

LEFF FLOOR AMENDMENT

SENATE AMENDMENTS TO H.B. 2727

(Reference to PSHS amendment)

1 Page 9, between lines 13 and 14, insert:

2 "Sec. 4. Section 15-183, Arizona Revised Statutes, as amended by Laws  
3 2008, Chapter 56, is amended to read:

4 15-183. Charter schools; application; requirements; immunity;  
5 exemptions; renewal of application; reprisal

6 A. An applicant seeking to establish a charter school shall submit a  
7 written application to a proposed sponsor as prescribed in subsection C of  
8 this section. The application shall include a detailed business plan for the  
9 charter school and may include a mission statement for the charter school, a  
10 description of the charter school's organizational structure and the  
11 governing body, a financial plan for the first three years of operation of  
12 the charter school, a description of the charter school's hiring policy, the  
13 name of the charter school's applicant or applicants and requested sponsor, a  
14 description of the charter school's facility and the location of the school,  
15 a description of the grades being served and an outline of criteria designed  
16 to measure the effectiveness of the school.

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

20 C. The sponsor of a charter school may be either a school district  
21 governing board, the state board of education or the state board for charter  
22 schools, subject to the following requirements:

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

25 (a) An applicant for a charter school may submit its application to a  
26 school district governing board, which shall either accept or reject  
27 sponsorship of the charter school within ninety days. An applicant may  
28 submit a revised application for reconsideration by the governing board. If  
29 the governing board rejects the application, the governing board shall notify

1 the applicant in writing of the reasons for the rejection. The applicant may  
2 request, and the governing board may provide, technical assistance to improve  
3 the application.

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

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

1           (d) Beginning July 1, 2000, a school district governing board shall  
2 not grant a charter to a charter school that is located outside the  
3 geographic boundaries of that school district.

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

7           2. The applicant may submit the application to the state board of  
8 education or the state board for charter schools. The state board of  
9 education or the state board for charter schools may approve the application  
10 if the application meets the requirements of this article and may approve the  
11 charter if the proposed sponsor determines, within its sole discretion, that  
12 the applicant is sufficiently qualified to operate a charter school. The  
13 state board of education or the state board for charter schools may approve  
14 any charter schools transferring charters. The state board of education and  
15 the state board for charter schools shall approve any charter schools  
16 transferring charters from a school district that is determined to be out of  
17 compliance with the uniform system of financial records pursuant to this  
18 section, but may require the charter school to sign a new charter that is  
19 equivalent to the charter awarded by the former sponsor. If the state board  
20 of education or the state board for charter schools rejects the preliminary  
21 application, the state board of education or the state board for charter  
22 schools shall notify the applicant in writing of the reasons for the  
23 rejection and of suggestions for improving the application. An applicant may  
24 submit a revised application for reconsideration by the state board of  
25 education or the state board for charter schools. The applicant may request,  
26 and the state board of education or the state board for charter schools may  
27 provide, technical assistance to improve the application.

28           3. Each applicant seeking to establish a charter school shall submit a  
29 full set of fingerprints to the approving agency for the purpose of obtaining  
30 a state and federal criminal records check pursuant to section 41-1750 and  
31 Public Law 92-544. If an applicant will have direct contact with students,  
32 the applicant shall possess a valid fingerprint clearance card that is issued

1       pursuant to title 41, chapter 12, article 3.1. The department of public  
2       safety may exchange this fingerprint data with the federal bureau of  
3       investigation. The criminal records check shall be completed before the  
4       issuance of a charter.

5             4. All persons engaged in instructional work directly as a classroom,  
6       laboratory or other teacher or indirectly as a supervisory teacher, speech  
7       therapist or principal shall have a valid fingerprint clearance card that is  
8       issued pursuant to title 41, chapter 12, article 3.1, unless the person is a  
9       volunteer or guest speaker who is accompanied in the classroom by a person  
10      with a valid fingerprint clearance card. A charter school shall not employ a  
11      teacher whose certificate has been revoked for a violation of section 15-507  
12      or 15-550 or for any offense that placed a pupil in danger. All other  
13      personnel shall be fingerprint checked pursuant to section 15-512. **A CHARTER**  
14      **SCHOOL SHALL REFUSE TO HIRE OR SHALL TERMINATE PERSONNEL FINGERPRINT CHECKED**  
15      **PURSUANT TO SECTION 15-512 WHO HAVE BEEN CONVICTED OF OR ADMITTED COMMITTING**  
16      **ANY OF THE CRIMINAL OFFENSES PRESCRIBED IN SECTION 15-512, SUBSECTION D OR OF**  
17      **A SIMILAR OFFENSE IN ANOTHER JURISDICTION.** Before employment, the charter

