

Senate Engrossed House Bill

FILED

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SECRETARY OF STATE

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CHAPTER 320
HOUSE BILL 2219

AN ACT

AMENDING SECTIONS 15-213.01, 15-910.02, 15-995, 15-1107, 15-2011 AND
15-2041, ARIZONA REVISED STATUTES; RELATING TO SCHOOL FINANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

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

11 B. A school district may enter into a guaranteed energy cost
12 savings contract with a qualified provider if it determines that the
13 energy savings project pays for itself within the expected life, according
14 to the manufacturer's equipment standards, of the energy cost savings
15 measures implemented, the term of the financial agreement or twenty-five
16 years, whichever is shortest, if the recommendations in the proposal are
17 followed. The school district shall retain the cost savings achieved by a
18 guaranteed energy cost ~~saving~~ SAVINGS contract, and these cost savings may
19 be used to pay for the contract and project implementation.

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

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

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

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

1 with the energy consumed after installation or implementation of the
2 energy cost savings measures. The qualified provider and the school
3 district may agree to make modifications to the energy baseline only for
4 any of the following:

- 5 1. Changes in utility rates.
- 6 2. Changes in the number of days in the utility billing cycle.
- 7 3. Changes in the square footage of the facility.
- 8 4. Changes in the operational schedule of the facility.
- 9 5. Changes in facility temperature.
- 10 6. Significant changes in the weather.
- 11 7. Significant changes in the amount of equipment or lighting
12 ~~utilized~~ USED in the facility.

13 8. Significant changes in the nature or intensity of energy use,
14 such as the change of classroom space to laboratory space.

15 G. The information to develop the energy baseline shall be derived
16 from historical energy costs or actual energy measurements or shall be
17 calculated from energy measurements at the facility where energy cost
18 savings measures are to be installed or implemented. The baseline shall
19 be established before the installation or implementation of energy cost
20 savings measures.

21 H. At the qualified provider's expense, the proposal shall include
22 an independent third-party validation of cost savings calculations
23 associated with each proposed energy cost savings measure by a licensed,
24 registered professional engineer, with credentials from the national
25 association of energy engineers, who has demonstrated experience in energy
26 analysis. The school district must approve the selection of the
27 credentialed engineer.

28 I. A school district, or two or more school districts, may enter
29 into a financing agreement with a qualified provider or the financial
30 institution, trustee or paying agent for the purchase and installation or
31 implementation of energy cost savings measures. The guaranteed energy
32 cost savings contract may provide for payments over a period of not more
33 than the expected life, according to the manufacturer's equipment
34 standards, of the energy cost savings measures implemented, the term of
35 the financial agreement or twenty-five years, whichever is shortest. The
36 contract shall provide that all payments, except obligations on
37 termination of the contract before its expiration, shall be made pursuant
38 to the terms of the financing agreement. If a school district purchases
39 the energy cost savings measure, the qualified provider shall guarantee
40 that the energy cost savings meet or exceed the school district's total
41 cost of the energy savings project purchase.

42 J. The guaranteed energy cost savings contract shall include a
43 written guarantee of the qualified provider that the energy savings will
44 meet or exceed the costs of the energy cost savings measures over the

1 expected life, according to the manufacturer's equipment standards, of the
2 energy cost savings measures implemented, the term of the financial
3 agreement or twenty-five years, whichever is shortest. The qualified
4 provider shall:

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

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

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

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

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

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

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

- 26 1. The name of the project.
- 27 2. The NAME OF THE qualified provider.
- 28 3. The total cost of the project.
- 29 4. The expected energy cost savings and relevant escalators.
- 30 5. The ~~agreed on~~ AGREED-ON baseline in the measurement and
31 verification agreement in both kilowatt hours and dollars.

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

35 ~~P.~~ O. This section does not apply to the construction of new
36 buildings.

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

1 ~~R.~~ Q. For the purposes of this section:

2 1. "Construction" means the process of building, altering,
3 repairing, improving or demolishing any school district structure or
4 building, or other public improvements of any kind to any school district
5 real property. Construction does not include the routine operation,
6 routine repair or routine maintenance of existing structures, buildings or
7 real property.

