Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

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House of Representatives
Fiftieth Legislature
Second Regular Session
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CHAPTER 230

HOUSE BILL 2830

AN ACT

AMENDING TITLE 9, CHAPTER 4, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 9-499.16; AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-254.08; AMENDING SECTION 15-213.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2011, SECOND SPECIAL SESSION, CHAPTER 1, SECTION 7; REPEALING SECTION 15-213.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 117, SECTION 4; REPEALING SECTION 15-342, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2011, CHAPTER 344, SECTION 13; AMENDING TITLE 15, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-213.03; AMENDING SECTION 15-910.02, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 12, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-1453; AMENDING TITLE 15, CHAPTER 13, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-1650.02; AMENDING TITLE 34, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 34-105; REPEALING SECTION 34-201, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 244, SECTION 24; REPEALING LAWS 2009, CHAPTER 101, SECTIONS 12, 13 AND 14 AND LAWS 2010, CHAPTER 117, SECTION 27; AMENDING LAWS 2010, CHAPTER 244, SECTION 43 AND LAWS 2010, CHAPTER 332, SECTION 38; REPEALING LAWS 2011, CHAPTER 344, SECTION 25; RELATING TO ENERGY AND WATER SAVINGS ACCOUNTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 9, chapter 4, article 8, Arizona Revised Statutes, is amended by adding section 9-499.16, to read:

9-499.16. Energy and water savings accounts

A. THE GOVERNING BODY OF A CITY OR TOWN MAY ESTABLISH AN ENERGY AND WATER SAVINGS ACCOUNT THAT CONSISTS OF A DESIGNATED POOL OF CAPITAL INVESTMENT MONIES TO FUND ENERGY OR WATER SAVINGS PROJECTS IN PUBLIC FACILITIES. A CITY OR TOWN MAY DEPOSIT IN THE ACCOUNT MONIES GENERATED FROM THE ENERGY OR WATER SAVINGS PROJECTS OR MEASURES IMPLEMENTED IN PUBLIC FACILITIES. A CITY OR TOWN MAY USE MONIES IN THE ENERGY AND WATER SAVINGS ACCOUNT FOR PAYMENTS UNDER A CONTRACT ENTERED INTO PURSUANT TO SECTION 34-105.

B. A CITY OR TOWN SHALL USE MONIES DEPOSITED IN AN ENERGY AND WATER SAVINGS ACCOUNT AS A DESIGNATED POOL OF CAPITAL INVESTMENT MONIES TO PAY FOR THE INCREMENTAL COST OF ENERGY OR WATER SAVINGS MEASURES IN FACILITIES THAT ARE OWNED BY THE CITY OR TOWN. ANY CONTRACT THAT IS ENTERED INTO PURSUANT TO THIS SECTION SHALL CONTAIN AN AGREEMENT BETWEEN THE QUALIFIED PROVIDER AND THE ENERGY OR WATER SERVICES COMPANY THAT BOTH PARTIES HAVE PERFORMED A REASONABLE INVESTIGATION TO DETERMINE THAT THE MEASURES CONTEMPLATED BY THE CONTRACT WILL RESULT IN STATED ENERGY OR WATER SAVINGS. CONTRACT TERMS MAY EXTEND THE PERIOD OF THE CAPITAL INVESTMENT REPAYMENT SCHEDULE PRESCRIBED IN SUBSECTION E OF THIS SECTION UP TO THE TERM OF THE CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS.

C. A CITY OR TOWN SHALL USE EXPENDITURES FROM AN ENERGY AND WATER SAVINGS ACCOUNT ONLY FOR THE FOLLOWING:

1. PROJECTS OR MEASURES PURSUANT TO A CONTRACT PURSUANT TO THIS SECTION OR SECTION 34-105 THAT SAVE ENERGY OR WATER IN FACILITIES THAT ARE OWNED BY THE CITY OR TOWN. MONIES MAY BE USED PURSUANT TO THIS PARAGRAPH TO PROVIDE TECHNICAL ASSISTANCE REGARDING ENERGY OR WATER SAVINGS TO CITIES OR TOWNS BY A QUALIFIED PROVIDER, ENERGY OR WATER SERVICES COMPANY.

2. PAYMENT OF PRINCIPAL, INTEREST, RELATED FINANCING COSTS AND PREPAYMENT PREMIUMS.

D. BEFORE THE IMPLEMENTATION OF THE ENERGY OR WATER SAVINGS MEASURES OR SERVICES, THE QUALIFIED PROVIDER, ENERGY OR WATER SERVICES COMPANY SHALL COMPUTE, AND THE CITY OR TOWN SHALL REVIEW AND APPROVE, THE ESTIMATED AMOUNT OF THE ENERGY OR WATER SAVINGS AND THE ASSOCIATED IMPACT ON ENERGY OR WATER COSTS TO BE ACHIEVED BY THE CITY OR TOWN ON AN ANNUAL AND MONTHLY BASIS OVER THE TERM OF THE CONTRACT AND SHALL INCLUDE THESE ESTIMATES IN THE CONTRACT. THE QUALIFIED PROVIDER AND THE CITY OR TOWN SHALL UPDATE THE ANNUAL AND MONTHLY ENERGY OR WATER SAVINGS AND ASSOCIATED COST IMPACT ESTIMATES ANNUALLY BASED ON ACTUAL EXPERIENCE FOR THE TERM OF THE CONTRACT.

E. BEFORE THE IMPLEMENTATION OF THE ENERGY OR WATER SAVINGS MEASURES OR SERVICES, THE QUALIFIED PROVIDER OR FINANCIAL INSTITUTION, TRUSTEE OR PAYING AGENT AND THE CITY OR TOWN SHALL JOINTLY DEVELOP A SCHEDULE OF MONTHLY OR ANOTHER MUTUALLY AGREED ON INTERVAL OF PAYMENTS FOR THE REPAYMENT OF

CAPITAL INVESTMENT MONIES. THE REPAYMENT SCHEDULE MUST RESULT IN LOWER ENERGY OR WATER COSTS, WHICH SHALL INCLUDE THE TOTAL COST OF ALL THE INSTALLED ENERGY OR WATER SAVINGS MEASURES FOR THE CITY OR TOWN OVER THE TERM OF THE CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS. THE REPAYMENT SCHEDULE SHALL BE INCLUDED IN THE CONTRACT.

F. THE CITY OR TOWN SHALL TRANSFER ON A MONTHLY BASIS THE AMOUNT OF THE MONTHLY PAYMENT PRESCRIBED PURSUANT TO SUBSECTION E OF THIS SECTION TO THE ENERGY AND WATER SAVINGS ACCOUNT FROM THE MAINTENANCE AND OPERATION PORTION OF THE CITY'S OR TOWN'S BUDGET TO REPAY ANY UNPAID BALANCE OF THE CAPITAL INVESTMENT PREVIOUSLY DEPOSITED IN THE ENERGY AND WATER SAVINGS ACCOUNT FROM THE QUALIFIED PROVIDER, ENERGY OR WATER SERVICES COMPANY PLUS A REASONABLE INTEREST RATE. FOR THE PERIOD OF TIME THAT THE COMPANY'S CAPITAL INVESTMENT MONIES AND REASONABLE INTEREST RATE REMAIN UNPAID, THE QUALIFIED PROVIDER, ENERGY OR WATER SERVICES COMPANY SHALL PROVIDE A SEPARATE BILLING OR BILLING COMPONENT TO REPAY THE CAPITAL INVESTMENT ON A MONTHLY BASIS, PURSUANT TO THE REPAYMENT SCHEDULE PRESCRIBED PURSUANT TO SUBSECTION E OF THIS SECTION, WHICH SHALL BE PAID BY THE CITY OR TOWN FROM THE ENERGY AND WATER SAVINGS ACCOUNT.

G. AFTER THE BALANCE OF THE QUALIFIED PROVIDER, ENERGY OR WATER SERVICES COMPANY'S CAPITAL INVESTMENT MONIES DEPOSITED IN THE ENERGY AND WATER SAVINGS ACCOUNT PLUS A REASONABLE INTEREST RATE ARE REPAID IN FULL BY THE CITY OR TOWN, THE CITY OR TOWN MAY DISCONTINUE THE DEPOSIT IN THE ENERGY AND WATER SAVINGS ACCOUNT OF AMOUNTS THAT ARE PRESCRIBED IN SUBSECTION F OF THIS SECTION.