18      school shall make documented, good faith efforts to contact previous  
19      employers of a person to obtain information and recommendations that may be  
20      relevant to a person's fitness for employment as prescribed in section  
21      15-512, subsection F. The charter school shall notify the department of  
22      public safety if the charter school or sponsor receives credible evidence  
23      that a person who possesses a valid fingerprint clearance card is arrested  
24      for or is charged with an offense listed in section 41-1758.03, subsection B.

25      Charter schools may hire personnel that have not yet received a fingerprint  
26      clearance card if proof is provided of the submission of an application to  
27      the department of public safety for a fingerprint clearance card and if the  
28      charter school that is seeking to hire the applicant does all of the  
29      following:

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

1 (b) Ensures that the department of public safety completes a statewide  
2 criminal history information check on the applicant. A statewide criminal  
3 history information check shall be completed by the department of public  
4 safety every one hundred twenty days until the date that the fingerprint  
5 check is completed.

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

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

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

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

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

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

28 E. The charter of a charter school shall ensure the following:

29 1. Compliance with federal, state and local rules, regulations and  
30 statutes relating to health, safety, civil rights and insurance. The  
31 department of education shall publish a list of relevant rules, regulations

1 and statutes to notify charter schools of their responsibilities under this  
2 paragraph.

3 2. That it is nonsectarian in its programs, admission policies and  
4 employment practices and all other operations.

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

10 4. That it designs a method to measure pupil progress, toward the  
11 pupil outcomes adopted by the state board of education pursuant to section  
12 15-741.01 including participation in the Arizona instrument to measure  
13 standards test and the nationally standardized norm-referenced achievement  
14 test as designated by the state board and the completion and distribution of  
15 an annual report card as prescribed in chapter 7, article 3 of this title.

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

19 6. That, except as provided in this article, it is subject to the same  
20 financial and electronic data submission requirements as a school district,  
21 including the uniform system of financial records as prescribed in chapter 2,  
22 article 4 of this title, procurement rules as prescribed in section 15-213  
23 and audit requirements. The auditor general shall conduct a comprehensive  
24 review and revision of the uniform system of financial records to ensure that  
25 the provisions of the uniform system of financial records that relate to  
26 charter schools are in accordance with commonly accepted accounting  
27 principles used by private business. A school's charter may include  
28 exceptions to the requirements of this paragraph that are necessary as  
29 determined by the district governing board, the state board of education or  
30 the state board for charter schools. The department of education or the  
31 office of the auditor general may conduct financial, program or compliance  
32 audits.

1           7. Compliance with all federal and state laws relating to the  
2 education of children with disabilities in the same manner as a school  
3 district.

4           8. That it provides for a governing body for the charter school that  
5 is responsible for the policy decisions of the charter school.

6           9. That it provides a minimum of one hundred seventy-five  
7 instructional days before June 30 of each fiscal year unless it is operating  
8 on an alternative calendar approved by its sponsor. The superintendent of  
9 public instruction shall adjust the apportionment schedule accordingly to  
10 accommodate a charter school utilizing an alternative calendar.

11           F. The charter of a charter school shall include a description of the  
12 charter school's personnel policies, personnel qualifications and method of  
13 school governance and the specific role and duties of the sponsor of the  
14 charter school. A charter school shall keep on file the resumes of all  
15 current and former employees who provide instruction to pupils at the charter  
16 school. Resumes shall include an individual's educational and teaching  
17 background and experience in a particular academic content subject area. A  
18 charter school shall inform parents and guardians of the availability of the  
19 resume information and shall make the resume information available for  
20 inspection on request of parents and guardians of pupils enrolled at the  
21 charter school. Nothing in this subsection shall be construed to require any  
22 charter school to release personally identifiable information in relation to  
23 any teacher or employee including the teacher's or employee's address,  
24 salary, social security number or telephone number.