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

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

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

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

20 (c) Automated or computerized energy control systems.

21 (d) Heating, ventilating or air conditioning system modifications
22 or replacements, including geothermal.

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

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

30 (g) Energy recovery systems.

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

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

35 (j) Devices that reduce water consumption and water costs or that
36 reduce sewer charges.

37 (k) Rainwater harvesting systems.

38 (l) Combined heat and power systems.

39 (m) Renewable and alternative energy projects and renewable energy
40 power service agreements.

41 (n) Self-generation systems.

42 (o) Any additional building systems and infrastructure that produce
43 energy, or that provide utility cost savings not specifically mentioned in
44 this paragraph, if the improvements meet the ~~life cycle~~ LIFE-CYCLE cost

1 requirement and enhance building system performance or occupant comfort
2 and safety, excluding those systems that fall under section 15-213.02.

3 (p) Geothermal.

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

6 5. "~~Life cycle~~ LIFE-CYCLE cost" means the sum of present values of
7 investment costs, capital costs, installation costs, energy costs,
8 operating costs, maintenance costs and disposal costs and utility rebates
9 over the life of the project, product or measure as provided by federal
10 ~~life cycle~~ LIFE-CYCLE cost rules, regulations and criteria contained in
11 the United States department of energy federal energy management program
12 "guidance on life-cycle cost analysis" required by executive order 13423,
13 January 2007.

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

21 Sec. 2. Section 15-910.02, Arizona Revised Statutes, is amended to
22 read:

23 15-910.02. Energy and water savings accounts

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

32 B. The auditor general and the department of education shall
33 prescribe the appropriate designation of the energy and water savings
34 accounts in the uniform system of financial records and shall prescribe
35 reporting requirements on the appropriate budget forms and annual
36 financial report 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
41 to this section shall contain an agreement between the qualified provider
42 and the energy or water services company that both parties have performed
43 a reasonable investigation to determine that the measures contemplated by
44 the contract will result in stated energy or water savings. Contract

1 terms may extend the period of the capital investment repayment schedule
2 prescribed in subsection G of this section up to the expected life,
3 according to the manufacturer's equipment standards, of the energy cost
4 savings measures implemented, the term of the financial agreement or
5 twenty-five years, whichever is shortest.

6 D. Expenditures from an energy and water savings account shall be
7 used 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
10 facilities that are owned by the school district. Monies may be used
11 pursuant to this paragraph to provide technical assistance regarding
12 energy or water savings to school districts by a qualified provider or
13 energy or water services 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
17 or services with monies distributed from the energy and water savings
18 accounts.

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

30 G. Before the implementation of the energy or water savings
31 measures or services, the qualified provider or financial institution,
32 trustee or paying agent and the school district shall jointly develop a
33 schedule of monthly or another mutually ~~agreed on~~ AGREED-ON interval of
34 payments for repayment of the capital investment monies. The repayment
35 schedule shall result in lower energy or water costs, which shall include
36 the total cost of all the installed energy or water savings measures for
37 the school district over the expected life, according to the
38 manufacturer's equipment standards, of the energy cost savings measures
39 implemented, the term of the financial agreement or twenty-five years,
40 whichever is shortest. The repayment schedule shall be included in the
41 contract.

42 H. The school district shall transfer ~~on a monthly basis~~ the amount
43 of the ~~monthly~~ payment prescribed pursuant to subsection G of this section
44 to the energy and water savings account from the maintenance and operation

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

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

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

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

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

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

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

5 ~~0. For all projects carried out under this section, the district~~
6 ~~shall report to the school facilities board:~~

7 ~~1. The name of the project.~~

8 ~~2. The qualified provider.~~

9 ~~3. The total cost of the project.~~

10 ~~4. The expected energy cost savings and relevant escalators.~~

11 ~~5. The agreed on baseline in the measurement and verification~~
12 ~~agreement in both kilowatt hours and dollars.~~

