

House Engrossed Senate Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 301

SENATE BILL 1187

AN ACT

AMENDING SECTION 15-2041, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010,
CHAPTER 17, SECTION 20; RELATING TO THE SCHOOL FACILITIES BOARD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 15-2041, Arizona Revised Statutes, as amended by
3 Laws 2010, chapter 17, section 20, is amended to read:

4 15-2041. New school facilities fund; capital plan; report

5 A. A new school facilities fund is established consisting of monies
6 appropriated by the legislature and monies credited to the fund pursuant to
7 section 37-221. The school facilities board shall administer the fund and
8 distribute monies, as a continuing appropriation, to school districts for the
9 purpose of constructing new school facilities and for contracted expenses
10 pursuant to section 15-2002, subsection B, paragraphs 2, 3 and 4. On June 30
11 of each fiscal year, any unobligated contract monies in the new school
12 facilities fund shall be transferred to the capital reserve fund established
13 by section 15-2003.

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

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

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

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

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

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

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

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

32 5. If a school district pays tuition for all or a portion of the
33 school district's high school pupils to another school district, the capital
34 plan shall indicate the number of pupils for which the district pays tuition
35 to another district. If a school district accepts pupils from another school
36 district pursuant to section 15-824, subsection A, the school district shall
37 indicate the projections for this population separately. This paragraph does
38 not apply to a small isolated school district as defined in section 15-901.

39 C. If the capital plan indicates a need for a new school or an
40 addition to an existing school within the next four years or a need for land
41 within the next ten years, the school district shall submit its plan to the
42 school facilities board by September 1 and shall request monies from the new
43 school facilities fund for the new construction or land. THE SCHOOL
44 FACILITIES BOARD MAY REQUIRE A SCHOOL DISTRICT TO SELL LAND THAT WAS
45 PREVIOUSLY PURCHASED ENTIRELY WITH MONIES PROVIDED BY THE SCHOOL FACILITIES

1 BOARD IF THE SCHOOL FACILITIES BOARD DETERMINES THAT THE PROPERTY IS NO
2 LONGER NEEDED WITHIN THE TEN YEAR PERIOD SPECIFIED IN THIS SUBSECTION FOR A
3 NEW SCHOOL OR NO LONGER NEEDED WITHIN THAT TEN YEAR PERIOD FOR AN ADDITION TO
4 AN EXISTING SCHOOL. Monies provided for land shall be in addition to any
5 monies provided pursuant to subsection D of this section.

6 D. The school facilities board shall distribute monies from the new
7 school facilities fund as follows:

8 1. The school facilities board shall review and evaluate the
9 enrollment projections and either approve the projections as submitted or
10 revise the projections. In determining new construction requirements, the
11 school facilities board shall determine the net new growth of pupils that
12 will require additional square footage that exceeds the building adequacy
13 standards prescribed in section 15-2011. If the projected growth and the
14 existing number of pupils exceed three hundred fifty pupils who are served in
15 a school district other than the pupil's resident school district, the school
16 facilities board, the receiving school district and the resident school
17 district shall develop a capital facilities plan on how to best serve those
18 pupils. A small isolated school district as defined in section 15-901 is not
19 required to develop a capital facilities plan pursuant to this paragraph.

20 2. If the approved projections indicate that additional space will not
21 be needed within the next two years for elementary schools or three years for
22 middle or high schools in order to meet the building adequacy standards
23 prescribed in section 15-2011, the request shall be held for consideration by
24 the school facilities board for possible future funding and the school
25 district shall annually submit an updated plan until the additional space is
26 needed.

27 3. If the approved projections indicate that additional space will be
28 needed within the next two years for elementary schools or three years for
29 middle or high schools in order to meet the building adequacy standards
30 prescribed in section 15-2011, the school facilities board shall provide an
31 amount as follows:

32 (a) Determine the number of pupils requiring additional square footage
33 to meet building adequacy standards. This amount for elementary schools
34 shall not be less than the number of new pupils for whom space will be needed
35 in the next year and shall not exceed the number of new pupils for whom space
36 will be needed in the next five years. This amount for middle and high
37 schools shall not be less than the number of new pupils for whom space will
38 be needed in the next four years and shall not exceed the number of new
39 pupils for whom space will be needed in the next eight years.

