

REFERENCE TITLE: schools; energy contracts

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2332

Introduced by
Representative Boone

AN ACT

AMENDING SECTIONS 15-213, 15-213.01 AND 15-342, ARIZONA REVISED STATUTES;
AMENDING TITLE 15, CHAPTER 9, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING
SECTION 15-910.02; AMENDING SECTION 34-201, ARIZONA REVISED STATUTES;
RELATING TO SCHOOL DISTRICTS.

(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, Arizona Revised Statutes, is amended to
3 read:

4 15-213. Procurement practices of school districts and charter
5 schools; definitions

6 A. The state board of education shall adopt rules prescribing
7 procurement practices for all school districts in this state as follows:

8 1. The state board shall submit to the auditor general proposed rules
9 consistent with the procurement practices prescribed in title 41, chapter 23,
10 modifying the provisions for public notice of invitation for bids, requests
11 for proposals and requests for qualifications to allow a governing board to
12 give public notice of the invitation for bids, requests for proposals and
13 requests for qualifications by publication in the official newspaper of the
14 county as defined in section 11-255, modifying the provisions relating to
15 disposal of materials to comply with section 15-342, paragraph 18, providing
16 for governing board delegation of procurement authority and modifying as
17 necessary other provisions which the state board determines are not
18 appropriate for school districts. The rules shall include provisions
19 specifying that school districts are not required to engage in competitive
20 bidding in order to make the decision to participate in programs pursuant to
21 section 15-382 and that a program authorized by section 15-382 is not
22 required to engage in competitive bidding for the services necessary to
23 administer the program or for purchase of insurance or reinsurance. The
24 rules for procurement of construction projects shall include provisions
25 specifying that surety bonds furnished as bid security and performance and
26 payment bonds shall be executed and furnished as required by title 34,
27 chapter 2 or 6, as applicable. The rules shall specify the total cost of a
28 procurement that is subject to invitations for bids, requests for proposals
29 and requests for clarification. The state board shall not exceed the
30 aggregate dollar amount limits for procurements prescribed in section
31 41-2535.

32 2. The state board of education shall adopt rules for procurements
33 involving construction not exceeding one hundred fifty thousand dollars which
34 shall be known as the simplified school construction procurement program. At
35 a minimum, the rules for a simplified construction procurement program shall
36 require that:

37 (a) A list be maintained by each county school superintendent of
38 persons who desire to receive solicitations to bid on construction projects
39 to which additions shall be permitted throughout the year.

40 (b) The list of persons be available for public inspection.

41 (c) A performance bond and a payment bond as required by this section
42 be provided for contracts for construction by contractors.

43 (d) All bids for construction be opened at a public opening and the
44 bids shall remain confidential until the public opening.

45 (e) All persons desiring to submit bids be treated equitably and the
46 information related to each project be available to all eligible persons.

1 (f) Competition for construction projects under the simplified school
2 construction procurement program be encouraged to the maximum extent
3 possible. At a minimum, a school district shall submit information on each
4 project to all persons listed with the county school superintendent by any
5 school district within that county.

6 (g) A provision, covenant, clause or understanding in, collateral to
7 or affecting a construction contract that makes the contract subject to the
8 laws of another state or that requires any litigation, arbitration or other
9 dispute resolution proceeding arising from the contract to be conducted in
10 another state is against this state's public policy and is void and
11 unenforceable.

12 3. IN LIEU OF THE PROCUREMENT RULES UNDER PARAGRAPH 2 OF THIS
13 SUBSECTION, THE STATE BOARD OF EDUCATION SHALL ADOPT RULES FOR A SCHOOL
14 CONSTRUCTION PROCUREMENT PROGRAM FOR ENERGY PERFORMANCE CONTRACTS AND
15 RENEWABLE ENERGY POWER PURCHASE CONTRACTS TO PURCHASE ENERGY SAVING AND
16 RENEWABLE ENERGY MEASURES.

17 ~~3-~~ 4. ~~On or before December 31, 2004,~~ The state board of education
18 shall adopt rules for the procurement of goods and information services by
19 school districts and charter schools using electronic, ~~on-line~~ ONLINE
20 bidding. The rules adopted by the state board shall include the use of
21 reverse auctions and shall be consistent with the procurement practices
22 prescribed in title 41, chapter 23, article 13, modifying as necessary those
23 provisions and the rules adopted pursuant to that article that the state
24 board determines are not appropriate for school districts and charter
25 schools. Until the rules are adopted school districts and charter schools
26 may procure goods and information services pursuant to title 41, chapter 23,
27 article 13 using the rules adopted by the department of administration in
28 implementing that article.

29 ~~4-~~ 5. The auditor general shall review the proposed rules to
30 determine whether the rules are consistent with the procurement practices
31 prescribed in title 41, chapter 23 and any modifications are required to
32 adapt the procedures for school districts.

33 ~~5-~~ 6. If the auditor general approves the proposed rules, the auditor
34 general shall notify the state board in writing and the state board shall
35 adopt such rules.

36 ~~6-~~ 7. If the auditor general objects to the proposed rules, the
37 auditor general shall notify the state board of the objections in writing and
38 the state board, in adopting the rules, shall conform the proposed rules to
39 meet the objections of the auditor general or revise the proposed rules to
40 which an objection has been made and submit the revisions to the auditor
41 general for approval.

42 B. After the bids submitted in response to an invitation for bids are
43 opened and the award is made or after the proposals or qualifications are
44 submitted in response to a request for proposals or a request for
45 qualifications and the award is made, the governing board shall make
46 available for public inspection all information, all bids, proposals and

1 qualifications submitted and all findings and other information considered in
2 determining whose bid conforms to the invitation for bids and will be the
3 most advantageous with respect to price, conformity to the specifications and
4 other factors or whose proposal or qualifications are to be selected for the
5 award. The invitation for bids, request for proposals or request for
6 qualifications shall include a notice that all information and bids,
7 proposals and qualifications submitted will be made available for public
8 inspection. The rules adopted by the state board shall prohibit the use in
9 connection with procurement of specifications in any way proprietary to one
10 supplier unless the specification includes all of the following:

11 1. A statement of the reasons why no other specification is
12 practicable.

13 2. A description of the essential characteristics of the specified
14 product.

15 3. A statement specifically permitting an acceptable alternative
16 product to be supplied.

17 C. No project or purchase may be divided or sequenced into separate
18 projects or purchases in order to avoid the limits prescribed by the state
19 board under subsection A of this section.

20 D. A contract for the procurement of construction or construction
21 services shall include a provision which provides for negotiations between
22 the school district and the contractor for the recovery of damages related to
23 expenses incurred by the contractor for a delay for which the school district
24 is responsible, which is unreasonable under the circumstances and which was
25 not within the contemplation of the parties to the contract. This subsection
26 shall not be construed to void any provision in the contract which requires
27 notice of delays, provides for arbitration or other procedure for settlement
28 or provides for liquidated damages.

29 E. The auditor general may conduct discretionary reviews,
30 investigations and audits of the financial and operational procurement
31 activities of school districts, nonexempt charter schools and school
32 purchasing cooperatives. The auditor general has final review and approval
33 authority over all school district, nonexempt charter school and school
34 purchasing cooperative audit contracts and any audit reports issued in
35 accordance with this section.