H. AFTER THE CAPITAL INVESTMENT MONIES OF THE QUALIFIED PROVIDER, ENERGY OR WATER SERVICES COMPANY PLUS A REASONABLE INTEREST RATE ARE REPAID IN FULL, ANY MONIES ASSOCIATED WITH AN ENERGY OR WATER SAVINGS PROJECT REMAINING IN THE ENERGY AND WATER SAVINGS ACCOUNT MAY BE TRANSFERRED TO THE MAINTENANCE AND OPERATION PORTION OF THE CITY'S OR TOWN'S BUDGET.

I. A CITY OR TOWN MAY DEPOSIT ENERGY-RELATED REBATE OR GRANT MONIES IN THE ENERGY AND WATER SAVINGS ACCOUNT TO ASSIST IN FUNDING ENERGY OR WATER SAVINGS PROJECTS. A CITY OR TOWN MAY USE THESE REBATE OR GRANT MONIES TO REDUCE THE TOTAL COST OF ENERGY OR WATER SAVINGS PROJECTS AND TO REDUCE THE AMOUNT OF CAPITAL INVESTMENT MONIES RECEIVED FROM AND REPAID TO ENERGY OR WATER SERVICES COMPANIES. A CITY OR TOWN IS NOT REQUIRED TO REPAY THE REBATE OR GRANT MONIES IN THE MANNER DESCRIBED IN SUBSECTION F OF THIS SECTION PURSUANT TO THE AGREEMENTS WITH THE PROVIDERS OF REBATE OR GRANT FUNDS.

J. A CITY OR TOWN MAY DEPOSIT MONIES FROM OTHER FUNDING SOURCES IN THE ENERGY AND WATER SAVINGS ACCOUNT TO FUND ENERGY OR WATER SAVING PROJECTS IN PUBLIC FACILITIES. THESE MONIES SHALL BE REPAID IN A MANNER CONSISTENT WITH THIS SECTION AND PURSUANT TO THE CONTRACT BETWEEN THE CITY OR TOWN AND THE PROVIDER OF THE FUNDING.

K. THIS SECTION DOES NOT IMPOSE AN OBLIGATION ON ANY ENERGY UTILITY, WATER UTILITY, PUBLIC SERVICE CORPORATION OR AGRICULTURAL IMPROVEMENT DISTRICT TO INVEST MONIES OR CONTRACT WITH ANY CITY OR TOWN.

Sec. 2. Title 11, chapter 2, article 4, Arizona Revised Statutes, is amended by adding section 11-254.08, to read:

11-254.08. Energy and water savings accounts

A. THE BOARD OF SUPERVISORS MAY ESTABLISH AN ENERGY AND WATER SAVINGS ACCOUNT THAT CONSISTS OF A DESIGNATED POOL OF CAPITAL INVESTMENT MONIES TO FUND ENERGY OR WATER SAVINGS PROJECTS IN COUNTY FACILITIES. THE COUNTY MAY DEPOSIT IN THE ACCOUNT MONIES GENERATED FROM THE ENERGY OR WATER SAVINGS PROJECTS OR MEASURES IMPLEMENTED IN COUNTY FACILITIES. THE COUNTY MAY USE MONIES IN THE ENERGY AND WATER SAVINGS ACCOUNT FOR PAYMENTS UNDER A CONTRACT ENTERED INTO PURSUANT TO SECTION 34-105.

B. A COUNTY SHALL USE MONIES DEPOSITED IN AN ENERGY AND WATER SAVINGS ACCOUNT AS A DESIGNATED POOL OF CAPITAL INVESTMENT MONIES TO PAY FOR THE INCREMENTAL COST OF ENERGY OR WATER SAVINGS MEASURES IN FACILITIES THAT ARE OWNED BY THE COUNTY. ANY CONTRACT THAT IS ENTERED INTO PURSUANT TO THIS SECTION SHALL CONTAIN AN AGREEMENT BETWEEN THE QUALIFIED PROVIDER AND THE ENERGY OR WATER SERVICES COMPANY THAT BOTH PARTIES HAVE PERFORMED A REASONABLE INVESTIGATION TO DETERMINE THAT THE MEASURES CONTEMPLATED BY THE CONTRACT WILL RESULT IN STATED ENERGY OR WATER SAVINGS. CONTRACT TERMS MAY EXTEND THE PERIOD OF THE CAPITAL INVESTMENT REPAYMENT SCHEDULE PRESCRIBED IN SUBSECTION E OF THIS SECTION UP TO THE TERM OF THE CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS.

C. A COUNTY SHALL USE EXPENDITURES FROM AN ENERGY AND WATER SAVINGS ACCOUNT ONLY FOR THE FOLLOWING:

1. PROJECTS OR MEASURES PURSUANT TO A CONTRACT PURSUANT TO THIS SECTION OR SECTION 34-105 THAT SAVE ENERGY OR WATER IN FACILITIES THAT ARE OWNED BY THE COUNTY. MONIES MAY BE USED PURSUANT TO THIS PARAGRAPH TO PROVIDE TECHNICAL ASSISTANCE REGARDING ENERGY OR WATER SAVINGS TO COUNTIES BY A QUALIFIED PROVIDER, ENERGY OR WATER SERVICES COMPANY.

2. PAYMENT OF PRINCIPAL, INTEREST, RELATED FINANCING COSTS AND PREPAYMENT PREMIUMS.

D. BEFORE THE IMPLEMENTATION OF THE ENERGY OR WATER SAVINGS MEASURES OR SERVICES, THE QUALIFIED PROVIDER, ENERGY OR WATER SERVICES COMPANY SHALL COMPUTE, AND THE COUNTY SHALL REVIEW AND APPROVE, THE ESTIMATED AMOUNT OF THE ENERGY OR WATER SAVINGS AND THE ASSOCIATED IMPACT ON ENERGY OR WATER COSTS TO BE ACHIEVED BY THE COUNTY ON AN ANNUAL AND MONTHLY BASIS OVER THE TERM OF THE CONTRACT AND SHALL INCLUDE THESE ESTIMATES IN THE CONTRACT. THE QUALIFIED PROVIDER AND THE COUNTY SHALL UPDATE THE ANNUAL AND MONTHLY ENERGY OR WATER SAVINGS AND ASSOCIATED COST IMPACT ESTIMATES ANNUALLY BASED ON ACTUAL EXPERIENCE FOR THE TERM OF THE CONTRACT.

E. BEFORE THE IMPLEMENTATION OF THE ENERGY OR WATER SAVINGS MEASURES OR SERVICES, THE QUALIFIED PROVIDER OR FINANCIAL INSTITUTION, TRUSTEE OR PAYING AGENT AND THE COUNTY SHALL JOINTLY DEVELOP A SCHEDULE OF MONTHLY OR ANOTHER MUTUALLY AGREED ON INTERVAL OF PAYMENTS FOR THE REPAYMENT OF CAPITAL INVESTMENT MONIES. THE REPAYMENT SCHEDULE MUST RESULT IN LOWER ENERGY OR WATER COSTS, WHICH SHALL INCLUDE THE TOTAL COST OF ALL THE INSTALLED ENERGY

OR WATER SAVINGS MEASURES FOR THE COUNTY OVER THE TERM OF THE CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS. THE REPAYMENT SCHEDULE SHALL BE INCLUDED IN THE CONTRACT.

