

State of Arizona
Senate
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 92

SENATE BILL 1161

AN ACT

AMENDING SECTION 15-213.01, ARIZONA REVISED STATUTES; RELATING TO THE STATE BOARD OF EDUCATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 15-213.01, Arizona Revised Statutes, is amended to
3 read:

4 15-213.01. Procurement practices; guaranteed energy cost
5 savings contracts; definitions

6 A. Notwithstanding section 15-213, subsection A, a school district may
7 contract for the procurement of a guaranteed energy cost savings contract
8 with a qualified provider through a competitive sealed proposal process as
9 provided by the procurement practices adopted by the state board of
10 education. To the extent the qualified provider subcontracts with
11 contractors who will be involved in any construction associated with the
12 guaranteed energy cost savings contract, the qualified provider must follow
13 the provisions of section 41-2533 in selecting these contractors.

14 B. A school district may enter into a guaranteed energy cost savings
15 contract with a qualified provider if it determines that the amount it would
16 spend on the energy cost savings measures recommended in the proposal would
17 not exceed the amount to be saved in energy and operational costs within ten
18 years after the date installation OR IMPLEMENTATION is complete, if the
19 recommendations in the proposal are followed. ~~In evaluating the proposals,~~
20 ~~the school district shall retain an independent engineer with experience in~~
21 ~~energy efficiency to review the top three proposals if the guaranteed energy~~
22 ~~savings contract is more than fifty thousand dollars. The engineer shall~~
23 ~~review each of the proposals to verify that the methodology for computing~~
24 ~~energy savings and the computations for baseline performance conform with~~
25 ~~generally accepted engineering principles and are accurate. In addition, the~~
26 ~~engineer shall review the proposals for the reasonableness of the energy~~
27 ~~savings devices suggested in each proposal, the extent of the qualified~~
28 ~~provider's guarantee, comprehensiveness, the existence of sufficient~~
29 ~~documentation of estimated costs, and savings projections. The qualified~~
30 ~~provider shall pay for the cost of this evaluation and shall include the cost~~
31 ~~as part of the cost of the guaranteed energy savings contract. The qualified~~
32 ~~provider shall submit to the independent engineer all energy audit~~
33 ~~information acquired in developing its proposal and any other relevant data~~
34 ~~requested by the engineer that may assist the engineer in evaluating the~~
35 ~~proposals. If the school district receives fewer than three proposals, it~~
36 ~~shall submit all proposals received to the independent engineer for review.~~

37 C. The school district shall use objective criteria in selecting the
38 qualified provider including the cost of the contract, the energy and
39 operational cost savings, the net projected energy savings, the quality of
40 the technical approach, the quality of the project management plan, the
41 financial solvency of the qualified provider and the experience of the
42 qualified provider with projects of similar size and scope. The school
43 district shall set forth each criterion with its respective numerical
44 weighting in the request for proposal.

1 D. In selecting a contractor to perform any construction work related
2 to performing the guaranteed energy cost savings contract, the qualified
3 provider may develop and use a prequalification process for contractors
4 wishing to bid on this work. These prequalifications may require the
5 contractor to demonstrate that the contractor is adequately bonded to perform
6 the work and that the contractor has not failed to perform on a prior job.
7 The qualified provider may use performance specifications in soliciting bids
8 from contractors.

9 E. An in-depth feasibility study shall be performed by the selected
10 qualified provider in order to establish the exact scope of the guaranteed
11 energy cost savings contract, the fixed cost savings guarantee amount and the
12 methodology for ~~verifying~~ DETERMINING actual savings. This report shall be
13 reviewed and approved by the ~~independent engineer~~ and school district prior
14 to the actual installation of any equipment. THE QUALIFIED PROVIDER SHALL
15 TRANSMIT A COPY OF THE APPROVED IN-DEPTH FEASIBILITY STUDY TO THE
16 SUPERINTENDENT OF PUBLIC INSTRUCTION.

17 F. The guaranteed energy savings contract shall require that an
18 ~~independent engineer~~ A QUALIFIED PROVIDER perform an energy audit of the
19 facility or facilities one year after the energy cost savings measures are
20 installed OR IMPLEMENTED and every three years thereafter for the length of
21 the contract. THE QUALIFIED PROVIDER SHALL TRANSMIT A COPY OF THE AUDIT TO
22 THE SUPERINTENDENT OF PUBLIC INSTRUCTION. The qualified provider shall pay
23 the cost of the audit. In determining whether the projected energy savings
24 calculations have been met, the energy or operational cost savings shall be
25 computed by comparing the energy baseline before installation OR
26 IMPLEMENTATION of the energy cost savings measures with the energy consumed
27 and operational costs avoided after installation OR IMPLEMENTATION of the
28 energy cost savings measures. The qualified provider and the school district
29 may agree to make modifications to the energy baseline only for any of the
30 following:

- 31 1. Changes in utility rates.
- 32 2. Changes in the number of days in the utility billing cycle.
- 33 3. Changes in the square footage of the facility.
- 34 4. Changes in the operational schedule of the facility.
- 35 5. Changes in facility temperature.
- 36 6. Significant changes in the weather.
- 37 7. Significant changes in the amount of equipment or lighting utilized
38 in the facility.

39 G. The information to develop the energy baseline shall be derived
40 from actual energy measurements or shall be calculated from energy
41 measurements at the facility where energy cost savings measures are to be
42 installed OR IMPLEMENTED. The measurements shall be taken in the year
43 preceding the installation OR IMPLEMENTATION of energy cost savings measures.