36 F. In addition to the requirements of sections 15-914 and 15-914.01,
37 school districts, nonexempt charter schools and school purchasing
38 cooperatives, in connection with any audit conducted by a certified public
39 accountant, shall contract for a systematic review of purchasing practices
40 using methodology consistent with sampling guidelines established by the
41 auditor general. The auditor general shall consider cost when establishing
42 guidelines pursuant to this subsection and to the extent possible shall
43 attempt to minimize the cost of the review. The purpose of the review is to
44 determine whether the school district, nonexempt charter school or school
45 purchasing cooperative is in compliance with the procurement laws and
46 applicable procurement rules of this state. A copy of the review shall be

1 submitted upon completion to the auditor general. The auditor general may
2 conduct discretionary reviews of school districts, nonexempt charter schools
3 and school purchasing cooperatives not required to contract for independent
4 audits.

5 G. The attorney general or county attorney has jurisdiction to enforce
6 this section. The attorney general or county attorney may seek relief for
7 any violation of this section through an appropriate civil or criminal action
8 in superior court including an action to enjoin a threatened or pending
9 violation of this section and including an action to enforce compliance with
10 any request for documents made by the auditor general pursuant to this
11 section.

12 H. The department of education shall enact policies and procedures for
13 the acceptance and disposition of complaints from the public regarding school
14 procurement practices and shall forward all school procurement complaints to
15 the attorney general.

16 I. The state board of education shall adopt, and the auditor general
17 shall review, rules authorizing school districts to procure construction
18 services by construction-manager-at-risk, design-build, qualified select
19 bidders list and job-order-contracting methods of project delivery. The
20 rules adopted shall require each school district that uses
21 construction-manager-at-risk, design-build, qualified select bidders list or
22 job-order-contracting to procure construction services to submit, on or
23 before January 15 of each year, a report to the secretary of state on the
24 benefits associated with the use of such procurement methods. The report
25 shall include the number of projects completed in the preceding calendar year
26 using that procurement method, the cost and description of each project and
27 an estimate of any cost savings or other benefits realized through the use of
28 that procurement method.

29 J. A school district or charter school may evaluate United States
30 general services administration contracts for materials and services. The
31 governing board or governing body may authorize purchases under a current
32 contract for materials or services without complying with the requirements of
33 the procurement rules adopted by the state board of education if the
34 governing board or governing body determines in writing that all of the
35 following apply:

36 1. The price for materials or services is equal to or less than the
37 contractor's current federal supply contract price with the general services
38 administration.

39 2. The contractor has indicated in writing that the contractor is
40 willing to extend the current federal supply contract pricing, terms and
41 conditions to the school district or charter school.

42 3. The purchase order adequately identifies the federal supply
43 contract on which the order is based.

44 4. The purchase contract is cost effective and is in the best
45 interests of the school district or charter school.

1 K. For the purposes of this section:

2 1. "Nonexempt charter school" means a charter school that is not
3 exempted from procurement laws pursuant to section 15-183, subsection E,
4 paragraph 6.

5 2. "School purchasing cooperative" means an entity engaged in
6 cooperative purchasing as defined in section 41-2631.

7 3. "Total cost" means the cost of all materials and services,
8 including the cost of labor performed by employees of the school district,
9 for all construction as provided in subsection A of this section.

10 Sec. 2. Section 15-213.01, Arizona Revised Statutes, is amended to
11 read:

12 15-213.01. Procurement practices; guaranteed energy cost
13 savings contracts; definitions

14 A. Notwithstanding section 15-213, subsection A, a school district may
15 contract for the procurement of a guaranteed energy cost savings contract
16 with a qualified provider through a competitive sealed proposal process as
17 provided by the procurement practices adopted by the state board of
18 education. To the extent the qualified provider subcontracts with
19 contractors who will be involved in any construction associated with the
20 guaranteed energy cost savings contract, the qualified provider must follow
21 ~~the provisions of~~ section 41-2533 in selecting these contractors.

22 B. A school district may enter into a guaranteed energy cost savings
23 contract with a qualified provider if it determines that the amount it would
24 spend on the energy cost savings measures recommended in the proposal would
25 not exceed the amount to be saved in energy and operational costs over the
26 expected life of the energy cost savings measures implemented or within
27 twenty-five years, whichever is shorter, after the date installation or
28 implementation is complete, if the recommendations in the proposal are
29 followed. ~~THE SCHOOL DISTRICT SHALL RETAIN THE COST SAVINGS ACHIEVED BY A~~
30 ~~GUARANTEED ENERGY COST SAVING CONTRACT, AND THESE COST SAVINGS MAY BE USED TO~~
31 ~~PAY FOR THE CONTRACT AND PROJECT IMPLEMENTATION. A SCHOOL DISTRICT SHALL NOT~~
32 ~~USE EXCESS UTILITIES MONIES FOR THE CONTRACT OR FOR PROJECT IMPLEMENTATION.~~

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

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

1 The qualified provider may use performance specifications in soliciting bids
2 from contractors.

3 E. ~~An in-depth feasibility~~ A study shall be performed by the selected
4 qualified provider in order to establish the exact scope of the guaranteed
5 energy cost savings contract, the fixed cost savings guarantee amount and the
6 methodology for determining actual savings. This report shall be reviewed
7 and approved by the school district ~~prior to~~ BEFORE the actual installation
8 of any equipment. The qualified provider shall transmit a copy of the
9 approved in-depth feasibility study to the superintendent of public
10 instruction AND THE DEPARTMENT OF COMMERCE ENERGY OFFICE.

11 F. The guaranteed energy COST savings contract shall require that
12 ~~a qualified provider perform an energy audit of the facility or facilities~~
13 ~~one year after the energy cost savings measures are installed or implemented~~
14 ~~and every three years thereafter for the length of the contract. The~~
15 ~~qualified provider shall transmit a copy of the audit to the superintendent~~
16 ~~of public instruction. The qualified provider shall pay the cost of the~~
17 ~~audit.~~ in determining whether the projected energy savings calculations have
18 been met, the energy or operational cost savings shall be computed by
19 comparing the energy baseline before installation or implementation of the
20 energy cost savings measures with the energy consumed and operational costs
21 avoided after installation or implementation of the energy cost savings
22 measures. The qualified provider and the school district may agree to make
23 modifications to the energy baseline only for any of the following:

- 24 1. Changes in utility rates.
- 25 2. Changes in the number of days in the utility billing cycle.
- 26 3. Changes in the square footage of the facility.
- 27 4. Changes in the operational schedule of the facility.
- 28 5. Changes in facility temperature.
- 29 6. Significant changes in the weather.
- 30 7. Significant changes in the amount of equipment or lighting utilized
31 in the facility.

32 G. The information to develop the energy baseline shall be derived
33 from actual energy measurements or shall be calculated from energy
34 measurements at the facility where energy cost savings measures are to be
35 installed or implemented. The measurements shall be taken in the year
36 preceding the installation or implementation of energy cost savings measures.

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

40 I. A school district, or two or more school districts, may enter into
41 an installment payment contract or lease-purchase agreement with a qualified
42 provider for the purchase and installation or implementation of energy cost
43 savings measures. The guaranteed energy cost savings contract may provide
44 for payments over a period of not more than the expected life of the energy
45 cost savings measures implemented or twenty-five years, whichever is shorter.

1 The contract shall provide that all payments, except obligations on
2 termination of the contract before its expiration, shall be made over time.

3 J. The guaranteed energy cost savings contract shall include a written
4 guarantee of the qualified provider that either the energy or operational
5 costs savings, or both, will meet or exceed the costs of the energy cost
6 savings measures over the expected life of the energy cost savings measures
7 implemented or within twenty-five years, whichever is shorter. The qualified
8 provider shall:

9 1. PREPARE A MEASUREMENT AND VERIFICATION REPORT ON AN ANNUAL BASIS IN
10 ADDITION TO AN ANNUAL RECONCILIATION OF SAVINGS.