F. THE COUNTY SHALL TRANSFER ON A MONTHLY BASIS THE AMOUNT OF THE MONTHLY PAYMENT PRESCRIBED PURSUANT TO SUBSECTION E OF THIS SECTION TO THE ENERGY AND WATER SAVINGS ACCOUNT FROM THE MAINTENANCE AND OPERATION PORTION OF THE COUNTY'S BUDGET TO REPAY ANY UNPAID BALANCE OF THE CAPITAL INVESTMENT PREVIOUSLY DEPOSITED IN THE ENERGY AND WATER SAVINGS ACCOUNT FROM THE QUALIFIED PROVIDER, ENERGY OR WATER SERVICES COMPANY PLUS A REASONABLE INTEREST RATE. FOR THE PERIOD OF TIME THAT THE COMPANY'S CAPITAL INVESTMENT MONIES AND REASONABLE INTEREST RATE REMAIN UNPAID, THE QUALIFIED PROVIDER, ENERGY OR WATER SERVICES COMPANY SHALL PROVIDE A SEPARATE BILLING OR BILLING COMPONENT TO REPAY THE CAPITAL INVESTMENT ON A MONTHLY BASIS, PURSUANT TO THE REPAYMENT SCHEDULE PRESCRIBED PURSUANT TO SUBSECTION E OF THIS SECTION, WHICH SHALL BE PAID BY THE COUNTY FROM THE ENERGY AND WATER SAVINGS ACCOUNT.

G. AFTER THE BALANCE OF THE QUALIFIED PROVIDER, ENERGY OR WATER SERVICES COMPANY'S CAPITAL INVESTMENT MONIES DEPOSITED IN THE ENERGY AND WATER SAVINGS ACCOUNT PLUS A REASONABLE INTEREST RATE ARE REPAID IN FULL BY THE COUNTY, THE COUNTY MAY DISCONTINUE THE DEPOSIT IN THE ENERGY AND WATER SAVINGS ACCOUNT OF AMOUNTS THAT ARE PRESCRIBED IN SUBSECTION F OF THIS SECTION.

H. AFTER THE CAPITAL INVESTMENT MONIES OF THE QUALIFIED PROVIDER, ENERGY OR WATER SERVICES COMPANY PLUS A REASONABLE INTEREST RATE ARE REPAID IN FULL, ANY MONIES ASSOCIATED WITH AN ENERGY OR WATER SAVINGS PROJECT REMAINING IN THE ENERGY AND WATER SAVINGS ACCOUNT MAY BE TRANSFERRED TO THE MAINTENANCE AND OPERATION PORTION OF THE COUNTY'S BUDGET.

I. A COUNTY MAY DEPOSIT ENERGY-RELATED REBATE OR GRANT MONIES IN THE ENERGY AND WATER SAVINGS ACCOUNT TO ASSIST IN FUNDING ENERGY OR WATER SAVINGS PROJECTS. A COUNTY MAY USE THESE REBATE OR GRANT MONIES TO REDUCE THE TOTAL COST OF ENERGY OR WATER SAVINGS PROJECTS AND TO REDUCE THE AMOUNT OF CAPITAL INVESTMENT MONIES RECEIVED FROM AND REPAID TO ENERGY OR WATER SERVICES COMPANIES. A COUNTY IS NOT REQUIRED TO REPAY THE REBATE OR GRANT MONIES IN THE MANNER DESCRIBED IN SUBSECTION F OF THIS SECTION PURSUANT TO THE AGREEMENTS WITH THE PROVIDERS OF REBATE OR GRANT FUNDS.

J. A COUNTY MAY DEPOSIT MONIES FROM OTHER FUNDING SOURCES IN THE ENERGY AND WATER SAVINGS ACCOUNT TO FUND ENERGY OR WATER SAVING PROJECTS IN COUNTY FACILITIES. THESE MONIES SHALL BE REPAID IN A MANNER CONSISTENT WITH THIS SECTION AND PURSUANT TO THE CONTRACT BETWEEN THE COUNTY AND THE PROVIDER OF THE FUNDING.

K. THIS SECTION DOES NOT IMPOSE AN OBLIGATION ON ANY ENERGY UTILITY, WATER UTILITY, PUBLIC SERVICE CORPORATION OR AGRICULTURAL IMPROVEMENT DISTRICT TO INVEST MONIES OR CONTRACT WITH ANY COUNTY.

Sec. 3. Section 15-213.01, Arizona Revised Statutes, as amended by Laws 2011, second special session, chapter 1, section 7, is amended to read:

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

A. Notwithstanding section 15-213, subsection A, a school district may contract for the procurement of a guaranteed energy cost savings contract with a qualified provider through a competitive sealed proposal process as provided by the procurement practices adopted by the state board of education.

B. A school district may enter into a guaranteed energy cost savings contract with a qualified provider if it determines that the ~~amount it would spend on the energy cost savings measures recommended in the proposal would not exceed the amount to be saved in energy and operational costs over the expected life of the energy cost savings measures implemented or within twenty-five years, whichever is shorter, after the date installation or implementation is complete~~ ENERGY SAVINGS PROJECT PAYS FOR ITSELF WITHIN FIFTEEN YEARS OR LESS, if the recommendations in the proposal are followed. The school district shall retain the cost savings achieved by a guaranteed energy cost saving contract, and these cost savings may be used to pay for the contract and project implementation. ~~A school district shall not use excess utilities monies for the contract or for project implementation.~~

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

D. In selecting a contractor to perform any construction work related to performing the guaranteed energy cost savings contract, the qualified provider may develop and use a prequalification process for contractors. These prequalifications may require the contractor to demonstrate that the contractor is adequately bonded to perform the work and that the contractor has not failed to perform on a prior job.

E. A study shall be performed by the selected qualified provider in order to establish the exact scope of the guaranteed energy cost savings contract, the fixed cost savings guarantee amount and the methodology for determining actual savings. This report shall be reviewed and approved by the school district before the actual installation of any equipment. The qualified provider shall transmit a copy of the approved study to the school facilities board and the governor's ~~energy~~ office OF ENERGY POLICY.

F. The guaranteed energy cost savings contract shall require that, in determining whether the projected energy savings calculations have been met, the energy ~~or operational cost~~ savings shall be computed by comparing the

energy baseline before installation or implementation of the energy cost savings measures with the energy consumed ~~and operational costs avoided~~ after installation or implementation of the energy cost savings measures. The qualified provider and the school district may agree to make modifications to the energy baseline only for any of the following:

1. Changes in utility rates.
2. Changes in the number of days in the utility billing cycle.
3. Changes in the square footage of the facility.
4. Changes in the operational schedule of the facility.
5. Changes in facility temperature.
6. Significant changes in the weather.
7. Significant changes in the amount of equipment or lighting utilized in the facility.
8. Significant changes in the nature or intensity of energy use such as the change of classroom space to laboratory space.

G. The information to develop the energy baseline shall be derived from HISTORICAL ENERGY COSTS OR actual energy measurements or shall be calculated from energy measurements at the facility where energy cost savings measures are to be installed or implemented. The ~~measurements~~ BASELINE shall be ~~taken in the year preceding~~ ESTABLISHED BEFORE the installation or implementation of energy cost savings measures.

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

H. AT THE QUALIFIED PROVIDER'S EXPENSE, THE PROPOSAL SHALL INCLUDE AN INDEPENDENT THIRD-PARTY VALIDATION OF COST SAVINGS CALCULATIONS ASSOCIATED WITH EACH PROPOSED ENERGY COST SAVINGS MEASURE BY A LICENSED, REGISTERED PROFESSIONAL ENGINEER, WITH CREDENTIALS FROM THE NATIONAL ASSOCIATION OF ENERGY ENGINEERS, WHO HAS DEMONSTRATED EXPERIENCE IN ENERGY ANALYSIS. THE SCHOOL DISTRICT MUST APPROVE THE SELECTION OF THE CREDENTIALED ENGINEER.

I. A school district, or two or more school districts, may enter into ~~an installment payment contract or lease-purchase~~ A FINANCING agreement with a qualified provider OR THE FINANCIAL INSTITUTION, TRUSTEE OR PAYING AGENT for the purchase and installation or implementation of energy cost savings measures. The guaranteed energy cost savings contract may provide for payments over a period of not more than ~~the expected life of the energy cost savings measures implemented or twenty-five years, whichever is shorter~~ FIFTEEN YEARS. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, shall be made ~~over time~~ PURSUANT TO THE TERMS OF THE FINANCING AGREEMENT. IF A SCHOOL DISTRICT PURCHASES THE ENERGY COST SAVINGS MEASURE, THE QUALIFIED PROVIDER SHALL GUARANTEE THAT THE ENERGY COSTS SAVINGS MEET OR EXCEED THE SCHOOL DISTRICT'S TOTAL COST OF THE ENERGY SAVINGS PROJECT PURCHASE.

