

COMMITTEE ON GOVERNMENT
SENATE AMENDMENTS TO H.B. 2542
(Reference to House engrossed bill)

1 Strike everything after the enacting clause and insert:

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: 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 ~~defined~~ 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 rules
19 shall include provisions specifying that school districts are not required
20 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

1 bidding in order to place a pupil in a private school that provides special
2 education services if such placement is prescribed in the pupil's
3 individualized education program and the private school has been approved
4 by the department of education division of special education pursuant to
5 section 15-765, subsection D. This placement is not subject to rules
6 adopted by the state board of education before November 24, 2009 pursuant
7 to this section. The rules for procurement of construction projects shall
8 include provisions specifying that surety bonds furnished as bid security
9 and performance and payment bonds shall be executed and furnished as
10 required by title 34, chapter 2 or 6, as applicable. The rules shall
11 specify the total cost of a procurement that is subject to invitations for
12 bids, requests for proposals and requests for clarification, using the
13 aggregate dollar amount limits for procurements prescribed in section
14 41-2535.

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

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

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

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

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

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

30 (f) Competition for construction projects under the simplified
31 school construction procurement program be encouraged to the maximum extent
32 possible. At a minimum, a school district shall submit information on each

1 project to all persons listed with the county school superintendent by any
2 school district within that county.

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

9 3. The state board of education shall adopt rules for the
10 procurement of goods and information services by school districts and
11 charter schools using electronic, online bidding. The rules adopted by the
12 state board shall include the use of reverse auctions and shall be
13 consistent with the procurement practices prescribed in title 41, chapter
14 23, article 13, modifying as necessary those provisions and the rules
15 adopted pursuant to that article that the state board determines are not
16 appropriate for school districts and charter schools. Until the rules are
17 adopted, school districts and charter schools may procure goods and
18 information services pursuant to title 41, chapter 23, article 13 using the
19 rules adopted by the department of administration in implementing that
20 article.

21 4. THE STATE BOARD OF EDUCATION SHALL ADOPT RULES FOR THE
22 PROCUREMENT BY SCHOOL DISTRICTS AND CHARTER SCHOOLS OF ANY MATERIALS,
23 SERVICES, GOODS, CONSTRUCTION OR CONSTRUCTION SERVICES THAT ENSURE THE
24 MAXIMUM PRACTICABLE COMPETITION AS PRESCRIBED IN SECTION 41-2565 AND SHALL
25 REQUIRE THAT A PERSON:

26 (a) WHO CONTRACTS FOR OR PURCHASES ANY MATERIALS, SERVICES, GOODS,
27 CONSTRUCTION OR CONSTRUCTION SERVICES IN A MANNER CONTRARY TO THE RULES
28 ADOPTED BY THE STATE BOARD OF EDUCATION PURSUANT TO THIS SECTION IS
29 PERSONALLY LIABLE FOR THE RECOVERY OF ALL PUBLIC MONIES PAID PLUS TWENTY
30 PERCENT OF THAT AMOUNT AND LEGAL INTEREST FROM THE DATE OF PAYMENT AND ALL
31 COSTS AND DAMAGES ARISING OUT OF THE VIOLATION AS PRESCRIBED IN SECTION
32 41-2616.

1 (b) WHO INTENTIONALLY OR KNOWINGLY CONTRACTS FOR OR PURCHASES ANY
2 MATERIALS, SERVICES, GOODS, CONSTRUCTION OR CONSTRUCTION SERVICES PURSUANT
3 TO A SCHEME OR ARTIFICE TO AVOID THE RULES ADOPTED BY THE STATE BOARD OF
4 EDUCATION PURSUANT TO THIS SECTION IS GUILTY OF A CLASS 4 FELONY AS
5 PRESCRIBED IN SECTION 41-2616.

6 (c) WHO PREPARES PROCUREMENT SPECIFICATIONS MAY NOT RECEIVE ANY
7 DIRECT OR INDIRECT BENEFIT FROM THE USE OF THOSE SPECIFICATIONS.