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

13 K. The school district may obtain any required financing as part of
14 the original competitive sealed proposal process FROM THE QUALIFIED PROVIDER
15 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. When selecting subcontractors to perform construction work, the
20 qualified provider is required to make public information in the
21 subcontractor's bids only if the qualified provider is awarded the guaranteed
22 energy COST savings contract by the school district.

23 N. FOR ALL PROJECTS CARRIED OUT UNDER THIS SECTION, THE DISTRICT SHALL
24 REPORT TO THE DEPARTMENT OF COMMERCE ENERGY OFFICE:

25 1. THE NAME OF THE PROJECT.

26 2. THE QUALIFIED PROVIDER.

27 3. THE TOTAL COST OF THE PROJECT.

28 4. THE EXPECTED ENERGY AND COST SAVINGS.

29 ~~N.~~ O. This section does not apply to the construction of new
30 buildings, EXCEPT THAT GUARANTEED ENERGY COST SAVINGS CONTRACTS MAY BE USED
31 TO FINANCE OR IMPLEMENT ENERGY COST SAVINGS MEASURES INSTALLED DURING
32 CONSTRUCTION OF NEW BUILDINGS.

33 ~~O.~~ P. For the purposes of this section:

34 1. "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 2. "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 3. "Energy cost savings measure" means a training program or facility
43 alteration designed to reduce energy consumption or operating costs and may
44 include one or more of the following:

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

1 (b) Storm windows or doors, caulking or weather stripping,
2 ~~multi-glazed~~ MULTIGLAZED windows or door systems, additional glazing,
3 reductions in glass area, or other window and door system modifications that
4 reduce energy consumption.

5 (c) Automated or computerized energy control systems.

6 (d) Heating, ventilating or air conditioning system modifications or
7 replacements.

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

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

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

23 (l) DEVICES THAT REDUCE WATER CONSUMPTION AND WATER COSTS OR THAT
24 REDUCE SEWER CHARGES.

25 (m) RAINWATER HARVESTING SYSTEMS.

26 (n) COMBINED HEAT AND POWER SYSTEMS.

27 (o) RENEWABLE AND ALTERNATIVE ENERGY PROJECTS AND RENEWABLE ENERGY
28 POWER PURCHASE CONTRACTS.

29 (p) SELF-GENERATION SYSTEMS.

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

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

37 5. "LIFE CYCLE COST" MEANS THE SUM OF PRESENT VALUES OF INVESTMENT
38 COSTS, CAPITAL COSTS, INSTALLATION COSTS, ENERGY COSTS, OPERATING COSTS,
39 MAINTENANCE COSTS AND DISPOSAL COSTS OVER THE LIFE OF THE PROJECT, PRODUCT OR
40 MEASURE AS PROVIDED BY FEDERAL LIFE CYCLE COST RULES, REGULATIONS AND
41 CRITERIA CONTAINED IN THE UNITED STATES DEPARTMENT OF ENERGY FEDERAL ENERGY
42 MANAGEMENT PROGRAM "GUIDANCE ON LIFE-CYCLE COST ANALYSIS" REQUIRED BY
43 EXECUTIVE ORDER 13122, APRIL 2005.

44 ~~5-~~ 6. "Operational savings" means reductions in actual budget line
45 items currently being expended or savings realized from the implementation or
46 installation of energy cost savings measures.

1 ~~6-~~ 7. "Qualified provider" means a person or a business experienced
2 in designing, implementing or installing energy cost savings measures.
3 Sec. 3. Section 15-342, Arizona Revised Statutes, is amended to read:
4 15-342. Discretionary powers
5 The governing board may:
6 1. Expel pupils for misconduct.
7 2. Exclude from grades one through eight children under six years of
8 age.
9 3. Make such separation of groups of pupils as it deems advisable.
10 4. Maintain such special schools during vacation as deemed necessary
11 for the benefit of the pupils of the school district.
12 5. Permit a superintendent or principal or representatives of the
13 superintendent or principal to travel for a school purpose, as determined by
14 a majority vote of the board. The board may permit members and members-elect
15 of the board to travel within or without the school district for a school
16 purpose and receive reimbursement. Any expenditure for travel and
17 subsistence pursuant to this paragraph shall be as provided in title 38,
18 chapter 4, article 2. The designated post of duty referred to in section
19 38-621 shall be construed, for school district governing board members, to be
20 the member's actual place of residence, as opposed to the school district
21 office or the school district boundaries. Such expenditures shall be a
22 charge against the budgeted school district funds. The governing board of a
23 school district shall prescribe procedures and amounts for reimbursement of
24 lodging and subsistence expenses. Reimbursement amounts shall not exceed the
25 maximum amounts established pursuant to section 38-624, subsection C.
26 6. Construct or provide in rural districts housing facilities for
27 teachers and other school employees which the board determines are necessary
28 for the operation of the school.
29 7. Sell or lease to the state, a county, a city or a tribal government
30 agency, ~~any~~ school property required for a public purpose, provided the sale
31 or lease of the property will not affect the normal operations of a school
32 within the school district.
33 8. Annually budget and expend funds for membership in an association
34 of school districts within this state.
35 9. Enter into leases or lease-purchase agreements for school buildings
36 or grounds, or both, as lessor or as lessee, for periods of less than five
37 years subject to voter approval for construction of school buildings as
38 prescribed in section 15-341, subsection A, paragraph 8.
39 10. Subject to chapter 16 of this title, sell school sites or enter
40 into leases or lease-purchase agreements for school buildings and grounds, as
41 lessor or as lessee, for a period of five years or more, but not to exceed
42 ninety-nine years, if authorized by a vote of the school district electors in
43 an election called by the governing board as provided in section 15-491,
44 except that authorization by the school district electors in an election is
45 not required if one of the following requirements is met:

1 (a) The market value of the school property is less than fifty
2 thousand dollars OR THE PROPERTY IS PROCURED THROUGH AN ENERGY PERFORMANCE
3 CONTRACT OR RENEWABLE ENERGY POWER PURCHASE CONTRACT PURSUANT TO SECTION
4 15-213 OR 15-213.01.

5 (b) The buildings and sites are completely funded with monies
6 distributed by the school facilities board.

7 (c) The transaction involves the sale of improved or unimproved
8 property pursuant to an agreement with the school facilities board in which
9 the school district agrees to sell the improved or unimproved property and
10 transfer the proceeds of the sale to the school facilities board in exchange
11 for monies from the school facilities board for the acquisition of a more
12 suitable school site. For a sale of property acquired by a school district
13 prior to July 9, 1998, a school district shall transfer to the school
14 facilities board that portion of the proceeds that equals the cost of the
15 acquisition of a more suitable school site. If there are any remaining
16 proceeds after the transfer of monies to the school facilities board, a
17 school district shall only use those remaining proceeds for future land
18 purchases approved by the school facilities board, or for capital
19 improvements not funded by the school facilities board for any existing or
20 future facility.

21 (d) The transaction involves the sale of improved or unimproved
22 property pursuant to a formally adopted plan and the school district uses the
23 proceeds of this sale to purchase other property that will be used for
24 similar purposes as the property that was originally sold, provided that the
25 sale proceeds of the improved or unimproved property are used within two
26 years after the date of the original sale to purchase the replacement
27 property. If the sale proceeds of the improved or unimproved property are
28 not used within two years after the date of the original sale to purchase
29 replacement property, the sale proceeds shall be used towards payment of any
30 outstanding bonded indebtedness. If any sale proceeds remain after paying
31 for outstanding bonded indebtedness, or if the district has no outstanding
32 bonded indebtedness, sale proceeds shall be used to reduce the district's
33 primary tax levy. A school district shall not use ~~the provisions of~~ this
34 subdivision unless all of the following conditions exist:

35 (i) The school district is the sole owner of the improved or
36 unimproved property that the school district intends to sell.

