

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

# HOUSE BILL 2830

## AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 9-499.16. Energy and water savings accounts

5 A. THE GOVERNING BODY OF A CITY OR TOWN MAY ESTABLISH AN ENERGY AND  
6 WATER SAVINGS ACCOUNT THAT CONSISTS OF A DESIGNATED POOL OF CAPITAL  
7 INVESTMENT MONIES TO FUND ENERGY OR WATER SAVINGS PROJECTS IN PUBLIC  
8 FACILITIES. A CITY OR TOWN MAY DEPOSIT IN THE ACCOUNT MONIES GENERATED FROM  
9 THE ENERGY OR WATER SAVINGS PROJECTS OR MEASURES IMPLEMENTED IN PUBLIC  
10 FACILITIES. A CITY OR TOWN MAY USE MONIES IN THE ENERGY AND WATER SAVINGS  
11 ACCOUNT FOR PAYMENTS UNDER A CONTRACT ENTERED INTO PURSUANT TO SECTION  
12 34-105.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3           11-254.08. Energy and water savings accounts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3           15-213.01. Procurement practices: guaranteed energy cost  
4           savings contracts: definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 M. The qualified provider is required to make public information in  
21 the subcontractor's bids only if the qualified provider is awarded the  
22 guaranteed 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 governor's ~~energy~~ office OF ENERGY POLICY and the school  
25 facilities board:

26 1. The name of the project.

27 2. The qualified provider.

28 3. The total cost of the project.

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

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

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

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

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

42 R. For the purposes of this section:

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

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

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

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

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

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

14 (c) Automated or computerized energy control systems.

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

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

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

24 (g) Energy recovery systems.

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

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

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

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

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

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

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

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

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

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

1 (p) GEOTHERMAL.

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

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

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

14 ~~7-~~ 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 AND  
18 MANAGERIAL CAPABILITIES TO DESIGN AND OPERATE COST SAVINGS MEASURES AND  
19 PROJECTS AND THAT HAS THE FINANCIAL ABILITY TO SATISFY GUARANTEES FOR ENERGY  
20 COST SAVINGS.

21 Sec. 4. Repeal

22 A. Section 15-213.01, Arizona Revised Statutes, as amended by Laws  
23 2010, chapter 117, section 4, is repealed.

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

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

28 15-213.03. Procurement practices; guaranteed energy production  
29 contracts; definitions

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

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

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

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

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

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

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

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

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

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

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

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

35 1. THE NAME OF THE PROJECT.  
36 2. THE QUALIFIED PROVIDER.  
37 3. THE TOTAL COST OF THE PROJECT.  
38 4. THE EXPECTED GUARANTEED ENERGY PRODUCTION AND GUARANTEED ENERGY  
39 PRICE, INCLUDING RELEVANT ESCALATORS, IF APPLICABLE, OVER THE TERM OF THE  
40 GUARANTEED ENERGY PRODUCTION CONTRACT.