8 (d) WHO SERVES ON A SELECTION COMMITTEE FOR A PROCUREMENT MAY NOT BE
9 A CONTRACTOR OR SUBCONTRACTOR UNDER A CONTRACT AWARDED UNDER THE
10 PROCUREMENT OR PROVIDE ANY SPECIFIED PROFESSIONAL SERVICES, CONSTRUCTION,
11 CONSTRUCTION SERVICES, MATERIALS OR OTHER SERVICES UNDER THE CONTRACT. A
12 PERSON WHO SERVES ON A SELECTION COMMITTEE FOR A PROCUREMENT AND WHO FAILS
13 TO DISCLOSE CONTACT WITH A REPRESENTATIVE OF A COMPETING VENDOR OR WHO
14 FAILS TO PROVIDE REQUIRED ACCURATE INFORMATION IS SUBJECT TO A CIVIL
15 PENALTY AS PRESCRIBED IN SECTION 41-2616.

16 5. THE STATE BOARD OF EDUCATION SHALL ADOPT RULES REQUIRING SCHOOL
17 DISTRICTS AND CHARTER SCHOOLS TO OBTAIN, AND MAINTAIN A RECORD OF, PROOF
18 THAT A CONSTRUCTION OR CONSTRUCTION SERVICES PROVIDER THAT HAS BEEN AWARDED
19 A CONTRACT WITH THE SCHOOL DISTRICT, CHARTER SCHOOL OR SCHOOL PURCHASING
20 COOPERATIVE, HAS A VALID LICENSE TO PRACTICE IN THIS STATE.

21 ~~4.~~ 6. The auditor general shall review the proposed rules to
22 determine whether the rules are consistent with the procurement practices
23 prescribed in title 41, chapter 23 and any modifications are required to
24 adapt the procedures for school districts.

25 ~~5.~~ 7. If the auditor general approves the proposed rules, the
26 auditor general shall notify the state board in writing and the state board
27 shall adopt such rules.

28 ~~6.~~ 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

1 rules to which an objection has been made and submit the revisions to the
2 auditor general for approval.

3 B. After the bids submitted in response to an invitation for bids
4 are opened and the award is made or after the proposals or qualifications
5 are submitted in response to a request for proposals or a request for
6 qualifications and the award is made, the governing board shall make
7 available for public inspection all information, all bids, proposals and
8 qualifications submitted and all findings and other information considered
9 in determining whose bid conforms to the invitation for bids and will be
10 the most advantageous with respect to price, conformity to the
11 specifications and other factors or whose proposal or qualifications are to
12 be selected for the award, **INCLUDING THE RATIONALE FOR AWARDING A CONTRACT**
13 **FOR ANY SPECIFIED PROFESSIONAL SERVICES, CONSTRUCTION, CONSTRUCTION**
14 **SERVICES OR MATERIALS TO AN ENTITY SELECTED FROM A QUALIFIED SELECT BIDDERS**
15 **LIST OR THROUGH A SCHOOL PURCHASING COOPERATIVE.** The invitation for bids,
16 request for proposals or request for qualifications shall include a notice
17 that all information and bids, proposals and qualifications submitted will
18 be made available for public inspection. The rules adopted by the state
19 board shall prohibit the use in connection with procurement of
20 specifications in any way proprietary to one supplier unless the
21 specification includes all of the following:

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

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

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

28 C. ~~NO~~ A project or purchase may **NOT** be divided or sequenced into
29 separate projects or purchases in order to avoid the limits prescribed by
30 the state board under subsection A of this section.

31 D. A contract for the procurement of construction or construction
32 services shall include a provision that provides for negotiations between

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

8 E. The auditor general may conduct discretionary reviews,
9 investigations and audits of the financial and operational procurement
10 activities of school districts, nonexempt charter schools and school
11 purchasing cooperatives. The auditor general has final review and approval
12 authority over all school district, nonexempt charter school and school
13 purchasing cooperative audit contracts and any audit reports issued in
14 accordance with this section. IF THE ATTORNEY GENERAL HAS REASONABLE CAUSE
15 TO BELIEVE AN EMPLOYEE OF A SCHOOL DISTRICT, CHARTER SCHOOL OR SCHOOL
16 PURCHASING COOPERATIVE, OR AN EMPLOYEE OF AN ENTITY THAT HAS BEEN AWARDED A
17 CONTRACT BY A SCHOOL DISTRICT, CHARTER SCHOOL OR SCHOOL PURCHASING
18 COOPERATIVE, HAS ENGAGED IN, IS ENGAGING IN OR IS ABOUT TO ENGAGE IN ANY
19 PRACTICE OR TRANSACTION THAT VIOLATES THE RULES ADOPTED BY THE STATE BOARD
20 OF EDUCATION PURSUANT TO THIS SECTION, THE ATTORNEY GENERAL MAY:

21 1. REQUIRE THAT PERSON TO FILE ON FORMS PRESCRIBED BY THE ATTORNEY
22 GENERAL A STATEMENT OR REPORT IN WRITING AND UNDER OATH AS TO ALL THE FACTS
23 AND CIRCUMSTANCES CONCERNING A VIOLATION OF THE RULES ADOPTED BY THE STATE
24 BOARD OF EDUCATION PURSUANT TO THIS SECTION BY THAT PERSON AND ANY OTHER
25 DATA AND INFORMATION DEEMED NECESSARY BY THE ATTORNEY GENERAL.

26 2. EXAMINE UNDER OATH ANY PERSON IN CONNECTION WITH A VIOLATION OF
27 THE RULES ADOPTED BY THE STATE BOARD OF EDUCATION PURSUANT TO THIS SECTION.

28 F. In addition to the requirements of sections 15-914 and 15-914.01,
29 school districts, nonexempt charter schools and school purchasing
30 cooperatives, in connection with any audit conducted by a certified public
31 accountant, shall contract for a systematic review of purchasing practices
32 using methodology consistent with sampling guidelines established by the

1 auditor general. The auditor general shall consider cost when establishing
2 guidelines pursuant to this subsection and to the extent possible shall
3 attempt to minimize the cost of the review. The purpose of the review is
4 to determine whether the school district, nonexempt charter school or
5 school purchasing cooperative is in compliance with the procurement laws
6 and applicable procurement rules of this state. A copy of the review shall
7 be submitted on completion to the auditor general. The auditor general may
8 conduct discretionary reviews of school districts, nonexempt charter
9 schools and school purchasing cooperatives not required to contract for
10 independent audits.

11 G. A SCHOOL DISTRICT OR CHARTER SCHOOL EMPLOYEE WHO HAS CONTROL OVER
12 PERSONNEL ACTIONS MAY NOT TAKE REPRISAL AGAINST A SCHOOL DISTRICT OR
13 CHARTER SCHOOL EMPLOYEE FOR DISCLOSURE OF INFORMATION THAT IS A MATTER OF
14 PUBLIC CONCERN, INCLUDING A VIOLATION OF THIS SECTION, BY THE EMPLOYEE TO A
15 PUBLIC BODY PURSUANT TO TITLE 38, CHAPTER 3, ARTICLE 9.

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

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

31 ~~J.~~ J. The state board of education shall adopt, and the auditor
32 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 ~~K.~~ K. 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.~~ L. 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 job-order-contracting
29 construction services ~~shall be~~ ARE limited to no more than five years
30 unless the governing board determines in writing before the procurement
31 solicitation is issued that a contract of longer duration would be
32 advantageous to the school district. Payment and performance obligations

1 for succeeding fiscal periods are subject to the availability and
2 appropriation of monies.

3 ~~+~~ M. Notwithstanding the rules adopted by the state board of
4 education, the maximum dollar amount of an individual job order for
5 job-order-contracting construction services ~~shall be~~ IS one million dollars
6 or a higher or lower amount prescribed by the governing board in a policy
7 adopted in a public meeting held pursuant to title 38, chapter 3, article
8 3.1. Requirements shall not be artificially divided or fragmented in order
9 to constitute a job order that satisfies the requirements of this
10 subsection.