37 (ii) The school district did not purchase the improved or unimproved
38 property that the school district intends to sell with monies that were
39 distributed pursuant to chapter 16 of this title.

40 (iii) The transaction does not violate section 15-341, subsection G.

41 11. Review the decision of a teacher to promote a pupil to a grade or
42 retain a pupil in a grade in a common school or to pass or fail a pupil in a
43 course in high school. The pupil has the burden of proof to overturn the
44 decision of a teacher to promote, retain, pass or fail the pupil. In order
45 to sustain the burden of proof, the pupil shall demonstrate to the governing
46 board that the pupil has mastered the academic standards adopted by the state

1 board of education pursuant to sections 15-701 and 15-701.01. If the
2 governing board overturns the decision of a teacher pursuant to this
3 paragraph, the governing board shall adopt a written finding that the pupil
4 has mastered the academic standards. Notwithstanding title 38, chapter 3,
5 article 3.1, the governing board shall review the decision of a teacher to
6 promote a pupil to a grade or retain a pupil in a grade in a common school or
7 to pass or fail a pupil in a course in high school in executive session
8 unless a parent or legal guardian of the pupil or the pupil, if emancipated,
9 disagrees that the review should be conducted in executive session and then
10 the review shall be conducted in an open meeting. If the review is conducted
11 in executive session, the board shall notify the teacher of the date, time
12 and place of the review and shall allow the teacher to be present at the
13 review. If the teacher is not present at the review, the board shall consult
14 with the teacher before making its decision. Any request, including the
15 written request as provided in section 15-341, the written evidence presented
16 at the review and the written record of the review, including the decision of
17 the governing board to accept or reject the teacher's decision, shall be
18 retained by the governing board as part of its permanent records.

19 12. Provide transportation or site transportation loading and unloading
20 areas for any child or children if deemed for the best interest of the
21 district, whether within or without the district, county or state.

22 13. Enter into intergovernmental agreements and contracts with school
23 districts or other governing bodies as provided in section 11-952.

24 14. Include in the curricula which it prescribes for high schools in
25 the school district career and technical education, vocational education and
26 technology education programs and career and technical, vocational and
27 technology program improvement services for the high schools, subject to
28 approval by the state board of education. The governing board may contract
29 for the provision of career and technical, vocational and technology
30 education as provided in section 15-789.

31 15. Suspend a teacher or administrator from the teacher's or
32 administrator's duties without pay for a period of time of not to exceed ten
33 school days, if the board determines that suspension is warranted pursuant to
34 section 15-341, subsection A, paragraphs 23 and 24.

35 16. Dedicate school property within an incorporated city or town to
36 such city or town or within a county to that county for use as a public
37 right-of-way if both of the following apply:

38 (a) Pursuant to an ordinance adopted by such city, town or county,
39 there will be conferred upon the school district privileges and benefits
40 which may include benefits related to zoning.

41 (b) The dedication will not affect the normal operation of any school
42 within the district.

43 17. Enter into option agreements for the purchase of school sites.

44 18. Donate surplus or outdated learning materials to nonprofit
45 community organizations where the governing board determines that the

1 anticipated cost of selling the learning materials equals or exceeds the
2 estimated market value of the materials.

3 19. Prescribe policies for the assessment of reasonable fees for
4 students to use district-provided parking facilities. The fees are to be
5 applied by the district solely against costs incurred in operating or
6 securing the parking facilities. Any policy adopted by the governing board
7 pursuant to this paragraph shall include a fee waiver provision in
8 appropriate cases of need or economic hardship.

9 20. Establish alternative educational programs that are consistent with
10 the laws of this state to educate pupils, including pupils who have been
11 reassigned pursuant to section 15-841, subsection E or F.

12 21. Require a period of silence to be observed at the commencement of
13 the first class of the day in the schools. If a governing board chooses to
14 require a period of silence to be observed, the teacher in charge of the room
15 in which the first class is held shall announce that a period of silence not
16 to exceed one minute in duration will be observed for meditation, and during
17 that time no activities shall take place and silence shall be maintained.

18 22. Require students to wear uniforms.

19 23. Exchange unimproved property or improved property, including school
20 sites, where the governing board determines that the improved property is
21 unnecessary for the continued operation of the school district without
22 requesting authorization by a vote of the school district electors if the
23 governing board determines that the exchange is necessary to protect the
24 health, safety or welfare of pupils or when the governing board determines
25 that the exchange is based on sound business principles for either:

26 (a) Unimproved or improved property of equal or greater value.

27 (b) Unimproved property that the owner contracts to improve if the
28 value of the property ultimately received by the school district is of equal
29 or greater value.

30 24. For common and high school pupils, assess reasonable fees for
31 optional extracurricular activities and programs conducted when the common or
32 high school is not in session, except that no fees shall be charged for
33 pupils' access to or use of computers or related materials. For high school
34 pupils, the governing board may assess reasonable fees for fine arts and
35 vocational education courses and for optional services, equipment and
36 materials offered to the pupils beyond those required to successfully
37 complete the basic requirements of any other course, except that no fees
38 shall be charged for pupils' access to or use of computers or related
39 materials. Fees assessed pursuant to this paragraph shall be adopted at a
40 public meeting after notice has been given to all parents of pupils enrolled
41 at schools in the district and shall not exceed the actual costs of the
42 activities, programs, services, equipment or materials. The governing board
43 shall authorize principals to waive the assessment of all or part of a fee
44 assessed pursuant to this paragraph if it creates an economic hardship for a
45 pupil. For the purposes of this paragraph, "extracurricular activity" means
46 any optional, noncredit, educational or recreational activity which

1 supplements the education program of the school, whether offered before,
2 during or after regular school hours.

3 25. Notwithstanding section 15-341, subsection A, paragraphs 8 and 10,
4 construct school buildings and purchase or lease school sites, without a vote
5 of the school district electors, if the buildings and sites are totally
6 funded from one or more of the following:

7 (a) Monies in the unrestricted capital outlay fund, except that the
8 estimated cost shall not exceed two hundred fifty thousand dollars for a
9 district that utilizes ~~the provisions of~~ section 15-949.

10 (b) Monies distributed from the school facilities board established by
11 section 15-2001.

12 (c) Monies specifically donated for the purpose of constructing school
13 buildings.

14 Nothing in this paragraph shall be construed to eliminate the requirement for
15 an election to raise revenues for a capital outlay override pursuant to
16 section 15-481 or a bond election pursuant to section 15-491.

17 26. Conduct a background investigation that includes a fingerprint
18 check conducted pursuant to section 41-1750, subsection G for certificated
19 personnel and personnel who are not paid employees of the school district, as
20 a condition of employment. A school district may release the results of a
21 background check to another school district for employment purposes. The
22 school district may charge the costs of fingerprint checks to its
23 fingerprinted employee, except that the school district may not charge the
24 costs of fingerprint checks for personnel who are not paid employees of the
25 school district.

26 27. Sell advertising space on the exterior of school buses as
27 follows:

28 (a) Advertisements shall be age appropriate and not contain promotion
29 of any substance that is illegal for minors such as alcohol, tobacco and
30 drugs or gambling. Advertisements shall comply with the state sex education
31 policy of abstinence.

