

State of Arizona  
Senate  
Fifty-fourth Legislature  
First Regular Session  
2019

**CHAPTER 85**  
**SENATE BILL 1256**

AN ACT

AMENDING SECTION 15-213, ARIZONA REVISED STATUTES; REPEALING SECTION 15-213.04, ARIZONA REVISED STATUTES; REPEALING LAWS 2018, CHAPTER 285, SECTION 32; RELATING TO THE SCHOOL DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

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

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

40       2. The state board of education shall adopt rules for procurements  
41 involving construction not exceeding ~~one hundred fifty thousand dollars~~  
42 \$150,000, which shall be known as the simplified school construction  
43 procurement program. At a minimum, the rules for a simplified  
44 construction procurement program shall require that:

(a) ~~A list be maintained by~~ Each county school superintendent **MAINTAIN A LIST** 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

construction projects 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 state board shall adopt rules for the procurement by school districts of any materials, services, goods, construction or construction services that ensure maximum practicable competition as prescribed in section 41-2565 and shall require that a person:

(a) That contracts for or purchases any materials, services, goods, construction or construction services in a manner contrary to the rules adopted by the state board pursuant to this section is personally liable for the recovery of all public monies paid plus twenty percent of that amount and legal interest from the date of payment and all costs and damages arising out of the violation as prescribed in section 41-2616.

6 (c) That prepares procurement specifications may not receive any  
7 direct or indirect benefit from using those specifications.

16       5. The state board shall adopt rules requiring school districts to  
17 obtain and maintain a record of proof that a construction or construction  
18 services provider that has been awarded a contract with the school  
19 district, or school purchasing cooperative, has a valid license to  
20 practice in this state.

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

25        7. If the auditor general approves the proposed rules, the auditor  
26 general shall notify the state board in writing and the state board shall  
27 adopt such rules.

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

34       B. After the bids submitted in response to an invitation for bids  
35 are opened and the award is made or after the proposals or qualifications  
36 are submitted in response to a request for proposals or a request for  
37 qualifications and the award is made, the governing board shall make  
38 available for public inspection all information, all bids, proposals and  
39 qualifications submitted and all findings and other information considered  
40 in determining whose bid conforms to the invitation for bids and will be  
41 the most advantageous with respect to price, conformity to the  
42 specifications and other factors or whose proposal or qualifications are  
43 to be selected for the award, including the rationale for awarding a  
44 contract for any specified professional services, construction,  
45 construction services or materials to an entity selected from a qualified

1 select bidders list or through a school purchasing cooperative. The  
2 invitation for bids, request for proposals or request for qualifications  
3 shall include a notice that all information and bids, proposals and  
4 qualifications submitted will be made available for public inspection.  
5 The rules adopted by the state board shall prohibit the use in connection  
6 with procurement of specifications in any way proprietary to one supplier  
7 unless the specification includes all of the following:

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

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

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

14      C. A project or purchase may not be divided or sequenced into  
15 separate projects or purchases in order to avoid the limits prescribed by  
16 the state board under subsection A of this section.

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

26      E. The auditor general may conduct discretionary reviews,  
27 investigations and audits of the financial and operational procurement  
28 activities of school districts, nonexempt charter schools and school  
29 purchasing cooperatives. The auditor general has final review and  
30 approval authority over all school district, nonexempt charter school and  
31 school purchasing cooperative audit contracts and any audit reports issued  
32 in accordance with this section. If the attorney general has reasonable  
33 cause to believe an employee of a school district or school purchasing  
34 cooperative, or an employee of an entity that has been awarded a contract  
35 by a school district or school purchasing cooperative, has engaged in, is  
36 engaging in or is about to engage in any practice or transaction that  
37 violates the rules adopted by the state board of education pursuant to  
38 this section, the attorney general may:

39       1. Require that person to file on forms prescribed by the attorney  
40 general a statement or report in writing and under oath as to all the  
41 facts and circumstances concerning a violation of the rules adopted by the  
42 state board pursuant to this section by that person and any other data and  
43 information deemed necessary by the attorney general.

44       2. Examine under oath any person in connection with a violation of  
45 the rules adopted by the state board pursuant to this section.

1       F. In addition to the requirements of sections 15-914 and  
2 15-914.01, school districts, nonexempt charter schools and school  
3 purchasing cooperatives, in connection with any audit conducted by a  
4 certified public accountant, shall contract for a systematic review of  
5 purchasing practices using methodology consistent with sampling guidelines  
6 established by the auditor general. The auditor general shall consider  
7 cost when establishing guidelines pursuant to this subsection and to the  
8 extent possible shall attempt to minimize the cost of the review. The  
9 purpose of the review is to determine whether the school district,  
10 nonexempt charter school or school purchasing cooperative is in compliance  
11 with the procurement laws and applicable procurement rules of this state.  
12 A copy of the review shall be submitted on completion to the auditor  
13 general. The auditor general may conduct discretionary reviews of school  
14 districts, nonexempt charter schools and school purchasing cooperatives  
15 **THAT ARE** not required to contract for independent audits.

16       G. A school district school employee who has control over personnel  
17 actions may not take reprisal against a school district school employee  
18 for that employee's disclosure of information that is a matter of public  
19 concern, including a violation of this section, to a public body pursuant  
20 to title 38, chapter 3, article 9.