40 (b) Multiply the number of pupils determined in subdivision (a) of
41 this paragraph by the square footage per pupil. The square footage per pupil
42 is ninety square feet per pupil for preschool children with disabilities,
43 kindergarten programs and grades one through six, one hundred square feet for
44 grades seven and eight, one hundred thirty-four square feet for a school
45 district that provides instruction in grades nine through twelve for fewer

1 than one thousand eight hundred pupils and one hundred twenty-five square
2 feet for a school district that provides instruction in grades nine through
3 twelve for at least one thousand eight hundred pupils. The total number of
4 pupils in grades nine through twelve in the district shall determine the
5 square footage factor to use for net new pupils. The school facilities board
6 may modify the square footage requirements prescribed in this subdivision for
7 particular schools based on any of the following factors:

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

10 (ii) Geographic factors.

11 (iii) Grade configurations other than those prescribed in this
12 subdivision.

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

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

30 (d) Once the school district governing board obtains approval from the
31 school facilities board for new facility construction funds, additional
32 portable or modular square footage created for the express purpose of
33 providing temporary space for pupils until the completion of the new facility
34 shall not be included by the school facilities board for the purpose of new
35 construction funding calculations. On completion of the new facility
36 construction project, if the portable or modular facilities continue in use,
37 the portable or modular facilities shall be included as prescribed by this
38 chapter, unless the school facilities board approves their continued use for
39 the purpose of providing temporary space for pupils until the completion of
40 the next new facility that has been approved for funding from the new school
41 facilities fund.

42 4. For projects approved after December 31, 2001, and notwithstanding
43 paragraph 3 of this subsection, a unified school district that does not have
44 a high school is not eligible to receive high school space as prescribed by
45 section 15-2011 and this section unless the unified district qualifies for

1 geographic factors prescribed by paragraph 3, subdivision (b), item (ii) of
2 this subsection.

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

7 E. Monies for architectural and engineering fees, project management
8 services and preconstruction services shall be distributed on the completion
9 of the analysis by the school facilities board of the school district's
10 request. After receiving monies pursuant to this subsection, the school
11 district shall submit a design development plan for the school or addition to
12 the school facilities board before any monies for construction are
13 distributed. If the school district's request meets the building adequacy
14 standards, the school facilities board may review and comment on the
15 district's plan with respect to the efficiency and effectiveness of the plan
16 in meeting state square footage and facility standards before distributing
17 the remainder of the monies. If the school facilities board modifies the
18 cost per square foot as prescribed in subsection D, paragraph 3, subdivision
19 (c) of this section, the school facilities board may deduct the cost of
20 project management services and preconstruction services from the required
21 cost per square foot. The school facilities board may decline to fund the
22 project if the square footage is no longer required due to revised enrollment
23 projections.

24 F. The school facilities board shall distribute the monies needed for
25 land for new schools so that land may be purchased at a price that is less
26 than or equal to fair market value and in advance of the construction of the
27 new school. If necessary, the school facilities board may distribute monies
28 for land to be leased for new schools if the duration of the lease exceeds
29 the life expectancy of the school facility by at least fifty per cent. A
30 SCHOOL DISTRICT SHALL NOT USE LAND PURCHASED OR PARTIALLY PURCHASED WITH
31 MONIES PROVIDED BY THE SCHOOL FACILITIES BOARD FOR A PURPOSE OTHER THAN A
32 SITE FOR A SCHOOL FACILITY WITHOUT OBTAINING PRIOR WRITTEN APPROVAL FROM THE
33 SCHOOL FACILITIES BOARD. A SCHOOL DISTRICT SHALL NOT LEASE, SELL OR TAKE ANY
34 ACTION THAT WOULD DIMINISH THE VALUE OF LAND PURCHASED OR PARTIALLY PURCHASED
35 WITH MONIES PROVIDED BY THE SCHOOL FACILITIES BOARD WITHOUT OBTAINING PRIOR
36 WRITTEN APPROVAL FROM THE SCHOOL FACILITIES BOARD. The proceeds derived
37 through the sale of any land purchased or partially purchased with monies
38 provided by the school facilities board shall be returned to the state fund
39 from which it was appropriated and to any other participating entity on a
40 proportional basis. Except as provided in section 15-342, paragraph 33, if a
41 school district acquires real property by donation at an appropriate school
42 site approved by the school facilities board, the school facilities board
43 shall distribute an amount equal to twenty per cent of the fair market value
44 of the donated real property that can be used for academic purposes. The
45 school district shall place the monies in the unrestricted capital outlay

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

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

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

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

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

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

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

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

22 G. In addition to distributions to school districts based on pupil
23 growth projections, a school district may submit an application to the school
24 facilities board for monies from the new school facilities fund if one or
25 more school buildings have outlived their useful life. If the school
26 facilities board determines that the school district needs to build a new
27 school building for these reasons, the school facilities board shall remove
28 the square footage computations that represent the building from the
29 computation of the school district's total square footage for purposes of
30 this section. If the square footage recomputation reflects that the school
31 district no longer meets building adequacy standards, the school district
32 qualifies for a distribution of monies from the new school construction
33 formula in an amount determined pursuant to subsection D of this section.
34 Buildings removed from a school district's total square footage pursuant to
35 this subsection shall not be included in the computation of monies from the
36 building renewal fund established by section 15-2031. The school facilities
37 board may only modify the base cost per square foot prescribed in this
38 subsection under extraordinary circumstances for geographic factors or site
39 conditions.