32 (b) Advertising approved by the governing board may appear only on the
33 sides of the bus in the following areas:

34 (i) The signs shall be below the seat level rub rail and not extend
35 above the bottom of the side windows.

36 (ii) The signs shall be at least three inches from any required
37 lettering, lamp, wheel well or reflector behind the service door or stop
38 signal arm.

39 (iii) The signs shall not extend from the body of the bus so as to
40 allow a handhold or present a danger to pedestrians.

41 (iv) The signs shall not interfere with the operation of any door or
42 window.

43 (v) The signs shall not be placed on any emergency doors.

44 (c) Establish a school bus advertisement fund that is comprised of
45 revenues from the sale of advertising space on school buses. The monies in a

1 school bus advertisement fund are not subject to reversion and shall be used
2 for the following purposes:

3 (i) To comply with the energy conservation measures prescribed in
4 section 15-349 in school districts that are in area A as defined in section
5 49-541, and any remaining monies shall be used to purchase alternative fuel
6 support vehicles and any other pupil related costs as determined by the
7 governing board.

8 (ii) For any pupil related costs as determined by the governing board
9 in school districts not subject to ~~the provisions of~~ item (i) of this
10 subdivision.

11 28. Assess reasonable damage deposits to pupils in grades seven through
12 twelve for the use of textbooks, musical instruments, band uniforms or other
13 equipment required for academic courses. The governing board shall adopt
14 policies on any damage deposits assessed pursuant to this paragraph at a
15 public meeting called for this purpose after providing notice to all parents
16 of pupils in grades seven through twelve in the school district. Principals
17 of individual schools within the district may waive the damage deposit
18 requirement for any textbook or other item if the payment of the damage
19 deposit would create an economic hardship for the pupil. The school district
20 shall return the full amount of the damage deposit for any textbook or other
21 item if the pupil returns the textbook or other item in reasonably good
22 condition within the time period prescribed by the governing board. For the
23 purposes of this paragraph, "in reasonably good condition" means the textbook
24 or other item is in the same or a similar condition as it was when the pupil
25 received it, plus ordinary wear and tear.

26 29. Notwithstanding section 15-1105, expend surplus monies in the civic
27 center school fund for maintenance and operations or unrestricted capital
28 outlay, if sufficient monies are available in the fund after meeting the
29 needs of programs established pursuant to section 15-1105.

30 30. Notwithstanding section 15-1143, expend surplus monies in the
31 community school program fund for maintenance and operations or unrestricted
32 capital outlay, if sufficient monies are available in the fund after meeting
33 the needs of programs established pursuant to section 15-1142.

34 31. Adopt guidelines for standardization of the format of the school
35 report cards required by section 15-746 for schools within the district.

36 32. Adopt policies that require parental notification when a law
37 enforcement officer interviews a pupil on school grounds. Policies adopted
38 pursuant to this paragraph shall not impede a peace officer from the
39 performance of the peace officer's duties. If the school district governing
40 board adopts a policy that requires parental notification:

41 (a) The policy may provide reasonable exceptions to the parental
42 notification requirement.

43 (b) The policy shall set forth whether and under what circumstances a
44 parent may be present when a law enforcement officer interviews the pupil,
45 including reasonable exceptions to the circumstances under which a parent may
46 be present when a law enforcement officer interviews the pupil, and shall

1 specify a reasonable maximum time after a parent is notified that an
2 interview of a pupil by a law enforcement officer may be delayed to allow the
3 parent to be present.

4 33. Enter into voluntary partnerships with any party to finance with
5 funds other than school district funds and cooperatively design school
6 facilities that comply with the adequacy standards prescribed in section
7 15-2011 and the square footage per pupil requirements pursuant to section
8 15-2041, subsection D, paragraph 3, subdivision (b). The design plans and
9 location of any such school facility shall be submitted to the school
10 facilities board for approval pursuant to section 15-2041, subsection 0. If
11 the school facilities board approves the design plans and location of any
12 such school facility, the party in partnership with the school district may
13 cause to be constructed and the district may begin operating the school
14 facility before monies are distributed from the school facilities board
15 pursuant to section 15-2041. Monies distributed from the new school
16 facilities fund to a school district in a partnership with another party to
17 finance and design the school facility shall be paid to the school district
18 pursuant to section 15-2041. The school district shall reimburse the party
19 in partnership with the school district from the monies paid to the school
20 district pursuant to section 15-2041, in accordance with the voluntary
21 partnership agreement. Before the school facilities board distributes any
22 monies pursuant to this subsection, the school district shall demonstrate to
23 the school facilities board that the facilities to be funded pursuant to
24 section 15-2041, subsection 0 meet the minimum adequacy standards prescribed
25 in section 15-2011. If the cost to construct the school facility exceeds the
26 amount that the school district receives from the new school facilities fund,
27 the partnership agreement between the school district and the other party
28 shall specify that, except as otherwise provided by the other party, any such
29 excess costs shall be the responsibility of the school district. The school
30 district governing board shall adopt a resolution in a public meeting that AN
31 analysis has been conducted on the prospective effects of the decision to
32 operate a new school with existing monies from the school district's
33 maintenance and operations budget and how this decision may affect other
34 schools in the school district. If a school district acquires land by
35 donation at an appropriate school site approved by the school facilities
36 board and a school facility is financed and built on the land pursuant to
37 this paragraph, the school facilities board shall distribute an amount equal
38 to twenty per cent of the fair market value of the land that can be used for
39 academic purposes. The school district shall place the monies in the
40 unrestricted capital outlay fund and increase the unrestricted capital budget
41 limit by the amount of the monies placed in the fund. Monies distributed
42 under this paragraph shall be distributed from the new school facilities fund
43 pursuant to section 15-2041. If a school district acquires land by donation
44 at an appropriate school site approved by the school facilities board and a
45 school facility is financed and built on the land pursuant to this paragraph,
46 the school district shall not receive monies from the school facilities board

1 for the donation of real property pursuant to section 15-2041, subsection F.
2 It is unlawful for:

3 (a) A county, city or town to require as a condition of any land use
4 approval that a landowner or landowners that entered into a partnership
5 pursuant to this paragraph provide any contribution, donation or gift, other
6 than a site donation, to a school district. This subdivision only applies to
7 the property in the voluntary partnership agreement pursuant to this
8 paragraph.

9 (b) A county, city or town to require as a condition of any land use
10 approval that the landowner or landowners located within the geographic
11 boundaries of the school subject to the voluntary partnership pursuant to
12 this paragraph provide any donation or gift to the school district except as
13 provided in the voluntary partnership agreement pursuant to this paragraph.

14 (c) A community facilities district established pursuant to title 48,
15 chapter 4, article 6 to be used for reimbursement of financing the
16 construction of a school pursuant to this paragraph.

17 (d) ~~For~~ A school district to enter into an agreement pursuant to this
18 paragraph with any party other than a master planned community party. Any
19 land area consisting of at least three hundred twenty acres that is the
20 subject of a development agreement with a county, city or town entered into
21 pursuant to section 9-500.05 or 11-1101 shall be deemed to be a master
22 planned community. For the purposes of this subdivision, "master planned
23 community" means a land area consisting of at least three hundred twenty
24 acres, which may be noncontiguous, that is the subject of a zoning ordinance
25 approved by the governing body of the county, city or town in which the land
26 is located that establishes the use of the land area as a planned area
27 development or district, planned community development or district, planned
28 unit development or district or other land use category or district that is
29 recognized in the local ordinance of such county, city or town and that
30 specifies the use of such land is for a master planned development.

