

Senate Engrossed House Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 306

HOUSE BILL 2578

AN ACT

AMENDING SECTION 15-213.01, ARIZONA REVISED STATUTES, AS AMENDED BY HOUSE BILL 2830, SECTION 3, FIFTIETH LEGISLATURE, SECOND REGULAR SESSION AND AS TRANSMITTED TO THE GOVERNOR; AMENDING SECTION 15-213.03, ARIZONA REVISED STATUTES, AS ADDED BY HOUSE BILL 2830, SECTION 5, FIFTIETH LEGISLATURE, SECOND REGULAR SESSION AND AS TRANSMITTED TO THE GOVERNOR; AMENDING SECTION 15-910.02, ARIZONA REVISED STATUTES, AS AMENDED BY HOUSE BILL 2830, SECTION 6, FIFTIETH LEGISLATURE, SECOND REGULAR SESSION AND AS TRANSMITTED TO THE GOVERNOR; AMENDING SECTIONS 15-2011, 15-2031 AND 15-2041, ARIZONA REVISED STATUTES; REPEALING SECTIONS 15-2063 AND 15-2092, ARIZONA REVISED STATUTES; AMENDING SECTION 15-2131, ARIZONA REVISED STATUTES; AMENDING SECTION 34-105, ARIZONA REVISED STATUTES, AS ADDED BY HOUSE BILL 2830, SECTION 9, FIFTIETH LEGISLATURE, SECOND REGULAR SESSION AND AS TRANSMITTED TO THE GOVERNOR; RELATING TO SCHOOL BUILDINGS; PROVIDING FOR CONDITIONAL ENACTMENT.

(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, as amended by
3 House Bill 2830, section 3, fiftieth legislature, second regular session and
4 as transmitted to the governor, is amended to read:

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

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

12 B. A school district may enter into a guaranteed energy cost savings
13 contract with a qualified provider if it determines that the energy savings
14 project pays for itself within ~~fifteen years or less~~ THE EXPECTED LIFE,
15 ACCORDING TO THE MANUFACTURER'S EQUIPMENT STANDARDS, OF THE ENERGY COST
16 SAVINGS MEASURES IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT OR
17 TWENTY-FIVE YEARS, WHICHEVER IS SHORTEST, if the recommendations in the
18 proposal are followed. The school district shall retain the cost savings
19 achieved by a guaranteed energy cost saving contract, and these cost savings
20 may be used to pay for the contract and project implementation.

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

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

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

42 F. The guaranteed energy cost savings contract shall require that, in
43 determining whether the projected energy savings calculations have been met,
44 the energy savings shall be computed by comparing the energy baseline before
45 installation or implementation of the energy cost savings measures with the

1 energy consumed after installation or implementation of the energy cost
2 savings measures. The qualified provider and the school district may agree
3 to make modifications to the energy baseline only for any of the following:
4 1. Changes in utility rates.
5 2. Changes in the number of days in the utility billing cycle.
6 3. Changes in the square footage of the facility.
7 4. Changes in the operational schedule of the facility.
8 5. Changes in facility temperature.
9 6. Significant changes in the weather.
10 7. Significant changes in the amount of equipment or lighting utilized
11 in the facility.
12 8. Significant changes in the nature or intensity of energy use such
13 as the change of classroom space to laboratory space.
14 G. The information to develop the energy baseline shall be derived
15 from historical energy costs or actual energy measurements or shall be
16 calculated from energy measurements at the facility where energy cost savings
17 measures are to be installed or implemented. The baseline shall be
18 established before the installation or implementation of energy cost savings
19 measures.
20 H. At the qualified provider's expense, the proposal shall include an
21 independent third-party validation of cost savings calculations associated
22 with each proposed energy cost savings measure by a licensed, registered
23 professional engineer, with credentials from the national association of
24 energy engineers, who has demonstrated experience in energy analysis. The
25 school district must approve the selection of the credentialed engineer.
26 I. A school district, or two or more school districts, may enter into
27 a financing agreement with a qualified provider or the financial institution,
28 trustee or paying agent for the purchase and installation or implementation
29 of energy cost savings measures. The guaranteed energy cost savings contract
30 may provide for payments over a period of not more than ~~fifteen years~~ THE
31 EXPECTED LIFE, ACCORDING TO THE MANUFACTURER'S EQUIPMENT STANDARDS, OF THE
32 ENERGY COST SAVINGS MEASURES IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT
33 OR TWENTY-FIVE YEARS, WHICHEVER IS SHORTEST. The contract shall provide that
34 all payments, except obligations on termination of the contract before its
35 expiration, shall be made pursuant to the terms of the financing
36 agreement. If a school district purchases the energy cost savings measure,
37 the qualified provider shall guarantee that the energy ~~costs~~ COST savings
38 meet or exceed the school district's total cost of the energy savings project
39 purchase.
40 J. The guaranteed energy cost savings contract shall include a written
41 guarantee of the qualified provider that the energy savings will meet or
42 exceed the costs of the energy cost savings measures over the ~~term of the~~
43 ~~contract, which shall not exceed fifteen years~~ EXPECTED LIFE, ACCORDING TO
44 THE MANUFACTURER'S EQUIPMENT STANDARDS, OF THE ENERGY COST SAVINGS MEASURES

1 IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT OR TWENTY-FIVE YEARS,
2 WHICHEVER IS SHORTEST. The qualified provider shall:

3 1. For the term of the guaranteed energy savings contract, prepare a
4 measurement and verification report on an annual basis in addition to an
5 annual reconciliation of savings.

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

8 3. Use the international performance and measurement and verification
9 protocol standards or the federal energy management program standards to
10 validate the savings guarantee.

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

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

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

20 N. For all projects carried out under this section, the district shall
21 report to the governor's office of energy policy and the school facilities
22 board:

23 1. The name of the project.

24 2. The qualified provider.

25 3. The total cost of the project.

26 4. The expected energy cost savings and relevant escalators.

27 5. The agreed on baseline in the measurement and verification
28 agreement in both kilowatt hours and dollars.

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

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

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

39 R. For the purposes of this section:

40 1. "Construction" means the process of building, altering, repairing,
41 improving or demolishing any school district structure or building, or other
42 public improvements of any kind to any school district real property.
43 Construction does not include the routine operation, routine repair or
44 routine maintenance of existing structures, buildings or real property.