11 N. A PERSON WHO SUPERVISES OR PARTICIPATES IN CONTRACTS, PURCHASES,
12 PAYMENTS, CLAIMS OR OTHER FINANCIAL TRANSACTIONS, OR A PERSON WHO
13 SUPERVISES OR PARTICIPATES IN THE PLANNING, RECOMMENDING, SELECTING OR
14 CONTRACTING FOR MATERIALS, SERVICES, GOODS, CONSTRUCTION OR CONSTRUCTION
15 SERVICES OF A SCHOOL DISTRICT, CHARTER SCHOOL OR SCHOOL PURCHASING
16 COOPERATIVE IS GUILTY OF A CLASS 6 FELONY IF THAT PERSON SOLICITS, ACCEPTS
17 OR AGREES TO ACCEPT ANY PERSONAL GIFT OR BENEFIT WITH A VALUE OF THREE
18 HUNDRED DOLLARS OR MORE FROM A PERSON OR VENDOR THAT HAS OR HAS TAKEN STEPS
19 TO SECURE A CONTRACT, PURCHASE, PAYMENT, CLAIM OR FINANCIAL TRANSACTION
20 WITH THE SCHOOL DISTRICT, CHARTER SCHOOL OR SCHOOL PURCHASING COOPERATIVE.
21 SOLICITING, ACCEPTING OR AGREEING TO ACCEPT ANY PERSONAL GIFT OR BENEFIT
22 WITH A VALUE OF TWO HUNDRED NINETY-NINE DOLLARS OR LESS IS A CLASS 1
23 MISDEMEANOR. A GIFT OR BENEFIT DOES NOT INCLUDE AN ITEM OF NOMINAL VALUE
24 SUCH AS A GREETING CARD, T-SHIRT, MUG OR PEN.

25 O. ANY PERSON OR VENDOR THAT HAS OR HAS TAKEN STEPS TO SECURE A
26 CONTRACT, PURCHASE, PAYMENT, CLAIM OR FINANCIAL TRANSACTION WITH A SCHOOL
27 DISTRICT, CHARTER SCHOOL OR SCHOOL PURCHASING COOPERATIVE THAT OFFERS,
28 CONFERS OR AGREES TO CONFER ANY PERSONAL GIFT OR BENEFIT WITH A VALUE OF
29 THREE HUNDRED DOLLARS OR MORE ON A PERSON WHO SUPERVISES OR PARTICIPATES IN
30 CONTRACTS, PURCHASES, PAYMENTS, CLAIMS OR OTHER FINANCIAL TRANSACTIONS, OR
31 ON A PERSON WHO SUPERVISES OR PARTICIPATES IN THE PLANNING, RECOMMENDING,
32 SELECTING OR CONTRACTING FOR MATERIALS, SERVICES, GOODS, CONSTRUCTION OR

1 CONSTRUCTION SERVICES OF A SCHOOL DISTRICT, CHARTER SCHOOL OR SCHOOL
2 PURCHASING COOPERATIVE IS GUILTY OF A CLASS 6 FELONY. OFFERING, CONFERRING
3 OR AGREEING TO CONFER ANY PERSONAL GIFT OR BENEFIT WITH A VALUE OF TWO
4 HUNDRED NINETY-NINE DOLLARS OR LESS IS A CLASS 1 MISDEMEANOR. A GIFT OR
5 BENEFIT DOES NOT INCLUDE AN ITEM OF NOMINAL VALUE SUCH AS A GREETING CARD,
6 T-SHIRT, MUG OR PEN.

7 P. ANY PERSON OR VENDOR CONVICTED UNDER SUBSECTION O OF THIS SECTION
8 MAY BE SUSPENDED FOR UP TO SIX MONTHS OR DEBARRED FOR UP TO THREE YEARS BY
9 THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION FROM DOING BUSINESS WITH
10 SCHOOL DISTRICTS, CHARTER SCHOOLS AND SCHOOL PURCHASING COOPERATIVES. THE
11 DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL ADOPT RULES, INCLUDING
12 ADMINISTRATIVE PROCEDURES, FOR THE SUSPENSION AND DEBARMENT OF ANY PERSON
13 FROM CONSIDERATION FOR AWARD OF CONTRACTS PURSUANT TO THIS SECTION.

14 ~~M.~~ Q. For the purposes of this section:

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

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

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

23 Sec. 2. Section 15-2041, Arizona Revised Statutes, is amended to
24 read:

25 15-2041. New school facilities fund; capital plan; report

26 A. The new school facilities fund is established consisting of
27 monies appropriated by the legislature and monies credited to the fund
28 pursuant to section 37-221. The school facilities board shall administer
29 the fund and distribute monies, as a continuing appropriation, to school
30 districts for the purpose of constructing new school facilities and for
31 contracted expenses pursuant to section 15-2002, subsection B, paragraphs
32 2, 3 and 4. On June 30 of each fiscal year, any unobligated contract

1 monies in the new school facilities fund shall be transferred to the
2 capital reserve fund established by section 15-2003.