31 Sec. 4. Title 15, chapter 9, article 1, Arizona Revised Statutes, is
32 amended by adding section 15-910.02, to read:

33 15-910.02. Energy and water savings accounts

34 A. EACH SCHOOL DISTRICT AND CHARTER SCHOOL MAY ESTABLISH AN ENERGY AND
35 WATER SAVINGS ACCOUNT THAT CONSISTS OF A DESIGNATED POOL OF CAPITAL
36 INVESTMENT MONIES TO FUND ENERGY OR WATER SAVING PROJECTS IN SCHOOL
37 FACILITIES. A SCHOOL DISTRICT OR CHARTER SCHOOL MAY DEPOSIT IN THE ACCOUNT
38 MONIES FROM ONE OR MORE COMPANIES THAT PROVIDE UTILITY, ENERGY OR WATER
39 SERVICES TO THE SCHOOL DISTRICT OR CHARTER SCHOOL PURSUANT TO CONTRACTS THAT
40 ARE EXECUTED BETWEEN THE COMPANIES AND THE SCHOOL DISTRICT OR CHARTER SCHOOL
41 AND THAT ARE DESIGNED TO SAVE ENERGY OR WATER IN SCHOOL FACILITIES. A SCHOOL
42 DISTRICT OR CHARTER SCHOOL MAY USE MONIES IN THE ENERGY AND WATER SAVINGS
43 ACCOUNT FOR PAYMENTS UNDER A PERFORMANCE CONTRACT ENTERED INTO PURSUANT TO
44 SECTION 15-213 OR 15-213.01.

45 B. THE AUDITOR GENERAL AND THE DEPARTMENT OF EDUCATION SHALL PRESCRIBE
46 THE APPROPRIATE DESIGNATION OF THE ENERGY AND WATER SAVINGS ACCOUNTS IN THE

1 UNIFORM SYSTEM OF FINANCIAL RECORDS AND SHALL PRESCRIBE REPORTING
2 REQUIREMENTS ON THE APPROPRIATE BUDGET FORMS AND ANNUAL FINANCIAL REPORT
3 FORMS.

4 C. MONIES DEPOSITED IN AN ENERGY AND WATER SAVINGS ACCOUNT SHALL BE
5 USED AS A DESIGNATED POOL OF CAPITAL INVESTMENT MONIES TO PAY FOR THE
6 INCREMENTAL COST OF ENERGY OR WATER SAVINGS MEASURES IN SCHOOL FACILITIES
7 THAT ARE OWNED OR OPERATED BY THE SCHOOL DISTRICT OR CHARTER SCHOOL. ANY
8 CONTRACT ENTERED INTO PURSUANT TO THIS SECTION SHALL CONTAIN AN AGREEMENT
9 BETWEEN THE QUALIFIED PROVIDER OR UTILITY, ENERGY OR WATER SERVICES COMPANY
10 AND THE SCHOOL DISTRICT OR CHARTER SCHOOL THAT EACH PARTY HAS PERFORMED A
11 REASONABLE INVESTIGATION TO DETERMINE THAT THE MEASURES CONTEMPLATED BY THE
12 CONTRACT WILL RESULT IN STATED ENERGY OR WATER SAVINGS. CONTRACT TERMS MAY
13 EXTEND THE PERIOD OF THE CAPITAL INVESTMENT REPAYMENT SCHEDULE PRESCRIBED IN
14 SUBSECTION G OF THIS SECTION UP TO THE EXPECTED LIFE OF THE ENERGY OR WATER
15 SAVINGS MEASURES, OR TWENTY-FIVE YEARS, WHICHEVER IS SHORTER.

16 D. EXPENDITURES FROM AN ENERGY AND WATER SAVINGS ACCOUNT SHALL BE USED
17 ONLY FOR THE FOLLOWING:

18 1. PROJECTS OR MEASURES PURSUANT TO A CONTRACT PURSUANT TO THIS
19 SECTION THAT SAVE ENERGY OR WATER IN SCHOOL FACILITIES THAT ARE OWNED OR
20 OPERATED BY THE SCHOOL DISTRICT OR CHARTER SCHOOL. MONIES MAY BE USED
21 PURSUANT TO THIS PARAGRAPH TO PROVIDE TECHNICAL ASSISTANCE REGARDING ENERGY
22 OR WATER SAVINGS TO SCHOOL DISTRICTS AND CHARTER SCHOOLS BY A QUALIFIED
23 PROVIDER OR A UTILITY, ENERGY OR WATER SERVICES COMPANY.

24 2. THE REPAYMENT TO THE QUALIFIED PROVIDER OR UTILITY, ENERGY OR WATER
25 SERVICES COMPANY OF CAPITAL INVESTMENT MONIES DEPOSITED IN THE ACCOUNT PLUS
26 REASONABLE CARRYING CHARGES PURSUANT TO THE TERMS OF THE CONTRACT.

27 E. SCHOOL DISTRICTS AND CHARTER SCHOOLS SHALL PROCURE ENERGY OR WATER
28 SAVINGS MEASURES OR SERVICES WITH MONIES DISTRIBUTED FROM THE ENERGY AND
29 WATER SAVINGS ACCOUNTS.

30 F. BEFORE THE IMPLEMENTATION OF THE ENERGY OR WATER SAVINGS MEASURES
31 OR SERVICES, THE QUALIFIED PROVIDER OR UTILITY, ENERGY OR WATER SERVICES
32 COMPANY SHALL COMPUTE, AND THE SCHOOL DISTRICT OR CHARTER SCHOOL SHALL REVIEW
33 AND APPROVE, THE ESTIMATED AMOUNT OF THE ENERGY OR WATER SAVINGS AND THE
34 ASSOCIATED IMPACT ON ENERGY OR WATER COSTS TO BE ACHIEVED BY THE SCHOOL
35 DISTRICT OR CHARTER SCHOOL ON AN ANNUAL AND MONTHLY BASIS OVER THE EXPECTED
36 LIFE OF THE MEASURES AND SHALL INCLUDE THESE ESTIMATES IN THE CONTRACT. THE
37 QUALIFIED PROVIDER OR UTILITY, ENERGY OR WATER SERVICES COMPANY AND THE
38 SCHOOL DISTRICT OR CHARTER SCHOOL SHALL UPDATE THE ANNUAL AND MONTHLY ENERGY
39 OR WATER SAVINGS AND ASSOCIATED COST IMPACT ESTIMATES ANNUALLY BASED ON
40 ACTUAL EXPERIENCE.

41 G. BEFORE THE IMPLEMENTATION OF THE ENERGY OR WATER SAVINGS MEASURES
42 OR SERVICES, THE QUALIFIED PROVIDER OR UTILITY, ENERGY OR WATER SERVICES
43 COMPANY AND THE SCHOOL DISTRICT OR CHARTER SCHOOL SHALL JOINTLY DEVELOP A
44 SCHEDULE OF MONTHLY PAYMENTS FOR REPAYMENT OF THE CAPITAL INVESTMENT MONIES
45 TO THE QUALIFIED PROVIDER OR UTILITY, ENERGY OR WATER SERVICES COMPANY. THE
46 REPAYMENT SCHEDULE SHALL RESULT IN LOWER ENERGY OR WATER COSTS, WHICH SHALL

1 INCLUDE THE COST OF THE INSTALLED ENERGY OR WATER SAVINGS MEASURES FOR THE
2 SCHOOL DISTRICT OR CHARTER SCHOOL OVER THE LIFE OF THE INSTALLED MEASURES
3 THAT THE SCHOOL DISTRICT OR CHARTER SCHOOL WOULD HAVE EXPERIENCED WITHOUT THE
4 INSTALLATION OF THE MEASURES. THE REPAYMENT SCHEDULE SHALL BE INCLUDED IN
5 THE CONTRACT.