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

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

28           I. An approved plan to establish a charter school is effective for  
29 fifteen years from the first day of operation. At least eighteen months  
30 before the expiration of the approved plan, the sponsor shall notify the  
31 charter school that the charter school may apply for renewal. A charter  
32 school that elects to apply for renewal shall file an application for renewal

1 at least fifteen months before the expiration of the approved plan. In  
2 addition to any other requirements, the application for renewal shall include  
3 a detailed business plan for the charter school. The sponsor may deny the  
4 request for renewal if, in its judgment, the charter school has failed to  
5 complete the obligations of the contract or has failed to comply with this  
6 article. A sponsor shall give written notice of its intent not to renew the  
7 charter school's request for renewal to the charter school at least twelve  
8 months before the expiration of the approved plan to allow the charter school  
9 an opportunity to apply to another sponsor to transfer the operation of the  
10 charter school. If the operation of the charter school is transferred to  
11 another sponsor, the fifteen year period of the current charter shall be  
12 maintained. A sponsor shall review a charter at five year intervals and may  
13 revoke a charter at any time if the charter school breaches one or more  
14 provisions of its charter. At least ninety days before the effective date of  
15 the proposed revocation the sponsor shall give written notice to the operator  
16 of the charter school of its intent to revoke the charter. Notice of the  
17 sponsor's intent to revoke the charter shall be delivered personally to the  
18 operator of the charter school or sent by certified mail, return receipt  
19 requested, to the address of the charter school. The notice shall  
20 incorporate a statement of reasons for the proposed revocation of the  
21 charter. The sponsor shall allow the charter school at least ninety days to  
22 correct the problems associated with the reasons for the proposed revocation  
23 of the charter. The final determination of whether to revoke the charter  
24 shall be made at a public hearing called for such purpose.

25 J. After renewal of the charter at the end of the fifteen year period  
26 described in subsection I of this section, the charter may be renewed for  
27 successive periods of fifteen years if the charter school and its sponsor  
28 deem that the school is in compliance with its own charter and this article.

29 K. A charter school that is sponsored by the state board of education  
30 or the state board for charter schools may not be located on the property of  
31 a school district unless the district governing board grants this authority.



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

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

15           (a) Disciplinary or corrective action.

16           (b) Detail, transfer or reassignment.

17           (c) Suspension, demotion or dismissal.

18           (d) An unfavorable performance evaluation.

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

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

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

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

26           (a) Suspension or termination of the program.

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

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

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

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

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

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

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

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

26 R. The sponsoring entity of a charter school shall have oversight and  
27 administrative responsibility for the charter schools that it sponsors.

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

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

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

12           V. A transfer of a charter to another sponsor, a transfer of a charter  
13 school site to another sponsor or a transfer of a charter school site to a  
14 different charter shall be completed before the beginning of the fiscal year  
15 that the transfer is scheduled to become effective. An entity that sponsors  
16 charter schools may accept a transferring school after the beginning of the  
17 fiscal year if the transfer is approved by the superintendent of public  
18 instruction. The superintendent of public instruction shall have the  
19 discretion to consider each transfer during the fiscal year on a case by case  
20 basis. If a charter school is sponsored by a school district that is  
21 determined to be out of compliance with this title, the uniform system of  
22 financial records or any other state or federal law, the charter school may  
23 transfer to another sponsoring entity at any time during the fiscal year.

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

1           Sec. 5. Section 15-512, Arizona Revised Statutes, is amended to read:

2           15-512. Noncertificated personnel; fingerprinting personnel;  
3                           background investigations; affidavit; civil  
4                           immunity; violation; classification; definition

5           A. Noncertificated personnel and personnel who are not paid employees  
6 of the school district and who are not either the parent or the guardian of a  
7 pupil who attends school in the school district but who are required or  
8 allowed to provide services directly to pupils without the supervision of a  
9 certificated employee and who are initially hired by a school district after  
10 January 1, 1990 shall be fingerprinted as a condition of employment except  
11 for personnel who are required as a condition of licensing to be  
12 fingerprinted if the license is required for employment or for personnel who  
13 were previously employed by a school district and who reestablished  
14 employment with that district within one year after the date that the  
15 employee terminated employment with the district. A school district may  
16 release the results of a background check to another school district for  
17 employment purposes. The employee's fingerprints and the form prescribed in  
18 subsection D of this section shall be submitted to the school district within  
19 twenty days after the date an employee begins work. A school district may  
20 terminate an employee if the information on the form provided under  
21 subsection D of this section is inconsistent with the information received  
22 from the fingerprint check. The school district shall develop procedures for  
23 fingerprinting employees. For the purposes of this subsection, "supervision"  
24 means under the direction of and, except for brief periods of time during a  
25 school day or a school activity, within sight of a certificated employee when  
26 providing direct services to pupils.