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

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

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

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

11 (c) Automated or computerized energy control systems.

12 (d) Heating, ventilating or air conditioning system modifications or
13 replacements, including geothermal.

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

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

21 (g) Energy recovery systems.

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

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

25 (j) Devices that reduce water consumption and water costs or that
26 reduce sewer charges.

27 (k) Rainwater harvesting systems.

28 (l) Combined heat and power systems.

29 (m) Renewable and alternative energy projects and renewable energy
30 power service agreements.

31 (n) Self-generation systems.

32 (o) Any additional building systems and infrastructure that produce
33 energy, or that provide utility cost savings not specifically mentioned in
34 this paragraph, if the improvements meet the life cycle cost requirement and
35 enhance building system performance or occupant comfort and safety, excluding
36 those systems that fall under ~~the provisions of~~ section 15-213.02.

37 (p) Geothermal.

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

40 5. "Life cycle cost" means the sum of present values of investment
41 costs, capital costs, installation costs, energy costs, operating costs,
42 maintenance costs and disposal costs and utility rebates over the life of the
43 project, product or measure as provided by federal life cycle cost rules,
44 regulations and criteria contained in the United States department of energy

1 federal energy management program "guidance on life-cycle cost analysis"
2 required by executive order 13423, January 2007.

3 6. "Qualified provider" means a person or a business that is
4 experienced in designing, implementing or installing energy cost savings
5 measures, that has a record of established projects or measures of similar
6 size and scope, that has demonstrated technical, operational, financial and
7 managerial capabilities to design and operate cost savings measures and
8 projects and that has the financial ability to satisfy guarantees for energy
9 cost savings.

10 Sec. 2. Section 15-213.03, Arizona Revised Statutes, as added by House
11 Bill 2830, section 5, fiftieth legislature, second regular session and as
12 transmitted to the governor, is amended to read:

13 15-213.03. Procurement practices; guaranteed energy production
14 contracts; definitions

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

20 B. The school district shall use objective criteria in selecting the
21 qualified provider, including the guaranteed energy price, the guaranteed
22 energy production, the quality of the technical approach, the quality of the
23 project management plan, the financial solvency of the qualified provider and
24 the experience of the qualified provider with projects of similar size and
25 scope. The school district shall set forth each criterion with its
26 respective numerical weighting in the request for proposal.

27 C. In selecting a contractor to perform any construction work related
28 to performing the guaranteed energy production contract, the qualified
29 provider may develop and use a prequalification process for contractors.
30 These prequalifications may require the contractor to demonstrate that the
31 contractor is adequately bonded to perform the work and that the contractor
32 has not failed to perform on a prior job.

33 D. When submitting a proposal for the installation of equipment, the
34 qualified provider shall include information containing the guaranteed energy
35 production associated with each proposed energy production measure. The
36 school district shall review and approve this guarantee before the actual
37 installation of any equipment. The qualified provider shall transmit a copy
38 of the approved guarantee to the school facilities board and the governor's
39 Office of energy policy.

40 E. A guaranteed energy production contract shall include a guaranteed
41 energy price, and a written guaranteed energy production as measured on an
42 annual basis over the expected life of the energy production measures
43 implemented or within ~~fifteen~~ TWENTY-FIVE years, whichever is shorter. The
44 qualified provider shall:

1 1. Prepare a measurement and verification report on an annual basis in
2 addition to an annual reconciliation of any guaranteed energy production
3 shortfall.

4 2. Reimburse the school district for any guaranteed energy production
5 shortfall on an annual basis by multiplying any energy production shortfall
6 by either the difference between the guaranteed energy price and the
7 effective utility rate, or an alternative method as mutually agreed on by the
8 school district and the provider.

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

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

15 H. The qualified provider is required to make public information in
16 the subcontractor's bids only if the school district awards the qualified
17 provider the guaranteed energy production contract.

18 I. For all projects carried out under this section, the district shall
19 report to the governor's office of energy policy and the school facilities
20 board:

21 1. The name of the project.

22 2. The qualified provider.

23 3. The total cost of the project.

24 4. The expected guaranteed energy production and guaranteed energy
25 price, including relevant escalators, if applicable, over the term of the
26 guaranteed energy production contract.

27 J. For all projects carried out under this section, the district shall
28 report to the school facilities board, by October 15 each year, the actual
29 energy production and guaranteed energy price.

30 K. For the purposes of this section:

31 1. "Actual energy production" means the actual amount of energy that
32 flows from the energy production measure on an annual basis as measured by a
33 meter in kilowatt hours alternating current.

34 2. "Construction" means the process of building, altering, repairing,
35 improving or demolishing any school district structure or building, or other
36 public improvements of any kind to any school district real property.
37 Construction does not include the routine operation, routine repair or
38 routine maintenance of existing structures, buildings or real property.

39 3. "Effective utility rate" means the average price per kilowatt hour
40 that a school district paid to its utility provider for electricity service
41 to the facility that is the subject of the guaranteed energy production
42 contract over the previous twelve months.

43 4. "Energy production measure" means renewable and alternative energy
44 projects or renewable energy power service agreements.

1 5. "Guaranteed energy price" means the agreed on price to be charged
2 to the school for each kilowatt hour alternating current of actual energy
3 production as such may change on an annual basis as set forth in the
4 guaranteed energy production contract.

5 6. "Guaranteed energy production" means the amount of energy, measured
6 in kilowatt hours alternating current, that the qualified provider guarantees
7 for each year of the guaranteed energy production contract.

8 7. "Guaranteed energy production contract" means a contract for
9 implementing one or more energy production measures between one or more
10 qualified providers and a school district.

11 8. "Guaranteed energy production shortfall" means the amount, if any,
12 that the actual energy production is less than the guaranteed energy
13 production in any given year.

14 9. "Qualified provider" means a person or a business that is
15 experienced in designing, implementing or installing energy cost savings
16 measures, that has demonstrated technical, operational, financial and
17 managerial capabilities to design and operate cost savings measures and
18 projects and that has the financial ability to satisfy guarantees for
19 guaranteed energy production, financial solvency and experience for projects
20 of similar size and scope.

