



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

May 22, 2017

The Honorable Michele Reagan
Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Re: Senate Bill 1036 (charter schools; rulemaking exemption)

Dear Secretary Reagan:

Today I vetoed Senate Bill 1036. While I support providing the State Board for Charter Schools exemption from rulemaking, the additional requirements of the bill are onerous.

Sincerely,

Douglas A. Ducey
Governor
State of Arizona

Cc: The Honorable Steve Yarbrough
The Honorable J.D. Mesnard
The Honorable Sylvia Allen

Conference Engrossed

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

SENATE BILL 1036

AN ACT

AMENDING SECTIONS 15-182 AND 41-1005, ARIZONA REVISED STATUTES; RELATING TO THE STATE BOARD FOR 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 15-182, Arizona Revised Statutes, is amended to
3 read:

4 15-182. State board for charter schools; membership; terms;
5 compensation; duties

6 A. The state board for charter schools is established consisting of
7 the following members:

8 1. The superintendent of public instruction or the superintendent's
9 designee.

10 2. Six members of the general public, at least two of whom shall
11 reside in a school district where at least sixty ~~per cent~~ PERCENT of the
12 children who attend school in the district meet the eligibility
13 requirements established under the national school lunch and child
14 nutrition acts (42 United States Code sections 1751 through 1785) for free
15 lunches, and at least one of whom shall reside on an Indian reservation,
16 who are appointed by the governor pursuant to section 38-211.

17 3. Two members of the business community who are appointed by the
18 governor pursuant to section 38-211.

19 4. A teacher who provides classroom instruction at a charter school
20 and who is appointed by the governor pursuant to section 38-211.

21 5. An operator of a charter school who is appointed by the governor
22 pursuant to section 38-211.

23 6. Three members of the legislature who shall serve as advisory
24 members and who are appointed jointly by the president of the senate and
25 the speaker of the house of representatives.

26 B. The superintendent of public instruction shall serve a term on
27 the state board for charter schools that runs concurrently with the
28 superintendent's term of office. The members appointed pursuant to
29 subsection A, paragraph 6 of this section shall serve ~~two-year~~ TWO-YEAR
30 terms on the state board for charter schools that begin and end on the
31 third Monday in January and that run concurrently with their respective
32 terms of office. Members appointed pursuant to subsection A, paragraphs
33 2, 3, 4 and 5 of this section shall serve staggered ~~four-year~~ FOUR-YEAR
34 terms that begin and end on the third Monday in January.

35 C. The state board for charter schools shall annually elect a
36 president and such other officers as it deems necessary from among its
37 membership.

38 D. Members of the state board for charter schools are not eligible
39 to receive compensation but are eligible for reimbursement of expenses
40 pursuant to title 38, chapter 4, article 2.

41 E. The state board for charter schools shall:

42 1. Exercise general supervision over charter schools THAT ARE
43 sponsored by the board, ~~and~~ recommend legislation pertaining to charter
44 schools to the legislature AND ADOPT RULES AND POLICIES THAT THE BOARD
45 DEEMS NECESSARY TO ACCOMPLISH THE PURPOSES PRESCRIBED IN THIS SECTION.