27           B. Fingerprint checks shall be conducted pursuant to section 41-1750,  
28 subsection G.

29           C. The school district shall assume the costs of fingerprint checks  
30 and may charge these costs to its fingerprinted employee, except that the  
31 school district may not charge the costs of the fingerprint check to  
32 personnel of the school district who are not paid employees. The fees charged

1 for fingerprinting shall be deposited with the county treasurer who shall  
2 credit the deposit to the fingerprint fund of the school district. The costs  
3 charged to a fingerprinted employee are limited to and the proceeds in the  
4 fund may only be applied to the actual costs, including personnel costs,  
5 incurred as a result of the fingerprint checks. The fingerprint fund is a  
6 continuing fund which is not subject to reversion.

7 D. Personnel required to be fingerprinted as prescribed in subsection  
8 A of this section shall certify on forms that are provided by the school and  
9 notarized whether they are awaiting trial on or have ever been convicted of  
10 or admitted in open court or pursuant to a plea agreement committing any of  
11 the following criminal offenses in this state or similar offenses in another  
12 jurisdiction:

- 13 1. Sexual abuse of a minor.
- 14 2. Incest.
- 15 3. First or second degree murder.
- 16 4. Kidnapping.
- 17 5. Arson.
- 18 6. Sexual assault.
- 19 7. Sexual exploitation of a minor.
- 20 8. Felony offenses involving contributing to the delinquency of a  
21 minor.
- 22 9. Commercial sexual exploitation of a minor.
- 23 10. Felony offenses involving sale, distribution or transportation of,  
24 offer to sell, transport, or distribute or conspiracy to sell, transport or  
25 distribute marijuana or dangerous or narcotic drugs.
- 26 11. Felony offenses involving the possession or use of marijuana,  
27 dangerous drugs or narcotic drugs.
- 28 12. Misdemeanor offenses involving the possession or use of marijuana  
29 or dangerous drugs.
- 30 13. Burglary in the first degree.
- 31 14. Burglary in the second or third degree.
- 32 15. Aggravated or armed robbery.

- 1           16. Robbery.
- 2           17. A dangerous crime against children as defined in section 13-604.01.
- 3           18. Child abuse.
- 4           19. Sexual conduct with a minor.
- 5           20. Molestation of a child.
- 6           21. Manslaughter.
- 7           22. Aggravated assault.
- 8           23. Assault.
- 9           24. Exploitation of minors involving drug offenses.

10           E. A school district ~~may~~ SHALL refuse to hire or ~~may review or~~ SHALL  
11 terminate personnel who have been convicted of or admitted committing any of  
12 the criminal offenses prescribed in subsection D of this section or of a  
13 similar offense in another jurisdiction. ~~A school district which is~~  
14 ~~considering terminating an employee pursuant to the provisions of this~~  
15 ~~subsection shall hold a hearing to determine whether a person already~~  
16 ~~employed shall be terminated. In conducting a review, the governing board~~  
17 ~~shall utilize the guidelines, including the list of offenses that are not~~  
18 ~~subject to review, as prescribed by the state board of education pursuant to~~  
19 ~~section 15-534, subsection C. In considering whether to hire or terminate~~  
20 ~~the employment of a person the governing board shall take into account the~~  
21 ~~following factors:~~

- 22           1. ~~The nature of the crime and the potential for crimes against~~  
23 ~~children.~~
- 24           2. ~~Offenses committed as a minor for which proceedings were held under~~  
25 ~~the jurisdiction of a juvenile or an adult court.~~
- 26           3. ~~Offenses that have been expunged by a court of competent~~  
27 ~~jurisdiction, if the person has been pardoned or if the person's sentence has~~  
28 ~~been commuted.~~
- 29           4. ~~The employment record of the person since the commission of the~~  
30 ~~crime if the crime was committed more than ten years before the governing~~  
31 ~~board's consideration of whether to hire or terminate the person.~~

1           ~~5. The reliability of the evidence of an admission of a crime unless~~  
2           ~~made under oath in a court of competent jurisdiction.~~