J. The guaranteed energy cost savings contract shall include a written guarantee of the qualified provider that ~~either~~ the energy ~~or operational~~

~~costs~~ savings~~, or both,~~ will meet or exceed the costs of the energy cost savings measures over the ~~expected life of the energy cost savings measures implemented or within twenty-five years, whichever is shorter~~ TERM OF THE CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS. The qualified provider shall:

1. For the ~~first three years of savings~~ TERM OF THE GUARANTEED ENERGY SAVINGS CONTRACT, prepare a measurement and verification report on an annual basis in addition to an annual reconciliation of savings.

2. Reimburse the school district for any shortfall of guaranteed energy cost savings on an annual basis

3. USE THE INTERNATIONAL PERFORMANCE AND MEASUREMENT AND VERIFICATION PROTOCOL STANDARDS OR THE FEDERAL ENERGY MANAGEMENT PROGRAM STANDARDS TO VALIDATE THE SAVINGS GUARANTEE.

K. The school district may obtain any required financing as part of the original competitive sealed proposal process from the qualified provider or a third-party financing institution.

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

M. The qualified provider is required to make public information in the subcontractor's bids only if the qualified provider is awarded the guaranteed energy cost savings contract by the school district.

N. For all projects carried out under this section, the district shall report to the governor's ~~energy~~ office OF ENERGY POLICY and the school facilities board:

1. The name of the project.

2. The qualified provider.

3. The total cost of the project.

4. The expected energy ~~and~~ cost savings AND RELEVANT ESCALATORS.

5. THE AGREED ON BASELINE IN THE MEASUREMENT AND VERIFICATION AGREEMENT IN BOTH KILOWATT HOURS AND DOLLARS.

O. For all projects carried out under this section, the district shall report to the school facilities board, by October 15 each year, the actual energy ~~and~~ cost savings.

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

Q. A school district may utilize a simplified energy performance contract for projects less than five hundred thousand dollars. Simplified energy performance contracts are not required to include an energy savings guarantee and shall comply with all requirements in this section except for the requirements that are specifically related to the energy savings guarantee and the measurement and verification of the guaranteed savings.

R. For the purposes of this section:

1. "Construction" means the process of building, altering, repairing, improving or demolishing any school district structure or building, or other public improvements of any kind to any school district real property.

Construction does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

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

3. "Energy cost savings measure" means a training program or facility alteration designed to reduce energy consumption ~~or operating costs~~ and may include one or more of the following, and any related meters or other measuring devices:

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

(b) Storm windows or doors, caulking or weather stripping, multiglazed windows or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption.

(c) Automated or computerized energy control systems.

(d) Heating, ventilating or air conditioning system modifications or replacements, INCLUDING GEOTHERMAL.

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

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

(g) Energy recovery systems.

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

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

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

~~(k)~~ (i) Procurement of low-cost utility supplies of all types, including electricity, natural gas, propane and water.

~~(l)~~ (j) Devices that reduce water consumption and water costs or that reduce sewer charges.

~~(m)~~ (k) Rainwater harvesting systems.

~~(n)~~ (l) Combined heat and power systems.

~~(o)~~ (m) Renewable and alternative energy projects and renewable energy power service agreements.

~~(p)~~ (n) Self-generation systems.

~~(q)~~ (o) Any additional building systems and infrastructure that produce energy, or that provide utility ~~or operational~~ cost savings not specifically mentioned in this paragraph, if the improvements meet the life cycle cost requirement and enhance building system performance or occupant comfort and safety, EXCLUDING THOSE SYSTEMS THAT FALL UNDER THE PROVISIONS OF SECTION 15-213.02.

(p) GEOTHERMAL.

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

5. "Life cycle cost" means the sum of present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs and disposal costs AND UTILITY REBATES over the life of the project, product or measure as provided by federal life cycle cost rules, regulations and criteria contained in the United States department of energy federal energy management program "guidance on life-cycle cost analysis" required by executive order 13423, January 2007.

~~6. "Operational savings" means reductions in actual budget line items currently being expended or savings realized from the implementation or installation of energy cost savings measures.~~

~~7.~~ 6. "Qualified provider" means a person or a business THAT IS experienced in designing, implementing or installing energy cost savings measures, THAT HAS A RECORD OF ESTABLISHED PROJECTS OR MEASURES OF SIMILAR SIZE AND SCOPE, THAT HAS DEMONSTRATED TECHNICAL, OPERATIONAL, FINANCIAL AND MANAGERIAL CAPABILITIES TO DESIGN AND OPERATE COST SAVINGS MEASURES AND PROJECTS AND THAT HAS THE FINANCIAL ABILITY TO SATISFY GUARANTEES FOR ENERGY COST SAVINGS.

Sec. 4. Repeal

A. Section 15-213.01, Arizona Revised Statutes, as amended by Laws 2010, chapter 117, section 4, is repealed.

B. Section 15-342, Arizona Revised Statutes, as amended by Laws 2011, chapter 344, section 13, is repealed.

Sec. 5. Title 15, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 15-213.03, to read:

15-213.03. Procurement practices; guaranteed energy production contracts; definitions

A. NOTWITHSTANDING SECTION 15-213, SUBSECTION A, A SCHOOL DISTRICT MAY CONTRACT FOR THE PROCUREMENT OF A GUARANTEED ENERGY PRODUCTION CONTRACT WITH A QUALIFIED PROVIDER THROUGH A COMPETITIVE SEALED PROPOSAL PROCESS AS PROVIDED BY THE PROCUREMENT PRACTICES ADOPTED BY THE STATE BOARD OF EDUCATION.

B. THE SCHOOL DISTRICT SHALL USE OBJECTIVE CRITERIA IN SELECTING THE QUALIFIED PROVIDER, INCLUDING THE GUARANTEED ENERGY PRICE, THE GUARANTEED ENERGY PRODUCTION, THE QUALITY OF THE TECHNICAL APPROACH, THE QUALITY OF THE PROJECT MANAGEMENT PLAN, THE FINANCIAL SOLVENCY OF THE QUALIFIED PROVIDER AND THE EXPERIENCE OF THE QUALIFIED PROVIDER WITH PROJECTS OF SIMILAR SIZE AND SCOPE. THE SCHOOL DISTRICT SHALL SET FORTH EACH CRITERION WITH ITS RESPECTIVE NUMERICAL WEIGHTING IN THE REQUEST FOR PROPOSAL.

C. IN SELECTING A CONTRACTOR TO PERFORM ANY CONSTRUCTION WORK RELATED TO PERFORMING THE GUARANTEED ENERGY PRODUCTION CONTRACT, THE QUALIFIED PROVIDER MAY DEVELOP AND USE A PREQUALIFICATION PROCESS FOR CONTRACTORS. THESE PREQUALIFICATIONS MAY REQUIRE THE CONTRACTOR TO DEMONSTRATE THAT THE

CONTRACTOR IS ADEQUATELY BONDED TO PERFORM THE WORK AND THAT THE CONTRACTOR HAS NOT FAILED TO PERFORM ON A PRIOR JOB.

D. WHEN SUBMITTING A PROPOSAL FOR THE INSTALLATION OF EQUIPMENT, THE QUALIFIED PROVIDER SHALL INCLUDE INFORMATION CONTAINING THE GUARANTEED ENERGY PRODUCTION ASSOCIATED WITH EACH PROPOSED ENERGY PRODUCTION MEASURE. THE SCHOOL DISTRICT SHALL REVIEW AND APPROVE THIS GUARANTEE BEFORE THE ACTUAL INSTALLATION OF ANY EQUIPMENT. THE QUALIFIED PROVIDER SHALL TRANSMIT A COPY OF THE APPROVED GUARANTEE TO THE SCHOOL FACILITIES BOARD AND THE GOVERNOR'S OFFICE OF ENERGY POLICY.