- 1 2. Grant charter status to qualifying applicants for charter
- 2 schools pursuant to section 15-183.
- 3 3. Adopt and use an official seal in the authentication of its
- 4 acts.
- 5 4. Keep a record of its proceedings.
- 6 5. Adopt rules for its own government.
- 7 6. Determine the policy of the board and the work undertaken by it.
- 8 7. Delegate to the superintendent of public instruction the
- 9 execution of board policies.
- 10 8. Prepare a budget for expenditures necessary for the proper
- 11 maintenance of the board and the accomplishment of its purpose.
- 12 F. The state board for charter schools may:
- 13 1. Contract.
- 14 2. Sue and be sued.
- 15 3. Use the services of the auditor general.
- 16 4. Subject to title 41, chapter 4, article 4 and legislative
- 17 appropriation, employ staff.
- 18 G. The state board for charter schools may accept gifts or grants
- 19 of monies or real or personal property from public and private
- 20 organizations, if the purpose of the gift or grant specified by the donor
- 21 is approved by the board and is within the scope of the board's powers and
- 22 duties. The board shall establish and administer a gift and grant fund
- 23 for the deposit of monies received pursuant to this subsection.
- 24 Sec. 2. Section 41-1005, Arizona Revised Statutes, is amended to
- 25 read:
- 26 41-1005. Exemptions
- 27 A. This chapter does not apply to any:
- 28 1. Rule that relates to the use of public works, including streets
- 29 and highways, under the jurisdiction of an agency if the effect of the
- 30 order is indicated to the public by means of signs or signals.
- 31 2. Order or rule of the Arizona game and fish commission that does
- 32 the following:
- 33 (a) Opens, closes or alters seasons or establishes bag or
- 34 possession limits for wildlife.
- 35 (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.
- 36 (c) Establishes a license classification, fee or application fee
- 37 pursuant to title 17, chapter 3, article 2.
- 38 3. Rule relating to section 28-641 or to any rule regulating motor
- 39 vehicle operation that relates to speed, parking, standing, stopping or
- 40 passing enacted pursuant to title 28, chapter 3.
- 41 4. Rule concerning only the internal management of an agency that
- 42 does not directly and substantially affect the procedural or substantive
- 43 rights or duties of any segment of the public.
- 44 5. Rule that only establishes specific prices to be charged for
- 45 particular goods or services sold by an agency.

1 6. Rule concerning only the physical servicing, maintenance or care
2 of agency owned or operated facilities or property.

3 7. Rule or substantive policy statement concerning inmates or
4 committed youths of a correctional or detention facility in secure custody
5 or patients admitted to a hospital, if made by the state department of
6 corrections, the department of juvenile corrections, the board of
7 executive clemency or the department of health services or a facility or
8 hospital under the jurisdiction of the state department of corrections,
9 the department of juvenile corrections or the department of health
10 services.

11 8. Form whose contents or substantive requirements are prescribed
12 by rule or statute, and instructions for the execution or use of the form.

13 9. Capped fee-for-service schedule adopted by the Arizona health
14 care cost containment system administration pursuant to title 36,
15 chapter 29.

16 10. Fees prescribed by section 6-125.

17 11. Order of the director of water resources adopting or modifying
18 a management plan pursuant to title 45, chapter 2, article 9.

19 12. Fees established under section 3-1086.

20 13. Fees established under sections 41-4010 and 41-4042.

21 14. Rule or other matter relating to agency contracts.

22 15. Fees established under section 32-2067 or 32-2132.

23 16. Rules made pursuant to section 5-111, subsection A.

24 17. Rules made by the Arizona state parks board concerning the
25 operation of the Tonto natural bridge state park, the facilities located
26 in the Tonto natural bridge state park and the entrance fees to the Tonto
27 natural bridge state park.

28 18. Fees or charges established under section 41-511.05.

29 19. Emergency medical services protocols except as provided in
30 section 36-2205, subsection B.

31 20. Fee schedules established pursuant to section 36-3409.

32 21. Procedures of the state transportation board as prescribed in
33 section 28-7048.

34 22. Rules made by the state department of corrections.

35 23. Fees prescribed pursuant to section 32-1527.

36 24. Rules made by the department of economic security pursuant to
37 section 46-805.

38 25. Schedule of fees prescribed by section 23-908.

39 26. Procedure that is established pursuant to title 23, chapter 6,
40 article 6.

41 27. Rules, administrative policies, procedures and guidelines
42 adopted for any purpose by the Arizona commerce authority pursuant to
43 chapter 10 of this title if the authority provides, as appropriate under
44 the circumstances, for notice of an opportunity for comment on the
45 proposed rules, administrative policies, procedures and guidelines.

1 28. Rules made by a marketing commission or marketing committee
2 pursuant to section 3-414.

3 29. Administration of public assistance program monies authorized
4 for liabilities that are incurred for disasters declared pursuant to
5 sections 26-303 and 35-192.

6 30. User charges, tolls, fares, rents, advertising and sponsorship
7 charges, services charges or similar charges established pursuant to
8 section 28-7705.

9 31. Administration and implementation of the hospital assessment
10 pursuant to section 36-2901.08, except that the Arizona health care cost
11 containment system administration must provide notice and an opportunity
12 for public comment at least thirty days before establishing or
13 implementing the administration of the assessment.