21 Sec. 3. Section 15-910.02, Arizona Revised Statutes, as amended by
22 House Bill 2830, section 6, fiftieth legislature, second regular session and
23 as transmitted to the governor, is amended to read:

24 15-910.02. Energy and water savings accounts

25 A. Each school district may establish an energy and water savings
26 account that consists of a designated pool of capital investment monies to
27 fund energy or water saving projects in school facilities. A school district
28 may deposit in the account monies generated from the energy or water savings
29 projects or measures implemented in school facilities. A school district may
30 use monies in the energy and water savings account for payments under a
31 performance contract entered into pursuant to section 15-213 or 15-213.01.

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

37 C. Monies deposited in an energy and water savings account shall be
38 used as a designated pool of capital investment monies to pay for the
39 incremental cost of energy or water savings measures in school facilities
40 that are owned by the school district. Any contract entered into pursuant to
41 this section shall contain an agreement between the qualified provider and
42 the energy or water services company that both parties have performed a
43 reasonable investigation to determine that the measures contemplated by the
44 contract will result in stated energy or water savings. Contract terms may
45 extend the period of the capital investment repayment schedule prescribed in

1 subsection G of this section up to the ~~term of the guaranteed energy savings~~
2 ~~contract, which shall not exceed fifteen years~~ EXPECTED LIFE, ACCORDING TO
3 THE MANUFACTURER'S EQUIPMENT STANDARDS, OF THE ENERGY COST SAVINGS MEASURES
4 IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT OR TWENTY-FIVE YEARS,
5 WHICHEVER IS SHORTEST.

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

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

14 2. Payment of principal, interest, related financing costs and
15 prepayment premiums.

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

18 F. Before the implementation of the energy or water savings measures
19 or services, the qualified provider, ~~OR energy or water services company~~
20 shall compute, and the school district shall review and approve, the
21 estimated amount of the energy or water savings and the associated impact on
22 energy or water costs to be achieved by the school district on an annual and
23 monthly basis over the term of the guaranteed energy savings contract and
24 shall include these estimates in the contract. The qualified provider and the
25 school district shall update the annual and monthly energy or water savings
26 and associated cost impact estimates annually based on actual experience for
27 the term of the guaranteed energy savings contract.

28 G. Before the implementation of the energy or water savings measures
29 or services, the qualified provider or financial institution, trustee or
30 paying agent and the school district shall jointly develop a schedule of
31 monthly or another mutually agreed on interval of payments for repayment of
32 the capital investment monies. The repayment schedule shall result in lower
33 energy or water costs, which shall include the total cost of all the
34 installed energy or water savings measures for the school district over the
35 ~~term of the guaranteed energy savings contract, which shall not exceed~~
36 ~~fifteen years~~ EXPECTED LIFE, ACCORDING TO THE MANUFACTURER'S EQUIPMENT
37 STANDARDS, OF THE ENERGY COST SAVINGS MEASURES IMPLEMENTED, THE TERM OF THE
38 FINANCIAL AGREEMENT OR TWENTY-FIVE YEARS, WHICHEVER IS SHORTEST. The
39 repayment schedule shall be included in the contract.

40 H. The school district shall transfer on a monthly basis the amount of
41 the monthly payment prescribed pursuant to subsection G of this section to
42 the energy and water savings account from the maintenance and operation
43 portion of the school district's budget to repay any unpaid balance of the
44 capital investment previously deposited in the energy and water savings
45 account from the qualified provider, ~~OR energy or water services company~~

1 plus a reasonable carrying charge. For the period of time that the company's
2 capital investment monies and reasonable carrying charge remain unpaid, the
3 qualified provider,— OR energy or water services company shall provide a
4 separate billing or billing component to repay the capital investment on a
5 monthly basis, pursuant to the repayment schedule prescribed pursuant to
6 subsection G of this section, which shall be paid by the school district from
7 the energy and water savings account. The school district's general budget
8 limit shall be reduced by the amount of monies transferred to the energy and
9 water savings account pursuant to this section.

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

16 J. Any monies associated with an energy or water savings project
17 remaining in the energy and water savings account after the capital
18 investment monies of the qualified provider,— OR energy or water services
19 company plus a reasonable carrying charge are repaid in full may be
20 transferred to the maintenance and operation portion of the school district's
21 budget, and the general budget limit may be increased by the amount
22 transferred.

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

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

35 M. School districts may deposit monies from other funding sources in
36 the energy and water savings account to fund energy or water saving projects
37 in school facilities. These monies shall be repaid in a manner consistent
38 with this section and pursuant to the contract between the school district
39 and the provider of the funding.

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

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

1 2. For a school district that provides instruction to up to eight
2 hundred pupils in grades seven and eight, eighty-four square feet per pupil
3 in grades seven and eight.

4 3. For a school district that provides instruction to more than eight
5 hundred pupils in grades seven and eight, eighty square feet per pupil in
6 grades seven and eight or sixty-seven thousand two hundred square feet,
7 whichever is more.

8 4. For a school district that provides instruction to up to four
9 hundred pupils in grades nine through twelve, one hundred twenty-five square
10 feet per pupil in grades nine through twelve.

11 5. For a school district that provides instruction to more than four
12 hundred and up to one thousand pupils in grades nine through twelve, one
13 hundred twenty square feet per pupil in grades nine through twelve or fifty
14 thousand square feet, whichever is more.

15 6. For a school district that provides instruction to more than one
16 thousand and up to one thousand eight hundred pupils in grades nine through
17 twelve, one hundred twelve square feet per pupil in grades nine through
18 twelve or one hundred twenty thousand square feet, whichever is more.

19 7. For a school district that provides instruction to more than one
20 thousand eight hundred pupils in grades nine through twelve, ninety-four
21 square feet per pupil in grades nine through twelve or two hundred one
22 thousand six hundred square feet, whichever is more.

23 D. The school facilities board may modify the square footage
24 requirements prescribed in subsection C of this section or modify the amount
25 of monies awarded to cure the square footage deficiency pursuant to this
26 section for particular school districts based on extraordinary circumstances
27 for any of the following considerations:

28 1. The number of pupils served by the school district.

29 2. Geographic factors.

30 3. Grade configurations other than those prescribed in subsection C of
31 this section.

32 E. In measuring the square footage per pupil requirements of
33 subsection C of this section, the school facilities board shall:

34 1. Use the most recent one hundredth day average daily membership.

35 2. For each school, use the lesser of either:

36 (a) Total gross square footage.

37 (b) Student capacity multiplied by the appropriate square footage per
38 pupil prescribed by subsection C of this section.

