

House Engrossed

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**JANICE K. BREWER
SECRETARY OF STATE**

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CHAPTER 137

HOUSE BILL 2430

AN ACT

AMENDING SECTIONS 15-213.01, 34-452, 34-454, 34-455 AND 34-456, ARIZONA
REVISED STATUTES; RELATING TO ENERGY COST SAVING MEASURES.

(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 OVER THE
18 EXPECTED LIFE OF THE ENERGY COST SAVINGS MEASURES IMPLEMENTED OR within ten
19 TWENTY-FIVE years, WHICHEVER IS SHORTER, after the date installation or
20 implementation is complete, if the recommendations in the proposal are
21 followed.

22 C. The school district shall use objective criteria in selecting the
23 qualified provider including the cost of the contract, the energy and
24 operational cost savings, the net projected energy savings, the quality of
25 the technical approach, the quality of the project management plan, the
26 financial solvency of the qualified provider and the experience of the
27 qualified provider with projects of similar size and scope. The school
28 district shall set forth each criterion with its respective numerical
29 weighting in the request for proposal.

30 D. In selecting a contractor to perform any construction work related
31 to performing the guaranteed energy cost savings contract, the qualified
32 provider may develop and use a prequalification process for contractors
33 wishing to bid on this work. These prequalifications may require the
34 contractor to demonstrate that the contractor is adequately bonded to perform
35 the work and that the contractor has not failed to perform on a prior job.
36 The qualified provider may use performance specifications in soliciting bids
37 from contractors.

38 E. An in-depth feasibility study shall be performed by the selected
39 qualified provider in order to establish the exact scope of the guaranteed
40 energy cost savings contract, the fixed cost savings guarantee amount and the
41 methodology for determining actual savings. This report shall be reviewed
42 and approved by the school district prior to the actual installation of any
43 equipment. The qualified provider shall transmit a copy of the approved
44 in-depth feasibility study to the superintendent of public instruction.

1 F. The guaranteed energy savings contract shall require that a
2 qualified provider perform an energy audit of the facility or facilities one
3 year after the energy cost savings measures are installed or implemented and
4 every three years thereafter for the length of the contract. The qualified
5 provider shall transmit a copy of the audit to the superintendent of public
6 instruction. The qualified provider shall pay the cost of the audit. In
7 determining whether the projected energy savings calculations have been met,
8 the energy or operational cost savings shall be computed by comparing the
9 energy baseline before installation or implementation of the energy cost
10 savings measures with the energy consumed and operational costs avoided after
11 installation or implementation of the energy cost savings measures. The
12 qualified provider and the school district may agree to make modifications to
13 the energy baseline only for any of the following:

- 14 1. Changes in utility rates.
- 15 2. Changes in the number of days in the utility billing cycle.
- 16 3. Changes in the square footage of the facility.
- 17 4. Changes in the operational schedule of the facility.
- 18 5. Changes in facility temperature.
- 19 6. Significant changes in the weather.
- 20 7. Significant changes in the amount of equipment or lighting utilized
21 in the facility.

22 G. The information to develop the energy baseline shall be derived
23 from actual energy measurements or shall be calculated from energy
24 measurements at the facility where energy cost savings measures are to be
25 installed or implemented. The measurements shall be taken in the year
26 preceding the installation or implementation of energy cost savings measures.

27 H. When submitting a proposal for the installation of equipment, the
28 qualified provider shall include information on the projected energy savings
29 associated with each proposed energy cost savings measure.

30 I. A school district, or two or more school districts, may enter into
31 an installment payment contract or lease-purchase agreement with a qualified
32 provider for the purchase and installation or implementation of energy cost
33 savings measures. The guaranteed energy cost savings contract may provide for
34 payments over a period of not more than THE EXPECTED LIFE OF THE ENERGY COST
35 SAVINGS MEASURES IMPLEMENTED OR ~~ten~~ TWENTY-FIVE years, WHICHEVER IS
36 SHORTER. The contract shall provide that all payments, except obligations on
37 termination of the contract before its expiration, shall be made over time.

38 J. The guaranteed energy cost savings contract shall include a written
39 guarantee of the qualified provider that either the energy or operational
40 costs savings, or both, will meet or exceed the costs of the energy cost
41 savings measures OVER THE EXPECTED LIFE OF THE ENERGY COST SAVINGS MEASURES
42 IMPLEMENTED OR within ~~ten~~ TWENTY-FIVE years, WHICHEVER IS SHORTER. The
43 qualified provider shall reimburse the school district for any shortfall of
44 guaranteed energy cost savings on an annual basis.

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

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

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

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

11 O. For the purposes of this section:

12 1. "Construction" means the process of building, altering, repairing,
13 improving or demolishing any school district structure or building, or other
14 public improvements of any kind to any school district real property.
15 Construction does not include the routine operation, routine repair or
16 routine maintenance of existing structures, buildings or real property.

17 2. "Energy baseline" means a calculation of the amount of energy used
18 in an existing facility before the installation or implementation of the
19 energy cost savings measures.

