.

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

6 15-189.02. Charter schools; public bidding; exemption

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

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

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

18 15-213. Procurement practices of school districts and charter
19 schools; definitions

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

22 1. The state board shall submit to the auditor general proposed
23 rules consistent with the procurement practices prescribed in title 41,
24 chapter 23, modifying the provisions for public notice of invitation for
25 bids, requests for proposals and requests for qualifications to allow a
26 governing board to give public notice of the invitation for bids, requests
27 for proposals and requests for qualifications by publication in the
28 official newspaper of the county as ~~defined~~ PRESCRIBED in section 11-255,
29 modifying the provisions relating to disposal of materials to comply with
30 section 15-342, paragraph 18, providing for governing board delegation of
31 procurement authority and modifying as necessary other provisions that the
32 state board determines are not appropriate for school districts. The
33 rules shall include provisions specifying that school districts are not
34 required to engage in competitive bidding in order to make the decision to
35 participate in programs pursuant to section 15-382 and that a program
36 authorized by section 15-382 is not required to engage in competitive
37 bidding for the services necessary to administer the program or for
38 purchase of insurance or reinsurance. The rules shall include provisions
39 specifying that school districts are not required to engage in competitive
40 bidding in order to place a pupil in a private school that provides
41 special education services if such placement is prescribed in the pupil's
42 individualized education program and the private school has been approved
43 by the department of education division of special education pursuant to
44 section 15-765, subsection D. This placement is not subject to rules
45 adopted by the state board of education before November 24, 2009 pursuant

1 to this section. The rules for procurement of construction projects shall
2 include provisions specifying that surety bonds furnished as bid security
3 and performance and payment bonds shall be executed and furnished as
4 required by title 34, chapter 2 or 6, as applicable. The rules shall
5 specify the total cost of a procurement that is subject to invitations for
6 bids, requests for proposals and requests for clarification, using the
7 aggregate dollar amount limits for procurements prescribed in section
8 41-2535, EXCEPT THAT ANY QUOTE SOLICITED THAT EXCEEDS FIFTY THOUSAND
9 DOLLARS FOR THE PROVISION OF MATERIALS, SERVICES OR CONSTRUCTION FOR
10 CHARTER SCHOOLS SHALL BE IN WRITING.

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

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

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

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

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

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

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

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

38 3. The state board of education shall adopt rules for the
39 procurement of goods and information services by school districts and
40 charter schools using electronic, online bidding. The rules adopted by
41 the state board shall include the use of reverse auctions and shall be
42 consistent with the procurement practices prescribed in title 41, chapter
43 23, article 13, modifying as necessary those provisions and the rules
44 adopted pursuant to that article that the state board determines are not
45 appropriate for school districts and charter schools. Until the rules are

1 adopted, school districts and charter schools may procure goods and
2 information services pursuant to title 41, chapter 23, article 13 using
3 the rules adopted by the department of administration in implementing that
4 article.

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

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

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

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

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

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

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

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

43 D. A contract for the procurement of construction or construction
44 services shall include a provision that provides for negotiations between
45 the school district and the contractor for the recovery of damages related

1 to expenses incurred by the contractor for a delay for which the school
 2 district is responsible, that is unreasonable under the circumstances and
 3 that was not within the contemplation of the parties to the contract.
 4 This subsection shall not be construed to void any provision in the
 5 contract that requires notice of delays, provides for arbitration or any
 6 other procedure for settlement or provides for liquidated damages.

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

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

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

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

44 I. The state board of education shall adopt, and the auditor
 45 general shall review, rules authorizing school districts to procure

1 construction services by construction-manager-at-risk, design-build,
2 qualified select bidders list and job-order-contracting methods of project
3 delivery. The rules shall not require school districts to obtain bid
4 security for the construction-manager-at-risk method of project delivery.

5 J. A school district or charter school may evaluate United States
6 general services administration contracts for materials and services. The
7 governing board or governing body may authorize purchases under a current
8 contract for materials or services without complying with the requirements
9 of the procurement rules adopted by the state board of education if the
10 governing board or governing body determines in writing that all of the
11 following apply:

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

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

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

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

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

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

1 M. For the purposes of this section:

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

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

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