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

16 Sec. 3. Section 15-995, Arizona Revised Statutes, is amended to
17 read:

18 15-995. Special district assessment for adjacent ways by
19 school district

20 A. The governing board of a school district may contract for
21 constructing, maintaining or otherwise improving any public way adjacent
22 to any parcel of land owned by the school district or leased for school
23 purposes by the school district, or an intersection of any public way
24 adjoining a quarter block in which the parcel of land is situated, and for
25 the construction of sidewalks, sewers, utility lines, roadways and other
26 related improvements in or along such streets and intersections, and to
27 pay for such improvements by the levy of a special assessment on the
28 taxable property in the school district. A school district shall not use
29 any portion of the monies generated from the special assessment for any
30 construction, maintenance or other improvements to the school district's
31 property except improvements necessary to ensure the safe ingress to and
32 egress from public school property directly adjacent to the public way for
33 buses and fire equipment. The assessment shall be made a part of the
34 itemized statement that is regularly filed with the county school
35 superintendent and that shows the amount of monies needed for the expenses
36 of schools within the school district for the ensuing year. Each adjacent
37 ways project proposal to be funded through this special assessment must be
38 filed with the school facilities board and include the project cost
39 estimate. If the entire project cost for the adjacent ways project is
40 greater than fifty thousand dollars, THE SCHOOL FACILITIES BOARD SHALL
41 APPROVE OR DENY THE PROJECT WITHIN SIXTY DAYS AFTER RECEIPT OF THE FILING
42 OF THE PROJECT PROPOSAL BY THE SCHOOL DISTRICT AND the expenditure shall
43 not be made unless the school facilities board validates both of the
44 following within sixty days after RECEIPT OF THE filing OF the proposal:

1 1. The project that is proposed to be funded by the assessment is
2 in compliance with state laws relating to adjacent ways projects.

3 2. The proposal selected by the school district does not contain
4 additional work that is not listed in the adjacent ways proposal submitted
5 by the school district.

6 B. If any property that is owned by a school district or leased by
7 a school district for school purposes from any city or county, the state
8 or the United States is included within the assessment district to be
9 assessed to pay the costs and expenses of any public improvements
10 initiated by a city, in order to make the assessments thereon payable by
11 the city in which the improvement is initiated, the governing board may
12 contract with the municipality or its improvement district to reimburse it
13 for the amount of the assessment against the property and to pay the
14 amount so contracted for by the levy of a special assessment as provided
15 by subsection A of this section.

16 C. The governing board of the school district shall follow the
17 truth in taxation notice and hearing requirements prescribed in section
18 15-905.01, subsection B.

19 D. The portion of the primary tax rate to fund adjacent ways as
20 provided in this section shall not be included in the computation of
21 additional state aid for education as prescribed in section 15-972.

22 Sec. 4. Section 15-1107, Arizona Revised Statutes, is amended to
23 read:

24 15-1107. Litigation recovery fund; disposition of proceeds

25 A. Monies received for and derived from settlement of legal
26 controversies or from recovery of costs, attorney fees or damages by a
27 school district in litigation by or against the school district shall be
28 deposited with the county treasurer who shall credit the deposits to the
29 litigation recovery fund of the school district. The litigation recovery
30 fund is a continuing fund that is not subject to reversion.

31 B. If a school district receives monies as provided in subsection A
32 of this section for the purpose of replacing or repairing school buildings
33 or other school property, the governing board, or the superintendent or
34 chief administrative officer with the approval of the governing board, may
35 ~~only~~ apply the proceeds ONLY to:

36 1. REIMBURSE THE SCHOOL FACILITIES BOARD BUILDING RENEWAL GRANT
37 FUND ESTABLISHED BY SECTION 15-2032 OR THE EMERGENCY DEFICIENCIES
38 CORRECTION FUND ESTABLISHED BY SECTION 15-2022 TO THE EXTENT THAT MONIES
39 WERE RECEIVED BY THE SCHOOL DISTRICT FROM THE SCHOOL FACILITIES BOARD FOR
40 REPLACING OR REPAIRING SCHOOL BUILDINGS OR OTHER SCHOOL PROPERTY THAT WAS
41 THE SUBJECT OF THE DISPUTE AND THE MONIES RECOVERED BY THE SCHOOL DISTRICT
42 PURSUANT TO SUBSECTION A OF THIS SECTION ARE DESIGNATED FOR THE
43 REPLACEMENT OR REPAIR. THE SCHOOL DISTRICT SHALL PRIORITIZE THE
44 REIMBURSEMENT OF THE SCHOOL FACILITIES BOARD, IF APPLICABLE.

1 ~~1.~~ 2. Pay any outstanding bonded indebtedness of the school
2 district that is payable from the levy of taxes on property within the
3 school district.

4 ~~2.~~ 3. Construct, acquire, improve, repair or furnish school
5 buildings after notice. If the proceeds are applied to a project that
6 costs more than two hundred fifty thousand dollars, the governing board,
7 or the superintendent or chief administrative officer with the approval of
8 the governing board, may apply the proceeds after notice and a hearing.

9 ~~3.~~ 4. Replace or repair the school property other than school
10 buildings.

11 C. Except as provided in subsection B of this section, the
12 governing board, or the superintendent or chief administrative officer
13 with the approval of the governing board, may apply the proceeds of
14 litigation recoveries to procure legal services or for the costs of
15 litigation.

16 Sec. 5. Section 15-2011, Arizona Revised Statutes, is amended to
17 read:

18 15-2011. Minimum school facility adequacy requirements;
19 definition

20 A. The school facilities board, as determined and prescribed in
21 this chapter, shall provide funding to school districts for new
22 construction as the number of pupils in the district fills the existing
23 school facilities and requires more pupil space.

24 B. School buildings in a school district are adequate if all of the
25 following requirements are met:

26 1. The buildings contain sufficient and appropriate space and
27 equipment that comply with the minimum school facility adequacy guidelines
28 established pursuant to subsection F of this section. The state shall not
29 fund facilities for elective courses that require the school district
30 facilities to exceed minimum school facility adequacy requirements. The
31 school facilities board shall determine whether a school building meets
32 the requirements of this paragraph by analyzing the total square footage
33 that is available for each pupil in conjunction with the need for
34 specialized spaces and equipment.

35 2. The buildings are in compliance with federal, state and local
36 building and fire codes and laws that are applicable to the particular
37 building, except that a school with an aggregate area of less than five
38 thousand square feet is subject to permitting and inspection by a local
39 fire marshal and is only subject to regulation or inspection by the state
40 fire marshal if the county, city or town in which the school is located
41 does not employ a local fire marshal. An existing school building is not
42 required to comply with current requirements for new buildings unless this
43 compliance is specifically mandated by law or by the building or fire code
44 of the jurisdiction where the building is located.

1 3. The building systems, including roofs, plumbing, telephone
2 systems, electrical systems, heating systems and cooling systems, are in
3 working order and are capable of being properly maintained.

4 4. The buildings are structurally sound.

5 C. The standards that shall be used by the school facilities board
6 to determine whether a school building meets the minimum adequate gross
7 square footage requirements are as follows:

8 1. For a school district that provides instruction to pupils in
9 programs for preschool children with disabilities, kindergarten programs
10 and grades one through six, eighty square feet per pupil in programs for
11 preschool children with disabilities, kindergarten programs and grades one
12 through six.

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

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

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

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

27 6. For a school district that provides instruction to more than one
28 thousand and up to one thousand eight hundred pupils in grades nine
29 through twelve, one hundred twelve square feet per pupil in grades nine
30 through twelve or one hundred twenty thousand square feet, whichever is
31 more.

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

36 D. The school facilities board may modify the square footage
37 requirements prescribed in subsection C of this section or modify the
38 amount of monies awarded to cure the square footage deficiency pursuant to
39 this section for particular school districts based on extraordinary
40 circumstances for any of the following considerations:

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

42 2. Geographic factors.