39 3. Consider the total space available in all schools in use in the
40 school district, except that the school facilities board shall allow an
41 exclusion of the square footage for certain schools and the pupils within the
42 schools' boundaries if the school district demonstrates to the board's
43 satisfaction unusual or excessive busing of pupils or unusual attendance
44 boundary changes between schools.

1 4. Compute the gross square footage of all buildings by measuring from
2 exterior wall to exterior wall. Square footage used solely for district
3 administration, storage of vehicles and other nonacademic purposes shall be
4 excluded from the gross square footage.

5 5. Include all portable and modular buildings.

6 6. Include in the ~~gross~~ NET square footage new construction funded
7 wholly or partially by the school facilities board based on the square
8 footage funded by the school facilities board. If the new construction is to
9 exceed the square footage funded by the school facilities board, the excess
10 square footage shall not be included in the ~~gross~~ NET square footage if any
11 of the following applies:

12 (a) The excess square footage was constructed before July 1, 2002 or
13 funded by a class B bond, impact aid revenue bond or capital outlay override
14 approved by the voters after August 1, 1998 and before June 30, 2002 or
15 funded from unrestricted capital outlay expended before June 30, 2002.

16 (b) The excess square footage of new school facilities does not exceed
17 twenty-five per cent of the minimum square footage requirements pursuant to
18 subsection C of this section.

19 (c) The excess square footage of expansions to school facilities does
20 not exceed twenty-five per cent of the minimum square footage requirements
21 pursuant to subsection C of this section.

22 7. Require that excess square footage that is constructed after July
23 1, 2002 and that is not excluded pursuant to paragraph 6 of this subsection
24 meets the minimum school facility adequacy guidelines in order to be eligible
25 for building renewal monies as computed in section 15-2031.

26 8. Exclude square footage built under a developer agreement according
27 to section 15-342, paragraph 33 until the school facilities board provides
28 funding for the square footage under section 15-2041, subsection 0.

29 F. The school facilities board shall adopt rules establishing minimum
30 school facility adequacy guidelines. ~~The executive director of the school~~
31 ~~facilities board shall report monthly to the joint committee on capital~~
32 ~~review on the progress of the development of the proposed rules establishing~~
33 ~~the guidelines. The joint committee on capital review shall review the~~
34 ~~proposed guidelines before the school facilities board adopts the rules to~~
35 ~~establish the minimum school facility adequacy guidelines. The guidelines~~
36 shall provide the minimum quality and quantity of school buildings and
37 facilities and equipment necessary and appropriate to enable pupils to
38 achieve the academic standards pursuant to section 15-203, subsection A,
39 paragraphs 12 and 13 and sections 15-701 and 15-701.01. At a minimum, the
40 school facilities board shall address all of the following in developing
41 these guidelines:

- 42 1. School sites.
- 43 2. Classrooms.
- 44 3. Libraries and media centers, or both.
- 45 4. Cafeterias.

- 1 5. Auditoriums, multipurpose rooms or other multiuse space.
- 2 6. Technology.
- 3 7. Transportation.
- 4 8. Facilities for science, arts and physical education.
- 5 9. Other facilities and equipment that are necessary and appropriate
- 6 to achieve the academic standards prescribed pursuant to section 15-203,
- 7 subsection A, paragraphs 12 and 13 and sections 15-701 and 15-701.01.
- 8 10. Appropriate combinations of facilities or uses listed in this
- 9 section.

10 G. The board shall consider the facilities and equipment of the
11 schools with the highest academic productivity scores, as prescribed in
12 section 15-2002, subsection A, paragraph 9, subdivision (d), and the highest
13 parent quality ratings in the establishment of the guidelines.

14 H. The school facilities board may consider appropriate combinations
15 of facilities or uses in making assessments of and curing existing
16 deficiencies pursuant to section 15-2002, subsection A, paragraph 1 and in
17 certifying plans for new school facilities pursuant to section 15-2002,
18 subsection A, paragraph 5.

19 I. For the purposes of this section, "student capacity" means the
20 capacity adjusted to include any additions to or deletions of space,
21 including modular or portable buildings at the school. The school facilities
22 board shall determine the student capacity for each school in conjunction
23 with each school district, recognizing each school's allocation of space as
24 of July 1, 1998, to achieve the academic standards prescribed pursuant to
25 section 15-203, subsection A, paragraphs 12 and 13 and sections 15-701 and
26 15-701.01.

27 Sec. 5. Section 15-2031, Arizona Revised Statutes, is amended to read:
28 15-2031. Building renewal fund; definitions

29 A. A building renewal fund is established consisting of monies
30 appropriated by the legislature. The school facilities board shall
31 administer the fund and distribute monies to school districts for the purpose
32 of maintaining the adequacy of existing school facilities. Monies in the
33 fund are continuously appropriated and are exempt from the provisions of
34 section 35-190 relating to lapsing of appropriations.

35 B. The school facilities board shall inventory and inspect all school
36 buildings in this state in order to develop a database to administer the
37 building renewal formula. The database shall include the student capacity of
38 the building as determined by the school facilities board. The board shall
39 distribute monies from the building renewal fund to school districts in an
40 amount computed pursuant to subsection I of this section. A school district
41 that receives monies from the building renewal fund shall use the monies
42 first for any projects that fall below the minimum school facility adequacy
43 guidelines, as adopted by the school facilities board pursuant to section
44 15-2011, and that are part of any buildings in the database and second for

1 any other projects that are part of any buildings owned by the school
2 district for any of the following:

3 1. Major renovations and repairs of a building.
4 2. Upgrading systems and areas that will maintain or extend the useful
5 life of the building.

6 3. Infrastructure costs.
7 4. Relocation and placement of portable and modular buildings.

8 C. Monies received from the building renewal fund shall be used for
9 primary projects, unless only secondary projects exist.

10 D. Notwithstanding subsections B and C of this section, school
11 districts shall use building renewal monies on secondary projects to comply
12 with building, health, fire or safety codes. Before spending building
13 renewal monies on secondary projects to comply with building, health, fire or
14 safety codes, the school facilities board shall approve the projects.

15 E. Monies received from the building renewal fund shall not be used
16 for any of the following purposes:

17 1. New construction.
18 2. Remodeling interior space for aesthetic or preferential reasons.
19 3. Exterior beautification.
20 4. Demolition.

21 5. The purchase of soft capital items pursuant to section 15-962,
22 subsection D.