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

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

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

42       K. A school district or charter school may evaluate United States  
43 general services administration contracts for materials and services. The  
44 governing board or governing body may authorize purchases under a current  
45 contract for materials or services without complying with the requirements

1 of the procurement rules adopted by the state board of education if the  
2 governing board or governing body determines in writing that all of the  
3 following apply:

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

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

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

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

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

27 M. Notwithstanding the rules adopted by the state board of  
28 education, the maximum dollar amount of an individual job order for  
29 job-order-contracting construction services is ~~one million dollars~~  
30 \$1,000,000 or a higher or lower amount prescribed by the governing board  
31 in a policy adopted in a public meeting held pursuant to title 38,  
32 chapter 3, article 3.1. Requirements shall not be artificially divided or  
33 fragmented in order to constitute a job order that satisfies the  
34 requirements of this subsection.

35 N. A person who supervises or participates in contracts, purchases,  
36 payments, claims or other financial transactions, or a person who  
37 supervises or participates in the planning, recommending, selecting or  
38 contracting for materials, services, goods, construction, or construction  
39 services of a school district or school purchasing cooperative is guilty  
40 of a class 6 felony if the person solicits, accepts or agrees to accept  
41 any personal gift or benefit with a value of ~~three hundred dollars~~ \$300 or  
42 more from a person or vendor that has secured or has taken steps to secure  
43 a contract, purchase, payment, claim or financial transaction with the  
44 school district or school purchasing cooperative. Soliciting, accepting  
45 or agreeing to accept any personal gift or benefit with a value of less

1 than ~~three hundred dollars~~ \$300 is a class 1 misdemeanor. A gift or  
2 benefit does not include an item of nominal value such as a greeting card,  
3 t-shirt, mug or pen.

4 0. Any person or vendor that has secured or has taken steps to  
5 secure a contract, purchase, payment, claim or financial transaction with  
6 a school district or school purchasing cooperative that offers, confers or  
7 agrees to confer any personal gift or benefit with a value of ~~three~~  
8 ~~hundred dollars~~ \$300 or more on a person who supervises or participates in  
9 contracts, purchases, payments, claims or other financial transactions, or  
10 on a person who supervises or participates in planning, recommending,  
11 selecting or contracting for materials, services, goods, construction or  
12 construction services of a school district or school purchasing  
13 cooperative, is guilty of a class 6 felony. Offering, conferring or  
14 agreeing to confer any personal gift or benefit with a value of less than  
15 ~~three hundred dollars~~ \$300 is a class 1 misdemeanor. A gift or benefit  
16 does not include an item of nominal value such as a greeting card,  
17 t-shirt, mug or pen.

18 P. Any person or vendor convicted under subsection 0 of this  
19 section may be suspended for up to six months or barred for up to three  
20 years by the director of the department of administration from doing  
21 business with school districts and school purchasing cooperatives. The  
22 director of the department of administration shall adopt rules, including  
23 administrative procedures, to suspend or bar any person from consideration  
24 for award of contracts pursuant to this section.

25 ~~Q. A school district may not hire the same auditor or auditing firm  
26 for more than three consecutive years.~~

27 ~~R. An auditor or auditing firm hired by a school district may not  
28 also receive consulting fees from that school district.~~

29 ~~S. Q.~~ For the purposes of this section:

30 1. "Gift or benefit" means a payment, distribution, expenditure,  
31 advance, deposit or donation of monies, any intangible personal property  
32 or any kind of tangible personal or real property. Gift or benefit does  
33 not include either:

34 (a) Food or beverage.

35 (b) Expenses or sponsorships relating to a special event or  
36 function to which individuals listed in subsection N of this section are  
37 invited.

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

41 3. "School purchasing cooperative" means an entity THAT IS engaged  
42 in cooperative purchasing as defined in section 41-2631.

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

1       Sec. 2. Repeal

2       A. Section 15-213.04, Arizona Revised Statutes, is repealed.

3       B. Laws 2018, chapter 285, section 32 is repealed.

4       Sec. 3. School procurement consulting pilot program;  
5                    qualifications; report; definition; delayed repeal

6       A. On or before September 1, 2019, the school facilities board  
7 shall select three school districts with ongoing or planned procurements  
8 of construction services using alternative project delivery methods for  
9 the purpose of establishing a school procurement consulting pilot program.  
10 One of the schools selected must have an average daily membership of two  
11 thousand or more but less than eight thousand and two must have an average  
12 daily membership of less than two thousand. Each school district selected  
13 shall agree to participate in the pilot program. Each of the selected  
14 school districts shall have ongoing or planned procurements of  
15 construction services and alternative project delivery methods either as a  
16 school facilities board-approved project or as a locally procured project  
17 that is not submitted to or paid for through the school facilities board.

18       B. The school facilities board shall provide technical assistance  
19 and procurement consulting services for the selected school districts,  
20 including drafting specifications, developing solicitations, managing the  
21 procurement and construction processes and reviewing all bids, proposals,  
22 responses to requests for information, technical offers, statements of  
23 qualifications, specifications and protests. The school facilities board  
24 shall provide guidance and advice to the school district's procurement  
25 evaluation committee, if any, but may not serve as a voting member of the  
26 committee.

27       C. On or before September 1, 2020, the school facilities board  
28 shall submit a report of its findings to the governor, the president of  
29 the senate, the speaker of the house of representatives, the chairperson  
30 of the house of representatives education committee, or its successor  
31 committee, and the chairperson of the senate education committee, or its  
32 successor committee, and shall provide a copy of the report to the  
33 secretary of state.

34       D. For the purposes of this section, "construction" has the same  
35 meaning prescribed in section 41-2503, Arizona Revised Statutes.

36       E. This section is repealed from and after February 15, 2021.

37       Sec. 4. Emergency

38       This act is an emergency measure that is necessary to preserve the  
39 public peace, health or safety and is operative immediately as provided by  
40 law.

APPROVED BY THE GOVERNOR APRIL 11, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2019.