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

- 1 K. FOR THE PURPOSES OF THIS SECTION:  
2 1. "ACTUAL ENERGY PRODUCTION" MEANS THE ACTUAL AMOUNT OF ENERGY THAT  
3 FLOWS FROM THE ENERGY PRODUCTION MEASURE ON AN ANNUAL BASIS AS MEASURED BY A  
4 METER IN KILOWATT HOURS ALTERNATING CURRENT.  
5 2. "CONSTRUCTION" MEANS THE PROCESS OF BUILDING, ALTERING, REPAIRING,  
6 IMPROVING OR DEMOLISHING ANY SCHOOL DISTRICT STRUCTURE OR BUILDING, OR OTHER  
7 PUBLIC IMPROVEMENTS OF ANY KIND TO ANY SCHOOL DISTRICT REAL PROPERTY.  
8 CONSTRUCTION DOES NOT INCLUDE THE ROUTINE OPERATION, ROUTINE REPAIR OR  
9 ROUTINE MAINTENANCE OF EXISTING STRUCTURES, BUILDINGS OR REAL PROPERTY.  
10 3. "EFFECTIVE UTILITY RATE" MEANS THE AVERAGE PRICE PER KILOWATT HOUR  
11 THAT A SCHOOL DISTRICT PAID TO ITS UTILITY PROVIDER FOR ELECTRICITY SERVICE  
12 TO THE FACILITY THAT IS THE SUBJECT OF THE GUARANTEED ENERGY PRODUCTION  
13 CONTRACT OVER THE PREVIOUS TWELVE MONTHS.  
14 4. "ENERGY PRODUCTION MEASURE" MEANS RENEWABLE AND ALTERNATIVE ENERGY  
15 PROJECTS OR RENEWABLE ENERGY POWER SERVICE AGREEMENTS.  
16 5. "GUARANTEED ENERGY PRICE" MEANS THE AGREED ON PRICE TO BE CHARGED  
17 TO THE SCHOOL FOR EACH KILOWATT HOUR ALTERNATING CURRENT OF ACTUAL ENERGY  
18 PRODUCTION AS SUCH MAY CHANGE ON AN ANNUAL BASIS AS SET FORTH IN THE  
19 GUARANTEED ENERGY PRODUCTION CONTRACT.  
20 6. "GUARANTEED ENERGY PRODUCTION" MEANS THE AMOUNT OF ENERGY, MEASURED  
21 IN KILOWATT HOURS ALTERNATING CURRENT, THAT THE QUALIFIED PROVIDER GUARANTEES  
22 FOR EACH YEAR OF THE GUARANTEED ENERGY PRODUCTION CONTRACT.  
23 7. "GUARANTEED ENERGY PRODUCTION CONTRACT" MEANS A CONTRACT FOR  
24 IMPLEMENTING ONE OR MORE ENERGY PRODUCTION MEASURES BETWEEN ONE OR MORE  
25 QUALIFIED PROVIDERS AND A SCHOOL DISTRICT.  
26 8. "GUARANTEED ENERGY PRODUCTION SHORTFALL" MEANS THE AMOUNT, IF ANY,  
27 THAT THE ACTUAL ENERGY PRODUCTION IS LESS THAN THE GUARANTEED ENERGY  
28 PRODUCTION IN ANY GIVEN YEAR.  
29 9. "QUALIFIED PROVIDER" MEANS A PERSON OR A BUSINESS THAT IS  
30 EXPERIENCED IN DESIGNING, IMPLEMENTING OR INSTALLING ENERGY COST SAVINGS  
31 MEASURES, THAT HAS DEMONSTRATED TECHNICAL, OPERATIONAL, FINANCIAL AND  
32 MANAGERIAL CAPABILITIES TO DESIGN AND OPERATE COST SAVINGS MEASURES AND  
33 PROJECTS AND THAT HAS THE FINANCIAL ABILITY TO SATISFY GUARANTEES FOR  
34 GUARANTEED ENERGY PRODUCTION, FINANCIAL SOLVENCY AND EXPERIENCE FOR PROJECTS  
35 OF SIMILAR SIZE AND SCOPE.

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

38 15-910.02. Energy and water savings accounts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 15-1453. Energy and water savings accounts