43 3. Grade configurations other than those prescribed in subsection C
44 of this section.

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

3 1. Use the ~~most recent one hundredth day~~ average daily membership
4 THROUGH THE FIRST ONE HUNDRED DAYS IN SESSION.

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

6 (a) Total gross square footage.

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

9 3. Consider the total space available in all schools in use in the
10 school district, except that the school facilities board shall allow an
11 exclusion of the square footage for certain schools and the pupils within
12 the schools' boundaries if the school district demonstrates to the board's
13 satisfaction unusual or excessive busing of pupils or unusual attendance
14 boundary changes between schools.

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

19 5. Include all portable and modular buildings.

20 6. Include in the net square footage new construction funded wholly
21 or partially by the school facilities board based on the square footage
22 funded by the school facilities board. If the new construction is to
23 exceed the square footage funded by the school facilities board, the
24 excess square footage shall not be included in the net square footage if
25 any of the following applies:

26 (a) The excess square footage was constructed before July 1, 2002
27 or funded by a class B bond, impact aid revenue bond or capital outlay
28 override approved by the voters after August 1, 1998 and before June 30,
29 2002 or funded from unrestricted capital outlay expended before June 30,
30 2002.

31 (b) The excess square footage of new school facilities does not
32 exceed twenty-five percent of the minimum square footage requirements
33 pursuant to subsection C of this section.

34 (c) The excess square footage of expansions to school facilities
35 does not exceed twenty-five percent of the minimum square footage
36 requirements pursuant to subsection C of this section.

37 7. Exclude square footage built under a developer agreement
38 according to section 15-342, paragraph 33 until the school facilities
39 board provides funding for the square footage under section 15-2041,
40 subsection 0.

41 8. Include square footage that a school district has leased to
42 another entity.

43 F. The school facilities board shall adopt rules establishing
44 minimum school facility adequacy guidelines. The guidelines shall provide

1 the minimum quality and quantity of school buildings and facilities and
2 equipment necessary and appropriate to enable pupils to achieve the
3 academic standards pursuant to section 15-203, subsection A, paragraphs 12
4 and 13 and sections 15-701 and 15-701.01. At a minimum, the school
5 facilities board shall address all of the following in developing these
6 guidelines:

- 7 1. School sites.
- 8 2. Classrooms.
- 9 3. Libraries and media centers, or both.
- 10 4. Cafeterias.
- 11 5. Auditoriums, multipurpose rooms or other multiuse space.
- 12 6. Technology.
- 13 7. Transportation.
- 14 8. Facilities for science, arts and physical education.
- 15 9. Other facilities and equipment that are necessary and
16 appropriate to achieve the academic standards prescribed pursuant to
17 section 15-203, subsection A, paragraphs 12 and 13 and sections 15-701 and
18 15-701.01.
- 19 10. Appropriate combinations of facilities or uses listed in this
20 section.

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

25 H. The school facilities board may consider appropriate
26 combinations of facilities or uses in making assessments of and curing
27 existing deficiencies pursuant to section 15-2002, subsection A, paragraph
28 1 and in certifying plans for new school facilities pursuant to section
29 15-2002, subsection A, paragraph 5.

30 I. For the purposes of this section, "student capacity" means the
31 capacity adjusted to include any additions to or deletions of space,
32 including modular or portable buildings at the school. The school
33 facilities board shall determine the student capacity for each school in
34 conjunction with each school district, recognizing each school's
35 allocation of space as of July 1, 1998, to achieve the academic standards
36 prescribed pursuant to section 15-203, subsection A, paragraphs 12 and 13
37 and sections 15-701 and 15-701.01.