6 H. THE SCHOOL DISTRICT OR CHARTER SCHOOL SHALL TRANSFER ON A MONTHLY
7 BASIS THE AMOUNT OF THE MONTHLY PAYMENT PRESCRIBED PURSUANT TO SUBSECTION G
8 OF THIS SECTION TO THE ENERGY AND WATER SAVINGS ACCOUNT FROM THE MAINTENANCE
9 AND OPERATION PORTION OF THE SCHOOL DISTRICT'S OR CHARTER SCHOOL'S BUDGET TO
10 REPAY ANY UNPAID BALANCE OF THE CAPITAL INVESTMENT PREVIOUSLY DEPOSITED IN
11 THE ENERGY AND WATER SAVINGS ACCOUNT FROM THE QUALIFIED PROVIDER OR UTILITY,
12 ENERGY OR WATER SERVICES COMPANY PLUS A REASONABLE CARRYING CHARGE. FOR THE
13 PERIOD OF TIME THAT THE COMPANY'S CAPITAL INVESTMENT MONIES AND REASONABLE
14 CARRYING CHARGE REMAIN UNPAID, THE QUALIFIED PROVIDER OR UTILITY, ENERGY OR
15 WATER SERVICES COMPANY SHALL PROVIDE A SEPARATE BILLING OR BILLING COMPONENT
16 TO REPAY THE CAPITAL INVESTMENT ON A MONTHLY BASIS, PURSUANT TO THE REPAYMENT
17 SCHEDULE PRESCRIBED PURSUANT TO SUBSECTION G OF THIS SECTION, WHICH SHALL BE
18 PAID BY THE SCHOOL DISTRICT OR CHARTER SCHOOL FROM THE ENERGY AND WATER
19 SAVINGS ACCOUNT. THE SCHOOL DISTRICT'S GENERAL BUDGET LIMIT SHALL BE REDUCED
20 BY THE AMOUNT OF MONIES TRANSFERRED TO THE ENERGY AND WATER SAVINGS ACCOUNT
21 PURSUANT TO THIS SECTION.

22 I. AFTER THE BALANCE OF THE QUALIFIED PROVIDER OR UTILITY, ENERGY OR
23 WATER SERVICES COMPANY'S CAPITAL INVESTMENT MONIES DEPOSITED IN THE ENERGY
24 AND WATER SAVINGS ACCOUNT PLUS A REASONABLE CARRYING CHARGE ARE REPAYED IN
25 FULL BY THE SCHOOL DISTRICT OR CHARTER SCHOOL, THE SCHOOL DISTRICT OR CHARTER
26 SCHOOL MAY DISCONTINUE THE DEPOSIT IN THE ENERGY AND WATER SAVINGS ACCOUNT OF
27 AMOUNTS THAT ARE PRESCRIBED IN SUBSECTION H OF THIS SECTION.

28 J. ANY MONIES ASSOCIATED WITH AN ENERGY OR WATER SAVINGS PROJECT
29 REMAINING IN THE ENERGY AND WATER SAVINGS ACCOUNT AFTER THE CAPITAL
30 INVESTMENT MONIES OF THE QUALIFIED PROVIDER OR UTILITY, ENERGY OR WATER
31 SERVICES COMPANY PLUS A REASONABLE CARRYING CHARGE ARE REPAYED IN FULL MAY BE
32 TRANSFERRED TO THE MAINTENANCE AND OPERATION PORTION OF THE SCHOOL DISTRICT'S
33 OR CHARTER SCHOOL'S BUDGET, AND THE GENERAL BUDGET LIMIT MAY BE INCREASED BY
34 THE AMOUNT TRANSFERRED.

35 K. SCHOOL DISTRICTS OR CHARTER SCHOOLS MAY DEPOSIT ENERGY-RELATED
36 REBATE OR GRANT MONIES IN THE ENERGY AND WATER SAVINGS ACCOUNT TO ASSIST IN
37 FUNDING ENERGY OR WATER SAVINGS PROJECTS. THESE REBATE OR GRANT MONIES SHALL
38 BE USED TO REDUCE THE TOTAL COST OF ENERGY OR WATER SAVINGS PROJECTS AND TO
39 REDUCE THE AMOUNT OF CAPITAL INVESTMENT MONIES RECEIVED FROM AND REPAYED TO
40 UTILITY, ENERGY OR WATER SERVICES COMPANIES. SCHOOL DISTRICTS OR CHARTER
41 SCHOOLS ARE NOT REQUIRED TO REPAY THE REBATE OR GRANT MONIES IN THE MANNER
42 DESCRIBED IN SUBSECTION H OF THIS SECTION, PURSUANT TO THE AGREEMENTS WITH
43 THE PROVIDERS OF REBATE OR GRANT FUNDS.

44 L. SCHOOL DISTRICTS SHALL NOT USE OR DEPOSIT ANY EXCESS UTILITIES
45 MONIES BUDGETED PURSUANT TO SECTION 15-910 OR 15-910.04 IN THE ENERGY AND
46 WATER SAVINGS ACCOUNT.

1 M. SCHOOL DISTRICTS OR CHARTER SCHOOLS MAY DEPOSIT MONIES FROM OTHER
2 FUNDING SOURCES, INCLUDING FROM CLEAN RENEWABLE ENERGY BONDS, IN THE ENERGY
3 AND WATER SAVINGS ACCOUNT TO FUND ENERGY OR WATER SAVING PROJECTS IN SCHOOL
4 FACILITIES. THESE MONIES SHALL BE REPAYED IN A MANNER CONSISTENT WITH THIS
5 SECTION AND PURSUANT TO THE CONTRACT BETWEEN THE SCHOOL DISTRICT OR CHARTER
6 SCHOOL AND THE PROVIDER OF THE FUNDING.

7 N. THIS SECTION DOES NOT IMPOSE AN OBLIGATION ON ANY ENERGY UTILITY,
8 WATER UTILITY, PUBLIC SERVICE CORPORATION OR AGRICULTURAL IMPROVEMENT
9 DISTRICT TO INVEST MONIES OR CONTRACT WITH ANY SCHOOL DISTRICT OR CHARTER
10 SCHOOL.

11 Sec. 5. Section 34-201, Arizona Revised Statutes, is amended to read:

12 34-201. Notice of intention to receive bids and enter contract;
13 procedure; doing work without advertising for bids;
14 county compliance

15 A. Except as provided in subsections B through G and L of this
16 section, every agent ~~shall~~, ~~upon~~ ON acceptance and approval of the working
17 drawings and specifications, SHALL publish a notice to contractors of
18 intention to receive bids and contract for the proposed work. This notice
19 shall be published by advertising in a newspaper of general circulation in
20 the county in which the agent is located for two consecutive publications if
21 it is a weekly newspaper or for two publications that are at least six but no
22 more than ten days apart if it is a daily newspaper. The notice shall state:

23 1. The nature of the work required, the type, purpose and location of
24 the proposed building, ~~and~~ where the plans, specifications and full
25 information as to the proposed work may be obtained.

26 2. That contractors desiring to submit proposals may obtain copies of
27 full or partial sets of plans and specifications for estimate on request or
28 by appointment. The return of such plans and specifications shall be
29 guaranteed by a deposit of a designated amount which shall be refunded on
30 return of the plans and specifications in good order.