3 B. The school facilities board shall prescribe a uniform format for
4 use by the school district governing board in developing and annually
5 updating a capital plan that consists of each of the following:

6 1. Enrollment projections for the next five years for elementary
7 schools and eight years for middle and high schools, including a
8 description of the methods used to make the projections.

9 2. A description of new schools or additions to existing schools
10 needed to meet the building adequacy standards prescribed in section
11 15-2011. The description shall include:

12 (a) The grade levels and the total number of pupils that the school
13 or addition is intended to serve.

14 (b) The year in which it is necessary for the school or addition to
15 begin operations.

16 (c) A timeline that shows the planning and construction process for
17 the school or addition.

18 3. Long-term projections of the need for land for new schools.

19 4. Any other necessary information required by the school facilities
20 board to evaluate a school district's capital plan.

21 5. If a school district pays tuition for all or a portion of the
22 school district's high school pupils to another school district, the
23 capital plan shall indicate the number of pupils for which the district
24 pays tuition to another district. If a school district accepts pupils from
25 another school district pursuant to section 15-824, subsection A, the
26 school district shall indicate the projections for this population
27 separately. This paragraph does not apply to a small isolated school
28 district as defined in section 15-901.

29 C. If the capital plan indicates a need for a new school or an
30 addition to an existing school within the next four years or a need for
31 land within the next ten years, the school district shall submit its plan
32 to the school facilities board by July 1 and shall request monies from the

1 new school facilities fund for the new construction or land. The school
2 facilities board may require a school district to sell land that was
3 previously purchased entirely with monies provided by the school facilities
4 board if the school facilities board determines that the property is no
5 longer needed within the ten-year period specified in this subsection for a
6 new school or no longer needed within that ten-year period for an addition
7 to an existing school. Monies provided for land ~~shall be~~ ARE in addition
8 to any monies provided pursuant to subsection D of this section.

9 D. The school facilities board shall distribute monies from the new
10 school facilities fund for additional square footage as follows:

11 1. The school facilities board shall review and evaluate the
12 enrollment projections. On or before December 1, following the submission
13 of the enrollment projections, the school facilities board shall either
14 approve the projections as submitted or revise the projections. In
15 approving or revising the enrollment projections, the school facilities
16 board shall use the most recent fortieth day average daily membership data
17 available during the current school year. On request from the school
18 facilities board, the department of education shall make available the most
19 recent average daily membership data for use in revising the enrollment
20 projections. In determining new construction requirements, the school
21 facilities board shall determine the net new growth of pupils that will
22 require additional square footage that exceeds the building adequacy
23 standards prescribed in section 15-2011. If the projected growth and the
24 existing number of pupils exceed three hundred fifty pupils who are served
25 in a school district other than the pupil's resident school district, the
26 school facilities board, the receiving school district and the resident
27 school district shall develop a capital facilities plan on how to best
28 serve those pupils. A small isolated school district as defined in section
29 15-901 is not required to develop a capital facilities plan pursuant to
30 this paragraph.

31 2. If the most recent fortieth day average daily membership during
32 the current school year indicates that additional space would not have been

1 needed during the current school year in order to meet the building
2 adequacy standards prescribed in section 15-2011, the request shall be held
3 for consideration by the school facilities board for possible future
4 funding and the school district shall annually submit an updated plan until
5 the additional space is needed.

6 3. If the most recent fortieth day average daily membership during
7 the current school year indicates that additional space would have been
8 needed during the current school year in order to meet the building
9 adequacy standards prescribed in section 15-2011, the school facilities
10 board shall provide an amount as follows:

11 (a) Determine the number of pupils requiring additional square
12 footage to meet building adequacy standards. This amount for elementary
13 schools shall not be less than the number of new pupils for whom space will
14 be needed in the next year and shall not exceed the number of new pupils
15 for whom space will be needed in the next five years. This amount for
16 middle and high schools shall not be less than the number of new pupils for
17 whom space will be needed in the next four years and shall not exceed the
18 number of new pupils for whom space will be needed in the next eight years.