E. A GUARANTEED ENERGY PRODUCTION CONTRACT SHALL INCLUDE A GUARANTEED ENERGY PRICE, AND A WRITTEN GUARANTEED ENERGY PRODUCTION AS MEASURED ON AN ANNUAL BASIS OVER THE EXPECTED LIFE OF THE ENERGY PRODUCTION MEASURES IMPLEMENTED OR WITHIN FIFTEEN YEARS, WHICHEVER IS SHORTER. THE QUALIFIED PROVIDER SHALL:

1. PREPARE A MEASUREMENT AND VERIFICATION REPORT ON AN ANNUAL BASIS IN ADDITION TO AN ANNUAL RECONCILIATION OF ANY GUARANTEED ENERGY PRODUCTION SHORTFALL.

2. REIMBURSE THE SCHOOL DISTRICT FOR ANY GUARANTEED ENERGY PRODUCTION SHORTFALL ON AN ANNUAL BASIS BY MULTIPLYING ANY ENERGY PRODUCTION SHORTFALL BY EITHER THE DIFFERENCE BETWEEN THE GUARANTEED ENERGY PRICE AND THE EFFECTIVE UTILITY RATE, OR AN ALTERNATIVE METHOD AS MUTUALLY AGREED ON BY THE SCHOOL DISTRICT AND THE PROVIDER.

F. THE SCHOOL DISTRICT MAY OBTAIN ANY REQUIRED FINANCING AS PART OF THE ORIGINAL COMPETITIVE SEALED PROPOSAL PROCESS FROM THE QUALIFIED PROVIDER OR A THIRD-PARTY FINANCING INSTITUTION.

G. A QUALIFIED PROVIDER THAT IS AWARDED THE CONTRACT SHALL GIVE A SUFFICIENT BOND TO THE SCHOOL DISTRICT FOR ITS FAITHFUL PERFORMANCE OF THE EQUIPMENT INSTALLMENT.

H. THE QUALIFIED PROVIDER IS REQUIRED TO MAKE PUBLIC INFORMATION IN THE SUBCONTRACTOR'S BIDS ONLY IF THE SCHOOL DISTRICT AWARDS THE QUALIFIED PROVIDER THE GUARANTEED ENERGY PRODUCTION CONTRACT.

I. FOR ALL PROJECTS CARRIED OUT UNDER THIS SECTION, THE DISTRICT SHALL REPORT TO THE GOVERNOR'S OFFICE OF ENERGY POLICY AND THE SCHOOL FACILITIES BOARD:

1. THE NAME OF THE PROJECT.

2. THE QUALIFIED PROVIDER.

3. THE TOTAL COST OF THE PROJECT.

4. THE EXPECTED GUARANTEED ENERGY PRODUCTION AND GUARANTEED ENERGY PRICE, INCLUDING RELEVANT ESCALATORS, IF APPLICABLE, OVER THE TERM OF THE GUARANTEED ENERGY PRODUCTION CONTRACT.

J. FOR ALL PROJECTS CARRIED OUT UNDER THIS SECTION, THE DISTRICT SHALL REPORT TO THE SCHOOL FACILITIES BOARD, BY OCTOBER 15 EACH YEAR, THE ACTUAL ENERGY PRODUCTION AND GUARANTEED ENERGY PRICE.

K. FOR THE PURPOSES OF THIS SECTION:

1. "ACTUAL ENERGY PRODUCTION" MEANS THE ACTUAL AMOUNT OF ENERGY THAT FLOWS FROM THE ENERGY PRODUCTION MEASURE ON AN ANNUAL BASIS AS MEASURED BY A METER IN KILOWATT HOURS ALTERNATING CURRENT.

2. "CONSTRUCTION" MEANS THE PROCESS OF BUILDING, ALTERING, REPAIRING, IMPROVING OR DEMOLISHING ANY SCHOOL DISTRICT STRUCTURE OR BUILDING, OR OTHER PUBLIC IMPROVEMENTS OF ANY KIND TO ANY SCHOOL DISTRICT REAL PROPERTY. CONSTRUCTION DOES NOT INCLUDE THE ROUTINE OPERATION, ROUTINE REPAIR OR ROUTINE MAINTENANCE OF EXISTING STRUCTURES, BUILDINGS OR REAL PROPERTY.

3. "EFFECTIVE UTILITY RATE" MEANS THE AVERAGE PRICE PER KILOWATT HOUR THAT A SCHOOL DISTRICT PAID TO ITS UTILITY PROVIDER FOR ELECTRICITY SERVICE TO THE FACILITY THAT IS THE SUBJECT OF THE GUARANTEED ENERGY PRODUCTION CONTRACT OVER THE PREVIOUS TWELVE MONTHS.

4. "ENERGY PRODUCTION MEASURE" MEANS RENEWABLE AND ALTERNATIVE ENERGY PROJECTS OR RENEWABLE ENERGY POWER SERVICE AGREEMENTS.

5. "GUARANTEED ENERGY PRICE" MEANS THE AGREED ON PRICE TO BE CHARGED TO THE SCHOOL FOR EACH KILOWATT HOUR ALTERNATING CURRENT OF ACTUAL ENERGY PRODUCTION AS SUCH MAY CHANGE ON AN ANNUAL BASIS AS SET FORTH IN THE GUARANTEED ENERGY PRODUCTION CONTRACT.

6. "GUARANTEED ENERGY PRODUCTION" MEANS THE AMOUNT OF ENERGY, MEASURED IN KILOWATT HOURS ALTERNATING CURRENT, THAT THE QUALIFIED PROVIDER GUARANTEES FOR EACH YEAR OF THE GUARANTEED ENERGY PRODUCTION CONTRACT.

7. "GUARANTEED ENERGY PRODUCTION CONTRACT" MEANS A CONTRACT FOR IMPLEMENTING ONE OR MORE ENERGY PRODUCTION MEASURES BETWEEN ONE OR MORE QUALIFIED PROVIDERS AND A SCHOOL DISTRICT.

8. "GUARANTEED ENERGY PRODUCTION SHORTFALL" MEANS THE AMOUNT, IF ANY, THAT THE ACTUAL ENERGY PRODUCTION IS LESS THAN THE GUARANTEED ENERGY PRODUCTION IN ANY GIVEN YEAR.

9. "QUALIFIED PROVIDER" MEANS A PERSON OR A BUSINESS THAT IS EXPERIENCED IN DESIGNING, IMPLEMENTING OR INSTALLING ENERGY COST SAVINGS MEASURES, THAT HAS DEMONSTRATED TECHNICAL, OPERATIONAL, FINANCIAL AND MANAGERIAL CAPABILITIES TO DESIGN AND OPERATE COST SAVINGS MEASURES AND PROJECTS AND THAT HAS THE FINANCIAL ABILITY TO SATISFY GUARANTEES FOR GUARANTEED ENERGY PRODUCTION, FINANCIAL SOLVENCY AND EXPERIENCE FOR PROJECTS OF SIMILAR SIZE AND SCOPE.

Sec. 6. Section 15-910.02, Arizona Revised Statutes, is amended to read:

15-910.02. <u>Energy and water savings accounts</u>

A. Each school district may establish an energy and water savings account that consists of a designated pool of capital investment monies to fund energy or water saving projects in school facilities. A school district may deposit in the account monies ~~from one or more companies that provide utility, energy or water services to the school district pursuant to contracts that are executed between the companies and the school district and that are designed to save energy or water in school facilities~~ GENERATED FROM

THE ENERGY OR WATER SAVINGS PROJECTS OR MEASURES IMPLEMENTED IN SCHOOL FACILITIES. A school district may use monies in the energy and water savings account for payments under a performance contract entered into pursuant to section 15-213 or 15-213.01.

B. The auditor general and the department of education shall prescribe the appropriate designation of the energy and water savings accounts in the uniform system of financial records and shall prescribe reporting requirements on the appropriate budget forms and annual financial report forms.