23 6. Routine maintenance except as provided in section 15-2002,
24 subsection K and subsection L of this section.

25 F. The school facilities board shall maintain the building renewal
26 database and use the database for the computation of the building renewal
27 formula distributions. The board shall ensure that the database is updated
28 on at least an annual basis to reflect changes in the ages and value of
29 school buildings. The facilities listed in the database shall include only
30 those buildings that are owned by school districts that are required to meet
31 academic standards. Each school district shall report to the school
32 facilities board no later than October 15 of each year the number and type of
33 school buildings owned by the district, the square footage of each building,
34 the age of each building, the nature of any renovations ~~completed~~ and the
35 cost of any renovations ~~completed~~. The school facilities board may review or
36 audit, or both, to confirm the information submitted by a school district.
37 If a joint technical education district leases a building from a school
38 district, that building shall not be included in the school district's square
39 footage calculation for the purposes of determining the school district's
40 building renewal distribution pursuant to this section. The board shall
41 adjust the age of each school facility in the database whenever a building is
42 significantly upgraded or remodeled. The age of a building that has been
43 significantly upgraded or remodeled shall be recomputed as follows:

44 1. Divide the cost of the renovation by the building capacity value of
45 the building determined in subsection I, paragraph 3 of this section.

1 2. Multiply the quotient determined in paragraph 1 of this subsection
2 by the currently listed age of the building in the database.

3 3. Subtract the product determined in paragraph 2 of this subsection
4 from the currently listed age of the building in the database, rounded to the
5 nearest whole number. If the result is negative, use zero.

6 G. The school facilities board shall submit electronically an annual
7 report to the president of the senate, the speaker of the house of
8 representatives, the Arizona state library, archives and public records and
9 the governor by October 1 that includes the computation of the amount of
10 monies to be distributed from the building renewal fund for the current
11 fiscal year. The joint committee on capital review shall review the school
12 facilities board's calculation of the building renewal fund distributions.
13 After the joint committee on capital review reviews the distributions
14 computed by the school facilities board, the school facilities board shall
15 distribute the monies from the building renewal fund to school districts in
16 two equal installments in November and May of each year.

17 H. School districts that receive monies from the building renewal fund
18 shall establish a district building renewal fund and shall use the monies in
19 the district building renewal fund only for the purposes prescribed in
20 subsection B of this section. Ending cash balances in a school district's
21 building renewal fund may be used in following fiscal years for building
22 renewal pursuant to subsection B of this section. By October 15 of each
23 year, each school district shall report to the school facilities board the
24 projects funded at each school in the previous fiscal year with monies from
25 the district building renewal fund, including the amount of expenditures
26 dedicated to primary projects and to secondary projects. On receipt of these
27 reports, the school facilities board shall forward this information to the
28 joint legislative budget committee staff and the governor's office of
29 strategic planning and budgeting staff. Each school district shall also
30 report to the school facilities board an accounting of the monies remaining
31 in the district building renewal fund at the end of the previous fiscal year
32 and a comprehensive three year plan that details the proposed use of building
33 renewal monies. If a school district fails to submit the report by October
34 15 or the information required by subsection F of this section, the school
35 facilities board shall withhold building renewal monies from the school
36 district until the school facilities board determines that the school
37 district has complied with the reporting requirement. When the school
38 facilities board determines that the school district has complied with the
39 reporting requirement, the school facilities board shall restore the full
40 amount of withheld building renewal monies to the school district.

41 I. Notwithstanding any other provision of this chapter, if a school
42 district converts space that is listed in the database maintained pursuant to
43 this section to space that will be used for administrative purposes, the
44 school district is responsible for any costs associated with the conversion,

1 maintenance and replacement of that space. The building renewal amount for
2 each school building shall be computed as follows:

3 1. Divide the age of the building as computed pursuant to subsection F
4 of this section by one thousand two hundred seventy-five or, in the case of
5 modular or portable buildings, by two hundred ten.

6 2. Multiply the quotient determined in paragraph 1 of this subsection
7 by 0.67.

8 3. Determine the building capacity value as follows:

9 (a) Multiply the student capacity of the building by the per student
10 square foot capacity established by section 15-2041.

11 (b) Multiply the product determined in subdivision (a) by the cost per
12 square foot established by section 15-2041.

13 4. Multiply the product determined in paragraph 2 of this subsection
14 by the product determined in paragraph 3, subdivision (b) of this subsection.

15 J. If the school facilities board determines that a school district
16 has spent monies from the building renewal fund for purposes other than those
17 prescribed in subsection B of this section, the school facilities board shall
18 notify the superintendent of public instruction. Notwithstanding any other
19 law, the superintendent of public instruction shall withhold a corresponding
20 amount from the monies that would otherwise be due the school district under
21 the capital outlay revenue limit until these monies are repaid.

22 K. A school district is not entitled to receive monies from the
23 building renewal fund for any buildings that are to be replaced with new
24 buildings that are funded with deficiencies corrections monies. The
25 replacement buildings are not eligible to receive building renewal funding
26 until the fiscal year following the completion of the building.

27 L. Notwithstanding subsections B and E of this section, a school
28 district may use eight per cent of the building renewal amount computed
29 pursuant to subsection I of this section for routine preventative
30 maintenance. The board, after consultation with maintenance specialists in
31 school districts, shall provide examples of recommended services that are
32 routine preventative maintenance.

33 M. A school district that uses building renewal monies for routine
34 preventative maintenance shall use the building renewal monies to supplement
35 and not supplant expenditures from other funds for the maintenance of school
36 buildings. The auditor general shall prescribe a method for determining
37 compliance with the requirements of this subsection. A school district, in
38 connection with any audit conducted by a certified public accountant, shall
39 also contract for an independent audit to determine whether the school
40 district used building renewal monies to reduce the school district's
41 existing level of routine preventative maintenance funding. The auditor
42 general may conduct discretionary reviews of a school district that is not
43 required to contract for an independent audit.

1 N. For the purposes of this section:

2 1. "Primary projects" means projects that are necessary for buildings
3 owned by school districts that are required to meet the academic standards
4 listed in the database maintained pursuant to subsection F of this section
5 and that fall below the minimum school facility adequacy guidelines, as
6 adopted by the school facilities board pursuant to section 15-2011.