14 32. Rules made by the Arizona department of agriculture to adopt
15 and implement the provisions of the federal milk ordinance as prescribed
16 by section 3-605.

17 B. Notwithstanding subsection A, paragraph 21 of this section, at
18 such time as the federal highway administration authorizes the
19 privatization of rest areas, the state transportation board shall make
20 rules governing the lease or license by the department of transportation
21 to a private entity for the purposes of privatization of a rest area.

22 C. Coincident with the making of a final rule pursuant to an
23 exemption from the applicability of this chapter under this section,
24 another statute or session law, the agency shall file a copy of the rule
25 with the secretary of state for publication pursuant to section 41-1012
26 and provide a copy to the council.

27 D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
28 chapter do not apply to the Arizona board of regents and the institutions
29 under its jurisdiction, except that the Arizona board of regents shall
30 make policies or rules for the board and the institutions under its
31 jurisdiction that provide, as appropriate under the circumstances, for
32 notice of and opportunity for comment on the policies or rules proposed.

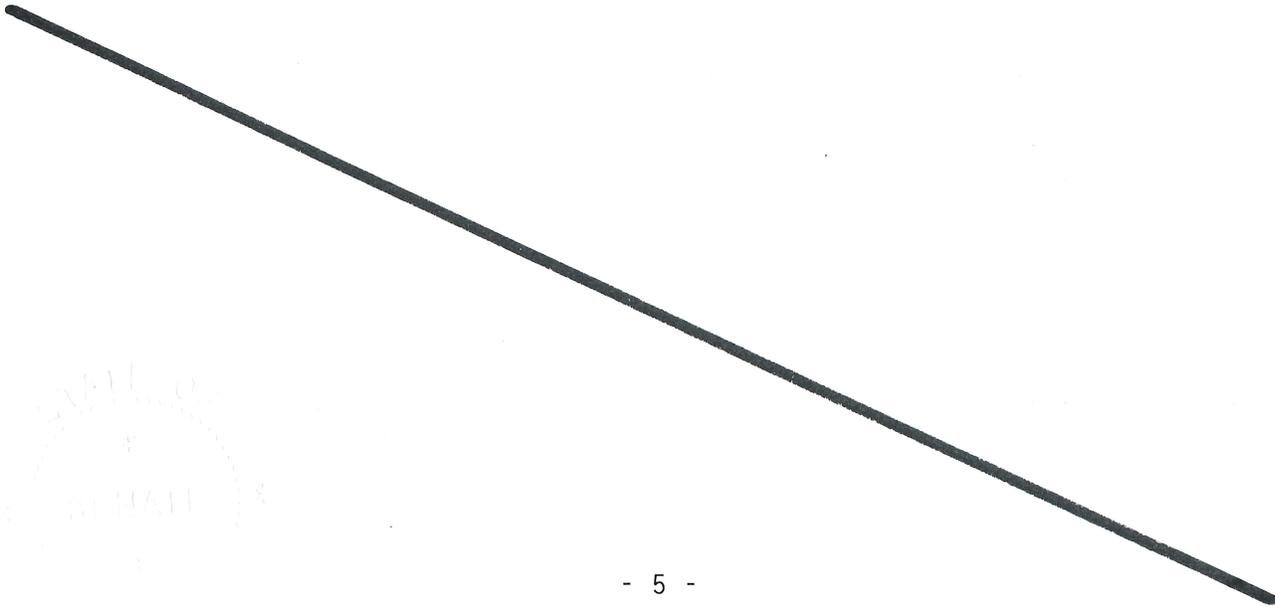
33 E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
34 chapter do not apply to the Arizona state schools for the deaf and the
35 blind, except that the board of directors of all the state schools for the
36 deaf and the blind shall adopt policies for the board and the schools
37 under its jurisdiction that provide, as appropriate under the
38 circumstances, for notice of and opportunity for comment on the policies
39 proposed for adoption.

40 F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
41 chapter do not apply to the state board of education, except that the
42 state board of education shall adopt policies or rules for the board and
43 the institutions under its jurisdiction that provide, as appropriate under
44 the circumstances, for notice of and opportunity for comment on the
45 policies or rules proposed for adoption. In order to implement or change

1 any rule, the state board of education shall provide at least two
2 opportunities for public comment.