31 3. That every proposal shall be accompanied by a certified check,
32 cashier's check or surety bond for ten per cent of the amount of the bid
33 included in the proposal as a guarantee that the contractor will enter into a
34 contract to perform the proposal in accordance with the plans and
35 specifications. Notwithstanding ~~the provisions of~~ any other statute, the
36 surety bond shall be executed solely by a surety company or companies holding
37 a certificate of authority to transact surety business in this state issued
38 by the director of the department of insurance pursuant to title 20, chapter
39 2, article 1. The surety bond shall not be executed by an individual surety
40 or sureties, even if the requirements of section 7-101 are satisfied. The
41 certified check, cashier's check or surety bond shall be returned to the
42 contractors whose proposals are not accepted, and to the successful
43 contractor ~~upon~~ ON the execution of a satisfactory bond and contract as
44 provided in this article. The conditions and provisions of the surety bid
45 bond regarding the surety's obligations shall follow the following form:

1 Now, therefore, if the obligee accepts the proposal of the
2 principal and the principal enters into a contract with the
3 obligee in accordance with the terms of the proposal and gives
4 the bonds and certificates of insurance as specified in the
5 standard specifications with good and sufficient surety for the
6 faithful performance of the contract and for the prompt payment
7 of labor and materials furnished in the prosecution of the
8 contract, or in the event of the failure of the principal to
9 enter into the contract and give the bonds and certificates of
10 insurance, if the principal pays to the obligee the difference
11 not to exceed the penalty of the bond between the amount
12 specified in the proposal and such larger amount for which the
13 obligee may in good faith contract with another party to perform
14 the work covered by the proposal then this obligation is void.
15 Otherwise it remains in full force and effect provided, however,
16 that this bond is executed pursuant to the provisions of section
17 34-201, Arizona Revised Statutes, and all liabilities on this
18 bond shall be determined in accordance with the provisions of
19 the section to the extent as if it were copied at length herein.

20 4. That the right is reserved to reject any or all proposals or to
21 withhold the award for any reason the agent determines.

22 B. If the agent believes that any construction, building addition or
23 alteration contemplated at a public institution can be advantageously done by
24 the inmates of the public institution and regularly employed help, the agent
25 may cause the work to be done without advertising for bids.

26 C. Any building, structure, addition or alteration may be constructed
27 either with or without the use of the agent's regularly employed personnel
28 without advertising for bids, provided that the total cost of the work,
29 excluding materials and equipment previously acquired by bid, does not
30 exceed:

31 1. In fiscal year 1994-1995, fourteen thousand dollars.

32 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
33 amount provided in paragraph 1 of this subsection adjusted by the annual
34 percentage change in the GDP price deflator as defined in section 41-563.

35 D. Notwithstanding ~~the provisions of~~ subsection C of this section, any
36 street, road, bridge, water or sewer work, other than a water or sewer
37 treatment plant or building, may be constructed either with or without the
38 use of the agent's regularly employed personnel without advertising for bids,
39 provided that the total cost of the work does not exceed:

40 1. In fiscal year 1994-1995, one hundred fifty thousand dollars.

41 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
42 amount provided in paragraph 1 of this subsection adjusted by the annual
43 percentage change in the GDP price deflator as defined in section 41-563.

44 E. For the purposes of subsection D of this section, the total cost of
45 water or sewer work does not include services provided by volunteers or
46 donations made for the water or sewer project.

1 F. Notwithstanding ~~the provisions of~~ this section, an agent may:
2 1. Construct, reconstruct, install or repair a natural gas or electric
3 utility and distribution system, owned or operated by such agent, with
4 regularly employed personnel of the agent without advertising for bids,
5 unless otherwise prohibited by charter or ordinance.
6 2. Construct recreational projects, including trails, playgrounds,
7 ballparks and other similar facilities and excluding buildings, structures,
8 building additions and alterations to buildings, structures and building
9 additions, with volunteer workers or workers provided by a nonprofit
10 organization without advertising for bids for labor and materials, provided
11 that the total cost of the work does not exceed:
12 (a) In fiscal year 2001-2002, one hundred fifty thousand dollars.
13 (b) In fiscal year 2002-2003 and each fiscal year thereafter, the
14 amount provided in subdivision (a) ~~of this paragraph~~ adjusted by the annual
15 percentage change in the GDP price deflator as defined in section 41-563.
16 G. A contribution by an agent for the financing of public
17 infrastructure made pursuant to a development agreement is exempt from ~~the~~
18 ~~provisions of~~ this section if such contribution for any single development
19 does not exceed:
20 1. In fiscal year 1994-1995, one hundred thousand dollars.
21 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
22 amount provided in paragraph 1 of this subsection adjusted by the annual
23 percentage change in the GDP price deflator as defined in section 41-563.
24 H. In addition to other state or local requirements relating to the
25 publication of bids, each agent shall provide at least one set of all plans
26 and specifications to any construction news reporting service that files an
27 annual request with the agent. For the purposes of this subsection,
28 "construction news reporting service" means a service that researches,
29 gathers and disseminates news and reports either in print or electronically,
30 on at least a weekly basis for building projects, construction bids, the
31 purchasing of materials, supplies or services and other construction bidding
32 or planned activity to the allied construction industry. The allied
33 construction industry includes both general and specialty contractors,
34 builders, material and service suppliers, architects and engineers, owners,
35 developers and government agencies.
36 I. Any construction by a county under this section shall comply with
37 the uniform accounting system prescribed for counties by the auditor general
38 under section 41-1279.21. Any construction by a city or town under this
39 section shall comply with generally accepted accounting principles.
40 J. Any construction, building addition or alteration project ~~which~~
41 ~~THAT~~ is financed by monies of this state or its political subdivisions shall
42 not use endangered wood species unless an exemption is granted by the
43 director of the department of administration. The director shall only grant
44 an exemption if the use of endangered wood species is deemed necessary for
45 historical restoration or to repair existing facilities and the use of any
46 substitute material is not practical. Any lease-purchase agreement entered

1 into by this state or its political subdivisions for construction shall
2 specify that no endangered wood species may be used in the construction
3 unless an exemption is granted by the director. ~~As used in~~ FOR THE PURPOSES
4 OF this subsection, "endangered wood species" includes those listed in
5 appendix I of the convention on international trade in endangered species of
6 wild flora and fauna.

7 K. All bonds given by a contractor and surety pursuant to ~~the~~
8 ~~provisions of~~ this article, regardless of their actual form, will be deemed
9 by law to be the form required and set forth in this article and no other.

10 L. Any building, structure, addition or alteration may be constructed
11 without complying with this article if the construction, including
12 construction of buildings or structures on public or private property, is
13 required as a condition of development of private property and is authorized
14 by section 9-463.01 or 11-806.01. For the purposes of this subsection,
15 building does not include police, fire, school, library, ~~or~~ other public
16 buildings.

17 M. Notwithstanding section 34-221, any agent may enter into a
18 guaranteed energy cost savings contract with a qualified provider, ~~as those~~
19 ~~terms are defined in section 15-213.01,~~ for the purchase of energy cost
20 savings measures without complying with this article and may procure a
21 guaranteed energy cost savings contract through the competitive sealed
22 proposal process prescribed in title 41, chapter 23, ~~article 3~~ or any similar
23 competitive proposal process adopted by the agent. ~~as long as the agent~~
24 ~~follows any additional requirements set forth in section 15-213.01.~~