19 (b) Multiply the number of pupils determined in subdivision (a) of
20 this paragraph by the square footage per pupil. The square footage per
21 pupil is ninety square feet per pupil for preschool children with
22 disabilities, kindergarten programs and grades one through six, one hundred
23 square feet for grades seven and eight, one hundred thirty-four square feet
24 for a school district that provides instruction in grades nine through
25 twelve for fewer than one thousand eight hundred pupils and one hundred
26 twenty-five square feet for a school district that provides instruction in
27 grades nine through twelve for at least one thousand eight hundred
28 pupils. The total number of pupils in grades nine through twelve in the
29 district shall determine the square footage factor to use for net new
30 pupils. The school facilities board may modify the square footage
31 requirements prescribed in this subdivision for particular schools based on
32 any of the following factors:

1 (i) The number of pupils served or projected to be served by the
2 school district.

3 (ii) Geographic factors.

4 (iii) Grade configurations other than those prescribed in this
5 subdivision.

6 (iv) Compliance with minimum school facility adequacy requirements
7 established pursuant to section 15-2011.

8 (c) Multiply the product obtained in subdivision (b) of this
9 paragraph by the cost per square foot. The cost per square foot is ninety
10 dollars for preschool children with disabilities, kindergarten programs and
11 grades one through six, ninety-five dollars for grades seven and eight and
12 one hundred ten dollars for grades nine through twelve. The cost per
13 square foot shall be adjusted annually for construction market
14 considerations based on an index identified or developed by the joint
15 legislative budget committee as necessary but not less than once each year.
16 The school facilities board shall multiply the cost per square foot by 1.05
17 for any school district located in a rural area. The school facilities
18 board may only modify the base cost per square foot prescribed in this
19 subdivision for particular schools based on geographic conditions or site
20 conditions. For the purposes of this subdivision, "rural area" means an
21 area outside a thirty-five-mile radius of a boundary of a municipality with
22 a population of more than fifty thousand persons.

23 (d) Once the school district governing board obtains approval from
24 the school facilities board for new facility construction monies,
25 additional portable or modular square footage created for the express
26 purpose of providing temporary space for pupils until the completion of the
27 new facility and any additional space funded by the school district shall
28 not be included by the school facilities board for the purpose of new
29 construction funding calculations. On completion of the new facility
30 construction project, any additional space funded by the school district
31 shall be included as prescribed by this chapter and, if the portable or
32 modular facilities continue in use, the portable or modular facilities

1 shall be included as prescribed by this chapter, unless the school
2 facilities board approves their continued use for the purpose of providing
3 temporary space for pupils until the completion of the next new facility
4 that has been approved for funding from the new school facilities fund.

5 4. For projects approved after December 31, 2001, and
6 notwithstanding paragraph 3 of this subsection, a unified school district
7 that does not have a high school is not eligible to receive high school
8 space as prescribed by section 15-2011 and this section unless the unified
9 district qualifies for geographic factors prescribed by paragraph 3,
10 subdivision (b), item (ii) of this subsection.

11 5. If a joint technical education district leases a building from a
12 school district, that building shall be included in the school district's
13 square footage calculation for the purposes of new construction pursuant to
14 this section.

15 6. If a school district leases a building to another entity, that
16 building shall be included in the school district's square footage
17 calculation for purposes of new construction pursuant to this section.

18 7. A school district shall qualify for monies from the new school
19 facilities fund for additional square footage in a fiscal year only if the
20 school facilities board has approved or revised its enrollment projection
21 under paragraph ~~3~~ 1 of this subsection on or before March 1 of the prior
22 fiscal year.

23 E. Monies for architectural and engineering fees, project management
24 services and preconstruction services shall be distributed on the
25 completion of the analysis by the school facilities board of the school
26 district's request. After receiving monies pursuant to this subsection,
27 the school district shall submit a design development plan for the school
28 or addition to the school facilities board before any monies for
29 construction are distributed. If the school district's request meets the
30 building adequacy standards, the school facilities board may review and
31 comment on the district's plan with respect to the efficiency and
32 effectiveness of the plan in meeting state square footage and facility

1 standards before distributing the remainder of the monies. If the school
2 facilities board modifies the cost per square foot as prescribed in
3 subsection D, paragraph 3, subdivision (c) of this section, the school
4 facilities board may deduct the cost of project management services and
5 preconstruction services from the required cost per square foot. The
6 school facilities board may decline to fund the project if the square
7 footage is no longer required due to revised enrollment projections.