C. Monies deposited in an energy and water savings account shall be used as a designated pool of capital investment monies to pay for the incremental cost of energy or water savings measures in school facilities that are owned ~~or operated~~ by the school district. Any contract entered into pursuant to this section shall contain an agreement between the qualified provider ~~or utility,~~ AND THE energy or water services company ~~and the school district~~ that ~~each party has~~ BOTH PARTIES HAVE performed a reasonable investigation to determine that the measures contemplated by the contract will result in stated energy or water savings. Contract terms may extend the period of the capital investment repayment schedule prescribed in subsection G of this section up to the ~~expected life of the energy or water savings measures, or twenty-five years, whichever is shorter~~ TERM OF THE GUARANTEED ENERGY SAVINGS CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS.

D. Expenditures from an energy and water savings account shall be used only for the following:

1. Projects or measures pursuant to a contract pursuant to this section OR SECTION 15-213.01 that save energy or water in school facilities that are owned ~~or operated~~ by the school district. Monies may be used pursuant to this paragraph to provide technical assistance regarding energy or water savings to school districts by a qualified provider ~~or a utility~~, energy or water services company.

~~2. The repayment to the qualified provider or utility, energy or water services company of capital investment monies deposited in the account plus reasonable carrying charges pursuant to the terms of the contract. Reasonable carrying charges for investor owned utilities will be the most recent authorized rate of return approved by the Arizona corporation commission.~~

2. PAYMENT OF PRINCIPAL, INTEREST, RELATED FINANCING COSTS AND PREPAYMENT PREMIUMS.

E. School districts shall procure energy or water savings measures or services with monies distributed from the energy and water savings accounts.

F. Before the implementation of the energy or water savings measures or services, the qualified provider ~~or utility~~, energy or water services company shall compute, and the school district shall review and approve, the estimated amount of the energy or water savings and the associated impact on energy or water costs to be achieved by the school district on an annual and

monthly basis over the ~~expected life of the measures~~ TERM OF THE GUARANTEED ENERGY SAVINGS CONTRACT and shall include these estimates in the contract. The qualified provider ~~or utility, energy or water services company~~ and the school district shall update the annual and monthly energy or water savings and associated cost impact estimates annually based on actual experience FOR THE TERM OF THE GUARANTEED ENERGY SAVINGS CONTRACT.

G. Before the implementation of the energy or water savings measures or services, the qualified provider or ~~utility, energy or water services company~~ FINANCIAL INSTITUTION, TRUSTEE OR PAYING AGENT and the school district shall jointly develop a schedule of monthly OR ANOTHER MUTUALLY AGREED ON INTERVAL OF payments for repayment of the capital investment monies ~~to the qualified provider or utility, energy or water services company~~. The repayment schedule shall result in lower energy or water costs, which shall include the TOTAL cost of ALL the installed energy or water savings measures for the school district over the ~~life of the installed measures that the school district would have experienced without the installation of the measures~~ TERM OF THE GUARANTEED ENERGY SAVINGS CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS. The repayment schedule shall be included in the contract.

H. The school district shall transfer on a monthly basis the amount of the monthly payment prescribed pursuant to subsection G of this section to the energy and water savings account from the maintenance and operation portion of the school district's budget to repay any unpaid balance of the capital investment previously deposited in the energy and water savings account from the qualified provider ~~or utility~~, energy or water services company plus a reasonable carrying charge. For the period of time that the company's capital investment monies and reasonable carrying charge remain unpaid, the qualified provider ~~or utility~~, energy or water services company shall provide a separate billing or billing component to repay the capital investment on a monthly basis, pursuant to the repayment schedule prescribed pursuant to subsection G of this section, which shall be paid by the school district from the energy and water savings account. The school district's general budget limit shall be reduced by the amount of monies transferred to the energy and water savings account pursuant to this section.

I. After the balance of the qualified provider ~~or utility~~, energy or water services company's capital investment monies deposited in the energy and water savings account plus a reasonable carrying charge are repaid in full by the school district, the school district may discontinue the deposit in the energy and water savings account of amounts that are prescribed in subsection ~~H~~ G of this section.

J. Any monies associated with an energy or water savings project remaining in the energy and water savings account after the capital investment monies of the qualified provider ~~or utility~~, energy or water services company plus a reasonable carrying charge are repaid in full may be transferred to the maintenance and operation portion of the school district's

budget, and the general budget limit may be increased by the amount transferred.

K. School districts may deposit energy-related rebate or grant monies in the energy and water savings account to assist in funding energy or water savings projects. These rebate or grant monies ~~shall~~ MAY be used to reduce the total cost of energy or water savings projects and to reduce the amount of capital investment monies received from and repaid to utility, energy or water services companies. School districts are not required to repay the rebate or grant monies in the manner described in subsection ~~H~~ G of this section~~,~~ pursuant to the agreements with the providers of rebate or grant funds.

L. School districts shall not use or deposit any excess utilities monies budgeted pursuant to section 15-910 in the energy and water savings account.

M. School districts may deposit monies from other funding sources~~, including from clean renewable energy bonds and the American recovery and reinvestment act of 2009 funding,~~ in the energy and water savings account to fund energy or water saving projects in school facilities. These monies shall be repaid in a manner consistent with this section and pursuant to the contract between the school district and the provider of the funding.

N. This section does not impose an obligation on any energy utility, water utility, public service corporation or agricultural improvement district to invest monies or contract with any school district.

O. For all projects carried out under this section, the district shall report to the school facilities board:

1. The name of the project.
2. The qualified provider.
3. The total cost of the project.
4. The expected energy ~~and~~ cost savings AND RELEVANT ESCALATORS.
5. THE AGREED ON BASELINE IN THE MEASUREMENT AND VERIFICATION AGREEMENT IN BOTH KILOWATT HOURS AND DOLLARS.

P. For all projects carried out under this section, the district shall report to the school facilities board, by October 15 each year, the actual energy ~~and~~ cost savings.

Sec. 7. Title 15, chapter 12, article 3, Arizona Revised Statutes, is amended by adding section 15-1453, to read:

15-1453. Energy and water savings accounts

A DISTRICT BOARD MAY ESTABLISH AN ENERGY AND WATER SAVINGS ACCOUNT IN THE SAME MANNER AS A SCHOOL DISTRICT PURSUANT TO SECTION 15-910.02 AND MAY FUND AND USE MONIES FOR GUARANTEED ENERGY SAVINGS CONTRACTS PURSUANT TO SECTION 34-105.

Sec. 8. Title 15, chapter 13, article 2, Arizona Revised Statutes, is amended by adding section 15-1650.02, to read:

15-1650.02. Energy and water savings accounts

THE ARIZONA BOARD OF REGENTS MAY ESTABLISH AN ENERGY AND WATER SAVINGS ACCOUNT IN THE SAME MANNER AS A SCHOOL DISTRICT PURSUANT TO SECTION 15-910.02 AND MAY FUND AND USE MONIES FOR GUARANTEED ENERGY SAVINGS CONTRACTS PURSUANT TO SECTION 34-105.

Sec. 9. Title 34, chapter 1, article 1, Arizona Revised Statutes, is amended by adding section 34-105, to read:

34-105. Guaranteed energy savings contracts; definitions

A. AN AGENT MAY CONTRACT FOR THE PROCUREMENT OF A GUARANTEED ENERGY COST SAVINGS CONTRACT WITH A QUALIFIED PROVIDER.

B. AN AGENT MAY ENTER INTO A GUARANTEED ENERGY COST SAVINGS CONTRACT WITH A QUALIFIED PROVIDER IF THE AGENT DETERMINES THAT THE AMOUNT THE AGENT WOULD SPEND ON THE ENERGY COST SAVINGS MEASURES RECOMMENDED IN THE PROPOSAL WOULD NOT EXCEED THE AMOUNT TO BE SAVED IN ENERGY COSTS OVER THE TERM OF THE CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS, AFTER THE DATE THAT INSTALLATION OR IMPLEMENTATION IS COMPLETE, IF THE RECOMMENDATIONS IN THE PROPOSAL ARE FOLLOWED. AN AGENT SHALL RETAIN THE COST SAVINGS ACHIEVED BY A GUARANTEED ENERGY COST SAVING CONTRACT, AND THESE COST SAVINGS MAY BE USED TO PAY FOR THE CONTRACT AND PROJECT IMPLEMENTATION.

