House Engrossed Senate Bill

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KEN BENNETT
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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)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Geographic factors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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