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

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

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

28 (c) Automated or computerized energy control systems.

29 (d) Heating, ventilating or air conditioning system modifications or
30 replacements.

31 (e) Replacing or modifying lighting fixtures to increase the energy
32 efficiency of the lighting system without increasing the overall illumination
33 of a facility unless an increase in illumination is necessary to conform to
34 the applicable state or local building code for the lighting system after the
35 proposed modifications are made.

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

38 (g) Energy recovery systems.

39 (h) Installing a new or retrofitting an existing day lighting system.

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

42 (j) Implementing operation programs through education, training and
43 software that reduce the operating costs.

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

1 5. "Operational savings" means reductions in actual budget line items
2 currently being expended or savings realized from the implementation or
3 installation of energy cost savings measures.

4 6. "Qualified provider" means a person or a business experienced in
5 designing, implementing or installing energy cost savings measures.

6 Sec. 2. Section 34-452, Arizona Revised Statutes, is amended to read:
7 34-452. Solar design standards for state buildings; energy life
8 cycle costing

9 A. Capital projects as defined in section 41-790 including buildings
10 designed and constructed by the department of administration, school
11 districts, community college districts and universities and containing over
12 six thousand square feet shall include a written evaluation of the following
13 solar energy features:

14 1. Proper site orientation.

15 2. Utilization of active and passive solar energy systems for space
16 heating.

17 3. Utilization of solar water heating.

18 4. Utilization of solar daylighting devices as defined in section
19 44-1761.

20 B. Energy life cycle costing shall be used to evaluate all solar
21 energy and energy conservation design, equipment and materials that are
22 considered for constructing new state buildings and in the scheduled
23 remodeling of existing state buildings. ~~Solar energy and energy conservation~~
24 ~~design, equipment and materials shall be used if the simple payback is eight~~
25 ~~years or less. If the useful life of a product is less than eight years, the~~
26 ~~simple payback shall be equal to or less than the useful life of the product.~~

27 ~~C. The department of commerce energy office shall:~~

28 ~~1. For each of the eight fiscal years after completion of the project,~~
29 ~~determine energy and cost avoidance for solar energy and energy conservation~~
30 ~~design, equipment and materials installed in state buildings, using~~
31 ~~monitoring verification standards that are accepted by the United States~~
32 ~~department of energy. Energy and cost avoidance amounts shall be based on~~
33 ~~preinstallation or preconstruction baseline energy usage versus energy usage~~
34 ~~after solar and other energy and resource efficient design, materials or~~
35 ~~equipment are incorporated into the state building.~~

36 ~~2. Prior to calculating the energy and cost avoidance amounts, present~~
37 ~~its methodology for doing so to the joint legislative budget committee for~~
38 ~~review.~~

39 ~~3. Report the amount determined in paragraph 1 of this subsection to~~
40 ~~the governor's office of strategic planning and budgeting and the joint~~
41 ~~legislative budget committee.~~

42 ~~D. The legislature shall appropriate from the fund or funds from which~~
43 ~~the maintenance and operation budget is derived the amount of the annual cost~~
44 ~~avoidance for each of the first eight fiscal years after completion of the~~
45 ~~project as follows:~~

1 ~~1. Until the amount of the cumulative annual cost avoidance is equal~~
2 ~~to the simple payback, no money shall be appropriated.~~

3 ~~2. When the amount of the cumulative annual cost avoidance is greater~~
4 ~~than the simple payback, the appropriation is as follows:~~

5 ~~(a) Forty per cent to the budget unit that operates the building to be~~
6 ~~used in the next fiscal year either to procure energy related equipment,~~
7 ~~supplies, disposal costs and capital improvements approved by the chief~~
8 ~~administrative officer of the agency or agencies and consistent with state~~
9 ~~and federal law or for purposes of any of the budget unit's programs as~~
10 ~~prescribed by law.~~

11 ~~(b) Twenty per cent to the department of commerce for use by the~~
12 ~~energy office for verification and monitoring of energy conservation~~
13 ~~measures, project identification and implementation technical assistance.~~

14 ~~E. The amounts prescribed by subsection D of this section are intended~~
15 ~~to supplement and not supplant any appropriation for energy conservation~~
16 ~~projects. These amounts shall be identified by footnote or other designation~~
17 ~~in the budget process as resulting from energy saving projects.~~

18 Sec. 3. Section 34-454, Arizona Revised Statutes, is amended to read:

19 34-454. Establishment and use of life cycle cost methods and
20 procedures; definition

21 A. The director of the department of administration, in consultation
22 with the department of commerce, shall establish practical and effective
23 present value methods for estimating and comparing life cycle costs for state
24 capital projects, using the sum of all capital and operating expenses
25 associated with the energy system of the building involved over the expected
26 life of the system or during a period of ~~fifteen~~ TWENTY-FIVE years, whichever
27 is shorter, and using average fuel costs and a discount rate determined by
28 the director. The director shall develop and prescribe the procedures to be
29 followed in applying and implementing the methods and procedures established
30 by this subsection.

