Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 156

HOUSE BILL 2438

AN ACT

AMENDING SECTION 15-183, ARIZONA REVISED STATUTES; RELATING TO CHARTER SCHOOLS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 15-183, Arizona Revised Statutes, is amended to
3 read:
4 15-183. Charter schools; application; requirements; immunity;
5 exemptions; renewal of application; reprisal
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
30 the applicant in writing of the reasons for the rejection. The applicant may
31 request, and the governing board may provide, technical assistance to improve
32 the application.
33 (b) In the first year that a school district is determined to be out
34 of compliance with the uniform system of financial records, within fifteen
35 days of the determination of noncompliance, the school district shall notify
36 by certified mail each charter school sponsored by the school district that
37 the school district is out of compliance with the uniform system of financial
38 records. The notification shall include a statement that if the school
39 district is determined to be out of compliance for a second consecutive year,
40 the charter school will be required to transfer sponsorship to another entity
41 pursuant to subdivision (c) of this paragraph.
42 (c) In the second consecutive year that a school district is
43 determined to be out of compliance with the uniform system of financial
44 records, within fifteen days of the determination of noncompliance, the
45 school district shall notify by certified mail each charter school sponsored

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

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

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

2. The applicant may submit the application to the state board of education or the state board for charter schools. The state board of education or the state board for charter schools may approve the application if the application meets the requirements of this article and may approve the charter if the proposed sponsor determines, within its sole discretion, that the applicant is sufficiently qualified to operate a charter school. The state board of education or the state board for charter schools may approve any charter schools transferring charters. The state board of education and the state board for charter schools shall approve any charter schools transferring charters from a school district that is determined to be out of compliance with the uniform system of financial records pursuant to this section, but may require the charter school to sign a new charter that is equivalent to the charter awarded by the former sponsor. If the state board of education or the state board for charter schools rejects the preliminary application, the state board of education or the state board for charter schools shall notify the applicant in writing of the reasons for the rejection and of suggestions for improving the application. An applicant may submit a revised application for reconsideration by the state board of education or the state board for charter schools. The applicant may request, and the state board of education or the state board for charter schools may provide, technical assistance to improve the application.

3. Each applicant seeking to establish a charter school shall submit a full set of fingerprints to the approving agency for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. If an applicant will have direct contact with students,

the applicant shall possess a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. The criminal records check shall be completed before the issuance of a charter.

4. All persons engaged in instructional work directly as a classroom, laboratory or other teacher or indirectly as a supervisory teacher, speech therapist or principal shall have a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1. A charter school shall not employ a teacher whose certificate has been revoked for a violation of section 15-507 or 15-550 or for any offense that placed a pupil in danger. All other personnel shall be fingerprint checked pursuant to section 15-512. Before employment, the charter school shall make documented, good faith efforts to contact previous employers of a person to obtain information and recommendations that may be relevant to a person's fitness for employment as prescribed in section 15-512, subsection F. The charter school shall notify the department of public safety if the charter school or sponsor receives credible evidence that a person who possesses a valid fingerprint clearance card is arrested for or is charged with an offense listed in section 41-1758.03, subsection B.

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

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

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

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

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

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

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

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

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

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

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

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

F. The charter of a charter school shall include a description of the charter school's personnel policies, personnel qualifications and method of school governance and the specific role and duties of the sponsor of the charter school. A charter school shall keep on file the resumes of all current and former employees who provide instruction to pupils at the charter school. Resumes shall include an individual's educational and teaching background and experience in a particular academic content subject area. A charter school shall inform parents and guardians of the availability of the resume information and shall make the resume information available for inspection on request of parents and guardians of pupils enrolled at the charter school. Nothing in this subsection shall be construed to require any charter school to release personally identifiable information in relation to

any teacher or employee including the teacher's or employee's address, salary, social security number or telephone number.

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

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

I. An approved plan to establish a charter school is effective for fifteen years from the first day of operation. At the conclusion of the first fourteen years of operation, the charter school may apply for renewal. In addition to any other requirements, the application for renewal shall include a detailed business plan for the charter school. The sponsor may deny the request for renewal if, in its judgment, the charter school has failed to complete the obligations of the contract or has failed to comply with this article. A sponsor shall give written notice of its intent not to renew the charter school's request for renewal to the charter school at least twelve months before the expiration of the approved plan to allow the charter school an opportunity to apply to another sponsor to transfer the operation of the charter school. If the operation of the charter school is transferred to another sponsor, the fifteen year period of the current charter shall be maintained. A sponsor shall review a charter at five year intervals and may revoke a charter at any time if the charter school breaches one or more provisions of its charter. At least ninety days before the effective date of the proposed revocation the sponsor shall give written notice to the operator of the charter school of its intent to revoke the charter. Notice of the sponsor's intent to revoke the charter shall be delivered personally to the operator of the charter school or sent by certified mail, return receipt requested, to the address of the charter school. The notice shall incorporate a statement of reasons for the proposed revocation of the charter. The sponsor shall allow the charter school at least ninety days to correct the problems associated with the reasons for the proposed revocation of the charter. The final determination of whether to revoke the charter shall be made at a public hearing called for such purpose.

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

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

L. A governing board or a school district employee who has control over personnel actions shall not take unlawful reprisal against another employee of the school district because the employee is directly or indirectly involved in an application to establish a charter school. A governing board or a school district employee shall not take unlawful reprisal against an educational program of the school or the school district

because an application to establish a charter school proposes the conversion of all or a portion of the educational program to a charter school. As used in this subsection, "unlawful reprisal" means an action that is taken by a governing board or a school district employee as a direct result of a lawful application to establish a charter school and that is adverse to another employee or an education program and:

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

(a) Disciplinary or corrective action.

(b) Detail, transfer or reassignment.

(c) Suspension, demotion or dismissal.

(d) An unfavorable performance evaluation.

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

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

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

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

(a) Suspension or termination of the program.

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

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

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

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

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

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

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

Q. The sponsor of a charter school shall establish procedures to conduct administrative hearings ~~upon~~ ON determination by the sponsor that grounds exist to revoke a charter. Procedures for administrative hearings

shall be similar to procedures prescribed for adjudicative proceedings in title 41, chapter 6, article 10. Except as provided in section 41-1092.08, subsection H, final decisions of the state board of education and the state board for charter schools from hearings conducted pursuant to this subsection are subject to judicial review pursuant to title 12, chapter 7, article 6.

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

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

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

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

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

W. THE SPONSORING ENTITY MAY NOT CHARGE ANY FEES TO A CHARTER SCHOOL THAT IT SPONSORS UNLESS THE SPONSOR HAS PROVIDED SERVICES TO THE CHARTER SCHOOL AND THE FEES REPRESENT THE FULL VALUE OF THOSE SERVICES PROVIDED BY THE SPONSOR. ON REQUEST, THE VALUE OF THE SERVICES PROVIDED BY THE SPONSOR TO THE CHARTER SCHOOL SHALL BE DEMONSTRATED TO THE DEPARTMENT OF EDUCATION.

APPROVED BY THE GOVERNOR APRIL 20, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 20, 2005.

Passed the House March 7, 2005

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate April 12, 2005,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

H.B. 2438

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 14, 2005,

by the following vote: 54 Ayes,

1 Nays, 5 Not Voting

Speaker of the House

Pro Tempore

Norman L. Moore

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

15th day of April, 2005

at 9:00 o'clock a. M.

Jennifer Upbarka

Secretary to the Governor

Approved this 20 day of

April, 2005,

at 2:15 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of April, 2005,

at 4:10 o'clock P. M.

Janice K. Brewer

Secretary of State

H.B. 2438