7 2. "Routine preventative maintenance" means services that are
8 performed on a regular schedule at intervals ranging from four times a year
9 to once every three years and that are intended to extend the useful life of
10 a building system and reduce the need for major repairs.

11 3. "Secondary projects" means all projects that are not primary
12 projects.

13 4. "Student capacity" has the same meaning prescribed in section
14 15-2011.

15 Sec. 6. Section 15-2041, Arizona Revised Statutes, is amended to read:
16 15-2041. New school facilities fund; capital plan; report

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

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

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

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

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

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

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

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

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

44 5. If a school district pays tuition for all or a portion of the
45 school district's high school pupils to another school district, the capital

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

6 C. If the capital plan indicates a need for a new school or an
7 addition to an existing school within the next four years or a need for land
8 within the next ten years, the school district shall submit its plan to the
9 school facilities board by September 1 and shall request monies from the new
10 school facilities fund for the new construction or land. The school
11 facilities board may require a school district to sell land that was
12 previously purchased entirely with monies provided by the school facilities
13 board if the school facilities board determines that the property is no
14 longer needed within the ten year period specified in this subsection for a
15 new school or no longer needed within that ten year period for an addition to
16 an existing school. Monies provided for land shall be in addition to any
17 monies provided pursuant to subsection D of this section.

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

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

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

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

44 (a) Determine the number of pupils requiring additional square footage
45 to meet building adequacy standards. This amount for elementary schools

1 shall not be less than the number of new pupils for whom space will be needed
2 in the next year and shall not exceed the number of new pupils for whom space
3 will be needed in the next five years. This amount for middle and high
4 schools shall not be less than the number of new pupils for whom space will
5 be needed in the next four years and shall not exceed the number of new
6 pupils for whom space will be needed in the next eight years.

7 (b) Multiply the number of pupils determined in subdivision (a) of
8 this paragraph by the square footage per pupil. The square footage per pupil
9 is ninety square feet per pupil for preschool children with disabilities,
10 kindergarten programs and grades one through six, one hundred square feet for
11 grades seven and eight, one hundred thirty-four square feet for a school
12 district that provides instruction in grades nine through twelve for fewer
13 than one thousand eight hundred pupils and one hundred twenty-five square
14 feet for a school district that provides instruction in grades nine through
15 twelve for at least one thousand eight hundred pupils. The total number of
16 pupils in grades nine through twelve in the district shall determine the
17 square footage factor to use for net new pupils. The school facilities board
18 may modify the square footage requirements prescribed in this subdivision for
19 particular schools based on any of the following factors:

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

22 (ii) Geographic factors.

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

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

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

42 (d) Once the school district governing board obtains approval from the
43 school facilities board for new facility construction funds, additional
44 portable or modular square footage created for the express purpose of
45 providing temporary space for pupils until the completion of the new facility

1 shall not be included by the school facilities board for the purpose of new
2 construction funding calculations. On completion of the new facility
3 construction project, if the portable or modular facilities continue in use,
4 the portable or modular facilities shall be included as prescribed by this
5 chapter, unless the school facilities board approves their continued use for
6 the purpose of providing temporary space for pupils until the completion of
7 the next new facility that has been approved for funding from the new school
8 facilities fund.

9 4. For projects approved after December 31, 2001, and notwithstanding
10 paragraph 3 of this subsection, a unified school district that does not have
11 a high school is not eligible to receive high school space as prescribed by
12 section 15-2011 and this section unless the unified district qualifies for
13 geographic factors prescribed by paragraph 3, subdivision (b), item (ii) of
14 this subsection.

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

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

36 F. The school facilities board shall distribute the monies needed for
37 land for new schools so that land may be purchased at a price that is less
38 than or equal to fair market value and in advance of the construction of the
39 new school. If necessary, the school facilities board may distribute monies
40 for land to be leased for new schools if the duration of the lease exceeds
41 the life expectancy of the school facility by at least fifty per cent. A
42 school district shall not use land purchased or partially purchased with
43 monies provided by the school facilities board for a purpose other than a
44 site for a school facility without obtaining prior written approval from the
45 school facilities board. A school district shall not lease, sell or take any

1 action that would diminish the value of land purchased or partially purchased
2 with monies provided by the school facilities board without obtaining prior
3 written approval from the school facilities board. The proceeds derived
4 through the sale of any land purchased or partially purchased, OR THE SALE OF
5 BUILDINGS FUNDED OR PARTIALLY FUNDED, with monies provided by the school
6 facilities board shall be returned to the state fund from which it was
7 appropriated and to any other participating entity on a proportional basis.
8 Except as provided in section 15-342, paragraph 33, if a school district
9 acquires real property by donation at an appropriate school site approved by
10 the school facilities board, the school facilities board shall distribute an
11 amount equal to twenty per cent of the fair market value of the donated real
12 property that can be used for academic purposes. The school district shall
13 place the monies in the unrestricted capital outlay fund and increase the
14 unrestricted capital budget limit by the amount of monies placed in the fund.
15 Monies distributed under this subsection shall be distributed from the new
16 school facilities fund. A school district that receives monies from the new
17 school facilities fund for a donation of land pursuant to section 15-342,
18 paragraph 33 shall not receive monies from the school facilities board for
19 the donation of real property pursuant to this subsection. A school district
20 shall not pay a consultant a percentage of the value of any of the following:
21 1. Donations of real property, services or cash from any of the
22 following:
23 (a) Entities that have offered to provide construction services to the
24 school district.
25 (b) Entities that have been contracted to provide construction
26 services to the school district.
27 (c) Entities that build residential units in that school district.
28 (d) Entities that develop land for residential use in that school
29 district.
30 2. Monies received from the school facilities board on behalf of the
31 school district.
32 3. Monies paid by the school facilities board on behalf of the school
33 district.
34 G. In addition to distributions to school districts based on pupil
35 growth projections, a school district may submit an application to the school
36 facilities board for monies from the new school facilities fund if one or
37 more school buildings have outlived their useful life. If the school
38 facilities board determines that the school district needs to build a new
39 school building for these reasons, the school facilities board shall remove
40 the square footage computations that represent the building from the
41 computation of the school district's total square footage for purposes of
42 this section. If the square footage recomputation reflects that the school
43 district no longer meets building adequacy standards, the school district
44 qualifies for a distribution of monies from the new school construction
45 formula in an amount determined pursuant to subsection D of this section.