3           F. Before employment with the school district, the district shall make  
4           documented, good faith efforts to contact previous employers of a person to  
5           obtain information and recommendations which may be relevant to a person's  
6           fitness for employment. A governing board shall adopt procedures for  
7           conducting background investigations required by this subsection, including  
8           one or more standard forms for use by school district officials to document  
9           their efforts to obtain information from previous employers. A school  
10          district may provide information received as a result of a background  
11          investigation required by this section to any other school district, to any  
12          other public school and to any public entity that agrees pursuant to a  
13          contract or intergovernmental agreement to perform background investigations  
14          for school districts or other public schools. School districts and other  
15          public schools may enter into intergovernmental agreements pursuant to  
16          section 11-952 and cooperative purchasing agreements pursuant to rules  
17          adopted in accordance with section 15-213 for the purposes of performing or  
18          contracting for the performance of background investigations and for sharing  
19          the results of background investigations required by this subsection.  
20          Information obtained about an employee or applicant for employment by any  
21          school district or other public school in the performance of a background  
22          investigation may be retained by that school district or the other public  
23          school or by any public entity that agrees pursuant to contract to perform  
24          background investigations for school districts or other public schools and  
25          may be provided to any school district or other public school that is  
26          performing a background investigation required by this subsection.

27          G. A school district may fingerprint any other employee of the  
28          district, whether paid or not, or any other applicant for employment with the  
29          school district not otherwise required by this section to be fingerprinted on  
30          the condition that the school district may not charge the costs of the  
31          fingerprint check to the fingerprinted applicant or nonpaid employee.

1           H. Subsection A of this section does not apply to a person who  
2 provides instruction or other education services to a pupil, with the written  
3 consent of the parent or guardian of the pupil, under a work release program,  
4 advance placement course or other education program that occurs off school  
5 property.

6           I. Public entities that agree pursuant to contract to perform  
7 background investigations, public schools, the department of education and  
8 previous employers who provide information pursuant to this section are  
9 immune from civil liability unless the information provided is false and is  
10 acted on by the school district to the harm of the employee and the public  
11 entity, the public school, the previous employer or the department of  
12 education knows the information is false or acts with reckless disregard of  
13 the information's truth or falsity. A school district which relies on  
14 information obtained pursuant to this section in making employment decisions  
15 is immune from civil liability for use of the information unless the  
16 information obtained is false and the school district knows the information  
17 is false or acts with reckless disregard of the information's truth or  
18 falsity.

19           J. The superintendent of a school district or chief administrator of a  
20 charter school or the person's designee who is responsible for implementing  
21 the governing board's policy regarding background investigations required by  
22 subsection F of this section and who fails to carry out that responsibility  
23 is guilty of unprofessional conduct and shall be subject to disciplinary  
24 action by the state board.

25           K. A school district may hire noncertificated personnel before  
26 receiving the results of the fingerprint check but may terminate employment  
27 if the information on the form provided in subsection D of this section is  
28 inconsistent with the information received from the fingerprint check. In  
29 addition to any other conditions or requirements deemed necessary by the  
30 superintendent of public instruction to protect the health and safety of  
31 pupils, noncertificated personnel who are required or allowed unsupervised



1 contact with pupils may be hired by school districts before the results of a  
2 fingerprint check are received if all of the following conditions are met:

3 1. The school district that is seeking to hire the applicant shall  
4 document in the applicant's file the necessity for hiring and placement of  
5 the applicant before a fingerprint check could be completed.

6 2. The school district that is seeking to hire the applicant shall do  
7 all of the following:

8 (a) Ensure that the department of public safety completes a statewide  
9 criminal history information check on the applicant. A statewide criminal  
10 history information check shall be completed by the department of public  
11 safety every one hundred twenty days until the date that the fingerprint  
12 check is completed.

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

16 (c) Provide general supervision of the applicant until the date that  
17 the fingerprint check is completed.

18 (d) Report to the superintendent of public instruction on June 30 and  
19 December 31 the number of applicants hired prior to the completion of a  
20 fingerprint check. In addition, the school district shall report the number  
21 of applicants for whom fingerprint checks were not received after one hundred  
22 twenty days and after one hundred seventy-five days of hire.

23 L. Notwithstanding any other law, this section does not apply to  
24 pupils who attend school in a school district and who are also employed by a  
25 school district.

26 M. A person who makes a false statement, representation or  
27 certification in any application for employment with the school district is  
28 guilty of a class 3 misdemeanor.

29 N. For the purpose of this section, "background investigation" means  
30 any communication with an employee's or applicant's former employer that  
31 concerns the education, training, experience, qualifications and job  
32 performance of the employee or applicant and that is used for the purpose of

1           evaluating the employee or applicant for employment.     Background  
2           investigation does not include the results of any state or federal criminal  
3           history records check.”

4           Re-number to conform

5           Amend title to conform

5/7/08

10:47 AM

S: DW/jas