8 F. The school facilities board shall distribute the monies needed
9 for land for new schools so that land may be purchased at a price that is
10 less than or equal to fair market value and in advance of the construction
11 of the new school. If necessary, the school facilities board may
12 distribute monies for land to be leased for new schools if the duration of
13 the lease exceeds the life expectancy of the school facility by at least
14 fifty percent. A school district shall not use land purchased or partially
15 purchased with monies provided by the school facilities board for a purpose
16 other than a site for a school facility without obtaining prior written
17 approval from the school facilities board. A school district shall not
18 lease, sell or take any action that would diminish the value of land
19 purchased or partially purchased with monies provided by the school
20 facilities board without obtaining prior written approval from the school
21 facilities board. The proceeds derived through the sale of any land
22 purchased or partially purchased, or the sale of buildings funded or
23 partially funded, with monies provided by the school facilities board shall
24 be returned to the state fund from which it was appropriated and to any
25 other participating entity on a proportional basis. Except as provided in
26 section 15-342, paragraph 33, if a school district acquires real property
27 by donation at an appropriate school site approved by the school facilities
28 board, the school facilities board shall distribute an amount equal to
29 twenty percent of the fair market value of the donated real property that
30 can be used for academic purposes. The school district shall place the
31 monies in the unrestricted capital outlay fund and increase the
32 unrestricted capital budget limit by the amount of monies placed in the

1 fund. Monies distributed under this subsection shall be distributed from
2 the new school facilities fund. A school district that receives monies
3 from the new school facilities fund for a donation of land pursuant to
4 section 15-342, paragraph 33 shall not receive monies from the school
5 facilities board for the donation of real property pursuant to this
6 subsection. A school district shall not pay a consultant a percentage of
7 the value of any of the following:

8 1. Donations of real property, services or cash from any of the
9 following:

10 (a) Entities that have offered to provide construction services to
11 the school district.

12 (b) Entities that have been contracted to provide construction
13 services to the school district.

14 (c) Entities that build residential units in that school district.

15 (d) Entities that develop land for residential use in that school
16 district.

17 2. Monies received from the school facilities board on behalf of the
18 school district.

19 3. Monies paid by the school facilities board on behalf of the
20 school district.

21 G. In addition to distributions to school districts based on pupil
22 growth projections, a school district may submit an application to the
23 school facilities board for monies from the new school facilities fund if
24 one or more school buildings have outlived their useful life. If the
25 school facilities board determines that the school district needs to build
26 a new school building for these reasons, the school facilities board shall
27 remove the square footage computations that represent the building from the
28 computation of the school district's total square footage for purposes of
29 this section. If the square footage recomputation reflects that the school
30 district no longer meets building adequacy standards, the school district
31 qualifies for a distribution of monies from the new school construction
32 formula in an amount determined pursuant to subsection D of this section.

1 The school facilities board may only modify the base cost per square foot
2 prescribed in this subsection under extraordinary circumstances for
3 geographic factors or site conditions.

4 H. School districts that receive monies from the new school
5 facilities fund shall establish a district new school facilities fund and
6 shall use the monies in the district new school facilities fund only for
7 the purposes prescribed in this section. By October 15 of each year, each
8 school district shall report to the school facilities board the projects
9 funded at each school in the previous fiscal year with monies from the
10 district new school facilities fund and shall provide an accounting of the
11 monies remaining in the new school facilities fund at the end of the
12 previous fiscal year.

13 I. If a school district has surplus monies received from the new
14 school facilities fund, the school district may use the surplus monies only
15 for capital purposes for the project for up to one year after completion of
16 the project. If the school district possesses surplus monies from the new
17 school construction project that have not been expended within one year of
18 the completion of the project, the school district shall return the surplus
19 monies to the school facilities board for deposit in the new school
20 facilities fund.