1 Buildings removed from a school district's total square footage pursuant to
2 this subsection shall not be included in the computation of monies from the
3 building renewal fund established by section 15-2031. The school facilities
4 board may only modify the base cost per square foot prescribed in this
5 subsection under extraordinary circumstances for geographic factors or site
6 conditions.

7 H. School districts that receive monies from the new school facilities
8 fund shall establish a district new school facilities fund and shall use the
9 monies in the district new school facilities fund only for the purposes
10 prescribed in this section. By October 15 of each year, each school district
11 shall report to the school facilities board the projects funded at each
12 school in the previous fiscal year with monies from the district new school
13 facilities fund and shall provide an accounting of the monies remaining in
14 the new school facilities fund at the end of the previous fiscal year.

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

23 J. The board's consideration of any application filed after December
24 31 of the year in which the property becomes territory in the vicinity of a
25 military airport or ancillary military facility as defined in section 28-8461
26 for monies to fund the construction of new school facilities proposed to be
27 located in territory in the vicinity of a military airport or ancillary
28 military facility shall include, if after notice is transmitted to the
29 military airport pursuant to section 15-2002 and before the public hearing
30 the military airport provides comments and an analysis concerning
31 compatibility of the proposed school facilities with the high noise or
32 accident potential generated by military airport or ancillary military
33 facility operations that may have an adverse effect on public health and
34 safety, consideration and analysis of the comments and analysis provided by
35 the military airport before making a final determination.

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

41 L. The school facilities board shall establish a separate account in
42 the new school facilities fund designated as the litigation account to pay
43 attorney fees, expert witness fees and other costs associated with litigation
44 in which the school facilities board pursues the recovery of damages for
45 deficiencies correction that resulted from alleged construction defects or

1 design defects that the school facilities board believes caused or
2 contributed to a failure of the school building to conform to the building
3 adequacy requirements prescribed in section 15-2011. Attorney fees paid
4 pursuant to this subsection shall not exceed the market rate for similar
5 types of litigation. On or before December 1 of each year, the school
6 facilities board shall report to the joint committee on capital review the
7 costs associated with current and potential litigation that may be paid from
8 the litigation account.

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

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

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

43 Sec. 7. Repeal

44 Sections 15-2063 and 15-2092, Arizona Revised Statutes, are repealed.

1 Sec. 8. Section 15-2131, Arizona Revised Statutes, is amended to read:
2 15-2131. Definitions

3 In this article, unless the context otherwise requires:

4 1. "HVAC system" means the equipment, distribution network and
5 terminals that provide, either collectively or individually, the process of
6 heating, ventilation or air conditioning to a building.

7 2. "School activity hours" means the time of day in which students or
8 school personnel occupy school facilities.

9 3. "Standard 62" means the AMERICAN NATIONAL STANDARDS
10 INSTITUTE/American society of heating, ~~ventilating, refrigeration~~
11 REFRIGERATING and air conditioning engineers standard ~~62~~ 62.1 entitled
12 "ventilation for acceptable indoor air quality".

13 Sec. 9. Section 34-105, Arizona Revised Statutes, as added by House
14 Bill 2830, section 9, fiftieth legislature, second regular session and as
15 transmitted to the governor, is amended to read:

16 34-105. Guaranteed energy savings contracts; definitions

17 A. An agent may contract for the procurement of a guaranteed energy
18 cost savings contract with a qualified provider.

19 B. An agent may enter into a guaranteed energy cost savings contract
20 with a qualified provider if the agent determines that the amount the agent
21 would spend on the energy cost savings measures recommended in the proposal
22 would not exceed the amount to be saved in energy costs over the ~~term of the~~
23 ~~contract, which shall not exceed fifteen years~~ EXPECTED LIFE, ACCORDING TO
24 THE MANUFACTURER'S EQUIPMENT STANDARDS, OF THE ENERGY COST SAVINGS MEASURES
25 IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT OR TWENTY-FIVE YEARS,
26 WHICHEVER IS SHORTEST, after the date that installation or implementation is
27 complete, if the recommendations in the proposal are followed. An agent
28 shall retain the cost savings achieved by a guaranteed energy cost saving
29 contract, and these cost savings may be used to pay for the contract and
30 project implementation.

31 C. An agent shall use objective criteria in selecting the qualified
32 provider, including the cost of the contract, the energy savings, the net
33 projected energy savings, the quality of the technical approach, the quality
34 of the project management plan, the financial solvency of the qualified
35 provider and the experience of the qualified provider with projects of
36 similar size and scope. An agent shall state each criterion with its
37 relevant order of importance in the request for proposal.

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

1 E. The selected qualified provider shall perform a study in order to
2 establish the exact scope of the guaranteed energy cost savings contract, the
3 fixed cost savings guarantee amount and the methodology for determining
4 actual savings. The agent shall review and approve this report before the
5 actual installation of any equipment. The qualified provider shall transmit
6 a copy of the approved study to the governor's office of energy policy.

7 F. The guaranteed energy cost savings contract shall require that in
8 determining whether the projected energy savings calculations have been met,
9 the energy costs savings shall be computed by comparing the energy baseline
10 before installation or implementation of the energy cost savings measures
11 with the energy consumed after installation or implementation of the energy
12 cost savings measures. The qualified provider and the agent may agree to
13 make modifications to 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 8. Significant changes in the nature or intensity of energy use such
23 as the change of classroom space to laboratory space.

24 G. The information to develop the energy baseline shall be derived
25 from historical energy costs or actual energy measurements or shall be
26 calculated from energy measurements at the facility where energy cost savings
27 measures are to be installed or implemented. The baseline shall be
28 established before the installation or implementation of energy cost savings
29 measures.

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

33 I. An agent, or two or more agents, may enter into a financing
34 agreement with a qualified provider or the financial institution, trustee or
35 paying agent for the purchase and installation or implementation of energy
36 cost savings measures. The guaranteed energy cost savings contract may
37 provide for payments over a period of not more than the ~~term of the contract,~~
38 ~~which shall not exceed fifteen years~~ EXPECTED LIFE, ACCORDING TO THE
39 MANUFACTURER'S EQUIPMENT STANDARDS, OF THE ENERGY COST SAVINGS MEASURES
40 IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT OR TWENTY-FIVE YEARS,
41 WHICHEVER IS SHORTEST. The contract shall provide that all payments, except
42 obligations on termination of the contract before its expiration, shall be
43 made pursuant to the terms of the agreement. If an agent purchases the
44 energy cost savings measure, the qualified provider shall guarantee that the
45 energy cost savings meet or exceed the agent's total cost of purchase.