3 G. UNLESS OTHERWISE REQUIRED BY LAW, ARTICLES 2, 3, 4 AND 5 OF THIS
4 CHAPTER DO NOT APPLY TO THE STATE BOARD FOR CHARTER SCHOOLS, EXCEPT THAT
5 THE STATE BOARD FOR CHARTER SCHOOLS SHALL ADOPT POLICIES OR RULES FOR THE
6 BOARD AND THE CHARTER SCHOOLS SPONSORED BY THE BOARD THAT PROVIDE, AS
7 APPROPRIATE UNDER THE CIRCUMSTANCES, FOR NOTICE OF AND OPPORTUNITY FOR
8 COMMENT ON THE POLICIES OR RULES PROPOSED FOR ADOPTION. IN ORDER TO
9 IMPLEMENT OR CHANGE ANY RULE, THE STATE BOARD FOR CHARTER SCHOOLS SHALL
10 PROVIDE AT LEAST TWO OPPORTUNITIES FOR PUBLIC COMMENT.

11 H. NOTWITHSTANDING SUBSECTIONS F AND G OF THIS SECTION ANY PERSON,
12 IN A MANNER AND FORM PRESCRIBED BY THE AGENCY, WITHIN ONE YEAR AFTER A
13 POLICY OR A RULE HAS BEEN ADOPTED MAY PETITION THE AGENCY BY OBJECTING TO
14 ALL OR PART OF A POLICY OR A RULE BASED ON THE RULE OR POLICY NOT BEING IN
15 COMPLIANCE WITH STATE LAW, BEING OUTSIDE THE INTENT OF STATE LAW OR HAVING
16 UNINTENDED POLICY IMPLICATIONS NEGATIVELY IMPACTING ENTITIES UNDER THE
17 JURISDICTION OF THE AGENCY. THE AGENCY SHALL CONSIDER THE PETITION AND
18 RESPOND TO THE PETITIONER WITHIN SIXTY DAYS AFTER RECEIVING THE FORMAL
19 REQUEST TO REVIEW A POLICY OR A RULE. AN AGENCY THAT DETERMINES NOT TO
20 TAKE ACTION BASED ON A PETITION SHALL FORWARD THE RESPONSE OF THE AGENCY
21 TO BOTH THE PETITIONER AND THE GOVERNOR'S REGULATORY REVIEW COUNCIL FOR
22 ADDITIONAL REVIEW. IF THE COUNCIL RECEIVES A PETITION PURSUANT TO THIS
23 SECTION AND AT LEAST TWO COUNCIL MEMBERS MAKE A REQUEST TO THE CHAIRPERSON
24 THAT THE MATTER BE HEARD IN A PUBLIC MEETING, THE COUNCIL SHALL REVIEW THE
25 PETITIONER'S REQUEST AND THE AGENCY'S RESPONSE WITHIN THIRTY DAYS. THE
26 COUNCIL MAY CHOOSE TO INVALIDATE A POLICY OR A RULE AND REQUIRE THE AGENCY
27 TO REAUTHORIZE A POLICY OR A RULE OR MAKE RECOMMENDATIONS FOR THE AGENCY
28 TO CONSIDER. FOR THE PURPOSES OF THIS SUBSECTION, "AGENCY" MEANS THE
29 STATE BOARD OF EDUCATION AND THE STATE BOARD FOR CHARTER SCHOOLS.



Passed the House April 17, 20 17,

by the following vote: 35 Ayes,

22 Nays, 2 Not Voting

H. R. Espinoza
Speaker of the House
Pro Tempore
Jim Drake
Chief Clerk of the House

Passed the Senate February 2, 20 17,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Steve R. Garbarino
President of the Senate
Susan O'Connell
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~~

S.B. 1036

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 9, 20 17,
by the following vote: 31 Ayes,

24 Nays, 5 Not Voting

[Signature]
Speaker of the House
Pro Tempore

[Signature]
Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate April 27, 20 17,
by the following vote: 16 Ayes,

11 Nays, 3 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 10th day of May, 20 17,
at 6:20 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 22nd day of
May, 20 17,
at 2:54 o'clock P. M.

VETO

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

S.B. 1036