1 H. When submitting a proposal FOR THE INSTALLATION OF EQUIPMENT, the
2 qualified provider shall include information on the projected energy savings
3 associated with each proposed energy cost savings measure.

4 I. A school district, or two or more school districts, may enter into
5 an installment payment contract or lease-purchase agreement with a qualified
6 provider for the purchase and installation OR IMPLEMENTATION of energy cost
7 savings measures. The guaranteed energy cost savings contract may provide for
8 payments over a period of not more than ten years. The contract shall
9 provide that all payments, except obligations on termination of the contract
10 before its expiration, shall be made over time.

11 J. The guaranteed energy cost savings contract shall include a written
12 guarantee of the qualified provider that either the energy or operational
13 costs savings, or both, will meet or exceed the costs of the energy cost
14 savings measures within ten years. The qualified provider shall reimburse
15 the school district for any shortfall of guaranteed energy cost savings on
16 an annual basis.

17 K. The school district may obtain any required financing as part of
18 the original competitive sealed proposal process.

19 L. A qualified provider that is awarded the contract shall give a
20 sufficient bond to the school district for its faithful performance of the
21 equipment installment.

22 M. When selecting subcontractors to perform construction work, the
23 qualified provider is required to make public information in the
24 subcontractor's bids only if the qualified provider is awarded the guaranteed
25 energy savings contract by the school district.

26 N. This section does not apply to the construction of new buildings.

27 O. For THE purposes of this section:

28 1. "Construction" means the process of building, altering, repairing,
29 improving or demolishing any school district structure or building, or other
30 public improvements of any kind to any school district real property.
31 Construction does not include the routine operation, routine repair or
32 routine maintenance of existing structures, buildings or real property.

33 2. "Energy baseline" means a calculation of the amount of energy used
34 in an existing facility ~~if BEFORE THE INSTALLATION OR IMPLEMENTATION OF the~~
35 ~~energy cost savings measures had not been installed.~~

36 3. "Energy cost savings measure" means a training program or facility
37 alteration designed to reduce energy consumption or operating costs and may
38 include one or more of the following:

39 (a) Insulating the building structure or systems in the building.

40 (b) Storm windows or doors, caulking or weather stripping,
41 multi-glazed windows or door systems, additional glazing, reductions in glass
42 area, or other window and door system modifications that reduce energy
43 consumption.

44 (c) Automated or computerized energy control systems.

1 (d) Heating, ventilating or air conditioning system modifications or
2 replacements.

3 (e) Replacing or modifying lighting fixtures to increase the energy
4 efficiency of the lighting system without increasing the overall illumination
5 of a facility unless an increase in illumination is necessary to conform to
6 the applicable state or local building code for the lighting system after the
7 proposed modifications are made.

8 (f) Indoor air quality improvements to increase air quality
9 that conform to the applicable state or local building code requirements.

10 (g) Energy recovery systems.

11 (h) Installing A new or retrofitting an existing day lighting system.

12 (i) Any life safety measures that provide long-term operating cost
13 reductions and that comply with state and local codes.

14 (j) Building IMPLEMENTING operation programs THROUGH EDUCATION,
15 TRAINING AND SOFTWARE that reduce the operating costs.

16 4. "Guaranteed energy cost savings contract" means a contract for
17 implementing one or more energy cost savings measures.

18 ~~5. "Independent engineer" means an engineer who has experience in
19 energy efficiency, who is a certified energy manager or possesses an
20 engineering degree from a four year accredited college or university and who
21 has not been employed in the five years preceding the award of the contract
22 by any of the qualified providers submitting a proposal for a guaranteed
23 energy cost savings contract.~~

24 ~~6. 5. "Operational savings" means reductions in actual budget line
25 items currently being expended or already committed for operations,
26 maintenance, repair and replacement SAVINGS REALIZED FROM THE IMPLEMENTATION
27 OR INSTALLATION of energy cost savings measures.~~

28 ~~7. 6. "Qualified provider" means a person or a business experienced
29 in designing, implementing and OR installing energy cost savings measures.~~

~~APPROVED BY THE GOVERNOR APRIL 23, 2003.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2003.~~

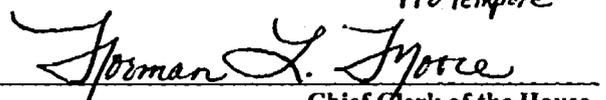
Passed the House April 14, 20 03

by the following vote: 42 Ayes,

18 Nays, 0 Not Voting



Speaker of the House
Pro Tempore

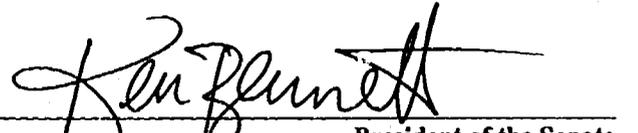


Chief Clerk of the House

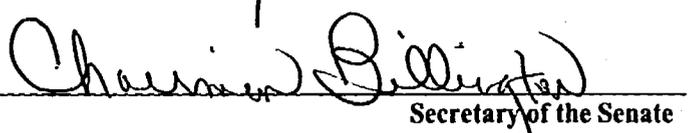
Passed the Senate February 26, 20 03

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

S.B. 1161

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate April 17, 2003,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Bennett
President of the Senate
Chermin B. Blanton
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

17 day of April, 2003

at 2:12 o'clock P M.

Sandra Ramirez
Secretary to the Governor

Approved this 23 day of

April, 2003,

at 2:15 o'clock P M.

J. D. Haydt
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 23 day of April, 2003,

at 4:07 o'clock P M.

Janice L. Brewer
Secretary of State

S.B. 1161