21 J. The board's consideration of any application filed after
22 December 31 of the year in which the property becomes territory in the
23 vicinity of a military airport or ancillary military facility as defined in
24 section 28-8461 for monies to fund the construction of new school
25 facilities proposed to be located in territory in the vicinity of a
26 military airport or ancillary military facility shall include, if after
27 notice is transmitted to the military airport pursuant to section 15-2002
28 and before the public hearing the military airport provides comments and an
29 analysis concerning compatibility of the proposed school facilities with
30 the high noise or accident potential generated by military airport or
31 ancillary military facility operations that may have an adverse effect on
32 public health and safety, consideration and analysis of the comments and

1 analysis provided by the military airport before making a final
2 determination.

3 K. If a school district uses its own project manager for new school
4 construction, the members of the school district governing board and the
5 project manager shall sign an affidavit stating that the members and the
6 project manager understand and will follow the minimum adequacy
7 requirements prescribed in section 15-2011.

8 L. The school facilities board shall establish a separate account in
9 the new school facilities fund designated as the litigation account to pay
10 attorney fees, expert witness fees and other costs associated with
11 litigation in which the school facilities board pursues the recovery of
12 damages for deficiencies correction that resulted from alleged construction
13 defects or design defects that the school facilities board believes caused
14 or contributed to a failure of the school building to conform to the
15 building adequacy requirements prescribed in section 15-2011. Attorney
16 fees paid pursuant to this subsection shall not exceed the market rate for
17 similar types of litigation. On or before December 1 of each year, the
18 school facilities board shall report to the joint committee on capital
19 review the costs associated with current and potential litigation that may
20 be paid from the litigation account.

21 M. Until the state board of education and the auditor general adopt
22 rules pursuant to section 15-213, subsection ~~†~~ J, the school facilities
23 board may allow school districts to contract for construction services and
24 materials through the qualified select bidders list method of project
25 delivery for new school facilities pursuant to this section.

26 N. The school facilities board shall submit electronically a report
27 on project management services and preconstruction services to the
28 governor, the president of the senate and the speaker of the house of
29 representatives by December 31 of each year. The report shall compare
30 projects that use project management and preconstruction services with
31 those that do not. The report shall address cost, schedule and other
32 measurable components of a construction project. School districts,

1 ~~construction manager at risk~~ CONSTRUCTION-MANAGER-AT-RISK firms and project
2 management firms that participate in a school facilities board funded
3 project shall provide the information required by the school facilities
4 board in relation to this report.

5 O. If a school district constructs new square footage according to
6 section 15-342, paragraph 33, the school facilities board shall review the
7 design plans and location of any new school facility submitted by school
8 districts and another party to determine whether the design plans comply
9 with the adequacy standards prescribed in section 15-2011 and the square
10 footage per pupil requirements pursuant to subsection D, paragraph 3,
11 subdivision (b) of this section. When the school district qualifies for a
12 distribution of monies from the new school facilities fund according to
13 this section, the school facilities board shall distribute monies to the
14 school district from the new school facilities fund for the square footage
15 constructed under section 15-342, paragraph 33 at the same cost per square
16 foot established by this section that was in effect at the time of the
17 beginning of the construction of the school facility. Before the school
18 facilities board distributes any monies pursuant to this subsection, the
19 school district shall demonstrate to the school facilities board that the
20 facilities to be funded pursuant to this section meet the minimum adequacy
21 standards prescribed in section 15-2011. The agreement entered into
22 pursuant to section 15-342, paragraph 33 shall set forth the procedures for
23 the allocation of these funds to the parties that participated in the
24 agreement.

25 P. Accommodation schools are not eligible for monies from the new
26 school facilities fund.

27 Q. If the school facilities board approves a school district for
28 funding from the new school facilities fund and the full legislative
29 appropriation is not available to the school district in the fiscal year
30 following the approval by the school facilities board, the school district
31 may use any legally available monies to pay for the land or the new
32 construction project approved by the school facilities board and may

Senate Amendments to H.B. 2542

- 1 reimburse the fund from which the monies were used in subsequent years with
- 2 legislative appropriations when those appropriations are made available by
- 3 this state."
- 4 Amend title to conform

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