38 Sec. 6. Section 15-2041, Arizona Revised Statutes, is amended to
39 read:

40 15-2041. New school facilities fund; capital plan; report

41 A. ~~A~~ THE new school facilities fund is established consisting of
42 monies appropriated by the legislature and monies credited to the fund
43 pursuant to section 37-221. The school facilities board shall administer
44 the fund and distribute monies, as a continuing appropriation, to school

1 districts for the purpose of constructing new school facilities and for
2 contracted expenses pursuant to section 15-2002, subsection B, paragraphs
3 2, 3 and 4. On June 30 of each fiscal year, any unobligated contract
4 monies in the new school facilities fund shall be transferred to the
5 capital reserve fund established by section 15-2003.

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

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

12 2. A description of new schools or additions to existing schools
13 needed to meet the building adequacy standards prescribed in section
14 15-2011. The description shall include:

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

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

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

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

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

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

32 C. If the capital plan indicates a need for a new school or an
33 addition to an existing school within the next four years or a need for
34 land within the next ten years, the school district shall submit its plan
35 to the school facilities board by September 1 and shall request monies
36 from the new school facilities fund for the new construction or land. The
37 school facilities board may require a school district to sell land that
38 was previously purchased entirely with monies provided by the school
39 facilities board if the school facilities board determines that the
40 property is no longer needed within the ten-year period specified in this
41 subsection for a new school or no longer needed within that ten-year
42 period for an addition to an existing school. Monies provided for land
43 shall be in addition to any monies provided pursuant to subsection D of
44 this section.

1 D. The school facilities board shall distribute monies from the new
2 school facilities fund FOR ADDITIONAL SQUARE FOOTAGE as follows:

3 1. The school facilities board shall review and evaluate the
4 enrollment projections. On or before March 1, following the submission of
5 the enrollment projections, the school facilities board shall either
6 approve the projections as submitted or revise the projections. In
7 approving or revising the enrollment projections, the school facilities
8 board shall use the most recent average daily membership data available.
9 On request from the school facilities board, the department of education
10 shall make available the most recent average daily membership data for use
11 in revising the enrollment projections. In determining new construction
12 requirements, the school facilities board shall determine the net new
13 growth of pupils that will require additional square footage that exceeds
14 the building adequacy standards prescribed in section 15-2011. If the
15 projected growth and the existing number of pupils exceed three hundred
16 fifty pupils who are served in a school district other than the pupil's
17 resident school district, the school facilities board, the receiving
18 school district and the resident school district shall develop a capital
19 facilities plan on how to best serve those pupils. A small isolated
20 school district as defined in section 15-901 is not required to develop a
21 capital facilities plan pursuant to this paragraph.

22 2. If the approved projections indicate that additional space would
23 not have been needed during the current school year in order to meet the
24 building adequacy standards prescribed in section 15-2011, the request
25 shall be held for consideration by the school facilities board for
26 possible future funding and the school district shall annually submit an
27 updated plan until the additional space is needed.

28 3. If the approved projections indicate that additional space would
29 have been needed during the current school year in order to meet the
30 building adequacy standards prescribed in section 15-2011, the school
31 facilities board shall provide an amount as follows:

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

41 (b) Multiply the number of pupils determined in subdivision (a) of
42 this paragraph by the square footage per pupil. The square footage per
43 pupil is ninety square feet per pupil for preschool children with
44 disabilities, kindergarten programs and grades one through six, one

1 hundred square feet for grades seven and eight, one hundred thirty-four
2 square feet for a school district that provides instruction in grades nine
3 through twelve for fewer than one thousand eight hundred pupils and one
4 hundred twenty-five square feet for a school district that provides
5 instruction in grades nine through twelve for at least one thousand eight
6 hundred pupils. The total number of pupils in grades nine through twelve
7 in the district shall determine the square footage factor to use for net
8 new pupils. The school facilities board may modify the square footage
9 requirements prescribed in this subdivision for particular schools based
10 on any of the following factors:

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

13 (ii) Geographic factors.