C. AN AGENT SHALL USE OBJECTIVE CRITERIA IN SELECTING THE QUALIFIED PROVIDER, INCLUDING THE COST OF THE CONTRACT, THE ENERGY SAVINGS, THE NET PROJECTED ENERGY SAVINGS, THE QUALITY OF THE TECHNICAL APPROACH, THE QUALITY OF THE PROJECT MANAGEMENT PLAN, THE FINANCIAL SOLVENCY OF THE QUALIFIED PROVIDER AND THE EXPERIENCE OF THE QUALIFIED PROVIDER WITH PROJECTS OF SIMILAR SIZE AND SCOPE. AN AGENT SHALL STATE EACH CRITERION WITH ITS RELEVANT ORDER OF IMPORTANCE IN THE REQUEST FOR PROPOSAL.

D. IN SELECTING A CONTRACTOR TO PERFORM ANY CONSTRUCTION WORK RELATED TO PERFORMING THE GUARANTEED ENERGY COST SAVINGS CONTRACT, THE QUALIFIED PROVIDER MAY DEVELOP AND USE A PREQUALIFICATION PROCESS FOR CONTRACTORS. THESE PREQUALIFICATIONS MAY REQUIRE THE CONTRACTOR TO DEMONSTRATE THAT THE CONTRACTOR IS ADEQUATELY BONDED TO PERFORM THE WORK AND THAT THE CONTRACTOR HAS NOT FAILED TO PERFORM ON A PRIOR JOB.

E. THE SELECTED QUALIFIED PROVIDER SHALL PERFORM A STUDY IN ORDER TO ESTABLISH THE EXACT SCOPE OF THE GUARANTEED ENERGY COST SAVINGS CONTRACT, THE FIXED COST SAVINGS GUARANTEE AMOUNT AND THE METHODOLOGY FOR DETERMINING ACTUAL SAVINGS. THE AGENT SHALL REVIEW AND APPROVE THIS REPORT BEFORE THE ACTUAL INSTALLATION OF ANY EQUIPMENT. THE QUALIFIED PROVIDER SHALL TRANSMIT A COPY OF THE APPROVED STUDY TO THE GOVERNOR'S OFFICE OF ENERGY POLICY.

F. THE GUARANTEED ENERGY COST SAVINGS CONTRACT SHALL REQUIRE THAT IN DETERMINING WHETHER THE PROJECTED ENERGY SAVINGS CALCULATIONS HAVE BEEN MET, THE ENERGY COSTS SAVINGS SHALL BE COMPUTED BY COMPARING THE ENERGY BASELINE BEFORE INSTALLATION OR IMPLEMENTATION OF THE ENERGY COST SAVINGS MEASURES WITH THE ENERGY CONSUMED AFTER INSTALLATION OR IMPLEMENTATION OF THE ENERGY

COST SAVINGS MEASURES. THE QUALIFIED PROVIDER AND THE AGENT MAY AGREE TO MAKE MODIFICATIONS TO THE ENERGY BASELINE ONLY FOR ANY OF THE FOLLOWING:

1. CHANGES IN UTILITY RATES.
2. CHANGES IN THE NUMBER OF DAYS IN THE UTILITY BILLING CYCLE.
3. CHANGES IN THE SQUARE FOOTAGE OF THE FACILITY.
4. CHANGES IN THE OPERATIONAL SCHEDULE OF THE FACILITY.
5. CHANGES IN FACILITY TEMPERATURE.
6. SIGNIFICANT CHANGES IN THE WEATHER.
7. SIGNIFICANT CHANGES IN THE AMOUNT OF EQUIPMENT OR LIGHTING UTILIZED IN THE FACILITY.
8. SIGNIFICANT CHANGES IN THE NATURE OR INTENSITY OF ENERGY USE SUCH AS THE CHANGE OF CLASSROOM SPACE TO LABORATORY SPACE.

G. THE INFORMATION TO DEVELOP THE ENERGY BASELINE SHALL BE DERIVED FROM HISTORICAL ENERGY COSTS OR ACTUAL ENERGY MEASUREMENTS OR SHALL BE CALCULATED FROM ENERGY MEASUREMENTS AT THE FACILITY WHERE ENERGY COST SAVINGS MEASURES ARE TO BE INSTALLED OR IMPLEMENTED. THE BASELINE SHALL BE ESTABLISHED BEFORE THE INSTALLATION OR IMPLEMENTATION OF ENERGY COST SAVINGS MEASURES.

H. WHEN SUBMITTING A PROPOSAL FOR THE INSTALLATION OF EQUIPMENT, THE QUALIFIED PROVIDER SHALL INCLUDE INFORMATION ON THE PROJECTED ENERGY SAVINGS ASSOCIATED WITH EACH PROPOSED ENERGY COST SAVINGS MEASURE.

I. AN AGENT, OR TWO OR MORE AGENTS, MAY ENTER INTO A FINANCING AGREEMENT WITH A QUALIFIED PROVIDER OR THE FINANCIAL INSTITUTION, TRUSTEE OR PAYING AGENT FOR THE PURCHASE AND INSTALLATION OR IMPLEMENTATION OF ENERGY COST SAVINGS MEASURES. THE GUARANTEED ENERGY COST SAVINGS CONTRACT MAY PROVIDE FOR PAYMENTS OVER A PERIOD OF NOT MORE THAN THE TERM OF THE CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS. THE CONTRACT SHALL PROVIDE THAT ALL PAYMENTS, EXCEPT OBLIGATIONS ON TERMINATION OF THE CONTRACT BEFORE ITS EXPIRATION, SHALL BE MADE PURSUANT TO THE TERMS OF THE AGREEMENT. IF AN AGENT PURCHASES THE ENERGY COST SAVINGS MEASURE, THE QUALIFIED PROVIDER SHALL GUARANTEE THAT THE ENERGY COST SAVINGS MEET OR EXCEED THE AGENT'S TOTAL COST OF PURCHASE.

J. THE GUARANTEED ENERGY COST SAVINGS CONTRACT SHALL INCLUDE A WRITTEN GUARANTEE OF THE QUALIFIED PROVIDER THAT THE ENERGY COST SAVINGS WILL MEET OR EXCEED THE COSTS OF THE ENERGY COST SAVINGS MEASURES OVER THE TERM OF THE CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS, EXCEPT AS PROVIDED IN SUBSECTION I OF THIS SECTION. THE QUALIFIED PROVIDER SHALL:

1. FOR THE TERM OF THE CONTRACT, PREPARE A MEASUREMENT AND VERIFICATION REPORT ON AN ANNUAL BASIS IN ADDITION TO AN ANNUAL RECONCILIATION OF SAVINGS.
2. REIMBURSE THE AGENT FOR ANY SHORTFALL OF GUARANTEED ENERGY COST SAVINGS ON AN ANNUAL BASIS.
3. USE THE INTERNATIONAL PERFORMANCE AND MEASUREMENT AND VERIFICATION PROTOCOL STANDARDS OR THE FEDERAL ENERGY MANAGEMENT PROGRAM STANDARDS TO VALIDATE THE SAVINGS GUARANTEE.

K. THE AGENT MAY OBTAIN ANY REQUIRED FINANCING AS PART OF THE ORIGINAL COMPETITIVE SEALED PROPOSAL PROCESS FROM THE QUALIFIED PROVIDER OR A THIRD-PARTY FINANCING INSTITUTION.

L. A QUALIFIED PROVIDER THAT IS AWARDED THE CONTRACT SHALL GIVE A SUFFICIENT BOND TO THE AGENT FOR ITS FAITHFUL PERFORMANCE OF THE EQUIPMENT INSTALLMENT.

M. THIS SECTION DOES NOT APPLY TO THE CONSTRUCTION OF NEW BUILDINGS.

N. AN AGENT MAY USE A SIMPLIFIED ENERGY PERFORMANCE CONTRACT FOR PROJECTS LESS THAN FIVE HUNDRED THOUSAND DOLLARS. SIMPLIFIED ENERGY PERFORMANCE CONTRACTS ARE NOT REQUIRED TO INCLUDE AN ENERGY SAVINGS GUARANTEE AND SHALL COMPLY WITH ALL REQUIREMENTS IN THIS SECTION EXCEPT FOR THE REQUIREMENTS THAT ARE SPECIFICALLY RELATED TO THE ENERGY SAVINGS GUARANTEE AND THE MEASUREMENT AND VERIFICATION OF THE GUARANTEED SAVINGS.