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

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

3           15-1650.02. Energy and water savings accounts

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

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

10          34-105. Guaranteed energy savings contracts; definitions

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

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

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

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

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

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

1 COST SAVINGS MEASURES. THE QUALIFIED PROVIDER AND THE AGENT MAY AGREE TO  
2 MAKE MODIFICATIONS TO THE ENERGY BASELINE ONLY FOR ANY OF THE FOLLOWING:  
3 1. CHANGES IN UTILITY RATES.  
4 2. CHANGES IN THE NUMBER OF DAYS IN THE UTILITY BILLING CYCLE.  
5 3. CHANGES IN THE SQUARE FOOTAGE OF THE FACILITY.  
6 4. CHANGES IN THE OPERATIONAL SCHEDULE OF THE FACILITY.  
7 5. CHANGES IN FACILITY TEMPERATURE.  
8 6. SIGNIFICANT CHANGES IN THE WEATHER.  
9 7. SIGNIFICANT CHANGES IN THE AMOUNT OF EQUIPMENT OR LIGHTING UTILIZED  
10 IN THE FACILITY.  
11 8. SIGNIFICANT CHANGES IN THE NATURE OR INTENSITY OF ENERGY USE SUCH  
12 AS THE CHANGE OF CLASSROOM SPACE TO LABORATORY SPACE.  
13 G. THE INFORMATION TO DEVELOP THE ENERGY BASELINE SHALL BE DERIVED  
14 FROM HISTORICAL ENERGY COSTS OR ACTUAL ENERGY MEASUREMENTS OR SHALL BE  
15 CALCULATED FROM ENERGY MEASUREMENTS AT THE FACILITY WHERE ENERGY COST SAVINGS  
16 MEASURES ARE TO BE INSTALLED OR IMPLEMENTED. THE BASELINE SHALL BE  
17 ESTABLISHED BEFORE THE INSTALLATION OR IMPLEMENTATION OF ENERGY COST SAVINGS  
18 MEASURES.  
19 H. WHEN SUBMITTING A PROPOSAL FOR THE INSTALLATION OF EQUIPMENT, THE  
20 QUALIFIED PROVIDER SHALL INCLUDE INFORMATION ON THE PROJECTED ENERGY SAVINGS  
21 ASSOCIATED WITH EACH PROPOSED ENERGY COST SAVINGS MEASURE.  
22 I. AN AGENT, OR TWO OR MORE AGENTS, MAY ENTER INTO A FINANCING  
23 AGREEMENT WITH A QUALIFIED PROVIDER OR THE FINANCIAL INSTITUTION, TRUSTEE OR  
24 PAYING AGENT FOR THE PURCHASE AND INSTALLATION OR IMPLEMENTATION OF ENERGY  
25 COST SAVINGS MEASURES. THE GUARANTEED ENERGY COST SAVINGS CONTRACT MAY  
26 PROVIDE FOR PAYMENTS OVER A PERIOD OF NOT MORE THAN THE TERM OF THE CONTRACT,  
27 WHICH SHALL NOT EXCEED FIFTEEN YEARS. THE CONTRACT SHALL PROVIDE THAT ALL  
28 PAYMENTS, EXCEPT OBLIGATIONS ON TERMINATION OF THE CONTRACT BEFORE ITS  
29 EXPIRATION, SHALL BE MADE PURSUANT TO THE TERMS OF THE AGREEMENT. IF AN  
30 AGENT PURCHASES THE ENERGY COST SAVINGS MEASURE, THE QUALIFIED PROVIDER SHALL  
31 GUARANTEE THAT THE ENERGY COST SAVINGS MEET OR EXCEED THE AGENT'S TOTAL COST  
32 OF PURCHASE.  
33 J. THE GUARANTEED ENERGY COST SAVINGS CONTRACT SHALL INCLUDE A WRITTEN  
34 GUARANTEE OF THE QUALIFIED PROVIDER THAT THE ENERGY COST SAVINGS WILL MEET OR  
35 EXCEED THE COSTS OF THE ENERGY COST SAVINGS MEASURES OVER THE TERM OF THE  
36 CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS, EXCEPT AS PROVIDED IN  
37 SUBSECTION I OF THIS SECTION. THE QUALIFIED PROVIDER SHALL:  
38 1. FOR THE TERM OF THE CONTRACT, PREPARE A MEASUREMENT AND  
39 VERIFICATION REPORT ON AN ANNUAL BASIS IN ADDITION TO AN ANNUAL  
40 RECONCILIATION OF SAVINGS.  
41 2. REIMBURSE THE AGENT FOR ANY SHORTFALL OF GUARANTEED ENERGY COST  
42 SAVINGS ON AN ANNUAL BASIS.  
43 3. USE THE INTERNATIONAL PERFORMANCE AND MEASUREMENT AND VERIFICATION  
44 PROTOCOL STANDARDS OR THE FEDERAL ENERGY MANAGEMENT PROGRAM STANDARDS TO  
45 VALIDATE THE SAVINGS GUARANTEE.

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

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

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

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

14 O. FOR THE PURPOSES OF THIS SECTION:

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

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

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

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

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

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

33 (c) AUTOMATED OR COMPUTERIZED ENERGY CONTROL SYSTEMS.

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

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

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

- 1 (g) ENERGY RECOVERY SYSTEMS.
- 2 (h) INSTALLING A NEW OR RETROFITTING AN EXISTING DAY LIGHTING SYSTEM.
- 3 (i) PROCUREMENT OF LOW-COST UTILITY SUPPLIES OF ALL TYPES, INCLUDING
- 4 ELECTRICITY, NATURAL GAS, PROPANE AND WATER.
- 5 (j) DEVICES THAT REDUCE WATER CONSUMPTION AND WATER COSTS OR THAT
- 6 REDUCE SEWER CHARGES.
- 7 (k) RAINWATER HARVESTING SYSTEMS.
- 8 (l) COMBINED HEAT AND POWER SYSTEMS.
- 9 (m) RENEWABLE AND ALTERNATIVE ENERGY PROJECTS AND RENEWABLE ENERGY
- 10 POWER SERVICE AGREEMENTS.
- 11 (n) SELF-GENERATION SYSTEMS.
- 12 (o) ANY ADDITIONAL BUILDING SYSTEMS AND INFRASTRUCTURE THAT PRODUCE
- 13 ENERGY, OR THAT PROVIDE UTILITY COST SAVINGS NOT SPECIFICALLY MENTIONED IN
- 14 THIS PARAGRAPH, IF THE IMPROVEMENTS MEET THE LIFE CYCLE COST REQUIREMENT AND
- 15 ENHANCE BUILDING SYSTEM PERFORMANCE OR OCCUPANT COMFORT AND SAFETY.
- 16 (p) GEOTHERMAL.

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

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

31 Sec. 10. Repeal

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

34 Sec. 11. Repeal

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

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

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

38 Sec. 43. Effective date

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

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

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

2           Sec. 38. Effective dates

3           ~~A.~~ Sections 15-1781, 15-1782, 15-1783, 15-1784 and 15-1851, Arizona  
4 Revised Statutes, as amended by this act, are effective from and after June  
5 30, 2011.

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

8           Sec. 14. Repeal

9           Laws 2011, chapter 344, section 25 is repealed.