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

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

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

33 (d) Once the school district governing board obtains approval from
34 the school facilities board for new facility construction monies,
35 additional portable or modular square footage created for the express
36 purpose of providing temporary space for pupils until the completion of
37 the new facility AND ANY ADDITIONAL SPACE FUNDED BY THE SCHOOL DISTRICT
38 shall not be included by the school facilities board for the purpose of
39 new construction funding calculations. On completion of the new facility
40 construction project, ANY ADDITIONAL SPACE FUNDED BY THE SCHOOL DISTRICT
41 SHALL BE INCLUDED AS PRESCRIBED BY THIS CHAPTER AND, if the portable or
42 modular facilities continue in use, the portable or modular facilities
43 shall be included as prescribed by this chapter, unless the school
44 facilities board approves their continued use for the purpose of providing

1 temporary space for pupils until the completion of the next new facility
2 that has been approved for funding from the new school facilities fund.

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

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

13 6. If a school district leases a building to another entity, that
14 building shall be included in the school district's square footage
15 calculation for purposes of new construction pursuant to this section.

16 7. A school district shall qualify for monies from the new school
17 facilities fund FOR ADDITIONAL SQUARE FOOTAGE in a fiscal year only if the
18 school facilities board has approved or revised its enrollment projection
19 under paragraph 3 of this subsection on or before March 1 of the prior
20 fiscal year.

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

38 F. The school facilities board shall distribute the monies needed
39 for land for new schools so that land may be purchased at a price that is
40 less than or equal to fair market value and in advance of the construction
41 of the new school. If necessary, the school facilities board may
42 distribute monies for land to be leased for new schools if the duration of
43 the lease exceeds the life expectancy of the school facility by at least
44 fifty percent. A school district shall not use land purchased or

1 partially purchased with monies provided by the school facilities board
2 for a purpose other than a site for a school facility without obtaining
3 prior written approval from the school facilities board. A school
4 district shall not lease, sell or take any action that would diminish the
5 value of land purchased or partially purchased with monies provided by the
6 school facilities board without obtaining prior written approval from the
7 school facilities board. The proceeds derived through the sale of any
8 land purchased or partially purchased, or the sale of buildings funded or
9 partially funded, with monies provided by the school facilities board
10 shall be returned to the state fund from which it was appropriated and to
11 any other participating entity on a proportional basis. Except as
12 provided in section 15-342, paragraph 33, if a school district acquires
13 real property by donation at an appropriate school site approved by the
14 school facilities board, the school facilities board shall distribute an
15 amount equal to twenty percent of the fair market value of the donated
16 real property that can be used for academic purposes. The school district
17 shall place the monies in the unrestricted capital outlay fund and
18 increase the unrestricted capital budget limit by the amount of monies
19 placed in the fund. Monies distributed under this subsection shall be
20 distributed from the new school facilities fund. A school district that
21 receives monies from the new school facilities fund for a donation of land
22 pursuant to section 15-342, paragraph 33 shall not receive monies from the
23 school facilities board for the donation of real property pursuant to this
24 subsection. A school district shall not pay a consultant a percentage of
25 the value of any of the following:

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

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

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

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

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

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

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

39 G. In addition to distributions to school districts based on pupil
40 growth projections, a school district may submit an application to the
41 school facilities board for monies from the new school facilities fund if
42 one or more school buildings have outlived their useful life. If the
43 school facilities board determines that the school district needs to build
44 a new school building for these reasons, the school facilities board shall

1 remove the square footage computations that represent the building from
2 the computation of the school district's total square footage for purposes
3 of this section. If the square footage recomputation reflects that the
4 school district no longer meets building adequacy standards, the school
5 district qualifies for a distribution of monies from the new school
6 construction formula in an amount determined pursuant to subsection D of
7 this section. The school facilities board may only modify the base cost
8 per square foot prescribed in this subsection under extraordinary
9 circumstances for geographic factors or site conditions.

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

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

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

41 K. If a school district uses its own project manager for new school
42 construction, the members of the school district governing board and the
43 project manager shall sign an affidavit stating that the members and the

1 project manager understand and will follow the minimum adequacy
2 requirements prescribed in section 15-2011.