40 H. School districts that receive monies from the new school facilities
41 fund shall establish a district new school facilities fund and shall use the
42 monies in the district new school facilities fund only for the purposes
43 prescribed in this section. By October 15 of each year, each school district
44 shall report to the school facilities board the projects funded at each
45 school in the previous fiscal year with monies from the district new school

1 facilities fund and shall provide an accounting of the monies remaining in
2 the new school facilities fund at the end of the previous fiscal year.

3 I. If a school district has surplus monies received from the new
4 school facilities fund, the school district may use the surplus monies only
5 for capital purposes for the project for up to one year after completion of
6 the project. If the school district possesses surplus monies from the new
7 school construction project that have not been expended within one year of
8 the completion of the project, the school district shall return the surplus
9 monies to the school facilities board for deposit in the new school
10 facilities fund.

11 J. The board's consideration of any application filed after December
12 31 of the year in which the property becomes territory in the vicinity of a
13 military airport or ancillary military facility as defined in section 28-8461
14 for monies to fund the construction of new school facilities proposed to be
15 located in territory in the vicinity of a military airport or ancillary
16 military facility shall include, if after notice is transmitted to the
17 military airport pursuant to section 15-2002 and before the public hearing
18 the military airport provides comments and an analysis concerning
19 compatibility of the proposed school facilities with the high noise or
20 accident potential generated by military airport or ancillary military
21 facility operations that may have an adverse effect on public health and
22 safety, consideration and analysis of the comments and analysis provided by
23 the military airport before making a final determination.

24 K. If a school district uses its own project manager for new school
25 construction, the members of the school district governing board and the
26 project manager shall sign an affidavit stating that the members and the
27 project manager understand and will follow the minimum adequacy requirements
28 prescribed in section 15-2011.

29 L. The school facilities board shall establish a separate account in
30 the new school facilities fund designated as the litigation account to pay
31 attorney fees, expert witness fees and other costs associated with litigation
32 in which the school facilities board pursues the recovery of damages for
33 deficiencies correction that resulted from alleged construction defects or
34 design defects that the school facilities board believes caused or
35 contributed to a failure of the school building to conform to the building
36 adequacy requirements prescribed in section 15-2011. Attorney fees paid
37 pursuant to this subsection shall not exceed the market rate for similar
38 types of litigation. The joint committee on capital review shall conduct an
39 annual review of the litigation account, including the costs associated with
40 current and potential litigation.

41 M. Until the state board of education and the auditor general adopt
42 rules pursuant to section 15-213, subsection I, the school facilities board
43 may allow school districts to contract for construction services and
44 materials through the qualified select bidders list method of project
45 delivery for new school facilities pursuant to this section.

1 N. The school facilities board shall submit electronically a report on
2 project management services and preconstruction services to the governor, the
3 president of the senate and the speaker of the house of representatives by
4 December 31 of each year. The report shall compare projects that use project
5 management and preconstruction services with those that do not. The report
6 shall address cost, schedule and other measurable components of a
7 construction project. School districts, construction manager at risk firms
8 and project management firms that participate in a school facilities board
9 funded project shall provide the information required by the school
10 facilities board in relation to this report.

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

APPROVED BY THE GOVERNOR MAY 10, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2010.

Passed the House April 28, 2010,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

[Signature]

Speaker of the House
Pro Tempore

[Signature]
Chief Clerk of the House

Passed the Senate February 22, 2010,

by the following vote: 28 Ayes,

1 Nays, 1 Not Voting

[Signature]

President of the Senate

[Signature]
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

S.B. 1187

**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

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 29, 20 10

by the following vote: 26 Ayes,

2 Nays, 2 Not Voting

Robert L. Bean
President of the Senate

Chermin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

29 day of April, 20 10

at 4:45 o'clock P. M.

A. Nicole Bondie
Secretary to the Governor

Approved this 10 day of

May, 2010

at 11:10 o'clock A. M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 10th day of May, 20 10

at 4:10 o'clock P. M.

Ken Blumenthal
Secretary of State