31 B. The design of new capital projects and the application of energy
32 conservation measures to existing capital projects shall be made using life
33 cycle cost methods and procedures established pursuant to subsection A.

34 C. In leasing buildings preference shall be given to buildings which
35 minimize life cycle costs.

36 D. For the purposes of this section, "life cycle cost" means the total
37 cost of owning, operating and maintaining a building over its useful life,
38 including such costs as fuel, energy, labor and replacement components
39 determined on the basis of a systematic evaluation and comparison of
40 alternative building systems, except that in the case of leased buildings,
41 the life cycle costs shall be calculated over the effective remaining term of
42 the lease.

1 Sec. 4. Section 34-455, Arizona Revised Statutes, is amended to read:

2 34-455. Performance contracting; definitions

3 A. The department of administration shall develop and implement a
4 program to enter into performance contracts solely for the purpose of
5 achieving energy savings as measured in dollars and benefits ancillary to
6 that purpose. Each contract may be for a period of not more than THE
7 EXPECTED LIFE OF THE ENERGY SAVINGS MEASURES IMPLEMENTED OR ~~fifteen~~
8 TWENTY-FIVE years, WHICHEVER IS SHORTER. The contract shall provide that the
9 ~~contractor bear~~ ENERGY AND OPERATIONAL SAVINGS GENERATED COVER all costs,
10 AFTER ACCOUNTING FOR ANY FINANCIAL INCENTIVES OR ASSISTANCE PROVIDED BY
11 UTILITIES, associated with implementation of energy conservation measures to
12 include audits, design equipment, purchase and installation, metering,
13 interest on monies borrowed and training, and the contract shall include
14 contractor profit. The contractor shall recover an amount not to exceed the
15 summation of these costs and the agreed upon profit. Energy dollar savings
16 realized as a result of a performance contract under this section shall be
17 shared at a negotiated rate between the state and the contractor, until such
18 time as the contractor has recovered the amount specified in the contract, at
19 which time all savings shall accrue to the state. Interest rates charged on
20 each contract shall be mutually agreed upon by the department of
21 administration and the contractor. Contracts shall contain contingency
22 provisions agreed upon by the department and the contractor for cases where
23 measured energy dollar savings do not meet predicted energy dollar savings.

24 B. For the purposes of this section: ~~—~~

25 1. "COMBINED HEAT AND POWER" MEANS ANY SYSTEM THAT SIMULTANEOUSLY OR
26 SEQUENTIALLY GENERATES BOTH ELECTRIC OR MECHANICAL ENERGY AND USEFUL THERMAL
27 ENERGY USING THE SAME UNIT OF FUEL.

28 2. "Energy dollar savings" means a reduction in the cost of energy,
29 from a base energy cost established through a methodology set forth in the
30 contract, utilized in an existing or new state owned or leased building as a
31 result of either:

32 ~~1-~~ (a) The lease or purchase of operating equipment BY THE STATE OR
33 CONTRACTOR, improvements MADE, altered operation and maintenance, technical
34 services PROVIDED or renewable energy sources UTILIZED.

35 ~~2-~~ (b) The increased efficient use of existing energy sources by
36 cogeneration ~~of heat recovery~~ OR COMBINED HEAT AND POWER.

37 Sec. 5. Section 34-456, Arizona Revised Statutes, is amended to read:

38 34-456. Use of energy savings; definitions

39 A. Fifty per cent of the amount of after-contract cost savings
40 realized by the department of administration for that year from contracts
41 entered into pursuant to section 34-455 shall remain available without
42 further appropriation to undertake additional energy conservation measures.
43 Funds generated as a result of these contracts shall be known as "energy
44 conservation funds". The department shall use the energy conservation funds
45 to implement additional energy conservation measures in state facilities.

1 The department shall keep a separate accounting of these after-contract cost
2 savings and provide an annual report to the speaker of the house of
3 representatives, the president of the senate and the governor detailing
4 account balances, amounts spent on additional conservation measures, energy
5 and dollar savings accrued as a result of expenditures from the fund and
6 projected utilization of the funds. These funds shall not be subject to the
7 provisions of section 35-190.

8 B. For the purposes of this section:

9 1. "After-contract cost savings" means the portion of energy dollar
10 savings for that year that ~~remain~~ REMAINS after all performance contract
11 costs are paid for that year.

12 2. "COMBINED HEAT AND POWER" HAS THE SAME MEANING PRESCRIBED IN
13 SECTION 34-455.

14 ~~2-~~ 3. "Energy conservation measures" means measures that are applied
15 to a state building that improve energy efficiency and are life cycle cost
16 effective and involve energy conservation, cogeneration facilities, renewable
17 energy sources, improvements in operations, COMBINED HEAT AND POWER and
18 maintenance efficiencies or retrofit activities.

APPROVED BY THE GOVERNOR APRIL 17, 2006.

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