3 L. The school facilities board shall establish a separate account
4 in the new school facilities fund designated as the litigation account to
5 pay attorney fees, expert witness fees and other costs associated with
6 litigation in which the school facilities board pursues the recovery of
7 damages for deficiencies correction that resulted from alleged
8 construction defects or design defects that the school facilities board
9 believes caused or contributed to a failure of the school building to
10 conform to the building adequacy requirements prescribed in section
11 15-2011. Attorney fees paid pursuant to this subsection shall not exceed
12 the market rate for similar types of litigation. On or before December 1
13 of each year, the school facilities board shall report to the joint
14 committee on capital review the costs associated with current and
15 potential litigation that may be paid from the litigation account.

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

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

32 O. If a school district constructs new square footage according to
33 section 15-342, paragraph 33, the school facilities board shall review the
34 design plans and location of any new school facility submitted by school
35 districts and another party to determine whether the design plans comply
36 with the adequacy standards prescribed in section 15-2011 and the square
37 footage per pupil requirements pursuant to subsection D, paragraph 3,
38 subdivision (b) of this section. When the school district qualifies for a
39 distribution of monies from the new school facilities fund according to
40 this section, the school facilities board shall distribute monies to the
41 school district from the new school facilities fund for the square footage
42 constructed under section 15-342, paragraph 33 at the same cost per square
43 foot established by this section that was in effect at the time of the
44 beginning of the construction of the school facility. Before the school

1 facilities board distributes any monies pursuant to this subsection, the
2 school district shall demonstrate to the school facilities board that the
3 facilities to be funded pursuant to this section meet the minimum adequacy
4 standards prescribed in section 15-2011. The agreement entered into
5 pursuant to section 15-342, paragraph 33 shall set forth the procedures
6 for the allocation of these funds to the parties that participated in the
7 agreement.

8 P. Accommodation schools are not eligible for monies from the new
9 school facilities fund.

10 Q. IF THE SCHOOL FACILITIES BOARD APPROVES A SCHOOL DISTRICT FOR
11 FUNDING FROM THE NEW SCHOOL FACILITIES FUND AND THE FULL LEGISLATIVE
12 APPROPRIATION IS NOT AVAILABLE TO THE SCHOOL DISTRICT IN THE FISCAL YEAR
13 FOLLOWING THE APPROVAL BY THE SCHOOL FACILITIES BOARD, THE SCHOOL DISTRICT
14 MAY USE ANY LEGALLY AVAILABLE MONIES TO PAY FOR THE LAND OR THE NEW
15 CONSTRUCTION PROJECT APPROVED BY THE SCHOOL FACILITIES BOARD AND MAY
16 REIMBURSE THE FUND FROM WHICH THE MONIES WERE USED IN SUBSEQUENT YEARS
17 WITH LEGISLATIVE APPROPRIATIONS WHEN THOSE APPROPRIATIONS ARE MADE
18 AVAILABLE BY THIS STATE.

APPROVED BY THE GOVERNOR MAY 22 ,2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 22, 2017.



Passed the House February 21, 20 17

Passed the Senate April 26, 20 17

by the following vote: 58 Ayes,

by the following vote: 27 Ayes,

0 Nays, 2 Not Voting

0 Nays, 3 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

Pro Tempore

[Signature]
Chief Clerk of the House

[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. 2219

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

_____ May 8 _____, 20 17,

by the following vote: _____ 59 _____ Ayes,

_____ 0 _____ Nays, _____ 1 _____ Not Voting

_____ [Signature] _____
Speaker of the House
No Tempore

_____ [Signature] _____
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ 8th _____ day of May _____, 20 17,

at _____ 3:37 _____ o'clock _____ P. _____ M.

_____ [Signature] _____
Secretary to the Governor

Approved this _____ 22nd _____ day of

_____ May _____, 20 17,

at _____ 1:37 _____ o'clock _____ P. _____ M.

_____ [Signature] _____
Governor of Arizona

H.B. 2219

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ 22 _____ day of May _____, 20 17,

at _____ 6:34 _____ o'clock _____ P. _____ M.

_____ [Signature] _____
Secretary of State