1 J. The guaranteed energy cost savings contract shall include a written
2 guarantee of the qualified provider that the energy cost savings will meet or
3 exceed the costs of the energy cost savings measures over the ~~term of the~~
4 ~~contract, which shall not exceed fifteen years~~ EXPECTED LIFE, ACCORDING TO
5 THE MANUFACTURER'S EQUIPMENT STANDARDS, OF THE ENERGY COST SAVINGS MEASURES
6 IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT OR TWENTY-FIVE YEARS,
7 WHICHEVER IS SHORTEST, except as provided in subsection I of this section.
8 The qualified provider shall:

9 1. For the term of the contract, prepare a measurement and
10 verification report on an annual basis in addition to an annual
11 reconciliation of savings.

12 2. Reimburse the agent for any shortfall of guaranteed energy cost
13 savings on an annual basis.

14 3. Use the international performance and measurement and verification
15 protocol standards or the federal energy management program standards to
16 validate the savings guarantee.

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

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

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

24 N. An agent may use a simplified energy performance contract for
25 projects less than five hundred thousand dollars. Simplified energy
26 performance contracts are not required to include an energy savings guarantee
27 and shall comply with all requirements in this section except for the
28 requirements that are specifically related to the energy savings guarantee
29 and the measurement and verification of the guaranteed savings.

30 O. For the purposes of this section:

31 1. "Agent" has the same meaning prescribed in section 34-101 but also
32 includes a community college district organized under title 15, chapter 12,
33 the department of administration and the Arizona board of regents.

34 2. "Construction" means the process of building, altering, repairing,
35 improving or demolishing any structure or building, or other public
36 improvements of any kind to any real property. Construction does not include
37 the routine operation, routine repair or routine maintenance of existing
38 structures, buildings or real property.

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

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

- 1 (a) Insulating the building structure or systems in the building.
- 2 (b) Storm windows or doors, caulking or weather stripping, multiglazed
- 3 windows or door systems, additional glazing, reductions in glass area, or
- 4 other window and door system modifications that reduce energy consumption.
- 5 (c) Automated or computerized energy control systems.
- 6 (d) Heating, ventilating or air conditioning system modifications or
- 7 replacements, including ground source heat pumps.
- 8 (e) Replacing or modifying lighting fixtures to increase the energy
- 9 efficiency of the lighting system without increasing the overall illumination
- 10 of a facility unless an increase in illumination is necessary to conform to
- 11 the applicable state or local building code for the lighting system after the
- 12 proposed modifications are made.
- 13 (f) Indoor air quality improvements to increase air quality that
- 14 conform to the applicable state or local building code requirements.
- 15 (g) Energy recovery systems.
- 16 (h) Installing a new or retrofitting an existing day lighting system.
- 17 (i) Procurement of low-cost utility supplies of all types, including
- 18 electricity, natural gas, propane and water.
- 19 (j) Devices that reduce water consumption and water costs or that
- 20 reduce sewer charges.
- 21 (k) Rainwater harvesting systems.
- 22 (l) Combined heat and power systems.
- 23 (m) Renewable and alternative energy projects and renewable energy
- 24 power service agreements.
- 25 (n) Self-generation systems.
- 26 (o) Any additional building systems and infrastructure that produce
- 27 energy, or that provide utility cost savings not specifically mentioned in
- 28 this paragraph, if the improvements meet the life cycle cost requirement and
- 29 enhance building system performance or occupant comfort and safety.
- 30 (p) Geothermal.
- 31 5. "Life cycle cost" means the sum of the present values of investment
- 32 costs, capital costs, installation costs, energy costs, operating costs,
- 33 maintenance costs and disposal costs and utility rebates over the life of the
- 34 project, product or measure as provided by federal life cycle cost rules,
- 35 regulations and criteria contained in the united states department of energy
- 36 federal energy management program "guidance on life-cycle cost analysis"
- 37 required by executive order 13423, January 2007.
- 38 6. "Qualified provider" means a person or a business that is
- 39 experienced in designing, implementing or installing energy cost savings
- 40 measures, that has a record of established projects or measures of similar
- 41 size and scope, that has demonstrated technical, operational, financial and
- 42 managerial capabilities to design and operate cost savings measures and
- 43 projects and that has the financial ability to satisfy guarantees for energy
- 44 cost savings.

1 Sec. 10. Conditional enactment

2 A. Section 15-213.01, Arizona Revised Statutes, as amended by this
3 act, is not effective unless section 15-213.01, Arizona Revised Statutes, as
4 amended by House Bill 2830, section 3, fiftieth legislature, second regular
5 session and as transmitted to the governor, becomes law.

6 B. Section 15-213.03, Arizona Revised Statutes, as amended by this
7 act, is not effective unless section 15-213.03, Arizona Revised Statutes, as
8 added by House Bill 2830, section 5, fiftieth legislature, second regular
9 session and as transmitted to the governor, becomes law.

10 C. Section 15-910.02, Arizona Revised Statutes, as amended by this
11 act, is not effective unless section 15-910.02, Arizona Revised Statutes, as
12 amended by House Bill 2830, section 6, fiftieth legislature, second regular
13 session and as transmitted to the governor, becomes law.

14 D. Section 34-105, Arizona Revised Statutes, as amended by this act,
15 is not effective unless section 34-105, Arizona Revised Statutes, as added by
16 House Bill 2830, section 9, fiftieth legislature, second regular session and
17 as transmitted to the governor, becomes law.

APPROVED BY THE GOVERNOR MAY 7, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 8, 2012.

Passed the House February 28, 2012

by the following vote: 56 Ayes,

0 Nays, 3 Not Voting
1 vacant

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate April 12, 2012

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

[Signature]
President of the Senate

[Signature]
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. 2578

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 30, 2012,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

W. M. Tor
Speaker of the House

Cheryl Laube
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

30th day of April, 2012,

at 4:30 o'clock P M.

Carolee Wynn
Secretary to the Governor

Approved this 7th day of

May, 2012,

at 4:35 o'clock P. M.

Janice K. Brewer
Governor of Arizona

H.B. 2578

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 8th day of May, 2012

at 8:25 o'clock a M.

John Blumenthal
Secretary of State