O. FOR THE PURPOSES OF THIS SECTION:

1. "AGENT" HAS THE SAME MEANING PRESCRIBED IN SECTION 34-101 BUT ALSO INCLUDES A COMMUNITY COLLEGE DISTRICT ORGANIZED UNDER TITLE 15, CHAPTER 12, THE DEPARTMENT OF ADMINISTRATION AND THE ARIZONA BOARD OF REGENTS.

2. "CONSTRUCTION" MEANS THE PROCESS OF BUILDING, ALTERING, REPAIRING, IMPROVING OR DEMOLISHING ANY STRUCTURE OR BUILDING, OR OTHER PUBLIC IMPROVEMENTS OF ANY KIND TO ANY REAL PROPERTY. CONSTRUCTION DOES NOT INCLUDE THE ROUTINE OPERATION, ROUTINE REPAIR OR ROUTINE MAINTENANCE OF EXISTING STRUCTURES, BUILDINGS OR REAL PROPERTY.

3. "ENERGY BASELINE" MEANS A CALCULATION OF THE AMOUNT OF ENERGY USED IN AN EXISTING FACILITY BEFORE THE INSTALLATION OR IMPLEMENTATION OF THE ENERGY COST SAVINGS MEASURES.

4. "ENERGY COST SAVINGS MEASURE" MEANS A TRAINING PROGRAM OR FACILITY ALTERATION DESIGNED TO REDUCE ENERGY CONSUMPTION AND MAY INCLUDE ONE OR MORE OF THE FOLLOWING, AND ANY RELATED METERS OR OTHER MEASURING DEVICES:

(a) INSULATING THE BUILDING STRUCTURE OR SYSTEMS IN THE BUILDING.

(b) STORM WINDOWS OR DOORS, CAULKING OR WEATHER STRIPPING, MULTIGLAZED WINDOWS OR DOOR SYSTEMS, ADDITIONAL GLAZING, REDUCTIONS IN GLASS AREA, OR OTHER WINDOW AND DOOR SYSTEM MODIFICATIONS THAT REDUCE ENERGY CONSUMPTION.

(c) AUTOMATED OR COMPUTERIZED ENERGY CONTROL SYSTEMS.

(d) HEATING, VENTILATING OR AIR CONDITIONING SYSTEM MODIFICATIONS OR REPLACEMENTS, INCLUDING GROUND SOURCE HEAT PUMPS.

(e) REPLACING OR MODIFYING LIGHTING FIXTURES TO INCREASE THE ENERGY EFFICIENCY OF THE LIGHTING SYSTEM WITHOUT INCREASING THE OVERALL ILLUMINATION OF A FACILITY UNLESS AN INCREASE IN ILLUMINATION IS NECESSARY TO CONFORM TO THE APPLICABLE STATE OR LOCAL BUILDING CODE FOR THE LIGHTING SYSTEM AFTER THE PROPOSED MODIFICATIONS ARE MADE.

(f) INDOOR AIR QUALITY IMPROVEMENTS TO INCREASE AIR QUALITY THAT CONFORM TO THE APPLICABLE STATE OR LOCAL BUILDING CODE REQUIREMENTS.

(g) ENERGY RECOVERY SYSTEMS.

(h) INSTALLING A NEW OR RETROFITTING AN EXISTING DAY LIGHTING SYSTEM.

(i) PROCUREMENT OF LOW-COST UTILITY SUPPLIES OF ALL TYPES, INCLUDING ELECTRICITY, NATURAL GAS, PROPANE AND WATER.

(j) DEVICES THAT REDUCE WATER CONSUMPTION AND WATER COSTS OR THAT REDUCE SEWER CHARGES.

(k) RAINWATER HARVESTING SYSTEMS.

(l) COMBINED HEAT AND POWER SYSTEMS.

(m) RENEWABLE AND ALTERNATIVE ENERGY PROJECTS AND RENEWABLE ENERGY POWER SERVICE AGREEMENTS.

(n) SELF-GENERATION SYSTEMS.

(o) ANY ADDITIONAL BUILDING SYSTEMS AND INFRASTRUCTURE THAT PRODUCE ENERGY, OR THAT PROVIDE UTILITY COST SAVINGS NOT SPECIFICALLY MENTIONED IN THIS PARAGRAPH, IF THE IMPROVEMENTS MEET THE LIFE CYCLE COST REQUIREMENT AND ENHANCE BUILDING SYSTEM PERFORMANCE OR OCCUPANT COMFORT AND SAFETY.

(p) GEOTHERMAL.

5. "LIFE CYCLE COST" MEANS THE SUM OF THE PRESENT VALUES OF INVESTMENT COSTS, CAPITAL COSTS, INSTALLATION COSTS, ENERGY COSTS, OPERATING COSTS, MAINTENANCE COSTS AND DISPOSAL COSTS AND UTILITY REBATES OVER THE LIFE OF THE PROJECT, PRODUCT OR MEASURE AS PROVIDED BY FEDERAL LIFE CYCLE COST RULES, REGULATIONS AND CRITERIA CONTAINED IN THE UNITED STATES DEPARTMENT OF ENERGY FEDERAL ENERGY MANAGEMENT PROGRAM "GUIDANCE ON LIFE-CYCLE COST ANALYSIS" REQUIRED BY EXECUTIVE ORDER 13423, JANUARY 2007.

6. "QUALIFIED PROVIDER" MEANS A PERSON OR A BUSINESS THAT IS EXPERIENCED IN DESIGNING, IMPLEMENTING OR INSTALLING ENERGY COST SAVINGS MEASURES, THAT HAS A RECORD OF ESTABLISHED PROJECTS OR MEASURES OF SIMILAR SIZE AND SCOPE, THAT HAS DEMONSTRATED TECHNICAL, OPERATIONAL, FINANCIAL AND MANAGERIAL CAPABILITIES TO DESIGN AND OPERATE COST SAVINGS MEASURES AND PROJECTS AND THAT HAS THE FINANCIAL ABILITY TO SATISFY GUARANTEES FOR ENERGY COST SAVINGS.

Sec. 10. Repeal

Section 34-201, Arizona Revised Statutes, as amended by Laws 2010, chapter 244, section 24, is repealed.

Sec. 11. Repeal

A. Laws 2009, chapter 101, sections 12, 13 and 14 are repealed.

B. Laws 2010, chapter 117, section 27 is repealed.

Sec. 12. Laws 2010, chapter 244, section 43 is amended to read:

Sec. 43. Effective date

~~A.~~ This act is effective from and after September 30, 2011 ~~except as provided in subsection B of this section~~.

~~B. Section 34-201, Arizona Revised Statutes, as amended by section 24 of this act, is effective from and after June 30, 2013.~~

Sec. 13. Laws 2010, chapter 332, section 38 is amended to read:

Sec. 38. Effective dates

~~A.~~ Sections 15-1781, 15-1782, 15-1783, 15-1784 and 15-1851, Arizona Revised Statutes, as amended by this act, are effective from and after June 30, 2011.

~~B. Section 15-342, Arizona Revised Statutes, as amended by section 10 of this act, is effective from and after June 30, 2013.~~

Sec. 14. Repeal

Laws 2011, chapter 344, section 25 is repealed.

APPROVED BY THE GOVERNOR APRIL 10, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2012.

Passed the House February 29, 2012

by the following vote: 54 Ayes,

0 Nays, 5 Not Voting

Vacant

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate April 3, 2012

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____ day of

_____

at _____ o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2830

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

April 5, 2012,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Speaker of the House

Cheryl Laub

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

5 day of April, 2012,

at 1 o'clock P M.

Secretary to the Governor

Approved this 10th day of

April, 2012,

at 4:14 o'clock P. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this ~~5th~~ 11th day of ~~April~~ April, 20~~12~~ 12

at ~~11:53~~ 8:27 o'clock ~~a~~ a M.

Ken Bennett

Secretary of State

H.B. 2830